

CALIFORNIA ACUPUNCTURE BOARD



2022 SUNSET REVIEW REPORT

**Prepared for the Senate Committee on Business,
Professions and Economic Development and the Assembly
Committee on Business and Professions**

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CALIFORNIA ACUPUNCTURE BOARD



Board Members

John Harabedian, Esq., President - Public Ruben
Osorio – Vice President - Public Dr. Amy Matecki,
M.D., L.Ac. - Licensee
Dr. Yong Ping Chen, L.Ac., Ph.D – Licensee Hyun
"Francisco" Kim, M.S., L.Ac. – Licensee Dr. Shu Dong Li,
Ph. D – Public
Vacant – Public

Executive Officer

Ben Bodea

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CALIFORNIA ACUPUNCTURE BOARD

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of June 30, 2022

Section 1 –

Background and Description of the Board and Regulated Profession

1. Provide a short explanation of the history and function of the board.¹ Describe the occupations/profession that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

Mission Statement

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

Brief History

The Board of Medical Examiners (now called the Medical Board of California) 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.

In 1975, Senate Bill 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 a 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.

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

In 1982, the Legislature designated the Acupuncture Examining Committee as an autonomous body. Effective January 1, 1990, through AB 2367 (Chapter, 1249, Statutes of 1989) the name was changed to Acupuncture Committee to better identify it as a state licensing entity for acupuncturists. The legislation further provided that, until January 1, 1995, the California Acupuncture Licensing Examination (CALE) would be developed and administrated by an independent consultant, which was later extended to June 2000.

In 1988, legislation was signed into law (Chapter 1496, Statutes of 1988), which included acupuncturists as “physicians” only in the Workers Compensation system for purposes of treating

¹ The term “board” in this document refers to a board, bureau, commission, committee, council, department, division, program, or agency, as applicable. Please change the term “board” throughout this document to appropriately refer to the entity being reviewed.

injured workers. The bill permitted acupuncturists to treat workplace injuries without first obtaining a referral but did not permit acupuncturists to evaluate disability. The bill went into effect in 1989 with a four-year sunset clause. AB 400 (Chapter 824, Statutes of 1992) extended the inclusion of acupuncturists as “physicians” in the Workers’ Compensation system until December 1996 and AB 1002 (Chapter 26, Statutes of 1996) further extended the inclusion of acupuncturists as “physicians” in the Workers’ Compensation system until January 1, 1999. Legislation passed in 1997 (Chapter 98, Statutes of 1997) deleting the 1999 sunset date on the Workers’ Compensation system.

On January 1, 1999, the committee’s name was changed to Acupuncture Board (SB 1980, Chapter 991, Statutes of 1998) and the Committee was removed from within the jurisdiction of the Medical Board of California (SB 1981, Chapter 736, Statutes of 1998). The Acupuncture Board (Board) became and remains an autonomous body under the California Department of Consumer Affairs (DCA).

Acupuncture Scope of Practice

Acupuncture is defined in Business and Professions Code (B&PC) Section 4927(d) as, “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.” (Chapter 655, Sec. 56, Statutes of 1999).

Acupuncturist are allowed 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. Nothing in this section prohibits any person who does not possess an acupuncturist’s license or another license as a healing arts practitioner from performing or prescribing the use of any modality listed in this subdivision. BPC Section 4937.

Function of the Board

The Acupuncture Licensure Act commences with B&PC Section 4925 et seq. The Board’s regulations appear in Title 16, Division 13.7, of the California Code of Regulations (CCR). The Board establishes and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license.

BPC § 4928.1 establishes that the protection of the public is the Acupuncture Board’s highest priority. The Board protects California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board’s regulations. The Board promotes safe practice through establishing education training standards for entry level practice, continuing education, enforcement of the acupuncture practice act, and public outreach.

1. Describe the make-up and functions of each of the board’s committees (cf., Section 12, Attachment B).

Committees serve as an essential component of the full Board to address specific issues referred by the public or recommended by staff. Committees are composed of one or more Board Members who are charged with gathering public input, exploring alternatives to the issues and making recommendations to the full Board.

The Board currently has the following three committees:

Licensing Committee –

Addresses issues related to development and administration of the examination, exam policy, miscellaneous exam related issues, licensing policy, and license issuance and renewal processes, educational standards, tutorial programs, and continuing education.

Executive and Legislation Committee –

Addresses issues related to expenditures/ revenue/fund condition, legislation, outreach, committee policy/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.

Table 1a. Attendance			
John Harabedian			
Date Appointed:	12/22/20217		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	03/30/2018	Sacramento	Y
Board Meeting	04/13/2018	Teleconference – Sacramento/Los Angeles/Berkeley	Y
Board Meeting	06/28/2018	San Diego	Y
Board Meeting	06/29/2018	San Diego	Y
Board Meeting	10/25/2018	Berkeley	Y
Board Meeting	10/26/2018	Berkeley	Y
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	N
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y
Board Meeting	12/09/2021	WebEx	Y
Board Meeting	12/10/2021	WebEx	Y
Board Meeting	03/25/2022	WebEx	Y
Board Meeting	05/20/2022	WebEx	Y

Ruben Osorio			
Date Appointed:	05/09/2017		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	08/4/2017	Sacramento	Y
Board Meeting	10/20/2017	Sacramento	Y
Board Meeting	11/17/2017	Sacramento	Y
Board Meeting	12/15/2017	Sacramento	Y
Board Meeting	03/30/2018	Sacramento	Y
Board Meeting	04/13/2018	Teleconference – Sacramento/Los Angeles/Berkeley	Y
Board Meeting	06/28/2018	San Diego	Y
Board Meeting	06/29/2018	San Diego	Y
Board Meeting	10/25/2018	Berkeley	Y
Board Meeting	10/26/2018	Berkeley	Y
Board Meeting	03/28/2019	Sacramento	N
Board Meeting	03/29/2019	Sacramento	N
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	Y
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y
Board Meeting	12/09/2021	WebEx	Y
Board Meeting	12/10/2021	WebEx	Y
Board Meeting	03/25/2022	WebEx	Y
Board Meeting	05/20/2022	WebEx	Y

Yong Ping Chen			
Date Appointed:	03/05/2020		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	Y
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y
Board Meeting	12/09/2021	WebEx	Y
Board Meeting	12/10/2021	WebEx	Y
Board Meeting	03/25/2022	WebEx	Y
Board Meeting	05/20/2022	WebEx	Y

Hyun “Francisco” Kim			
Date Appointed:	11/02/2018		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	Y
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y
Board Meeting	12/09/2021	WebEx	Y
Board Meeting	12/10/2021	WebEx	Y
Board Meeting	03/25/2022	WebEx	Y
Board Meeting	05/20/2022	WebEx	Y

Shu Dong Li			
Date Appointed:	11/05/2018		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	Y
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y
Board Meeting	12/09/2021	WebEx	Y
Board Meeting	12/10/2021	WebEx	Y
Board Meeting	03/25/2022	WebEx	Y
Board Meeting	05/20/2022	WebEx	Y

Dr. Amy Matecki			
Date Appointed:	11/01/2016		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	08/04/2017	Board Meeting	Y
Board Meeting	10/20/2017	Board Meeting	Y
Board Meeting	11/17/2017	Board Meeting	Y
Board Meeting	12/15/2017	Board Meeting	Y
Board Meeting	03/30/2018	Sacramento	Y
Board Meeting	04/13/2018	Teleconference – Sacramento/Los Angeles/Berkeley	Y
Board Meeting	06/28/2018	San Diego	Y
Board Meeting	06/29/2018	San Diego	Y
Board Meeting	10/25/2018	Berkeley	Y
Board Meeting	10/26/2018	Berkeley	Y
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	Y
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y
Board Meeting	12/09/2021	WebEx	Y
Board Meeting	12/10/2021	WebEx	Y
Board Meeting	03/25/2022	WebEx	Y
Board Meeting	05/20/2022	WebEx	Y

Kitman Chan			
Date Appointed:	08/14/2013		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	08/04/2017	Board Meeting	Y
Board Meeting	10/20/2017	Board Meeting	Y
Board Meeting	11/17/2017	Board Meeting	N
Board Meeting	12/15/2017	Board Meeting	Y
Board Meeting	10/25/2018	Berkeley	Y
Board Meeting	10/26/2018	Berkeley	Y
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	06/26/2020	WebEx	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y
Board Meeting	08/27/2020	WebEx	Y
Board Meeting	08/27/2020	WebEx	Y
Education/Research Committee Meeting	12/17/2020	WebEx	Y
Board Meeting	12/17/2020	WebEx	Y
Board Meeting	12/18/2020	WebEx	Y
Board Meeting	03/25/2021	WebEx	Y
Board Meeting	03/26/2021	WebEx	Y
Board Meeting	06/24/2021	WebEx	N
Board Meeting	06/25/2021	WebEx	Y
Board Meeting	08/26/2021	WebEx	Y

Bradley Cimino			
Date Appointed:	11/07/2018		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	03/28/2019	Sacramento	Y
Board Meeting	03/29/2019	Sacramento	Y
Education/Research Committee Meeting	06/13/2019	Whittier	Y
Board Meeting	06/13/2019	Whittier	Y
Board Meeting	06/14/2019	Whittier	Y
Board Meeting	08/15/2019	San Jose	Y
Board Meeting	08/16/2019	San Jose	Y

Francisco Hsieh			
Date Appointed:	05/22/2013		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	08/04/2017	Sacramento	Y
Board Meeting	10/20/2017	Sacramento	N
Board Meeting	11/17/2017	Sacramento	Y
Board Meeting	12/15/2017	Sacramento	Y
Board Meeting	03/30/2018	Sacramento	Y
Board Meeting	04/13/2018	Teleconference – Sacramento/Los Angeles/Berkeley	N

Jeanne Kang			
Date Appointed:	09/13/2013		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	08/04/2017	Sacramento	Y
Board Meeting	10/20/2017	Sacramento	Y
Board Meeting	11/17/2017	Sacramento	Y
Board Meeting	12/15/2017	Sacramento	Y
Board Meeting	03/30/2018	Sacramento	N
Board Meeting	04/13/2018	Teleconference – Sacramento/Los Angeles/Berkeley	Y

Table 1b. Board/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re- appointed	Date Term Expires	Appointing Authority	Type (public or professional)
Yong Ping Chen	03/05/2020	07/23/2021	06/01/2025	Governor	Professional
Shu Dong Li	11/05/2018	01/11/2022	06/01/2025	Assembly Speaker	Public
Hyun “Francisco” Kim	11/02/2018	06/25/2021	06/01/2025	Governor	Professional
Bradley Cimino	11/07/2018	N/A	12/06/2019	Governor	Professional
John Harabedian	12/22/2017	08/19/2021	06/01/2025	Governor	Public
Ruben Osorio	05/09/2017	12/30/2021	06/01/2025	Senate Rules	Public
Dr. Amy Matecki	11/01/2016	07/19/2021	06/01/2025	Governor	Professional
Jeanne Kang	09/13/2013	08/04/2017	04/26/2018	Governor	Professional
Kitman Chan	08/14/2013	06/01/2017	10/26/2021	Governor	Public
Francisco Hsieh	05/22/2013	N/A	06/01/2017	Assembly Speaker	Public
Vacant (Chan)				Governor	Public

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?

The Board was not prevented from holding a meeting during the last four years due to a lack of quorum.

3. Describe any major changes to the board since the last Sunset Review, including, but not limited to:
- Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)
 - All legislation sponsored by the board and affecting the board since the last sunset review.
 - All regulation changes approved by the board since the last sunset review. Include the status of each regulatory change approved by the board.

Change in Leadership

The Board's office leadership consists of Executive Officer Ben Bodea, Staff Services Manager Jay Herdt and Staff Services Manager Marisa Ochoa. The Executive Officer remains unchanged from the last Sunset Review in fiscal year 2016-17. To properly align manager-to-staff ratios consistent with California Department of Human Resources, the Board received position and dollar authority for one Staff Services Manager through the Budget Change Proposal process. To achieve proper oversight and management of the Board's Central Services Unit, the Board reclassified an Office Technician to a Staff Services Manager I position.

The Election of Board Officers was held on June 24, 2021. The results of the Election of Officers are:

- President – John Harabedian
- Vice-President – Ruben Osorio

Staffing

Board staff numbers have temporarily grown since the last review, on a limited term basis, to address the increased workload during the development and transition to the Board's new IT system. The Board received 2.0 Associate Governmental Program Analyst position through the Budget Change Proposal process. As of June 30, 2022, the authority for those positions have expired.

Relocation

On June 23, 2022, the Board relocated to new office space to a suite within the Department of Consumer Affairs headquarters building in Natomas. The office move resulted in a smaller rental rate per square foot.

Strategic Planning

The Board 2018-2022 was developed in 2017. The plan includes six areas of focus: Licensing, Enforcement, Education, Legislation and Regulation, Outreach, and Board Administration. The Board has worked diligently on each of the goals outlined in the plan since its development. The Board's next plan will be developed following the conclusion of its fiscal year 2022-23 Sunset Review to discuss and include any legislative recommendations raised in the Sunset Review process.

Refer to Attachment 13.E.1 in Section 13 for the Board's 2018-2022 Strategic Plan.

Business Modernization

The Board received budgetary authority to proceed with modernizing its business processes as well as two analyst positions to address the increased workload during the development and transition to the new IT system. The Board joined efforts with three other Department of Consumer Affairs (DCA) programs to create the Business Modernization Cohort 1 under the project direction of DCA's Office of Information Services (OIS). Working together allows the programs to pool resources and achieve cost savings in developing a new IT platform to facilitate licensing, enforcement, and online payment and cashiering. In October and November of 2019, the Board, along with its business modernization cohort members, OIS, and the Department of Technology, reviewed multiple responses to Requests for Offers for a new IT platform to address current business needs to conduct the Board's licensing and enforcement duties. In January of 2020, the Board began implementation of its new IT platform via the Business Modernization project.

On September 16, 2020, the Board, in collaboration with the Department's Office of Information Services, launched the first phase of a new application, licensing, and enforcement system known as "AcuConnect". Through phased software releases from September 2020 through July 2022, the Board has implemented these functions:

- Initial license application
- License Renewals
- Address changes

Legislation

The Board did not sponsor any legislation since the last Sunset Review.

The Board has been affected by the following legislation since its last Sunset Review:

SB 1448 (Hill, Chapter 570, Statutes of 2018) - Requires healing arts licensees under probation (through an order made on or after July 1, 2019) to disclose that status to their patients or their patients' guardians or health care advocates prior to their first visit.

AB 3142 (Low, Chapter 596, Statutes of 2018) – Reauthorization of Acupuncture License Act and the Acupuncture Board until January 1, 2023. Changes the required status of an approved educational

and training program to pre-accreditation status (from candidacy status) with the Accreditation Commission for Acupuncture and Herbal Medicine. Expands the scope of unlawful practice of acupuncture.

AB 2138 (Chiu, Chapter 995, Statutes of 2018) – Requires boards considering discipline of a licensee or denial of an applicant for licensure to consider criminal convictions only if those convictions show a substantial relationship to the qualifications, functions or duties of the profession of licensure.

AB 779 (Low, Chapter 308, Statutes of 2019) – Established a “wall license” that assigns a unique license number to each place of practice registered by the licensee.

SB 878 (Jones, Chapter 131, Statutes of 2020) – Requires Boards within the Department of Consumer Affairs to begin displaying on their websites, effective July 1, 2021, information on the processing times for initial and renewal license applications.

AB 2113 (Low, Chapter 186, Statutes of 2020) – Requires Boards within the Department of Consumer Affairs to expedite the initial licensure process for an applicant with approved refugee, asylum, or special immigrant visa status.

AB 3330 (Calderon, Chapter 359, Statutes of 2020) - Set new fee amounts and established new fees for licensees and continuing education providers. Fees went into effect in 2021.

