

## **PART 1.**

# **ACUPUNCTURE BOARD**

## **Background Information and Overview of the Current Regulatory Program**

### **BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION**

#### **History of the Board**

Before acupuncture became regulated in California acupuncturists were arrested and prosecuted for engaging in the unlicensed practice of medicine. Acupuncturists and their patients organized and sought regulation to make the practice of acupuncture by acupuncturists legal.

The Board of Medical Examiners (now called the Medical Board of California) began regulating acupuncture in 1972 under provisions which authorized the practice of acupuncture under the supervision of a licensed physician as part of acupuncture research in medical schools. Subsequently, the law was amended to allow acupuncture research to be conducted under the auspices of medical schools rather than just in medical schools.

In 1975, Senate Bill 86 (Chapter 267, Statutes of 1975) created the Acupuncture Advisory Committee (committee) under the Board of Medical Examiners and allowed the practice of acupuncture but only upon prior diagnosis or referral by a licensed physician, chiropractor or dentist. In 1976 California became the eighth state to license acupuncturists. Subsequent legislation in 1978 established acupuncture as a "primary health care profession" by eliminating the requirement for prior diagnosis or referral by a licensed physician, chiropractor or dentist; and Assembly Bill 2424 (Chapter 1398, Statutes of 1978) authorized Medi-Cal payments for acupuncture treatment.

In 1980 the law was amended to: abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority; expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that oriental massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the Medical Board's fund. Most of these statutory changes became effective on January 1, 1982.

In 1982, the Legislature designated the Acupuncture Examining Committee as an autonomous body, and effective January 1, 1990, through AB 2367 (Chapter 1249, Statutes of 1989) the name was changed to the Acupuncture Committee to better identify it as a state licensing entity for acupuncturists. On January 1, 1999, the committee's name was changed to the Acupuncture Board (SB 1980, Chapter 991, Statutes of 1998) and removed the Committee from within the jurisdiction of the Medical Board of California (SB 1981, Chapter 736, Statutes of 1998).

### **Function of the Board**

The Acupuncture Board's (Board) legal mandate is to regulate the practice of acupuncture in the State of California. The Board established 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 mission of the Acupuncture Board is to protect and educate the public through appropriate regulation of licensure, education standards, and enforcement of the Acupuncture Licensure Act.

The vision of the Acupuncture Board is to remain committed to meet the growing consumer demand for acupuncture and oriental medicine by providing information to the public so they can make informed decisions when choosing acupuncture and oriental medicine as an appropriate first treatment. The Board will continue its leadership to develop and enhance the profession's role as an equal partner with all other primary health care professions.

The primary responsibility of the Acupuncture Board is to protect California consumers from incompetent, unethical and/or unlicensed 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.

### **Board Composition**






SB 1980 (Chapter 991, Statutes 1998) reduced the Board from 11 members to 9 members. The Board is currently composed of 4 members who are licensed acupuncturists with at least five years of acupuncture experience and not licensed as physicians, one member who is a licensed physician with two years of acupuncture experience, and 4 public members. The Board has eight appointed members and one professional vacancy. The current Board members are:

	<b>Term Expiration</b>
<b>SHARI ASPLUND</b> , Chair (Public Member) Appointed by Senate Rules Committee, September 1996	July 2002
<b>JOAN CHANG</b> , L.Ac. (Professional Member) Appointed by the Governor, June 2001	June 2003
<b>MIN M. CHANG</b> (Public Member) Appointed by the Speaker of the Assembly, May 2001	July 2004
<b>MICHAEL ENG</b> , Esq. (Public Member) Appointed by the Governor, November 2000	June 2004
<b>GARY KLAPMAN</b> , M.D., L.Ac. (Professional Member) Appointed by the Governor, November 2000	June 2004
<b>HOWARD MOFFET</b> , L.Ac., Vice Chair (Professional Member) Appointed by the Governor, November 2000	June 2003
<b>JUSTIN TIN</b> , D.D.S. (Public Member) Appointed by the Governor, April 2000	June 2003
<b>PEI LI ZHONG-FONG</b> , L.Ac. (Professional Member) Appointed by the Governor, November 2000	June 2004





### **Committees of the Board**

The Acupuncture Board has four committees, which make recommendations to the full Board as follows:

Executive Committee -- issues related to:

-  expenditures/revenue/fund condition
-  executive officer selection/evaluation
-  legislation/regulations
-  committee policy/procedures
-  special administrative projects

Education Committee -- issues related to:

-  acupuncture educational standards
-  school application and approval process
-  tutorial programs
-  continuing education

Examination Committee -- issues related to:

- 📖 development and administration contracts
- 📖 administration
- 📖 miscellaneous issues

Enforcement Committee -- issues related to:

- 📖 scope of practice
- 📖 complaints
- 📖 disciplinary decisions
- 📖 probation monitoring
- 📖 reinstatements
- 📖 miscellaneous issues

**Board regulation of the practice and practitioners**

The Acupuncture Licensure Act (B & P Code, Section 4925-4979) and its related administrative regulations (Title 16, CCR, Sections 1399.400 et seq.) defines and regulates both the practice of acupuncture and the profession. The Board licenses and regulates acupuncturists, establishes educational standards and approves acupuncture training programs. As part of its licensing function, the Board develops and administers the California Acupuncture Licensing Examination (CALE) biannually.

The practice of acupuncture, as defined in B & P Code Section 4927, involves the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body. Acupuncture includes the techniques of electroacupuncture, cupping and moxibustion.

In California, only those persons who have met the educational and examination requirements and have been issued and possesses a current and valid acupuncturists license are allowed to practice acupuncture. Individuals licensed by the Acupuncture Board use the title of Licensed Acupuncturist (L.Ac.) or Certified Acupuncturist (C.A.).

Exemptions: Physicians licensed by the Medical Board of California are authorized to practice acupuncture within their scope of licensed medical practice. Podiatrists licensed by the California Board of Podiatric Medicine and dentists licensed by the Dental Board of California may also practice acupuncture as part of their respective licensed practices - if they have completed a course of instruction in acupuncture approved by their respective licensing boards (B & P Code Section 4947).

## **Major Changes to the Board since the Last Sunset Review**

### **1998**

- 📁 Secured the Acupuncture Board's autonomy from the Medical Board of California and name change from Committee to Board.
- 📁 Through regulations, removed the limitation on hours accredited towards ethics and practice management for continuing education and allow continuing education credits to be awarded on Board approved distance education courses.
- 📁 Created a Law Enforcement Task Force to promote cooperation between enforcement agencies and to improve service to the public.
- 📁 Through the budget change proposal (BCP) process, secured funding to fully support the enforcement and examination programs and to develop a consumer brochure.

### **1999**

- 📁 Elimination of clinical portion of the licensing examination commencing Fall 1999.
- 📁 Implemented live-scan fingerprinting for applicants, reducing the waiting period for obtaining a license by approximately 70%.
- 📁 Developed, designed and implemented the Board's website.
- 📁 Expanded the website to offer license verification capability for licensee name, address and disciplinary status. (Board averages about 2,700 license lookup hits a month).
- 📁 Legislative and regulatory amendments completed on the examination and reexamination fee structure to be actual cost to the Board for the development, grading and administering of each examination.
- 📁 Evaluated, tested and replaced or modified technical systems to be Y2K ready.
- 📁 Promoted and reclassified existing staff, hired new staff and trained staff in each position.
- 📁 Secured Language Line with AT&T to accommodate non-English speaking calls to the Board.
- 📁 Developed and implemented a Business Continuity Plan.
- 📁 Secured authority to hire a permanent enforcement/education office technician.
- 📁 Commenced special task force meetings to define competencies and educational outcomes in order to increase educational curriculum requirements for licensure.

### **2000**

- 📁 Commenced occupational analysis.
- 📁 Five new member appointments made to the Board.
- 📁 Secured authority to hire a permanent examination office technician.
- 📁 Commenced development and design of a new consumer brochure.

### **2001**

- 📁 Concluded occupational analysis.
- 📁 Two new member appointments made to the Board.
- 📁 Completed and mailed consumer brochure.

