

**REVISED SUNRISE RECOMMENDATIONS
FOR THE ACUPUNCTURE BOARD**

**Recommendations of the
Council of Acupuncture and Oriental Medicine Associations**

Summary of Comments and Positions

Issue	Position	Comment
#1	Revise	maintain four-year review cycle
#2	Revise	replace MD position from Board with an Acupuncturist
#3	Reject	maintain definition of quorum for functionality
#4	Revise	change name to Board or Oriental Medicine
#5	Revise	continue to improve website information accessibility
#6	Revise	continue to contract for exam administration
#7	Support	do not require additional coursework for repeat examinees
#8	Support	include acupuncturists in B&P Section 800 reporting requirements
#9	Revise	update educational standards and scope of practice legal opinion
#10	Revise	continue to evaluate national examinations
#11	Support	investigate and the use of unlicensed acupuncture “assistants”
#12	Revise	evaluate the practice of acupuncture by other licensed professions
#13	Revise	require additional continuing education hours
#14	Revise	evaluate use of private school evaluation agencies
#15	New	review and amend occupational survey

Revised April 22, 2002

COMMENTS ON THE JLSRC RECOMMENDATIONS
FOR THE ACUPUNCTURE BOARD

**Recommendations of the
Council of Acupuncture and Oriental Medicine Associations**

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION AND THE EXISTENCE OF THE BOARD?) Should the licensing and regulation of acupuncturists be continued, and the profession be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *Continue regulation of the profession by the Board and review the Board again in four years.*

Comments: Continued regulation of the practice of acupuncture is necessary, given the direct patient care performed by acupuncturists. Acupuncturists assess and diagnose illness, and prescribe and administer various oriental medicine treatments in order to treat disease and to promote, maintain, and restore patient health. Consumers rely upon the licensing process to ensure that acupuncturists are properly trained to provide competent care.

The Acupuncture Board should be continued as the entity responsible for the regulation of acupuncturists. Since the Board was reduced to only three members between the sunset review cycle as a result of changing administrations, and the Department delayed or postponed regulatory proposals adopted by the Board in order to wait for replacement members, a more limited sunset review cycle might exacerbate the Board's efforts to remedy issues identified in this sunset review cycle.

The Council suggests that the Board be required to submit an interim report for the Legislature in two years.

ISSUE #2. (CHANGE BOARD COMPOSITION?) The Board does not have a faculty member appointee.

Recommendation #2: *Eliminate the M.D. position from the Board, and replace it with a licensee.*

Comments: It has been suggested that one Board member be a sitting faculty member of a California Acupuncture School. However, there is little evidence of a need for this. In the past, applicants have been advised that there could be the appearance of impropriety or conflict of interest to members actively sitting on board of professional organizations, employed by schools,

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or otherwise deriving income from the regulated industry. In fact, there is currently a former California Acupuncture School faculty member serving on the board, who had previously offered to give up his faculty position in order to qualify for appointment to the Board. He has brought up many issues on behalf of the schools during his term.

The MD position on the Board, however, has turned over numerous times over the past several years. In the past five years, only one MD has served a full year of their term. This position has been largely a symbolic holdover from the time when the Acupuncture Examining Committee was under the authority of the Board of Medical Quality Assurance. Since the Acupuncture Board regulates the licensees, and most issues involve the regulation of licensees, the majority of the Board should consist of regulated licensees. This would be in compliance with commonly recommended standards that suggest that one-third of Boards should be public members.

ISSUE #3: (HOW MANY MEMBERS OF THE BOARD SHOULD CONSTITUTE A QUORUM?) The law provides that a majority of the appointed members of the Board shall constitute a quorum.

Recommendation #3: *The majority of appointed members of the Board should continue to constitute a quorum. Other Boards should adopt this policy.*

Comments: The current requirement that a majority of the appointed members of the Board shall constitute a quorum to conduct business is good policy and should be extended to other regulatory boards within the Department. Some other boards and bureaus have experienced serious problems when a shortage of members has left them without a quorum needed to conduct meetings.

