



## **NOTICE OF ACUPUNCTURE BOARD ENFORCEMENT COMMITTEE MEETING**

**WEDNESDAY, DECEMBER 14, 2016**

**Upon conclusion of Education Committee meeting until completion of business**

**LOCATION:  
ELIHU M. HARRIS STATE OFFICE BUILDING  
MEETING ROOM #2  
1515 CLAY STREET  
OAKLAND, CA 94612**

### **Enforcement Committee Members**

*Hildegarde Aguinaldo, Chair, Public Member*  
*Francisco Hsieh, Public Member*  
*Jeannie Kang, L.Ac, Licensed Member*  
*Jamie Zamora, Public Member*

### **AGENDA**

#### **ENFORCEMENT COMMITTEE MEETING**

- 1. Call to Order and Establishment of a Quorum**
- 2. Discussion and Possible Action of Revised Disciplinary Guidelines (Brothers and Johnson)**
- 3. Discussion and Possible Action on Prostitution Prevention and Condition of Office regulatory package (Johnson) ; Possible Recommendation to Board**
- 4. Future Enforcement Committee Agenda Items**
- 5. Public Comment for Items Not on the Agenda**  
*The Committee may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))*
- 6. Adjournment**

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

**THE FULL BOARD AGENDA, AS WELL AS COMMITTEE MEETING MINUTES, CAN BE FOUND  
ON THE ACUPUNCTURE BOARD'S WEBSITE AT  
[www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)**

Please Note: Committee meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204

## **#2 – Discussion and Possible Action of Revised Disciplinary Guidelines**



<b>DATE</b>	December 14, 2016
<b>TO</b>	Enforcement Committee Members
<b>FROM</b>	Marc Johnson – Policy Coordinator Kristine Brothers – Enforcement Coordinator
<b>SUBJECT</b>	Draft 2016 Acupuncture Board Disciplinary Guidelines

**Issue:**

Update of the Board’s Disciplinary Guidelines (hereafter ‘Guidelines’). The current Guidelines date to 1996 and need to be updated. Staff has prepared a draft version of the 2016 Guidelines for Committee review. This memo provides an overview of the proposed changes.

**Action Item for the Committee:**

Review and discussion of the draft 2016 Acupuncture Board Disciplinary Guidelines. Direction to staff, if any, for additional work on Guidelines before referral to the full Board at future meeting.

**Background and Discussion:**

The Board’s current Disciplinary Guidelines, which are used by attorneys, administrative law judges (ALJ’s), licensees, others involved in the disciplinary process, and ultimately the Board itself, date to 1996. The current Guidelines are outdated as there have been several changes to the laws and regulations, as well as changes to discipline standards. The Guidelines are used to impose discipline, including conditions of probation for licensees that address the violations charged and provide public protection. Since many portions of the 1996 Guidelines will still be used in the updated 2016 version, the updates set out in this memo are considered amendments to the 1996 guidelines.

Staff originally began revisions of the Guidelines in 2012 in order to accommodate DCA’s Uniform Standards for Substance Abusing Licensees and also as a general update. Based upon advice from Legal Counsel, the Uniform Standards were separated in 2016 into a separate regulatory package (SB 1441). Staff began work on the new, separated Guidelines in October 2016. It is anticipated that the Guidelines will be filed for public notice and comment after full Board approval by end of summer 2017.

**Proposed Changes:**

Changes proposed are detailed below. Within the Guidelines, the proposed new text is underlined and text proposed to be removed is struck through.

Overall document: Reformatted, with consistent font and spacing for readability and clarity. Minor grammatical and punctuation changes were made. A number of optional



and standard conditions have been re-numbered. The phrase 'or its designee' has been added throughout the document to provide staff delegated authority by the Board to handle decisions with respect to the conditions of probation orders on its behalf. Throughout the document wherever 'AC' (Acupuncture Committee) appears, it has been replaced with 'Board' since the Acupuncture Committee changed to a Board since the adoption of the 1996 Disciplinary Guidelines.

Cover Page: New cover page with DCA and Acupuncture Board logo, and new revision date of December 2016.

Table of Contents (Pg. 1): A new proposed section of the Guidelines that incorporates a table of contents of the document. This will assist readers in locating the parts of the document for quick reference.

Introduction (Pgs. 2-3): The existing section has been amended in several ways. The introduction has been expanded to explain the purpose of the Guidelines and identifies who the interested parties are to enhance clarity. New language has been added that sets out the different categories of probation terms and conditions. In addition, the passage that addressed what should be done in rare cases when there are deviations from the guidelines was deleted and written differently for clarity purposes.

General Considerations (Pg. 4): A new proposed section with a list of general considerations has been added to help users determine whether revocation, suspension or probation is to be imposed in a given case, with a list of factors to be considered. This assists ALJ's, attorneys, licensees, applicants, and the Board in determining what factors are taken into consideration when formulating the appropriate discipline.

Terms and Conditions (Pgs. 5-6): A table listing optional and standard terms and conditions has been added to help guide the reader. In addition, a third condition category was added to set out special conditions that require a specific penalty. Explaining this third category provides more instruction to the interested parties, specifically the ALJ, when writing the proposed decision.

### ***Optional Terms and Conditions***

#2 Psychological Evaluation (Pg. 7): This optional condition has been amended to further define the DSM reference to the Diagnostic and Statistical Manual of Mental Disorders (DSM) for clarity. The prior third edition has been struck through so the condition is not held to a specific DSM edition. Additionally, new language was added to provide authority that allows the Board to require respondent to comply with psychotherapy if deemed necessary by the evaluator. It was also added that such therapy be paid by respondent. Adding this provides the Board with the authority to impose psychotherapy if it is recommended by the psychological evaluation. This provides further public protection.



**#3 Physical Examination (Pg. 8):** This optional condition has been amended to add a requirement that the licensee shall be responsible for the costs associated with the physical evaluation and failure to pay them is a violation of probation. Such language was added to be more descriptive of what is required of the respondent

**#4 Practice/Billing Monitor (Pgs. 8-10):** This optional condition has been amended in a number of ways. The word "Billing" is added to the condition to delineate that the monitoring can be on respondent's practice, billing or both. The condition mostly provides the same intent and authority but the language was changed around for clarity and ease of reading. Language was added to provide more detail on the role of the Board reviewing the monitor's monitoring plan to provide more instruction. Language regarding a specific frequency of meetings with the monitor was removed so the Board or its designee can determine the appropriate frequency on a case by case basis. Additional language was added to the part of the condition that addresses when a monitor resigns or is no longer available to provide more guidance on the mechanics of how that process would occur. Finally, language was added to provide the Board authority to inspect or copy records retained by respondent. This gives the Board a tool to ensure compliance and public protection.

