

BACKGROUND PAPER FOR THE CALIFORNIA ACUPUNCTURE BOARD

Joint Oversight Hearing, March 14, 2016

**Senate Committee on Business, Professions and Economic Development
and
Assembly Committee on Business and Professions**

BRIEF OVERVIEW OF THE CALIFORNIA ACUPUNCTURE BOARD

History of the Board

The Board of Medical Examiners (now called the Medical Board of California (MBC)) began regulating acupuncture in 1972 under provisions that 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 (SB) 86 (Chapter 267, Statutes of 1975) created the Acupuncture Advisory 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 (AB) 2424 (Keysor, Chapter 1398, Statutes of 1978) authorized Medi-Cal payments for acupuncture treatment.

In 1980, the law was amended to: 1) abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions, with limited autonomous authority; 2) expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; 3) clarified that Oriental (Asian) massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and, 4) provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the MBC'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 California Acupuncture Board (Board)

Senate Bill 1980 (Chapter 991, Statutes of 1998) removed the Committee from within the jurisdiction of the MBC. Senate Bill 248 (Chapter 659, Statutes of 2005) repealed the nine member Board and reconstituted the Board effective January 1, 2006.

The Board was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions (Committees) in 2014.

Function of the Board

The Board regulates the practice of acupuncture and Asian medicine in the State of California. According to the Board, it regulates 17,801 acupuncturists, and 11,644 of these acupuncturists are actively practicing in the state.

The practice of acupuncture, as defined in Business and Professions Code (BPC) § 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 and includes the techniques of electroacupuncture, cupping and moxibustion. BPC § 4937 authorizes a licensed acupuncturist to engage in the practice of acupuncture and to perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain and restore health. BPC § 4937 gives acupuncturists some additional authority to practice a number of other forms of Asian treatment. However, as set out in subdivision (b), these treatments (unlike the practice of acupuncture itself) are not restricted to the acupuncture profession.

The primary responsibility of the Board is to protect California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. The Board implements regulatory programs and performs a variety of functions to protect consumers. These activities include setting licensure requirements for acupuncturists, developing and administering the licensure exam, issuing and renewing licenses, overseeing the investigation of complaints against licensees or allegations of unlicensed activity, overseeing the continuing education (CE) program and monitoring probationer acupuncturists.

The Acupuncture Licensure Act provides:

The protection of the public shall be the highest priority of the Acupuncture Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

In concert with this statutory mandate, the Board's 2013-2017 Strategic Plan states:

The mission of the Acupuncture Board is to protect, benefit and inform the people of California by exercising the licensing, regulatory and enforcement mandates of the Acupuncture Licensure Act and Acupuncture Regulations.

The 2013-2017 Strategic Plan also includes a vision statement as follows:

[Our vision is] a California with the greatest health and well-being through access to excellent primary health care in acupuncture.

The Legislature has mandated that the acupuncture members of the Board must represent a cross-section of the cultural backgrounds of the licensed members of the profession. Members of the Board are appointed for a term of four years. Each member may serve no more than two full terms. As a result, the Board is currently composed of seven members with a public majority (e.g., four public members and three professional members). Five members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Pro Tempore. Four members of the Board, including at least one member who is an acupuncturist, constitutes a quorum necessary for the Board to conduct business.

The following is a list of current members of the Board with a brief biography of each member, their current status, appointment and term expiration dates, and the appointing authority:

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
Nian Peng “Michael” Shi, professional member has been an adjunct professor at the American College of Traditional Chinese Medicine since 2009 and clinical director at Wellspring Clinic since 1991. He was an associate acupuncturist with Pacific Complementary Medicine Center from 1994 to 2005. Mr. Shi served as an expert examiner for the California Acupuncture Licensing Examination Committee from 1995 to 1996 and an expert item writer for the California Acupuncture Committee from 1992 to 1995.	7/2/13	6/1/17	Governor
Jamie Zamora, public member , is an Assistant Director for the State Government Relations Unit within the UCLA Government and Community Relations Department. He is a former Congressional Aide in the district office of U.S. Congresswoman Linda T. Sanchez. His career in public service began as a Senator Richard G. Polanco Public Policy Fellow where he served with the California Debt and Advisory Commission within the California State Treasurer's Office and in the Office of Assemblymember Majority Leader Dario Frommer. Additionally, he served as a Pedro Zamora Public Policy Fellow with AIDS Action Council, in Washington, DC.	8/21/13	6/1/17	Senate Rules Committee
Francisco H. Hsieh, public member , has been a political and business consultant, with clients at the local, state, and federal levels since 1970. Most recently, Mr. Hsieh was a Special Assistant for former Assembly member, Fiona Ma. He has previously served on the Commission on Asian and Pacific Islander American Affairs, as member of the California World Trade Commission, and on the California Transportation Advisory Board. Mr. Hsieh actively promotes San Francisco internationally as a member of the San Francisco-Shanghai Sister City Committee, and as former co-chair of the San Francisco-Taipei Sister City Committee.	6/1/13	6/1/17	Speaker of the Assembly
Jeannie Kang, professional member , has been chief executive officer and president at Serenity Total Acupuncture Treatment Center since 1998 and a guest lecturer at South Baylo University since 2007. She was a lecturer of master case studies at the American Association of Oriental Medicine in 2007.	8/21/13	6/1/17	Governor
Kitman Chan, public member , has been deputy publisher of the Meizhou Huaren Wenyi magazine since 2007 and owner of Kitman Chan CPA since 1984. He is a member of the California Society of Certified Public Accountants.	8/21/13	6/1/17	Governor
Hildegard Aguinaldo, public member , has been an associate at Lewis Brisbois Bisgaard and Smith LLP since 2008. She was deputy of health and legal affairs at the Office of Los Angeles City Councilmember Richard	8/21/13	6/1/17	Governor

Alarcón in 2008, a law clerk at the Los Angeles City Attorney's Office Airport Division from 2006 to 2007 and administrative specialist for health education at the Kaiser Foundation Hospital from 2004 to 2005. Aguinaldo is a community board member of the Northridge Hospital Medical Center and commissioner on the Los Angeles County Hospitals and Health Care Delivery Commission.			
Michael Corradino, professional member , has been a resident practitioner and weekly speaker at the Golden Door Spa Resort since 2013, founder and owner at Neuropuncture LLC since 2011 and co-founder and owner at the North County Integrative Acupuncture Center since 2008. He was a professor of orthopedic pain and neurology at the Pacific College of Oriental Medicine from 2004 to 2012. He earned a Doctor of Acupuncture and Oriental Medicine degree from the Pacific College of Oriental Medicine.	5/21/15	6/1/17	Governor

The Board has four subcommittees, each of which consists of three or more board members. The members are appointed by the President to review, discuss, deliberate, hear public comment and vote on any issue(s) that pertain to the specific subcommittee's jurisdiction. The subcommittees bring forth recommendation(s) to the full Board to discuss and take possible action. The subcommittees and their purposes are as follows:

- Education Committee – address issues related to acupuncture educational standards, school application and approval process, tutorial programs, and CE.
- Examination Committee – address issues related to development and administration of the examination, examination policy, and miscellaneous examination related issues.
- Enforcement Committee – address issues related to scope of practice, complaints, disciplinary decisions, probation monitoring, reinstatements, and miscellaneous issues.
- Executive Committee – address issues related to expenditures/revenue/fund condition, executive officer selection/evaluation, legislation/regulations, committee policy/procedures, and special administrative projects.

Fiscal and Fund Analysis

As a Special Fund agency, the Board receives no General Fund (GF) support, relying solely on fees set by statute and collected from cite and fine fees, examination fees, fees for CE providers, licensing fees and renewal fees for schools. These fees support the licensing, examination, enforcement, education oversight and enforcement, CE and enforcement and oversight and administration programs, which includes processing and issuing licenses, maintaining records, administration of the California Acupuncture Licensing Examination, mediating consumer complaints, enforcing statutes, disciplinary actions, personnel expenditures and general operating expenses.

