

~~DEPARTMENT OF CONSUMER AFFAIRS~~

~~MEDICAL BOARD OF CALIFORNIA~~

~~ACUPUNCTURE COMMITTEE~~

~~**DISCIPLINARY**~~
~~**GUIDELINES**~~

~~1996~~



Acupuncture Board



Disciplinary Guidelines and Conditions of Probation

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.acupuncture.ca.gov.

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INTRODUCTION

The Acupuncture ~~Committee (AC) Board*~~ (Board) is a consumer protection agency with the primary mission of protecting consumers of acupuncture services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the AC Board has adopted the ~~following recommended guidelines for disciplinary orders~~ Disciplinary Guidelines and Conditions of Probation for violations of the Acupuncture Licensure Act.

This document, designed for use by attorneys, administrative law judges, acupuncturists, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

The terms and conditions of probation are divided into three general categories:

- 1) Optional Conditions are those conditions of probation which may be used to address the sustained violations and any significant mitigating or aggravating circumstances of a particular case;
- 2) Standard Conditions are those conditions of probation which should be used in all cases; and
- 3) Substance-Abusing Conditions are those conditions of probation that are required to be used in cases related to substance-abusing licensees.

Except as provided in the Board's Uniform Standards Related to Substance-Abusing Licensees, the AC Board recognizes that a rare individual case may necessitate a departure from these guidelines for disciplinary order. However, in such a rare case, the mitigating circumstances must be detailed in the "Findings of Fact" which is in every Proposed Decision or Stipulation. As the Board's highest priority in exercising its disciplinary function is public protection, additional terms and conditions of probation which would provide greater public protection may be imposed.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the AC Board expects outright revocation of the license. This is particularly true in cases of patient sexual abuse or bodily harm. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines would be expected.

Following Section 1, The Board's Uniform Standards Related to Substance-Abusing Licensees, you will find the probation and penalty guidelines that apply to all cases.

* Pursuant to Senate Bill 1980, effective January 1, 1999, the Acupuncture Committee is renamed the Acupuncture Board.

I.
THE BOARD'S UNIFORM
STANDARDS RELATED TO
SUBSTANCE-ABUSING
LICENSEES

THE BOARD'S UNIFORM STANDARDS RELATED TO SUBSTANCE-ABUSING LICENSEES

Pursuant to Business and Professions Code §315, the following standards are adopted by the Board and shall be adhered to for all cases involving a substance-abusing licensee.

1. Clinical Diagnostic Evaluations:

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

- holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
- has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
- is approved by the board.

2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

3. The clinical diagnostic evaluation report shall:

- set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
- set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
- set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

2. Removal from Practice Pending Clinical Diagnostic Evaluation

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a probation manager shall determine, whether or not the licensee is safe to return to either part-time or full-time practice. However, no licensee shall return to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope, pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

3. Board Communication with Probationer's Employer:

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

4. Drug Testing Standards:

The following standards shall govern all aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

| <u>Level</u> | <u>Segments of Probation/Diversion</u> | <u>Minimum Range of Number of Random Tests</u> |
|---------------------|---|---|
| <u>I</u> | <u>Year 1</u> | <u>52-104 per year</u> |
| <u>II*</u> | <u>Year 2+</u> | <u>36-104 per year</u> |

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee

shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier

License Type

Probation/Diversion Effective Date

General Range of Testing Frequency by/for Each Probationer/Diversion Participant

Dates Testing Requested

Dates Tested

Identify the Entity that Performed Each Test

Dates Tested Positive

Dates Contractor (if applicable) was informed of Positive Test

Dates Board was informed of Positive Test

Dates of Questionable Tests (e.g. dilute, high levels)

Date Contractor Notified Board of Questionable Test

Identify Substances Detected or Questionably Detected

Dates Failed to Appear

Date Contractor Notified Board of Failed to Appear

Dates Failed to Call In for Testing

Date Contractor Notified Board of Failed to Call In for Testing

Dates Failed to Pay for Testing

Date(s) Removed/Suspended from Practice (identify which)

Final Outcome and Effective Date (if applicable)

5. Participation in Group Support Meetings

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in

the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

6. Determining What Treatment is Necessary

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- Recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, severity of substance abuse, and
- threat to himself/herself or the public.