**#5 Psychotherapy (Pg. 10):** This optional condition has been added to appear in decision and orders either concurrently with condition number two (2), Psychological Evaluation or on its own. The condition sets forth the requirements for when a respondent is ordered to undergo psychotherapy during his or her probation. It also details how the condition operates, the qualifications for the therapist conducting the therapy, how the therapist's evaluation is provided to the Board, and what the consequences are if respondent is deemed unsafe to practice. This proposed condition provides additional public protection by adding more in-depth rehabilitation and expert evaluation in cases where respondent's emotional, mental or judgment is called into question.

**#6 Restrictions on Patient Population or Practice Setting (Pg. 11):** This optional condition has been renamed and has been amended to provide actual language to be used in probation orders. The condition provides a strong public protection by prohibiting a respondent from practicing on a specific patient population or under certain practice settings. This condition allows the Board to protect those applicable groups of people who respondent's misconduct was directed to. It also allows the Board to impose a certain practice setting to ensure respondent does not commit the same or similar transgressions that the barred setting supports. The existing note was amended for clarity.

**#7 Restrictions on Practice Techniques and Modalities (Pg. 11):** This new optional condition has been added to allow the Board to place restrictions on types of practice and requires the licensee to submit to the Board a plan to implement this restriction. A note is also added to clarify that restrictions shall be appropriate to the violation and specifies when the condition should be used. This condition allows the Board to protect



the public by prohibiting respondent from providing a certain technique or modality that he or she lacks skill in or deviates from the standard of practice.

#8 Examination(s) (Pgs. 11-12): This renumbered optional condition has been amended to remove the reference to a clinical exam as the Board no longer requires this as part of the California Acupuncture Licensing Exam (CALE). It also requires a probationer to take and pass the exam before practicing Acupuncture. Additional language has been added requiring the exam be taken in the first twelve months of probation. The existing note was updated for clarity. By specifying that the exam must be passed within the first twelve months of probation, provides more public protection to eliminate those who do not demonstrate competency to practice safely.

#9 Restitution (Pg. 12): This optional condition has been re-numbered to #9.

#10 Alcohol and Drug Abuse Treatment Program (Pg. 12): This renumbered optional condition has been amended in several ways. The word 'Program' was added to the title for clarity. Also, a note which allows the Board to consider previous court ordered treatment programs within the last three years has been added. This allows the Board to evaluate and accept treatment programs that were done as a condition of the respondent's criminal probation. The length was taken down from six months to three months because this is typically the length that criminal courts impose for treatment programs. This change brings the Board in line with the criminal justice system for first time offenders for Driving Under the Influence. Additionally, a requirement of submission of program completion to be submitted within 15 days has been added. A change to the note which references the Conditions that must accompany this one has been updated. Language from existing condition that addressed twelve step meetings and group therapy was removed because a more clear and updated condition is being proposed to put in its place.

(Removed Condition) Reimbursement for Probation Service Monitoring (Pg. 13): This optional condition has been deleted as its provisions have been incorporated into a new standard condition, #25.

#11 Attend Chemical Dependency Support and Recovery Groups (Pg. 13): This optional condition has been added in order to allow the Board to require a licensee to attend support and recovery groups as a condition of probation. This adds additional public protection by promoting rehabilitation efforts for respondent.

#12 Abstain from Drugs and Alcohol and Submit to Tests and Samples (Pgs. 13-14): This renumbered optional condition has been re-written for better clarity. References to Business and Professions Code Sections and Health and Safety Code Sections were removed to avoid the need to update each time those laws are changed. An exception was added allowing respondent the use of prescription drugs if lawfully prescribed by a licensed practitioner. Language was also added specifying that certain documentation is required to be submitted to the Board as proof. Adding such a clause protects the



consumer while allowing respondent to maintain medically necessary prescription drugs. Additionally, a reference to the use of 'Uniform Standards Related to Substance-Abusing Licensees' has been added in case the licensee has been determined as such. This has been added to direct ALJ's and attorneys to the uniform standards that are statutorily required in cases where evidence establishes that he or she is a substance-abusing licensee.

#13 Coursework (Pg. 14): This renumbered optional condition has been amended in several ways. The requirement of not less than 20 semester or 30 quarter units in the following area(s) \_\_\_\_\_ has been deleted and instead has been replaced with coursework in continuing education as determined by the Board or its designee. The requirement of coursework at a graduate level school has been replaced with a requirement that coursework must be Board approved continuing education or an equivalent. These changes will give the Board greater flexibility in assigning coursework appropriate to the violation. In addition, there are more course options available to respondent when it is not required that it be taken at the graduate level at a school. However, respondent is not only limited to continuing education coursework. Providing options to respondent furthers compliance and thereby increases public protection. The condition also now requires a licensee to submit certificates of completion to the Board within 15 days of completion, as well as additional information about the courses for determining the coursework plan. These changes will further public protection and promote more accessible education to address deficiencies.

#14 Community Service (Pgs. 14-15): This renumbered optional condition has been amended to detail how the Board may require a licensee to complete community service as a condition of probation and how the Board may consider various forms of service. It also requires the licensee to submit to the Board details about the program within 60 days and submit documentation of the service hours on a quarterly basis. Finally, the licensee is required to complete the service six months prior to the end of his or her probation. The changes enhance clarity since there wasn't actual language to include in probation orders previously.

#15 Supervised Practice (Pgs. 15-16): This new optional condition has been added. It allows the Board to impose supervised practice on licensees under the direction of a supervisor who is another licensed acupuncturist approved by the Board. It does provide that if a licensed acupuncturist cannot be secured, then another supervisor in another field of practice may be submitted for approval. The condition sets out requirements for the supervisor and imposes various reporting requirements. The purpose of this new condition is to provide more public protection if respondent's violation demonstrates that he or she needs supervision. This condition would be used in cases of sexual misconduct, incompetency and any other violation which would suggest respondent and the public would benefit from it.

### ***Standard Conditions***



#16 Obey All Laws (Pg. 17): This standard condition has been renumbered to 16. The level of laws have been deleted to provide more clarity and be all encompassing of every law that exists.

#17 Quarterly Reports (Pg. 17): This renumbered standard condition has been amended with language to allow the Board to extend probation if the final report is not submitted on time. This allows the Board continuing jurisdiction if not all matters of probation have been met.

