

CALIFORNIA ACUPUNCTURE BOARD

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



EXECUTIVE OFFICER'S TESTIMONY TO THE APRIL 25, 2005 SENATE B&P COMMITTEE REGARDING SB 233 (Figueroa)

Honorable Chair and Members of this Committee, I am Marilyn Nielsen, Executive Officer of the Acupuncture Board and this is Dr. Joan Chang, Vice-Chair of the Board. I respectfully request a "NO" vote on SB 233 - and instead support the sunrise of the Acupuncture Board. The Board should continue in its current structure to provide consumer protection through the licensure and regulation of the profession.

I hope that the members were able to review the documents the Board provided each of you last week. The consumers –and- the Board, deserve your point by point review of these Board responses. The decision you make will have a broad and deep impact on the delivery of this medicine to literally millions of consumers in California.

The Board has been exhaustively scrutinized over the past several years. It's been through 3 statutorily required sunset reviews, one of which in 1998 elevated the then Acupuncture Committee to a full Board status. The Board has also been through 2 extensive program and fiscal audits. The Governor's Performance Review recommended maintaining the Board in its current structure –and- an extensive review by the LHC identified issues about the practice and regulation of the medicine, but did not recommend any structural changes to the Board or its status as a Board. None of these recommendations were to downgrade the Acupuncture Board, nor did they disclose any sustained problems.

The issues identified in the Joint Committee's final recommendations, which they used as their basis for sunsetting the Board, do not accurately reflect Board actions and positions and even discounts the considerable input provided to that Committee. A review of the documents in the Board's packet reflects that the Board has been responsive to the issues raised by both the LHC and the Joint Committee. With minimal staff, the Board operates efficiently, effectively and consistently with all statutory and administrative requirements, as disclosed by the results of the program and fiscal audits.

For 8 months, between June 2004 and the end of January 2005, the Board was without a quorum, which precluded the Board from dealing with some of the issues raised by the LHC and the JC.

On January 10th the JC released their 'preliminary staff recommendations' listing 5 issues they wanted the Board to address. They wanted the board to define in emergency regulations the definitions of diagnosis and primary health care, the use of sterile single-use disposable needles, use of assistants and implement an action plan to address other professions with overlapping jurisdiction (i.e., physicians, podiatrists and dentists). All but the definition of primary health care and the combined issue of an acupuncturist having the ability to make referrals have been dealt with one way or another or are in the process.

The Board presented five different versions of the definition of primary health care to the JC, but the only definition acceptable to the Committee staff was one that contained language saying” “primary care provider – means only that any patient may see an acupuncturist without first having to obtain a referral from any physician or other health care professional” --- The definition the Board preferred, but was unacceptable to the JC staff, said “primary care provider means a health care practitioner acting within the scope of his or her license who provides the first level of basic or general health care for a person’s needs, including diagnostic and treatment services and initiates referrals to other health care practitioners.” Over the last 4 months, we came to an impasse – the Board just couldn’t endorse the reduced version that the JC staff was demanding – which the Board felt would compromise both the consumer and the practitioner. Eliminating the terms “regulated as a primary health care profession” contained in the intent language of B&P 4926, was offered as a threat to the Board if it did not proceed with the reduced definition.

When the JC’s Final Recommendations were released on April 12 (at a vote only meeting – no public discussion was allowed), it touched on issues such as the board was not cooperating, had not done what it had been asked to do, and did not do the review on the national exam and school accreditation as requested. All of which is not accurate. No where in the Final Recommendations did they bring up the issues that seemed to be their primary contention for the last 4 months -- that of primary health care and referrals – which are directly related to the profession. The concern and speculation among many is that there is an intent, by some, to significantly change the status of the Board and long established definitions that ‘all’ health care practitioners operate under. The results of SB 233 will directly impact consumers as well as the profession. The outcome of what happens here in California likewise will set precedent for the rest of the country.

The LHC identified a number of recommendations that the consumer, Board and profession would benefit from implementing. The JC Final Recommendations and decisions didn’t even touch on any of these. In addition, of all the 4 issues LHC was commissioned to review, none of their recommendations relating to these issues are reflected in SB 233. If given a chance to be sunrised, now that the Board has a quorum, it looks forward to progressively reviewing the additional issues raised by the LHC.

Over the past couple of years a covert, financially driven agenda has emerged. This is an attempt by national stakeholders to control the profession in California. These factions have created a stir with the oversight authorities in this state. By allowing the Board to be sunsetted, you are letting the national stakeholders gain control of the profession at the cost of consumer protection.

This, behind the scene, conniving has prompted whatever criticisms of the Board that has surfaced. Criticisms have not been driven by consumer complaint! Downgrading the Board will not end the battle between some schools and the profession that has raged for years and will continue to rage. This conflict was evident in a recent phone conversation with a respected school leader, wherein he stated “the acupuncture profession has had this coming for a long time, they are out there touting themselves as primary health care providers and trying to control the educational standards, instead of leaving the education up to the experts and allowing the schools their educational freedom.” This is patently false. The current Occupational Analysis drives both the educational standards and licensing exam. It is a sad day when the Board is being compromised in an effort to control the profession.

The Board has continued to provide consumer protection by strengthening the

enforcement program, increasing the educational standards, clarifying examination requirements, streamlining the licensing process, improving the Board's website and developing a consumer brochure. This has been accomplished while working with a group of diverse stakeholders, both in California and nationally, who don't agree, have different visions and interpretations for the scope of practice, educational standards and the concept of the medicine, involved different ethnicities, cultural views and values, and varying goals for the profession. All further complicated by the above noted outside special interests.

In addition, to reviewing all the documents the Board has presented, please listen, and hear the outpouring of sentiments by consumers, students and licensees here today. Please do not turn back the clock or level down the Acupuncture Board and the profession to national standards. Please substitute sunrise for sunset and allow traditional Chinese medicine to continue to improve the lives of millions.

The Board will continue to work with the Committees of the Legislature towards the best interest of the consumers of this age-old Asian medicine.

At the Joint Committee January 4th hearing, the packed room full of attendees was told this was not about the profession, but about the Board. They did not believe it then and their attendance in even greater numbers today and their communications in the last weeks demonstrate they don't believe it now.

Acupuncture consumers and professionals rejoiced in 1998 when the then Acupuncture Committee was sunrised and removed from under the jurisdiction of the Medical Board to a stand-alone status. The divided vote action of the JC on April 12th to sunset the Board, which will relegate the Acupuncture Board to a mere bureau status, was and is viewed overwhelmingly as an affront to –and- diminishment of the entirety of ancestral Asian medicine. At the April 12th hearing one of the JC members even suggested moving the Acupuncture Board again under the Medical Board.

This is particularly proven by the fact that the Acupuncture Board would be singled out as the very first health care board to be sunsetted and reduced to a bureau. As a bureau, consumer input and access would be filtered and insulated from consumers by yet another cumbersome bureaucracy with limited open meeting access. During the LHC's public hearing on the Governor's Reorganization Plan, the Commission made it quite clear that there are reservations as to whether or not the DCA is equipped to take on the responsibilities of the Board.

This action would wipe out 30 years of the advancement of this Asian medicine in California, would send the conclusive signal that Asian medicine is 2nd rate and have a chilling effect on the growing consumer demand for this complementary medicine.

I again respectfully request a "NO" vote on SB 233. Thank You.