Regulations Approved by the Board

The following regulatory packages have been approved by the Board since the last Sunset review:

- Treatment Procedures; Hand Hygiene Requirements (Title 16 CCR 1399.451(a))

Approved by the Board in January 2014, the proposed regulations would add to the handwashing requirements in regulation. The proposed changes would align the regulatory language with recommendations from the California Department of Public Health and the Center for Infectious Disease. This package is currently under development with staff.

- Disciplinary Guidelines; Probation Disclosure; Uniform Standards for Substance Abusing Licensees; Probation Disclosure (Title 16 CCR section 1399.469)

Approved by the Board in March 2019, these proposed regulations address the provisions of SB 1441 (Ridley-Thomas, Chapter 538, Statutes of 2008), updating the Board’s Disciplinary Guidelines to reflect Uniform Standards for Substance Abusing Licensees. The Board approved additional language in December 2020 to align the Guidelines with AB 2138.

This package also includes language to ensure that the Board’s Disciplinary Guidelines are consistent with SB 1448 (Hill, Chapter 570, Statutes of 2018), concerning the disclosure by licensees on probation (pursuant to a probationary order made on or after July 1, 2019) of their probationary status to patients or their guardians or health care surrogates. Following review from the DCA’s Legal Affairs Division, the Board will consider revised language at a meeting in 2023.

- Align Curriculum Standards and Approval Related Regulations with Statute (Title 16 CCR sections 1399.415, 1399.434, 1399.435, 1399.437, 1399.438, 1399.439)

The Board approved regulatory language for this package at its August 2019 and March 2021 meetings. The proposed regulations add to previously promulgated regulations that ensure the Board’s compliance with SB 1246 (Lieu, Chapter 397, Statutes of 2014). The law changed the Board’s authority from approving schools and colleges of acupuncture to approving an education and training program’s acupuncture curriculum. This package is currently under development with staff.

- Application for Retired Status; Retired Status (Title 16 CCR section 1399.419.3)

Approved by the Board at the August 2019 meeting, the proposed regulations would create a retired status license type, set criteria for applying for that status, and for applying for restoration of active status from retired status. The package is currently under development with staff and legal counsel.

- Application Process for Licensing Examination and Re-examination, and Criteria, and Procedures for Approval of a Credential Evaluation Service (Add Title 16 CCR sections 1399.409, 1399.416.2, 1399.416.3, and 1399.416.4, and amend sections 1399.411, 1399.413, 1399.414, 1399.416, 1399.417, and 1399.419 419 in Title 16 of the CCR)

The Board approved regulatory language for this package at its March 2021 meeting. The proposed regulations would allow the Board to approve credential evaluation services for evaluating the foreign education of applicants for licensure, reflecting changes in Business and Professions Code Section 4939. The regulatory package is currently under development by staff.

- Continuing Education Requirements (Title 16 CCR sections 1399.483, 1399.489)

Approved by the Board at the March 2021 meeting, the proposed regulations would require four (4) hours of continuing education credits in law and ethics for licensees seeking renewal. There would be other changes made to clean up existing language. The regulatory package is currently under development with staff.

- Standards of Practice for Telehealth Services (Title 16 CCR section 1399.452.1)

Approved by the Board at the March 2021 meeting, the proposed regulations would make specific to acupuncture the guidance outlined in Business and Professions Code Section 2290.5 on the provision of services through telehealth. This package follows guidance on telehealth the Board issued to licensees in 2020 and the Governor's Executive Orders encouraging greater use of telehealth during the COVID-19 pandemic (Executive Orders N-39-20 and N-43-20). The regulatory package is currently under development with staff.

Regulatory Packages Approved by the Office of Administrative Law since last Sunset Review

- Sponsored Free Health Care Events (Article 1.5 of Division 13.7 of Title 16 CCR sections 1399.407, 1399.407.1, 1399.407.1, 1399.407.2, 1399.407.3)

This package set regulations for the Acupuncture Board to implement and make specific Business and Professions Code section 901. The regulations cover how entities might sponsor free health care events and how out of state practitioners might participate in such events without a California license. The regulations were effective October 1, 2017.

- Increase Board Fees (*Section 100 process*) (Title 16 CCR 1399.460, 1399.462)

This package implemented the recent fee increases set by AB 3330 (Calderon, Chapter 359, Statutes of 2020). The only changes to regulations were the fee amounts, so the package was submitted through the Section 100 process. The Office of Administrative Law approved the regulations on May 24, 2021, and they are effective as of that date.

- Repeal of Sponsored Free Health Care Events (*Section 100 process*) (Article 1.5 of Division 13.7 of Title 16 CCR sections 1399.407, 1399.407.1, 1399.407.2, 1399.407.3)

The proposed changes would remove language in the Code of California Regulations for which the underlying authority (Business and Professions Code section 901) has been repealed. As the changes would reflect existing law, the package was submitted through the Section 100 process. The regulatory package was filed with the Office of Administrative Law in June 2021. The regulations were approved and made effective August 6, 2021.

- Substantial Relationship and Rehabilitation Criteria (Title 16 CCR sections 1399.469.4, 1399.469.5, 1399.469.6)

Approved by the Board in March 2019, these proposed regulations address the provisions of AB 2138 (Chiu, Chapter 995, Statutes of 2018). The new language would require the Board to consider a licensee's criminal conviction when disciplining them only if there is a substantial relationship between the conviction and the qualifications, functions, or duties of the profession. This package was approved by OAL on September 2, 2021.

Regulations Abandoned since last Sunset Review

- Advertising Guidelines; Display of License Number in Advertising (Title 16 CCR 1399.455)

This package would have required acupuncturists who advertise their services to be active licensees and to include their license number in any advertising. The Board voted at the October 2018 Board meeting to not pursue this regulatory package.

- Prohibited Sexual Acts (Title 16 CCR 1399.469.4)

This package would make it more difficult to use an acupuncture business as a front for sexual activity. Anyone subject to regulation by the Acupuncture Board who knowingly engages or aides in owning, leasing, licensing, or operating a location where sexual acts or attempted sexual acts occur, whether or not fees or services are paid, would be guilty of unprofessional conduct. The Board did not approve regulatory language at this meeting, but directed the Legal Counsel conduct additional research to address concerns about clarity and necessity of the proposed language. Based on the opinions of the attorneys Board staff consulted, additional regulations would be unnecessary. Enforcement should be able to proceed with administrative discipline for violations of BPC Section 731 without convictions. The Board voted at the July 2022 Board meeting to not pursue this regulatory package.

4. Describe any major studies conducted by the board (cf. Section 12, Attachment C).

Fee Study

In 2019, the Board contracted with Capital Accounting Partners to conduct and prepare a detailed costs analysis of its fees to address the Board's structural imbalance. The Board's only source of revenue are fees charged to each of the various licenses/processes, so it is vital that the fees charged fully recover the costs to the Board.

The Board's third-party fee study was completed in August 2019. The fee study reported revenue losses amongst all the fees set in statute under Business and Professions Code (BPC) sections 4970 and 4971. The fee study also identified increased fee amounts at a base level that would allow the Board to align its revenues with projected expenditures, thereby, balancing the Board's budget.

In addition, the fee study identified new proposed fees based upon processes and workload performed by the Board, but which the Board does not currently charge a fee, such as CE Course Per Unit, Foreign Applicants, Wall License, and Retirement Status License. While the Board has statutory authority to charge a fee for these services, the Board has not done so in the past. This means the Board is incurring a revenue loss on these services.

In response to the audit's findings, the Board pursued legislation to amend and the update the fees for licensees during the 2020-21 legislative session. Chapter 359, Statutes of 2020, provides the revision of the fees as specified. The Board was then able to increase fees through the regulation process to align with Statute.

Occupational Analysis

The Board, in coordination with the Office of Professional Examination Services, conducted an Occupational Analysis of the California Acupuncture Licensing Exam (CALE) in the spring of 2021. The Analysis, which will inform the next update to the CALE, was sent to all active licensees, yielding a 23.6 percent participation rate.

5. List the status of all national associations to which the board belongs.
 - Does the board's membership include voting privileges?
 - List committees, workshops, working groups, task forces, etc., on which the board participates.
 - How many meetings did board representative(s) attend? When and where?
 - If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

The Board does not have memberships in any national associations. Board staff have attended the Council of Colleges of Acupuncture and Herbal Medicine conference to address training programs directly, inform of any changes, and collaborate on issues.

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Section 2 – Performance Measures and Customer Satisfaction Surveys

6. Provide each quarterly and annual performance measure report for the board as published on the DCA website.

Please see Attachment 13.E.2a in Section 13 for the Board's quarterly performance measure reports, and Attachment 13.E.2b in Section 13 for the Board's annual performance measure report.

7. Provide results for each question in the board's customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

Please see Attachment 13.E.3 in Section 13 for the Board's Consumer Satisfaction Surveys.

The Board received eleven Consumer Satisfaction Survey responses. With minimal response rate, it is difficult for the Board to conclude the level of satisfaction from the survey results.

The Board did not receive any completed Consumer Satisfaction Surveys in the following quarters:

- 2017-18 Q1 – No Results
- 2017-18 Q3 – No Results
- 2017-18 Q4 – No Results
- 2018-19 Q3 – No Results
- 2019-20 Q1 – No Results
- 2019-20 Q2 – No Results
- 2019-20 Q3 – No Results
- 2019-20 Q4 – No Results
- 2020-21 Q2 – No Results
- 2020-21 Q3 – No Results
- 2021-22 Q1 – No Results
- 2021-22 Q2 – No Results
- 2021-22 Q3 – No Results
- 2021-22 Q4 – No Results

The Consumer Satisfaction Survey, provided by DCA, was developed and is used as a performance measure to gauge the consumer's satisfaction regarding how their complaint was processed. This survey is sent to the consumer (complainant) with the Board's letter when a case is closed. The consumer can complete the survey in a variety of ways: online or through a QR Code Reader.

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Section 3 – Fiscal and Staff

Fiscal Issues

8. Is the board's fund continuously appropriated? If yes, please cite the statute outlining this continuous appropriation.

No, the Board's fund is not continuously appropriated.

9. Describe the board's current reserve level, spending, and if a statutory reserve level exists.

The Boards' current reserve level is projected to be 11.4 months in reserve, or \$3.9 million at the end of 2022-23. The Board has historically achieved cost savings each year. The statutory reserve level for the fund is no more than 24 months based on B&PC Section 128.5.

10. Describe if/when a deficit is projected to occur and if/when a fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.

The Board does not currently project a deficit in the foreseeable future and no fee increases or decrease are anticipated.

Table 2. Fund Condition

(Dollars in Thousands)	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Beginning Balance*	4,418	3,766	4,021	3,477	3,650	3,865
Revenues and Transfers	2,658	2,415	3,090	3,757	4,063	4,063
Total Revenue	\$7,076	\$6,181	\$7,110	\$7,234	\$7,713	\$7,928
Budget Authority (incl Reimbursements)	3,432	4,690	4,730	4,192	3,903	4,075
Expenditures**	3,032	3,459	3,921	3,584	3,848	4,075
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Loans Repaid From General Fund	N/A	1,000	N/A	N/A	N/A	N/A
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

*Includes PY adjustments

**Less Reimbursements, includes direct draws to the fund (i.e. Statewide ProRata, Pension Payments, etc)

11. Describe the history of general fund loans. When were the loans made? When have payments been made to the board? Has interest been paid? What is the remaining balance?

In fiscal year 2011-12, the Board provided a \$5 million loan to the General Fund, of which \$4 million was repaid in 2016-17 with approximately \$87,000 in interest income. The remaining \$1 million was repaid 2019-20 with approximately \$30,000 in interest income.

12. Describe the amounts and percentages of expenditures by program component. Use *Table 3. Expenditures by Program Component* to provide a breakdown of the expenditures by the board in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.

The Board expenditures are comprised of the expenditure amounts and percentages, by program components: (1) Enforcement; (2) Examination; (3) Licensing; and (4) Administration.

In 2017-18, the Board had \$1 million in Personnel Services cost and \$1.8 million in Operating Expenses & Equipment cost, a total of \$2.8 million in program expenditures and spent 83.1 percent of its \$3.3 million authorized budget. The Enforcement program spent \$476,000 or 17.2 percent of total expenditures, Examination program spent \$639,000 or 23 percent, Licensing program spent \$546,000 or 19.7 percent, Administration program spent \$321,000 or 11.6 percent, and DCA Pro Rata costs were \$791,000 or 28.5 percent.

In 2018-19, the Board had \$1 million in Personnel Services cost and \$1.8 million in Operating Expenses & Equipment cost, a total of \$2.8 million in program expenditures and spent 82.5 percent of its \$3.4 million authorized budget. The Enforcement program spent \$620,000 or 22 percent of total expenditures, Examination program spent \$629,000 or 22.4% of total expenditures, Licensing program spent \$481,000 or 17.1 percent, Administration program spent \$405,000 or 14.4 percent, and DCA Pro Rata costs were \$670,000 or 24.1 percent. In addition, the Board transferred \$250,000 to an Architectural Revolving Fund for its relocation.

In 2019-20, the Board had \$1.3 million in Personnel Services cost and \$2 million in Operating Expenses & Equipment cost, a total of \$3.3 million in program expenditures and spent 70.4 percent of its \$4.7 million authorized budget. The Enforcement program spent \$827,000 or 25.2 percent of total expenditures, Examination program spent \$646,000 or 19.7 percent of total expenditures, Licensing program spent \$478,000 or 14.6%, Administration program spent \$534,000 or 16.3%, and DCA Pro Rata costs were \$799,000 or 24.3 percent.

In 2020-21, the Board had \$1.2 million in Personnel Services cost and \$2.6 million in Operating Expenses & Equipment cost, a total of \$3.8 million in program expenditures and spent 80.5 percent of its \$4.7 million authorized budget. The Enforcement program spent \$929,000 or 24.5 percent of total expenditures, Examination program spent \$764,000 or 20.2 percent of total expenditures, Licensing program spent \$592,000 or 15.6 percent, the Administration program spent \$655,000 or 17.3 percent, and DCA Pro Rata costs were \$849,000 or 22.4 percent.

FY 2021-22, the Board had \$1.4 million in Personnel Services cost and \$1.9 million in Operating Expenses & Equipment cost, a total of \$3.3 million in program expenditures and spent 78.8 percent of its \$4.2 million authorized budget. The Enforcement program spent \$616,000 or 18.8 percent of total expenditures, Examination program spent \$677,000 or 20.6% of total expenditures, Licensing program spent \$579,000 or 17.6 percent, Administration program spent \$563,000 or 17.1 percent, and DCA Pro Rata costs were \$850,000 or 25.9 percent.

For the last five fiscal years, Board's total program expenditures have increased by \$512,000 or 15.6 percent. Personnel Services expenditures increased by \$402,000 or 28.4 percent and Operating Expenses & Equipment (OE&E) expenditures increased by \$110,000 or 5.9 percent, and DCA Pro Rata costs increased \$59,000 or 6.9 percent.

Table 3. Expenditures by Program Component (list dollars in thousands)										
	FY 2017/18		FY 2018/19		FY 2019/20		FY 2020/21		FY 2021/22	
	Person nel Service s	OE&E	Person nel Service s	OE&E	Person nel Service s	OE&E	Person nel Service s	OE&E	Person nel Service s	OE&E
Enforcement	214	262	224	396	320	507	320	609	298	318
Examination	214	425	240	389	254	392	253	511	320	357
Licensing	365	181	302	179	320	158	320	272	404	175
Administratio n *	220	101	255	150	359	175	353	302	393	170
DCA Pro Rata	0	791	0	679	0	799	0	849	0	850
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	\$1,013	\$1,760	\$1,021	\$1,793	\$1,253	\$2,031	\$1,246	\$2,543	\$1,415	\$1,870
*Administration includes costs for executive staff, board, administrative support, and fiscal services.										

13. Describe the amount the board has contributed to the BreEZe program. What are the anticipated BreEZe costs the board has received from DCA?

