



ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

Memo

To: Enforcement Committee

From: CAB Staff

Re: Proposed Prostitution Enforcement Regulatory Language

Date: January 17, 2014

Issue:

The Board needs additional regulatory language to address disciplinary actions related to prostitution in cases in which there is no conviction for prostitution.

Problem:

Prostitution cases involving businesses posing as acupuncture clinics are being dismissed by local District Attorneys leaving the Board no authority to discipline the licensed acupuncturist that either engages in prostitution or lends their license to businesses that are a front for prostitution.

Background:

Acupuncture and massage are two professions that are being used as fronts for illegal operations for human trafficking and prostitution. In the past several years, the Board has tried to crack down on prostitution by bringing enforcement actions against licensees who either engage in prostitution or lend their license to others who engage in prostitution. In bringing disciplinary actions against licensees, the Board has encountered some major barriers to successful prosecution. The main barrier is only being able to bring disciplinary actions in cases in which the licensed acupuncturist has been convicted of prostitution. Without a conviction, the Board is unable to discipline a licensee for allowing or engaging in prostitution at their office.

The Board is currently limited to the following Business and Professions Code sections in pursuing disciplinary action against licensees involved in prostitution.

4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to, the following:

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

731. (a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) for the first offense, and not to exceed five thousand dollars (\$5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

Discussion:

The current BP code sections clearly provide that prostitution and human trafficking would be considered unprofessional conduct subject to disciplinary action. However, this misconduct is tied to a conviction. The issue that we need to address is providing additional regulatory language that would allow Board action for cases of prostitution and/human trafficking in cases that do not result in a conviction. Typically, these cases do begin with investigation, charges filed but then they are dropped by the local District Attorney's Office leaving the Board without authority to discipline the licensee for unprofessional conduct.

The proposed solution is to borrow regulatory language from the Chiropractic Board that prohibits sex on the premises. This is simple and ties the prohibited actions to the conduct on the premises. Currently the Board regulates the condition of the office of licensed acupuncturists. Thus, the Board would have the authority to amend the "Condition of Office" section of our regulations to include language that prohibits any sexual acts on the premises. With this amendment, the Board would have the authority to bring disciplinary actions against licensees who violate this condition of office regulations. This would remove the major barrier to enforcement actions involving prostitution. Additionally, this regulatory change would allow the Board to crack down on licensees who engage in prostitution or lend their name to illegal operations.

The proposed language is currently used by the Chiropractic Board to regulate prostitution and unprofessional conduct. Thus, this is good model language for the Board to use and there is precedent that another Board uses this language to regulate similar illicit activities.

Proposed Regulatory Language:

Amend Condition of Office section 1399.450 to read as follows:

1399.450 Condition of Office.

(a) Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall have a readily accessible bathroom facility in accordance with Title 24, Part 2, Building Standards Code Sections 494A.1 and 1994 Uniform Building Code Section 2902.3

(b) Where an acupuncture license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, employees, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.

Recommendation: The committee approve the proposed regulatory language and make a recommendation to the Board.