#18 Surveillance Program (Pg. 17): This renumbered standard condition has been amended by removing 'district office' and 'probation surveillance monitor' to reflect current practice of the use of the term "probation monitor" within Enforcement. A reference to subject matter experts has been updated to reflect current terminology.

#19 Interview with the Board or Its Designee (Pg. 17): This standard condition has been renumbered to 19.

#20 Changes of Employment (Pg. 17): This renumbered standard condition has been amended to provide clarity and update terminology to the standard use of "probation monitor."

#21 Tolling for Out-of-State Practice or Residence (Pgs. 17-18): This renumbered standard condition has been amended to require a licensee to report to the Board when vacationing out of state longer than 30 days. This further defines how long a respondent would have to be residing out of state for it to qualify for his or her probation to be tolled. Language was also added to specify that ordered suspension or non-practice in compliance with another condition of probation shall not be tolled. This provides more clarity.

#22 Employment and Supervision of Trainees (Pg. 18): This renumbered standard condition has been amended with a prohibition on a licensee teaching at any Board approved training program. This language identifies that any respondents who violated the Acupuncture Licensure Act are not qualified to teach acupuncture trainees in any capacity until his or her probation term is completed, which ensures more public protection.

#23 Cost Recovery (Pg. 18): This renumbered standard condition has been amended to allow for a licensee to submit a payment plan to the Board. It also allows the Board to extend probationary time in order to fulfill the probationary order at respondent's request. Further, it states that cost recovery can no longer be tolled and the filing of bankruptcy does not relieve respondent from his or her responsibility to pay the ordered costs. These changes allow the Board more authority to collect the owed costs, even past the probation period. It also provides more flexibility to respondent to make payments towards costs that fit his or her fiscal capabilities which promotes compliance.





#24 Violation of Probation (Pg. 18): This renumbered standard condition has been amended to allow the Board to continue monitoring a licensee's probation if any terms or conditions have not been met or probation terms are violated. This promotes flexibility for the Board and provides continuing authority over respondent when there are conditions not met.

#25 Probation Monitoring Costs (Pg. 19): This new standard condition requires that a licensee shall pay any costs associated with probation monitoring, including but not limited to costs associated with travel and quarterly reviews. This changes has now created standard language to be used in probation orders. It adds clarity and ensures the Board is getting back what it expends in ensuring compliance during the probation term.

#26 License Surrender (Pg. 19): This new standard condition allows that a licensee may surrender his or her license to the Board if certain criteria are met, and the Board may evaluate and take action on the request. It also states that the licensee will not be subject to probation once a surrender is made, but that the licensee's disciplinary history will reflect the surrender. This provides more flexibility to the Board and the licensees on probation. If a licensee can no longer comply with a probationary condition or chooses to resign, he or she has an option within the probation order to allow for a process to surrender his or her license without violating the probation order.

#27 Severability Clause (Pg. 19): This new standard condition specifies that each condition of probation is a separate and distinct condition, and that if one condition becomes unenforceable the rest still apply. This provides more authority to the Board and promotes public protection.

#28 Notification of Name, Address, Telephone Number or Email Address Changes (Pg. 19): This new standard condition requires that a licensee submit any changes to their name, address, phone number or email address to the Board within 10 days. This will enhance public protection by making sure all licensees on probation have correct and accurate information on file with the Board's probation/enforcement unit.

#29 Maintenance of Valid License (Pgs. 19-20): This new standard condition requires that a respondent maintain an active and current license with the Board during the time he or she is on probation. It also requires that a respondent granted an initial license complete the licensure process within two years from the effective decision date. The condition also states that if respondent's license does expire, all probationary conditions shall be complied with that were not previously satisfied. Adding this condition provides more authority to the Board. It also prevents licensees inactivating his or her license or letting it expire for the sole purpose of getting out of complying with certain probationary conditions.

#30 Completion of Probation (Pg. 20): This standard condition has been renumbered from 22 to 30.



## ***Additional Changes***

Penalty Guidelines (Pg. 21): This section has been amended in several ways. A note that referred to the Guidelines only providing examples of violations for illustrative purposes has been removed since the new Guidelines have the penalty guidelines structured by section number now. In addition, a reference specific to providing information regarding offenses under the Acupuncture Licensure Act has been removed since general provisions of the Business and Professions Code (BPC) are now being added. Therefore, the range of offenses are not just specific to the Act. A more descriptive introduction to the forthcoming penalty guidelines was added for clarity.

Recommended Action by Violation of General California Business and Professions Code Provisions (Pg. 22): This new section provides a list of commonly used or violated Business and Professions Code Sections (outside of the Acupuncture Licensure Act) which a licensee may violate and includes the recommended minimum and maximum penalties. These new sections include:

1. BPC Section 651, Advertising
2. BPC Section 726, Commission Of Act Of Sexual Abuse Or Misconduct With Patient

Recommended Action by Violation of Acupuncture Licensure Act (Pgs. 23-29): This section has been amended and reformatted. The previous system of listing violations with the corresponding penalty (i.e. "resulting in substantial harm to patients" or "convictions of a crime of violence..") has been deleted. Staff found that formatting the penalties by the use of violation examples was more limiting and confusing. Instead, the violations have been grouped and titled by their specific Acupuncture Licensure Act statute (i.e. Unprofessional Conduct, Fraud, etc) with each specific violation listed. The minimum and maximum penalties for each violation available to the Board are listed below the statute. This gives interested parties of the Guidelines greater flexibility in determining the appropriate course of action for each violation. By reformatting the penalty guidelines section, it provides an ease of understanding and use of the document. The reorganized sections include the following changes:

The Guidelines are proposing a minimum probation term of three (3) years instead of the previous five (5) years probation minimum penalty. This change is based upon standards within Enforcement among the Department and a precedence set by decisions being adopted currently by the Board. There are only two exceptions within the Act that propose a lower minimum penalty of two (2) years: 4955 (c), False or Misleading Advertising and 4955.1 (e), Failing to Maintain Adequate and Accurate Records. A lower penalty is being recommended for these two less egregious statute violations.