7. Work Site Monitor Requirements:

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

8. Procedure for Positive Testing

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

9. Procedures for a Confirmed Ingested Banned Substance

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

10. Major and Minor Violations & Consequences

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;

3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

11. Petition for Return to Practice

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program;
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse; and
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

12. Petition for Reinstatement

“Petition for Reinstatement” as used in this standard is an informal request as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable;
2. Demonstrated successful completion of recovery program, if required;
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated that he or she is able to practice safely; and
5. Continuous sobriety for three (3) to five (5) years.

II.
RECOMMENDED GUIDELINES
FOR DISCIPLINARY ORDERS AND
CONDITIONS OF PROBATION

TERMS AND CONDITIONS

Terms and conditions of probation are divided into ~~two~~ three categories. The first category consists of **optional terms and conditions** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **standard terms and conditions** which must appear in all proposed decisions and proposed stipulated settlements. The third category consists of **substance-abusing terms and conditions** which must appear in all proposed decisions and proposed stipulated settlements involving substance-abusing licensees.

To enhance the clarity of a proposed decision or stipulation, the AC Board requests that all optional and substance-abusing conditions that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions.

OPTIONAL TERMS AND CONDITIONS

Listed below are optional conditions of probation which the Board would expect to be included in any proposed decision as appropriate. The terms are not mutually exclusive, but can and should be combined with each other, as appropriate to a particular case. Other terms and conditions may be specified in stipulations for inclusion at the request of the AC Board depending on the unique aspects of an individual case.

Optional 1. Actual Suspension

As part of the probation, respondent is suspended from the practice of acupuncture for ____ days beginning with the effective date of this decision.

Optional 2. Psychological Evaluation

Within 90 days of the effective date of this decision and on a periodic basis thereafter as may be required by the AC Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by an AC Board appointed California licensed psychologist. The Board shall receive a current DSM-III-R diagnosis and a written report regarding the respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the AC Board deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the AC Board. The completed evaluation is the sole property of the AC Board.

If the AC Board concludes from the results of the evaluation that respondent is unable to practice independently and safely, he/she shall immediately cease practice and shall not resume practice until notified by the AC Board. If the Board concludes from the results of the evaluation that respondent would benefit from ongoing psychotherapy, respondent shall comply with the Board's directives in that regard.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

***NOTE:** Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the respondent or where there has been a history of abuse or dependency of*

alcohol or controlled substances. When appropriate, respondent shall be barred from rendering acupuncture services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the AC Board has accepted and approved the evaluation.

Optional 3. Physical Examination

Within 90 days of the effective date of this decision, respondent shall undergo a physical examination by a licensed physician and surgeon approved by the AC Board. Respondent shall bear all costs of such an examination. The AC Board shall receive the physician's report which shall provide an assessment of respondent's physical condition and capability to safely provide acupuncture services. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician providing written progress reports to the Board on a quarterly basis or as otherwise determined by the AC Board.

It shall be the respondent's responsibility to assure that the required progress reports are filed in a timely manner.

***NOTE:** This condition permits the AC Board to require the probationer to obtain appropriate treatment for physical problems/disabilities which could affect safe practice of acupuncture. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.*

Optional 4. Practice Monitor

Within 90 days of the effective date of this decision, respondent shall submit to the AC Board for its prior approval, the name and qualifications of one or more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a practice monitor. Once approved, the monitor shall submit to the AC Board a plan by which respondent's practice shall be monitored. The monitor's education and experience shall be in the same field of practice as that of the respondent. The monitor shall submit written reports to the AC Board on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance. It shall be respondent's responsibility to assure that the required reports are filed in a timely fashion. The respondent shall provide access to the monitor of respondent's fiscal and client records and shall be permitted to make direct contact with patients. Further, the monitor shall have no prior business, professional, personal or other relationship with respondent. Respondent shall execute a release authorizing the monitor to divulge any information that the AC Board may request.

Respondent shall notify all current and potential patients of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such notification shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, respondent shall not practice until a new monitor has been approved by the AC Board. All costs of monitoring shall be borne by the respondent. Monitoring shall consist of at least one hour per week of individual face to face meetings.

