

BACKGROUND PAPER FOR THE CALIFORNIA ACUPUNCTURE BOARD

Joint Oversight Hearing, March 14, 2023

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

BACKGROUND, IDENTIFIED ISSUES, AND RECOMMENDATIONS

BRIEF OVERVIEW OF THE BOARD

The California Acupuncture Board (CAB) is a licensing entity within the Department of Consumer Affairs (DCA). The CAB is responsible for administering and enforcing the Acupuncture Licensing Act.¹ The act is the chapter of laws that establish the CAB and outlines the regulatory framework for the practice, licensing, education, and discipline of acupuncturists.

An acupuncture license authorizes the holder:

To engage in the practice of acupuncture [and] 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.²

Specifically, the Acupuncture Licensing Act defines the following:

- “Acupuncture” is “the stimulation of a certain point or 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.”³
- A “Magnet” is a mineral or metal that produces a magnetic field without the application of an electric current.⁴

¹ Business and Professions Code (BPC) §§ 4925-4979.

² BPC § 4937.

³ BPC § 4927(d).

⁴ BPC § 4937(c).

- “Plant, animal, and mineral products” are “naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs.”⁵
- “Dietary supplement” has the meaning as under federal law, except that dietary supplement does not include controlled substances or dangerous drugs as defined under state law.⁶

The CAB is the agency responsible for administering and enforcing the act. The CAB is also authorized to establish and clarify licensing procedures and practice standards through administrative rulemaking (the process for issuing regulations).⁷ For fiscal year (FY) 2021-22, the CAB reported a total of 11,819 actively licensed acupuncturists.

The CAB’s mission statement, as stated in its *2018–2022 Strategic Plan*, is:

To protect the people of California by upholding acupuncture practice standards through the oversight and enforcement of the Acupuncture Licensure Act.

Legislative History

Before 1972, the practice of acupuncture by non-physicians was in a legal grey area—it was technically prohibited by the Medical Practice Act (among other unlicensed forms of medicine). In 1972, the Legislature authorized the unlicensed practice of acupuncture and other forms of traditional medicine, specifically Chinese medicine, but only for purposes of research in approved medical schools and under the supervision of licensed physicians.⁸ The bill contained an urgency clause,⁹ in which the Legislature wrote that the urgency was in response to a rising interest in the potential benefits of acupuncture and other traditional medicines from “practitioners of modern western medicine.”

In 1975, the Legislature established a restricted licensing program for acupuncture under the Board of Medical Examiners.¹⁰ It also established an Acupuncture Advisory Committee but did not specify any authority or duties. While the licensing program authorized the practice of acupuncture by acupuncturists who obtain a certificate from the board, licensees could only perform acupuncture upon a prior diagnosis or referral by a licensed physician, chiropractor, or dentist. In 1979, the prior diagnosis or referral requirement was repealed.¹¹

⁵ BPC § 4937(d).

⁶ BPC § 4937(e).

⁷ California Code of Regulations (CCR), tit. 16, §§ 1399.400-1399.489.1.

⁸ Assembly Bill (AB) 1500 (Duffy, et al.), Chapter 826, Statutes of 1972.

⁹ Language in a bill which states the bill will take effect immediately upon enactment.

¹⁰ Senate Bill (SB) 86 (Moscone and Song), Chapter 267, Statutes of 1975.

¹¹ AB 1391 (Torres), Chapter 488, Statutes of 1979.

In 1980, the Acupuncture Advisory Committee was replaced by the Acupuncture Examining Committee within the Division of Allied Health Professions within the Board of Medical Quality Assurance (previously the Board of Medical Examiners).¹² That committee was granted the authority to administer the laws relating to the practice of acupuncture.

In 1990, the Acupuncture Examining Committee was renamed the Acupuncture Committee.¹³ The committee’s authority to administer the licensing examination was also transferred to independent consultants, until January 1, 1995, and later extended to June 2000.

In 1999, the CAB was established as a standalone board. The Acupuncture Committee was renamed the Acupuncture Board and removed from the jurisdiction of the Medical Board of California.¹⁴

Board Membership

The CAB has seven board member positions, four public members and three professional members. The Governor appoints five board members: three professional members and two public members. The Senate Rules Committee and the Assembly Speaker each appoint one public member. Members receive no compensation but are provided \$100 per diem for each day spent performing official duties and are reimbursed for related travel.

The CAB meetings are subject to the Bagley-Keene Open Meeting Act, which requires public notice and an opportunity for the public to testify.¹⁵ The following table lists the current members of the CAB, including their background, when they were last appointed, their term expiration date, and their appointing authority.

Board Members	Appointment	Term Expiration	Appointing Authority
John Harabedian, President, Public Member, has been an Associate Investment Manager, Legal Counsel at Omni Bridgeway since 2016. He served as a Deputy District Attorney at the Los Angeles County District Attorney’s Office from 2015 to 2016. He was an Associate at Latham and Watkins LLP from 2011 to 2015 and a Law Clerk for the Honorable Josephine Staton at the U.S. District Court, Central District of California from 2010 to 2011. Harabedian was a Policy Analyst in the Los Angeles Mayor’s Office in 2007, a Coro Foundation Fellow from 2006 to 2007 and an Analyst at Barrington Associates from 2004 to 2005. He earned a Juris Doctor degree from Stanford Law School and a Master of Science degree in comparative social policy from the University of Oxford.	12/22/17	06/01/25	Governor
Ruben A. Osoria, Vice-President, Public Member, is a Regional Sales Supervisor for Dion International Trucks.	05/09/17	06/01/25	Senate Rules

¹² AB 3040 (Knox), Chapter 357, Statutes of 1980.

¹³ AB 2367 (Filante), Chapter 1249, Statutes of 1989.

¹⁴ SB 1980 (Greene), Chapter 991, Statutes of 1998.

¹⁵ Government Code §§ 11120-11132.