1. Unprofessional Conduct – added the following violations which were not previously addressed in the 1996 Guidelines:

- Failing to Follow Infection Control Guidelines
- The Use of Threats or Harassment Against a Licensee/Patient
- Disciplinary Action Taken by Any Public Agency
- Action or Conduct that Warrants a Denial of License
- Violation of Any Law or Local Ordinance on Business Premises

Existing violations which have been changed; added/updated standard terms and conditions and applicable optional terms and conditions to each:

- Using or Possessing Any Controlled Substance – added reference to Board's 'Uniform Standards for Substance-Abusing Licensees' document.
- Conviction of Crime – this violation has been renamed, a reference to BPC Section 4956 has been added, and a note about the only applicable penalty standard for cases involving registered sex offenders has also been added.
- False or Misleading Advertising – this violation has been renamed.
- Aiding or Abetting or Violating Terms of this Chapter or Any Board Regulation – this violation has been renamed and no longer strictly ties the section to only aiding and abetting unlicensed practice.

2. Fraud – added the following violations:

- Failing to Maintain Adequate and Accurate Records (repeated acts).

Existing violations which have been changed; added standard terms and conditions and applicable optional terms and conditions to each:

- Securing a License by Fraud or Deceit
- Any Act involving Fraud, Dishonesty or Corruption as an Acupuncturists – this violation has been renamed.

3. Negligence – existing violations which have been changed; added standard terms and conditions and applicable optional terms and conditions to each:

- Gross Negligence – this violation has been renamed.
- Repeated Negligent Acts
- Incompetence

Accusations (Pg. 30): This section has been amended with the correct statutory authority the Acupuncture Licensure Act to recover costs.

Language for Probation Orders (Pg. 31): This new section adds recommended language for interested parties in writing probation orders for licensees, applicants and those who are granted reinstatements. The language used is commonly found in the Board's past probation orders and is provided to assure clarity and uniformity when completing these orders.

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Recommended Language for Cost Recovery for Surrenders (Pg. 32): This new section adds recommended language for cost recovery when ordered in Decisions that result in license surrenders. This language used is commonly found in the Board's past cost recovery orders and is provided to assure clarity and uniformity.

Demonstrations of Rehabilitation (Pgs. 33-34): This new section sets out different criteria which the Board may consider when determining a denial of license, suspension or revocation is more appropriate. This gives the Board examples of evidence and factors to consider when a respondent is trying to demonstrate rehabilitation. This provides greater clarity and greater purpose to the document.

Evidence of Mitigation (Pg. 35): This new section has been added to provide guidance for licensees as to how they may present evidence to demonstrate rehabilitation and recovery. This provides more consistency in making decisions among similar cases. It also provides more direction to interested parties.

Evidence of Aggravation (Pg. 36): This new section has been added to assist Administrative Law Judges with examples of aggravating circumstances which may be considered in their proposed decisions. This provides more consistency in making decisions among similar cases. It also provides more direction to interested parties.

Proposed Decisions (Pg. 37): This section has been amended with new numbering used from the terms and conditions.

Reinstatement / Penalty Relief Hearings (Pgs. 38-39): This section has been amended with minor changes to the language for clarity.

Index of Violations (Pgs. 40): This new section adds an index to refer readers to specific violations listed within the disciplinary guidelines.

**#2 – Proposed Language  
for 1399.469**

## California Acupuncture Board

### Title 16 – Update to Disciplinary Guidelines

#### **1399.469. Disciplinary Guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Acupuncture Board shall consider the disciplinary guidelines entitled "~~Department of Consumer Affairs, Acupuncture Board 'Disciplinary Guidelines' 1996~~ Revised December 2016" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the Acupuncture Board in its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

# **#2 – Proposed December 2016 Disciplinary Guidelines**

~~Department of Consumer Affairs~~  
~~Medical Board of California~~

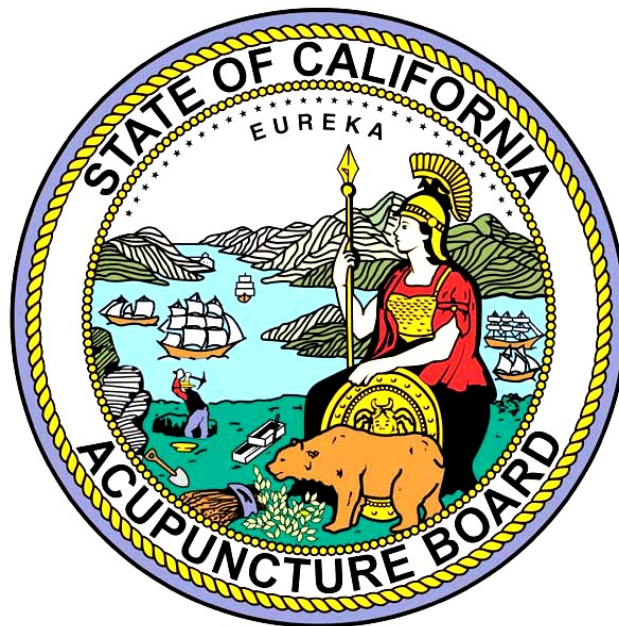
~~ACUPUNCTURE COMMITTEE~~

~~DISCIPLINARY~~  
~~GUIDELINES~~

~~1996~~



# Acupuncture Board



## Disciplinary Guidelines

Revised December 2016

***PROPOSED NEW 2016 LANGUAGE IS UNDERLINED. LANGUAGE PROPOSED FOR REMOVAL IS STRIKETHROUGH.***

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](http://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 and conditions of probation for violations of the Acupuncture Licensure Act.

~~The AC 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.~~

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, and
2. Standard Conditions are those conditions of probation which should be used in all cases.
3. Special Conditions and specific penalty guidelines shall be adhered to in the following cases:
  - a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", shall be used in any probationary order of the Board affecting that licensee.
  - b. As provided in California Code of Regulations Section 1399.469.1, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall do the following: 1.) Deny an application by the individual for

licensure; 2.) Revoke the license; or 3.) Deny any petition to reinstate or reissue the individual's license.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board always requests that 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 Board during its review and consideration of the Proposed Decision for final action. 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.

## **General Considerations**

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

## 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 **special conditions** that call for specific penalty guidelines in the following cases:

a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", shall be used in any probationary order of the Board affecting that licensee.

b. As provided in California Code of Regulations Section 1399.469.1, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall do the following: 1.) Deny an application by the individual for licensure; 2.) Revoke the license; or 3.) Deny any petition to reinstate or reissue the individual's license.