***NOTE:** Monitoring shall be utilized when respondent's ability to function independently is in doubt, as a result of a deficiency in knowledge or skills, or as a result of questionable judgment.*

Optional 5. Restriction of Patient Population

NOTE: In cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if in treatment with the respondent, language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.

Optional 6. Examination(s)

Respondent shall take and pass the written and/or clinical licensing examination(s) prior to the termination of probation. The examinations shall be taken on regularly scheduled exam dates. Respondent shall pay the established examination fee.

If respondent fails the examination three times, his/her license to practice acupuncture is suspended until the examination is successfully passed.

NOTE: In cases involving evidence of severe deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to take and pass both the written and clinical examinations during the course of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).

Optional 7. Restitution

Within 90 days of the effective date of this Decision, respondent shall provide proof to the AC Board of restitution in the amount of \$ _____ paid to _____.

NOTE: In offenses involving breach of contract, restitution is an appropriate term of probation. 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.

Optional 8. Alcohol and Drug Abuse Treatment

Effective 30 days from the date of this Decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program (a minimum of six (6) months duration) or an equivalent program as approved by the AC Board.

Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent. Subsequent to the program, respondent shall participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the Board at least three times a week during the first year of probation; and/or other substance abuse recovery programs approved by the AC Board. Respondent shall pay all costs of treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the equivalent as approved by the Board. The psychologist shall confirm that respondent has complied with the requirements of this Decision and shall notify the AC Board immediately if he or she believes the respondent cannot safely render acupuncture services. Respondent shall execute a release authorizing the psychologist to divulge the aforementioned information to the AC Board.

NOTE: Alcohol and other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by respondent has impaired respondent's ability to safely provide acupuncture services to patients. This condition must be accompanied by condition #9 Optional 9.

Optional 9. Abstain from Drugs and Alcohol and Submit to Tests and Samples

Respondent shall completely abstain from the personal use or possession of alcohol and controlled substances as defined in the California Uniform Controlled Substances Act (~~Division 10, commencing with section 11000, Health and Safety Code~~) and dangerous drugs as defined in Section 4211-4022 of the Business and Professions Code, or any drugs requiring a prescription—except when lawfully prescribed by a licensed practitioner for a bona fide illness. ~~Respondent shall abstain completely from the use of alcoholic beverages.~~

Respondent shall undergo random biological fluid testing as determined by the ~~AC Board~~. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the ~~AC Board~~. Any confirmed positive finding will be considered a violation of probation.

NOTE: This condition provides documentation that the probationer is substance or chemical free. It also provides the AC Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances.

Optional 10. Reimbursement for Probation Surveillance Monitoring

Respondent shall reimburse the AC Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

NOTE: This condition can only be included in a proposed stipulation, since there is no legal authority to include it in proposed decisions.

Optional 11. Coursework

Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of coursework in the following area(s) _____. All coursework shall be taken at the graduate level at a school approved by the AC Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first 3 years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this decision, respondent shall submit a plan for the AC Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the respondent.

Optional 12. Community Service

NOTE: In addition to other terms of probation, community service work may be required for relatively minor offenses which do not involve deficiencies in knowledge, skills or judgment. Community service may be appropriately combined with restitution or other conditions as a term of probation. Specific language applicable to the case shall include the requirement that services rendered shall be professional in nature and under the auspices of a governmental entity or a non-profit corporation tax exempt under the Internal Revenue Code.

STANDARD TERMS AND CONDITIONS

(To be included in all Decisions)

~~13.~~ **Standard 1. Obey All Laws**

Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the AC Board in writing within seventy-two (72) hours of occurrence.

~~14.~~ **Standard 2. Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the AC Board, stating whether there has been compliance with all the conditions of probation.

~~15.~~ **Standard 3. Surveillance Program**

Respondent shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with **1)** victims or complainants associated with the case; **2)** AC Board members or members of its staff; or **3)** persons serving the AC Board as expert examiners.

~~16.~~ **Standard 4. Interview with the AC Board or Its Designee**

Respondent shall appear in person for interviews with the AC Board or its designee upon request at various intervals and with reasonable notice.

