



Draft
**ACUPUNCTURE BOARD
MEETING MINUTES**

Westin Hotel
San Diego, CA

**FULL BOARD MEETING
February 23, 2010**

Members Present

*Robert Brewer, Public Member, Chair
Charles Kim, Public Member
Anyork Lee, L.Ac,
George Wedemeyer, Public Member
Paul Weisman, Public Member*

Staff Present

*Janelle Wedge, Executive Officer
LaVonne Powell, Staff Counsel
Christie Loftin, Examination Coordinator
Cathy Hardin Schau, Education Coordinator
Kristine Brothers, Enforcement Coordinator
Benjamin Bodea, Administrative Technician*

Guest List on File

1. Call to Order and Establishment of a Quorum

All members were present. Quorum established. Meeting started at 8:50 am.

2. Chairs Report

Chair Brewer announced that item 10i will be moved into the Director's Report (item 4).

3. Executive Officer's Report

Janelle Wedge shared that the Senate Rules Committee has confirmed the reappointment of Charles Kim and the appointments of AnYork Lee and Paul Weisman. The Board office is projected to be relocating to DCA Headquarters off of North Market by April 1, 2011. All Boards have been upgraded to MS Outlook and members will soon have access to their own email. Janelle Wedge presented to the Board the Offices 2009-2010 Expenditure Report and Revenue Report.

4. Director's Report

Kimberly Kirchmeyer, Deputy Director of the DCA presented on behalf of Acting Director Steiger. She shared that the Executive office has been talking to the Board's Executives to begin discussion on the addition eight million additional individuals within the Healthcare system as a result of the Federal Healthcare reform. Kimberly also shared that the Budget Change Proposal for the 140 positions requested for the Consumer Protection Enforcement Initiative has been approved and the department is in the process of filling those positions. The DCA has been addressing 8 performance measurements w/in the CPEI and this data will become public in October. George Wedemeyer asked if the Department is looking into job viability after licensure.

Kimberly responded that it was out of the Purview of the Department and to approach the schools. She noted that the Department is also looking to begin streamlining the Licensing process for all the Boards.

4a. Discussion Regarding Initiation of Rulemaking Package to Amend Regulations to Strengthen Board Enforcement Program Pursuant to the Department of Consumer Affairs Consumer Protection Enforcement Initiative. (Formerly Item 10i)

Spencer Walker summarized for the Board that to since the Directive failed the Department has suggested language to adopt in place of the regulations. If adopted, these should take effect within 6 to 12 months.

ANYORK LEE MOTIONED TO INITIATE THE PROCESS OF A RULEMAKING PACKAGE TO AMEND THE REGULATIONS. PAUL WIESMAN SECONDED. 5 – 0 – 0. MOTION PASSED

5. Approval of May 6, 2010 Meeting Minutes

Ted Priebe asked that the minutes be more in dept to more accurately reflect the transcript of the meeting. Spencer Walker responded that the minutes do not need to be a transcript but a review of what occurred. Hugh Morrison asked if the Board must post all submissions made to the Board at the meetings by members of the Public. Spencer responded that it's at the discretion of the Board.

CHARLES KIM MOTIONED TO ADOPT THE MINUTES. ANYORK LEE SECONDED. 5 – 0 – 0. MOTION PASSED.

6. Election of Vice Chair

George Wedemeyer and Charles Kim were nominated for the position of the vice chair. A vote yielded 3 votes for George and 2 for Charles Kim. George Wedemeyer is now the Vice-Chair.

7. Legislation Update

Janelle Wedge updated the Board on the status of SB 294, SB 1171, SB 1172 and S. 3002

8. Education Business

a. Update Pending School Applications

Cathy Hardin Schau reported on the six universities pending. Janelle reminded the Board that the Office is still unable to receive authorization for out of state travel and thus the office must wait for the Hawaii and Arizona schools. George asked to be provided a copy of the previous bill detailing that out-of-state students have their transcripts/acupuncture programs evaluated like Foreign Applicants graduating from foreign programs.

b. Update on School Annual Report Filings

Cathy reported on the status of Annual Reports that she has received from the schools.

c. School Site Report on Nine Star University

Cathy presented her update on the application status of Nine Star University. As the Board had requested at the last Board meeting, the school submitted a final syllabus that accurately reflects their current curriculum. They have also sent more updated syllabi, adding hours to four of their classes, including one that corrects their deficiency in the basic sciences. Paul Weisman asked if deficiencies in curriculum hours are common issues for schools. Cathy responded that it's not uncommon to see this in a first review but not to see it four times as with Nine Star.

ANYORK MOTIONED TO APPROVE THE APPLICATION OF NINE STAR UNIVERSITY. NO SECOND. MOTION FAILED. CHARLES KIM MOTIONED TO DISSAPPROVE THE APPLICATION OF NINE STAR UNIVERSITY. GEORGE WEDEMEYER SECONDED. ANYORK LEE ASKED CATHY TO SUBMIT A LIST OF NINE STAR'S DEFICIENCIES SO THAT THEY MAY ADDRESS THEM. VOTE 5 – 0 – 0 . MOTION PASSED.

d. Acupuncture and Integrative Medicine College (Probation Status)

The school has submitted the two reports requested at the last meeting. The reports were complete. Financially, the report did not differ from what you received at the last meeting. They information on their curriculum and their instructors they submitted was also in compliance. Terry Powers, President of AIMC Berkeley, presented herself to the Board and updated the board on its status.