ISSUE #4. (MAINTAIN THE CURRENT NAME OF THE BOARD?) The Board supports a name change to the “California Board of Acupuncture and Oriental Medicine,” stating that acupuncture is one modality within the whole practice and philosophy of Oriental medicine.

Recommendation #4: *Change the name of the Board to the “California Board of Oriental Medicine.”*

Comments: Presently, consumers and other health care professionals are confused by the difference between the scope of practice of oriental medicine services provided by Licensed Acupuncturists, and the title of Licensed Acupuncturist, which does not match the scope of practice. A change of the Board title to “California Board of Oriental Medicine” would be a step in the right direction towards public education. The practice of “oriental medicine” is specifically mentioned in statute and regulation, its modalities are already authorized in statute, and is not a licensed profession separate or removed from acupuncture. This would also be consistent with the Medical Board of California, which oversees licensed “physicians and surgeons,” rather than “licensed doctors” or “medicalists.” The Board’s authority to regulate and enforce the practice of oriental medicine are in place.

ISSUE #5. (MAXIMIZE USE OF THE INTERNET?) Is the Board utilizing Internet capabilities to improve services and provide better information to consumers and licensees?

Recommendation #5: *All Board reports, newsletters and brochures should be available on the Board's website.*

Comments: The Board should be commended for its efforts to place information on its website and to keep it up to date. They were one of the first boards to put their information up, and have recently made a thorough revision to their website. To facilitate dissemination of information to Board licensees and the general public, the Board should continue to post meeting announcements, minutes, newsletters, brochures, and reports on-line.

Furthermore, the Department should work more diligently to have other boards and bureaus meet these same standards of information accessibility.

ISSUE #6. (CONTINUE TO CONTRACT OUT EXAM ADMINISTRATION?) The licensing examination is administered by a private company, the cooperative personnel services (CPS).

Recommendation #6: *Continue to contract out exam administration to an independent consultant.*

Comments: While the Board has done a commendable job overcoming the problems with administration of the licensing exam in the late 1980s, the requirement that the Board contract with an independent consultant for exam administration should be continued.

ISSUE #7. (SHOULD ADDITIONAL COURSEWORK BE REQUIRED OF AN APPLICANT WHO FAILS THE EXAM?) The Board is proposing the adoption of legislation that would require an applicant who fails the examination after three attempts to complete additional education before they can sit for the exam.

Recommendation #7: *Additional coursework should not be required of applicants who fail the exam.*

Comments: While there have been accusations and suspicions that some applicants have taken the exam numerous times for the purpose of selling the questions, there is no solid evidence of this. Therefore, applicants should be permitted to continue to sit for the examination, even after failed attempts, without being required to attend additional coursework or continuing education. It is up to the applicant to pursue supplementary education needed for passage of the examination. As long as applicants meet the educational requirements and pay the fee to sit for

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the examination, they should be allowed to continue to take the exam, as many times as necessary.

ISSUE #8. (SUBJECT ACUPUNCTURISTS TO THE PROFESSIONAL REPORTING LAWS?) Unlike most health boards and health care licensees, neither the Board nor their licensees are subject to the professional reporting laws (Section 800 et seq. of the Business and Professions Code).

Recommendation #8: *Acupuncturists should be subject to professional reporting laws.*

Comments: The acupuncturist profession has proposed that acupuncturists should be subject to the same Section 800 reporting laws as other primary health care professionals licensed in California.

ISSUE #9. (FURTHER STUDY NEEDED TO DETERMINE EDUCATIONAL STANDARDS AND SCOPE OF PRACTICE?) The Board appears to be proposing to increase the education requirement for the practice of acupuncture and oriental medicine. The Board is proposing to change the law so that acupuncturists can diagnose within the scope of their practice.

