

BACKGROUND PAPER FOR THE California Acupuncture Board

**(Joint Oversight Hearing, March 17, 2014, Senate Committee on
Business, Professions and Economic Development and the Assembly
Committee on Business, Professions and Consumer Protection)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE CALIFORNIA ACUPUNCTURE BOARD

BRIEF OVERVIEW OF THE CALIFORNIA ACUPUNCTURE BOARD

History of the Board

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

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

In 1980, the law was amended to: 1) abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority; 2) expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that Oriental (Asian) massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and, 3) provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the MBC's fund. Most of these statutory changes became effective on January 1, 1982.

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

(SB 1980, Chapter 991, Statutes of 1998) and removed the Committee from within the jurisdiction of the Medical Board of California (SB 1981, Chapter 736, Statutes of 1998).

SB 248 (Chapter 659, Statutes of 2005) repealed the 9 member Board and reconstituted the Board effective January 1, 2006.

Function of the Board

The Acupuncture Board (Board) regulates the practice of acupuncture and Asian medicine in the State of California. As of fiscal year 2012/2013, the Board licensed 16,874 individuals.

The practice of acupuncture, as defined in Business and Professions Code (BPC) § 4927, involves the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. BPC § 4937 authorizes a licensed acupuncturist to engage in the practice of acupuncture and to perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain and restore health. BPC § 4937 gives acupuncturists some additional authority to practice a number of other forms of Asian treatment. However, as set out in subdivision (b), these treatments (unlike the practice of acupuncture itself) are not restricted to the acupuncture profession.

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

The Acupuncture Licensure Act provides that the “Protection of the public shall be the highest priority of the Acupuncture Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” In concert with this statutory mandate, the Board’s 2013-2017 Strategic Plan states, “The mission of the Acupuncture Board is to protect, benefit and inform the people of California by exercising the licensing, regulatory and enforcement mandates of the Acupuncture Licensure Act and Acupuncture Regulations.”

The Strategic Plan also included a vision statement which indicates, “[Our vision is] a California with the greatest health and well-being through access to excellent primary health care in acupuncture.”

The Legislature has mandated that the acupuncture members of the Board must represent a cross-section of the cultural backgrounds of the licensed members of the profession. Members of the Board are appointed for a term of 4 years. Each member may serve no more than 2 full terms. As a result, the Board is currently composed of seven members with a public majority (e.g., 4 public members and 3 professional members). Five members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Pro Tempore. Four members of the Board, including at least one member who is an acupuncturist, constitutes a quorum necessary for the Board to conduct business.

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

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
<p>Nian Peng “Michael” Shi, professional member has been an adjunct professor at the American College of Traditional Chinese Medicine since 2009 and clinical director at Wellspring Clinic since 1991. He was an associate acupuncturist with Pacific Complementary Medicine Center from 1994 to 2005. Mr. Shi served as an expert examiner for the California Acupuncture Licensing Examination Committee from 1995 to 1996 and an expert item writer for the California Acupuncture Committee from 1992 to 1995.</p>	7/2/13	6/1/17	Governor
<p>Jamie Zamora, public member, is an Assistant Director for the State Government Relations Unit within the UCLA Government and Community Relations Department. He is a former Congressional Aide in the district office of U.S. Congresswoman Linda T. Sanchez. His career in public service began as a Senator Richard G. Polanco Public Policy Fellow where he served with the California Debt and Advisory Commission within the California State Treasurer's Office and in the Office of Assemblymember Majority Leader Dario Frommer. Additionally, he served as a Pedro Zamora Public Policy Fellow with AIDS Action Council, in Washington, DC.</p>	8/21/13	6/1/17	Senate Rules Committee
<p>Francisco H. Hsieh, public member, has been a political and business consultant, with clients at the local, state, and federal levels since 1970. Most recently, Mr. Hsieh was a Special Assistant for former Assembly member, Fiona Ma. He has previously served on the Commission on Asian and Pacific Islander American Affairs, as member of the California World Trade Commission, and on the California Transportation Advisory Board. Mr. Hsieh actively promotes San Francisco internationally as a member of the San Francisco-Shanghai Sister City Committee, and as former co-chair of the San Francisco-Taipei Sister City Committee.</p>	6/1/13	6/1/17	Speaker of the Assembly
<p>Jeannie Kang, professional member, has been chief executive officer and president at Serenity Total Acupuncture Treatment Center since 1998 and a guest lecturer at South Baylo University since 2007. She was a lecturer of master case studies at the American Association of Oriental Medicine in 2007.</p>	8/21/13	6/1/17	Governor
<p>Kitman Chan, public member, has been deputy publisher of the Meizhou Huaren Wenyi magazine since 2007 and owner of Kitman Chan CPA since 1984. He is a member of the California Society of Certified Public Accountants.</p>	8/21/13	6/1/17	Governor
<p>Hildegard Aguinaldo, public member, has been an associate at Lewis Brisbois Bisgaard and Smith LLP since 2008. She was deputy of health and legal affairs at the Office of Los Angeles City Councilmember Richard Alarcón in 2008, a law clerk at the Los Angeles City Attorney's Office Airport Division from 2006 to 2007 and administrative specialist for health education at the Kaiser Foundation Hospital from 2004 to 2005. Aguinaldo is a community board member of the Northridge Hospital Medical Center and commissioner on the Los Angeles County Hospitals and Health Care Delivery Commission.</p>	8/21/13	6/1/17	Governor
<p>Vacant, professional member</p>			Governor