**Licensing Data**

Consumers requesting licensing information are provided the license number, status, date of issue and expiration, address of record, and/or whether any disciplinary action has been filed or taken against the license. This information is also available through license verification on our website.

There are approximately 6,809 licensed acupuncturists through FY 2000/01. The following provides licensing data for the past four years:

**TABLE 1**

LICENSING DATA FOR ACUPUNCTURE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
<b>Total Licensed *</b>	Total: 5062	Total: 5443	Total: 5839	Total: 6809
<b>Applications Received</b>	Total: 808	Total: 664	Total: 553	Total: 838
<b>Applications Denied</b>	Total: 0	Total: 1	Total: 1	Total: 0
<b>Licenses Issued</b>	Total: 448	Total: 452	Total: 496	Total: 628
<b>Renewals Issued</b>	Total: 1928	Total: 1643	Total: 2118	Total: 2671
<b>Statement of Issues Filed</b>	Total: 0	Total: 1	Total: 0	Total: 0
<b>Statement of Issues Withdrawn</b>	Total: 0	Total: 0	Total: 0	Total: 0
<b>Licenses Denied</b>	Total: 0	Total: 0	Total: 1	Total: 1

☛ figures for total licensed does not include licenses which have been cancelled, deceased or revoked.

**BUDGET AND STAFF**

**Current Fee Schedule and Range**

The Acupuncture Board has an annual budget of approximately \$ 1,892,000 derived primarily from various fees, such as: license, renewal, school applications, tutorial program, examination and continuing education. The remainder of the Board's revenues are generated from interest and disciplinary cost recovery.

The last fee adjustment by the Board was for examination fees. Effective January 1, 1999, SB 1980 amended B & P Code Section 4970(b), which set the limit for examination

fees to be the actual cost for development and writing of, grading, and administering of each examination. Subsequently, regulations were adopted setting the examination fee at \$550.00, which was determined to be the actual cost.

The Board anticipates filing a regulation package to increase our delinquency fee to an amount allowed under B & P Code Section 4970(e), which was amended to set the delinquency fee in accordance with B & P Code Section 163.5 (SB 1980, Chapter 991, Statutes of 1998). Section 163.5 allows for the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs (DCA) to be set at 50% of the renewal fee, with a minimum of \$25.00 and a maximum of \$150.00. CCR Section 1399.460(f) currently defines a \$25.00 delinquency fee.

The following schedule illustrates various revenue sources and fees:

**TABLE 2**

<b>Fee Schedule</b>	<b>Current Fee</b>	<b>Statutory Limit</b>
Application Fee	\$ 75.00	\$ 75.00
Exam / ReExam Fee	\$ 550.00	Actual cost for development and administration
Original License Fee Initial license fee is prorated, 13 to 24 months, based on the date license is issued and the birthmonth	\$ 325.00	\$ 325.00
Renewal Fee (Biennial)	\$ 325.00	\$ 325.00
Delinquency Fee	\$ 25.00	\$ 150.00
School Application Fee	\$ 1,500.00	\$ 3,000.00
Tutorial Supervisor Application Fee	\$ 200.00	\$ 200.00
Tutorial Supervisor Renewal Fee	\$ 50.00	\$ 50.00
Tutorial Trainee Application Fee	\$ 25.00	\$ 25.00
Tutorial Trainee Renewal Fee	\$ 10.00	\$ 10.00
CE Provider Application Fee	\$ 150.00	\$ 150.00
Duplicate/replacement wall license	\$ 15.00	\$ 15.00
Duplicate/replacement pocket license	\$ 10.00	\$ 10.00
Endorsement Ltrs	\$ 10.00	\$ 10.00

**Revenue and Expenditure History**

The Board's total revenue, expenditures and fund balance have been fairly stable and consistent over the years. The Board has a biennial renewal system (implemented in 1996) which results in higher revenues being generated in even years. The license fee of \$325.00 biennially is sufficient to maintain program costs and provides an adequate reserve. Approximately 90% of the Board revenues are from fees. The Board is self-funded, supported by fees imposed upon the profession it regulates. The Board draws no monies from taxpayers nor the General Fund.

**TABLE 3**

REVENUES	ACTUAL				PROJECTED	
	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Licensing/Exam Fees	860,723	1,388,573	1,190,842	1,897,057	1,726,230	1,890,605
Fines & Penalties	4,097	20,883	22,216	16,244		
Fingerprint Reimburse	11,564	52,297	25,512	***392		
External/Private/Grant	2,220	2,246	6,593	9,084		
Interest	87,189	99,990	91,272	122,704	79,472	77,457
Special Deposit Fund		*179,629		**57,391		
<b>TOTALS</b>	<b>965,793</b>	<b>1,743,618</b>	<b>1,336,435</b>	<b>2,102,872</b>	<b>1,805,702</b>	<b>1,968,062</b>

- \* First Malibu lawsuit repayment
- \*\* Final Malibu lawsuit repayment
- \*\*\* Implementation of Live Scan fingerprint process

EXPENDITURES	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Personnel Services	376,899	404,654	389,781	459,009	516,880	527,218
Operating Expenses	778, 277	924,599	1,312,187	1,161,247	1,329,120	1,355,702
(-) Reimbursements			54,321			
(-) Distributed Costs						
<b>TOTALS</b>	<b>1,155,176</b>	<b>1,329,253</b>	<b>1,647,647</b>	<b>1,620,256</b>	<b>1,846,000</b>	<b>1,882,920</b>

The examination and enforcement program budget allocations were each increased through the BCP process in FY1999/2000 allowing for program costs to be fully covered. The Board's operating expenses were consistent prior to the increase in 1999/2000 and have remained steady.

The Board has 9 full-time permanent and four part-time seasonal positions. The Board has submitted two BCP's for FY 2002/03 for two additional positions.

**Expenditures by Program Component**

Approximately 23% of the Board's budget is expended for licensing related activities, 40% is expended for examination related expenditures, 29% expended for enforcement and discipline, and 8% expended for general administration.



**TABLE 4**

<b>EXPENDITURES BY PROGRAM COMPONENT</b>	<b>FY 97-98</b>	<b>FY 98-99</b>	<b>FY 99-00</b>	<b>FY 00-01</b>	<b>Average % Spent by Program</b>
<b>Enforcement</b>	335,001	385,484	477,817	469,874	<b>29%</b>
<b>Examination</b>	462,070	531,701	659,059	648,103	<b>40%</b>
<b>Licensing</b>	265,691	305,728	378,959	372,659	<b>23%</b>
<b>Administrative</b>	92,414	106,340	131,812	129,620	<b>8%</b>
<b>TOTALS</b>	<b>1,155,176</b>	<b>1,329,253</b>	<b>1,647,647</b>	<b>1,620,256</b>	

**Fund Condition**

The Board's fund condition has remained fairly consistent over the years. There are no mandated statutory reserve levels the Board is required to maintain. The Board has been consistent in maintaining a 9-10 month reserve.

**TABLE 5**

<b>ANALYSIS OF FUND CONDITION</b>	<b>FY 99-00</b>	<b>FY 00-01</b>	<b>FY 01-02 (Budget Yr)</b>	<b>FY 02-03 (Projected)</b>	<b>FY 03-04 (Projected)</b>	<b>FY 04-05 (Projected)</b>
<b>Total Reserves, July 1</b>	1,720,424	1,354,486	1,589,432	1,549,134	1,634,276	1,521,641
<b>Total Rev. &amp; Transfers</b>	1,282,139	2,014,779	1,805,702	1,968,062	1,807,944	2,007,423
<b>Total Resources</b>	3,002,268	3,369,265	3,395,134	3,517,196	3,442,219	3,529,064
<b>Total Expenditures</b>	1,647,782	1,779,833	1,846,000	1,882,920	1,920,578	1,958,990
<b>Reserve, June 30</b>	1,354,486	1,589,432	1,549,134	1,634,276	1,521,641	1,570,074
<b>MONTHS IN RESERVE</b>	<b>9.9</b>	<b>10.7</b>	<b>10.1</b>	<b>10.4</b>	<b>9.5</b>	<b>9.6</b>

**LICENSURE REQUIREMENTS**

**Education, Experience and Examination Requirements**

B & P Code Section 4938 states:

The Board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

- (a) Is at least 18 years of age.
- (b) Furnishes satisfactory evidence of completion of one of the following:
  - (1) An educational and training program approved by the Board pursuant to Section 4939.