~~17.~~ **Standard 5. Changes of Employment**

Respondent shall notify the AC Board in writing, through the assigned probation surveillance compliance officer of any and all changes of employment, location and address within 30 days of such change.

~~18.~~ **Standard 6. Tolling for Out-of-State Practice or Residence**

In the event respondent should leave California to reside or to practice outside the State, respondent must notify the AC Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

~~19.~~ **Standard 7. Employment and Supervision of Trainees**

Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this probation.

20. Standard 8. Cost Recovery

Respondent shall pay to the AC Board its costs of investigation and enforcement in the amount of \$_____.

21. Standard 9. Violation of Probation

If respondent violates probation in any respect, the AC Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against respondent during probation, the AC Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against respondent.

22. Standard 10. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

SUBSTANCE-ABUSING TERMS AND CONDITIONS

(To be included in Decisions involving substance-abusing licensees)

Substance-Abusing 1. Clinical Diagnostic Evaluation (CDE)

Within twenty (20) days of the effective date of the Decision and at any time thereafter upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease any practice of acupuncture pending the results of the clinical diagnostic evaluation and review by the Board. While awaiting the results of the clinical diagnostic evaluation, Respondent shall submit to random drug testing at least two (2) times per week.

The clinical diagnostic evaluation shall be conducted by a licensed practitioner who: holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation; has three (3) years of experience in providing evaluations of health professionals with substance abuse disorders; and, is approved by the Board. The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report no more than ten (10) days from the date the evaluator was assigned to the matter, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, at least, the evaluator's opinions as to: whether the licensee has a substance abuse problem; whether the licensee is a threat to himself/herself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. Cost of such evaluation shall be paid by the Respondent.

Respondent may return to either full-time or part-time work if he/she has had at least 30 days of negative drug tests and the Board determines that he/she is safe to practice upon review of the clinical diagnostic evaluation and the following criteria:

- License type;
- Licensee's history;
- Documented length of sobriety/time that has elapsed since the last substance use;
- Scope and pattern of use;
- Treatment history;
- Medical history and current medical condition;
- Nature, duration and severity of substance abuse; and
- Whether the licensee is a threat to himself/herself or others.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

SOURCE: Uniform Standards #1 and #2 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 2. Notice to Employer

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, conduct which may violate any probationary condition.

Respondent shall provide his/her employer, supervisor, director, or contractor and all subsequent employers, supervisors, directors, or contractors with a copy of the Decision and Accusation in this matter prior to the beginning of, or return to, employment or within 14 calendar days from each change in a supervisor or director. The Respondent must ensure that the Board receives written confirmation from the employer that Respondent has complied with this requirement. Respondent must ensure that all written confirmations required herein are submitted from the employer directly to the Board.

[Optional language: This condition may be waived or modified by the Board upon a written finding by the CDE that respondent is not a substance-abusing licensee.]

SOURCE: Uniform Standard #3 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 3. Abstain from Alcohol, Controlled Substances, and Dangerous Drugs

Respondent shall completely abstain from the use of alcoholic beverages. Respondent shall abstain completely from the personal use, possession, injection, consumption by any route, including inhalation of all controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined in Business and Professions Code section 4022, and any drugs requiring a prescription. This probation does not apply to medications lawfully prescribed by a practitioner, licensed to prescribe such medications, for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber's name, address, and telephone number; medication name and

strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted. Respondent shall provide the Board with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, psychotropic or mood altering drugs. Once a Board-approved physician and surgeon has been identified, Respondent shall provide a copy of the Accusation and Decision to the physician and surgeon. The coordinating physician and surgeon shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of such substances.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, Respondent shall be ordered by the Board to cease any practice and may not practice unless and until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

[Optional language: This condition may be waived or modified by the Board upon a written finding by the CDE that respondent is not a substance-abusing licensee.]