The Board has four subcommittees, each of which consists of three or more board members. The members are appointed by the ChairPresident to review, discuss, deliberate, hear public comment and vote on any issue(s) that pertain to the specific subcommittee's jurisdiction. The subcommittees bring

forth recommendation(s) to the full Board to discuss and take possible action. The subcommittees and their purposes are as follows:

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

Fiscal and Fund Analysis

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

The normal license renewal cycle is every two years with the exception of first time renewals whose initial license period ranges from 13 to 23 months. All acupuncturists renewing their license are required to complete and list 50 hours of board approved continuing education courses on their renewal application and sign under penalty of perjury. If they are renewing their license for the first time, the hours vary from 35 to 50 units required. The Board has not had a fee change in the last ten years.

Fee Schedule and Revenue							
Fee	Current Fee Amount	Statutory Limit	FY 2009/10 Revenue	FY 2010/11 Revenue	FY 2011/12 Revenue	FY 2012/13 Revenue	% of Total Revenue
Other Regulatory Fee							1.5%
Duplicate Renew Receipt	\$10	\$10	\$1	\$1	\$1	\$1	
Endorsement	\$10	\$10	\$1	\$1	\$1	\$1	
Duplicate Cert – Add'l Office	\$15	\$15	\$5	\$5	\$5	\$5	
CE Approval Fee	\$150	\$150	\$32	\$29	\$42	\$40	
Licenses & Permits							33%
App Fee - Schools	\$1,500	\$3,000	\$5	\$3	\$6	\$3	
App Fee – Acupuncture	\$75	\$75	\$67	\$54	\$59	\$69	
Re-Exam Fee – Acupuncture	\$550	\$550	\$212	\$179	\$189	\$221	

App Fee – Tutorial Supvr	\$200	\$200	\$3	\$3	\$3	\$3	
App Fee – Tutorial Trainee	\$25	\$25	\$0	\$0	\$0	\$0	
Exam Fee – Acupuncture	\$550	\$550	\$422	\$339	\$366	\$424	
Initial Cert – Acupuncture	\$325*	\$325	\$161	\$159	\$144	\$156	
Renewal Fees							65%
Biennial Renewal Fee – Acupuncture	\$325	\$325	\$1,445	\$1,640	\$1,590	\$1,720	
Annual Renewal – Tutorial Supvr	\$50	\$50	\$1	\$1	\$1	\$1	
Annual Renewal – Tutorial Trainee	\$10	\$10	\$0	\$0	\$0	\$0	
Delinquent Fees							.5%
Delinquent Renewal – Acupuncture	\$25	\$25	\$11	\$12	\$12	\$13	
Delinquent Renewal – Tutorial Trainee	\$25	\$25	\$0	\$0	\$0	\$0	
Delinquent Renewal – Tutorial Supvr	\$25	\$25	\$0	\$0	\$0	\$0	

* Fee is pro-rated based on the date the license is issued and the birth month of the applicant. Fee varies from \$176.00 for 13 months to 325.00 for 24 months.

The current reserve level for the Board is \$7.9 million. The current spending level is \$1.9 million. The Board has an annual operating budget of approximately \$2.8 million. The Board’s anticipated expenditures for FY 2013/2014 are \$2.4 million. The Board loaned the General Fund \$5 million in Fiscal Year 2011/12. That loan is scheduled to be repaid with interest in FY 2015/16. The Board spends approximately 34% of its budget on its enforcement program followed by examination administration at 32%.

The Board's current budget is roughly equivalent to the annual revenue levels. The expenditure levels are significantly lower than the budgeted amount so there is no immediate concern regarding the need to raise fees. However, the expenditure levels have remained low due to understaffing and vacancies. As the Board fills vacancies and adds staff, its expenditures will increase to close to its revenue levels. As it has more enforcement staff, enforcement expenditures will increase. Similarly, overhead expenditures are expected to increase when “BreEZe” is implemented. At this point, the Board's fiscal outlook is healthy and balanced.