The normal license renewal cycle is every two years with the exception of first time renewals whose initial license period ranges from 13 to 23 months. All acupuncturists renewing their license are required to complete and list 50 hours of Board approved CE courses on their renewal application and sign under penalty of perjury. If they are renewing their license for the first time, the hours vary from 35 to 50 units. The Board has not had a fee change in the last twelve years; however, the Board is currently considering a fee increase in light of the Board's projected increase in expenditures.

Fee Schedule and Revenue							
Fee	Current Fee	Statutory Limit	FY 11/12 Revenue	FY 12/13 Revenue	FY 13/14 Revenue	FY 14/15 Revenue	% of Total Revenue
Other Regulatory Fees							1.8%
Duplicate Renewal Fee	\$10	\$10	\$1	\$1	\$1	\$1	
Endorsement	\$10	\$10	\$1	\$1	\$1	\$1	
Duplicate Additional Office	\$15	\$15	\$5	\$5	\$6	\$6	
Duplicate Pocket License	\$10	\$10					
CE Approval Fee	\$150	\$150	\$42	\$40	\$38	\$44	
Licenses & Permits							30.8%
App Fee Schools	\$1500	\$3000	\$6	\$3	\$0	\$3	
App Fee CALE	\$75	\$75	\$59	\$69	\$62	\$62	
Re-Exam Fee CALE	\$550	\$550	\$189	\$221	\$235	\$223	
App Fee Tutorial Supervisor	\$200	\$200	\$3	\$3	\$3	\$2	
App Fee Trainee	\$50	\$50	\$0	\$0	\$0	\$0	
Exam Fee CALE	\$550	\$550	\$366	\$424	\$373	\$290	
Initial Licensure Fee	\$325	\$325	\$144	\$156	\$145	\$140	
Renewal Fees							66.7%
Biennial Licensure Renewal Fee	\$325	\$325	\$1,590	\$1,720	\$1,696	\$1,869	
Annual Renewal Tutorial Supervisor	\$50	\$50	\$1	\$1	\$1	\$1	
Annual Renewal Fee Tutorial Trainee	\$10	\$10	\$0	\$0	\$0	\$0	
Delinquent Fees							0.5%
Delinquent Renewal Fee Licensure	\$25	\$25	\$12	\$13	\$14	\$16	
Delinquent Renewal Fee Tutorial Supervisor	\$25	\$25	\$0	\$0	\$0	\$0	
Delinquent Renewal Fee Tutorial Trainee	\$5	\$5	\$0	\$0	\$0	\$0	

*Fee pro-rated based on the date the license is issued and the birth month of the applicant. Fee varies from \$176 for 13 months to \$325 for 24 months.

*Note: This table was taken from the 2015 CAB Sunset Review Report

The current reserve level for the Board is \$1.456 million. The current spending level is \$3.4 million. The Board has an annual operating budget of approximately \$3.48 million. The Board's anticipated expenditures for Fiscal Year (FY) 2015/2016 are \$3.1 million. The Board loaned the GF \$5 million in FY 2011/12. That loan was scheduled to be repaid with interest in FY 2015/16; however, as of February 17, 2016 no such payment has been made.

Fund Condition						
(Dollars in Thousands)	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance	\$5830	\$1,367	\$2,090	\$1,881	\$1,459	\$1,226
Revenues and Transfers	-\$2,594	\$2,636	\$2,555	\$2,635	\$3,225	\$4,223
Total Revenue	\$2,406	\$2,636	\$2,555	\$2,635	\$3,225	\$3,223
Budget Authority	\$2564	\$2751	\$2797	\$3,256	\$2,853	\$3,457
Expenditures	\$1860	\$1,935	\$2,797	\$3,303	\$2,853	\$4,229
Loans to General Fund	-\$5,000	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
Fund Balance	\$1,367	\$2,090	\$1,881	\$1,456	\$1,226	\$1,898
Months in Reserve	8.4	8.9	7.9	5.0	4.1	6.3

*Note: This table was taken from the 2015 CAB Sunset Review Report

For the last four FYs, the Board reported that it has expended approximately 28% on enforcement, 28% on examinations, 8% on licensing, 11% on administration, 0% on school site visits, 8% on education (CE and school oversight), and 18% on DCA pro rata.

Expenditures by Program Component (listed in thousands)								
(Dollars in thousands)	FY 2011/12		FY 2012/13		FY 2013/14		FY 2014/15	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	85,786	509,966	58,284	513,111	147,862	1,038,193	114,665	852,654
Examination	85,786	425,567	97,140	473,193	147,862	604,619	114,665	856,595
Licensing	42,893	54,859	48,570	67,601	147,862	231,257	114,665	155,191
Administration*	243,692	165,228	217,682	203,243	154,331	115,628	230,525	155,191
Education**	42,893	54,859	38,856	54,081	73,931	115,628	114,665	155,191
DCA Pro Rata		174,655		182,667	\$0	203,520	\$0	630,865
Diversion (if applicable)	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	501,050	1,385,134	460,532	1,493,896	671,846	2,308,845	809,183	2,805,685
*Administration includes costs for executive staff, board, administrative support, and fiscal services.								
** Education line added to chart to reflect Education Program expenditures								

*Note: This table was taken from the 2015 CAB Sunset Review Report

Cost Recovery

In probationary cases, the Board's probation monitor ensures that cost recovery is paid in full by the end of the licensee's probation term. If there is an unpaid balance, the Board can file a petition to revoke the probationer's license for a violation of the terms and conditions of their probation. In revocation and surrender cases, where cost recovery was also ordered and respondent has failed to pay, the Board submits his or her information to the accounting office to forward to the Franchise Tax Board's Interagency Intercept Collections Program (FTB IIP).

Since the last sunset review, the Board has included more specific language detailing when cost recovery is due in its stipulations. This allows the board to seek a violation of probation action for probationers who do not pay the ordered cost recovery.

Thirty cases ordering cost recovery were established in the last four FYs totaling \$186,134. Thirteen of those cases are probation orders with cost recoveries. One of those cases is a revocation with costs already paid off. The remaining 16 cases will likely be forwarded to the FTB for recovery. The FTB's IIP has only returned about 3% of the total unrecovered costs reported. Based on this return rate for the remaining cases, it is estimated that \$112,581.37 will be uncollectible.

Board Staff

The Board's Executive Officer is appointed by the Board. The current Executive Officer, Terri Thorfinnson, has served as Executive Officer since September 2012. Her prior position was as the Chief of the former Office of Women's Health located within the Department of Health Care Services and the Department of Public Health. For FY 2015/16, the Board has 11 permanent staff positions and two temporary staff. There are no vacancies. The positions and their respective duties are delineated below.

- Executive Officer – Oversees and is responsible for all of the programmatic functions and management of staff as well as Executive Officer functions;
- Enforcement – two staff persons for enforcement including probation;
- Examinations – two staff persons for examinations including foreign applicant review, cashiering and exam administration;
- Licensing – two staff persons for licensing including issuing of licenses, processing renewals and fingerprint clearances;
- Education – two staff persons for school approvals, education oversight and enforcement, CE course and provider approval;
- Administration – one staff person for administrative functions such as contracts, budgets, procurement;
- Policy and Regulation – one staff person for promulgating regulations, legislation and website.

The Board requested an increase in expenditure authority of \$512,000 in FY 2016/17 and \$373,000 in FY 2017/2018 and ongoing to fund 1.0 Staff Services Manager 1, 2.0 Staff Service Analyst/Associate Governmental Program Analyst positions, and 1.0 Office Technician position. The Board made these requests based on “the workload to implement the provisions of [SB 1246].” This is discussed more fully in the *Current Sunset Review Issues for the California Acupuncture Board* section of the paper.

School Approval

Pursuant to BPC § 4939, the Board has established school approval standards. Under this authority, the Board approves curriculum and clinical training for in-state and out-of-state schools applying for Board approval of their training program for the first time. This statute also gives the Board authority to conduct site visits to verify curriculum and evaluate the clinical training program for compliance. There are two types of site visits: (1) new training program approval; and (2) compliance visit of Board approved school.