- (2) Satisfactory completion of a tutorial program in the practice of an acupuncturist which is approved by the Board.
- (3) In the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and clinical experience which meets the standards established pursuant to Sections 4939 and 4941.
- (c) Passes a written examination administered by the Board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Examination Resources of the Department of Consumer Affairs.
- (d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

Pursuant to the above, subsection (b)(1) involves graduation from an approved acupuncture school or college with a specified minimum curriculum of 2,348 hours (1,548 didactic/theoretical training and 800 hours supervised clinical training). Subsection (b)(2) involves 2,850 hours (2,250 hours clinical training and 600 hours theoretical/didactic training). Subsection (b)(3) requires that foreign-trained applicants must meet the minimum curriculum requirements and hours as defined in subsection (b)(1).

All applicants for examination are required to have submitted to the Board original transcripts directly from the institution where their education was obtained. The Board contacts the foreign institutions directly to verify all documents submitted. The Board also requires all applicants to be fingerprinted for criminal history information through both the California Department of Justice and the Federal Bureau of Investigation prior to licensure.

The Board has contracted with the DCA's Office of Examination Resources to perform an occupational analysis. It is anticipated to be completed by November 2001. The last occupational analysis was completed in 1996.

**TABLE 6**

<b>CALIFORNIA ACUPUNCTURE LICENSING EXAMINATION</b>				
	<b>1997/98</b>	<b>1998/99</b>	<b>1999/00</b>	<b>2000/01</b>
<b>CANDIDATES</b>	462	884	1060	1154
<b>PASS %</b>	65%	49%	62%	54%
<b>NOTE:</b> The above candidate numbers are for the written examination only. Effective July 1, 1999, the clinical exam administered by the board was eliminated.				

Applications for examination are required to be filed with the Board at least 120 calendar days prior to the examination date (CCR Section 1399.413). The regulations also require the Board to notify examinees of their results within 30 days from the date of examination. After the 150 days mentioned here, it is approximately another eight weeks before their license is issued.

**TABLE 7**

<b>AVERAGE DAYS TO RECEIVE LICENSE</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Application to Examination	120	120	120	120
Examination to Issuance	86	86	86	86
<b>Total Average Days</b>	<b>206</b>	<b>206</b>	<b>206</b>	<b>206</b>

**Continuing Education/Competency Requirements**

Acupuncturists are required to complete 30 hours of continuing education (CE) every two years as a condition of license renewal. Licensees must list courses and hours completed and sign an affidavit attesting to completion of the required CE on their renewal applications.

If a licensee does not obtain the required CE hours, the Board may renew the license and require the deficient hours of CE to be made up during the following renewal period, in addition to the current CE requirement for that period. If a licensee fails to make up the deficient hours and complete the current requirement of CE hours during the subsequent renewal period, the license will not be renewed until all the required hours are completed and documented.

The content of CE courses must be relevant to the practice of acupuncture and related to the knowledge and/or technical skills required to practice acupuncture. Courses in practice management or professional ethics are acceptable and encouraged. Courses must include a method by which course participants can evaluate whether the course met its stated objectives; the adequacy of the instructor's knowledge of the course subject; the utilization of appropriate teaching methods; and the applicability or usefulness of the course information.

Effective January 30, 2000, the Board's regulations were amended to allow licensed acupuncturists to take up to 50% of the continuing education hours required in a non-classroom setting. Non-classroom setting may include audio, visual, internet, etc.

**Comity/Reciprocity With Other States**

To practice in California as an acupuncturist the law requires completion of one of the three licensure requirements described previously. Regardless of which method is used, all current license applicants must pass the licensing examination, including applicants licensed in another state and/or those who have passed the national certification examination. There is no provision for reciprocity with other states and there is no provision for a temporary California acupuncture license.

## ENFORCEMENT ACTIVITY

The California Acupuncture Board receives complaints from consumers, members of the profession, professional associations, law enforcement, governmental agencies and other states. While historically consumers and law enforcement have been the main source of complaints, the profession has become more proactive in reporting violations and unlicensed activity.

The Board requests that all complaints be submitted in writing. A detailed complaint form is available from the Board's office and website, or upon request from the DCA Consumer Information Center (CIC). This form provides information about filing a complaint, as well as explaining the Board's statutory authority to act and the process that is followed upon receipt of a complaint. In lieu of the complaint form, complainants may also submit a letter, identifying the practitioner who is the subject of the complaint, explaining the issues of concern and the action or results they hope to achieve by filing the complaint.

The Board currently does not have a statute addressing reporting requirements by other governmental agencies. However, the Board has included proposed language in this year's legislative package which requires that notification of any disciplinary action against a licensee be sent to the local business licensing entity where the licensee is currently known to be practicing. It is estimated that the Board responds to between 500 and 700 inquiries annually. These inquiries include, but are not limited to, scope of practice, ethics, laws and regulations, practice management, and disciplinary related issues. These inquiries are received via email, facsimile, telephone and U.S. mail, with the majority requiring a written response.

The CIC reported the following number of inquiries on the practice of acupuncture:

	<u>FY 1997/98</u>	<u>FY 1998/99</u>	<u>FY 1999/00</u>	<u>FY 2000/01</u>
Licensing	171	166	101	155
Complaints	30	199	540	50
Applications & Pamphlets	<u>31</u>	<u>119</u>	<u>78</u>	<u>54</u>
TOTAL	232	484	719	259

The Board uses the Consumer Affairs System (CAS) / Enforcement Tracking System (ETS) database to log and track all complaint and licensing information. Therefore, all statistical tables have been completed using reports generated from this system.

**TABLE 8**

<b>ENFORCEMENT DATA</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
<b>Complaints Received (Source)</b>	Total: 132	Total: 78	Total: 79	Total: 99
Public	50	39	37	36
Licensee/Professional Groups	6	3	7	16
Governmental Agencies	38	27	25	38
Other	38	9	10	9
<b>Complaints Filed (By Type)</b>	Total: 132	Total: 78	Total: 79	Total: 99
Competence/Negligence	14	11	9	3
Unprofessional Conduct	58	25	27	52
Fraud	5	4	6	6
Health & Safety	3	1	0	3
Unlicensed Activity	17	15	22	14
Sexual Misconduct	7	5	7	8
Personal Conduct	27	17	8	13
<b>Complaints Closed</b>	Total: 124	Total: 101	Total: 74	Total: 97
<b>Investigations Commenced</b>	Total: 40	Total: 29	Total: 32	Total: 20
<b>Compliance Actions</b>	Total: 33	Total: 11	Total: 9	Total: 8
ISOs & TROs Issued	0	0	0	0
Citations and Fines	0	0	0	1
Public Letter of Reprimand	0	0	0	0
Cease & Desist/Warning	33	11	9	7
Referred for Diversion	0	0	0	0
Compel Examination	0	0	0	0
<b>Referred for Criminal Action</b>	Total: 1	Total: 3	Total: 5	Total: 2
<b>Referred to AG's Office</b>	Total: 23	Total: 10	Total: 7	Total: 12
Accusations Filed	6	20	9	10
Accusations Withdrawn	1	1	0	2
Accusations Dismissed	11	0	0	0
Accusations Declined	5	2	1	0
<b>Stipulated Settlements</b>	Total: 3	Total: 6	Total: 1	Total: 3
<b>Disciplinary Actions</b>	Total: 6	Total: 12	Total: 7	Total: 11
Revocation	3	3	6	8
Voluntary Surrender	1	2	1	2
Suspension Only	0	0	0	0
Probation with Suspension	0	1	0	1
Probation	2	6	0	0
Probationary License Issued	0	0	0	0
<b>Probation Violations</b>	Total: 0	Total: 0	Total: 0	Total: 0
Suspension or Probation				
Revocation or Surrender				

As indicated in Table 8, complaints filed with the Board have decreased somewhat during the past three fiscal years. This is most notable in the category of incompetence/negligence, with fiscal year 2000-01 down by 72% from the average of three previous fiscal years. The number of complaints received from governmental agencies increased 27% from the average of three previous fiscal years. This may be attributed in part to the creation of the Board's Enforcement Task Force.