The Board was originally scheduled for Release 3 of the BreEZe system and contributed a total of \$171,931 through fiscal year 2017-18. The Board and other Release 3 programs were eliminated from the project due to technical issues. The Board does not anticipate contributing any additional costs to the BreEZe program.

14. Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the board.

Licenses are renewed on a biennial basis on birth month, with the exception of first-time renewals which are pro-rated based on the date the license is issued and the birth month.

Over the past 10 years, the Board increased fees once in 2020-21. The following chart shows each new fee. (B&PC Sections 4970 and 4971 and Title 16, California Code of Regulations section 1399.460 – 1399.462).

The Board's fees are set either through statutory or regulatory authority. The statutory authority for fees is set forth in B&PC Sections 4970, 4971, and 4972. The regulatory authority for fees is set for in Title 16, California Code of Regulations section 1399.460 – 1399.462.

See fee chart below:

Fee Name	Fees Prior to 1/1/21	New Fees as of 1/1/21
Licensee Fees		
Exam Fee - Acupuncturist	\$550	\$800
Re-Exam Fee - Acupuncturist	\$550	\$800
Application Fee - Acupuncturist	\$75	\$250
Foreign Trained Applicants	---	\$350
Initial Cert - Acupuncturist	\$325	*\$500
Biennial Renewal Fee - Acupuncturist	\$325	\$500
Delinquent Renewal - Acupuncturist	\$25	\$150
Replacement Pocket License	\$10	\$50
Wall License Registration	---	\$50
Wall License Replacement/Renewal	\$15/---	\$50
Delinquent Renewal – Wall License	---	\$25
Endorsement	\$10	\$100
CE Provider Fees		
CE Provider Approval Fee	\$150	\$500
CE Provider Approval Renewal Fee	\$150	\$500
CE Course Fee	---	\$10/CE hour
Tutorial Fees		
Application Fee - Acupuncturist Supervisor	\$200	\$100
Annual Renewal - Acupuncturist Supervisor	\$50	\$200
Application Fee - Acupuncturist Trainee	\$25	\$1000
Annual Renewal - Acupuncturist Trainee	\$10	\$500
Delinquent Fee Acu. Trainee	\$5	\$100
Delinquent Fee Acu. Supr.	\$25	\$100

Table 4. Fee Schedule and Revenue (list revenue dollars in thousands)								
Fee	Current Fee Amount	Statutory Limit	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	FY 2021/22 Revenue	% of Total Revenue
Delinquent Renewal - Licensure	\$150	\$150	14	13	12	14	42	0.7
Delinquent Renewal - Tutorial Trainee	\$100	\$200	0	0	0	0	0	0
Delinquent Renewal - Tutorial Supervisor	\$100	\$100	0	0	0	0	0	0
Delinquent Renewal – Wall License	\$25	\$25	0	0	0	0	0	0
Renewal - Licensure	\$500	\$775	1,889	1,996	1,905	2,345	2,710	75.1
Renewal – Tutorial Supervisor	\$200	\$500	1	1	1	4	1	0.1
Renewal – Tutorial Trainee	\$500	\$600	0	0	0	7	10	0.1
Renewal – Wall License	\$50	\$50	0	0	0	2	5	0.1
Renewal – Continuing Education Provider	\$500	\$700	0	0	0	38	83	0.8
Application - Licensure	\$500	\$500	114	104	66	107	125	3.6
Application - Tutorial Trainee	\$1,000	\$2,500	1	1	0	12	24	0.3
Application – Tutorial Supervisor	\$100	\$200	6	6	3	5	5	0.2
Application - Foreign	\$350	\$500	0	0	0	0	6	0
Initial Certification - Licensure	\$500	\$500	114	104	66	107	125	3.6
Initial – Wall License	\$50	\$50	0	0	0	41	98	1.0
Exam	\$800	\$800	160	249	180	250	342	8.2
Re-Exam	\$800	\$800	110	85	41	58	42	2.3
Continuing Education Provider Approval	\$500	\$700	43	47	42	24	11	1.2
Duplicate Renewal Receipt	\$50	\$50	1	1	2	3	12	0.1
Duplicate – Additional Office	\$50	\$50	7	0	0	0	0	0.1
Replacement – Wall License	\$50	\$50	0	7	6	5	1	0.1
Endorsement	\$100	\$100	2	2	1	8	14	0.2

15. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved
1111-052	2018-19	Acupuncture Management	1.0 – SSM I	1.0 – SSM I	114,000	114,000	17,000	17,000
1111-300	2019-20	Business Modernization Project Implementation	2.0 - AGPA	2.0 - AGPA	227,000	227,000	920,000	920,000
1111-051	2020-21	Business Modernization Continued Implementation	0	0	0	0	1,208,000	1,208,000
1111-051	2021-22	Business Modernization Cohort 1	-1.5 - AGPA	-1.5 - AGPA	56,000	56,000	378,000	378,000
1111-078	2022-23	Business Modernization Cohort 1 Maintenance & Operations	-0.5 - AGPA	-0.5 - AGPA	0	0	330,000	330,000

Staffing Issues

16. Describe any board staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.

During the past five fiscal years, position vacancy rates were between 7% and 21%, or approximately one to three positions. These vacancy rates were primarily the results of staff promoting or taking lateral transfers outside of the Board.

Due to the ongoing COVID-19 pandemic, it has been challenging for the Board to recruit and hire qualified staff for its vacant associate governmental program analyst positions. As a temporary solution to this issue, the Board has re-allocated workload to existing staff and offered compensating time off to assist with completing mission critical functions.

17. Describe the board's staff development efforts and total spent annually on staff development (cf., Section 12, Attachment D).

In support of staff development, the Board utilizes and encourages staff to attend internal training services provided by the DCA, Strategic Organization, Leadership, and Individual Development (SOLID) Training Solution. SOLID offers a range of training and services to provide opportunity for employee development and learning through various platforms.

Additionally, the Board's management staff have attended leadership development training courses offered by the Department of Human Resources.

Trainings provided by SOLID are included in the Board's DCA Pro Rata expenses. Over the past five fiscal years, the Board has spent the following on training outside of SOLID:

- 2017-18: \$420
- 2018-19: \$2,790
- 2019-20: \$10,863
- 2020-21: \$0
- 2021-22: \$4,405

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Section 4 – Licensing Program

18. What are the board's performance targets/expectations for its licensing² program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

The Board strives to meet a target of ten (10) days or less in its licensing performance targets and has been successful in doing so. This performance measure represents the time starting with receipt of the initial license payment to the issuance of the license number. In the first four (4) fiscal years covered by this report, the average processing time was two (2) days. With the implementation of the CONNECT system in 2021, an initial license is established within nine (9) business days of payment of the initial license fee which allows for payment posting, processing time, and the completion for fingerprint clearances from the Federal Bureau of Investigation (FBI) and Californian Department of Justice (DOJ).

19. Describe any increase or decrease in the board's average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done by the board to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

The Board has not experienced an increase in its average time to process applications, administer exams, or issue licenses since the last Sunset Report. The Board continues to improve its application processing timeframes by streamlining the process using the CONNECT online portal. As of September 2020, applications for exam and licensure can be processed online. Licensees can renew and order wall licenses in the online system.

In October 2018 the Board changed from a twice-yearly paper/pencil exam to computer-based testing, which is offered six (6) 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 now have the ability to apply as soon as they graduate and can be approved to take the exam as soon as the Board 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.

20. How many licenses or registrations has the board denied over the past four years based on criminal history that is determined to be substantially related to the qualifications, functions, or duties of the profession, pursuant to BPC § 480? Please provide a breakdown of each instance of denial and the acts the board determined were substantially related.

There have been no license denials based on criminal history in the last three (3) years.

Based on Business and Professions Code 480 (g)(1), the Board does not retain application records older than three (3) years.

BPC 480 (g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an

² The term "license" in this document includes a license certificate or registration.

applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

Table 6. Licensee Population

		FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Licensed Acupuncturist	Active ³	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
	Retired Status <i>if applicable</i>	N/A	N/A	N/A	N/A	N/A
	Inactive	1881	1910	2169	2334	2400
	Other ⁴	3066	3333	3556	3747	4010
Wall License	Active	N/A	N/A	N/A	721	3018
	Out of State	N/A	N/A	N/A	N/A	N/A
	Out of Country	N/A	N/A	N/A	N/A	N/A
	Delinquent/Expired	N/A	N/A	N/A	3	51
	Retired Status <i>if applicable</i>	N/A	N/A	N/A	N/A	N/A
	Inactive	N/A	N/A	N/A	N/A	N/A
	Other	N/A	N/A	N/A	11	125
Note: 'Out of State' and 'Out of Country' are two mutually exclusive categories. A licensee should not be counted in both. Wall License Requirement effective January 1, 2021						

Table 7a. Licensing Data by Type

Application Type		Received	Approved/Issued	Closed	Pending Applications			Cycle Times		
					Total (Close of FY)	Complete (within Board control)*	In-complete (outside Board control)*	Complete Apps	In-complete Apps	combined, IF unable to separate out
FY 2017/18	(Exam)	462	382		n/a	n/a	n/a	n/a	0	n/a
	(License)	451	451		0	0	0	9	0	n/a
	(Renewal)	5797	5797	n/a	0	0	0	3	0	n/a
FY 2018/19	(Exam)	567	532		n/a	n/a	n/a	n/a	0	n/a
	(License)	415	415		0	0	0	9	0	n/a
	(Renewal)	5967	5967	n/a	0	0	0	3	0	n/a
FY 2019/20	(Exam)	409	392		n/a	n/a	n/a	n/a	0	n/a
	(License)	272	272		0	0	0	9	0	n/a
	(Renewal)	6000	6000	n/a	0	0	0	3	0	n/a
FY 2020/21	(Exam)	454	410		n/a	n/a	n/a	n/a	0	n/a
	(License)	296	296		0	0	0	9	0	n/a
	(Renewal)	5994	5994	n/a	0	0	0	3	0	n/a
FY 2021/22	(Exam)	390	350		n/a	n/a	n/a	n/a	0	n/a
	(License)	311	311		0	0	0	9	0	n/a
	(Renewal)	5684	5684	n/a	0	0	0	3	0	n/a
* Optional. List if tracked by the board.										

³ Active status is defined as able to practice. This includes licensees that are renewed, current, and active.

⁴ Other is defined as a status type that does not allow practice in California, other than retired or inactive.

Table 7b. License Denial					
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
License Applications Denied (no hearing requested)	0	0	0	0	0
SOIs Filed	0	2	0	0	0
Average Days to File SOI (from request for hearing to SOI filed)	n/a	93	n/a	n/a	n/a
SOIs Declined	0	0	0	0	0
SOIs Withdrawn	0	1	0	0	0
SOIs Dismissed (license granted)	0	0	0	0	0
License Issued with Probation / Probationary License Issued	1	2	0	0	0
Average Days to Complete (from SOI filing to outcome)	569	396	n/a	n/a	n/a

21. How does the board verify information provided by the applicant?

- a. What process does the board use to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant? Has the board denied any licenses over the last four years based on the applicant's failure to disclose information on the application, including failure to self-disclose criminal history? If so, how many times and for what types of crimes (please be specific)?

Each applicant for licensure is required to be fingerprinted prior to obtaining a license. The results from the fingerprinting are sent to the Board from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). The results would reveal any past criminal record. Additionally, certified court records, law enforcement arrest/incident reports, and National Practitioner Data Bank (NPDB) records can also be obtained as needed. The Board has not denied a license based on a failure to disclose prior discipline.

- b. Does the board fingerprint all applicants?

Yes. If a clear fingerprint is not received from DOJ and FBI, then the Board's Enforcement Unit must gather relevant documentation to the prior discipline before the Executive Officer can review and decide if a license will be granted.

- c. Have all current licensees been fingerprinted?

Yes, all current licensees have been fingerprinted except for a few licensees whose licenses have been on inactive status since the regulation went into effect in 2011, and thus have not completed the fingerprinting requirement as set out in CCR § 1399.419.2. These acupuncturists would be required to complete the requirement if they apply to return to active status.

- d. Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?

Yes, the Board contracts with the National Practitioner Data Bank (NPDB), which is a database of reports submitted containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers in the United States. All out-of-state applicants for licensure are checked in this database for disciplinary actions or malpractice

reports prior to issuing a license. Additionally, the Board receives ongoing electronic malpractice reports from mandated reporters via the NPDB.

The Board does not check the NPDB for license renewals.

e. Does the board require primary source documentation?

Yes, the Board requires that all certified diplomas and transcripts submitted to the Board as part of a prospective licensee's application are official documents sent directly from the issuing institution. All foreign trained applicants must use a foreign transcript evaluator from a member organization of the National Association of Credential Evaluation Services (NACES). This includes translations of their foreign transcripts, verification that the school is accredited, and a course-by-course evaluation.

22. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

Out-of-state applicants must have graduated from a Board-approved training program to qualify to take the CALE. If applicants pass the licensure exam, they are eligible for licensure pending the fingerprint background check.

Foreign-trained applicants are not required to graduate from a Board-approved training program, but they are required to meet the same training program curriculum requirements as those who have graduated from Board-approved training programs. Foreign applicants are required to arrange to have their schools send official transcripts to the approved foreign credential evaluator (that is a NACES member) who reviews, translates, and completes a course-by-course evaluation of the official transcripts, and identifies if the school has regional accreditation. Upon receipt of all documents, the Board reviews the transcript evaluation and determines whether the applicant has met the Board's curriculum and clinical requirements.

AB 2190 enacted additional changes to the Board's approval of foreign applicants. This bill requires an applicant whose education was completed outside the United States to submit documentation of his or her education to a Board-approved credential evaluation service and requires the Board to examine the results of the application. Additionally, the bill requires the Board to create a framework for approval of those foreign credential evaluation services. In order to be compliant with AB 2190 on March 2021 the Board approved language to amending existing regulations CCR sections 1399.409, 1399.411, 1399.413, 1399.414, 1399.415, 1399.416, 1399.416.1, 1399.416.2, 1399.416.3, 1399.416.4, 1399.417, 1399.419 to achieve compliance with AB 2190. That package is moving through the regulatory process with Spring 2023 anticipated completion date .

23. Describe the board's process, if any, for considering military education, training, and experience for purposes of licensing or credentialing requirements, including college credit equivalency.

a. Does the board identify or track applicants who are veterans? If not, when does the board expect to be compliant with BPC § 114.5?

The Board is fully compliant with BPC § 114.5. The Board identifies and tracks applicants for license. A question regarding military service is included on license applications.

b. How many applicants offered military education, training or experience towards meeting licensing or credentialing requirements, and how many applicants had such education, training or experience accepted by the board?

Since the last Sunset Review Report, the Board has not been offered any applicant's military education for qualification for the CALE.

- c. What regulatory changes has the board made to bring it into conformance with BPC § 35?

Legal Counsel has determined such a regulatory change is not needed. As a result, the Board has not made any regulatory changes to be in compliance with BPC § 35 as there are no known U.S. military college programs specifically in Acupuncture and Asian Medicine.

- d. How many licensees has the board waived fees or requirements for pursuant to BPC § 114.3, and what has the impact been on board revenues?

Since the last Sunset Review Report, the Board has waived fees for three (3) licensees pursuant to BPC § 114.3. The impact on Board Revenue is -\$1500.00 (\$500 biannual renewal fee x 3 licensees = \$1500.00 in revenue waived).

- e. How many applications has the board expedited pursuant to BPC § 115.5?

Since the last Sunset Review Report, the Board has not had any applications for licensure pursuant to BPC § 115.5.

24. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

The Board sends No Longer Interested notifications to DOJ on a regular and ongoing basis. These are not as of yet electronically submitted but the process is automated for deceased and cancelled licenses.