The Bureau for Private Postsecondary Education (BPPE) is involved in this process. Schools will typically seek and secure BPPE approval prior to applying to the Board for training program approval. For in-state schools, the school must obtain BPPE approval. For out-of-state schools, they must obtain the equivalent to BPPE approval in their respective state.

Currently the Board has 38 approved schools (22 in-state and 16 out-of-state). Over the past two years, the Board conducted site visits for six schools seeking Board approval of their training programs and 22 follow-up compliance site visits of already approved schools. From 1992 to 2014, the CAB had not conducted any school compliance visits, and effective January 1, 2017, the CAB will no longer be authorized to conduct compliance visits.

Senate Bill 1246 (Price, Chapter 397, Statutes of 2014) the Board’s last sunset review bill, sets in place new requirements as of January 1, 2017. The law will require schools to have their curriculum approved by the Board, be accredited by the Accrediting Commission on Asian and Oriental Medicine

(ACAOM), and also be approved by the BPPE. Upon submitting a request to the Board to determine whether it meets California curriculum standards, the Board has 30 days in which to respond. Site visits will be conducted by the ACAOM and the BPPE to check for ongoing training program compliance. The CAB will no longer need to conduct site visits.

Examination

The California Acupuncture Licensure Exam (CALE) is the only exam that is currently required and accepted for licensure in California. The CALE is developed by the Office of Professional Examination Services (OPES) within the DCA. The exam is offered twice a year, in March and August, one in Northern and one in Southern California. All three languages: English, Chinese and Korean examinations are offered at the same time and location.

The Board approved using computer-based testing in November 2012, because it would be a significant cost savings and mutually convenient for both Board staff and candidates. However, the Board has not yet received DCA approval for moving forward with implementing computer-based testing because it is not yet certain whether the CALE will remain the sole examination for licensure in California.

Occupational Analysis – The Board completed an occupational analysis (OA) of the CALE in February 2015, and also completed an audit of the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), the only national examination for acupuncture and oriental medicine.

Canadian Students – Prior to the enactment of SB 800 (Senate Committee on Business, Professions and Economic Development, Chapter 426, Statutes of 2015) Canadian acupuncture training programs were not considered foreign or domestic. As a result, Canadian graduates of acupuncture training programs were ineligible to be approved to sit for the CALE. As of January 1, 2016, the Board is able to approve Canadian applicants to take the CALE.

Military Experience – Applicants for the CALE with prior collegiate military education, who have completed a Board approved training program, are reviewed and processed in the same fashion that traditional applicants are processed. The Board provides expedited services and accommodation as needed and records data about applicants who have military experience in their database.

Licensing

According to the Board, to date, the Board has licensed approximately 17,801 acupuncturists. The Licensing Program of the Board provides public protection by ensuring licenses are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would meet grounds for denial.

The Board's established performance expectations are that all new license applications are processed within 38 days. Currently, the Board is processing applications within 9 days. The Board issues a license upon approval of the application and supporting documents.

The Board requires primary source documentation for any educational transcripts, experience records, license verification from other states and professional certifications. As part of the license process, the Board requires all applicants to submit fingerprint images in order to obtain criminal history

background checks from the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI).

Continuing Education

At the end of a licensee's two-year renewal period, the licensee must submit a declaration, under the penalty of perjury, that they have completed the minimum requirement of 50 CE hours. Those who fail to submit the declaration of 50 CE hours have a hold put on their license that is not removed until they have submitted evidence of their CE coursework completion. If they fail to renew, they are notified by letter that they are no longer eligible to practice acupuncture and must cease from practicing acupuncture until their renewal has been completed.

The Board received 3,627 CE Course Applications in the FY 2014/15. Of these applications, 3,481 courses were approved and 146 courses were denied.

There are currently 924 Board-approved CE providers. Of these providers, 69 received approval in FY 2015/16. No providers were denied during this time.

The Board has audited 1707 licensees in the last four FYs. Of those licenses, 119 have failed the audit. The CE audit failure rate was 15% for the FY 2013/14. The Board has issued notifications of audits for licensees in FY 2014/15 and is awaiting the licensees' submissions.

Additional Background Information

For more detailed information regarding the responsibilities, operations, and functions of the Board, please refer to the Board's *2015 Sunset Review Report*. The report is available on the Assembly Committee on Business and Profession's website at: <http://abp.assembly.ca.gov/reports>.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection (Renamed in 2015 to: The Assembly Committee on Business and Professions) in 2014. During the previous sunset review, the Committee staff raised 12 issues and provided recommendations. Below, are actions which have been taken over the last two years to address the issues. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under the *Current Sunset Review Issues for the California Acupuncture Board* section.

Recommendation 1. The Board should confer with DCA to review whether staffing levels are adequate to manage workload. The Board should hire permanent intermittent staff to address workload and backlog in the meantime.

Board Response: *The Board has followed the Committees' recommendation in addressing these deficiencies. The Board did confer with DCA about its need for staff and DCA has been very supportive. The Board hired three new staff and created two permanent intermittent positions. The Board now has 11 Personnel Years (PYs) and three part time staff. As a result, the Board has addressed all of the above-listed deficiencies with the help of additional staff as follows:*

- *Progress with CE audits: The Board conducted random audits of 5-8% of licensees over the past two years. Those audits have resulted in citations issued to licensees and non-compliant*

CE providers identified through the audit process. The staff created a system to randomly audit licensees, an audit template for enforcement, and a system for the Education staff to work with Enforcement staff in the enforcement process.

- *Progress in meeting Enforcement targets: The Board has reduced its enforcement backlog of aging cases while increasing its overall enforcement caseload. Ninety-one percent of closed investigations are less than two years old and 84% of Attorney General closed cases are more than two years old. The Board has also increased the number of citations it has issued.*
- *Progress with intake and investigation timelines: The Board has made some progress on meeting its intake and investigative timelines due to the additional enforcement staff.*
- *Progress with posting Board materials and agendas to website: The Board has timely posted agendas. The Board materials posted on the website are consolidated into one document for ease of use. The Board routinely arranges for webcasts of all its Board meetings and some of its committee meetings. It has also re-activated its list serve that provides updates and meeting notices that link to the website.*
- *Progress in implementing regulations: The Board implemented CPEI regulations. The Board has filed the AB 2699 Sponsored Free Health Care Events and the BPC 138 regulatory packages with the Office of Administrative Law. The Board is finalizing its SB 1441 and SB 1246 regulatory packages, as well as AB 2699 and Notice to Consumers BPC Section 138 regulatory packages.*
- *Progress with Education site visits: The Board conducted 28 school visits last year, completing all visits necessary to evaluate pending school applications and all compliance visits for all in-state Board-approved training programs. The remaining out-of-state school visits are to be completed this year.*
- *Progress with consumer outreach and education efforts: The Board has created outreach materials, templates for contacting and educating licensees, tips for new licensees and revised website with new Frequently Asked Questions, and more outreach information related to all Board functions. The Board created an outreach letter about the new law that allows the use of either a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN). The website has new law changes related to military and ITIN new policies.*
- *Progress with participating in national organizations: The Board has hosted members of national organizations including Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), the Accrediting Council for Independent Colleges and Schools (ACICS) to make presentation on accreditation to the Board. Additionally, the Board has hosted the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) to make a presentation about their exam. The Board has begun to expand their collaboration with ACAOM regarding sharing information about school oversight.*
- *Progress with processing licenses in a timely manner: The Board has eliminated all processing delays, and has reduced processing time to an average of nine days. The Board has instituted manual status checks on licensees and created information letters that are sent to identified licensees informing them of their status, problems, delinquency, and impending cancellation.*

Recommendation 2. The Board should update the Committees about the current status of its implementation of BreEze. Have there been any challenges in working to implement this new system? What are the anticipated costs of implementing this system?

Board Response: *The Board is not scheduled for BreEze implementation until release three. No date or details on release three are available at this time. The Board staff continues to be involved with DCA planning on BreEze.*

Recommendation 3. The Board should inform the Committees what issues have led to the lack of consistency and timeliness with utilizing technology to provide materials to the public.