<p>Amy Matecki, Professional Member, is chief of the Integrative Medicine Division at Alameda Health System, where she has been an attending physician since 2004. She is also the medical director for complementary and integrative medicine at the Alta Bates Summit Medical Center and a consultant for integrative medicine and an internal medicine hospitalist at Northern California Hematology and Oncology Consultants Inc. She is president of the International Center for Integrative Medicine, a fellow of the American College of Physicians-American Society of Internal Medicine, and a member of several oncology and Chinese medicine organizations. She earned an MD from Qingdao University Medical College and an MS in traditional Chinese medicine from the Academy of Chinese Culture and Health Sciences.</p>	06/01/17	06/01/25	Governor
<p>Hyun “Francisco” Kim Kim, Professional Member, has been an Acupuncture Practitioner at Harmony Holistic Wellness Center since 2019, Clinic Director and Acupuncturist at Healtones Medical Clinic since 2014, and Adjunct Clinical Instructor at Touro University California, College of Osteopathic Medicine since 2014. He was Partner at Eastridge Medical Group from 2012 to 2013 and Owner of St. Francis Clinic from 2004 to 2012. Kim is a member of the Association of Korean Asian Medicine and Acupuncture. He earned a Master of Science degree in oriental medicine and acupuncture from South Baylo University.</p>	11/02/18	06/01/25	Governor
<p>Shudong Li, Public Member, has served as President of the USA Tai Chi Foundation and a Board Member of the United States of America Wushu-Kung Fu Federation. He is a 20th-generation descendant of Chen-style Taijiquan and is a Doctor of Physical Education. As a national coach and team leader, he led the US national Wushu team to the World Games, Combat Games, and the World Wushu Championships a number of times.</p>	11/05/18	06/01/25	Assembly Speaker
<p>Yong Ping Chen, Professional Member, has been a professor at Alhambra Medical University since 2020 and an Acupuncturist at Chen's Chinese Medicine clinic since 2002. She was Director of the Experimental Acupuncture Teaching Department and Laboratory at Guangzhou University of Chinese Medicine from 2000 to 2002, Associate Professor and Deputy Chief Physician at Southern Medical University from 1989 to 1997, and Physician and Proctologist at Linhai Traditional Chinese Medicine Hospital from 1984 to 1986. She earned Doctor of Medicine and Doctor of Philosophy degrees in integrative Chinese - Western medicine from Guangzhou University of Chinese Medicine and a Master of Science degree in classical Chinese medicine from Zhejiang Chinese Medical University.</p>	03/05/20	06/01/25	Governor
<p>Vacant, Professional Member</p>			Governor

Committees

Because members of the licensing boards often have professional responsibilities outside of their board responsibilities, they are usually only able to meet a few times a year. As a result, many use smaller committees that can meet more frequently, explore issues in-depth, and then make recommendations to the full boards at the public board meetings.

The CAB currently has three committees. It uses committees to address policy issues, issues referred by the public or licensees to the CAB, or recommendations by CAB staff:

- **Licensing Committee:** Addresses issues related to the development and administration of the examination, exam policy, miscellaneous exam-related issues, licensing policy, and license issuance and renewal processes, educational standards, tutorial programs, continuing education.
- **Executive and Legislation Committee:** Addresses issues related to expenditures, revenue, fund condition, legislation, outreach, committee policy and procedures, and special administrative projects.
- **Enforcement Committee:** Addresses issues related to scope of practice, standard of care, competency, complaints, disciplinary decisions, probation monitoring, reinstatement of licensure, and miscellaneous issues.

Staff

Since 2016, the CAB's Executive Officer has been Benjamin Bodea, who has served in several capacities with the CAB since January 2008. The CAB's office leadership consists of Executive Officer Ben Bodea, Staff Services Manager Jay Herdt, and Staff Services Manager Marisa Ochoa.

CAB staff reports that, during the past five FYs, position vacancy rates were between 7% and 21%, or approximately one to three positions. They attribute the vacancy rates to staff promoting or taking lateral transfers outside of the CAB. CAB staff also note that, due to the ongoing COVID-19 pandemic, it has been challenging for the CAB to recruit and hire qualified staff for its vacant associate governmental program analyst positions. As a temporary solution to this issue, the CAB has reallocated the workload to existing staff and offered compensated time off to assist with completing mission-critical functions.

Fiscal

The CAB is a special fund agency and receives no support from the General Fund.¹⁶ The CAB's fund, the Acupuncture Fund,¹⁷ is primarily funded through licensing fees and administrative fee revenues. The largest and most consistent source of revenue is renewal fees. It may also collect revenue from fines and reimbursement from enforcement cost recovery.

The CAB and other licensing boards also try to maintain a healthy fund reserve, a fund balance that can cover economic uncertainties, potential litigation, salary or price increases, and other unexpected expenditures. For example, the CAB may have to cover unexpected costs, such as litigation or administrative Pro Rata costs.¹⁸

¹⁶ For more information related to state funds, see "Finance Glossary of Accounting and Budget Terms," Department of Finance, <https://ebudget.ca.gov/reference/GlossaryOfTerms.pdf>.

¹⁷ BPC § 205(a)(23).

¹⁸ Government Code § 11270, BPC § 201.

During the CAB’s last Sunset Review, the CAB’s reserve was declining due to an operational budget deficit. Subsequently, the CAB completed a fee study in August 2019.¹⁹ The fee study observed revenue losses among all of the CAB’s fees and also identified workload that was not supported by the existing fee structure.

In response to the study, the CAB pursued legislation to update its fees during the 2020-21 Legislative Session. Those fees were included in the DCA-supported fee bill, AB 3330 (Calderon), Chapter 359, Statutes of 2020. Since then, the CAB has spent less than its revenue and its reserve appears stable. The CAB currently estimates a reserve of \$3.9 million at the end of FY 2022-23, approximately 11.4 months.

Fund Condition (Dollars in Thousands)						
	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23*	FY 23-24*
Beginning Balance**	\$4,418	\$3,766	\$4,021	\$3,477	\$3,650	\$3,865
Total Revenues/Transfers	\$2,658	\$2,415	\$3,030	\$3,757	\$4,063	\$4,063
Total Resources	\$7,076	\$6,181	\$7,110	\$7,234	\$7,713	\$7,928
Authorized Budget	\$3,432	\$4,690	\$4,730	\$4,192	\$3,903	\$4,075
Total Expenditures	\$3,032	\$3,459	\$3,921	\$3,584	\$3,848	\$4,075
Fund Balance	\$4,044	\$3,721	\$3,190	\$3,650	\$3,865	\$3,853
Months in Reserve	14.0	11.4	10.7	11.4	11.4	11.3
<i>* Projections—may not reflect actuals at the end of the FY.</i>						
<i>**May not match prior fund balance due to prior year adjustments.</i>						

Fees

The CAB's fees are established under the Acupuncture Licensure Act²⁰ and CAB regulations.²¹ Its current fees for licensees are:

- Application fee of \$250.
- Examination and reexamination fee of \$800.
- Initial license fee of \$500. Initial licenses that expire less than one year after issuance are pro-rated by 50 percent.
- Biennial renewal fee of \$500.
- Delinquent renewal fee of \$150, set in accordance with BPC § 163.5 (50 percent of the renewal fee, up to \$150).
- Pocket license replacement fee of \$50.
- Wall license registration fee of \$50 (after initial licensure or for multiple places of practice).
- Wall license renewal or replacement fee of \$50.
- Wall license delinquent renewal fee of \$25.
- Endorsement fee of \$100.

¹⁹ Capital Accounting Partners, LLC., “California Acupuncture Board, Report Fee Analysis,” Attachment C of the *CAB 2022 Sunset Review Report*.

²⁰ BPC § 4970-4971.

²¹ CCR, tit. 16, § 1399.460.