The Enforcement Task Force held its first meeting beginning in April of 1998. The meetings included Board staff, the Office of the Attorney General/Department of Justice, the Division of Investigation (DOI), Immigration and Naturalization Service, Department of the Treasury, Department of Industrial Relations, Labor Standards Enforcement, and multi-level law enforcement staff from various city, county, state and federal agencies located in Southern California. The meeting provided a forum for all parties to ask questions, share common problems, understand jurisdictions, discuss laws relating to the practice of acupuncture, and methods of handling violations related to acupuncture. The increased public awareness may be attributed to the Board's outreach and education provided via media releases, participation in DCA consumer information fairs, updates to schools and availability of the Board's website.

The Board processes and acknowledges all complaints received. Every attempt is made to review complaints for jurisdiction, complexity and availability of factual materials within thirty days. The Board generally resolves less egregious complaints in house, except in those cases related to actual patient harm. Cases involving patient harm and/or sexual misconduct are automatically forwarded to the DOI for formal investigation.

Upon completion of initial complaint review, the following actions may be taken:

- 📁 Board contacts complainant for clarification and/or additional information.
- 📁 Board resolves complainant's issues, thereby closing the complaint.
- 📁 Complainant is notified the case was referred to another agency with jurisdiction over the issues alleged.
- 📁 Board requests a formal investigation by the DOI.

Cases are assigned a priority code upon complaint intake, which is logged on the ETS. The highest priority is assigned, but not limited, to those cases involving actual patient harm, mental impairment, and sexual misconduct. These types of complaint cases take precedence over those cases of a less egregious nature. The DOI is asked to expedite processing these cases. Depending upon the nature and degree of the alleged violation, cases from governmental agencies or officials may also receive priority handling.

Unprofessional conduct, unlicensed activity and sexual misconduct were the most frequent complaints received against licensees during this reporting period. These complaints may be initially investigated in-house, and if warranted, forwarded to the DOI requesting a formal investigation. Incompetence, negligence, and sexual misconduct, (all involve actual patient harm) and some allegations of fraud are automatically referred to formal investigation by the DOI. Violations of a less egregious nature may result in a citation and fine, as opposed to more egregious cases warranting a formal accusation and disciplinary action.

The Board conducts an average of 30 licensee investigations per fiscal year as reflected in Table 8. This represents a slight decrease in the number of investigations opened in this review period as compared with the Board's last Sunset Review Report.

As illustrated in Table 8, *Referred for Criminal Action*, 11 cases were forwarded for criminal prosecution during this reporting period. Cases may be referred for criminal action by DOI, which has authority to issue criminal citations. These cases most often involve individuals, licensees, or entities that have harmed patients, engaged in unlicensed activity, engaged in criminal activity, or committed insurance fraud. Once the criminal citation is issued, the matter is referred to the local authority for criminal prosecution.

Table 8 indicates statistics relative to the Board's disciplinary actions during this review. The average number of formal accusations filed and disciplinary actions taken has been fairly consistent since the last Sunset Review Report. The majority of disciplinary actions pertain to unprofessional conduct and sexual misconduct with patients. Disciplinary cases may be heard by an administrative law judge, or resolved through stipulated settlement, and default actions due to various reasons.

The Acupuncture Board's *Disciplinary Guidelines* are used by the Attorney General, the Board, administrative law judges, and others involved in the enforcement process. These Guidelines are specifically used when the Board takes action to suspend, revoke, deny, order/modify probation, or reinstate a license, and are an essential component in providing for the fair and consistent application of penalties in the disciplinary process. In 1997, pursuant to SB 523 (Chapter 938, Statutes of 1995), the Board adopted a regulation to incorporate the Disciplinary Guidelines by reference.

### **Enforcement Program Overview**

Consumers and law enforcement are the main source of licensee complaints. While there is no requirement for other states, government agencies, or other licensed health care professionals to notify the Board of disciplinary actions taken against California licensees, reporting is encouraged.

The Board and DOI investigators routinely experience problems in receiving or obtaining relevant information, documentation, and patient records for investigative purposes. Complainants, patients and/or witnesses are reluctant to come forward with a complaint and provide testimony. This is especially true with certain cultural or ethnic groups for fear of retaliation.

The majority of complaints filed involve unprofessional conduct, unlicensed practice and sexual misconduct. Accordingly disciplinary actions taken involve unprofessional and sexual misconduct. The Board considers settlement in most cases, with the exception being those cases involving patient injury, and/or patient death. Cases settled are generally related to violations of a less harmful nature. When considering settlement in

a disciplinary case it is the Board's policy to discuss and consider options during the hearing stage.

As illustrated in Table 8, a total of 36 cases resulted in 13 stipulated settlements during this reporting period; in those 36 cases the following results were attained:

- ☒ 55 % Revocation.
- ☒ 17 % Voluntary surrender of license.
- ☒ 6 % Revocation stayed, with suspension and probation.
- ☒ 22 % Revocation stayed, with probation.

The results from stipulated settlements are similar to those achieved should a matter proceed to a formal hearing with the Office of Administrative Hearings. Costs involved in settling a case prior to the hearing process are substantially less. Settlements result in saving both time and money for all parties.

The Board has experienced few changes in the source and type of complaints received, obtaining investigative information, or in the settlement process since the previous review.

Table 8 represents licensee complaints opened, closed, referred for formal investigation, accusations filed, and disciplinary actions for the current four-year reporting period. It should be noted that a complaint typically is not opened, investigated and either closed or referred for disciplinary action within the same fiscal year. An accusation may be filed in one fiscal year with the resulting disciplinary action occurring in a subsequent fiscal year.

**TABLE 9**

<b>NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION</b>				
	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
<b>COMPLAINTS RECEIVED</b>	<b>132</b>	<b>78</b>	<b>76</b>	<b>99</b>
Complaints Closed	125	102	74	99
Referred for Investigation	40	29	32	20
Accusation Filed	6	20	9	10
Disciplinary Action	6	13	7	11

As indicated in Table 9, 31% of complaints opened are referred for formal investigation, and 37% of those cases formally investigated, proceed to accusation. A comparison of disciplinary actions made in relation to the number of complaints received against licensees, shows that 10% of complaints against licensees result in disciplinary action. This figure is consistent with statistics reported during the previous review.



An aggressive approach by the Board to expand its knowledge and understanding of existing laws has led to several amendments or the introduction of new laws relevant to acupuncture. The Board has become more proficient in their knowledge, understanding and interpretation of other California laws, which are relevant or essential to the practice of acupuncture, i.e., Corporations, Health and Safety, Uniform Building and OSHA Codes. This has positively impacted the disciplinary process by ensuring that those cases referred to accusation warrant disciplinary action. This has resulted in fewer administrative cases declined, dismissed, or rejected as unactionable, by the Office of the Attorney General. Similar results have occurred with criminal cases forwarded to local authorities.

There has been a marked and continuous increase in the public's awareness of the practice of acupuncture. As public awareness and acceptance becomes more wide spread, so have the number of consumers seeking acupuncture treatment as complementary or primary health care throughout California and the United States. This has resulted in more inquiries made to the Board regarding license status, scope of practice, interpretation of laws, professional responsibilities, ethics, practice management, complaint, investigation, disciplinary and probationary action. These inquiries come from all avenues; the public, licensees, law enforcement, other licensed health care professionals, various federal, state, county and city agencies, insurance companies, professional associations, schools, students, attorneys and the media.

The Board evaluates each case during intake. Cases that are not within the Board's jurisdiction or those that are unactionable are referred to the appropriate agency or closed. Cases which cannot be resolved in-house or warrant formal investigation are forwarded to the DOI.

**Case Aging Data**

**TABLE 10**

<b>AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES</b>				
	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Complaint Processing	<b>242</b>	<b>129</b>	<b>167</b>	<b>128</b>
Investigations	<b>356</b>	<b>267</b>	<b>305</b>	<b>209</b>
Post-Accusation*	<b>785</b>	<b>146</b>	<b>345</b>	<b>453</b>
<b>TOTAL AVERAGE DAYS**</b>	<b>2213</b>	<b>1108</b>	<b>952</b>	<b>965</b>
*From formal charges filed to conclusion of disciplinary case logged on ETS.				
**From date complaint logged on ETS to date of final disposition of disciplinary case logged on ETS.				

