

ACUPUNCTURE BOARD

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DATE	January 17, 2014
TO	Enforcement Committee
FROM	Kristine Brothers Enforcement Coordinator
SUBJECT	Standardized Malpractice 801 Form

Issue:

Senate Committee on Business, Professions and Economic Development issued a "Background Paper for the California Acupuncture Board" after the Sunset Review hearing held March 12, 2012 directing the Board to develop a form to standardize 801 reports. Currently, the Board may not be receiving all judgments and settlements that amount to damages of \$3,000 or more for claims involving injury or death proximately caused by a licensed acupuncturist. There is not a streamlined process for insurers or practitioners to report such judgments and settlements to the Board.

The Board needs to discuss any interest in pursuing legislation to amend Business and Professions Code Section 801.01 by adding the Acupuncture Board.

Problem:

The Board does not currently have authority to require malpractice insurance carriers to use a standard reporting form prescribed by the Board. Without this form, reporting of malpractice case remains non standardize and left up to the insurance companies rather than the Board. As a result of this non-standard reporting, many malpractice cases could be missed or unreported to the Board. Ensuring that all malpractice cases are reported to the Board with this standardized form, would improve and enhance the Board's enforcement and protection of public safety.

Background:

Effective October 11, 2009, Senate Bill 819 added the Acupuncture Board to Business and Professions Code Section 800. Section 800 requires each named board to maintain specified information in a central file for each licensee. Part of the required information to be maintained are judgments or settlements requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802. Since the addition of

Acupuncture Board to Section 800, the Board has received six complaints reported by insurers for fiscal year 2010/2011, three for fiscal year 2011/2012, and zero for fiscal year 2012/2013.

After the release of the Sunset Review Background Paper, staff developed a standardized form and submitted it to Legal Counsel for approval. It was at that time when Counsel pointed out that the Acupuncture Board cannot develop a prescribed form for reporting because it was not given authority under Business and Professions Code Section 801.01 (g)(1). Section 801.01 (g)(1) states, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board may develop a prescribed form for the report. Further, Business and Professions Code Section 801.01 (a) states, a complete report shall be sent to the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or the Physician Assistant Board with respect to a licensee of the Board involved in a settlement over \$30,000 or an arbitration award of any amount or a civil judgment of any amount for a claim or action for damages for death or personal injury caused by the licensee.

Effective January 1, 2007, Senate Bill 1438 added Business and Professions Code Section 801.01. The bill was sponsored by the Medical Board of California with the intention of clarifying and simplifying existing reporting and disclosure requirements so that there would be a clearer understanding of exactly what is required to be reported and disclosed to the public. The Medical Board's sunset review in 2002 revealed numerous and significant problems with the Board's enforcement and public disclosure practices. The Legislature responded by enacting SB 1950 (Figueora, Chapter 1085, Statutes of 2002). That bill significantly expanded the reporting requirements for malpractice actions against physicians and osteopaths and the disclosure of such information by their respective licensing boards. Senate Bill 1438 consolidated the reporting and disclosure requirements for physicians, osteopaths and podiatrists in one section which made it clear exactly what, when, and how to report.

Discussion:

In the same way the Medical Board responded to their Sunset Review in 2002 by sponsoring a bill to address enforcement and disclosure practices, it may be prudent for the Acupuncture Board to respond similarly to its 2011 Sunset Review. It may also make it more clear to insurers and practitioners what, when, and how to report. In addition, based upon the number of complaints being received related to injury/death settlements and judgments, it appears that the Board is receiving less and less reports each year. When the Board receives these 801 reports it allows the Board to conduct an independent investigation into the facts related to the injury or death. It also allows the Board to have its own Expert Consultant to evaluate and determine if there was any negligence or deviation from the standard of care. If a form was developed and placed on the Board's website it may increase compliance with the reporting requirement and thereby increase the Board's outreach. The alternative to seeking legislation to increase reporting is to simply provide information to the public regarding Business and Professions Code Section 801 reporting requirements. Since the addition of the Acupuncture Board to Section 800 in 2009, there has never been any official outreach or notification about the new requirement.

Recommendation: Initially, the committee should consider an outreach tactic to increase reporting to the Board as a short term goal. The committee should consider seeking legislation to increase and expand reporting requirements, including the development of a standardized form. If the Board approves this proposal it could be raised as an issue in the Sunset Review hearings which would be timely and an opportunity for the Board.

Attached: Business and Professions Code Sections 800 through 802