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

### Optional Terms and Conditions

- |  |   |
|--|---|
| <u>1</u> <u>Actual Suspension</u>                                      | <u>9</u> <u>Restitution</u>   |
| <u>2</u> <u>Psychological Evaluation</u>                               | <u>10</u> <u>Alcohol and Drug Abuse Treatment Program</u>                       |
| <u>3</u> <u>Physical Examination</u>                                   | <u>11</u> <u>Attend Chemical Dependency Support and Recovery Groups</u>         |
| <u>4</u> <u>Practice/Billing Monitor</u>                               | <u>12</u> <u>Abstain from Drugs and Alcohol and Submit to Tests and Samples</u> |
| <u>5</u> <u>Psychotherapy</u>  | <u>13</u> <u>Coursework</u>   |
| <u>6</u> <u>Restrictions on Patient Population or Practice Setting</u> | <u>14</u> <u>Community Service</u>  |
| <u>7</u> <u>Restrictions on Practice Techniques and Modalities</u>     | <u>15</u> <u>Supervised Practice</u>  |
| <u>8</u> <u>Examination(s)</u>   |   |

### Standard Terms and Conditions

- |   |  |
|---|--|
| <u>16</u> <u>Obey All Laws</u>                                  | <u>24</u> <u>Violation of Probation</u>  |
| <u>17</u> <u>Quarterly Reports</u>                              | <u>25</u> <u>Probation Monitoring Costs</u>  |
| <u>18</u> <u>Surveillance Program</u>                           | <u>26</u> <u>License Surrender</u>   |
| <u>19</u> <u>Interview with the Board or Its Designee</u>       | <u>27</u> <u>Severability Clause</u>   |
| <u>20</u> <u>Changes of Employment</u>                          | <u>28</u> <u>Notification of Name, Address, Telephone Number or E-mail Address Changes</u> |
| <u>21</u> <u>Tolling for Out-of-State Practice or Residence</u> | <u>29</u> <u>Maintenance of Valid License</u>  |
| <u>22</u> <u>Employment and Supervision of Trainees</u>         | <u>30</u> <u>Completion of Probation</u>   |
| <u>23</u> <u>Cost Recovery</u>                                  |  |

## **Optional Terms and Conditions**

Listed below are optional conditions of probation which the AG 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 AG Board depending on the unique aspects of an individual case.

**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.

**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 AC Board or its designee shall receive a current Diagnostic and Statistical Manual of Mental Disorders (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 or its designee 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 or its designee 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 or its designee. If the AC Board or its designee concludes from the results of the evaluation that respondent would benefit from ongoing psychotherapy, respondent shall comply with the AC's Board's directives in that regard. If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

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.*

### **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 or its designee. Respondent shall bear all costs of such an examination. Failure to pay costs will be considered a violation of the probation order. 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 AC Board or its designee on a quarterly basis or as otherwise determined by the AC Board or its designee.

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.*

### **4. Practice/Billing Monitor**

~~Within 90 days of the effective date of this decision, respondent shall submit to the AC 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 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 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 may request.~~

~~If the monitor quits or is otherwise no longer available, respondent shall not practice until a new monitor has been approved by the AC. 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.~~

Within 90 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a \_\_\_\_\_ (i.e., practice, billing, or practice and billing) monitor(s), the name and qualifications of one or more licensed acupuncturists whose license is valid and in good standing. Prior to the Board's approval, respondent shall provide a copy of the Board's Accusation and Decision to the monitor(s). A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board or its designee, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

Upon approval of the monitor(s), the Board or its designee shall provide a monitoring plan. Within 15 calendar days of receipt of the monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of acupuncture or billing, or both, and whether respondent is practicing acupuncture safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits written reports to the Board or its designee quarterly.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability notify the Board. Within 30 days, respondent shall submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor. Upon approval, the monitor shall assume immediate responsibility. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, after notification by the Board, respondent shall be suspended from the practice of acupuncture until a replacement monitor is approved and prepared to assume immediate monitoring responsibility.

Failure to maintain all records, or to make all appropriate records available for

immediate inspection and copying on the premises, or to comply with this condition as outlined above, is a violation of probation.

**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.*

## **5. Psychotherapy**

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board or its designee. Within 15 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent. Counseling shall be at least once a week unless otherwise determined by the Board or its designee. Respondent shall continue in such therapy at the Board's or its designee's discretion. Cost of such therapy is to be borne by respondent.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board or its designee concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board or its designee. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board or its designee.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board or its designee, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board or its designee.

Note: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

**6.5. Restrictions of on Patient Population or Practice Setting**

Respondent's practice shall be restricted to [specify patient population and/or setting] for the first \_\_\_\_\_ years of probation. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

*NOTE: The restrictions shall be appropriate to the violation. This condition shall be included ~~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. The condition shall also be used in cases where public protection is achieved by respondent having a specified practice setting (e.g. no solo practice, etc).*~~*language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.*~~

**7. Restrictions on Practice Techniques and Modalities**

Respondent's practice shall be limited to \_\_\_\_\_. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

*NOTE: The restrictions shall be appropriate to the violation. The condition shall be used in cases where public protection is achieved by respondent abstaining from a specific acupuncture service (herbs, moxibustion, an alternative treatment not in the Acupuncture Licensure Act, etc.)*

**8.6. Examination(s)**

Respondent shall take and pass the ~~written and/or clinical~~ licensing examination(s) prior to the termination of probation. licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. The examinations shall be taken on regularly scheduled exam dates. Respondent shall pay the established examination fees.

If respondent ~~fails the~~ has not taken and passed the examination ~~three times~~, his/her license to practice acupuncture is suspended until the examination is successfully passed within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

**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~~ the examination(s) ~~during the course~~ within the first twelve months of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).

### **9.7. Restitution**

Within 90 days of the effective date of this Decision, respondent shall provide proof to the AC Board or its designee 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.

### **10.8 Alcohol and Drug Abuse Treatment Program**

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) three (3)~~ months duration) or an equivalent program as approved by the AC Board or its designee. The Board may consider a recovery program taken under court order within the last three years prior to the effective date of the decision. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent. ~~Subsequent to the program, Respondent shall submit proof of completion of the recovery program to the Board or its designee within 15 days of its conclusion.~~ ~~participate in ongoing 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 AC at least three times a week during the first year of probation; and/or other substance abuse recovery programs approved by the AC. 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 AC. The psychologist shall confirm that respondent has complied with the requirements of this Decision and shall notify the AC 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.~~

**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 conditions # 911 and 12

**~~10. Reimbursement for Probation Surveillance Monitoring~~**

~~Respondent shall reimburse the AC 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.~~

**11. Attend Chemical Dependency Support and Recovery Groups**

Within thirty (30) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous). Documentation of attendance shall be submitted by the Respondent with each quarterly written report. Frequency and duration shall be determined by the Board or its designee.