For providers of continuing education (CE):

- Initial approval fee of \$500.
- Biennial renewal fee of \$500
- Course approval fee of \$10 per hour of instruction.

For tutorial (apprenticeship) programs:

- Supervisor application fee of \$100.
- Annual supervisor renewal fee of \$200.
- Delinquent supervisor renewal fee of \$100.
- Trainee application fee of \$1000.
- Annual trainee renewal fee of \$500.
- Delinquent trainee renewal fee of \$100.

Licensing

In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. The programs require anyone who wishes to practice a licensed profession to demonstrate a minimum level of competency. Requirements vary by profession but usually include specific education, examinations, and experience. The requirements for licensure under the Acupuncture Licensure Act are found under BPC §§ 4935-4949.

The act makes it a misdemeanor to practice acupuncture or hold oneself out as being able to practice acupuncture, via titles or other methods, unless licensed as an acupuncturist, a physician and surgeon, a dentist, or a podiatrist, or otherwise authorized by law.²² The act also makes it unprofessional conduct for a licensed acupuncturist to use the title “Doctor” or the abbreviation “Dr.” unless the licensee possesses a license that allows it or has earned a doctorate degree from an approved program.²³

The CAB reports the following license data since FY 2017-18:

		FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Acupuncture Licensees	Active	12138	12274	12203	12138	11819
	Out of State	1325	1289	1218	1147	1003
	Out of Country	246	235	224	202	170
	Delinquent/Expired	973	996	1096	1217	1556
	Inactive	1881	1910	2169	2334	2400
	Practice Restricted	3066	3333	3556	3747	4010

In terms of license processing timelines, the CAB strives to meet a target of 10 days or less and has been successful in doing so. The timeline begins with the receipt of the initial license application and ends with the issuance of the initial license.

²² BPC § 4935.

²³ BPC § 4936.

The CAB notes that the current cycle time for approved applications is nine days. This includes a 24- to 48-hour payment processing time and an average of seven days for Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) fingerprint background check clearance. Since September 2020, the CAB has implemented its new AcuConnect Licensing System, which allows applicants to apply and pay for an acupuncture license online without having to contact the CAB directly.

Education

Under BPC § 4927.5, schools must have their curriculum approved by the CAB and be accredited by the Accrediting Commission on Asian and Oriental Medicine (ACAOM), which changed its name to the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) in 2021. They must also be approved by the Bureau for Private Postsecondary Education (BPPE). Schools will typically seek and secure BPPE approval before applying to the CAB for training program approval. For in-state schools, the school must obtain BPPE approval. Out-of-state schools must obtain the equivalent of BPPE approval in their respective state.

Upon submitting a request to the CAB to determine whether it meets California curriculum standards, the CAB has 30 days in which to respond. Site visits are conducted by ACAHM and the BPPE to check for ongoing training program compliance, and CAB staff routinely monitor school approval and accreditation status. Schools must also submit a request to the CAB before making any changes to the approved curriculum,

The CAB reports that, as of June 30, 2022, it recognizes 36 training programs—21 are in California and 15 are located in other states. In the past two FYs, the CAB has recognized nine new approved school degree programs. In the last two FYs, there have been four school degree programs that have lost approved status. Two schools lost approval due to failure to obtain BPPE approval. One school lost approval due to failing to obtain ACAHM approval in a timely manner. One school lost approval per the school's decision to no longer continue offering the program.

Examination

The California Acupuncture Licensure Exam (CALE) is the only examination that is currently required and accepted for licensure in California. The CALE is developed by the DCA's Office of Professional Examination Services (OPES) and is offered in three languages: English, Chinese, and Korean.

In October 2018 the CAB changed from a twice-yearly paper exam to computer-based testing, which is offered six days a week at Psychological Services Incorporated (PSI) Testing Center sites across CA and the U.S. With the reduction of the total time required for exam application processing, applicants can now apply as soon as they graduate and can be approved to take the exam as soon as the CAB receives all required documentation. Upon approval and payment of the exam fee, the applicant can schedule themselves online with PSI for the site and date of their choice, usually within the month.

The CAB is also currently reviewing the use of the examinations offered by the National Certification Commission on Acupuncture and Oriental Medicine (NCCAOM). The NCCAOM is a private, non-profit, voluntary certification organization for acupuncture that is accredited by the National Commission for Certifying Agencies. It is similar to other private organizations that offer examinations and certifications for professionals seeking to demonstrate a specified level of practice competency. It is advertised as an entry-level competency certification for acupuncture, and it is used for purposes of licensure in every other state that regulates acupuncture (46 other states).²⁴ Currently, the NCCAOM is a primarily English language organization, having delayed the implementation of its Chinese and Korean language examinations “due to the low number of candidates interested in taking these exams, which affects the psychometric reliability of these exams.”²⁵

Continuing Education

Professions and practices can change over time. For instance, new technology, research, or ethical requirements may increase the level of minimum competence needed to protect consumers. Therefore, some licensing boards require licensees to complete additional training or classes to maintain minimum competence post-licensure. This is usually accomplished through continuing education (CE) or continuing competence requirements at the time of renewal.

At the end of an acupuncture 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 practicing acupuncture until their renewal has been completed.

CE providers must obtain CAB approval for CE courses before they qualify for license renewal requirements. The CAB’s process for approving CE providers and their courses is established in its regulations.²⁶ CE providers must submit a “Continuing Education Provider Application” with a \$500 fee either using the online system or by mail. The CAB then reviews and approves the application if the CE provider meets the CAB’s requirements. A CE provider is approved for two years. After two years, the provider may renew for another two years for \$500. Upon approval, the CE provider may submit as many course applications for approval as desired within the two-year period. The CE course applications must be submitted at least 45 calendar days before new courses are offered.

In the DCA-supported fee bill, AB 3330 (Calderon), Chapter 359, Statutes of 2020, a new, one-year course approval application fee was established, assessed at \$10.00 per hour of instruction.

²⁴ “NCCAOM State Licensure Requirements Interactive Map, NCCAOM, accessed March 2, 2023, <https://www.nccaom.org/state-licensure>.

²⁵ “NCCAOM Exam Administration,” NCCAOM, accessed March 2, 2023, <https://www.nccaom.org/certification/exam-administration>.

²⁶ CCR, tit. 16, §§ 1399.481, 1399.483.

The bill also increased the fee for new and renewing CE providers from \$150.00 to \$ 500.00 effective January 1, 2021.

Enforcement

The CAB is responsible for enforcing the requirements of the Acupuncture Licensure Act. The purpose of enforcement is to ensure that licensees continue to adhere to licensing requirements and protect the public from those that do not.

To that end, the CAB is required to investigate potential violations. Like other licensing boards, it relies on complaints and other information submitted by consumers, licensees, employers, relevant organizations, and governmental entities, including arrest and conviction notices from law enforcement. CAB enforcement staff may also open a case based on internal observations.