The calculation for *Post-Accusation* in Table 10 is based upon the average number of days from filing (service) of the accusation to the final disposition. Final dispositions include license revocation, suspension, probation, surrender of the license, stay, or withdrawal of the accusation. As indicated, these time periods have varied throughout

the four-year period and as a case progresses through this part of the process may be resolved through stipulated settlement or administrative hearing. Stipulated settlements generally are negotiated with the respondents and their attorneys through the Deputy Attorney General (DAG), in consultation with the Board's Executive Officer. Stipulated settlements are subsequently presented to the Board for a vote to adopt or reject. In cases moving to the administrative hearing process, the Board requests an Administrative Law Judge (ALJ) to preside and render proposed decisions. Depending on the outcome of the hearing and based on the action of the Board, resolution may take up to two years.

In reviewing the *Post-Accusation Average Days to Prosecute* for each of the fiscal years represented, it should be kept in mind that many factors can contribute to processing times. For example, a case in which an accusation is filed then proceeds to an administrative hearing, may take two or three times longer to conclude, than one in which an accusation is filed and settled by a stipulated settlement. In either case, the matter must then proceed to the Board for review and action. Each case is unique and time periods vary.

**TABLE 11**

<b>INVESTIGATIONS CLOSED WITHIN:</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>	<b>AVERAGE % CASES CLOSED</b>
90 Days	4	3	3	14	<b>19</b>
180 Days	11	9	0	1	<b>17</b>
1 Year	6	8	6	6	<b>20</b>
2 Years	8	13	12	14	<b>37</b>
3 Years	1	0	2	1	<b>3</b>
Over 3 Years	3	0	1	1	<b>4</b>
<b>Total Cases Closed</b>	<b>33</b>	<b>33</b>	<b>24</b>	<b>37</b>	
<b>AG CASES CLOSED WITHIN:</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>	<b>AVERAGE % CASES CLOSED</b>
1 Year	6	6	0	1	<b>23</b>
2 Years	2	5	4	1	<b>21</b>
3 Years	3	1	1	5	<b>18</b>
4 Years	0	1	0	2	<b>5</b>
Over 4 Years	16	3	0	0	<b>33</b>
<b>Total Cases Closed</b>	<b>27</b>	<b>16</b>	<b>5</b>	<b>9</b>	
<b>Disciplinary Cases Pending</b>	<b>4</b>	<b>15</b>	<b>5</b>	<b>36</b>	

The calculation for *Investigations Closed Within* Table 11 is based upon the number of days from assignment of a case for formal investigation to receipt of a final investigation report from the DOI. The calculation for *AG Cases Closed Within* is based upon the number of days from the referral of a case to the Office of the Attorney General to receipt of a final disposition.

The data provided in Table 11, *Investigations Closed Within*, demonstrates the average number of cases closed in the time span of 90 days to two years during this reporting period. The majority of investigations closed were within a two-year time frame.

In *AG Cases Closed Within*, a review of Table 11 shows that most cases were closed within three years. This figure is consistent with statistics reported during the previous sunset review.

Cases referred to the Office of the Attorney General took from two to eight months for the Board to receive an accusation package back from the DAG. The number of additional arrests made in several existing cases, required the DAG to file amended accusations.

### **Cite and Fine Program**

As illustrated in Table 12 one citation with a fine has been issued and collected. CCR Section 1399.465 establishes that any administrative fine to be levied shall be no less than \$100 nor more than \$2,500.

**TABLE 12**

<b>CITATIONS AND FINES</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Total Citations	0	0	0	0
Total Citations With Fines	0	0	0	1
Amount Assessed	0	0	0	\$500
Reduced, Withdrawn, Dismissed	0	0	0	0
<b>Amount Collected</b>	-	-	-	\$500

### **Results of Complainant Satisfaction Survey**

The Board mailed a consumer satisfaction survey to 189 individuals whose complaints were processed between July 1, 1997 and June 30, 2001. Of the 101 surveys returned to the Board, 65 were actual survey responses and 36 were returned as undeliverable.

The Board follows standard procedures in the handling of all complaints and investigations. However, consumer satisfaction was greatest in those cases resulting in disciplinary action to the licensee.

**TABLE 13**

<b>CONSUMER SATISFACTION SURVEY RESULTS*</b>						
<b>QUESTIONS</b>	<b>Responses</b>					
<b># Surveys Mailed: 189</b>	<b>Satisfied</b>			<b>Dissatisfied</b>		
<b># Surveys completed: 65</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>n/a</b>
1. Were you satisfied with knowing where to file a complaint and whom to contact?	24	11	8	6	13	3
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?	22	9	4	7	18	5
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?	13	9	8	8	23	4
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?	11	5	8	8	27	6
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	9	5	7	5	29	10
6. Were you satisfied with the final outcome of your case?	8	4	5	6	26	16
<b>7. Were you satisfied with the overall service provided by the Board?</b>	<b>14</b>	<b>5</b>	<b>8</b>	<b>6</b>	<b>24</b>	<b>8</b>

A detailed review of the completed responses for overall satisfaction of service showed the following:

- ✍ 22% were "very satisfied".
- ✍ 8% were "satisfied".
- ✍ 12% were "somewhat satisfied".
- ✍ 9% were "dissatisfied".
- ✍ 37% were "very dissatisfied".
- ✍ 12% answered "N/A or not-applicable".

**ENFORCEMENT EXPENDITURES  
AND COST RECOVERY**

The Board is not able to provide a factual average cost per case as requested by the Joint Legislative Sunset Review Committee in Table 14 below. As previously indicated,

the Board uses DCA's CAS/ETS which is the only database available to the Board to track enforcement and licensing history. This database does not report the requested information in Table 14. Under *Average Cost Per Case Investigated* the number of closed cases are factual numbers; however, it does not reflect the actual number of cases investigated during the reporting period. For example, in 1997/98 it states there were 33 investigations closed, which is a factual number, but there may have been 45 cases investigated. The actual number of cases investigated is the more factual number to divide into the amount expended during that fiscal year.

**TABLE 14**

<b>AVERAGE COST PER CASE INVESTIGATED</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Cost of Investigation & Experts	<b>\$96,103</b>	<b>\$66,006</b>	<b>\$251,332</b>	<b>\$208,170</b>
Number of Cases Closed	33	41	32	38
Average Cost Per Case				
<b>AVERAGE COST PER CASE REFERRED TO AG</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Cost of Prosecution & Hearings	<b>\$145,872</b>	<b>\$68,998</b>	<b>\$112,811</b>	<b>\$109,227</b>
Number of Cases Referred	10	23	7	16
Average Cost Per Case				
<b>AVERAGE COST PER DISCIPLINARY CASE</b>				

The cost of investigation and experts has increased due to several cases involving unprofessional conduct related to massage/prostitution activity initially required additional evidence. Cases involving incompetence, negligence and sexual misconduct require an expert opinion. This opinion includes standard of care within the community, any departure or deviation from the standard and the degree of the departure or deviation. Cases requiring expert testimony are more costly to prosecute. The DAG must devote additional hours to process, research, or request additional investigation from DOI, obtain an expert opinion and testimony, then prosecute the case. The Board forwards those substantive cases that warrant formal investigation. This has reduced the number of cases referred to DOI, thereby increasing the workload of the Board to research complaint information, obtain documents, contact complainants, licensees, enforcement officials, and other government agencies.

Prior to fiscal year 1998/99 the Board experienced significant difficulty in budgeting for prosecution and hearing costs. In 1999 the Office of the Attorney General completed prosecution of numerous cases related to the licensing examination bribery occurring in the late 1980's. Litigation expenses related to the prosecution of these cases was exorbitant and required a budget augmentation in fiscal year 1996/97 and 1997/98 through the deficiency request process. The Board was required to delay forwarding all new cases until the next fiscal year, and halt processing several existing cases already at the Office of the Attorney General.

## **Cost Recovery Efforts**

The Board's policy is to pursue cost recovery where appropriate. All accusations include a plea for awarding costs. Table 15 illustrates cost recovery information during this review period.