Board Response: *The Board followed the Committees' recommendation and has addressed this deficiency since the last sunset review. The Board has posted all agendas to the website at least ten days prior to Board meetings as required. All meetings are webcast and for convenience the link to the webcast is included on the agendas posted on the website. The listserv has been re-activated and meeting notices and other update information are sent to the listserv. In the past 2 years, only one meeting notice was not sent through the listserv.*

Recommendation 4. The Board should set procedures in place to begin checking the NPDB. If the cost of continuous query serves is too high, the Board may consider conducting periodic checks of sets of licensees. The Board should confer with other Boards to gain insight about how other Boards utilize the NPDB.

Board Response: *The Board followed the Committees' advice and is now contracting with the NPDB. The Board is checking all new licensees and out of state licensees and conducting random checks in the general licensee population. The Board did confer with other Boards on how they were utilizing the NPDB. The Enforcement Committee will review the results to see whether this has led to in an increase in reports to the Board.*

Recommendation 5. Consumer protection is the utmost concern of the Committees and should be the priority of the Board. The Board should explain why these regulations have not been promulgated.

Board Response: *The Board followed the Committees' recommendation. The Board reclassified a position to create a dedicated regulatory staff position to promulgate regulations. As a result, over the last two years, the Board has drafted five regulatory packages that are in final implementation or review stages. The CPEI regulations have been promulgated and became effective October 1, 2015.*

Recommendation 6. Public protection should be the primary concern of the Board. As such, an adequate enforcement program is critical. The Board should explain why the guidelines for case assignment have not been finished.

Board Response: *The enforcement staff has had training manuals since 2010. These training manuals describe the DCA guidelines the staff has followed for all enforcement activities, case prioritization, assignment, and procedures. At the time of last sunset review, the enforcement staff was the only staff that had training manuals. Now, all of the staff has training manuals.*

Recommendation 7. Pursuant to BPC Section 138, the Board should adopt regulations to require acupuncturists to inform their patients that they are licensed by the Acupuncture Board.

Board Response: *The Board followed the Committees' recommendation. The Board has filed its BPC Section 138 regulatory package with the OAL, and is currently in its final stages of submitting it for final approval with OAL.*

Recommendation 8. The Board should advise the Committees' why it does not belong to any regional regulatory associations. The Board should consider joining professional associations.

Board Response: *There are no national or regional regulatory associations for Acupuncture Boards. There used to be a national regulatory association, but it ceased to exist years ago. Unlike other professions that have national and regional regulatory associations, there are no such regulatory associations for acupuncture boards. The Board consulted legal counsel about joining professional associations. The Board was advised that it could not become a member of these associations because they were non-governmental organizations. However, individual Board members could become members of these associations only in their capacity as an individual, not as a Board member.*

Recommendation 9. The Board should advise the Committees' about what has led to the cashing delays.

Board Response: *The Board has addressed these delays. This issue was placed in the strategic plan as part of the Board's overall effort to streamline its licensing process. The major delays related to fingerprint processing delays or non-receipt of fingerprint results. To address this delay the Board identified and reached out to those experiencing delays either as a result of delays or problems receiving fingerprint results or not having submitted their fingerprint with their application. This eliminated the delays in processing licenses.*

An additional streamline issue the Board identified was that some of the letters being sent to licenses were sent in error, which caused confusion among licensees receiving those letters. The Board met with DCA staff to resolve these errors and was told that the issues could not be resolved because the solution involved making changes to ATS database. DCA created a policy that during the BreEze database implementation, all changes to ATS or CAS software are subject to a "freeze" unless an exemption is obtained by the Board. To obtain a freeze exemption, the Board presents its request to the DCA Control Board that has been set up to review requests for changes to the existing data bases while the BreEze database is being implemented. The Control Board prioritizes changes and staff time to address the changes. The Board applied for an exemption and was denied. The Board also applied to have online payment of credit cards and was not given an exemption to add that capacity to further streamline license processing time.

Recommendation 10. The recent approval for additional staff should help the Board begin to operate more efficiently in the area of CE oversight. The Board should establish fees for individual courses that a provider offers.

Board Response: *Since the last sunset review, the Board has made a number of changes to improve its CE oversight.*

- *The Board hired a CE Coordinator who is dedicated to CE oversight including auditing licensees.*

- *The Board has created a system of random audits that more accurately reflect the number of active licensees and their renewal cycles.*
- *The Board has significantly increased the number of citations to licensees and CE providers based on these audits.*

At the time of the last sunset review, the Board was beginning the process of conducting random audits with a goal of auditing 5% of the licensee population. In 2013, the Board audited 14,500 licensees. This population included all non-cancelled licenses, even those who are inactive and those who are newly licensed. So, in 2014, the Board removed inactive licensees and new licensees from the audit population, resulting in 10,000 licenses, 647 (6.4%) of whom were audited. In 2015, the Board removed delinquent licensees and licensees whose two-year renewal cycle had not yet been completed. This resulted in 4,000 licensees, 438 (11%) of whom were audited.

The Board agrees with the Committees' recommendation and is in the process of exploring the appropriate fee level for CE providers, courses and monitoring based on costs of approval and monitoring by the Board. Both the Education Committee and Executive Committees have discussed fee increases in this area and had a preliminary discussion about increasing the provider fee and making it an annual fee. The Board would need statutory authority to charge fees by individual courses or credits, which the Board is also considering.

Recommendation 11. Because of the problems the Board has encountered with providing the CALE, the associated costs of this examination and the existence of a national examination that appears to be adequate to test entry-level practitioners, the Board should take strides to move towards the goal of utilizing the national examination. The Board should first conduct an OA of the acupuncture workforce, conduct an audit of the NCCAOM examination(s), and pursue legislation that will allow students to take either the CALE or NCCAOM examination(s) until 2016. If the NCCAOM examination(s) are found to be valid and reliable, the Board should pursue legislative changes to require the use of the NCCAOM examination for licensure instead of the CALE.

Board Response: *The Board conducted a recent OA of the acupuncture profession and released the results of the OA in February 2015. The Board began its audit of the NCCAOM exam in the spring of 2015, after the final security agreements were secured for the study. To assist with conducting the audit of the NCCAOM exam, the Board hired a panel of national experts, including the OPES. These national experts are currently in the process of conducting the audit of the NCCAOM exam. Upon completion, the Board will release the results of the audit of the NCCAOM exam and begin discussion about the suitability of the NCCAOM exam. The results of the audit will drive the Board's discussion and final determination.*

Major Changes Since the Board's Last Sunset Review

- A new Board Member was appointed.
- The Board conducted 28 school site visits in FY 2014/15.
- The Board completed and released the results of the OA for the California Acupuncture Licensing Exam (CALE) in February 2015.
- The Board is auditing the NCCAOM examinations.

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA ACUPUNCTURE BOARD

The following are unresolved issues pertaining to the Board, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this *Background Paper* and can respond to the issues presented and the recommendations of staff.

DATA DISCREPANCY ISSUES

ISSUE #1: *Why are there discrepancies in data reported in the Board's 2015 Sunset Review Report?*

Background: There are some data discrepancies within the report that the Board submitted to the Committees as noted below:

- There is a discrepancy in the Board's reporting of processing times for its licensing program. For example, in its 2013/14 report to the Committees, the Board indicated it took an average of 40 days of processing time from when it first received an application for licensure and when it issued the license. In its 2015/16 report, the Board indicates that the processing times dropped from 14.6 days to 11.46 days in 2013/14. These two reports cite different numbers for average processing time in 2013/14 e.g. 40 versus 11.46 days.
- There are inconsistent reports of the number of acupuncturists the Board licenses. In one place in the Board's *2015 Sunset Review Report*, it is noted that there are 17,801 acupuncturists regulated by the Board, 11,644 of these are actively practicing in California. In another place in the report, the Board notes that there are 13,533 acupuncturists regulated by the Board with 11,477 actively practicing.
- In the Board's *2013 Sunset Review Report*, it reported that the Board had not been performing CE audits. However, in the *2015 Sunset Review Report*, the Board noted that there have been 1707 audits of licensees in the past four FYs.