Fund Condition						
(Dollars in Thousands)	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Beginning Balance	4785	5279	5830	1404	2090	1881
Revenues and Transfers	2367	2437	-2594	2637	2601	3114
Total Revenue	2367	2437	2406	2637	2601	3114
Budget Authority	2434	2535	2564	2751	2797	2853
Expenditures	1864	1945	1860	1935	2797	2853
Loans to General Fund	0	0	-5000	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
Fund Balance	5286	5764	1367	2090	1881	2142
Months in Reserve	32.5	37	8.4	8.9	7.9	8.8

Expenditures by Program Component								
	FY 2009/10		FY 2010/11		FY 2011/12		FY 2012/13	
	Personnel Services	OE&E						
Enforcement	\$51,427	\$515,044	\$82,734	\$555,055	\$85,786	\$509,966	\$58,284	\$513,111
Examination	\$102,854	\$426,687	\$91,927	\$462,489	\$85,786	\$425,567	\$97,140	\$473,193
Licensing	\$51,427	\$60,478	\$45,963	\$62,673	\$42,893	\$54,859	\$48,570	\$67,601
Administration	\$224,693	\$181,433	\$214,275	\$188,018	\$243,692	\$165,228	\$217,682	\$203,243
Education	\$51,427	\$60,478	\$45,963	\$62,673	\$42,893	\$54,859	\$38,856	\$54,081
DCA Pro Rata		\$149,690		\$155,198		\$174,655		\$182,667
Diversion (if applicable)								
TOTALS	\$481,828	\$1,393,810	\$480,862	\$1,486,106	\$501,050	\$1,385,134	460,532	\$1,493,896

In probationary cases, the Board's probation monitor ensures that cost recovery is paid in full by the end of the licensee's probation term. If there is 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. In revocation and surrender cases, where cost recovery was also ordered and respondent has failed to pay, the Board submits his or her information to the accounting office to forward to the Franchise Tax Board's Interagency Intercept Collections Program (FTB IIP).

In FY 2012/13 nine cost recovery cases were established that amounted to \$54,911. These were cases involving probation, revocation and public admonishments. In addition to the nine cost recovery cases established in FY 2012/13, there were 24 prior established cases. Outstanding cost recoveries are sent to the FTB IIP. Even with having submitted the majority of outstanding cost recoveries to the FTB IIP, the Board has only received four percent of their outstanding total through the program. Based upon their total outstanding cost recovery, with a four percent reimbursement rate, it is estimated that approximately \$171,853.81 is uncollectable.

Staffing Levels

The Board's Executive Officer is appointed by the Board. The current Executive Officer, Terri Thorfinnson, has served as Executive Officer since September 2012. Her prior position was as the Chief at the Office of Women's Health located within the Department of Health Care Services and the Department of Public Health. For FY 2013/14, the Board has eight permanent staff positions and two temporary staff. There are no vacancies. The positions and their respective duties are delineated below.

- **Executive Officer** - Oversees and is responsible for all of the programmatic functions and management of staff as well as Executive Officer functions;
- **Enforcement** - One staff person for enforcement including probation;
- **Examinations** - Two staff persons for examinations including foreign applicant review, cashiering and exam administration;
- **Licensing** - One staff person for licensing including issuing of licenses, processing renewals and fingerprint clearances;
- **Education** - One staff person for school approvals, education oversight and enforcement, CE course and provider approval;

- **Administration** - Two staff persons for administrative functions such as contracts, budgets, procurement;
- **Policy and Regulation**- One staff person for promulgating regulations, legislation and website.

Licensing

To date the Board has licensed approximately 16,874 acupuncturists. The Licensing Program of the Board provides public protection by ensuring licenses are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would meet grounds for denial.

The Board's established performance expectations are that all new license applications are processed within 38 days. Currently, the Board is processing applications within 40 days. For incomplete or deficient applications, the processing time is approximately 58 days. The Board issues a license upon approval of the application and supporting documents.

The Board requires primary source documentation for any educational transcripts, experience records, license verification from other states and professional certifications. As part of the license process, the Board requires all applicants to submit fingerprint images in order to obtain criminal history background checks from the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI).

School Approval

The Board establishes standards for approval and approves the training programs and in particular the curriculum within institutions and colleges offering education and training programs in the practice of acupuncture and oriental medicine. BPC § 4938 establishes the Board's authority to approve acupuncture schools. Section 4939 also requires schools in California to be approved by the Bureau of Private Postsecondary Education (BPPE) and for out-of-state schools, an appropriate "governmental" educational authority using equivalent standards.

There are currently 36 schools/training programs approved by the Board (21 in California and 15 in other states). The Board does not have the authority to approve international schools. Approved Training programs are reviewed every year through their Annual Report to monitor changes to the institution, faculty and curriculum. Currently, due to a staffing shortage, the annual review consists of a desk audit of the annual reports submitted to the Board.

The approval process requires extensive review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures and with financial solvency. Following the review of the application, a full on-site visit is performed to review implementation of application policies and procedures, facilities and clinical training.

The Board is currently exploring the feasibility of a Memorandum of Understanding (MOU) with BPPE. In the meantime, the Board continues to work closely with BPPE on school enforcement and school approvals.

Continuing Education

The Board requires, as a condition of biennial license renewal, that licensees complete 50 hours of CE. Licensees sign an affidavit that the number of CE units (hours) have been met. The Board does not

require any verifying documents to be submitted due to space issues at the Board office. The Board charges a \$150.00 fee for CE providers, but does not charge a fee for each course the provider offers.

The Board is in the process of conducting 600 CE compliance audits, 85% of completed audits have been found to be in full compliance with CE requirements. The limited numbers of audits were due to a lack of staff.