**TABLE 15**

<b>COST RECOVERY DATA</b>	<b>FY 1997/98</b>	<b>FY 1998/99</b>	<b>FY 1999/00</b>	<b>FY 2000/01</b>
Total Enforcement Expenditures	<b>\$245,998</b>	<b>\$136,297</b>	<b>\$374,187</b>	<b>\$380,679</b>
# Potential Cases for Recovery*	10	23	7	16
# Cases Recovery Ordered	10	9	14	7
Amount of Cost Recovery Ordered/% of Enforcement Exp	\$5,000 / 2%	\$27,672 / 20%	\$11,423 / 3%	\$49,141 / 13%
<b>Amount Collected</b>	<b>\$4,097</b>	<b>\$20,883</b>	<b>\$22,216</b>	<b>\$16,244</b>

\*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.

Table 15 is divided into two components, *Potential Cost Recovery Cases* and *Cost Recovery in Relation to Case Expenditures*. Figures represented are number of cases, dollar amounts, and percentage of recovery rate. For each year within the review period, the Board's recovery rate has averaged eight percent of the total enforcement expenditures over the past four fiscal years.

Many cases that initially qualify by statute for cost recovery are concluded via methods that eliminate the potential for cost recovery. These methods include:

- ✍ Cases closed via default.
- ✍ Cases closed via stipulated revocation.
- ✍ Cases closed via stipulated surrender.

Should a respondent petition for reinstatement the Board requires payment of all cost recovery ordered but not collected due to a revocation or surrender of the license.

The amount collected illustrates recovery rates with respect to enforcement expenditures for those cases in which cost recovery was ordered or included in settlements. The percentage of recovery is substantial and reflects a strong success rate.

## **RESTITUTION PROVIDED TO CONSUMERS**

The Acupuncture Board does not have, and is not currently considering, any provision for restitution. Therefore, no restitution to consumers is reported.

## COMPLAINT DISCLOSURE POLICY

It is policy of the Acupuncture Board not to disclose complaint information regarding a licensee unless a violation has been established. The Board complies with current law regarding the confidentiality of licensee information. Information regarding open or closed complaints and investigations is not released to the public pursuant to Government Code Section 6254(f) of the Public Records Act. If an investigation substantiates a violation, and the Board takes action by issuing a citation or filing an accusation against the licensee, the citation or the accusation and resulting disciplinary action are public record.

The Board has issued a press release during this reporting period regarding disciplinary issues and resulting action taken against licensees. Disciplinary actions are also posted on the Board's website.







The Board's website also includes a license verification feature, which is available to anyone interested in obtaining licensee verification and status. Information available includes name of licensee, license number, status, issue and expiration date, address of record and disciplinary action(s). This information can also be obtained by contacting the Board. Detailed information regarding disciplinary actions or copies of documents filed against a licensee must be requested in writing.

**TABLE 16**

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		<b>X</b>
Citation	X	
Fine	X	
Letter of Reprimand	X	
Pending Investigation		X
Investigation Completed		X
Arbitration Decision		X
Referred to AG: Pre-Accusation		X
Referred to AG: Post-Accusation	X	
Settlement Decision	X	
Disciplinary Action Taken	X	
Civil Judgment	n/a	
Malpractice Decision	n/a	
Criminal Violation:	n/a	
Felony		
Misdemeanor		

## CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

The Board maintains a comprehensive and user-friendly website ([www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)). The website provides the public with the following information:

 About the Board	Committee Assignments History Mission & Vision Member Profiles
 What is Acupuncture?	Fact Sheet and Questions Frequently Asked Question
 Licensing	Licensing and Application Process License Renewal Lapsed Licenses Fees Display of License
 Examinations	Requirements Calendar Examination Content Development/Validation Criterion-Referenced Scoring Book/Reference List Examination Security Special Accommodations Statistics
 Education	Requirements Transcripts, Diplomas, etc. School List School Approval Process BPPVE Externships Satellite and Branch Tutorial Foreign Equivalency
 Continuing Education	Requirements How to Become a Provider Course Criteria/Content Approved Courses



	Audits
📁 Enforcement	Press Release(s) Consumer Complaint Information Warning to Acupuncturists Common Complaints Filed A Guide to Enforcement Language Professional Titles/Abbreviations Enforcement Statistics Board Actions and Decisions
📁 Law and Regulations	Business and Professions Code California Code of Regulations
📁 Board Meetings	Acupuncture Board Meeting Minutes and Agendas
📁 Miscellaneous	State & Federal Acupuncture Associations
📁 Publications and Forms	Licensing Examination Enforcement / Complaint Education
📁 Links	Government Agencies Business and Professions Code Board Approved Education Institutions Acupuncture Associations and National Organizations

DCA's Office of Information Systems reported the following number of hits to the Board's website which commenced November 1998:

<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
204	96,596	171,459	123,536*

\*January-July 2001

The categories consistently receiving the highest number of hits are: California Acupuncture Board, examinations, licensing, acupuncture associations, education, links, publications and forms, licensing and application process, and laws and regulations.

The Board implemented a "license verification" feature on its website and has averaged about 2,700 license verification hits a month, which is not reflective in the website numbers indicated above. Information available includes licensee name, license number, status, address of record and disciplinary actions. Disciplinary information posted on the website list's the respondent's name, license number, the discipline

imposed, the cause of discipline, statutes and regulations violated, as applicable, and the date the discipline became effective. Further details regarding the disciplinary action will be provided upon written request to the Board.

The Board's website offers two complaint forms to download; one to file a complaint against a licensee, and the other to register comments or complaints about the California Acupuncture Board. Instructions regarding how to file these complaint forms, as well as an explanation of the complaint process, are also included on the website.

Depending on future resources and the abilities to integrate all computer and technical systems maintained by the Department, assure data security, and accept digital signatures for documents that must be signed, the Board believes the following online capabilities may assist the public in terms of increased convenience and timeliness:

- 📁 Filing of applications (i.e., examination, licensing, continuing education provider) if accompanied by credit card payment of fee and digital signature.
- 📁 Renewal of licenses if accompanied by credit card payment of fees and digital signature.
- 📁 Filing of change of address.
- 📁 Filing of complaints.
- 📁 Online consumer assistance.

The Board has researched and is moving towards implementation of an online complaint filing process. The Board does not offer online licensure testing, nor believes it to be feasible or appropriate.

Regarding regulation of Internet business practices, pursuant to B & P Code Section 17500, advertising on the Internet is currently regulated.

## **PART 2. ACUPUNCTURE BOARD**

### **Board's Response to Issues Identified And Former Recommendations Made by the Joint Legislative Sunset Review Committee**

#### **BOARD ISSUES**

**JLSRC 1997 - Issue #1:  
Should the licensing of acupuncturists be continued?**

#### **JLSRC Recommendation**

In its report to the Department of Consumer Affairs, the Joint Legislative Sunset Review Committee (JLSRC) recommended the State continue the licensure and regulation of the practice of acupuncture and Oriental medicine and the Acupuncture Board (Committee) should continue to be the regulating agency.

#### **Discussion**

Effective January 1, 1999, (SB 1980, Chapter 991) extended the sunset date of the Acupuncture Committee and changed the name to Acupuncture Board.

The Board believes licensing and regulation of acupuncture and Oriental medicine practitioners is necessary, as they are primary health care professionals directly affecting the health, safety and welfare of a patient and the public. The scope of practice for acupuncture and Oriental medicine includes modalities and treatment procedures unique to the profession. Acupuncture and Oriental medicine is based upon a different philosophy than allopathic western-trained health care professionals. The profession is recognized and accepted in California's MediCal and Worker's Compensation programs. The practitioners diagnose, administer treatment, perform treatments and prescribe herbs to promote patient health.

The Acupuncture Board should still continue to license and regulate the profession for the same reasons that existed in 1997. The unregulated practice of acupuncture could result in incompetent or unethical practice and/or severe patient harm. In addition, it could adversely impact the consumers' right to alternative forms of health care in California. Continued regulation by the state is essential to provide consumer protection and availability of competent practitioners to consumers seeking

complementary health care. A study in the *Journal of the Family Practice* (2000) showed 33% of the patients seeking health care used a complementary medicine practitioner as their primary health care provider. Additionally, a study in *Archives of Internal Medicine* (1998) showed 43% of medical doctors refer patients to alternative or complementary medicine providers.