In order for the Committees to exercise effective oversight, it is imperative that the Board presents data in a consistent and clear fashion.

Staff Recommendation: *The Board should review the all of the data it has reported in its 2015 Sunset Review Report, and clarify what the accurate data is in the areas of: licensing, processing time for issuing licenses, and CE audits.*

ENFORCEMENT ISSUES

ISSUE #2: Why has the Board failed to meet its enforcement goals?

Background: There seems to be a number of issues with the Board's ability to meet its consumer protection mandate of effectively enacting enforcement of the profession. The following is a list of enforcement issues that the Board needs to rectify:

- The Board reported that it "...has begun to issue citations and fines for non-disclosure" of information applicants are required to submit including: criminal histories, prior disciplinary actions, and other unlawful acts.
- The Board's average days to process accusations against licensees increased from 565 in 2013/14 to 902 in 2014/15.
- The Board's average days to complete disciplinary investigations increased from 1083 in 2013/14 to 1132 in 2014/15.
- The Board reported historical challenges with monitoring licensees who are on probation. In 2012/13, the Board did not meet its performance targets in the areas of probation and intake.
- In 2013/14, the Board did not meet its target for intake and investigation or for formal discipline.
- The volume of consumer complaints has risen.
- The Board is not in compliance with BPC § 801 which requires insurers and uninsured licensees to report malpractice settlements and judgments of \$3000 or more. In 2011, the Committees recommended that the Board seek statutory authority to create a form for insurers and uninsured licensees to make these reports. The Board reported in its *2015 Sunset Review Report* that it "...hopes to [seek] this authority" in legislation next year.

Effective enforcement is the hallmark of a well-run licensing entity, and a necessity for ensuring consumer protection. The Board's *2013-2017 Strategic Plan* notes that its enforcement responsibilities include: addressing enforcement issues, and proposing regulations, policies, and standards to ensure compliance with the Board's statutes and regulations. The Board reported that it is unable to meet its current enforcement mandates and goals because it has not been afforded enough resources.

Staff Recommendation: *The Board should advise the Committees as to its plan to eradicate the backlogs and delays in processing applications and completing investigations, begin monitoring probationers, and report on its efforts to comply with BPC § 801.*

STRATEGIC PLAN ISSUES

ISSUE #3: What has prevented the Board from meeting the timelines outlined in its 2013-2017 Strategic Plan?

Background: The Board updated its Strategic Plan in 2013. Within its plan, the Board identified a number of goals to be met within the 2013 to 2017 timeframe. As listed below, it appears that the Board has not met a number of its goals within its established timelines.

- The Board has not completed its review of existing disciplinary guidelines to identify revisions and update regulatory standards (projected completion date was 2015).
- The Board's Examination Committee has not yet completed its recommendation to establish a limit on the number of times an individual can take the licensing examination (projected completion date was 2014).
- The Board has not met its goals of identifying acupuncture/Asian medicine state and national professional associations (projected completion date was 2015).
- The Board has not yet conducted a meeting with professional association representatives to identify the types of information to receive to increase awareness of Board business (projected completion date was 2015).

Effective licensing entities outline their goals for effectively regulating the profession, with the ultimate interest of ensuring consumer protection.

Staff Recommendation: *The Board should review the areas of its 2013-2017 Strategic Plan that are past due, advise the Committees on its efforts to complete the goals, and include an updated timeline for completion of the goals.*

BUDGET ISSUES

ISSUE #4: Why has the Board's reserve level decreased by over six million dollars?

Background: The Board's expenditures have increased significantly since the last sunset review. The Board reported its current reserve level is \$1.456 million. However, in its *2013/14 Sunset Review Report*, it reported that the reserve level was \$7.9 million. The Board also reported that it is considering a fee increase in light of the projected increase in expenditures.

Staff Recommendation: The Board should advise the Committees as to why the reserve level has decreased significantly over the past two years. What has the Board expended these funds on? The Board should also justify the need for a fee increase – especially considering that its workload will be decreased once its school approval authority is removed commencing January 1, 2017.

EXAMINATION ISSUES

ISSUE #5: *Should the Board take steps towards adopting a national examination?*

Background: The Board develops and administers its own licensing examination, the CALE. The CALE is offered twice a year – once in northern California and once in southern California. The Board spent approximately \$571,000 on administering the CALE in 2013/14.

Most states accept applicants who have passed a national examinations administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). The NCCAOM examinations are offered in English, Chinese and Korean, they are computerized, and are offered at multiple locations in states in which it is provided. California is the only state that licenses acupuncturists that does not utilize the NCCAOM's examination. Additionally, though California only accepts the CALE, approximately 300 students who receive education in California take both the CALE and the NCCAOM in order to ensure they will be able to practice in other states.

In 2007, the Board contracted with the DCA's OPES to conduct an in depth study in order to define the practice of acupuncturists – referred to as an OA. The OA process includes surveying licensees to determine actual job tasks that new licensees must be able to perform safely and competently, and the knowledge required to perform those tasks. The *Validation Report of the Occupational Analysis* of the acupuncture profession and the *Test Plan* was adopted by the Board on February 19, 2009. The report served as the blueprint for the ongoing development of the CALE. A new examination was administered for the first time in February 2011.

There were notable problems with the February 2011 examination. One problem occurred with the translation of the examination to Chinese and Korean. When the new examination was provided, applicants for licensure, who registered to take the examination in Korean, were given a test that contained many questions in Chinese. In response to an outcry from Korean language applicants, the Board permitted the applicants to retake the test after it had been properly translated at no additional cost to the applicants.

In the Board's 2012 *Sunset Review Report*, it noted that adapting the English examination into Chinese and Korean created an, "...unstandardized examination and are not equivalent measures of minimum competency." The Board reported that the tests vary in terms of difficulty and equivalency when translated. To address this and other issues with the examination, the Board considered a regulatory change to only administer the examination in English. However, after considerable public outcry against this change and a cease and desist memorandum from then Senator Curren D. Price and Senate pro Tempore Darryl Steinberg, the Board stopped efforts to move to an English only examination. In contrast, the NCCAOM examination continues to be administered in English, Chinese and Korean.

In May of 2011, OPES found that the integrity of the CALE had been compromised. The Board found that students could purchase "study guides" containing many of the answers from previously administered licensing examinations. In response, OPES removed several items from the testing bank.

In August of 2012, the pass rates for the CALE test takers was abnormally low (39%). In response to another outcry of stakeholders, the Board hired an outside reviewer to audit the examination. The results of the investigation showed that the examination was valid.

During the 2013/14 sunset review of the Board, hundreds of students and schools lobbied the Legislature to require the Board to cease offering the CALE and instead move towards offering the

NCCAOM examinations. These stakeholders organized a movement, *CALE Takers United Front*. Since then, there have been complaints of problems with the conditions at the Board's examination testing sites.

As outlined above, there have been various issues with the CALE resulting in the Committees and stakeholders requesting the Board to seriously consider utilizing the NCCAOM examinations. During the 1999 Sunset Review Hearings, the Committee asked the Board to evaluate the NCCAOM examinations and compare it to the CALE. This request was echoed again during the 2002, 2005, 2012, and 2014 Sunset Review Hearings of the Board.

Since its 2013/14 sunset review, the Board contracted with the OPES to conduct another OA of the CALE. The OA was completed in February 2015. The Board contracted with the OPES and completed an audit of the NCCAOM examinations which was presented at the February Board meeting. The OPES found that the NCCAOM examinations were comparable to the CALE in most did not include California specific information on its examinations. However, as pointed out during the Board meeting, this is typical of national licensing examinations. Most regulatory entities require a national examination and a supplemental ethics or jurisprudence examination that tests for state specific laws. During the meeting, Board members requested additional information on the NCCAOM examinations as compared to the CALE and asked OPES to consult with the NCCAOM and provide this additional information to the Board at a future meeting.

The historical request to compare the examinations stems from the aforementioned illustrated problems with examination administration, translation, workload impact, and the fact that the examination is quite costly to the Board. In addition, because California is the only state that does not accept the NCCAOM examinations, reciprocity is hampered for acupuncturists who desire to practice across state lines, e.g. approximately 300 California based students end up taking both examinations annually which is quite costly to students.