Enforcement

The Board's statistics show that the DCA Performance Measurement expectations are being met. Enforcement data is showing a trend in consumer complaints decreasing and convictions/arrests steadily increasing over time. Accusation process times, which are reflective of the DOJ's process time to prepare an accusation, have improved.

The biggest performance barrier is the lack of adequate enforcement staff to function efficiently and oversee every stage of enforcement. A second barrier is the time it takes for thorough analysis and review after an investigation is completed. Cases are first reviewed by enforcement staff, the Executive Officer, and expert consultant and then a deputy attorney general to determine acceptance for case prosecution. To expedite this process, staff meets regularly with the Executive Officer, and combines analysis efforts. Staff is utilizing a mix of expert consultants and is requesting that experts expedite their reviews to allow staff's second review in a more timely fashion. Staff prioritizes checking on the status of disciplinary cases pending with the DOJ on a regular basis as a way to try to impact the time the case is with a deputy attorney general.

The third barrier is the arrest cases that can span months to years before a conviction results. The Board only has jurisdiction over convictions, not arrests. The Board can only commence an enforcement action once a licensee has been convicted. However, the Board has the authority and ability to bring an accusation in the event a licensee has been arrested and charged with crime that may pose a risk to public safety. In those cases, the Board can seek to have the DOJ appear in the matter representing the Board to request the assigned Administrative Law Judge to issue an order to suspend the license pending the outcome of the criminal matter.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Senate Business, Professions and Economic Development Committee in 2012. At that time, the Committee identified numerous issues for discussion.

On November 1, 2013, the Board submitted its required Sunset Review Report to the Committees. In the report, the Board described actions it has taken since its last Sunset Review Hearing. Below are the Board's responses to the issues raised during the last Sunset Review Hearing. For a complete history of the background of these issues see, "Background Paper for Hearing March 12, 2012."

- **Issue 1:** The Board was found to be lacking in its overall operation. The Board was asked to submit a corrective action plan to implement the following operational management tools:
 - 1) Establish a tracking mechanism for approved regulatory changes and other instructions given to staff.
 - 2) Use committees in a more open and productive manner.
 - 3) Explain why it has a history of cancelling meetings.

- 4) Explain if it believes it is meeting the goals and objectives of its Strategic Plan of 2007.
- 5) Update its strategic plan and develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met.
- 6) The Board should be given a written status report on the action plan at each board meeting.
- 7) Board meetings should be webcast, when feasible.
- 8) Board meeting materials should provide sufficient information to permit board members to make informed decisions and the public ability to understand the issues discussed.

Board Response:

- 1) *The Board created a regulatory tracking system and introduced it at the October 25, 2013 Board meeting.*
 - 2) *The Board restructured the committees and the meetings are now public.*
 - 3) *Since the Board was reconstituted in June of 2013, it has only cancelled one meeting due to a lack of a quorum due to the amount of time it took to appoint new members to the Board.*
 - 4) *The Board created a 2013-2017 plan that was adopted on October 25, 2013 and it plans to implement an action plan in February of 2014.*
 - 5) *See number 4.*
 - 6) *See number 4.*
 - 7) *The Board indicated that it webcasts meetings if logistically feasible.*
 - 8) *The Board noted that over the past year, informational materials have been provided.*
- **Issue 2:** The Governor should appoint as soon as possible two of the licensed acupuncturists to the Board and the requirement that one licensed member be in attendance at a Board meeting in order to establish a quorum should be removed.

Board Response: *In October of 2012, a sixth member was appointed to the Board and in February 2013 the seventh appointment was made. In June of 2013, one member was reappointed to the Board. In August of 2013, five new members were appointed to the Board. There is one remaining vacancy.*

- **Issue 3:** It is time for the Board to relinquish its involvement in trying to clarify scope of practice for acupuncturists. Any scope of practice changes should be referred to the Legislature and certainly should not be attempted pursuant to regulations.

Board Response: *The Board indicated, "...there has been some reliance on a legal opinion interpreting the scope of practice authorized by the Acupuncture Act. The Board agrees that it does not have the authority to make scope of practice changes or clarifications."*

- **Issue 4:** The Board should enter into a Memorandum of Understanding (MOU) with the BPPE to assure there is no duplication of site visits. It should also be required that these acupuncture schools either have currently, or obtain within a reasonable time, accreditation from an accrediting agency recognized by the United States Department of Education. Consideration could be given, based on the success of accreditation of these schools, to eliminating the Board's responsibility and need for approving acupuncture educational programs.

Board Response: *The Board has not had time to discuss this issue due to the newly appointed members. The Board also noted that it is, "currently exploring the feasibility of a Memorandum of Understanding (MOU) with BPPE."*

- **Issue 5:** The Board should review its CE course approval and auditing processes to determine if it has sufficient resources to operate an effective CE oversight program. The Board should seek legislative authority to assess a fee for CE course approvals. If appropriate, the Board should submit a Budget Change Proposal to obtain staff dedicated to conducting increased CE audits.