**12.9. Abstain from Drugs and Alcohol and Submit to Tests and Samples**

Respondent shall abstain completely ~~abstain~~ from the personal use or possession or use 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 of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall abstain completely from the use of alcoholic beverages. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, shall be considered a violation of probation.

Respondent shall undergo random biological fluid testing as determined by the AC Board or its designee. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the AC Board or its designee. 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. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", shall be used in any probationary order of the Board affecting that licensee.

### **13.11. Coursework**

Respondent shall take and successfully complete not less than \_\_\_\_\_twenty (20) semester units or thirty (30) quarter units of coursework in continuing education in the following area(s) \_\_\_\_\_ as determined by the Board or its designee. All coursework shall be Board approved continuing education or an equivalent as approved by the Board or its designee. taken at the graduate level at a school approved by the AC. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all 50% of the required coursework must be completed within the first 3 years of probation. Any remaining coursework not completed within the first year shall be completed no later than three (3) months prior to the completion of probation. Respondent must submit a certificate of completion within 15 calendar days following the end of the coursework. 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, including date(s) of course(s), Continuing Education Provider (CEP), course title, instructor, and course description, for the AC's Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the respondent.

### **14.12. Community Service**

Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, a community service program in which respondent shall provide volunteer services on a regular basis to a community or charitable facility or agency for at least \_\_\_\_\_ hours per month for the first \_\_\_\_\_ months of probation. Such community service does not necessarily include acupuncture service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a quarterly basis. Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation.

Respondent shall complete all community service hours no later than six (6) months prior to the completion of probation.

**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.~~*

## **15. Supervised Practice**

During the period of probation, when respondent conducts evaluations and treatments on \_\_\_\_\_ (specific population of patients), such evaluations and treatments shall be performed only under the supervision and direct observation of a licensed acupuncturist not on probation with the Board. Upon and after the effective date of this decision, respondent shall not practice acupuncture and his or her license shall be automatically suspended until a supervisor is approved by the board or its designee. The supervision shall be direct observation of all treatments provided to all \_\_\_\_\_ (specific population of patients).

The supervisor shall be a current California licensed acupuncturist, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent. If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of licensed acupuncturists in the area, then the Board or its designee may consider permitting respondent to secure a supervisor not in the respondent's field of practice. The Board or its designee may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision or to locate another licensed acupuncturist.

Within thirty (30) days of the effective date of this decision, respondent shall have his or her supervisor submit notification to the board or its designee in writing stating that the supervisor has read the decision in case number \_\_\_\_\_ and is familiar with the required level of supervision as determined by the board or its designee. It shall be the respondent's responsibility to ensure that his or her supervisor submit timely acknowledgement(s) to the board or its designee. Failure to cause the direct supervisor to submit timely acknowledgements to the board or its designee shall be considered a violation of probation. If respondent changes employment, it shall be the respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board or its designee. Respondent shall have his or her new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor have read the decision in case number \_\_\_\_\_ and is familiar with the level of supervision as determined by the board or its designee. Respondent shall not practice acupuncture and his or her license shall be automatically suspended until the board or its designee approves a new supervisor.



Failure to cause the direct supervisor to submit timely acknowledgements to the board or its designee shall be considered a violation of probation. Within ten (10) days of leaving employment, respondent shall notify the board or its designee in writing.

# Standard Terms and Conditions

## (To be included in all Decisions)

### **16.13 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 AG Board or its designee in writing within seventy-two (72) hours of occurrence.

### **17.14 Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the AG Board or its designee, stating whether there has been compliance with all the conditions of probation. If the final probation report is not submitted as directed, probation shall be extended automatically until such time as the final report is submitted and accepted by the board or its designee.

### **18.15 Surveillance Program**

Respondent shall comply with the AG's Board's probation surveillance program and shall, upon reasonable notice, report to the assigned probation monitor ~~investigative district office~~. Respondent shall contact ~~the~~ assigned probation monitor ~~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) Board members or members of its staff; or 3) persons serving the AG Board as subject matter experts ~~examiners~~.

### **19.16 Interview with the AG Board or Its Designee**

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

### **20.17 Changes of Employment**

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

### **21.18 Tolling for Out-of-State Practice or Residence**

In the event respondent should leave California to reside, to vacation exceeding 30 days, or to practice outside the State, respondent must notify the AG Board or its designee 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.

For purposes of this condition, a Board ordered suspension or non-practice in compliance with any other condition of probation shall not be tolled.

### **22.19 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 supervisorial relationship in existence on the effective date of this probation. Respondent shall not teach at any Board approved training program during the course of this probation.

### **23.20 Cost Recovery**

Respondent shall pay to the AG Board its costs of investigation and enforcement in the amount of \$\_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, with payments to be completed no later than three months prior to the end of the probation term. Cost recovery will not be tolled.

At respondent's request, if respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board or its designee, in its discretion, may grant an extension of respondent's probation period up to two years without further hearing in order to comply with this condition. During the two years extension, all original conditions of probation will apply. The filing of bankruptcy by respondent shall not relieve respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs.

### **24.24 Violation of Probation**

If respondent violates probation in any respect, the AG 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 AG 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. If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose

the penalty which was stayed.

## **25. Probation Monitoring Costs**

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period, including but not limited to travel and quarterly reviews.

## **26. License Surrender**

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of his or her license or registration. The Board or its designee reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within fifteen (15) calendar days, deliver respondent's pocket and/or wall certificate to the Board or its designee and respondent shall no longer practice acupuncture. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. If respondent reapplies for an acupuncture license, the application shall be treated as a petition for reinstatement of a revoked or surrendered license.

## **27. Severability Clause**

Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

## **28. Notification of Name, Address, Telephone Number or E-mail Address Changes**

Respondent shall notify the assigned probation monitor, in writing within ten (10) days, of any and all name, address, telephone and/or e-mail address changes.

## **29. Maintenance of Valid License**

Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension or tolled probation.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within 2 years from the effective date of the Board's Decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

***NOTE: If Respondent violates this term and a petition to revoke probation is filed that results in a default revocation, any outstanding cost recovery shall be ordered to be paid by the effective decision date.***

### **30. 22 Completion of Probation**

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

## 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.~~

The Acupuncture Licensure Act (Business and Professions Code, Division 2, Chapter 12) and general provision sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Below are the code sections with the recommended disciplinary actions listed by the degree of the offense.

When filing an Accusation, the Office of the Attorney General may also cite additional related statutes and regulations.