Staff Recommendation: *Because of the problems the Board has encountered with providing the CALE, the associated costs of this examination, and the existence of a national examination, which appears to be adequate to test entry-level practitioners, the Board should seriously consider moving towards utilizing a national examination(s). The Board should provide the Committee staff a copy of the audit of the NCCAOM which was completed in the fall of 2015. If, after the NCCAOM and the OPES have consulted and provided additional information to the Board, and if the NCCAOM examinations are found to be valid and reliable, the Board should consider pursuing legislative changes to require the use of the NCCAOM examinations for licensure instead of the CALE, and, consistent with the practice of various licensing entities that accept the passage of a national examination towards licensure, the Board should require a supplemental examination which would cover California specific laws and information.*

WORKLOAD ISSUES

ISSUE #6: *Should the Board receive an increase in staff, budget, and office space in order to implement the provisions of SB 1246?*

Background:

In August 2015, the Board submitted a Budget Change Proposal (BCP) to the Department of Finance, requesting an additional four staff positions, (an \$885,000 increase to its budget by 2018 and ongoing expenses), and an expansion of its current office space. Throughout the Board's *2015 Sunset Review Report*, and within the Board's BCP, the Board cited its failure to meet enforcement and other workload goals, and attributed these deficiencies to its preparation for the implementation of SB 1246 (Lieu, Chapter 397, Statutes of 2014) which was the Board's last sunset bill.

Senate Bill 1246, contained provisions that, as of January 1, 2017, removes the Board's authority to approve schools including conducting site visits of schools for compliance. The bill also required that all schools in California be accredited by the *only* acupuncture specific accrediting agency approved by the U.S. Department of Education, and utilized in all 45 states that license acupuncturists, the ACAOM. These changes were instituted because, at the time of the last sunset review, the Board had not demonstrated the ability to meet its *basic* consumer protection mandates including: conducting CE audits, conducting appropriate oversight of schools, and promulgating consumer protection regulations.

In addition, the law will make the Board's practices consistent with the standard practice of 37 of the DCA's 40 boards and bureaus which utilize an accrediting organization for school oversight. As stated in the Little Hoover Commission's 2004 report entitled: *Acupuncture in California: Study of Scope of Practice*:

Although states vary in their specificity regarding curriculum content, the near universal reliance on ACAOM to accredit acupuncture and Oriental medicine programs results in some standardization of the core curricula required...ACAOM requires program compliance with state laws and regulations that may exceed ACAOM's standards.

In other words, the Board should rely upon an accreditor that would not only abide by the statutory education standards for California acupuncture schools, which the Board had been deficient in for 20 years, but would also add additional layers of accountability.

In the following letter from former Senator Ted W. Lieu, author of SB 1246 and the former Chair of the Senate Committee on Business, Professions and Economic Development, to the Board, he shared his insights on the issues the Board was having with fulfilling its consumer protection mandates.

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CONSULTANTS
G.V. AYERS
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California Legislature

SENATE COMMITTEE ON BUSINESS, PROFESSIONS & ECONOMIC DEVELOPMENT

SENATOR TED W. LIEU, CHAIR

MEMBERS
MARK WYLAND
VICE CHAIR
TOM BERRYHILL
MARTY BLOCK
ELLEN M. CORBETT
CATHLEEN GALGIANI
ED HERNANDEZ, O.D.
JERRY HILL
ALEX PADILLA



August 7, 2014

Mr. Michael Shi, Chair
California Acupuncture Board
1747 N. Market Blvd, Suite 180
Sacramento, CA 95834

Dear Mr. Shi:

As the Chair of the Senate Business, Professions and Economic Development Committee (BP&ED), I am writing to you regarding Senate Bill 1246, the sunset bill for the California Acupuncture Board (CAB). I understand you inherited many of the problems related to the CAB. However, it is my clear belief that the current status quo is completely unacceptable. The failure of the CAB to fulfill basic duties has been an embarrassment to the acupuncture profession and to California. In my time in both the Assembly and the Senate I have never seen such dysfunction related to a board.

For decades, Legislative policy committees have raised several issues regarding the operations of the CAB. Despite the hiring of a new Executive Officer two years ago, and the appointment of new board members, many of these historical problems continue to persist and basic functions such as promulgating regulations and enforcement continue to languish. The Sunset Review Hearings held in March highlighted several areas where the Senate BP&ED and the Assembly Business, Professions and Consumer Protections (BP&CP) Committees continue to see problems. In addition, the Sunset Review Report provided specific recommendations for alleviating three major concerns, by 2017, when the CAB is next reviewed by the Legislative committees.

After the Sunset Review hearings, the Senate BP&ED and the Assembly BP&CP Committees met to determine which of the numerous deficiencies raised during the hearings should be addressed via legislation. I reviewed the issues and agreed to include the following in the CAB's sunset bill:

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1. Grant a 2 year extension of the CAB's sunset date from 2015 to 2017.
2. Permit the CAB to hire a new Executive Officer after 2015 who has not previously served as an Executive Officer to the CAB.
3. Remove the CAB's school approval process and require all schools to be accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

Since adding these provisions to SB 1246, my staff and I have met with a variety of stakeholders to ascertain their positions. I have also met with the Executive Officer twice to discuss concerns about her performance. Based on my meetings, I have decided to retain the provision that will remove the CAB's school approval process and require all schools to be accredited by ACAOM. However, in response to concerns from some stakeholders, I added language that permits the CAB to set the curriculum standards for all acupuncture education and training programs. I will also retain the two year sunset extension for the CAB.

I cannot tell if the current Executive Officer is fundamentally incapable of carrying out basic duties, or if her failures were due to inadequate training and guidance, or if her failures were due to the CAB not understanding its basic priorities. However, based on the Executive Officer's statements to me and my staff that she has not received sufficient training or guidance from the Department of Consumer Affairs, I will remove the language that allows the CAB the option of hiring an Executive Officer after 2015 that has not previously served as an Executive Officer. I will instead add language that extends the Executive Officer's position until January 1, 2016. This will give the current Executive Officer one year to receive adequate training and guidance and show Californians that basic duties will be performed. **Below, I outline the areas where I recommend immediate and significant improvement.**

1. **Interactions with Legislators and Legislative staff.** Based on my observations of the Executive Officer's interactions with myself and my staff, I am concerned about her ability to represent the CAB in a professional manner when interacting with representatives of the Legislature. The lack of communication is not acceptable. In addition, the tone and resistance that has been displayed is not acceptable. *The relationship between the Executive Officer and the Senate BP&ED Committee staff is critically important.* As such, it is my hope that the Executive Officer will adjust her demeanor and strive to improve relations with the staff of the Senate BP&ED Committee in order to foster an amicable working relationship.
2. **Representing the CAB before the Legislature.** There have been concerns that the Executive Officer has represented the views of the CAB to representatives of the Legislature before the CAB has taken a formal position on legislation. It is my hope that the Executive Officer will represent the views of the

CAB *only* when the CAB has taken a formal position on legislation and authorized her to speak on the CAB's behalf.

3. **Addressing Sunset Review issues.** Commensurate with the practice of several other boards that the Senate BP&ED and Assembly BP&CP Committees work with, it is my expectation that the Executive Officer works with the CAB Chair to address the issues that are highlighted during the Sunset Review Hearings. I suggest these issues be highlighted in the CAB's strategic plan and included as a standing item on the CAB's meeting agendas.
4. **Regulations.** It has come to my attention that consumer protection regulations that are over 7 years old have only recently been promulgated, and only after the urging of my staff at a recent CAB meeting. I believe that it is imperative that the Executive Officer direct the board staff to promulgate regulations, particularly consumer protection regulations, in a more timely fashion.
5. **Enforcement.** It is clear from the Sunset Review report, as well as information that the Executive Officer conveyed to me during our meeting, that the CAB's enforcement program is lacking. While I recognize the CAB's need for additional staff may have impeded this area, it is my hope, considering the recent addition of new staff to the CAB, that the Executive Officer will direct the staff to focus available resources to bolster this critical area.