Board Response: *The Board has not recently audited any provider due to staff shortages. The Board has not sought legislative authority to assess a fee for course approvals. The Board submitted a BCP for staff, but due to it being submitted after the BCP deadline, it was rejected by DCA. The Board submitted another BCP in Spring of 2013 and has been approved for an additional 3 staff, one of whom will be dedicated to education oversight and enforcement.*

- **Issue 6:** Because of the problems the Board has encountered with providing a state licensing examination for acupuncture, and the associated costs of this exam, and because of the existence of a national examination which appears to be adequate to test entry-level practitioners, the Board should justify to the Committee why it believes a state only examination for the practice of acupuncture in this state is necessary.

Board Response: *The Board indicated that it has not had time to discuss this issue. Due to another testing issue that arose after the last Sunset Review Hearing, the Board hired OPES and an independent reviewer to investigate the August 2012 administration of the examination. The results found that the August 2012 examination was valid. The Board indicated its commitment to conduct an audit of the NCCAOM examination to compare it to the CALE.*

- **Issue 7:** In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling its disciplinary cases, the following recommendations should be considered:
 - 1) Continue to reduce the amount of time to process and close complaints.
 - 2) A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.
 - 3) Making Case Processing and Aging a major focus of the Board's improvement planning.
 - 4) Prioritize the review of aged cases.
 - 5) Establish reasonable elapsed time objectives for each step of the case processing.
 - 6) Monitor performance by establishing regular oversight of case progress and staff productivity.
 - 7) A policy or procedures for supervisory staff in performing case reviews should be established.

Board Response:

- 1) *The Board has been erratic in meeting its performance targets and the average processing time has actually increased over the past two years due to staff vacancies and increasing licensing workload.*
- 2) *The Executive Officer has set up weekly meetings with enforcement staff to prioritize aging cases. The Board also indicated that, "The Board is in the process of creating training manuals for new staff."*
- 3) *See number 1 and 2.*
- 4) *See number 1 and 2.*
- 5) *See number 2.*

- 6) *See number 2. The Board also indicated that it, "...has implemented job related efficiencies," but does not specify what these are.*
- 7) *See number 2.*

- **Issue 8:** The Board should develop a form to standardize 801 reports.

Board Response: *The Board did not provide this information in its Sunset Review Report. Further communication indicates that the Board attempted to create the form. However, legal counsel advised them that a change needed to be made in statute. The Enforcement Committee discussed the need for standardizing 801 reports and the Board approved seeking such a legislative change.*

- **Issue 9:** Pursuant to BPC § 138, the Board should adopt regulations to require acupuncturists to inform their patients that they are licensed by the Acupuncture Board.

Board Response: *The Board indicated that it, "...intends to promulgate regulations to post such required notice."*

- **Issue 10:** The Board should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas.

Board Response: *The Board indicated that it will have to consider raising fees to either renewals and/or licensing examination, but currently the Board continues to operate with a surplus. As staffing levels increase, staffing expenditures will increase, and it is anticipated that enforcement costs will increase as well and both may push expenditures beyond current revenues.*

- **Issue 11:** The Board should explain to the Committee the impact of being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases and oversight of acupuncture schools.

Board Response: *The Board indicated that, "understaffing has been an issue for the Board for the past decade. The Board has weathered years of consecutive rounds of budget cuts, staffing-reduction drills and hiring freezes, all which were beyond the Board's control. Each year the Board has been reviewed by the committee, staffing levels have been an issue that has remained unresolved."*

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA ACUPUNCTURE BOARD

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

STAFFING ISSUES

ISSUE #1: What can be done to assist the Board in increasing their staff to reduce backlogs?

Background: In its recent report to the Committees, the Board indicated that there have been various constraints that have affected its ability to carry out its mandates. Specifically, the following deficiencies were noted:

1. Minimal CE audits have been conducted
2. The Board has not met enforcement performance targets
3. Inconsistent intake and investigation timelines
4. Late posting of Board materials and agendas to the website
5. Regulatory implementation work is backlogged
6. Education site visits have been severely limited
7. Little to no consumer outreach and education efforts have been initiated
8. No participation in national organizations
9. Inability to process licenses in a timely manner

The Board reported that these deficiencies are directly related to a lack of staff that would be responsible for completing these salient tasks. Currently, the Board has an Executive Officer and seven additional support staff. The Board requested a total of 10.5 staff in their most recent Fall and Spring BCP, but only 3 from the Spring BCP were granted. The Board reported that with the exception of the examination staff, all other functions are performed by one staff member with no back-up. Similarly, there is no other manager to act as back-up to the Executive Officer.

The Committees are extremely concerned about the Board's ability to regulate the profession as it has limited staff which prevents them from performing essential tasks that will help ensure consumer protection.

Staff Recommendation: *The Board should confer with administrative staff of the DCA to review the workload of the Board staff and evaluate if their staffing levels are adequate to manage the*

workload. In the meantime, the Board should consider hiring temporary/intermittent staff to help ease the workload and backlogs.

TECHNOLOGY ISSUES

ISSUE #2: What is the status of BReEZe implementation by the Board?

Background: The BreEZe Project will provide DCA boards, bureaus and committees with a new enterprise-wide enforcement and licensing system. BreEZe will replace the existing outdated Legacy systems and multiple “work around” systems with an integrated solution based on updated technology.