The Board does not have any backlog with No Longer Interested notifications;

Examinations

Table 8. Examination Data⁵				
California Examination (include multiple language) if any:				
License Type: Licensed Acupuncturist		English	Chinese	Korean
Exam Title: California Acupuncture Licensing Exam				
FY 2017/18	Number of Candidates	514	191	106
	Overall Pass %	54	66	61
	Overall Fail %	46	34	39
FY 2018/19	Number of Candidates	268	140	75
	Overall Pass %	77.9	89.2	78.6
	Overall Fail %	22	10.7	21.3
FY 2019/20	Number of Candidates	226	80	60
	Overall Pass %	70.7	75	70
	Overall Fail %	29.2	25	30
FY 2020/21	Number of Candidates	273	82	56
	Overall Pass %	72	73	86
	Overall Fail %	28	27	14
FY 2021/22	Number of Candidates	290	104	50
	Overall Pass %	68.6	70	70
	Overall Fail %	31.3	30	30
Date of Last OA		July 2021		
Name of OA Developer		Office of Professional Examination Services		
Target OA Date		2025-26		

⁵ This table includes all exams for all license types as well as the pass/fail rate. Include as many examination types as necessary to cover all exams for all license types.

National Examination (include multiple language) if any: NO NATIONAL EXAMINATION FOR LICENSING			
License Type		N/A	N/A
Exam Title			
FY 2018/19	Number of Candidates		
	Overall Pass %		
	Overall Fail %		
FY 2019/20	Number of Candidates		
	Overall Pass %		
	Overall Fail %		
FY 2020/21	Number of Candidates		
	Overall Pass %		
	Overall Fail %		
FY 2021/22	Number of Candidates		
	Overall Pass %		
	Overall Fail %		
Date of Last OA			
Name of OA Developer			
Target OA Date			

25. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required? Are examinations offered in a language other than English?

Currently, passing the California Acupuncture Licensing Examination (CALE) is required for licensure in California. A national examination is not a requirement for licensure nor is it accepted in lieu of the CALE. Assembly Bill 918, of 2021 was seeking to change the CA Acupuncture Board requirements to utilize NCCAOM's exam. This bill failed to pass in 2021 and in 2022 due to the need for both organizations requiring audits of the other's exam after their most recent Job Task Analysis had been performed, which is anticipated to be possible in or after 2024.

The CALE is currently offered in English, Chinese, and Korean.

26. What are pass rates for first time vs. retakes in the past 4 fiscal years?

Are pass rates collected for examinations offered in a language other than English?

Pass Rates are collected for examinations offered in a language other than English. Please refer to Table 8: Examination Data for pass rates of first time vs. retakes in the last fiscal years.

27. Is the board using computer-based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?

The Board transitioned to computer-based testing in October 2018 for the CALE. The exam is available at contracted PSI sites with almost 20 available sites in CA as well as additional sites across the U.S. The exam is offered six (6) days a week except holidays. Applicants can schedule for the date and site of their choosing. Results are given at the test site immediately following the exam.

28. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

The Board recommends that BPC § 4938 License Requirements. (a)(2)(A)(i) should clarify that “completion” of a Board-approved training program refers to an applicant graduating from said program.

School approvals

29. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?

Senate Bill (SB) 1246 (Lieu, Chapter 397, Statutes of 2014) became law January 1, 2017, and transitioned the responsibility of school (referred to as, “educational and training program”) approval from the Board to BPPE and the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) (since August of 2021, formerly the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM)), respectively, as set forth in BPC § 4927.5, below. As such, the Board is solely responsible for approving an educational and training program’s curriculum meets the Board’s curriculum requirements.

- 4927.5 (a) *For purposes of this chapter, “approved educational and training program” means a school or college offering education and training in the practice of an acupuncturist that meets all of the following requirements:*
 1. 4927.5 (a)(1) – Requires CCR § 1399.434 curriculum approval from the California Acupuncture Board.
 2. 4927.5 (a)(2) – Requires the approval to operate granted by the Bureau of Private Post-Secondary Education (BPPE) per Education Code § 94885.
 3. 4927.5 (a)(3) – Requires official documentation of the intent to pursue accreditation from the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM).

As a result of SB 1246, the Board implemented several changes to its regulations to ensure that the Board’s curriculum approval are in compliance with BPC § 4927.5:

- CCR §1399.434 and §1399.436 were amended to remove two different curriculum standards. In 2005, the Board increased the curriculum hours required (as part of CCR §1399.434) but left the old curriculum hours as a pathway for applicants for the transition to the new curriculum (as part of §1399.436). The Board now only has one curriculum standard, reflected in CCR §1399.434 which is consistent for all applicants of the CALE.
- CCR §1399.437 was amended to set requirements for Board approval of curriculum, which includes the “Application for Board Approval of Curriculum (rev.4/15),” based on the Board’s curriculum requirements described in the CCR §1399.434.

These regulations became effective May 24, 2017.

BPPE is responsible for approval of the acupuncture school itself. In preparation for the implementation of SB 1246 and the new BPC § 4927.5, acupuncture training program approval standards, the Board cultivated a working relationship with BPPE by signing an operational memo of understanding between the two agencies, allowing the Board and BPPE to share confidential information. The Board’s collaboration with BPPE has culminated in a clear identification of each agencies’ jurisdiction. This relationship has provided support to both the Board and BPPE in addressing complaints and enforcement actions.

BPC § 4927.5(a)(3) requires that all acupuncture training programs be in the process of accreditation with ACAHM, the national accrediting agency for specialized and professional education of Acupuncture and Asian Medicine that is recognized by the U.S. Department of Education. The primary purpose of ACAHM is to establish and accredit comprehensive educational and institutional requirements for acupuncture training programs in the United States. ACAHM and its recognition by the U.S. Department of Education has made it possible for acupuncture and Asian Medicine students to obtain federal student loans for their education. The Board continues to work collaboratively with ACAHM to understand each other's processes, which has included Board staff attending ACAHM accreditation site visits for acupuncture training programs in California.

30. How many schools are approved by the board? How often are approved schools reviewed? Can the board remove its approval of a school?

As of June 30, 2022, the Board recognizes 36 training programs; 21 are in California and 15 are located in other states. In the past two (2) FYs nine (9) new approved educational and training programs have been added.

The full review of an acupuncture training program curriculum only occurs when programs are reviewed as part of the Boards' "Application for Board Approval of Curriculum," available online at: http://www.acupuncture.ca.gov/pubs_forms/app_board_curriculum.pdf.

Prior to making any changes to the approved curriculum, acupuncture training programs are required to submit their proposed curriculum to the Board for review and approval. Both ACAHM and BPPE conduct periodic on-site visits for re-approvals or re-accreditations of all their programs. This includes onsite visits conducted independently by each agency, which involve full program review. Board staff routinely checks that status based on their respective standards.

In the last two (2) fiscal years, there have been four (4) acupuncture training programs that have lost the status of an approved educational and training program. Two (2) training programs lost approval due to failure to obtain BPPE approval. One (1) training program lost approval due to failing to obtain ACAHM approval in a timely manner. One (1) training program lost approval per the school's decision to no longer continue offering the program.

31. What are the board's legal requirements regarding approval of international schools?

Currently, the Board does not have the authority to approve foreign acupuncture training programs.

Continuing Education/Competency Requirements

32. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.

- a. How does the board verify CE or other competency requirements? Has the Board worked with the Department to receive primary source verification of CE completion through the Department's cloud?

As per BPC § 4945(b), 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. License renewals are only approved upon completion of the minimum of required CE hours.

Those who fail to submit this declaration of 50 CE hours have a hold placed on the renewal of their license. The hold is not removed until, under penalty of perjury, they have submitted their renewal attesting to the completion of the CE course work. Licensees are notified by letter that they are no longer eligible to practice and must cease from practicing until the Board receives attestation of CE compliance.

The Board is the primary source verifier of CE completion as it is the sole approver of CE providers and courses which can be used to fulfill the CE hours required for Acupuncture License renewal.

Board staff, in conjunction with the California Department of Technology, and the DCA, have developed a online CE management module in the CONNECT system, as part of its recent Business Modernization efforts. This system became available to CE providers in the Fall of 2022.

- b. Does the board conduct CE audits of licensees? Describe the board's policy on CE audits.

The Board's policy is to conduct random CE Audits of 5% of the licensing population that has renewed. The Board randomly selects licensees for the audit and verifies that the required CE has been completed by reviewing the Certificates of Completion for the submitted coursework.

- c. What are consequences for failing a CE audit?

Licensees who have failed a CE audit are subject to administrative enforcement actions consisting of a citation, fine, and order of abatement. Licensees who have been issued multiple citations for failure of a CE Audit and fail to come into compliance may be subject to formal disciplinary action taken against their license.

- d. How many CE audits were conducted in the past four fiscal years? How many fails? What is the percentage of CE failure?

None. Due to changes needed for an ongoing auditing process the Board paused its 2018 CE audit program. A new CE audit process was designed at the end of 2019 but was paused before implementation due the CE completion waivers afforded licensees during the pandemic. Staff will restart the CE audit process of 5% of the licensing population starting after the end of the emergency waivers allowing licensees to renew without satisfying their continuing education requirements.

- e. What is the board's CE course approval policy?

The Board's course approval policy is set forth in CCR § 1399.483 and 1399.484, and states that board-approved CE providers may obtain course approval for courses relevant to the practice of acupuncture and Asian medicine. The course approval policy requires course applications to meet submission deadlines, include course descriptions, outlines, as well as specified objectives depending on whether the course is a direct benefit to patient care or not a direct benefit, such as practice management. Courses that require in-person techniques are excluded from distance learning. All courses require Board approval to qualify for CE hours.

Statutory changes from the enactment of Assembly Bill 3330 (AB 3330) (Calderon, Chapter 359, Statutes of 2020), included changes to the course approval process to include course approval application fees assessed at \$10.00 per hour of instruction, and once approved those courses may be offered to licensees for a period of one year from the date of Board approval. This bill also increased the fee for new and renewing CE providers from \$150.00 to \$ 500.00 effective January 1, 2021.

- f. Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?

The Board approves all CE providers and all CE courses that can be used to meet license renewal requirements. The Board's process for approving CE providers is set forth in CCR § 1399.481 –

Criteria for Provider Approval. Both provider and course applications can be submitted online using the AcuConnect online CE business portal available at: <https://connect.acupuncture.ca.gov/#/User/LoginBusinessPortal> or by mail using forms available on the Boards website.

The prospective or renewing CE provider must submit a "Continuing Education Provider Application" with a \$500.00 fee either using the online system or by mail. The Board then reviews and approves the application if the CE provider meets the requirements above and the provider is offering CE courses compliant with regulations. A CE provider is approved for a two (2) year period. At the expiration of two (2) years, the provider may renew for another two (2) years as an active CE provider for \$500.00. Upon approval, the new or renewing CE provider may submit as many course applications for approval as desired within the two-year period. All course applications must be approved by the Board and accompanied by a form as described below.

The Board's process for approving CE courses is set forth in CCR § 1399.483, *Approval of continuing education courses* and 1399.484. *Application for Course Approval*. Board-approved CE providers are required to submit the "Request for Continuing Education (CE) Course Approval Form" either using the online system or by mail.

This application must be submitted at least 45 calendar days prior to new courses being offered. If there are questions regarding the content of a CE course, the Board consults a subject matter expert to weigh in on the final determination.

- g. How many applications for CE providers and CE courses were received? How many were approved?

	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Provider Applications Received	265	257	274	150	43
Provider Applications Approved	265	257	274	150	43
Course Applications Received	2635	3002	3703	2,827	2,509
Course Applications Approved	2382	2700	3220	2,720	2,493

- h. Does the board audit CE providers? If so, describe the board's policy and process.

CCR § 1399.482(g)(h) provides the Board the authority to audit CE providers.

The Board initiates a CE provider audit when it receives evidence that CE Provider is not in compliance with the required regulations. Such evidence may include consumer complaints, falsified documentation, or for incomplete Certificates of Completion, or unapproved courses.

- i. Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance-based assessments of the licensee's continuing competence.

The Board has not reviewed its CE policy to evaluate performance-based assessments of a licensee's continuing competence. Presently, all licensees taking distance education CE courses are required to complete and pass an examination at the end of the course. The examination must test participants mastery of the course material to receive CE credit. Live courses are not required to provide examinations at the end of the course but may be included as part of the live course.

Table 8a. Continuing Education			
Type	Frequency of Renewal	Number of CE Hours Required Each Cycle	Percentage of Licensees Audited
Licensed Acupuncturists	Biennially	50	5%
Continuing Education Providers	Biennially	N/A	Included as part of the Licensee audit process

Section 5 – Enforcement Program

33. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

In 2010, the Board set the following performance measure (PM) targets to quantify the effectiveness of its Enforcement program. Department of Consumer Affairs (DCA) set the overall process time from complaint receipt to the effective date of a decision to 540 days or approximately 18 months.

- Target: 10 days average for complaint intake cycle time (PM 2, Intake – Cycle Time)
- Target: 200 days average for days to complete cases not resulting in formal discipline (PM 3, Investigations – Cycle Time)
- Target: 540 days average for days to complete cases resulting in formal discipline (PM 4, Formal Discipline – Cycle Time)
- Target: 10 days average for a probation monitor to make first contact (PM 7, Probation Intake – Cycle Time)
- Target: 10 days average for the Board to take appropriate action on a probation violation (PM 8, Probation Violation Response – Cycle Time)

FY 2017/18 performance measures show that the Board is meeting its performance targets for all PMs for all quarters except for PM4. The cases that result in discipline are the Board's more complex cases that require any one of the following: one or more expert reviews, idle time waiting for the hearing date, and lengthy negotiations to come to a stipulated settlement agreement. The Executive Officer and Enforcement staff prioritize the review and filing of accusations and provide settlement terms quickly for cases when appropriate.

FY 2018/19 performance measures show that the Board did not meet PM3 targets on Q3 and Q4. Nevertheless, the average days for PM3 for the entirety of the fiscal year is 174 days, which is well below the target date of 200 days. PM4 for Q3 is also above the target of 540 days. To address these backlogs, the Board is tracking workload trends to ensure that the current staffing levels meet the workload requirements.

FY 2019/20 performance measures show that the Board is meeting its performance targets for all quarters except PM4 for Q3 and Q4. Due to the uncertainty brought about by the Covid-19 pandemic, enforcement workload was affected. In this time, Board staff adjusted to a telework setting to ensure compliance with shelter in place mandates and minimize work disruption.

FY 2020/21 performance measures show that the Board is not meeting its performance targets for PM3 Q2 and Q3 as well as PM4 Q1. Due to the changes brought about by the Covid-19 pandemic, enforcement processes and workload were affected. Board staff continued to adapt to pandemic protocols.

FY 2021/22 performance measures show that the Board is not meeting its performance targets for PM3 and PM4 for all quarters. Due to the continued effects of the Covid-19 pandemic, enforcement backlog increased. Agencies and private institutions the Board works with to address enforcement matters also had their own backlogs which led to longer processing times for the Board to proceed with cases.

34. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

In the past five (5) fiscal years, the number of complaints received decreased during the pandemic. The numbers show that the decrease in volume is mainly attributed to public complaints and internal complaints initiated by the Board. In contrast, the statistics also show an increase in complaints referred by governmental agencies, which would include arrests and convictions referred from Department of Justice.

Disciplinary data shows minimal changes in all areas: cases initiated, pending, and closed. Performance analysis indicates that, with exception, the Board has not met its performance measure target for discipline cases, which is set at 540 days. Historically, the Board receives a larger number of completed investigation reports from the Division of Investigation (DOI) mid-fiscal year. This creates an increase in initiated and pending disciplinary cases with the Office of the Attorney General. Presently, the Board's biggest challenge is the high variability of the average overall process time for cases that result in discipline.