SOURCE: Uniform Standards #4 and #8 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 4. Alcohol and Drug Testing

Respondent shall immediately submit to and pay for any random and directed biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board or its designee. The Respondent shall be randomly drug tested at least 52 times per year within the first year of probation, at least 36 times per year thereafter for the duration of the probationary term up to five (5) years, and at least one (1) time per month in year of probation after the fifth year provided there have been no positive test results during the previous five (5) years. The Board or its designee may require less frequent testing if any of the following applies:

- Where respondent has previously participated in a treatment or monitoring program requiring testing, the Board or its designee may consider that prior testing record in applying the testing frequency schedule above;
- Where the basis for probation or discipline is a single incident or conviction involving drugs or alcohol, or two incidents or convictions involving alcohol or drugs that were at least seven (7) years apart, that did not occur at work on the way to or from work, the Board or its designed may skip the first-year testing frequency requirement(s);
- Where the respondent is not employed in any health care field, frequency of testing may be reduced to a minimum of twelve tests per year. If Respondent wishes to thereafter return to employment in a health care field, Respondent shall be required to test at least once a week for a period of 60 days before commencing such employment, and shall thereafter be required to test at least once a week for a full year, before Respondent may be reduced to a testing frequency of at least 36 tests per year;

- Where respondent has demonstrated a period of sobriety and/or non-use, the Board or its designee may reduce the testing frequency to no less than 24 tests per year.
- Respondent's testing requirement may be suspended during any period of tolling of the probationary period.

Any requests from Respondent to modify testing frequency shall be submitted to the Board in writing.

Respondent shall make daily contact as directed by the Board to determine if he/she must submit to drug testing. Testing may be required on any day, including weekends and holidays. Respondent shall have the test performed by a Board approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that he/she is notified that a test is required. This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation. If the test results in a determination that the urine was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If a positive result is obtained, the Board may require respondent to immediately undergo a physical examination and to complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted result. If a positive result is obtained, Respondent shall be ordered by the Board to immediately cease any practice of acupuncture and may not practice unless and until notified by the Board. Any such examination or laboratory or testing costs shall be paid by Respondent. A positive result is one which, based on scientific principles, indicates Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the Board. If Respondent tests positive for a banned substance, Respondent shall be contacted and instructed to leave work and ordered to cease proactive. Respondent shall not resume practice until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

[Optional language: This condition may be waived or modified by the Board upon a written finding by the CDE that respondent is not a substance-abusing licensee.]

SOURCE: Uniform Standards #4, #8 and #9 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 5. Facilitated Support Group Meetings

Within fifteen (15) days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator.

When determining the type and frequency of required support group meeting attendance, the Board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations;
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress; and
4. The facilitator shall report any unexcused absence within 24 hours.

[Optional language: This condition may be waived or modified by the Board upon a written finding by the CDE that respondent is not a substance-abusing licensee.]

SOURCE: Uniform Standard #5 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 6. Treatment Program for Cases Involving Substance-Abusing Licensees

Within thirty (30) days of the effective date of the Decision, Respondent shall enter a treatment program specified by the Board. Respondent, at his/her expense, shall successfully complete an inpatient, outpatient or any other type of recovery and relapse prevention treatment program as directed by the Board. When determining if Respondent should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others. All costs associated with completion of the treatment program shall be paid by the Respondent.

The program director, psychiatrist, or psychologist shall confirm that Respondent has complied with the requirement of this Decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall sign a release authorizing the treatment program to report all aspects of participation in the treatment program as requested by the Board or its designee.

Failure to comply with requirements of the treatment program, terminating participation in the treatment program without permission, or being expelled for cause from the treatment program shall constitute a violation of probation by Respondent who shall be immediately suspended from the practice of acupuncture. Probation shall be automatically extended until Respondent successfully completes the treatment program.

[Optional language: This condition may be waived or modified by the Board upon a written finding by the CDE that respondent is not a substance-abusing licensee.]

SOURCE: Uniform Standard #6 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 7. Worksite Monitor

Respondent shall have a worksite monitor as required by this term. The worksite monitor shall not have any current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer or supervising physician to serve as the worksite monitor, this requirement may be waived by the Board. However, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

Respondent shall submit the name of a licensed acupuncturist as the proposed worksite monitor within 20 days of the effective date of the Decision. The worksite monitor's scope of practice shall include the scope of practice of the licensee who is being monitored or be another healthcare professional if no monitor with like practice is available. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he/she has reviewed the terms and conditions of the Decision and agrees to monitor the licensee as set forth by the Board. The licensee shall provide written consent and sign an agreement with the worksite monitor and the Board allowing the Board to communicate with the worksite monitor. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week;
- b) Interview other staff in the office regarding the licensee's behavior, if applicable; and
- c) Review the licensee's work attendance.