Cases without sufficient evidence or that do not allege a violation are closed without further action. If it finds there was a violation, the Enforcement Unit may take several types of actions depending on the severity of the violation.

For minor violations, the CAB may send a warning letter, called a Letter of Education, or issue a citation, which may include a fine up to a maximum of \$5,000 and may include an order of abatement. For more significant violations, it may seek formal disciplinary actions against a license, including probation, suspension, or revocation. The CAB can initiate formal disciplinary action by referring the matter to the Office of the Attorney General to prepare a case for prosecution in an administrative proceeding. For violations that also involve criminal conduct, the CAB can also refer the case to law enforcement.

The CAB uses its cite and fine authority in cases in which violations can be remedied through an order of abatement and fine, such as technical violations. The CAB does not issue citations in cases that involve patient harm or otherwise require restrictions on the license to ensure consumer protection. The CAB's top five violations are:

- 1) Unprofessional conduct.
- 2) Failure to notify of an address change.
- 3) Failure to disclose a conviction on an application.
- 4) Continuing education provider violations.
- 5) Unlicensed practice.

The DCA's 2010 Consumer Protection Enforcement Initiative (CPEI) introduced performance measures and set target cycle timelines with the aim of resolving investigations and disciplinary proceedings in a timely manner. Consumers, licensees, and the public benefit from the expedient resolution of investigations and disciplinary proceedings.

The CPEI timelines track statistics for every stage of the enforcement process, including the following statistics quarterly established by the CAB:

- Performance Measure (PM) 1—Case Volume: the total number of complaints and conviction or arrest notices received within the specified period.
- PM 2—Intake: New complaint intake and the average number of days to close a complaint or assign it for an investigation (target average of 10 days)
- PM 3—Investigations: Investigation cases completed and the average number of days to complete an investigation without formal discipline (target average of 200 days).
- PM 4—Formal Disciplinary Actions: the number of formal disciplinary actions completed and the average number of days to complete a disciplinary action (target average of 540 days).
- PM 7—Probation Intake: new probationers and the average number of days from assignment to first contact (target average 10 days).
- PM 8—Probation Violation Response: probation violations and the average number of days to initiate appropriate action (target average 10 days).

In the last four FYs, the CAB received an average of 150 consumer complaints and an average of 46 arrest or conviction notices. An average of 180 consumer complaints were referred for investigation and an average of 48 arrest or conviction notices were referred for investigation.

The CAB reports a decrease in complaints received during the pandemic. Its data suggests the decrease in volume is specific to public complaints and internal complaints initiated by the CAB. In contrast, the CAB saw an increase in complaints referred by governmental agencies, which would include arrests and convictions referred by the DOJ.

In terms of timelines, the CAB reports minimal changes in all areas across the last four FYs. According to its PM data, the CAB generally met its FY PM targets since FY 2017-18 but has not met its target for PM3 (investigations) and PM4 (formal discipline cases) in recent FYs.

- FY 2017-18: PMs show that the CAB met its performance targets for all PMs except for PM4. According to the CAB, the cases that result in discipline are the CAB's more complex cases that may require one or more expert reviews, idle time waiting for the hearing date, and lengthy negotiations to come to a stipulated settlement agreement.
- FY 2018-19: PMs show that the CAB met its performance targets. While it did not meet PM3 targets in Q3 and Q4, it did meet the overall FY target of 200 days at 174 days. It was also above the target of 540 days for PM4 for Q3. The CAB reports that to address these backlogs, it tracked workload trends to ensure that the current staffing levels meet the workload requirements.
- FY 2019-20: PMs show that the CAB met its performance targets for all quarters except PM4 for Q3 and Q4. According to the CAB, the uncertainty from the COVID-19 pandemic affected enforcement workload. During that time, CAB staff had to make adjustments relating to telework to ensure compliance with shelter-in-place mandates while minimizing work disruption.

- FY 2020-21: PMs show that the CAB did not meet its performance targets for PM3 Q2 and Q3 or PM4 Q1. According to the CAB, changes brought about by the COVID-19 pandemic continued to affect enforcement processes and workload.
- FY 2021-22: PMs show that the CAB did not meet its performance targets for PM3 and PM4 for all quarters. According to CAB staff, due to the continued effects of the COVID-19 pandemic, the enforcement backlog increased. The CAB also reports that the agencies and private institutions it works on enforcement matters also had backlogs which led to longer case processing times.

According to the CAB, it historically receives a larger number of completed investigation reports from the Division of Investigation (DOI) mid-FY. It notes that this creates an increase in initiated and pending disciplinary cases with the Office of the Attorney General. As with other DCA licensing boards, there tends to be significant variation between cases that result in discipline.

CAB staff reports that it is attempting to bring its process times down for discipline cases by ensuring its Enforcement Unit is adequately staffed. The CAB is also increasing collaboration and communication with DOI, which conducts the CAB's investigations, and the Attorney General's Office, which prosecutes cases. CAB staff report having met with the Attorney General's Office to streamline where both agencies' processes meet and maintaining consistent communication with DOI staff to help ensure items are acted upon as soon as resources are available.

In 2023, the CAB reports that it will begin development of its new enforcement module as part of its business modernization efforts. According to the CAB, work began in 2018 when process maps were created for the CAB's primary functions in Licensing and Enforcement. These maps were then reviewed for possible process improvements that a new system can provide. Licensing processes were rolled out in 2021 and 2022. The enforcement processes will be developed and released next and are anticipated to improve the CAB's ability to address and meet enforcement responsibilities and timeframes.

Additional Background Information

For more detailed information regarding the responsibilities, operations, and functions of the CAB, please refer to the CAB's *2022 Sunset Review Report*. The report is available on the CAB's website: <http://www.acupuncture.ca.gov>.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The CAB was last reviewed in 2018. A total of seven issues were raised by the Committees at that time. In the CAB's *2022 Sunset Review Report*, the CAB describes actions it has taken to address the recommendations made in the staff background paper for the review. The issues which have not been fully addressed or which may still be of concern to the Committees, are discussed more thoroughly under "Current Sunset Review Issues."

- **Prior Issue #1: What is the CAB's plan to balance its budget?** This issue was a continuation of Issue #4 from the CAB's 2016 Sunset Review. 2017 DCA Budget Office fund statements suggest that the CAB is operating with an imbalanced budget. Since FY 2014/15, the CAB's spending has exceeded its revenues, despite spending less than its authorized budget.

At the end of FY 2010-11, the CAB's fund balance reserve was approximately 37 months, which exceeded its 24-month statutory limit. As a result, the CAB had been operating with a structural imbalance to reduce its reserve.

- **Prior Issue #2: What is the CAB's status on the transition to BreEZe or its alternative?** This issue was a continuation of Issue #2 from the CAB's 2014 Sunset Review. The CAB was one of the DCA boards that was scheduled to update its legacy information technology (IT) systems, the Applicant Tracking System (ATS) and Consumer Affairs System (CAS), with the DCA's newer BreEZe system during phase three of the BreEZe rollout.