Note: Under conditions of probation you will find the applicable numbered conditions to include in a decision and order.

# **Recommended Action by Violation of General California Business and Professions Code Provisions**

## **Section 651 Advertising**

- Maximum Penalty: *Revocation stayed, 2 years probation*
- Minimum Penalty: *Revocation stayed, 1 year probation*

1. *Standard Terms and Conditions (#16 – #30)*

2. *Optional Conditions (#13)*

## **Section 726 Commission of Act of Sexual Abuse or Misconduct with Patient**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed, 60 days suspension, with 5 years probation*

3. *Standard Terms and Conditions (#16 – #30)*

4. *Optional Conditions (#1, #2, #5, #6, #13, #15)*

# Recommended Action by Violation of Acupuncture Licensure Act

## ~~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].~~

**Violation: Unprofessional Conduct**

**Section 4955(a) Using or possessing 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 to the public, and to an extent that such use impairs his or her ability to engage in the practice of acupuncture with safety to the public.**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed, 30 days suspension, with 3 years probation

1. Standard Terms and Conditions (#16 – #30)

2. Optional Conditions (#1, #10, #11, #12, #13)

3. Special Condition: If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards Related to Substance-Abusing Licensees (September 2016)”, shall be used in any probationary order of the Board affecting that licensee.

**Section 4955 (b) Conviction of a Crime Substantially Related to the Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed, 30 days suspension with 3 years probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #9, #13, #14)

NOTE: If an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the only penalty mandated by law is revocation or denial of license. Section 4955 (b) is in conjunction with Section 4956.

**Section 4955 (c) False or Misleading Advertising**

Repeated infraction of statute regarding advertising.

- Minimum Penalty: Revocation stayed with 2 years probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#13, #14)

**Section 4955 (d) Aiding or Abetting or Violating or Conspiring to Violate the-Terms of this Chapter or Any Board Regulation**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years probation with the following conditions

1. Standard Terms and Conditions (#16 – #30)
2. Optional Condition (#13)

**Section 4955 (e) Failing to Follow Infection Control Guidelines**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years probation, depending on nature and severity of violation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#4, #13)

**Section 4955 (f) The Use of Threats or Harassment Against a Licensee/Patient**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years

•

probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Condition (#13)

**Section 4955 (h) Disciplinary Action Taken by Any Public Agency**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years probation

1. Standard Terms and Conditions (#16 – #30)

**Section 4955 (i) Action or Conduct that Warrants a Denial of License**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Condition (#13)

**Section 4955 (j) Violation of Any Law or Local Ordinance on Business Premises**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#13, #14)

**Violation: Fraud**

**Section 4955.1 (a) Securing a License 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.

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation stayed with 3 years probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#8, #13)

**Section 4955.1 (b), (c), (d) Any Act involving Fraud, Dishonesty, or Corruption as an Acupuncturist**

- Maximum Penalty:      *Revocation or denial of license*
  - Minimum Penalty:      *Revocation stayed, 60 days suspension with 3 years probation*
1. *Standard Terms and Conditions (#16 – #30)*
  2. *Optional Conditions (#1, #2, #4, #9, #13, #14)*

**Section 4955.1 (e) Failing to Maintain Adequate and Accurate Records (repeated acts)**

- Maximum Penalty:      *Revocation or denial of license*
  - Minimum Penalty:      *Revocation stayed with 2 years probation*
1. *Standard Terms and Conditions (#16 – #30)*
  2. *Optional Conditions (#4, #13)*

**Violation: Negligence**

**Section 4955.2 (a) Gross Negligence**

- Maximum Penalty:      *Revocation or denial of license*
  - Minimum Penalty:      *Revocation stayed, 60 days suspension with 3 years probation*
1. *Standard Terms and Conditions (#16 – #30)*
  2. *Optional Conditions (#1, #4, #6, #7, #13)*

**Section 4955.2 (b) Repeated Negligent Acts**

- Maximum Penalty:      *Revocation or denial of license*
  - Minimum Penalty:      *Revocation stayed, 90 days suspension with 3 years probation*
1. *Standard Terms and Conditions (#16 – #30)*
  2. *Optional Conditions (#1, #4, #6, #7, #13)*

**Section 4955.2 (c) Incompetence**

- Maximum Penalty:      *Revocation or denial of license*
- Minimum Penalty:      *Revocation stayed, 90 days suspension*

with 3 years probation

1. Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #4, #6, #7, #8, #13)

## **Accusations**

The Board has the authority, pursuant to Section ~~425.3~~ 4959 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. The AG Board requests that this fact be included in the pleading and made part of the accusation.

## **Statements of Issues**

The AG 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 AG 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 AG 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 AG Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.

## Language for Probation Orders

When a stipulated settlement or proposed decision orders probationary terms and conditions, the Board recommends the following language be included:

- Licensees: It is hereby ordered, Acupuncture license no. AC-\_\_\_\_\_ , issued to respondent \_\_\_\_\_ , is hereby revoked; however, the revocation is stayed and respondent's license is placed on probation for \_\_\_\_\_ years on the following terms and conditions.
- Applicants: It is hereby ordered, the application of respondent \_\_\_\_\_ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the application, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of \_\_\_\_\_ years on the following conditions.
- Reinstatements with conditions of probation: It is hereby ordered, the petition of \_\_\_\_\_ for reinstatement of his or her acupuncture license is hereby GRANTED, as follows.

Acupuncture license number AC-\_\_\_\_\_ is reinstated. The license will then be immediately revoked; however, the revocation is stayed and petitioner is placed on probation for \_\_\_\_\_ years on the following terms and conditions:

In cases in which petitioners for reinstatement have not practiced acupuncture in the state of California for an extended amount of time, they must retake the licensing exam before reinstatement. This information must be provided to the Administrative Law Judge so that he or she can include: "Upon successful completion of the licensure examination, license no. AC-\_\_\_\_\_ shall be reinstated to respondent."

**NOTE:** If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.



## **Recommended Language for Cost Recovery for Surrenders**

When the Decision and Order results in surrender of the license, cost recovery should be included as follows:

If Respondent should ever apply or reapply for a new license, or petition for reinstatement of a license, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 4959 in the amount of \$ \_\_\_\_\_ prior to issuance of a new or reinstated license. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

Respondent shall relinquish his/her wall and pocket certificate of licensure to the Board or its designee once this Decision becomes effective and upon request.