Since its last review, the Board has made a number of changes to improve overall effectiveness and efficiency and respond to concerns and recommendations raised by the JLSRC. The Board has implemented several major changes since the last reporting period. The focus has been on raising educational standards, strengthening the enforcement program, modifying the licensing examination, developing the Board's Website and license verification, and producing a consumer brochure, as described in Part 1 of this report.

### **JLSRC 1997 - Issue #2:**

**Should the Acupuncture Board (Committee) be continued as is, be given more independence from the Medical Board, merged with the Medical Board, or have its operations and functions assumed by the Department of Consumer Affairs?**

### **JLSRC Recommendation**

JLSRC recommended that the Acupuncture Committee should remain as an independent state-licensing agency for acupuncture practice. Consideration should be given to: removing the minimal, apparently vestigial jurisdiction of the Medical Board (essentially just approval of Committee regulations); and changing the name of the Acupuncture Committee to the "Acupuncture Licensing Board of California," "Acupuncture Board," or the "State Board of Acupuncture and Oriental Medicine."

### **Discussion**

As defined in Part I, History of the Board, acupuncture and Oriental medicine practitioners became regulated in 1972 under the Board of Medical Examiners (now called the Medical Board of California). By 1990 the then Acupuncture Committee was established as an autonomous body with the Medical Board retaining a procedural requirement that all proposed regulations be approved by them. Effective January 1, 1999 (SB 1981, Chapter 736), the Acupuncture Board secured its autonomy from the Medical Board of California and the name was changed from Committee to Board.

It is felt that the use of the term acupuncture in the Board's name only partially reflects the scope of practice of the profession. Acupuncture is one modality within the whole practice and philosophy of Oriental medicine. Therefore, the Board supports the name change to "California Board of Acupuncture and Oriental Medicine."

## PRACTICE ISSUE

### **JLSRC 1997 - Issue #3:**

**Should the scope of practice for acupuncturists be expanded? Should the Acupuncture Committee (Board) regulate "herbalists" in California?**

#### **JLSRC Recommendation**

JLSRC made no recommendation on this issue, stating that prior to any proposal to regulate herbalists in California, the Board should thoroughly evaluate the problems, examine the overlap with other professions and oversight by other state and federal agencies.

#### **Board Recommendation**

This has been an issue in the Board's Strategic Plan since 1996. The Board concurs with the caution proposed by the JLSRC. The Board's primary goal is to protect the consumer, and is concerned about possible misuse and potential danger from medicinal-grade herbs. The Board continues to collect data from state and federal agencies, and private companies regarding the legal and illegal importation, distribution, prescription, and/or sale of herbs.

The Board will continue to work with the Food and Drug Administration (FDA) and the Food and Drug Branch of the Department of Health Services (FDB) to identify dangerous and illegal herbs, provide professional testimony, and when necessary, make recommendations.

## BOARD ISSUE

### **JLSRC 1997 - Issue #4:**

**Should the size or composition of the Acupuncture Committee be changed?**

#### **JLSRC Recommendation**

JLSRC recommended that the Legislature may want to consider reducing the size of the Acupuncture Board (Committee) from 11 members to 10 or even 9 members, and increasing the representation of public members thereon.

#### **Discussion**

Effective January 1, 1999 (SB 1980, Chapter 991), the size of the Acupuncture Board was reduced from eleven members to nine members, composed of four licensed members, four public members and one licensed M.D. with experience in acupuncture.

The Board continues to support the current composition. Professional members provide a base for the knowledge skills and abilities of the practice and professional expertise

needed to address medical and practice issues before the Board. Professional members are also required to participate in the review of clinic practice during the approval process of acupuncture and Oriental medicine educational institutions. The current composition of the Board is well balanced to provide consumer protection.

## LICENSING EXAMINATION ISSUE

### **JLSRC 1997 - Issue #5:**

**Should changes be made to the Acupuncture Board's (Committee) licensure examination, should that examination be eliminated or should the national examination be accepted for licensure?**

### **JLSRC Recommendation**

JLSRC recommended the California Acupuncture Licensing Examination's written and practical examination should be retained for the present. The requirement that the Board contract with an independent consultant to develop and administer its examination also should be retained.

### **Discussion**

1999 Trailer Bill language (Chapter 67, Statutes of 1999) abolished the clinical examination requirement for acupuncture licensure in California. The written examination is being developed by the Department of Consumer Affairs' Office of Examination Resources (OER) and administered by Cooperative Personnel Services (CPS).

The national examination referenced is actually a "certification" examination administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), in which an applicant can take the examination prior to graduation from their educational program. The position of the Board and OER is that a certification examination serves a different purpose than a state licensing examination.

Statistically, the California written licensing examination is performing at its highest level since the start of the examination process. The pass rate varies between 50-65%. California was one of the first states in this country to regulate and license acupuncturists. California has licensed more acupuncture and Oriental medicine practitioners (6,809 active licensees through FY 2000/01) than the rest of the states combined. California remains a leader in the United States to establish and set standards, therefore, the Board feels that California should retain its acupuncture licensing examination.

## ENFORCEMENT ISSUES

### **JLSRC 1997 - Issue #6:**

**Should additional enforcement authority be given to the Acupuncture Board (Committee) to address identified violations of the acupuncture laws? Should the list of violations that are included within "unprofessional conduct" be clarified, by stating that unprofessional conduct is not limited to just the specified offense?**

### **JLSRC Recommendation**

JLSRC recommended that the Board should provide additional information substantiating the existence of particular types of violations such as false or misleading advertising, unlicensed activity, or unsanitary conditions in acupuncture practices. If unlicensed activity, reflected in advertisements in telephone directories or newspapers is substantiated, it may warrant giving the Committee so-called "telephone disconnect" authority. Also, requiring licensees to provide their names and license numbers in all advertising should be evaluated for the potential to eliminate unlawful activity and increase the Committee's enforcement capability.

The JLSRC also recommended adding the term "but not limited to" regarding what acts are included within unprofessional conduct, indicating this may increase the Board's ability to implement disciplinary action. The JLSRC felt the Board should provide additional information to show how the lack of this terminology has precluded it from taking action in appropriate cases.

Another separate issue raised by the JLSRC in Issue #6 related to delinquent license penalty fees. The JLSRC recommended that given the apparent high number of delinquent licensees failing to renew their licenses, the Board should increase the delinquent license penalty fee, to that which has been enacted for other licensing agencies.

### **Discussion**

B&P Code section 4970(e) was amended to set the delinquency fee in accordance with B&P Code section 163.5 (SB 1980, Chapter 991, Statutes of 1998). Section 163.5 allows for the delinquency, penalty, or late fee for any licensee within DCA to be set at 50% of the renewal fee, with a minimum of \$25 and a maximum of \$150. CCR Section 1399.460 (f) established a \$25.00 delinquency fee for board licensees. The number of delinquent licensees who fail to renew their licenses with the Board has remained high in this profession. The Board is evaluating an appropriate amount in which to increase the delinquent license penalty fee through the regulatory process.

The Board currently has proposed language, which revises the disciplinary statutes to include a general provision for unprofessional conduct relating to violations involving licensee conduct/behavior. The language also separates and assigns individual code

sections to the more egregious violations involving patient harm, injury and/or death, fraud and corruption. The term “unprofessional conduct” in its present language encompasses “all offenses”, whether major or minor. Existing language does not provide an adequate description of the nature or degree of violations or offenses.

The ambiguity of the term has repeatedly prohibited or hampered the ability of all levels of law enforcement to effectively take disciplinary action against licensees in violations of acupuncture laws.

The proposed language also provides a much-needed tool for compiling more specific and accurate enforcement data. This data is reported to the public, the profession, in annual statistical reports for the legislature and for budget changes and projections of the Board.

The Board’s proposed language, approved by the Board May 2001, is attached to this report for JLSRC consideration. The proposal also includes a section describing the problem addressed with each section amendment.