Since the last review, the CAB has completed the development of major licensing functions in its new AcuConnect system, allowing for online application and payment of a number of applications including, applications for examination, applications for licensure, and wall license applications. Continuing Education (CE) functionality will be added in late 2022, and development will begin on the enforcement module in 2023.

- **Prior Issue #3: What are the impediments preventing the CAB from hiring additional managers?** The CAB reported that an increasing licensing population and an increased demand for data collection, reporting, and analysis have resulted in an increase in staff workload, which may have been increasing faster than its approved staffing could address. Since then, the CAB reports that staff is operating sufficiently with two Staff Services Manager I positions.
- **Prior Issue #4: Does the CAB review potential conflicts of interest outside of public board meetings?** The CAB reports that it continues to receive training about board member conflicts of interest, as well as its role as a DCA board. Since the CAB's April 2018 response, the CAB received additional training from Legal Counsel at its June 13-14, 2019, meeting regarding open and closed session protocols, the Adjudication Process, and conflicts of interest.

It also received training regarding ex-parte communication on August 27, 2020, at a public board meeting during the process of updating its administration manual. At its June 24-25, 2021, meeting, counsel provided training on the role of a board.

The CAB's legal counsel is also available to discuss conflict of interest matters as they arise. Formal presentations and training are offered to board members at every board member orientation training and, if needed, to ensure proper protocol is followed in CAB communications and matters involving conflict of interest.

- **Prior Issue #5: When does the CAB anticipate completing its 2013-2017 Strategic plan and adopting its 2018-2022 Strategic Plan?** This issue was a continuation of Issue #3 from 2016. At the CAB's May 26, 2017, meeting, it reported that it has implemented most of its 2013-2017 Strategic Plan, with the few remaining items in progress. The CAB has since reviewed its 2013-2017 Strategic Plan when it developed its 2018-2022 Strategic Plan and included any outstanding items in the new plan. The CAB reports that it will begin the 2023–2027 Strategic Planning session in the spring of 2023.
- **Prior Issue #6: Are there additional updates, issues, or hurdles relating to the school approval process?** School approval has been raised as an issue in every CAB sunset review since the CAB became a board: Issue # 6 from 2016, Issue #12 from 2014, Issue #4 from 2012, Issue #9 from 2005, Issue #9 from 2002, Issue #9 from 1998. Until January 1, 2017, the CAB was one of only a handful of DCA boards that approved schools and performed site visits. Because the issues at the board level persisted, and there appeared to be a superior alternative, the CAB's 2014 sunset bill changed the acupuncture training program approval process to transfer the CAB's site-visit and accreditation authority to the Accrediting Commission on Asian and Oriental Medicine (ACAOM), which changed its name to the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) in 2021.

Since then, the CAB has worked closely with the two additional agencies now required as part of Acupuncture Training Program Approval: California's Bureau of Private Post-Secondary Education (BPPE) and ACAHM. The CAB reports developing open communication channels and responsive protocols such that relevant information can be shared to satisfy each agency's role in the approval and enforcement of approved acupuncture training programs. CAB staff also identified potential statutory changes, which were included in its last sunset review bill.

- **Prior Issue #7: Are there additional updates, issues, or hurdles relating to the implementation of the approval process for education and training obtained outside of the United States?** While the CAB relies on ACAHM for training program accreditation, ACAHM does not approve schools outside of the United States. To address this issue, the CAB's 2016 sunset bill, AB 2190 (Salas), Chapter 667, Statutes of 2016, established the process for the CAB to assess the educational equivalency of license applicants who received their education and training outside of the United States.

The CAB has since reviewed regulatory language at the March 2021 board meeting and approved language changes at the March and August 2021 meetings. The regulatory package is currently being developed by staff.

- **Prior Issue #8: Are there updates from the CAB on the use of the California Acupuncture Licensing Examination (CALE) or the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination?** Like school approval, the question of whether the CAB should switch from the CAB-administered CALE to the NCCAOM-administered national examination has been raised in every CAB sunset review since 1998: Issue #5 from the CAB's 2016 Sunset Review, Issue #11 from the CAB's 2014 Sunset Review, Issue #6 from 2012, Issue #10 from 2005, Issue#17 from 2002, and Issue #5 from 1998.

Since then, CAB staff have met with OPES and the NCCAOM to review the necessary requirements. It was identified that a third-party audit of the most current Occupational Analysis (OA) and NCCAOM's Job Analysis Survey (JAS) would be required for the CAB to make an informed decision. The CAB completed its OA in 2021, and the NCCAOM will be completing its JAS in 2024. The CAB will revisit the audit in 2024.

- **Prior Issue #11: What is the status of the CAB's updates to its Disciplinary Guidelines and Uniform Standards?** This issue was a continuation of Issue #2 from 2016. In 2017, the CAB submitted a regulatory package to the Office of Administrative Law (OAL) for approval, intending to update its Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees. However, the CAB withdrew the package based on OAL disapproval of other Uniform Standards packages. The CAB planned to submit new packages separating the Disciplinary Guidelines and Uniform Standards and incorporating conditions required by the DCA's Substance Abusing Coordination Committee.

Since then, the CAB approved the proposed language along with the proposed 'Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees' document. The draft rulemaking package was submitted for legal review in May 2021. In December 2021 the CAB conferred with the Department of Justice on the language and has updated language that will be brought back before the CAB in 2023.

- **Prior Issue #12: Is action needed to address the performance of acupuncture services by other types of licensed healthcare professionals?** The CAB had reported that there have been concerns over the use of acupuncture techniques by other health practitioners, including physical therapists, chiropractors, and naturopathic doctors. For example, there have been reports of the use of needles to release "myofascial trigger points" (muscle knots), which is sometimes referred to as "dry needling." The CAB's enforcement staff had investigated several complaints regarding unlicensed practice and use of needles, however, the CAB has limited authority over other license types.

Committee staff noted that, regardless of the profession, the services must fall under each practitioner's scope of practice and competence, and each profession's licensing board is responsible for enforcing those requirements. According to the staff of the Physical Therapy Board of California, tissue penetration by needles was prohibited under the physical therapy scope of practice, except for procedures requiring electromyography.

The CAB reports that it agrees with the recommendation on this issue and does not believe any further action is needed at this time. Currently, the CAB has sufficient authority within the Acupuncture Licensure Act to take appropriate action on the unlawful practice of acupuncture, and actively collaborates with other healing arts boards to attend to the investigation and enforcement of these violations

- **Prior Issue #13: Should the CAB's ratio of professional to public members be adjusted?**
This issue was a continuation of Issue #1 from 2005. The CAB has had a public board member majority since 2006. In 2005, the DCA and the Joint Committee on Boards, Commissions and Consumer Protection recommended that the CAB be allowed to sunset and that its functions be transferred to the DCA.