Ultimately, I am calling upon you as the Chair to help hold your Executive Officer accountable in addressing the concerns highlighted above. The problems that have plagued this board have lingered too long and the citizens of California deserve better. I look forward to meeting with both you and the Executive Officer to discuss the concerns outlined in this letter before the conclusion of the Legislative session.

Sincerely,



Senator Ted W. Lieu
Chair, Senate Business, Professions and Economic Development Committee

CC:

Assemblymember Susan Bonilla, Chair, Assembly Business, Professions and Consumer Protection Committee
Awet Kidane, Director, Department of Consumer Affairs
Tracy Rhine, Chief Deputy Director, Department of Consumer Affairs
Graciela Castillo-Krings, Deputy Legislative Secretary, Office of Governor Edmund G. Brown

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As stated in former Senator Lieu's letter, SB 1246 was carefully negotiated. For example, in order to protect the Board's education and training standards (the most stringent in the nation) the Board is able to retain review of curriculum for any schools who desire to be approved in the state. It is important to

note that 18 of the 22 schools in the state are already accredited by the ACAOM, thus there would only be four schools that would need to comply with the new standards and be reviewed by the Board. In addition, all of the out of state schools that the Board has approved are accredited by the ACAOM.

Senate bill 1246 also reauthorized the Board to create education and training standards for foreign applicants. The Board argued in its BCP that the reauthorization of this authority will result in increased workload to the Board. It appears that the Board has requested additional resources to fund *foreign school approval* process. However, the Board *has not* been granted this authority in statute.

In its *2015 Sunset Review Report*, the Board indicated that it is at, "...the 2001 staffing level with three times the work load." It is partially for these reasons that the Board's school approval functions were removed. However, the Board continues to insist that this reduction in its authority will lead to an increase in workload and thus, the need for four additional staff, an increase in its operating budget of \$885,000, and additional office space. The Board provided rationale in its BCP to justify these requests. The Board's statements and response from staff of the Committees is as follows:

- **Board Statement:** *SB 1246 made substantive changes to the Acupuncture Licensure Act that generates new and ongoing workload to the Board.*
- **Staff Response:** The changes that were made were intended to reduce the workload of Board staff. Completing a desk audit of curriculum is much less exhausting of the Board's resources than is the current process of school approval, including site visits. Considering 18 of the 22 California schools already have ACAOM accreditation, there would only be four California schools whose curriculum would need to be reviewed by the Board.
- **Board Statement:** *...graduates from schools with lower standards than California will be allowed to apply to take the licensure exam...the Board estimates that all of the 28 non-Board approved schools will apply for Board approval of their curriculum...*
- **Staff Response:** Schools would still need to have their curriculum approved by the Board. Considering California has the most stringent standards in the nation, it is unlikely that all 28 schools will change their curriculum standards to match those of California. And, if so, nothing has prevented them from doing this already. The only possible incentive would be that the schools would no longer need to pay the Board a school approval fee of \$1500. It appears these schools do not have interest in completely revamping their curriculum requirements, and it is a stretch to propose that the removal of the \$1500 fee is incentive enough for all 28 out of state institutions to suddenly change their curriculum requirements to be congruent with California's curriculum and training requirements.
- **Board Statement:** *SB 1246 removes the curriculum compliance verification for curriculum compliance documentation.*
- **Staff Response:** SB 1246 allows the Board to complete a more simplified version of the curriculum verification process. The Board will review documentation from the schools to ensure that the curriculum is consistent with the Board's education standards.

- **Board Statement:** *The establishment of curriculum standards will create additional costs related to hiring of subject matter experts, meeting facilitation with SMEs, translation of foreign curriculum and documents, and travel of SMEs and Board members.*
- **Staff Response:** The establishment of curriculum standards will not create any significant additional costs as the subject matter experts, meeting with SMEs, and travel of SMEs is not a part of establishing curriculum standards. Rather, it is part of the process for establishing a foreign school approval process- which the Board has no statutory authority to do. Further, the Board's current authority to review application materials from foreign applicants was thoroughly discussed at a 2015 Education Committee meeting. At this meeting, the Board President recommended that the Board create new standards for foreign applicants. Multiple members of the public testified and inquired why foreign student approval would be different than domestic student approval, and argued that a different process would be discriminatory against foreign applicants. The Board's legal counsel pointed out that the Board may need a, "good public policy and consumer safety reason for creating two tiers of licensees." To prevent unnecessary workload, the Board voted to direct its Executive Officer to pursue adopting the same standards it currently uses for domestic students for foreign students. Despite this directive, the EO cited the Board President's proposal within the BCP submitted to the Department of Finance as justification for increased staff, budget, and office space.

In February 2016, the Department of Finance indicated that it intended to only approve a portion of the Board's BCP. Specifically, in their letter, they stated:

We recommend the Legislature modify the Governor's proposal to provide additional resources to implement Chapter 397 of 2014 (SB 1246, Lieu). First, we recommend approving \$179,000 for two positions requested to address additional licensing workload but on a three-year limited-term rather than permanent basis, because the ongoing level workload associated with licensing activities is highly uncertain. Second, we recommend rejecting the remaining two positions (\$173,000) requested for curriculum review of non-Board-approved schools and development of standards for curriculum for foreign training programs. We find that the department has not provided adequate workload justification for these positions. Third, consistent with the prior recommendations, we recommend rejecting \$160,000 requested for additional office space since the amount of additional workload and staff needed on an ongoing basis is uncertain.

In March 2016, the Department of Finance withdrew the Board's BCP. The Department indicated that after careful reconsideration and taking another look at the requirements/intent of SB 1246, they intended to rescind the BCP from legislative consideration.

The Legislature spent *significant* time debating and negotiating the provisions of SB 1246. The Legislature ultimately decided that the best solution for the Board was to limit its workload. Since then, the Board has been challenged in its ability to meet the directives of SB 1246, e.g. despite multiple requests to the EO from Board members, the EO has initiated very limited contact with the ACAOM over the past two years, and as reflected in the letter below, the contact that Board staff has had with ACAOM has been contentious and not reflective of working together as partners to implement the law. However, the Board staff has focused on perfecting its school approval process (the Board has made 28 visits to schools, which will no longer be necessary January 1, 2017). In addition, it appears that the Board staff has chosen to pursue the *most onerous and*

inefficient ways to implement SB 1246 in order to justify its request for additional staff, an increased budget, and additional office space.

Staff Recommendation: *The Board should focus its energy on complying with the requirements of SB 1246 in a way that will not exhaust the Board's resources. If the Board has a workload problem, they should make the case for additional staff, increased budget, and office space without using the implementation of SB 1246 as the reason.*



The Accreditation Commission for Acupuncture and Oriental Medicine

8941 Aztec Drive, Suite 2 | Eden Prairie, Minnesota 55347 | p: 952-212-2434 f: 952-657-7068

February 18, 2016

Terri A. Thorfinnson, J.D.
Executive Officer
California Acupuncture Board
Department of Consumer Affairs
1747 North Market Boulevard, Suite 180
Sacramento, CA 95834

RE: Email correspondence pertaining to the CAB February 2016 meeting

Dear Executive Officer Thorfinnson,

On behalf of the Accreditation Commission for Acupuncture and Oriental Medicine I am responding to your emails of 1/19/16 and 1/22/16.

On 1/19/16 you notified ACAOM that we were to attend the February 26 board meeting, because:

"...the board will need to hear about how ACAOM will take over the Board's school oversight and enforcement role. At this meeting the Board will discussion whether it is happy or unsatisfied with your proposal to implement SB1246."

I responded to your 1/19/2016 email the same day, with a reminder that during our 11/19/2015 phone conversation I provided the dates of the Commission's February meeting 2/25-2/27/2016, and requested additional options to respond to your request.