## Demonstrations of Rehabilitation

When the Board receives information that an applicant or licensee has a criminal conviction, there is a set of criteria the Board considers when determining a denial of license or revocation, or suspension of license is appropriate.

- In evaluating the rehabilitation of an applicant/licensee and to determine if action is necessary, the Board considers the following:
  1. The nature and severity of the crime(s) under consideration.
  2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license.
  3. The time that has elapsed since the commission of the crime(s).
  4. The extent to which the applicant/licensee has complied with any terms of probation or any other sanctions lawfully imposed against the applicant/licensee.
  5. Evidence, if any, of rehabilitation by the applicant/licensee.
  
- The petitioner should provide details regarding rehabilitation that include:
  1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
  2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
  3. Letters of reference from professors or colleagues within the field of acupuncture.
  4. Letters of reference from past and/or current employers.
  5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
  6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of an acupuncture profession for the applicant.

7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

## **Evidence of Mitigation**

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and competency in acupuncture:

1. Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, or ongoing therapy, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
2. Recent letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, etc., where appropriate, and sobriety date.
3. Recent, dated laboratory analyses or drug screen reports, where appropriate.
4. Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.
5. Certificates or transcripts of courses related to acupuncture which respondent may have completed since the date of the violation.

## **Evidence of Aggravation**

The following are examples of aggravating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. Perjury on official Board forms.
6. Violent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

## Proposed Decisions

The **AG 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 **AG's Board's** Disciplinary Guidelines.

When a probation order is imposed, the **AG Board** requests that the order first list any combination of the Optional Terms and Conditions as they may pertain to the case followed by all of the Standard Terms and Conditions [~~13—22~~ 16-30].

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

The AG 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 AG Board requests that would appreciate~~ a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license be included in the Petition Decision.

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

1. Continuing education pertaining to the offense and its effect on the practice of acupuncture.
2. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
3. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
4. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
5. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

6. A culpability or exculpability statement.

If the AG Board should deny a request for reinstatement of licensure or penalty relief, the AG 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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**#3 – Discussion of Prostitution  
Prevention and Condition of Office  
Regulatory Rulemaking**



<b>DATE</b>	December 14, 2016
<b>TO</b>	Acupuncture Board Enforcement Committee Members
<b>FROM</b>	Marc Johnson, Policy Coordinator
<b>SUBJECT</b>	Prostitution Prevention and Condition of Office – Revised Regulatory Language

**Issue:**

Discussion of the issue of prostitution prevention and condition of office revised regulatory language.

**Action items for Committee:**

1. Discussion and possible approval of revised language for Title 16, California Code of Regulations Section 1399.469.3, for referral back to the full Board.

**Background and Discussion:**

Historically, the use of Acupuncture Offices as fronts for prostitution has been minimal. In the last five fiscal years, the Board has received approximately twenty prostitution related complaints. This approximate number is based on the comments of the complaint description in the Board's licensing system for all complaints logged under the unprofessional conduct and criminal charges/convictions categories. However, there is not a specific complaint type for "prostitution" there is no way we can get the exact volume; the number could actually be higher or lower.

In 2014, the Board began discussion over regulations to prevent the usage of Acupuncture offices as fronts for prostitution. Originally, the Board desired to obtain more regulatory authority to discipline licensees who allow their places of business to become places of prostitution but who may not be directly engaging in the sexual acts with patients. While the Board already has authority to discipline licensees who are convicted of crimes related to prostitution, staff found that many licensees are skating by the Board's regulatory authority. In particular, staff and the Attorney General's (AG) office noticed either criminal charges are being dismissed or plea bargained away when the licensee is often only the owner of the business location and then lets other individuals use the business location to engage in the prostitution. Hence, there is a demonstrated need for possible regulation.

**CALIFORNIA ACUPUNCTURE BOARD**

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The Enforcement committee reviewed the issue at its February 14, 2014 meeting and reported it to the full Board, which then adopted the proposed language by a 6-0 vote. This language was based upon the California Chiropractic Board that prohibits sex on the premises of a licensee. Here is the text of the originally approved language (underlined):

***“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.”*

This summer, staff reviewed the approved language and discussed the matter with the California Attorney General’s office. The originally approved language was found to be overbroad and not specific enough. Staff and the AG believed that the Board would be better served creating a standalone disciplinary regulation using the authority of Business and Professions Code sections 731 and 4955, rather than plugging new language into an existing regulation. **Here is the newly proposed text:**

Add to Title 16 of Division 13.7 of the California Code of Regulations:

Adopt New Article 6.5 Enforcement (beginning with 1399.463):

1399.469.3 Prohibited Sexual Acts

(a) Any person subject to regulation by the Acupuncture Board, who knowingly engages in or who aids and abets in, by owning, leasing, licensing, or operating a location where sexual acts, or attempted sexual acts occur, involving any person, including but not limited to patients, clients, employees, patrons, visitors, or customers, whether or not fees for services are paid, that person, shall be guilty of unprofessional conduct.

(b) Sexual Acts, as defined in this regulation, means the touching of any part of a person for the purpose of sexual arousal, gratification, or sexual abuse. Sexual acts includes but is not limited to sexual intercourse, masturbation, sexual stimulation, and sexual penetration.

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(c) The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the Acupuncture Board.

NOTE: Authority Cited: Sections 731 and 4955, Business and Professions Code.

**#3b**

**New Condition of Office Proposed**

**Language Based on BPC 731**

**CALIFORNIA ACUPUNCTURE BOARD**  
**Condition of Office -- Proposed Regulatory Language**

**Language approved at 2/14/14 Board Meeting:**

Amend CA Business and Professions code 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~~

**New Proposed Regulatory Language:**

Add to Title 16 of Division 13.7 of the California Code of Regulations:

Adopt New Article 6.5 Enforcement (beginning with 1399.463):

1399.469.3 Prohibited Sexual Acts

(a) Any person subject to regulation by the Acupuncture Board, who knowingly engages in or who aids and abets in, by owning, leasing, licensing, or operating a location where sexual acts, or attempted sexual acts occur, involving any person, including but not limited to patients, clients, employees, patrons, visitors, or customers, whether or not fees for services are paid, that person, shall be guilty of unprofessional conduct.

(b) Sexual Acts, as defined in this regulation, means the touching of any part of a person for the purpose of sexual arousal, gratification, or sexual abuse. Sexual acts includes but is not limited to sexual intercourse, masturbation, sexual stimulation, and sexual penetration.

(c) The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the Acupuncture Board.

NOTE: Authority Cited: Sections 731 and 4955, Business and Professions Code.