The biggest step to bringing process times down consistently for discipline cases is to ensure the Enforcement Unit is adequately staffed. The Board is increasing collaboration and communication with DOI, who conduct the Board's investigations, and the Attorney General's Office. Board staff has met with the Attorney General's Office in an effort to streamline where both agencies' processes meet. The Board maintains consistent communication with DOI staff to help ensure items are acted upon as soon as resources are available.

In 2023, the Board will begin development of its new enforcement module as part of its business modernization efforts. Work began in 2018 when process maps were created for the Board'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 Board's ability to address and meet enforcement responsibilities and timeframes.

Table 9a. Enforcement Statistics

	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
COMPLAINTS					
Intake					
Received	159	192	181	109	109
Closed without Referral for Investigation	2	0	3	0	0
Referred to INV	169	195	206	190	141
Pending (close of FY)	3	0	1	0	0
Conviction / Arrest					
CONV Received	58	55	53	29	35
CONV Closed Without Referral for Investigation	0	0	0	0	0
CONV Referred to INV	61	56	59	29	37
CONV Pending (close of FY)	1	0	0	0	0
Source of Complaint ⁶					
Public	76	75	72	62	59
Licensee/Professional Groups	20	15	5	8	2
Governmental Agencies	16	10	12	12	39
Internal	71	122	117	32	8
Other	24	18	23	11	24
Anonymous	10	7	5	13	12
Average Time to Refer for Investigation (from receipt of complaint / conviction to referral for investigation)	7	9	4	5	5
Average Time to Closure (from receipt of complaint / conviction to closure at intake)	7	0	4	0	0
Average Time at Intake (from receipt of complaint / conviction to closure or referral for investigation)	7	9	4	5	5
INVESTIGATION					
Desk Investigations					
Opened	229	251	230	139	144
Closed	198	186	147	126	88
Average days to close (from assignment to investigation closure)	150	106	131	221	347
Pending (close of FY)	97	105	152	139	188
Non-Sworn Investigation					
Opened	n/a	n/a	n/a	n/a	n/a
Closed	n/a	n/a	n/a	n/a	n/a
Average days to close (from assignment to investigation closure)	n/a	n/a	n/a	n/a	n/a
Pending (close of FY)	n/a	n/a	n/a	n/a	n/a
Sworn Investigation					
Opened	48	57	36	26	7
Closed	36	26	40	47	25
Average days to close (from assignment to investigation closure)	385	571	512	694	907
Pending (close of FY)	62	93	89	68	50

⁶ Source of complaint refers to complaints and convictions received. The summation of intake and convictions should match the total of source of complaint.

All investigations ⁷					
Opened	229	251	230	139	144
Closed	234	212	187	173	113
Average days for all investigation outcomes (from start investigation to investigation closure or referral for prosecution)	186	163	212	349	471
Average days for investigation closures (from start investigation to investigation closure)	224	212	256	375	440
Average days for investigation when referring for prosecution (from start investigation to referral for prosecution)	214	740	n/a	789	1,289
Average days from receipt of complaint to investigation closure	227	216	259	379	445
Pending (close of FY)	159	198	241	204	238
CITATION AND FINE					
Citations Issued	47	43	33	22	2
Average Days to Complete (from complaint receipt / inspection conducted to citation issued)	151	179	201	541	399
Amount of Fines Assessed	\$30,850	\$23,160	\$27,020	\$33,780	\$3,750
Amount of Fines Reduced, Withdrawn, Dismissed	\$1,500	\$6,040	\$2,290	\$350	\$250
Amount Collected	\$33,085	\$24,485	\$17,180	\$17,330	\$13,050
CRIMINAL ACTION					
Referred for Criminal Prosecution	3	1	3	6	1
ACCUSATION					
Accusations Filed	9	9	17	7	7
Accusations Declined	0	0	0	0	1
Accusations Withdrawn	0	0	0	1	1
Accusations Dismissed	0	0	0	0	0
Average Days from Referral to Accusations Filed (from AG referral to Accusation filed)	119	76	100	161	127
INTERIM ACTION					
ISO & TRO Issued	0	0	0	0	0
PC 23 Orders Issued	0	2	1	2	0
Other Suspension/Restriction Orders Issued	0	0	0	0	0
Referred for Diversion	n/a	n/a	n/a	n/a	n/a
Petition to Compel Examination Ordered	0	0	0	0	0
DISCIPLINE					
AG Cases Initiated (cases referred to the AG in that year)	12	15	17	13	11
AG Cases Pending Pre-Accusation (close of FY)	6	6	5	12	8
AG Cases Pending Post-Accusation (close of FY)	8	9	14	6	10
DISCIPLINARY OUTCOMES					
Revocation	3	0	1	3	0
Surrender	2	5	4	5	0
Suspension only	0	0	0	0	0
Probation with Suspension	0	0	0	1	0
Probation only	7	8	2	5	3
Public Reprimand / Public Reprimand / Public Letter of Reprimand	0	0	1	0	0
Other	1	1	0	0	0

⁷ The summation of desk, non-sworn, and sworn investigations should match the total of all investigations.

DISCIPLINARY ACTIONS					
Proposed Decision	4	2	1	3	0
Default Decision	4	2	1	3	0
Stipulations	9	11	7	11	3
Average Days to Complete After Accusation (from Accusation filed to imposing formal discipline)	211	217	320	282	373
Average Days from Closure of Investigation to Imposing Formal Discipline	330	293	420	443	496
Average Days to Impose Discipline (from complaint receipt to imposing formal discipline)	637	748	1,062	958	1,435
PROBATION					
Probations Completed	5	7	7	10	5
Probationers Pending (close of FY)	42	40	32	29	21
Probationers Told	1	2	2	0	1
Petitions to Revoke Probation / Accusation and Petition to Revoke Probation Filed	2	5	1	1	1
SUBSEQUENT DISCIPLINE⁸					
Probations Revoked	1	1	0	0	1
Probationers License Surrendered	0	2	0	0	1
Additional Probation Only	0	0	0	0	0
Suspension Only Added	0	0	0	0	0
Other Conditions Added Only	0	0	0	0	0
Other Probation Outcome	0	0	0	0	0
SUBSTANCE ABUSING LICENSEES					
Probationers Subject to Drug Testing	12	13	6	2	0
Drug Tests Ordered	12	13	6	2	0
Positive Drug Tests	7	7	2	1	0
PETITIONS					
Petition for Termination or Modification Granted	0	1	0	0	0
Petition for Termination or Modification Denied	0	0	1	0	0
Petition for Reinstatement Granted	0	1	0	0	0
Petition for Reinstatement Denied	1	2	0	0	0
DIVERSION					
New Participants	n/a	n/a	n/a	n/a	n/a
Successful Completions	n/a	n/a	n/a	n/a	n/a
Participants (close of FY)	n/a	n/a	n/a	n/a	n/a
Terminations	n/a	n/a	n/a	n/a	n/a
Terminations for Public Threat	n/a	n/a	n/a	n/a	n/a
Drug Tests Ordered	n/a	n/a	n/a	n/a	n/a
Positive Drug Tests	n/a	n/a	n/a	n/a	n/a

⁸ Do not include these numbers in the Disciplinary Outcomes section above.

Table 10. Enforcement Aging							
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	Cases Closed	Average %
Investigations (Average %)							
Closed Within:							
90 Days		125	84	69	46	430	47
91 - 180 Days	52	29	29	13	6	129	14
181 - 1 Year	42	29	29	23	11	134	15
1 - 2 Years	25	18	34	41	17	135	15
2 - 3 Years	8	9	9	19	15	60	6
Over 3 Years	1	2	2	9	18	32	3
Total Investigation Cases Closed	234	212	187	174	113	920	100
Attorney General Cases (Average %)							
Closed Within:							
0 - 1 Year	8	9	5	6	1	29	57
1 - 2 Years	3	4	2	6	2	17	33
2 - 3 Years	2	0	0	2	0	4	8
3 - 4 Years	0	0	1	0	0	1	2
Over 4 Years	0	0	0	0	0	0	0
Total Attorney General Cases Closed	13	13	8	14	3	51	100

35. What do overall statistics show as to increases or decreases in disciplinary action since last review?

The overall statistics show that 90% of cases are being closed in two years or less in FY 2017-18 to FY 2021-22, whereas only 26% of cases were being closed in two years or less for FYs 2013-14 – FY 2016-17.

36. How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's *Complaint Prioritization Guidelines for Health Care Agencies* (August 31, 2009)? If so, explain why.

The Board utilizes the DCA's *Complaint Prioritization Guidelines for Health Care Agencies* (August 2016 edition), which can be found under Appendix G. This is the most recent version of the DCA's *Complaint Prioritization Guidelines for Health Care Agencies*. Cases are categorized by the nature and severity of the complaint. Case priority is determined during complaint intake and is assigned with the following categories: routine, high priority, and urgent. Cases are further prioritized by case age.

37. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the board actions taken against a licensee. Are there problems with the board receiving the required reports? If so, what could be done to correct the problems?

Under BPC § 801, insurers and uninsured licensees are required to report malpractice settlements and judgments of \$3,000.00 or more. In 2016, the Board developed a form as a tool for insurers and licensees to use when reporting settlements and judgments of \$3,000.00 or more. The form is on the Board's website for use. With the Board's active and continued use of the National Practitioner Databank (NPDB), the Board does not have any problems receiving the ongoing electronic malpractice reports from mandated reporters.

- a. What is the dollar threshold for settlement reports received by the board?

The dollar threshold for settlement reporting is \$3,000.00.

- b. What is the average dollar amount of settlements reported to the board?

The average dollar amount of settlements reported to the Board from FY 2017/18 to FY 2021/22 was \$47,944.47.

38. Describe settlements the board, and Office of the Attorney General on behalf of the board, enter into with licensees.

- a. What is the number of cases, pre-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?

The Board does not settle cases prior to filing a formal Accusation or Statement of Issues; therefore, there have been no pre-accusation cases that resulted in hearings.

- b. What is the number of cases, post-accusation, that the board settled for the past five years, compared to the number that resulted in a hearing?

Decision Type	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Settlements	9	11	7	11	3
Hearings	1	2	0	1	0

- c. What is the overall percentage of cases for the past five years that have been settled rather than resulted in a hearing?

Over the past five years, 91% of cases were resolved through a Stipulated Settlement, and 9% were resolved through an Administrative Hearing.

39. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the board's policy on statute of limitations?

The Board does not have statute of limitations, nor does it have any policy regarding statute of limitations for any of its administrative enforcement statutes. However, BPC § 4935 is the Board's only criminal statute in its Act that is considered a misdemeanor which has a statute of limitations of one year from the time the last violation act occurred. There are no recorded cases that have been lost due to statute of limitations. For all administrative cases, the Board uses DCA's *Complaint Prioritization Guidelines for Health Care Agencies* (August 2016 edition) to address more urgent cases, or cases involving criminal offenses outside of the Board's Act. These cases are expedited with higher priority.

40. Describe the board's efforts to address unlicensed activity and the underground economy.

Unlicensed activity complaints are submitted to the Division of Investigation (DOI) for formal investigations. If an investigation provides substantial evidence to support a criminal violation, DOI submits the case to the District Attorney for criminal prosecution. If a criminal prosecution is not

pursued or a conviction does not occur, the Board issues citations and fines for unlicensed practice. Since DCA has ended its Unlicensed Activity Program, the Board does not have the resources to proactively seek out unlicensed activity. However, the Board does investigate every complaint received.

The Board has provided outreach at Board meetings to educate stakeholders, including licensees and the public, who have expressed concerns regarding other healthcare practitioners providing acupuncture or needling without an acupuncture license. The Board has communicated with other healing arts boards about this issue to promote collaboration of enforcement efforts against this type of unlicensed activity, affording other programs the knowledge of the Board's jurisdiction, and the ability to refer such actions to the Board.

Cite and Fine

41. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the board increased its maximum fines to the \$5,000 statutory limit?

The Board uses its cite and fine in cases in which violations can be remedied through an order of abatement and fine. The Board addresses the more technical violations through citations. The Board also only issues citations in cases that do not necessitate restrictions on the license to ensure consumer protection. There have been no changes with the Board's cite and fine authority since the last sunset review nor has there been any update to the regulations. The Board has authority to issue a citation with a maximum of \$5,000.00.

42. How is cite and fine used? What types of violations are the basis for citation and fine?

The Board uses citations to educate its recipient (in the case of unlicensed practice) or the licensee and bring them into compliance with the laws and regulations. A fine is most often used as a deterrent for future violations. Citations cannot be used for any cases involving patient harm; therefore, citations are generally issued for more technical violations, i.e. failure to register a business address, failure to keep adequate records, etc. The Board predominately uses cite and fine for failed CE audits, and licensees' failure to change one's mailing address. The Board also uses citations to address minor probation violations or various unprofessional conduct that can be remedied through simple orders of abatement. In addition, citations are used for unlicensed practice of an individual holding oneself out as engaging in the practice of acupuncture. Although unlicensed cases generally pose a risk to public safety, the Board lacks jurisdiction over unlicensed individuals performing acupuncture, so citations are the only recourse available to the Board to prevent unlicensed activity involving acupuncture.

The other types of violations that result in cite and fines include inadequate record keeping, failure to register address changes, failure to have and display a license for each practice location, and CE provider violations.

43. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?

Set out below is a chart containing the information.

	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Number of informal office conferences, Disciplinary Review Committee reviews and/or Administrative Procedure Act appeals of a citation or fine	18	14	12	8	2

44. What are the five most common violations for which citations are issued?

1. Unprofessional Conduct
2. Failure to Notify of Address Change
3. Failure to Disclose a Conviction on an Application to the Board
4. Continuing Education Provider violations
5. Unlicensed Practice

45. What is average fine pre- and post- appeal?

The average pre-appeal fine is \$801.00 and the average post-appeal fine is \$768.00.

46. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

If the Board has a social security number for a cited person, licensed or unlicensed, the individual is sent three (3) Demand for Payment letters, with the last being certified. If no payment is received, then the Board sends the person's information to the accounting office to forward to the Franchise Tax Board's (FTB) Interagency Interception Program (IIP). If the Board does not have an individual's social security number due to him or her being unlicensed, then the fines are determined to be uncollectible.

Cost Recovery and Restitution

47. Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.

Since the 2018 Sunset Review Report, the Board has gone through its outstanding cost recoveries and has sent respondents demand for payment in compliance with FTB and DCA's protocol. For demands in which the Board has received a response from the respondent, the Board has either received total payment on its balances or the respondent is making regular payments through an installment plan. The respondents who have failed to respond have been sent to the FTB IIP for cost recovery.

In current probationary cases, the Board's probation monitor ensures that the probationer is making payments towards his or her cost recovery on a regular basis or has received approval from the probation monitor for some other payment plan. When a licensee's probation is coming to an end, a review is conducted and if there is any 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.

The Board is allowed to have continuing jurisdiction over a licensee past his or her probation term if costs are not paid in full. This allows the Board to continue collecting payments or allows the Board to petition for violation of probation if the licensee is not cooperative.

48. How many and how much is ordered by the board for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.

Forty-eight (48) cases ordering cost recovery were established since FY 2017/18, totaling \$570,429.58. Twenty-seven (27) of those cases are determined to be uncollectable because they are revocations and voluntary surrenders, totaling \$360,008.65. Analysis of these cases presents three primary causes of costs being determined uncollectible:

- First, most of the Board's surrender cases reached by Stipulated Settlement state that the respondent is only required to pay the ordered cost recovery as a condition of reinstatement.
- Second, most of the respondents whose license were revoked do not pay cost recovery because they may not have income, or they may not feel obligated since they no longer have a license with the Board.
- Third, cost recovery is determined uncollectible against deceased respondents should there be no funds left in their estate. For cases in which the respondent is ordered to pay costs as part of a revocation or the respondent is deceased, the Board works with the FTB IIP to recoup these costs.