Any suspected substance abuse must be verbally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; and any indicators that can lead to suspected substance abuse.

If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

[Optional language: This condition may be waived or modified by the Board upon a written finding by the CDE that respondent is not a substance-abusing licensee.]

SOURCE: Uniform Standard #7 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

Substance-Abusing 8. Major Violations

This provision applies if the Respondent commits a violation of the treatment program for substance-abusing licensees or any other condition applying the uniform standards specific to controlled substance.

If Respondent commits a major violation, Respondent shall immediately upon notification by the Board, cease practice until notified otherwise in writing by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required CDE;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

SOURCE: Uniform Standards #9 and #10 of the Board's Uniform Standards Related to Substance-Abusing Licensees.

PENALTY GUIDELINES

The following is an attempt to provide information regarding the range of offenses under the Acupuncture Licensure Act and the appropriate penalty for each offense. Examples are given for illustrative purposes, but no attempt is made to catalog all possible offenses. The AC Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations, which take into account each case's unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the AC Board always appreciates it if the Administrative Law Judge hearing the case will include some explanation of this in the Proposed Decision so that the circumstances can be better understood by the AC Board during its review and consideration of the Proposed Decision for final action.

All references are to the specified subsections of section **4955** of the Business and Professions Code.

A. SECURING A CERTIFICATE BY FRAUD OR DECEIT

Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

B. COMMITTING A FRAUDULENT OR DISHONEST ACT AS AN ACUNCTURIST RESULTING IN INJURY TO ANOTHER

MAXIMUM: Dishonest or fraudulent act resulting in substantial harm to patient(s)
Penalty: Revocation; denial of license.

MINIMUM: Dishonest or fraudulent t resulting in minimal harm to patient(s)
Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation and ongoing therapy if appropriate [2], full restitution [7], written and clinical examination [6], coursework in ethics [11], community service [12], and standard terms and conditions [13 - 22].

C. USING ANY CONTROLLED SUBSTANCE, OR DANGEROUS DRUG, OR ALCOHOLIC BEVERAGE TO AN EXTENT OR IN A MANNER DANGEROUS TO HIMSELF OR HERSELF, OR TO ANY OTHER PERSON, OR THE PUBLIC, AND TO AN EXTENT THAT SUCH USE IMPAIRS HIS OR HER ABILITY TO ENGAGE IN THE PRACCE OF ACUPUNCTURE WITH SAFETY TO THE PUBLIC

MAXIMUM: Abuse of alcohol or a controlled substance resulting in substantial harm to patient(s).
Penalty: Revocation; denial of license.

MINIMUM: Abuse of alcohol or controlled substance to the extent that ability to safely perform acupuncture services is impaired.
Penalty: 5 years probation, actual suspension [1], participation in an alcohol/drug abuse treatment program and continuing therapy with a psychologist trained in substance abuse treatment [8], biological fluid testing [9], practice monitor [4], physical examination (if appropriate) [3], and standard terms and conditions [13 - 22].

D. CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO THE FUNCTIONS OF AN

ACUPUNCTURIST, THE RECORD OF CONVICTION BEING CONCLUSIVE EVIDENCE THEREOF

MAXIMUM: Convictions of a crime of violence against person or property or economic crime resulting in substantial harm to patient(s).

Penalty: Revocation; denial of license.

MINIMUM: Conviction of other crime resulting in little or no harm to patient(s).

Penalty: 5 years probation, minimum 30 day suspension [1], ethics course [11], restitution (if appropriate) [7], community service [12], and standard terms and conditions [13 - 22].

E. IMPROPER ADVERTISING

Repeated infraction of statute regarding advertising.

Penalty: 5 years probation, written and clinical examination [6], coursework in ethics [11], community service [12], and standard terms and conditions [13 - 22].

F. VIOLATING OR CONSPIRING TO VIOLATE THE TERMS OF THIS CHAPTER

No guidelines drafted.

Refer to underlying statute or regulation.

G. GROSS NEGLIGENCE IN THE PRACTICE OF ACUPUNCTURE

MAXIMUM: Gross negligence resulting in substantial harm to patient(s).