At the time, the DCA noted that “the [CAB] has had trouble with getting involved in the wrong issues and spending too much time on them without even completing work on those issues. For example, over the past several years, the [CAB] has advocated for enhancing the title of its licensees and further increasing the educational requirements for licensees.... For these reasons, and others, Little Hoover found that the [CAB] has at times acted more as a venue for promoting the profession rather than regulating the profession to protect consumers.”

Rather than allow the CAB to sunset, the number of board members was reduced from nine (five professional members and four public members) to seven (four public members and three professional members). This was also in part to address issues with recruiting board members and lack of quorum. Many of the current board members are new, and there is one vacancy on the board (a professional member position).

According to the CAB, the ratio of public to licensed members has not been brought up as an issue by stakeholders at meetings, nor has the CAB discussed the issue as an agenda item. Therefore, the CAB believes the current balance of professional to public members is necessary and sufficient for it to conduct business.

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA ACUPUNCTURE BOARD

This section covers new and unresolved issues relating to the CAB. It includes background information and committee staff recommendations for each issue. Committee staff has provided this paper to the CAB and other interested parties, including the professions, so that they may respond to the issues and recommendations.

FISCAL ISSUES

ISSUE #1: FEE FOR CURRICULUM REVIEW. Should the CAB assess a fee for the review of curriculum?

Background: This issue is a continuation of Issues #1 and #6 from the CAB's 2018 Sunset Review. At the time, a fee for the review of acupuncture school curriculum was discussed as part of a solution to the CAB's structural budget deficit. While the CAB's structural budget deficit appears resolved, there is still no curriculum review fee.

The fee issue stems from recommendations made during CAB's 2016 Sunset Review. The recommendations led to replacing the CAB's authority to approve acupuncture schools and perform site visits with the requirement that schools instead obtain accreditation from the nationwide Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM), now known as the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM).

However, opposition at the time noted that educational requirements for an acupuncture license vary significantly between states. As a compromise, schools were still required to have their curriculum reviewed by the CAB. In addition, CAB staff have found the need to monitor ongoing curriculum compliance. As a result, staff monitors compliance through yearly reporting requirements.

Despite the workload, the CAB does not have the authority to assess a fee on the schools for the review. As a special fund entity, the CAB's workload is solely funded through fees. If the schools are not assessed a fee, then the workload is necessarily funded by the fees paid by those who are assessed fees, the licensees.

In the fee study commissioned by the CAB in 2019, a new school application fee and an annual school renewal fee were listed as potential new fees under the studies scenario charts, but no workload was analyzed and no amounts were proposed.²⁷ The fees were ultimately not submitted for inclusion in the DCA-supported fee bill, AB 3330 (Calderon), Chapter 359, Statutes of 2020.

Staff Recommendation: *The CAB should describe the workload associated with a typical curriculum review and whether the CAB intends to establish a curriculum review fee.*

²⁷ Capital Accounting Partners, LLC., "California Acupuncture Board, Report Fee Analysis," Attachment C of the CAB 2022 Sunset Review Report.

ISSUE #2: CONTINUING EDUCATION (CE) PROVIDER FEES. Should the CAB CE provider fees be restructured?

Background: This issue is a continuation of Issues #1 and #10 from the CAB's 2018 Sunset Review. At the time, a course approval fee for CE providers was discussed as part of a solution to the CAB's structural budget deficit. Since then, some stakeholders have complained that the fee structure should be changed.

CE providers must pay an approval fee and are approved for two years, after which they may renew for an additional two years. At the time of the CAB's 2018 sunset review, approved providers also applied for course approval but there was no fee. CAB staff noted that several CE providers have a disproportionately large number of courses, offering hundreds of courses, including pre-recorded and distance learning courses. Because the course review takes time, licensees and smaller CE providers were subsidizing the workload of the larger CE course providers.

The CAB's 2019 fee study,²⁸ supported two CE provider fee changes. The first was increasing the initial provider approval and renewal fee from \$150 to \$500. The second was a fee per CE course. The fees were submitted for inclusion in the DCA-supported fee bill, AB 3330 (Calderon), Chapter 359, Statutes of 2020. The fees went into effect on January 1, 2021.

During discussions of AB 3330, the CAB noted that the provider fee increase alone would not cover the workload associated with the overall CE approval program. Specifically, the fee audit calculated a workload cost per CE unit of \$197.00. At the time, the CAB estimated needing to process approximately 3100 CE course applications.

The fee study calculated that the increase to \$500 would result in approximately annual revenue of \$150,000. Dividing that revenue by 3100 CE courses, and ignoring the workload for provider approval, covers approximately \$48 per course, \$149 short of the calculated workload. To cover the remaining workload cost, the CAB would need to draw from other fee revenue.

As a result, AB 3330 implemented a new \$10 fee per unit for each CE course, up to 50 units per course. The CAB recommended calculating the fee on a per unit (hour) basis to account for variations in the amount of work per course, as well as prorating the fees by half-hour increments.

AB 3330 also established a one-year approval date. Previously, the length of CE approval was not specified in statute. Instead, the CAB would approve CE courses for a specific set of dates. AB 3330 instead allowed the courses to be approved and taught for one year, reducing the workload associated with frequent applications. It also provides CE providers flexibility in when they can offer their courses. This was consistent with other DCA boards that approve CE courses without deferring to private entities.

²⁸ *Id.*

However, some stakeholders have voiced concerns over the new fee structure, including the following arguments:

- 1) That the per-hour fee creates a cost risk for CE providers to offer more than very short classes, such as one to three hours.
- 2) That the per-course fee creates a cost risk for providers to offer courses covering new or untried material.
- 3) That the per-hour and per-course fees, in addition to the provider approval fee, discourage offering a greater number of courses.
- 4) That the additional administrative burden to review longer courses compared to shorter courses is negligible.
- 5) That the CAB should model its CE fees after the NCCAOM Professional Development Activity program (discussed further under Issue #3).

The NCCAOM currently assesses the following fees:²⁹

- a) A one-time \$350 initial application fee (with discounts for those certified by the NCCAOM or non-profit 501(c)(3) organizations).
- b) Either of the following course fees (assessed annually):
 - i) A flat per course fee of:
 - (1) \$250 for live presentations.
 - (2) \$250 for online courses.
 - (3) \$400 for conferences.
 - (4) \$400 for overseas tours.
 - ii) A bulk annual review discount of:
 - (1) \$750 for up to 50 course applications per year.
 - (2) \$1,000 for up to 100 course applications per year.
 - (3) \$1,500 for up to 200 course applications per year.
 - (4) \$2,000 for up to 500 course applications per year.