BreEZe will provide all DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve DCA’s service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals and process payments through the Internet. The public will also be able to file complaints, access complaint status and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

BreEZe is an important opportunity to improve the Board’s operations to include electronic payments and expedite processing. Staff from numerous DCA boards and bureaus have actively participated with the BreEZe Project. Due to increased costs in the BreEZe Project, SB 543 (Steinberg, Chapter 448, Statutes of 2011) was amended to authorize the Department of Finance (DOF) to augment the budgets of boards, bureaus and other entities that comprise DCA for expenditure of non-General Fund moneys to pay BreEZe project costs.

The Board was originally slated to begin using BreEZe in January of 2014, but has been notified that it is has been moved to the third release phase. It would be helpful to update the Committees about the Board’s current work to implement the BreEZe project.

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

ISSUE #3: What has prevented the Board from providing information to the public via its listserve, website and webcast?

Background: In the 2012 Sunset Review Background Paper, the Committee highlighted the Board’s lack of transparency in regards to utilizing technology to provide materials to the public. The Board had displayed difficulty posting agendas to the website and publicizing meeting notices at least 10 days prior to Board meetings as required by law. Since the report, the Board has shown improvement in this area. It has taken down old materials from the website and has begun posting examination scores and meeting agendas in a timely fashion. However, as the Board highlighted in its 2014 Sunset Review Report, “...this is an area that the Board still struggles to achieve consistency and timeliness.” Notices for meetings are not always sent out to the listserve on a consistent basis and there is a delay in how long it takes before webcasts are uploaded to the Board’s website. In addition, not every Board meeting is webcast.

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

ENFORCEMENT ISSUES

ISSUE #4: Should the Board use the National Practitioner Databank to check the background of applicants for licensure?

Background: The Board requires both FBI and DOJ fingerprint results prior to licensing. The Board also requires license verification from all healing arts boards that issued a license or certificate to the applicant as one of the verification requirements is to identify prior disciplinary actions. The applicant is also compelled to disclose prior convictions, pending convictions and disciplinary actions taken by any healing arts licensing authority on the application for licensure.

Though other states utilize the National Practitioner Databank, which includes information about an applicant or licensees disciplinary actions, the Board does not check the National Databank. The Board indicated:

... We do not check the national databank prior to issuing or renewing a license because we do not have authorized query capability, which we must pay to obtain. We are also exploring how other boards use the national data base (sic) services. Through our research with other Boards, it appears some Boards only conduct queries on out of state applicants. To simply check a set number of licensees per year would not be a significant increase in enforcement costs... We are still at the exploration stage in assessing costs and benefits and logistics.

The Committees are concerned with the protection of the public and the effective operation of the profession. As such, it is imperative that methods, such as utilizing the National Practitioner Databank, be employed to thoroughly examine a potential licensee's professional background and criminal history.

Staff Recommendation: *The Board should set procedures in place to begin checking the National Practitioner Databank. If the cost of continuous query services is too high, the Board may consider conducting periodic checks of sets of licensees. The Board should confer with other boards to gain insight about how other boards utilize the National Practitioner Databank.*

ISSUE #5: Why has there been a delay in promulgating the consumer protection regulations?

Background: In 2009, then Senator Gloria Negrete McLeod introduced SB 1111, a bill that included various consumer protection provisions for all DCA healing arts boards. The bill was not passed, but then DCA Director, Brian Stiger, sent a memorandum to all of the boards. It identified nine provisions that each board should adopt via regulation.

In 2013, Committee staff contacted all DCA healing arts boards to inquire about the status of promulgating these regulations. According to the Board's Sunset Review Report, the Board directed staff to commence rule-making on the regulatory package in October 2013, and the rule-making file was scheduled to be submitted to the Office of Administrative Law in November 2013. However, at the February 2014 Board meeting, a member of the Board noted there had been a considerable delay in responding to the four year old request for the Board to promulgate the regulations. The Board's legal counsel advised the Board to utilize model language that other Boards have utilized and promulgate the regulations as soon as possible.

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

ISSUE #6: Why has it taken the Board over two years to establish guidelines and training manuals?

Background: In the 2012 Sunset Review Report, the Committee highlighted issues that the Board was encountering in regards to enforcement duties. The Committee recommended to the Board, “A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff.” However, in the Board’s recent Sunset Review Report, the Board notes that it, “... is in the process of creating training manuals for new staff.”

Staff Recommendation: *Public protection should be the primary concern of the Board. As such, an adequate enforcement program is critical. The Board should explain to the Committees why the guidelines for case assignments have not yet been finalized.*

CONSUMER NOTICE ISSUE

ISSUE #7: Should the Board promulgate regulations pursuant to a statute enacted in 1999, to require acupuncturists to inform patients that they are licensed by the Acupuncture Board?

Background: BPC § 138 requires that DCA board and bureaus, including healing arts boards such as the Acupuncture Board, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner’s status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner.