Penalty: Revocation; denial of license.

MINIMUM: Gross negligence resulting in minimal harm to patient(s).

Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13 - 22].

H. REPEATED NEGLIGENT ACTS

MAXIMUM: Repeated negligent acts resulting in substantial harm to patient(s).

Penalty: Revocation; denial of license.

MINIMUM: Repeated negligent acts resulting in minimal harm to patient(s).

Penalty: 5 years probation, minimum 90 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13 - 22].

I. INCOMPETENCE

MAXIMUM: Incompetence resulting in harm to patient(s).

Penalty: Revocation; denial of license.

MINIMUM: Incompetence resulting in minimal harm to patient(s).

Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination

[6], coursework [11], and standard terms and conditions [13 - 22].

The following makes reference to **4935** and are in conjunction with **4955(f)** of the Business and Profession Code.

J. IMPERSONATING ANOTHER PERSON HOLDING AN ACUPUNCTURE LICENSE OR ALLOWING ANOTHER PERSON TO USE HIS OR HER LICENSE

MAXIMUM: Impersonation or use resulting in substantial harm to patient(s).
Penalty: Revocation; denial of license, or written and clinical examination application.

MINIMUM: Impersonation or use resulting in little or no harm to patient(s).
Penalty: 5 years probation / actual suspension [1], coursework in ethics [11], community service [12], and standard terms and conditions [13 - 22].

K. AIDING OR ABETTING UNLICENSED PRACTICE

MAXIMUM: Aiding or abetting unlicensed practice which results in harm to patient(s).
Penalty: Revocation; denial of license.

MINIMUM: Aiding or abetting unlicensed practice which results in minimal harm to patient(s).
Penalty: 5 years probation / actual suspension [1], oral examination [6], coursework [11], and standard terms and conditions [13 - 22].

ACCUSATIONS

The AC Board has the authority, pursuant to Section 125.3 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. The AC Board requests that this fact be included in the pleading and made part of the accusation.

STATEMENTS OF ISSUES

The AC Board will file a Statement of Issues to deny an application of a candidate for the commission of an act which if committed by a licensee would be cause for license discipline.

STIPULATED SETTLEMENTS

The AC Board will consider agreeing to stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to a settlement with the AC Board, he/she must admit to the violations set forth in the accusation. All proposed decisions must be accompanied by a memo from the Deputy Attorney General addressed to AC Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.

PROPOSED DECISIONS

The Board requests that proposed decisions include the following:

1. Names and addresses of all parties to the action.
2. Specific code section violated with the definition of the code in the Determination of Issues.
3. Clear description of the acts or omissions which caused the violation.
4. Respondent's explanation of the violation if he/she is present at the hearing in the findings of fact.
5. Explanation of deviation from AC Board's Disciplinary Guidelines.

When a probation order is imposed, the AC Board requests that the order first list any combination of the Optional Terms and Conditions as they may pertain to the particular case followed by **all** of the Standard Terms and Conditions [13 - 22].

If the respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, such inaction shall result in a default decision to revoke licensure or deny application.

REINSTATEMENT/PENALTY RELIEF HEARINGS

The primary concerns of the AC Board at reinstatement or penalty relief hearings are that the evidence presented by the petitioner of his/her rehabilitation. The AC Board is not interested in retrying the original revocation or probation case.

The AC Board will consider the following criteria of rehabilitation:

1. Nature and severity of the act(s) or offense(s)
2. Total criminal record
3. The time that has elapsed since commission of the act(s) or offense(s)
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the **Penal Code**
6. Evidence, if any, of rehabilitation submitted by the licensee or registration holder.

In the Petition Decision, the AC Board would appreciate a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license.

The AC Board requests that comprehensive information be elicited from the petitioner regarding his/her rehabilitation. The petitioner should provide details which include:

- A. Continuing education pertaining to the offense and its effect on the practice of acupuncture.
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
- C. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
- D. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- E. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
- F. A culpability or non-culpability statement.

If the AC Board should deny a request for reinstatement of licensure or penalty relief, the Board requests that the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches which would demonstrate rehabilitation.

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such action shall result in a default decision to deny reinstatement of the license or reduction of penalty.

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