Even if the NCCAOM's fees are more predictable, the CAB's new CE provider fee structure can be hundreds of dollars more affordable for CE providers who offer fewer or shorter classes when compared to the NCCAOM fee structure. While the NCCAOM initial \$350 fee is a one-time fee, a provider offering two, two-hour courses would pay still pay \$850 the first year and \$500 after that. The CAB's annual provider approval

There did appear to be a decrease in CE provider applications and CE course approvals after the new fee structure went into effect on January 1, 2021. CE provider applications in FY 2020-21 fell by 45% compared to FY 2019-20. As a result, the total number of approved CE providers fell by 27%. CE course applications fell by a lower proportion of 23%.

²⁹ "NCCAOM PDA Fee Schedule and How to Make a Payment," NCCAOM, accessed March 2, 2023, https://www.nccaom.org/wp-content/uploads/pdf/PDA/PDA_Fee_Schedule_and_How_to_Make_a_Payment.pdf.

In FY 2021-22, CE provider applications fell by another 78%, lowering the total number of approved CE providers by another 14%. CE course applications fell to a lesser degree by 23%. For the current FY, the numbers appear to be improving a bit.

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23
Provider Applications Received	265	257	274	150	33	101
Provider Applications Approved	265	257	274	150	33	101
Total Approved Providers	540	547	599	436	373	396
Course Applications Received	2635	3002	3703	2,827	2,509	n/a
Course Applications Approved	2382	2700	3220	2,720	2,493	n/a

It is unclear to what extent the decrease was caused by the fee increase. The decrease occurred during the first peak of the COVID-19 pandemic³⁰ when demand for CE would have been at its lowest. As part of the state of emergency, the administration granted temporary waivers of CE requirements, beginning with licenses expiring on March 31, 2020.³¹ Those waivers were extended until October 31, 2021, and licensees who utilized the waivers were required to complete waived CE requirements within six months of September 28, 2021 (March 2022).

Under normal conditions, acupuncture licensees are required complete 50 hours of CE every two years. At approximately 12,000 active licensees over the last five FYs, there has been guaranteed market demand for approximately 600,000 CE hours outside of the waiver period. To the extent demand dropped for CE courses during the waiver period, a proportional surge should have occurred in or around the six-month makeup period.

Staff Recommendation: *The CAB should discuss its implementation of the new CE course fees, describe the workload associated with reviewing and approving individual CE courses, and discuss noticeable impacts on the CE provider population throughout the COVID-19 pandemic, including any observed trends.*

EDUCATION ISSUES

ISSUE #3: THIRD-PARTY CE APPROVAL. Should the CAB be authorized to accept CE from CE providers approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)?

Background: The Acupuncture Licensure Act specifically requires that all providers of CE apply for approval with the CAB and pay a fee. However, some stakeholders have anecdotally reported a general decrease in the availability of high-quality, CAB-approved CE since the start of the COVID-19 pandemic. According to those stakeholders, the CE fee increases described under Issue #2 are causing CE providers to pass the costs down to licensees or are driving the providers out of state, particularly those that also apply for NCCAOM approval.

³⁰ According to the covid19.ca.gov dashboard, the first peak in cases and deaths occurred November through January of 2020, which is the middle of FY 2019-20, which spanned July 1, 2019 to June 30, 2020.

³¹ DCA Waivers DCA-20-01 through DCA-21-175, DCA-21-194.

The stakeholders also anecdotally reported a decrease in the accessibility of certain CE courses that tend to be more affordable and of higher quality but are primarily taught in Asian languages. The reason provided was that many of these providers had reduced their use of English translators, presumably to cut costs.

To address the issue, the stakeholders propose authorizing the CAB to accept CE provided by NCCAOM-approved providers. The goal would be to allow licensees to access a broader network of CE providers and prevent CE providers who pay for NCCAOM approval from also having to pay for CAB approval.

The NCCAOM is a private, non-profit, voluntary certification organization for acupuncture that is accredited by the National Commission for Certifying Agencies. It offers an entry-level competency certification for acupuncture, and it is used for purposes of licensure in every other state that regulates acupuncture (46 other states).³² Currently, the NCCAOM is a primarily English language organization, having delayed the implementation of its Chinese and Korean language examinations “due to the low number of candidates interested in taking these exams, which affects the psychometric reliability of these exams.”³³

While many other licensing boards accept CE approved by private entities, it is usually because the standards are more homogenous nationwide. As noted under Issue #1, California’s education and training requirements tend to be more stringent and cover more content than the standards in other states, which is the reason the CAB continues to review school curriculum and has not yet adopted the NCCAOM’s examinations (see Prior Issue #8 on page 15). As a result, the CAB may still have workload costs associated with reviewing NCCAOM-approved providers or otherwise working with the NCCAOM to ensure alignment with California-specific standards.

Staff Recommendation: *The CAB should discuss the feasibility of accepting NCCAOM CE, including potential hurdles, benefits, costs, or cost savings.*

ENFORCEMENT ISSUES

ISSUE #4: LICENSEE CE AUDITS. How will the CAB handle CE compliance audits now that the COVID-19 emergency waivers have expired?

Background: This issue is a continuation of Issue #9 from the CAB’s 2018 Sunset Review, relating to CE compliance audits. To ensure that licensees are meeting their CE requirements, licensing boards randomly select from the population of licensees applying for license renewal to verify that the licensees have completed the required number of hours in the proper subject areas. Boards then ask the licensees to submit supporting documentation, such as certificates of completion.

³² “NCCAOM State Licensure Requirements Interactive Map,” accessed March 2, 2023, <https://www.nccaom.org/state-licensure>.

³³ “NCCAOM Exam Administration, NCCAOM, accessed March 2, 2023, <https://www.nccaom.org/certification/exam-administration>.

During the last Sunset Review, the CAB reported that it had not completed any CE audits since FY 2014-15 due to vacancies in its Education and Licensing units. Subsequently, the vacancies were filled and the CAB expected to resume CE audits at the end of 2019. However, as discussed under Issue #2, part of the response to the COVID-19 pandemic was to allow licensees to renew their licenses without completing their CE requirements, so there was nothing to audit. CAB staff has stated they will start a new CE audit process of 5% of the licensing population now that the emergency waivers have expired.

Staff Recommendation: *The CAB should update the Committees on the status of its CE audit program, including timelines.*

ISSUE #5: CE PROVIDER AUDITS. When will the CAB begin auditing CE Providers?

Background: This issue is a continuation of Issue #10 CAB’s 2018 Sunset Review, relating to CE provider audits. The Acupuncture Licensure Act authorizes the CAB to monitor CE providers,³⁴ but the CAB only audits CE providers upon complaint or evidence of noncompliance, such as falsified or incomplete Certificates of Completion. Because licensees who attend CE courses may not be aware that a CE provider is violating the CAB’s policies, it may be beneficial to institute an affirmative audit process. For example, CAB regulations require CE providers to disclose advertisements and other conflicts of interest,³⁵ but it is difficult to enforce this policy unless someone attending identifies and reports the lack of disclosure.