During the 2012 review of the Board, the Committee indicated that the MBC had promulgated regulations pursuant to § 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC including the Board’s contact information. The Committee encouraged the Board to do the same. However, in its Sunset Review Report, the Board noted, “The Board intends to promulgate regulations to post such required notice.”

Staff Recommendation: *Pursuant to BPC § 138, the Board should adopt regulations to require acupuncturists to inform their patients that they are licensed by the Acupuncture Board.*

ADMINISTRATIVE ISSUES

ISSUE #8: Should the Board join professional regulatory associations?

Background: In the Sunset Review Report, the Board noted that it does not belong to any national, regional or local professional regulatory associations. The Committees believe that membership in such organizations is of value to the Board and the profession. Considering California has the largest population of acupuncturists in the nation, it is important for the Board to have a presence at these forums in order to ensure that the Board is well aware of current trends and practices in the profession.

Staff Recommendation: *The Board should advise the Committees why it does not belong to any professional regulatory associations. The Board should consider joining professional regulatory associations.*

ISSUE #9: What is contributing to the cashiering delays?

Background: In the Board’s 2013-2017 strategic plan, the Board has set a goal to work with the DCA to resolve cashiering delays. However, this issue is not highlighted in the Sunset Review Report.

Staff Recommendation: *The Board should advise the Committees about what has led to the cashiering delays.*

ISSUE #10: What are the impediments to the Board’s CE oversight functions?

Background: In the 2012 Background Paper, the Board was asked to review its CE course approval and auditing processes to determine if it has sufficient resources to operate an effective CE oversight program. The Board was also asked to seek legislative authority to assess a fee for CE course approvals.

In the Board’s Sunset Review Report, it indicates that there is still no verification of completion of the required CE credits for licensees. The reason for not requiring any verification documents is because there are space issues at the Board office. This past year, the Board only audited 600 CE applications of its licensee population (16,874 acupuncturists) due to staffing issues. At the time of their Sunset Review Report, the Board had not completed the audit.

Regarding the legislative authority to assess a fee for CE course approval, the Board responded in its Sunset Review Report that it has not sought legislative authority to assess a fee for course approvals. However, upon review of BPC § 4945, it appears that the Board already has legislative authority to assess a fee for courses. As the expense that is charged to CE providers for offering courses is only \$150.00, which permits the provider the ability to offer an unlimited number of courses, the Board may need to begin charging additional fees for courses.

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

EXAMINATION ISSUES

ISSUE #11: When will the Board conduct an audit of the NCCAOM examination(s)?

Background: The Board develops and administers its own licensing examination, the California Acupuncture Licensing Examination (CALE). The Board spent approximately \$571,000 on examination administration. The CALE is only offered only twice a year once in northern California and once in southern California. Conversely, most states automatically accept applicants who have passed a national examination administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). The NCCAOM examination(s) are offered in English, Chinese and Korean, they are computerized and are offered at multiple locations in states in which it is provided. California is the only state that does not utilize the national examination.

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

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

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

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

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

There have been longstanding issues with the CALE and subsequent requests to consider moving to a national examination. During the 1999 Sunset Review Hearings, the Committee asked the Board to evaluate the NCCAOM examination(s) and compare it to the CALE. This request was echoed again during the 2002, 2005 and 2012 Sunset Review Hearings. To date, no such comparison has taken place. The historical request to compare the examination stems from the aforementioned illustrated problems with examination administration, translation and the fact that the examination is quite costly to the Board. In addition, because California is the only state that does not accept the NCCAOM examination(s), reciprocity is hampered for acupuncturists who desire to practice across state lines.

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

SCHOOL OVERSIGHT/ACCREDITATION ISSUE

ISSUE #12: Should the Board continue to be responsible for the approval of schools and colleges offering education and training in the practice of acupuncture and should schools of acupuncture be required to be accredited?

BPC § 4939 (a) requires the Board, on or before January 1, 2004, to “establish standards for the approval of schools and colleges offering education and training the practice of an acupuncturist, including standards for the faculty in those schools and colleges and tutorial programs.” Section 4939 (b) states that the training program shall include a minimum of 3,000 hours of study.

There are approximately 65 acupuncture schools throughout the U.S., 36 of which are approved by the Board. Twenty one of the California-approved schools are located in California and 15 are located in other states. Sixty of the 60 schools are accredited by the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM).

The Board approves the schools’ Acupuncture Training Programs, in particular their curriculum programs, to ensure they meet the standards adopted by the Board. The school Training Program approval process requires review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and financial solvency. An onsite visit is performed to review implementation of policies and procedures, facilities and clinical training. According to the Board’s 2012 Sunset Review Report, the Board and the Bureau of Private Postsecondary Education (BPPE) “may perform a joint onsite visit, if the education institution has applied to both entities for approval.” In the 2012 Background Paper to the Board, the Committee suggested that the Board create a MOU with the BPPE regarding school site visits. The Board reported in its 2014 Sunset Review Report that it is in the process of working with the BPPE.

The ACAOM is the nationally recognized accrediting agency for the field of acupuncture and oriental (Asian) medicine. While many other states defer to ACAOM accreditation as being a sufficient condition for applicants to take the licensing exam in their states, California does not accept accreditation by ACAOM, nor does it require graduation from an accredited school as condition of being eligible to take the licensing exam. Instead, it conducts its own school evaluation and approvals.