Recommendation #9: *The Board should assign its legal counsel to the task of determining revisions to the licensed scope of practice. The Board should review the 3150 - 3950 hour curriculum recommended by its Competencies Task Force, and adopt it into a regulatory proposal.*

Comments: There has been much debate between the acupuncture profession and some acupuncture school owners/administrators surrounding the level of education that is needed for acupuncturists to practice effectively. The schools want the freedom to experiment with education, and the profession wants certain minimal requirements for entry into the profession to be met. A number of recent surveys have consistently determined that about 35% of licensees feel that their educational program inadequately prepared them to enter practice. The Board has acknowledged the debate over education by establishing numerous task forces over the past few years, including the recent Task Force on Professional Competencies and Educational Outcomes that met five times, with equal representation by the profession and school owners. The Council recommends adopting the reviewed curriculum of 3150 - 3950 hours as the basis for a new regulatory proposal to update curriculum standards.

In light of the fact that statute law has changed over the past ten years, the scope of practice for acupuncturists also needs to be clarified and codified in regulation, including an upgrade of curriculum standards. With the debate temporarily resolved, and with pending legislation affecting the scope of practice and curriculum, the profession recommends that the Board begin by assigning legal counsel to the task of reviewing the scope of practice of acupuncturists. As the practice of acupuncture evolves, it may be necessary to make changes to the practice act in order to reflect contemporary health care

ISSUE #10. (EVALUATE NATIONAL EXAMINATION?) The last time the Board was reviewed, the Joint Committee Recommended that the Board should continue evaluating the National Examination, given the time, effort and cost involved in providing the Board examination.

Recommendation #10: *The national examinations should continue to be monitored and evaluated for revisions.*

Comments: The Board should continue to evaluate the national examinations, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and determine whether or not the national examinations should be offered in California as part of the state examination process. While such an evaluation was conducted just a few years ago, the NCCAOM is developing an additional examination, and may include California acupuncturists in its professional survey this time. On the other hand, caution should be used in consideration of working with the NCCAOM, as they often have acted as a professional society, including providing testimony against the Acupuncture Board's regulatory proposals. To assess the scope of their "national" exam and its relevance to the practice in California, the Department's Office of Educational Resources (OER) should conduct or oversee a comparative analysis of the new national examination(s) with the California exam, scope of practice, and two most recent occupational surveys.

ISSUE #11. (INVESTIGATE THE EXTENT OF THE USE OF UNLICENSED ACUPUNCTURE ASSISTANTS?) Are "Assistants" being used by licensed acupuncturists to perform activities that could be considered engaging in the practice of acupuncture?

Recommendation #11: *Investigate the use of unlicensed acupuncture assistants.*

Comments: The profession has expressed concerns about the use of unregulated, unlicensed acupuncture assistants as a necessary component of large and successful practices. The Board should actively investigate the extent to which licensees are utilizing assistants. If the Board determines that this is a common yet unregulated practice, the Board should examine the need for licensure of these assistants and return to the Legislature in two years with a report on the frequency of the practice and the potential need for a new licensure category.

ISSUE #12. (THE BOARD FEELS THAT EXEMPTED HEALTH PRACTITIONERS ARE A RISK TO CONSUMERS.) Under certain instances, other licensed health practitioners, such as physicians, podiatrists and dentists may also practice acupuncture.

Recommendation #12: *The Council recommends that the Board examine ways to ensure consumers are not harmed by exempted practitioners and to report the results to the Legislature with its interim report in two years.*

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Comments: The Board claims that the 25-300 hour courses in acupuncture often taken by a physician, podiatrist or dentist may be inadequate and are essentially unregulated and unstandardized. The Joint Committee should direct these Boards and the others to work together on evaluating and developing standards for licensees under the various board who may wish to practice acupuncture as an adjunctive procedure within their respective scopes of practice.