**JLSRC 1997 - Issue #7:**

**Should willful licensed and unlicensed practice that results in great bodily harm, serious physical or mental illness, or death be made a felony?**

**JLSRC Recommendation**

JLSRC made no recommendation

**Discussion**

Currently, unlicensed practice is a misdemeanor violation. The Board has proposed increasing the penalty for unlicensed practice that results in serious patient harm, injury or death, to a felony rather than a misdemeanor. The Board believes that such a penalty is an inadequate deterrent to unlicensed practice. The Board recommends including a felony provision in the acupuncture laws to provide more explicit and meaningful enforcement authority for district attorneys and local law enforcement. Allied health and healing arts and medical laws currently contain standard felony violation language. The acupuncture laws should be consistent with these health care standards.



## CONTINUING EDUCATION ISSUE

### **JLSRC 1997 - Issue #8:**

**Should changes be made regarding the current continuing education requirement?**

#### **JLSRC Recommendation**

JLSRC recommended that consideration should be given for limiting the board's current authority to grant two-year waivers of the 30-hour continuing education prerequisite for license renewal. Waivers should only include circumstances of dire need or circumstances beyond the control of the licensee (e.g., serious illness).

#### **Discussion**

B&P Code Section 4945(e) defines that if a licensee does not obtain the required CE hours, the Board "may" renew the license during the following renewal period, in addition to the current CE requirements for that period. To request a waiver, the licensee must submit a written request defining the need to do so. This waiver is usually extended to those licensees who provide adequate evidence. It has been the policy of the Board to approve a licensee only one waiver. If a licensee fails to make up the deficient hours and complete the current requirement of CE hours during the subsequent renewal period, the license will not be renewed until all the required hours are completed and documented. CCR Section 1399.483(d) was amended in 1999 to allow a maximum of 50% of the required continuing education hours for license renewal to be taken in a distance learning course to allow an alternative to fulfill required continuing education hours.

## EDUCATIONAL ISSUE

### **JLSRC 1997 - Issue #9:**

**Should acupuncture schools be required to obtain approval from the Bureau of Private Postsecondary and Vocational Education (BPPVE)(formerly the CPPVE), or similar governmental approval if located outside of California, prior to obtaining Acupuncture Board (Committee) approval? Should the time period in which an acupuncture graduate may practice acupuncture in a supervised, postgraduate review course without obtaining a license be extended from three to six months?**

#### **JLSRC Recommendation**

JLSRC tentatively concurred with the Acupuncture Board that BPPVE, or similar approval, should be a prerequisite for Acupuncture Board approval in the future. The

Board should provide additional information on the rationale and possible effect of this prerequisite for schools and acupuncture students. The JLSRC supported with the extension of permissible supervised practice in postgraduate review courses by acupuncture school graduates.

### **Discussion**

The Board has not focused on the acupuncture school approval process since the time of the last reporting, due to limited resources. Issues the Board prioritized and focused on were the evaluation of the problems that plagued the clinical component of the licensing examination and transition to an all written examination once the clinical was eliminated; and the study of professional competencies and evaluation of current curriculum standards.

Fiscal Year 2000/2001, the Educational Committee has commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the Bureau of Private Postsecondary and Vocational Education's (BPPVE), and the Accreditation Commission of Acupuncture and Oriental Medicine's (ACAOM). The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.

Currently there are 29 schools offering acupuncture and Oriental medicine masters programs that have been approved by the Board. The number of acupuncture and Oriental medicine schools requesting applications for approval has dramatically increased. There were two school applications requested in 1998/1999, five in 1999/2000 and 19 in 2000/2001. The approval process requires extensive review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and financial solvency. Following application processing and review, a full on-site visit is performed to review implementation of application policies and procedures, facilities and clinical training. A final written report is prepared by the site visit team and presented to the Board. The Board reviewed, visited and approved five new acupuncture and Oriental medical schools within the last four years. The average application and curriculum review, site visit, report preparation and presentation to the Board take approximately 250-400 hours.

The Board amended B&P Code Section 4935 (AB 2888, Chapter 568) to provide acupuncture students with additional time, of up to one year, to attend postgraduate review courses prior to sitting for the licensing examination, at a school approved by the Board.

## EDUCATIONAL STANDARDS ISSUE

### **BOARD'S 2001 - Issue #10 (New):**

**Should the educational curriculum standards for the practice of acupuncture and Oriental medicine be increased?**

#### **Discussion**

To ensure that California consumers receive acupuncture treatment from competent acupuncturists, individuals practicing in this state are subject to regulation and control as a primary health care profession. The Acupuncture Board carries out this mission through the appropriate regulation of licensing, education standards, and enforcement of the Acupuncture Licensing Act. Licenses are issued to only those individuals who complete educational and training programs approved by the Board and pass the California licensing examination.

The Acupuncture Board is directed by California law to establish the educational standards for an individual to become a licensed acupuncture and Oriental medicine practitioner in the State of California. Furthermore, Business and Professions Code Section 4938 requires that an applicant complete an education and training program approved by the Board. Thus, the Board is required to establish educational standards for the approval of schools and colleges offering an educational program and training in the practice of acupuncture and Oriental medicine.

California Business and Professions Code Section 4926, states that "individuals practicing acupuncture be subject to regulation and control as a primary health care profession." The Board's main objective is to ensure an adequate level of education that provides the applicant with the knowledge, skills and abilities to perform as a primary health care professional. A primary healthcare professional is a first-contact healthcare practitioner who possess the skills necessary to provide comprehensive and routine care (preventive, diagnostic, palliative, therapeutic, curative, counseling and rehabilitative) for individuals with common health problems and chronic illnesses that can be managed on an outpatient basis, and who can differentiate health conditions that are amenable to their management from those conditions that require referral or co-management.

All primary health care providers, medical doctors, doctors of osteopathic, doctors of chiropractic, doctors of podiatry, and naturopathic doctors, should have a core medical curriculum leading to basic medical understanding. In addition, all medical practitioners should have an overview of the strengths and weaknesses of other modalities in order to know when to refer and how best to communicate to those other providers. It is in the patient's best interest that medical practitioners possess common core knowledge of medical terminology and knowledge in order to promote good professional communication, patient case management, and continuity of care. Acupuncture and Oriental medicine practitioners, as well as all providers listed in the California Labor

Code Section 3209.3, as physicians are required to complete accurate, uniform, and replicable evaluations. The procedures require an evaluation of anatomical loss, functional loss, and the presence of physical complaints to be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

The Board has been studying professional competencies, the knowledge, skills and abilities required of the practitioner today and evaluation of the current educational curriculum requirements. It is the intent of the Board to elevate the profession to current health care standards and increase educational standards for an individual to become a licensed acupuncture and Oriental medicine practitioner in the State of California.

## LICENSING EXAMINATION ISSUE

### **BOARD'S 2001 - Issue #11 (New):**

**Current discussion items or decisions made that affect the California Acupuncture Licensing Examination (CALE): (1) Number of questions on the examination, and (2) Language of the licensing examination.**

### **Discussion**

Regarding item 1, in February 2001, the Board took action to reduce the number of questions on the examination from 250 to 200 (175 scorable and 25 pre-test questions), which took affect for the June 2001 examination.

Regarding item 2, per CCR Section 1399.441, the licensing examination is administered in English, Chinese and Korean. In memorandums dated, February 12 and June 7, 2001, the Department of Consumer Affairs' Office of Examination Resources (OER) advised the Board of their concerns about adapting the English exam into other languages. OER cited that it creates an unstandardized examination when adapted and that the three tests, English, Chinese and Korean, are not equivalent measures of minimum competence. OER believes that the tests vary in terms of difficulty and equivalency when translated. OER recommended the licensing examination be administered in English only.

The Board has discussed this issue extensively at each board meeting since. The Board has taken action to reject OER's proposal at this time. The Board also has established a task force to continue evaluating the issue and to review the same data and resources that OER has had available and used to substantiate their position to make such a recommendation and determination, which has been requested from OER.

**ACUPUNCTURE BOARD**

**ENFORCEMENT  
LEGISLATIVE PROPOSALS  
FOR  
JOINT LEGISLATION SUNSET REVIEW COMMITTEE'S  
CONSIDERATION**

**Adopted by the Acupuncture Board May 22, 2001**