On 1/22/2016 you responded with two options:

- 1) *Teleconference you in during the agenda discussion—but that may not work for you if you are heading up your commission meeting.*
- 2) *You prepare a written presentation that lays out how you plan to implement SB 1246 including the MOU including the issues that we have discussed and agreed upon.*

Regretfully, Option 1 will not work as I will be fully involved in the Commission meeting on 2/26 from 7:30 am to 5:00 pm and again from 6:30 pm to 9:00 pm. Option 2 will also not work as

we are spending all of our time preparing for the program reviews and other agenda items required during the upcoming Commission meeting.

It is unfortunate that the CAB's February meeting was only recently scheduled in conflict with ACAOM's biannual meeting when those dates had been previously communicated to you. As a result of the CAB's scheduling decision, ACAOM will not be able to attend the CAB February meeting; we would be happy to attend the next available meeting and address the Board's questions at that time.

In the 1/22/2016 email you also identified 5 key issues that "the Board will want resolved" and closed with the following statement:

P.S. While I totally understand the conflict with our board meeting date, I can't help but observe that you seem to be able to make yourself available to undermine the Board at every legislative hearing that arises. I understand your testified at the AB 758 hearing earlier this month in Sacramento. And I anticipate that you will testify at the upcoming Sunset Review hearing. Despite your claim about wanting to work with the Board, you are not acting in good faith or as a partner and accumulating a lot of bad karma.

I respectfully suggest that your interpretation is without merit. ACAOM has not attempted to undermine the Board as you suggest, and I find it disconcerting that your email appears to be an attempt to position both myself and ACAOM as being in opposition to the CAB when that is not the case.

ACAOM was invited and found it necessary to appear at legislative hearings to clarify the legislative record based on inaccurate, incomplete and misleading information about ACAOM that had been submitted most recently to the Assembly Committee on Business and Professions by proponents of AB 758. My attendance at the previous hearings related to SB 1246 was similarly necessary to clarify the record with regard to misinformation about ACAOM and I have attached two letters to Chairman Bonilla demonstrating the basis for our appearance at the referenced hearings. I also want to remind you that in addition to attending legislative hearings, ACAOM made ourselves available on relatively short notice to appear before the California Acupuncture Board at the Board's invitation.

In regard to the key issues that "the Board will want resolved" you noted the following:

1. ACAOM setting up a CA track that can provide us annual updates of compliance with curriculum and clinical requirements.
2. ACAOM using our curriculum requirement form checklist and clinical checklists
3. ACAOM using our subject matter experts with ACAOM training
4. ACAOM providing the completed curriculum checklists and clinical checklists annually
5. ACAOM providing some form of evaluation of schools that Board can post on their website

Further, you included:



- A. *Providing the board with annual updates of curriculum compliances including any changes and clinical compliance—we need this annually and on our forms.*
- B. *Sharing enforcement and non-compliance information mutually on an ongoing basis and in real time.*

ACAOM has reviewed SB 1246 which goes into effect beginning January 1, 2017 and notes the following:

SB 1246 SEC.2. 4927.5 (a)(1-3) defines “approved educational and training program,” for purposes of licensure as an acupuncturist, as a school or college that: (A) offers curriculum that has been submitted to and approved by the board and includes at least 3,000 hours of which at least 2,050 hours are didactic and laboratory training, and at least 950 hours are supervised clinical instruction; (B) is approved by the Bureau for Private Postsecondary Education or is the appropriate out-of-state governmental educational authority; and (C) is accredited or granted candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine, or has submitted a letter of intent to pursue accreditation to that commission, as specified.

SB 1246 SEC.2. 4927.5 (b) requires the board, within 30 days of receiving curriculum submitted by a school or college pursuant to these provisions, to review the curriculum, determine whether the curriculum satisfies the board’s requirements, and notify the school or college, the Accreditation Commission for Acupuncture and Oriental Medicine, and the Bureau for Private Postsecondary Education of whether the board has approved the curriculum.

Based on this language, it appears that the school or the college must submit their curriculum directly to the California Acupuncture Board for review and a determination whether “the curriculum satisfies the board’s requirements” and that it is the Board’s responsibility to notify both CA BPPE and ACAOM of the Board’s approval of the curriculum within 30 days of submission. If this interpretation is correct, then it appears that schools would need to provide that information directly to the Board under items 1, 2, 4 and A from your 1/22/16 email, listed above and that it would be inappropriate and possibly a violation of SB 1246 for ACAOM to act as a “go between” in regard to curriculum review. If this is not the case please provide us the statutory basis for your interpretation.

As I mentioned during our November phone call, if you are willing to provide copies of the checklists mentioned under item 2 we are willing to review and consider incorporating them into our review processes. Please feel free to email an electronic copy of the checklists.

In regard to item 3, ACAOM has a very specific process for selection and training of site visitors. We are open to receiving applications from individuals that you classify as “subject matter experts”, but as you note, those individuals must complete ACAOM’s site visitor training prior to participating in ACAOM site visits.

In regard to items 5 and B, ACAOM currently posts information on program evaluation consistent with ACAOM policies, U.S. Department of Education regulations and state laws on ACAOM’s website; we recommend that you include a link to our website to access this information directly. ACAOM must publish program evaluation information in a consistent manner for all ACAOM-accredited programs and institutions. However, if the State of



California or the California Acupuncture Board has established specific requirements for public disclosure of information related to accreditation reviews, please provide that information so that we may ensure all required data is included consistent with applicable state law.

Again, regardless of your earlier interpretation I would like to assure you that ACAOM is willing to work with CAB and with your office to implement SB 1246 consistent with ACAOM policies, US Department of Education regulations and applicable state law. ACAOM is not attempting to undermine the Board and as ACAOM's Executive Director I will challenge any attempt by any party to provide inaccurate information about the Commission including inaccurately portraying ACAOM in the manner alluded to in your email.

Please let me know if you have any questions.

Sincerely,



Mark S McKenzie, LAc MsOM DiplOM
Executive Director
Mark.McKenzie@acaom.org

Cc: John Paul Liang, Ph.D., MSOM, L.Ac., Chair ACAOM
Nian Peng "Michael" Shi, L.Ac., Chair California Acupuncture Board

Attachments:
ACAOM Ltr Bonilla.AB758
2015 03 26 ACAOM Response Bonilla



**CONTINUED REGULATION OF ACUPUNCTURISTS BY THE
CALIFORNIA ACUPUNCTURE BOARD**

ISSUE #7: *Should the licensing and regulation of acupuncturists be continued and be regulated by the current Board membership?*

Background: The health, safety, and welfare of consumers is protected by a well-regulated acupuncture profession. The newly formed Board has stated a strong commitment to protecting the public, ameliorating past deficiencies, and improving efficiency in its operations. Staff of the Committees has observed improvements in the Board's operations since its last sunset review in 2014 and commends that Board on directing its staff to make improvements. Specifically, the Board has responded to the request to promulgate consumer protection regulations, has improved in processing time for applications, and has made strides to improve CE oversight.

Despite some of the noted positive changes, the Board has expended resources on school site visits and continues to spend approximately \$571,000.00 per year on examination administration costs. Both of these tasks could be completed by national organizations more equipped to provide oversight and administration as has been recommended in *multiple* prior sunset review reports of the Board.

The Board's EO has not seemed to show much improvement in several areas outlined in the August 7, 2014 letter from former Senator Ted W. Lieu. Specifically, the EO has had limited contact with the ACAOM, and has been contentious in her interactions with the ACAOM staff as evidenced in the letter above. She has not followed the advice of the Board, e.g. she promoted an argument that the Board should be given increased budget and staff in hopes it will be able to approve foreign schools though the Board's attorney made it clear during a 2015 Education Committee meeting that the Board *does not* have this statutory authority.

The Board has not posted minutes for its Board and committee meetings since July 2015, and has failed to include items on agendas that Board members and members of the public requested. The Board continues to show deficiencies in the areas of enforcement, and meeting its goals outlined in its *2013-2017 Strategic Plan*. Therefore, the Committees should continue to closely monitor the operations of the Board.

Staff Recommendation: *The practice of acupuncture should continue to be regulated by the current Board to protect the interests of the public. It is clear that immediate intervention is needed to ensure better management of the Board; thus, the Committees may wish to use the remainder of the 2015/2016 Legislative Session to determine the appropriate sunset date of the Board.*