ISSUE #13. (CHANGE THE BOARD'S CONTINUING EDUCATION PROGRAM?) Are changes needed to the Board's continuing medical education (CE) program? It is unclear whether the Board uses their authority to audit licensees to ensure compliance with the continuing education requirements. The Board has authorized licensees to complete up to 50% of their continuing education requirements on an independent or home study basis.

Recommendation #13: *The Board should study ways to improve the frequency and consistency of their auditing the quality and relevance of their courses, and the qualifications of the providers. The Board should consider whether 15 hours per year is sufficient for all licensees to keep apprised of new developments in their field of medicine.*

Comments: Acupuncturists are required to complete 30 hours of continuing education every two years as a condition for renewal of their licenses. The Board is authorized to audit, once each year, a random sample of acupuncturists who have reported compliance with the continuing education requirement. The frequency and consistency of the Board's auditing and the quality and relevance of Board approved course may not meet the standards recommended by the Joint Committee. The Board should review the Joint Committee's consistent standards for continuing education for all licensed healing arts professions. The Board should consider whether 15 hours per year of continuing education is sufficient for all licensees, and revise its standards accordingly.

ISSUE #14. (EXAMINE THE BOARD'S SCHOOL APPROVAL PROCESS?) The last time the Board was reviewed, the Joint Committee concurred with the Board that the Bureau of Private Postsecondary and Vocational Education (BPPVE), or similar approval for schools outside California, should be a prerequisite for Board approval of schools.

Recommendation #14: *The Board should continue to examine the pros and cons of the use of accreditation by the Western Association of Schools and Colleges (WASC), the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM), the approval process of BPPVE, and its own approval process. The Board should provide results of its study and make recommendations on any changes that are necessary to improve the overall efficiency and quality of the process at the next review.*

Comments: The Board continues to look at this issue at the request of the schools. In their current report to the Joint Committee, the Board states that they have delayed significant changes to the acupuncture school approval process since the time of the last reporting, due to limited resources. However, the Board's report does state that beginning fiscal year 2000/2001,

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their Educational Committee commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the BPPVE, and the ACAOM.

However, caution should be used in consideration of working with the ACAOM, as they often behave as a membership trade organization, frequently providing testimony on behalf of their accredited schools, and against standards of education higher than their own, while failing to set limits on the length of their own accredited institutions' programs. They have testified against the Acupuncture Board's regulatory proposals. It is recommended that the Western Association of Schools and Colleges be invited to make a competitive presentation. The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.

It would be appropriate for the Board to utilize accreditation site visit review as a substitute for its own site review, in order to avoid duplication for the schools. The Board could then utilize staff time reviewing curriculum content, faculty qualifications, student retention rates, exam pass rates, and other qualitative factors related to acupuncture education.

ADDITIONAL CAOMA RECOMMENDATIONS

ISSUE #15. (OCCUPATIONAL SURVEY PROCESS?) The two most recent occupational surveys failed to adequately survey the use of adjunctive therapies and procedures, and the limited scope of questioning arbitrarily limited the possible responses. Additionally, the most recent survey failed to ask about what conditions patients most frequently seek treatment for.

Recommendation #15: *Rather than wait another five years, the Board should request the Office of Examination Services to conduct an immediate follow-up survey to seek answers to questions that were not asked in previous surveys(s), specifically about adjunctive modalities and conditions treated.*

Comments: Since the passage of Senate Bill 341 in 2001, heat, cold, magnets, and diet have been specifically added to the scope of practice. While practitioners claimed to already be using these procedures prior to this, and many acupuncturists acknowledge making extensive use of adjunctive modalities of diet, nutrition, acupressure, and oriental massage, there were few, if any questions, asked about these therapies on the occupational analysis. Also, since the survey is used as the basis for a competency examination, frequently treated conditions should be determined, as these can be used to frame exam questions about diagnosis and treatment that are actually pertinent to licensed practice.