49. Are there cases for which the board does not seek cost recovery? Why?

BPC § 4959 (a) authorizes cost recovery only in cases where a licensee has been found guilty of unprofessional conduct. It does not allow cost recovery for Statements of Issues. Therefore, the Board does not seek cost recovery for decisions involving applicants for licensure. BPC § 125.3 also only allows cost recovery for violations of the Acupuncture Licensure Act. In addition, the Board may waive costs to achieve a stipulated surrender of a license to resolve the case.

50. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.

The Board submits all outstanding cost recovery cases to the FTB IIP for collection purposes, relying on FTB IIP for all its outstanding recovery costs as ordered. Future outstanding cases will be submitted to FTB IIP on a continual basis.

51. Describe the board's efforts to obtain restitution for individual consumers, any formal or informal board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.

The Board's Disciplinary Guidelines provide that the Board may order restitution for offenses involving breach of contract. It states the amount of restitution shall be the amount of actual damages sustained as a result of breach of contract. Evidence relating to the amount of restitution would have to be introduced at the Administrative Hearing. The Board has not had a decision ordering restitution since the 2016 Sunset Review Report; therefore, there have been no attempts to collect any restitution. If a future decision orders restitution and respondent fails to pay, the Board has the authority to petition for revocation of his or her probation for violating the term of restitution.

Table 11. Cost Recovery⁹ (list dollars in thousands)					
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Total Enforcement Expenditures	\$476	\$620	\$827	\$929	\$616
Potential Cases for Recovery *	8	8	9	8	2
Cases Recovery Ordered	11	9	10	15	3
Amount of Cost Recovery Ordered	\$47	\$48	\$154	\$274	\$48
Amount Collected	\$51	\$33	\$35	\$40	\$54
* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.					

Table 12. Restitution (list dollars in thousands)					
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Amount Ordered	\$0	\$0	\$0	\$517	\$0
Amount Collected	\$0	\$0	\$0	\$1	\$1

⁹ Cost recovery may include information from prior fiscal years.

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Section 6 – Public Information Policies

52. How does the board use the internet to keep the public informed of board activities? Does the board post board-meeting materials online? When are they posted? How long do they remain on the board's website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?

The Board regularly posts announcements and new information concerning new laws and regulations, alerts, and policy on its homepage at acupuncture.ca.gov under the "What's New" section. News and announcements are also disseminated through email via the Board's two Listserv subscription lists; one list is directed to licensees and another list for interested parties and stakeholders.

The Board routinely posts its Board meeting materials on its website in one convenient link adjacent to the relevant meeting date at the following webpage:

https://www.acupuncture.ca.gov/about_us/board_meetings.shtml. Materials are generally posted one to two weeks prior to the meeting date. Materials remain on the Board's website indefinitely. Draft meeting minutes are not posted separately but are included in each subsequent Board meeting materials when taken to the Board for vote. After the Board approves meeting minutes, a direct link to the final minutes is posted the following week on the Board's website. Final meeting minutes are posted indefinitely on the Board's website.

53. Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings? How long do webcast meetings remain available online?

Yes, all Board and committee meetings are webcasted per the availability of DCA webcasting resources. The Board plans to continue webcasting all future Board meetings, as well as committee meetings, whenever possible. Webcasted meetings are uploaded to DCA's YouTube page where they remain online indefinitely and the Board provides direct links to the webcast on its "Board Meetings" page (https://www.acupuncture.ca.gov/about_us/board_meetings.shtml).

54. Does the board establish an annual meeting calendar, and post it on the board's web site?

The Board establishes an annual tentative meeting calendar during the last Board meeting of each calendar year. The finalized meeting date(s) are posted on the Board's webpage under "Board Meetings". If the Board needs to schedule additional meetings, the meeting dates are posted online as soon as the dates are confirmed. Any changes or additions to the meeting schedule are posted in accordance with the Bagley-Keene Open Meeting Act and Administrative Procedure Act.

55. Is the board's complaint disclosure policy consistent with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the board post accusations and disciplinary actions consistent with DCA's *Web Site Posting of Accusations and Disciplinary Actions* (May 21, 2010)?

Yes, the Board follows DCA's recommended Minimum Standards for Consumer Complaint Disclosure. The board posts all Penal Code Section 23 suspension and bail condition Orders, Accusations, and final Decision and Orders on its website.

56. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?

The Board provides the following information to the public regarding licensees:

- Licensee's Name;
- License number, issue date, expiration date, and status;
- Current Address of Record;
- Practice Address(es)
- Disciplinary Actions (if any)

The Board does not post education completed, awards, certificates, or specialty areas.

57. What methods are used by the board to provide consumer outreach and education?

Consumer outreach and education is a priority that the Board continues to develop. The Board utilizes its website to provide pertinent information, forms/applications, laws and regulations, proposed regulations, board meeting materials and minutes, board and committee meeting webcasts, and other important notices for applicants, licensees, and the public.

The Board also utilizes email software called ListServ to send out important emails to stakeholders. Anyone can join the Board's e-mail subscription by registering on the Board's website.

Section 7 – Online Practice Issues

58. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate internet business practices or believe there is a need to do so?

The online practice of Acupuncture has not been prevalent prior to the COVID-19 pandemic.

The Board regulates online practice in the same manner as in-person practice, with the understanding that only those services which can be delivered via telehealth are provided by the licensees.

When a telehealth complaint is received, it is investigated and reviewed by the Board's subject matter expert to assess whether or not the appropriate standard of care was utilized in delivering acupuncture services.

There has been no threat to public safety to warrant additional regulation of acupuncture telehealth.

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Section 8 – Workforce Development and Job Creation

59. What actions has the board taken in terms of workforce development?

The Board conducts an Occupational Analysis (OA) every five (5) years, with the most recent OA completed in July 2021. Board staff sent invitations to participate in the survey on its website, by email and mail. Of the 11,828 acupuncturists invited to complete the questionnaire, 4,806 (40.6%) responded by accessing the online questionnaire. The final sample size included in the data analyses was 2,795 active licenses, or 23.6% of the licensed acupuncturist population that was invited to complete the questionnaire. Compared to the 2015 OA response rate of 11% of active licensed population, a high response rate from licensees provides a more comprehensive and accurate reflection of the practice of acupuncture in California and enables the Board to monitor trends in the acupuncture workforce.

Business and Professions Code section 4940 gives the Board authority to offer the Tutorial Training Program. This program allows for an apprentice program that consists of on-the-job training combined with classroom education that allows tutorial students a pathway to qualify for the licensing exam. Board staff have participated in DCA workforce development meetings in collaborations with the CA Division of Apprenticeship Standards to explore opportunities and support for apprentice programs in CA. The tutorial training program offers the opportunity of an on-the-job training pathway for new acupuncture trainees to establish eligibility for licensure who may not have access to acupuncture educational and training program. This program also provides opportunity to out of state or foreign trained acupuncturists that allows for the program to accept prior training that has been completed in the last ten (10) years.

60. Describe any assessment the board has conducted on the impact of licensing delays.

Licensing delays have largely been eliminated as the Board has been successful in implementing changes which have reduced the licensing cycle times. The current cycle time is the 24- 48-hour payment processing time and the fingerprint clearance from the FBI and DOJ that averages seven (7) days to clear those background checks, with a total cycle time for approved applications to licensure of nine (9) days. The AcuConnect Licensing System became available in September of 2020 and allows for licensing applicants the ability to apply for and pay for an acupuncture license online without having to contact the Board directly.

Additionally, staff is engaged continually to refine and streamline the licensing process to prevent delays, and periodic updates to the licensing desk manual.

61. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.

Board staff have regular communication with the 29 schools that house the 35 approved Master and Doctoral licensing program curriculums offered. Since the CA licensing requirement of accreditation standing from the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM, formally ACAOM), the Board has strived to create a collaborative relationship and work to foster alignment with the regulatory requirements of the Board with the accreditation standards of ACAHM. This relationship helped the Board navigate the needs of schools, students, and consumers to allow

acupuncture training to continue under emergency requirements and subsequent waivers that were necessitated by the pandemic.

Beginning in 2017 Board staff have attended the biannual meetings of the Council of Colleges for Acupuncture and Herbal Medicine (CCAHM, formally CCAOM). The CCAHM is a national organization whose members are comprised of ACAHM accredited programs. Attending these meeting allows the Board to stay up to date with trends and developments within the acupuncture training industry. Key topics that the Board are following and learning from are the development of competency-based evaluation of training, distance education, and telemedicine. Attending this conference also allows Board staff to network and have discussions with schools with Board approved curriculums, as well as programs from other states to better understand what is occurring with acupuncture training nationally.

62. Describe any barriers to licensure and/or employment the board believes exist.

Out-of-state acupuncture schools who do not have all the approvals from the Board, BPPE and ACAHM to offer acupuncture training that meets California standards often have students who wish to apply for licensure in California. Since their programs are not approved, they will typically have to transfer some of their completed acupuncture training to an approved school or transfer their hours to a tutorial program to become eligible to sit for the CALE. This transfer can add several months to several years to a student's time before the student is qualified to take the CALE. Out of state transfer students can use the tutorial training pathway to qualify to take the CALE which often shortens the time needed as compared to returning to complete a program at an acupuncture training program.

63. Provide any workforce development data collected by the board, such as:

- a. Workforce shortages
- b. Successful training programs.

The Board does not collect data on workforce development outside of the OA and its CALE pass/fail statistics that are analyzed by school, language, first-time test takers vs. re-takers, and pass/fail. In the 2021 OA, workforce related questions were added to the demographic questions to provide some workforce data. However, there is no annual workforce survey done for acupuncture by the Board, as workforce development is not within the Board's scope of duties. Additionally, the Board is unaware of any such survey conducted by Acupuncture Associations or professional groups.

Section 9 – Current Issues

64. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?

The Board approved proposed language along with the proposed 'Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees' document at its March 2019 Board meeting. In December 2020, the Board approved a revised version dated December 2020 so sections that incorporated AB 2138 substantial relationship criteria and criteria of rehabilitation were aligned with the modified language recently adopted by the Board. The draft rulemaking package was submitted for Legal review in May 2021. In December of 2021 the Board conferred with the Department of Justice on the language and staff is now anticipating bringing the language back before the Board in 2023.

65. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?

The CPEI regulations went into effect October 1, 2015.

66. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.

- a. Is the board utilizing BreEZe? What Release was the board included in? What is the status of the board's change requests?

The Board is not utilizing BreEZe, and was identified as a release three board. No change requests were made.

- b. If the board is not utilizing BreEZe, what is the board's plan for future IT needs? What discussions has the board had with DCA about IT needs and options? What is the board's understanding of Release 3 boards? Is the board currently using a bridge or workaround system?

The Board is part of the DCA Business Modernization Cohort 1 (BMC1). This initiative included both organizational readiness activities such as process mapping and functional requirement development, as well as project planning through the California Department of Technology's (CDT) four-stage Project Approval Lifecycle (PAL).

Since the Board is part of the BMC1 project it will not be necessary to use any workarounds or bridge IT systems.

In January 2020 the Board was one of the three boards and one bureau (boards/bureau) that following extensive planning completed the Project Approval Lifecycle process and began project implementation activities: The Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG), the Bureau of Private Postsecondary Education (BPPE), the California Acupuncture Board (CAB), and the Board of Chiropractic Examiners (BCE). Collectively, these boards/bureaus make up the BMC1. This project to date has delivered functionality to production that includes online application for the licensing Exam, Licensing and Renewal application submissions, the ability to pay for those services by credit or debit cards, back office streamlined workflows, and real-time application status updates with the applicant via email and text messages. To date, the project is

within its baseline budget and is within a month of its baseline schedule. Several successful software releases have occurred since project implementation increasing and refining functionality for the AcuConnect Licensing System.

The approved Stage 4 Fiscal Analysis Worksheet (FAW) for BMC1, which represents the initial cost baseline of the project, supports the maintenance costs identified as needed to support this project. BMC1 Boards/Bureau received one-time funding in 2020-21 for project activities. Of the \$5.231 million BMC1 project budget the Board received 1.208 million of funding and 2.0 limited term positions to support its Business Modernization implementation and systems development.

The BMC1 project is currently in the operations and maintenance stage of this project. The Board plans to continue in the BMC1 project for additional system development of the Enforcement Module.

Section 10 – Board Actions and Responses to COVID-19.

67. In response to COVID-19, has the board implemented teleworking policies for employees and staff?

a. How have those measures affected board operations? If so, how?

The Board implemented teleworking policies for all staff in response to COVID-19. Board operations slowed down as staff adjusted to the state of emergency and the new hybrid working environment. Challenges occurred in delays to communications and to document processing where staff working from home identified a document they would need access to which was not digitized and thus stored in the office. As staff adjusted to the new environment, such workflow challenges became accounted for.

68. In response to COVID-19, has the board utilized any existing state of emergency statutes?

a. If so, which ones, and why?

The Board utilized DCA Waiver DCA-20-01 Continuing Education, and its extensions, to allow an individual renewing a license to do so without requiring the completion of the continuing education requirements. Licensees were advised that the executive order allowed for a six-month extension to complete their continuing education requirements, unless further extended by additional waivers.

69. Pursuant to the Governor's Executive Orders N-40-20 and N-75-20, has the board worked on any waiver requests with the Department?

- a. Of the above requests, how many were approved?
- b. How many are pending?
- c. How many were denied?
- d. What was the reason for the outcome of each request?

The Board worked with its stakeholders and the Department to allow for a waiver of the regulatory requirement that acupuncture students receive their clinical education in-person. This would have allowed the Board to align with the exception being made by the national acupuncture accreditor, the Accreditation Commission for Acupuncture and Herbal Medicine.

The request was not approved, but the Board believes that the matter can be appropriately handled through enforcement of curriculum requirements.

70. In response to COVID-19, has the board taken any other steps or implemented any other policies regarding licensees or consumers?

No additional policies were implemented regarding licensees or consumers. The Board issued a statement on the responsibilities for the use of telehealth.

71. Has the board recognized any necessary statutory revisions, updates or changes to address COVID-19 or any future State of Emergency Declarations?

The Board has approved telehealth language to codify what a licensee can carry out in online practice such that it is clear for future State of Emergency Declarations.

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Section 11 – Board Action and Response to Prior Sunset Issues

Include the following:

1. Background information concerning the issue as it pertains to the board.
2. Short discussion of recommendations made by the Committees during prior sunset review.
3. What action the board took in response to the recommendation or findings made under prior sunset review.
4. Any recommendations the board has for dealing with the issue, if appropriate.

ISSUE #1: (Structural Budget Deficit). What is the CAB's plan to balance its budget?

Staff Recommendation: *The CAB should discuss its plan to address the structural imbalance or otherwise avoid insolvency, such as implementing minimum reserve thresholds, seeking authority to charge a fee for school curriculum approval (Issue #6) or continuing education course review (Issue #10), pursuing improvements or cost savings identified under the Business Modernization Plan (Issue #2), or any other potential options.*

Board's April 13, 2018, Response to Staff Recommendation:

The Board has been operating with structural imbalance for a period of time to reduce its fund balance reserve. At the end of fiscal year 2010-11, the Board's fund balance reserve was approximately 37 months, which exceeded its 24-month statutory limit.

In 2011-12, the Board provided a \$5 million General Fund (GF) loan, which reduced the fund balance reserve to approximately 8.4 months. Since 2011-12, the structural imbalance has contributed to reducing the fund balance reserve to approximately 4.9 months by the end of 2015-16. In 2016-17, \$4 million of the GF loan was repaid with interest, which increased the fund balance reserve to approximately 16.6 months.

At the current rate of revenues and expenditure, the Board will remain solvent until 2022-23. The Board is monitoring the structural imbalance and will likely be required to adjust fees in the next few years.

The Board's fee limits are set in statute and implemented through regulations. Except for the delinquent license renewal fee (set regulatorily at \$25 pursuant to 16 CCR § 1399.460(f) and a statutory limit of \$150 pursuant to BPC § 163.5), which generates minimal revenue, all of the Board's other fees are currently set at their statutory limit. Additionally, Board staff has identified that the Board has statutory authority pursuant to BPC § 4945(b) to approve continuing education providers and set a fee covering the cost of approval and monitoring. The Board will review a regulatory fee proposal at an upcoming Board meeting. As a result, any increases to Board fees (except the delinquent license renewal fee, and continuing education course fee, which can be increased through regulations) would require a statutory change.