Since then, CAB staff reports researching costs, constraints, and approaches to monitoring and auditing CE providers, including:

- Working with subject matter experts to attend and review CE courses for compliance.
- Monitoring live web-cast courses.
- Inquiring with national CE accreditors and other DCA boards to identify best practices.

According to CAB staff, it plans to begin CE provider audits at the time of licensee CE audits.

Staff Recommendation: *The CAB should update the Committees on its plan to audit CE providers, including any additional details or timelines.*

ISSUE #6: WALL LICENSES. Is the wall license registration system working as intended?

Background: In 2019, the requirement that acupuncture licensees disclose to the CAB and hang a wall license at each place of practice was expanded to include a registration fee and renewal requirements.³⁶ The new requirement is similar to the satellite office requirement for other boards, like the Dental Board of California³⁷ or the Board of Chiropractic Examiners³⁸.

³⁴ BPC § 4945(d).

³⁵ CCR, tit. 16, § 1377.483.

³⁶ AB 779 (Low), Chapter 308, Statutes of 2019.

³⁷ BPC §§ 1658-1658.8, CCR, tit. 16, §§ 1045-1048, 1057.

³⁸ CCR, tit. 16, § 308.

The goal of the expansion was to establish a clear record of practice locations, allowing the CAB to track instances of consumer harm and tie them to a potential licensee that may have practiced there. It did this by closing two loopholes in the Acupuncture Licensure Law.

The first loophole was the lack of an ongoing requirement to register new places of practice. Licensees were only required to register places of practice during initial licensure or when changing locations. As a result, licensees could choose not to register additional practice locations, allowing for situations where acupuncture was practiced but not tied to any license.

The second was the lack of a requirement to return, destroy, or otherwise keep track of a wall license if a licensee was no longer practicing but continued to maintain a license. The CAB noted there were cases of wall licenses being rented out to establishments that did not provide acupuncture services.

The next year, in the DCA-supported fee bill, AB 3330 (Calderon), Chapter 359, Statutes of 2020, increased the fee for the wall license registration and renewal from \$15 to \$50. That amount was consistent with the CAB's 2019 fee study.³⁹

However, some stakeholders believe the registration system is ineffective and that the fee is unfair to good actors. The stakeholders argue that, rather than creating more requirements up front, the CAB should instead increase its enforcement efforts and perform more outreach. The stakeholders believe that performing more investigations and using its cite and fine authority would be a stronger deterrent.

The CAB reports the following wall license data since the new system went into effect:

		FY 2020-21	FY 2021-22
Wall License	Active/Renewed	732	3146
	Delinquent/Expired	3	51

Staff Recommendation: *The CAB should update the Committees on the implementation of the new wall license registration program, including any trends in compliance or enforcement.*

ISSUE #7: PERFORMANCE MEASURE TIMELINES. How will the CAB handle the impediments preventing it from meeting its target timelines for investigations or formal discipline cases?

Background: As discussed under Enforcement on page 11 of this paper, the CAB did not meet its performance targets for performance measure (PM) 3 and PM4 for all quarters of FY 2021-22. According to CAB staff, due to the continued effects of the COVID-19 pandemic, the enforcement backlog increased. The CAB also reports that the agencies and private institutions it works on enforcement matters also had backlogs which led to longer case processing times.

³⁹ Capital Accounting Partners, LLC., “California Acupuncture Board, Report Fee Analysis,” Licensing and Misc Fees – V1 (Floor), Attachment C of the *CAB 2022 Sunset Review Report*.

Staff Recommendation: *The CAB should discuss ongoing impediments to meeting its PM timelines and any plans to overcome those impediments.*

PRACTICE ISSUES

ISSUE #8: ACUPUNCTURE ASSISTANTS. Should acupuncturists be authorized to utilize acupuncture students for certain functions in their practice?

Background: Currently, the Acupuncture Licensure Act limits the entirety of the practice of acupuncture to licensed acupuncturists unless the unlicensed person is engaged in an acupuncture course or tutorial program or participating in a post-graduate review course. As a result, acupuncturists are not allowed to hire or train acupuncture students in a typical practice.

Some stakeholders have requested the authority to supervise senior acupuncture students as “acupuncture assistants,” allowing assistants to perform low-level, non-invasive acupuncture functions in an acupuncture practice, such as the removal of needles or checking pulse or blood pressure. This would be similar to the use of supervised assistants in other professions, such as physical therapy assistants, occupational therapy assistants, and dental assistants, among numerous others.

Staff Recommendation: *The CAB should update the Committees on any discussions it may have had on the topic and whether there are any immediate patient safety concerns.*

COVID-19 ISSUES

ISSUE #9: COVID-19. Are any statutory revisions, updates, or changes necessary in the aftermath of the COVID-19 pandemic?

Background: In response to the COVID-19 pandemic, the Governor declared a state of emergency, issuing numerous executive orders and waivers to address the immediate crisis, including impacts on the state’s healthcare workforce. While the state of emergency ended on February 28, 2023, and the actions and waivers along with it, there may still be an ongoing need for those changes and flexibilities. There may also have been observed benefits that merit keeping the changes in place or making additional changes.

As a result, some of these actions have been extended or codified through statute. For example, SB 189 (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2022, extended the waiver allowing public meetings subject to the Bagley-Keene Open Meeting Act to be held both in-person and via teleconference until July 1, 2023. AB 269 (Berman), Chapter 1, Statutes of 2023, codified a waiver relating to COVID-19 testing and extended a waiver relating to the distribution of COVID-19 therapeutics until January 1, 2024.

Staff Recommendation: *The CAB should advise the Committees on its use of any COVID-19 waivers and whether any statutory changes relating to the COVID-19 pandemic are needed going forward.*

EDITS TO THE PRACTICE ACT

ISSUE #10: TECHNICAL CHANGES. Are there technical changes that can improve the CAB or its functions?

Background: There may be technical changes that can be made to the Acupuncture Licensure Act to help the CAB perform its duties or streamline its processes.

For example, the Acupuncture Licensure Act still refers specifically to the entity that approves schools as the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), but in 2021 the entity changed its name to the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM). It would clarify the act to update the name and language allowing for a successor organization.

Staff Recommendation: *The CAB should continue to work with the Committees and suggest any technical clean-up that may be needed.*

CONTINUED REGULATION OF THE PROFESSION

ISSUE #11: SUNSET EXTENSION. Should the practice of acupuncture continue to be regulated and licensed under the CAB?

Background: The CAB continues to work well with the Legislature in implementing its consumer protection mission. This is demonstrated by the CAB's recent completion of its fee study, occupational analysis, and ongoing improvements consistent with its Strategic Plan, including balancing its budget.

While the COVID-19 pandemic created understandable challenges, the CAB should continue to implement its CE auditing processes and monitor the needs of the acupuncture community, such as the availability of affordable and effective CE.

Staff Recommendation: *The CAB's regulation of acupuncturists should be continued and reviewed again on a future date to be determined.*