In 2004, the Little Hoover Commission (LHC) conducted a comprehensive comparative analysis of the school approval process of the ACAOM, the approval process of the Board of Post-Secondary and Private Education (BPPE) and the Board approval process. The LHC’s report concluded that the processes used by ACAOM appeared to be superior to the school approval process used by the Board and could be used by the state to ensure the quality of education for potential licensees.

In 2009, the Board sponsored legislation (AB 1260, Huffman) that would have required accreditation by a national accrediting agency recognized by the United States Department of Education (such as ACAOM) and would have eliminated the tutorial program as an avenue to licensure. According to the Board, the bill was opposed by one of the acupuncture associations and eventually it was amended to remove all reference to acupuncture.

Because California performs its own school approvals, there are a number of consequences and problems. These include:

- Students who are educated in accredited schools that are not approved by California receive only partial credit for their training. If they wish to gain licensure in California, they must

complete a Board approved training program.

- The Board is slow to approve applications for schools located outside of California due to budget constraints.
- The Board has recently begun conducting ongoing site reviews. However, because of staff vacancies, this has been a slow process.

In the 2012 Background Paper to the Board, the Committee wrote:

“...It should also be required that these acupuncture schools either have currently, or obtain within a reasonable time, accreditation from an accrediting agency recognized by the United States Department of Education. Especially since the accrediting process for these schools appears to be superior to that of the Board. At some time in the future, consideration could be given, based on the success of accreditation of these schools, to eliminating the Board’s responsibility and need for approving acupuncture educational programs.”

Staff Recommendation: *Considering the Board’s demonstrated difficulty with approving schools and the significant amount of resources that it takes for the Board to oversee this process, the Board should act on recommendations made during prior Sunset Review Hearings and seek legislative changes to require all schools of acupuncture to obtain accreditation from an agency approved by the U.S. Department of Education.*

CONTINUED REGULATION OF ACUPUNCTURISTS BY THE BOARD

ISSUE #13: Should the licensing and regulation of acupuncturists be continued and be regulated by the current Board?

Background: The health, safety and welfare of consumers are protected by a well-regulated acupuncture profession. Despite a quickly growing profession and the impact of a lack of staff, the newly formed Board has stated a strong commitment to protecting the public, ameliorating past deficiencies and improving efficiency in its operations. As has been recommended to prior Board members, the current Board should make every effort to ensure that its primary concern be the protection of the public and not over-involvement with the profession.

The Committees understand that the current Board members and staff inherited a program with little to no infrastructure and no institutional knowledge was passed down from prior Board staff. In recognition of this, Committee staff has reached out to the Board Executive Officer in an effort to ensure that the Executive Officer communicates the importance of addressing the concerns that were highlighted during the 2012 Sunset Review Hearing to the Board and Board staff. While the new Executive Officer has made laudable strides to improve Board operations, the Committees remains concerned about some of the outstanding tasks.

Of primary concern to the Committees are the aforementioned recommendations which were included in the 2012 Background Paper but have not been fully addressed to date. This leads the Committees to ask, “Where are the Board’s priorities? Will the newly formed Board continue down this road of selecting which issues it deems important while lacking in other critical functions?”

For example, the Board notes it is unable to purchase continuous query services from the National Practitioner Database, a service that is designed to help with enforcement. The Board indicates that this service is too expensive as it would cost the Board approximately \$70,000. However, the Board has expended resources on school site visits and has spent approximately \$571,000.00 per year on examination administration costs. Both of these tasks could be completed by national organizations more equipped to provide oversight and administration as has been recommended in *multiple* prior Sunset Review Reports of the Board.

Another example is the Board focusing too much time on practice-related issues e.g. at a recent committee meeting, a significant amount of time was spent on discussing the translations to the herb list study guide versus allowing the Board's subject matter experts to do this work. Similarly, during this same committee meeting, the committee members discussed how they might curtail the number of CE providers in California. These types of issues should not monopolize the Board's time.

The current Board should consider it a *priority* to direct its Executive Officer and staff to act on the following three recommendations prior to its next Sunset Review Hearing. These recommendations will put the Board back on track so that it might focus on *essential tasks* that it is lacking in such as enforcement, CE oversight and promulgating regulations:

- 1) Promulgate consumer protection and BPC § 138 regulations.
- 2) Conduct an occupational analysis of the acupuncture workforce, audit the NCCAOM examination(s) and pursue legislation that will provide students with the option to either take the CALE or the NCCAOM examination(s) until 2016, in preparation for the possible full adoption of the NCCAOM examination(s) thereafter.
- 3) Discontinue the Board's school approval process and instead pursue legislation to require that all schools be accredited by an accrediting agency approved by the U.S. Department of Education.

Staff Recommendation: *Recommend that the practice of acupuncture continue to be regulated by the current Board to protect the interests of the public. The Board should be reviewed by these Committees again in two years to specifically determine if the three identified issues have been addressed.*