Board's 2022 Sunset Review Update to Issue #1:

The Board contracted with Capital Accounting Partners, LLC (contractor) in 2019 to conduct a fee audit of the Board's budget, including revenue and costs associated with each business process and service provided. The results of the fee audit determined that the Board has been

providing services at no cost to the applicant despite having authority to do so. Additionally, the audit determined that the Board must raise revenue or cut costs to remain solvent moving forward.

The contractor recommended that the Board set fees to recover full costs and maintain additional reserves that would sustain the Board for three to six (3-6) months of expenditures in times that revenues do not meet expenditures. Further, it was recommended to the Board to raise the statutory cap to cover the regular fee increases described here and to give the Board the ability to raise fees as needed over the next few years. The contractor recommended the Board establish guidelines pertaining to pricing and how the Board would prefer certain costs are allocated to or subsidized by certain fee types. Lastly, it was recommended to the Board to conduct a fee audit every three to five years to reassess revenue, costs of business processes, and how the regulatory landscape has changed to the extent that it would necessitate additional changes to the Board's fee schedule.

During the Board's August 2019 public meeting, proposed minimum and maximum fees were brought to the Board for consideration to take to an author with the Legislature to introduce as new statutory language. The Board approved the proposed fees at this time. Board staff worked with the Department and the Legislature to implement the new fees in statute. Effective January 1, 2021, the new fees as part of Assembly Bill 3330 (AB 3330) (Calderon, Chapter 359, Statutes of 2020) were made law. Subsequently, the new fees were set in regulation effective May 24, 2021.

The Board continues to closely monitor its budget and remaining months in reserve. Staff has identified a new fee study will be conducted sometime in the next two fiscal years to ensure the Board sustains a healthy reserve and maintains solvency.

ISSUE #2: (Business Modernization Plan and BreEZe). What is the CAB's status on the transition to BreEZe or its alternative?

Staff Recommendation: *The CAB should discuss its progress with the Business Modernization Plan, when it anticipates moving to the next stage in CalTech's Project Approval Lifecycle, whether the BreEZe contributions will cover the costs of the Business Modernization Plan, and how the redirection of staff resources will impact the CAB's operations.*

Board's April 13, 2018, Response to Staff Recommendation:

The Board was previously scheduled to adopt the BreEZe system as part of Release #3. Those Department of Consumer Affairs entities, including the Board, which were scheduled for Release #3, are now undergoing a Business Modernization Plan (BMP) to determine whether the BreEZe system (or another IT system) is the most appropriate IT system for them.

The Board has begun Phase #1 of the BMP to map the current "as is" business processes and requirements. This phase is anticipated to be completed on or around May 15, 2018.

Phase #2 will then map the Board's "could be" processes. Upon completion of Phase #1 and #2, a cost benefit analysis will be conducted to determine the most appropriate IT system for the Board.

The Board's BreEZe funding contributions are sufficient to cover any BMP costs. The Board has been required (and will continue) to redirect staffing resources during this time. The Board notes the redirection of resources has resulted in workload being delayed in various program areas, but any delay has not affected public safety. Additionally, any impacts resulting from the redirection of resources are anticipated to be cleared upon the completion of Phase #1.

Board's 2022 Sunset Review Update to Issue #2:

Please refer to question 67.

To date, the Board has completed development of major licensing functions in the AcuConnect system, allowing for online application and payment of a number of applications including, application for examination, application for licensure, and wall license application. Continuing Education functionality will be added in late 2022, and development will begin on the enforcement module in 2023.

ISSUE #3: (Workload and Staff Managers). What are the impediments preventing the CAB from hiring additional managers?

Staff Recommendation: *Given that this is a high priority for the CAB, the CAB should discuss the difficulties it has faced in trying to hire additional managers and what would be needed to do so.*

Board's April 13, 2018, Response to Staff Recommendation:

The 2018-19 Governor's Budget includes funding and position authority for 1.0 Staff Services Manager I (SSMI) to be effective July 1, 2018. The Board's 2018-19 Budget Change Proposal (BCP) requesting this position provides detailed explanation and justification for authorizing the SSMI position to align the Board's management-to-staffing ratios consistent with CalHR staffing guidelines.

The Legislature is scheduled to begin hearings to deliberate on the Board's BCP request beginning in April 2018.

The Board will continue monitoring its workload to assure it has the proper staffing ratios.

Board's 2022 Sunset Review Update to Issue #3:

Board staff continues to operate sufficiently with two Staff Services Manager I positions; one who oversees the licensing, examination, and education functions of the Board, the second manager who oversees the central services of the Board, including administration and policy, and the Executive Officer manages the Board's enforcement unit.

ISSUE #4: (Board Member Conflict of Interest Policies). Does the CAB review potential conflicts of interest outside of public board meetings?

Staff Recommendation: *The CAB should discuss its current process for managing board member conflicts of interest and whether that process can be improved.*

Board's April 13, 2018, Response to Staff Recommendation:

The Board works pro-actively to address any actual or perceived Conflicts of Interest. Board Members have filed their Conflict-of-Interest Statement Form 700 on time every year, as well as upon appointment, reappointment, and end of appointment. Board Members also take the required Conflict of Interest Training per DCA's policies and the Board's Administrative Procedure Manual. Board Members, along with the Executive Officer, work closely with the Board's Legal Counsel, as well as the DCA's Ethics Officer, to address potential conflicts of interest (real and perceived). The Board members have also asked for and received additional training at Board Meetings from Legal Counsel, such as the "Role of a Regulatory Board" and "How Stakeholders Can Communicate with the Board."

Board's 2022 Sunset Review Update to Issue #4:

The Board continues to receive training about board member conflicts of interest, as well as its role as a Board. Since the Board's April 2018 response, the Board has 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. Further, the Board received training regarding ex-parte communication on August 27, 2020, at a public board meeting during the process of updating the Board's Administration Manual. At its June 24 – 25, 2021 Board meeting, Legal Counsel provided training on the role of the Board. Legal Counsel is available to discuss conflict of interest matters as they arise. Formal presentations and training will be offered to Board members at every Board Member Orientation Training, and additionally if needed, to ensure proper protocol is followed in Board communications and matters involving conflict of interest.

ISSUE #5: (Strategic Plan). When does the CAB anticipate completing its 2013-2017 Strategic plan and adopting its 2018-2022 Strategic Plan?

Staff Recommendation: *While the CAB has made considerable progress on completing its 2013-2017 Strategic Plan, it should discuss the status of the remaining items and progress on the development of its 2018-2022 Strategic Plan.*

Board's April 13, 2018, Response to Staff Recommendation:

The Board continues to work to implement the 2013-2017 Strategic Plan and has made considerable progress in the last two years. Additionally, the Board will be reviewing all uncompleted items at its upcoming March 30, 2018, Strategic Planning Meeting as it establishes its goals for its new 2018-2021 Strategic Plan. Once these goals are established, the Board will review and approve them and move on to creating the action plan that will guide the Board's actions in the next four years.

Set out below is an update on the current 2013-2017 outstanding strategic plan items which are still being pursued by the Board.

Goal 2: Enforcement

2.2. Strengthen the Board's enforcement authority through Implementation of Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Probation, and the Consumer Protection Enforcement Initiative. Not completed

The Board is continuing to work on this goal with an expected completion date by or before Quarter three of 2018.

2.3. Seek legislation to expand non-complaint-based clinic inspection authority to further public protection. Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

2.4. Determine feasibility of strengthening the recertification process for reinstatement of an inactive license to further public safety. Promulgate regulations to do so, if found feasible. Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

Goal 3: Education

3.2. To ensure that students are qualified to successfully complete Acupuncture training programs, the Board will explore increasing initial licensure qualifications to a bachelor's degree or set a score for the Medical College Admission Test (MCAT). Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

3.4. Promulgate regulations to require international applicants and students attending non-English track schools to pass the TOEFL exam before being eligible to sit for the California Acupuncture Licensing Exam (CALE). Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

3.5. The Education Committee will evaluate the feasibility of enhancing school curriculum regulations by adding a required course in Standardized Acupuncture terminology. Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

Goal 4: Professional Qualifications

4.1. Evaluate the approved continuing education course list and create a defined scope for continuing education coursework that focuses on improving practice knowledge, best practices, and updated research. Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

4.2. Formalize the continuing education audit process of the Education Committee's review of potentially non-compliant continuing education courses and providers. Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

Goal 5: Outreach

5.1. Form a Licensee Education Committee to create educational materials for licensees and a "What You Need to Know" educational series that will be accessible from the website. Not completed

The Board will consider this as a goal option for its 2018 – 2021 Strategic Plan.

5.4. Educate stakeholders on requirements of the Affordable Care Act and the implications for electronic records management.

The Board has determined that this is not within its authority to address and is no longer pursuing this item.

Board's 2022 Sunset Review Update to Issue #5:

The Board reviewed its 2013-2017 Strategic Plan when developing its 2018 – 2022 Strategic Plan and included any items still necessary to address in the new plan. The Board will begin the 2023 – 2027 Strategic Planning session in the Spring of 2023.

Education and Examination Issues

ISSUE #6: (School Approval). Are there additional updates, issues, or hurdles relating to the school approval process?

Staff Recommendation: *The CAB should update the Committees on any outstanding issues relating to the school approval process transition, including any outstanding*

statutory changes needed to complete the transition, foreseeable hurdles, and whether it will perform a fee audit or seek statutory authority to charge a curriculum review fee.

Board's April 13, 2018, Response to Staff Recommendation:

The Board 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 the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). The Board has developed 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. In 2016, Board staff and members met with BPPE and ACAOM representatives on numerous occasions to understand the separate processes each are charged with. Board staff and ACAOM, as well as Board staff and BPPE, have observed the other's site visit process and all three agencies have worked together on enforcement matters. The Board does not have any outstanding issues with ACAOM or BPPE in the administration of training program approvals and is committed to continued improvement in this collaborative effort.

Board staff has identified potential statutory changes which could be considered by the Committees to improve public protection. These items are planned to be brought before the Board to consider in the summer of 2018. Specifically, the issues to be considered for the Board's review and revision are:

- Clarifying the statutory text of BPC § 4927.5(3)(B) to be consistent with the current terminology used by ACAOM.
- Staff has observed confusion on the part of new training programs about the process necessary to complete BPC § 4927.5(3)(C), and the absence of a requirement of this statute to include a completed site visit by ACAOM for programs pursuing initial accreditation. Staff recommendation is that the standard necessary to meet BPC § 4927.5(3)(C) be set at a later point in the existing ACAOM accreditation process to include a completed site visit by ACAOM.
- Statute provides that meeting the three approval requirements of BPC § 4927.5 constitutes the requirements to become an "*approved educational and training program*." Currently there is no authority assigned to any one agency to verify all three approvals required of programs to have their students be eligible for the licensing examination. With all three approvals, an approved training program now can allow for enrolled students to engage in the pre-licensure practice of acupuncture (with the required supervision). However, this creates the possibility that a training program may begin operating prior to completing all necessary approvals as described in BPC § 4927.5. Since the January 1, 2017, implementation of BPC § 4927.5, Board staff has observed programs that have begun operating in this manner. This highlights the need for appropriate oversight necessary to meet the Board's mandate for public protection. Staff has recommended that the Board consider taking a position to amend this statute to give the Board the authority to verify that acupuncture training programs have met all three requirements in BPC § 4927.5. Once this verification has been completed, training programs would be officially recognized by the Board, as Board approved training programs.
- To further support the full enactment of BPC § 4927.5, the Board is aware of the need for changes to the regulations in 16 CCR §§ 1399.435, 1399.438-1399.439 that address a program's required documentation, enforcement and monitoring. There are items that may be eliminated that are currently being monitored by ACAOM and BPPE. There is also a need to revise or promulgate regulations to address training program accountability in response to enforcement actions to include training program ownership. Under current law, the jurisdiction

for training program enforcement of the practice of acupuncture falls on the clinic supervisors (as licensees) and students (as unlicensed practice).

- The Board will keep the Committees updated on its discussion on seeking statutory authority to charge a curriculum review fee.

Board's 2022 Sunset Review Update to Issue #6:

The 2019 Fee audit identified that curriculum review fees were recommended as they require several weeks for staff to review and are currently not assessed a fee. Staff has identified the issue of the need to monitor ongoing curriculum compliance. Educational and Training programs are required to report curriculum changes in yearly reporting although there are no program fees to support this monitoring and compliance.

ISSUE #7: (Foreign Education and Training). Are there additional updates, issues, or hurdles relating the implementation of the approval process for education and training obtained outside of the United States?

Staff Recommendation: *The CAB should discuss its progress on implementing AB 2190, including any hurdles or unforeseen issues, such as lack of credential evaluation service providers, costs, or large disparities in curriculum or courses.*

Board's April 13, 2018, Response to Staff Recommendation:

Staff has moved to researching AB 2190 requirements after completion of its regulations tied to SB 1246, which took effect on May 24, 2017. As of March 2018, the Board has continued working on developing regulations to implement AB 2190 at a staff level. To date, these actions have included:

- Regular staff meetings to develop proposed regulations and processes implementing AB 2190. Board staff has drafted the proposed text to implement AB 2190 and is continuing to refine as the process continues.
- Staff has met and communicated with members of the National Association of Credential Evaluation Services (NACES) to better understand the process of credential evaluation and to assist in developing best practices for the process.
- Staff is drafting a survey to be released to all eligible evaluation companies for a comprehensive look at the process.
- Board staff has consulted with the Board of Accountancy, who shares similar statutory authority (BPC § 5094 et seq.) for assistance in implementing regulations.
- Similarly, Board staff has consulted with the Board of Registered Nursing for their assistance in understanding the foreign equivalency process.

Staff plans to bring proposed AB 2190 regulations before the Board in Fall 2018.

Board's 2022 Sunset Review Update to Issue #7:

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

ISSUE #8: (Examination). 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?

Staff Recommendation: *The CAB should discuss feasibility, cost, and time constraints related to: (1) switching the CALE to computer-based testing; (2) developing a California supplement to the NCCAOM examination or for purposes of reciprocity; and (3) working nationally with other states and potentially federal healthcare agencies to increase the portability of the California acupuncture license and improve reciprocity with other out-of-state licenses.*

Board's April 13, 2018, Response to 8.1 Staff Recommendation:

The Board agrees with the Committees that computer-based testing would be an effective and efficient upgrade. This would allow for continuous, adaptive, on-demand testing as opposed to the current system of pencil and paper exams held twice a year. High security and testing standards would be maintained and will also allow for greater accessibility by offering multiple testing sites available year-round.

The Board application to move to computer-based testing with the DCA's Office of Information Services has been approved. Implementation of computer-based testing is estimated to be available October 1, 2018.

The costs of switching to computer-based testing have yet to be determined. The Board anticipates that computer-based testing will lower the costs to administer the CALE with the cost of developing the CALE remaining the same.

The Board continues to meet with the Office of Professional Examination Services (OPES) for their input and contract requirements, as well as with the Office of Information Services (OIS) for technical expertise in the transition. This process began in the fall of 2017 and will take twelve to eighteen months.

Board's 2022 Sunset Review Update to Issue #8.1:

The Board has transitioned to, and has been using, computer testing since October of 2018.

Board's April 13, 2018, Response to 8.2 Staff Recommendation:

As the background paper noted, after reviewing OPES's audit of the NCCAOM examinations, in June 2016, the Board voted to support legislation that would transition the licensing examination from the one-day CALE to requiring four of the NCCAOM modules as well as a California supplemental examination, not to take place before January 1, 2019.

OPES is in the process of reviewing the NCCAOM's most recent Job Task Analysis which will provide a clearer picture on how to develop a California Supplemental Exam. The Board will also reach out to other boards that have developed their own California supplemental exams to develop policies, procedures, and regulations necessary for implementation.

The overall cost and length of time needed to develop a California supplemental exam is yet to be determined. Once unresolved issues and the overall feasibility of a change in examination format have been addressed, the Board is confident that the creation of a supplemental exam can be completed when the need and a timeline have been clearly defined.

The Board has noted discrepancies in the total cost to applicants to take all four modules of the NCCAOM, as well as additional fees to provide those examination results to the Board for qualification for licensure. Additionally, at the June 10, 2016 Board Meeting, the Board

discussed with NCCAOM developing one module, instead of four, for California only, as well as providing NCCAOM recognition for currently licensed California acupuncturists. These concerns have been addressed by the Board at several meetings and remain unresolved. The Board confirms that current pricing to applicants of all four modules of the NCCAOM is at \$1,795, along with an additional fee of \$100 for submitting a written application as opposed to an online application. The Board also notes that the NCCAOM website is no longer displaying additional fees to take the modules in a foreign language as opposed to in English, a difference of \$200 per module for a total of \$800. The Board affirms that the cost to applicants for the CALE is \$625.

Board's 2022 Sunset Review Update to Issue #8.2:

Board 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) will be required for the Board to make an informed decision. The Board completed its OA in 2021, and the NCCAOM will be completing its JAS in 2024. The Board will revisit the audit in 2024.

Board's April 13, 2018, Response to 8.3 Staff Recommendation:

For acupuncture education and practice, each state sets their own specific standards. As the Background Paper notes, there are 16 states that license acupuncturists which recognize out-of-state licenses and can administer reciprocal licensing agreements.

The Board has discussed and directed board staff to research other states' licensing requirements and the possibility of working with other states to accept the CALE or the California Acupuncture License. With each state enforcing their own standards, there may be the additional requirement of California licensees to pass that state's supplemental examination.

In California, applicants are required to complete an approved 3000-hour curriculum at an approved training program. Many states require 1900 hours.

The Board needs to discuss the feasibility, cost, and time constraints necessary to increase the portability of the California acupuncture license and improve reciprocity with other out-of-state licenses.

Board's 2022 Sunset Review Update to Issue #8.3:

California Licensed Acupuncturists continue to be accepted by other states as the education requirements exceed those of most states. However, due to the lack of parity for education requirements, acupuncturists licensed outside of California continue to not meet the licensing requirements here. To sit for the California Acupuncture Licensing Examination such applicants can complete their missing education in a tutorial program (aka apprenticeship program) or at a training program that offers an approved curriculum.

ISSUE #9: (Licensee Continuing Education Audits). Has the CAB taken steps to avoid future lapses in its CE audit process?

Staff Recommendation: *The CAB should update the Committees on the status of its CE audit program. It should also discuss plans for or progress on implementing processes to avoid future lapses in audits, such as additional cross-training of staff or back-up protocols.*

Board's April 13, 2018, Response to Staff Recommendation:

The Board has filled its vacancy for the staff position conducting CE Course reviews and Licensee Audits. This position has now been trained, allowing the Board to begin the CE Audit process. Staff has been cross trained on the CE Audit process, as well as created updated procedures for conducting the CE Audit.

The Board conducts its Licensee CE Audit by randomly selecting 10% of the renewing active licensees. In the coming months, staff will work to eliminate the backlog that was a result of staffing issues.

Board's 2022 Sunset Review Update to Issue #9:

A new CE audit process was designed at the end of 2019 but was paused before implementation due to the Executive Waivers issued such that licensees could renew their license without needing to complete their CE requirements during the pandemic, with the requirement that the licensees come into compliance with the CE requirements within six months after the expiration of the Executive Waivers. Staff will start the new CE audit process of 5% of the licensing population after the end of the emergency waivers.

ISSUE #10: (Continuing Education Course Providers). Are there impediments to performing audits of CE providers or affirmatively enforcing the CAB's conflict of interest policy?

Staff Recommendation: *The CAB should discuss possibilities for seeking a CE course review fee and implementing CE provider audits.*

Board's April 13, 2018, Response to Staff Recommendation:

The Board has discussed CE Course Review Fees at past meetings. The Board has determined that it currently has the authority pursuant to BPC § 4945(b) to set fees for continuing education course applications. As such, staff is researching costs and constraints to present to the Board for future action, as well as a more comprehensive approach 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, as well as other DCA Board's to identify best practices to improve the efficacy of CE education to maintain continued competency in the practice of acupuncture.

Board's 2022 Sunset Review Update to Issue #10:

The Board sought legislative authority to establish CE Course fees and received it in AB 3330 which became operative on January 1, 2021. The Board now is required to assess the fee for continuing education course applications to the continuing education provider at a floor of \$10 per hour of continuing education requested to offer, and a cap of \$20 per hour of continuing education requested to offer, allowing up to a maximum of 50 hours to be approved per course application. The bill would specify that an approved course may be offered for a period of one year from the date of the board course approval.

CE Provider audits will be carried out at the time of Licensee CE audits.

ISSUE #11: (Disciplinary Guidelines and Uniform Standards). What is the status of the CAB's updates to its Disciplinary Guidelines and Uniform Standards?

Staff Recommendation: *The CAB should discuss the details regarding OAL disapproval of other regulatory packages updating Uniform Standards and whether the CAB is still on track to have both packages ready in 2018.*

Board's April 13, 2018, Response to Staff Recommendation:

In April 2017, the Board decided to withdraw its pending regulatory package implementing the Uniform Standards. This decision was based on several factors, including:

- Limited time remaining within Office of Administrative Law's (OAL) one-year filing deadline (which was to expire in April 2017) to complete the rulemaking;
- A review of the Board's proposed Uniform Standards manual requested of the Attorney General's office in March 2017. This was completed in July 2017 and contained multiple changes;
- Rejection by OAL of similar healing arts boards' rulemaking packages. For example, the Osteopathic Medical Board submitted their regulations implementing the Uniform Standards to OAL on October 25, 2016. On December 9, 2016, OAL rejected the regulatory package based on several factors. Most notably, OAL noted that BPC § 315 clearly requires Boards to adhere to all sixteen Uniform Standards and requires standards to be used by each healing arts Board whether or not the Board chooses to have a formal diversion program. The Acupuncture Board's 2016 regulatory rulemaking package, as proposed to be submitted, did not contain uniform standards #13 -16 since the Board does not have a diversion program.

Staff is awaiting guidance from Legal Counsel as to how to integrate the missing uniform standards (if necessary) into the Board's rulemaking package. However, the Board has been continuing work on a new Uniform Standards rulemaking package at a staff level, and anticipates presenting the rulemaking package to the Board during the Summer of 2018.

Separately, the Board approved changes to its 1996 Disciplinary Guidelines as a new, distinct rulemaking package at the February 24, 2017, public meeting. As with the Board's proposed Uniform Standards, the Attorney General's office was requested, in March 2017, to review and suggest changes to the Disciplinary Guidelines. Their review was completed in July 2017 and contained multiple changes. The Board has been continuing work on the Disciplinary Guidelines at a staff level, and anticipates presenting a rulemaking package to the Board during Summer of 2018.

Board's 2022 Sunset Review Update to Issue #11:

The Board approved proposed language along with the proposed 'Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees' document at its March 2019 Board meeting. In December 2020, the Board approved a revised version dated December 2020 so sections that incorporated AB 2138 substantial relationship criteria and criteria of rehabilitation were aligned with the modified language recently adopted by the Board. The draft rulemaking package was submitted for Legal review in May 2021. In December of 2021 the Board conferred with the Department of Justice on the language and has updated language that will be brought back before the Board in 2023.

ISSUE #12: (Acupuncture Services by Non-Acupuncturists). Is action needed to address the performance of acupuncture services by other types of licensed healthcare professionals?

Staff Recommendation: *It is unclear whether action is needed at this time. The CAB should discuss whether this issue is manageable with its current authority and any*

plans to increase awareness or further coordinate with other DCA boards to streamline referrals.

Board's April 13, 2018, Response to Staff Recommendation:

The Board agrees with the Committee staff's recommendation on this issue and does not believe any further action is needed at this time. At present, the Board 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. The Board will continue to discuss the issue at the Board Committee level and is open to further discussion and insight offered by the public and stakeholders.

Board's 2022 Sunset Review Update to Issue #12:

The Board continues to have 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.

ISSUE #13: (Professional to Public Board Member Ratio). Should the CAB's ratio of professional to public members be adjusted?

Staff Recommendation: The CAB should discuss its current balance of professional to public members and whether any changes are needed.

Board's April 13, 2018, Response to Staff Recommendation:

The Board is comprised of three licensed members and four public members, with one current vacancy for a Governor appointed licensed member. The ratio of public to licensed members has not been brought up as an issue by stakeholders at Board meetings, nor has the Board discussed the issue as an agenda item. At present, the Board affirms that the current balance of professional to public members is sufficient for the Board to conduct business and does not seek any changes to the ratio.

Board's 2022 Sunset Review Update to Issue #13:

The current balance of professional to public members is necessary and sufficient for the Board to conduct business.

ISSUE #14: (Technical Changes). Are there technical changes that can improve the CAB or its functions?

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

Board's April 13, 2018, Response to Staff Recommendation:

The Board appreciates the opportunity to address technical changes to the Acupuncture Licensure Act, and offers the following suggestions:

(Existing text is italicized. Proposed additions are underlined, and deletions are in strikethrough)

BPC § 4927.5(a)(3)(C): Has submitted a letter of intent to pursue accreditation to the Accreditation Commission for Acupuncture and Oriental Medicine within 30 days of receiving full institutional approval pursuant to paragraph (2), and is granted candidacy pre-accreditation status within three years of the date that letter was submitted.

Rationale: As of October 21, 2017, ACAOM has changed their terminology to describe their pre-candidacy and candidacy status¹⁰ as “pre-accreditation” status. Changing the terminology to match ACAOM’s terminology will provide clarity and consistency for the Board and potential approved training programs.

BPC § 4935(c): A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” “Chinese medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, oriental medicine, or Chinese medicine.

Rationale: This proposed change would add and make consistent placement of terms which are already set out in the same statutory section, and brings additional clarity to the statute.

BPC § 4938(a)(5): Completes a clinical internship training program approved by the board. The clinical internship training program shall not exceed nine months in duration and shall be located in a clinic in this state that is an approved educational and training program. The length of the clinical internship shall depend upon the grades received in the examination and the clinical training already satisfactorily completed by the individual prior to taking the examination. On and after January 1, 1987, individuals with 800 or more hours of documented clinical training shall be deemed to have met this requirement. The purpose of the clinical internship training program shall be to ensure a minimum level of clinical competence.

Rationale: This deleted section is no longer consistent with the definition of “Approved educational and training program” as set out in BPC § 4927.5(a)(1). That definition requires a minimum of 950 hours of supervised clinical instruction. This change will help to clarify the statute and make the requirement consistent.

BPC § 4955(e): Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, other healing arts boards as listed in Division 2, sections 500 – 4999.129 of the Business and Professions Code to encourage appropriate consistency in the implementation of this subdivision.

Rationale: While the Board continues to consult with boards currently listed in the statute, it may be appropriate to codify consulting with all applicable healing arts boards as listed in Division 2, sections 500-4999.129 of the Business and Professions Code. The Board already informally consults with other healing arts boards not listed within the statute. This change

¹⁰ ACAOM Standards and Master’s Level and Postgraduate Doctoral [DAOM] Pg.6. Available at: <http://acaom.org/wp-content/uploads/2018/01/ACAOM-Standards-and-Criteria-Manual-Masters-DAOM.pdf>

would make formal a consultation process with all healing arts boards which the Board already follows.

BPC § 4961(b): *An acupuncturist licensee shall post his or her wall license in a conspicuous location in his or her place of practice at all times. If an acupuncturist has more than one place of practice, he or she shall obtain from the board a duplicate wall license for each additional location and post the duplicate wall license at each location.*

Rationale: The Board has observed that some licensees are unaware or uncertain about the posting of additional licenses at duplicate practice locations. When applicable, the Board will take disciplinary action against those licensees. In other cases, the licensees will attempt to order duplicate renewal receipts (also known as “pocket” licenses, which are issued upon normal license renewal) in order to fulfill this requirement. This proposed change provides clarity to the licensee as to which license is required to be posted at all duplicate address locations and better connects the fee associated with ordering the duplicate wall license (currently \$15.00). Additionally, the change matches the terminology as set forth in BPC § 4970(g), which states, “The duplicate **wall** license fee is an amount equal to the cost to the board for the issuance of the duplicate license.” (emphasis added).

Board’s 2022 Sunset Review Update to Issue #14:

The Board has no technical changes to address.

Continued Regulation of the Profession

ISSUE #15: (Sunset Extension). Should the State continue to license and regulate acupuncturists under the current CAB?

Staff Recommendation: *The CAB should continue to regulate licensed acupuncturists order to protect the interests of the public. However, given the CAB’s inconsistent past and recent membership change, the CAB should be extended for two years with a reduced reporting requirement, unless the CAB can demonstrate that the current progress and focus will continue.*

Board’s April 13, 2018, Response to Staff Recommendation:

The Board agrees with the staff recommendation to continue regulating licensed acupuncturists to protect the interests of the public. Overall, the Board has noted considerable improvement in the last two years, and believes it is poised for continued improvement in the coming years. The Board has engaged in increased collaboration with the Legislature, stakeholders, and colleagues within the Department of Consumer Affairs, receiving commendation from its stakeholders for its evaluation and responsiveness to the public’s concerns. The Board’s accomplishments also include measurable progress in the key areas as identified by the Committees. Additionally, the Board has prioritized addressing the Committees’ concerns through statutory implementation; changes in regulatory language; meeting or exceeding enforcement timelines; and improving its daily functions and operations.

Although the Board has gone through a recent Board membership change, the current Board shares the Committees’ strong commitment and dedication to the protection of the public. The Board will continue collaborating and communicating with the Committees such that the attention and focus that the Board has demonstrated in the last two years endures.

Board’s 2022 Sunset Review Update to Issue #15:

The Board is committed to the continued regulation of licensed acupuncturists to protect the interests of the public.

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Section 12 – New Issues

This is the opportunity for the board to inform the Committees of solutions to issues identified by the board and by the Committees. Provide a short discussion of each of the outstanding issues, and the board's recommendation for action that could be taken by the board, by DCA or by the Legislature to resolve these issues (i.e., policy direction, budget changes, legislative changes) for each of the following:

1. Issues raised under prior Sunset Review that have not been addressed.

None.

2. New issues identified by the board in this report.

The Board has heard from stakeholders regarding the treatment modality 'Asian Massage'. This modality is included in an acupuncturist's scope of practice such that they can perform or prescribe its use. The challenge is that this modality is referred to as manual therapy in the allied health fields, and can create confusion for the public and consumers, let alone other adjacent industries not familiar with acupuncture. Additionally, the term 'Asian Massage' may be misconstrued by the public and consumers as referring to illegal black market sexual services.

Stakeholders have requested that the Board seek to change the term 'Asian massage' in the scope to 'manual therapy and massage'.

3. New issues not previously discussed in this report.

None.

4. New issues raised by the Committees.

None.

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Section 13– Attachments

Please provide the following attachments:

- A. Board’s administrative manual.
- B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).
- C. Major studies, if any (cf., Section 1, Question 4).
 - a. 2019 Fee Study
 - b. 2021 Occupational Analysis
- D. Year-end organization charts for last five fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).
- E. Additional Attachments
 - a. 2018 – 2022 Strategic Plan
 - b. Section 2, Question 6 – Enforcement Quarterly Performance Measures 2017 – 2021
 - c. Section 2, Question 6 – Enforcement Annual Performance Measures 2017 – 2021
 - d. FY 17-18 to 21-22 Consumer Satisfaction Survey Reports