PAUL WEISMAN MOVES TO REMOVE THE SCHOOL FROM PROBATION. CHARLES KIM SECONDED. 5 – 0 – 0. MOTION PASSED.

e. Update on St. Luke University

Cathy presented to the Board that St. Luke has been abiding by the conditions set by the Board in relying less on Donations from the school's owner. The School has been presenting financial information every six months and will be submitting two more reports before their conditional approval is up for a vote. Paul Weisman asked how a school knows what the Board considers financially stable. Cathy responded that there is not a standard set in the regulations but that the BPPVE standards are what we've been using as a guideline.

f. Automatic Probation for Schools

Spencer Walker responded to Charles Kim's request to discuss the automatic placement of schools on probation. This would not be possible without a meeting, either in person or by teleconference. Other than that it would require a regulatory change.

g. Closure of Samra University

David Lee, Provost of Samra University presented on the demise of the school. He shared that the University moved to a new location three years ago and in that time ran into problems with the landlord. The University faced eviction and although the school filed a suit against the landlord, it did not feel that it was certain whether or not it would be able to offer classes for the summer of 2010 and instead filed for Bankruptcy. All the proper organizations have been contacted regarding it's closure. Paul Weisman asked if students can still obtain their transcripts. David responded that Southern California University of Health Sciences has taken on the role of record keepers of Samra's students. Charles Kim asked David Lee to give out a press release informing the public of continuation of records for the students. David Lee replied that he has made himself personally available to any student needing access to their records. Janelle Wedge recommended listing the contact information on the website and on the school's outgoing message.

h. School Reporting Requirement on Post Graduate Employment.

George Wedemeyer decided to table the matter until since BPPVE has just been reformed and will be coming up with their guidelines. Ted Priebe stressed the difficult employment conditions licensed practitioners have experienced in California including 50% practitioners working less than 30 hours a week and also 50% earning 50K or less annually. Marilyn Allen shared that in the 2011 the Dept of Labor will deem Acupuncture as an emerging profession in the United States.

i. Ethics Course Requirement for Continuing Education

Paul Weisman asked what ethics Continuing Education Acupuncturists are required to take since one of the main issues in Enforcement has been unprofessional conduct. Ted Priebe stated that Ethics curriculum in Acupuncture is undeveloped and unprofessional. Marilyn Allen of the American Acupuncture Council shared that she's an ethics instructor at several Acupuncture Programs. The Ethics courses are usually 2 units which equates to 20 or 30 hours. Many students are somewhat naïve but we do talk about enforcement and the rules and regulations but would recommend a continuing education requirement for it. The difficulty she sees is that Acupuncturists are limited to five units of non-patient oriented education. Cathy Hardin Schau responded that an Ethics course would count as a category one patient oriented CE course. Neal Miller, Bill Mosca of CSOMA, Michelle Lao, of CAOMA, and strongly support Member Weisman's suggestion to institute an ethical CE requirement. Janelle Wedge stated that she would start drafting language. Charles Kim asked that guidelines for advertising and sexual misconduct be included. Elliot Wagner asked that we further enforce the audit for CE to insure that practitioners are completing their CE requirements.

9. Examination Business

a. August 10, 2010 Examination

Janelle Wedge reported that the August 10th Exam held in Sacramento went smoothly. The Passing Score Workshop is being held today and tomorrow with results out by either next week or the following week.

b. Herb/Formula List

Janelle Wedge included an updated Herb/Formula List for purposes of preparing the exam. Charles Kim asked that the list also include the Korean names for the herbs since the exam is offered in Korean. AnYork Lee asked when they will begin using the updated list for the exam. Janelle responded that it would be until at least August 2011. The list will be made public after the Korean translations have been obtained.

10. Enforcement Business

a. Enforcement Case Report

Enforcement Coordinator Kristine Brothers presented the Board the Enforcement Case report. She noted that the format has changed and the report contains a little more detail. Robert asked if we know how other Boards are doing. Kristine responded that other Boards' statistics are only available when they submit their Year End Report which is due out at the end of October. Robert praised Kristine and Janelle for the progress he's seen in the last four years in reducing the amount of time enforcement cases take.

b. Presentation by Chief of the Division of Investigation

Tabled until after item 10c. Janelle Wedge introduced Daryl Walker, the Chief of the Division of Investigation of the Department of Consumer Affairs. Daryl Walker shared his background in Police and Criminal Justice. He came to the DOI three years ago and has been sworn in as chief less than a month ago. Daryl explained the workings of the Division of Investigation and how it works for the Acupuncture Board.

c. Safe Compounding of Herbs Committee

Spencer Walker suggested several items the committee should address on whether or not this Board can actually regulate that. The committee should describe how the regulation of herbal compounding serves the mission of the Board to protect consumers, why it is necessary to regulate the compounding of herbs, which states, if any currently regulate the compounding of herbs, if the FDA has taken a position on the necessity to regulate herbal compounding to protect consumers and if not why, has the Acupuncture taken any action against a licensee for harm caused for unsafe herbal compounding, and why should the Acupuncture Board and not the CA Dept of Public health or the Naturopathic Medicine Committee seek legislation to regulate herbal compounding in California. Hugh Morrison encourages the Board to look at education related to safe administration of herbs. Neal Miller, Ben Kavoussi, Elliot Wagner and Michelle

Lau supports increasing consumer protection through an examination in this matter. Bill Mosca addressed the Board that this issue was originally brought up because the FDA left the contents of the specific herbal compound to the practitioner. He stresses that the Board take a look at the FDA's Current Good Manufacturing Practices (CGMP) and if there is any action incumbent on this board. Jean Jacques Marco suggested that the Board look at the German and European Union's work in this matter which dates back to the late eighties. Marilyn Allen of the American Acupuncture Council stated that her organization has broken down the CGMP and will share this with the Board. Bill Mosca shared that there is another guideline being worked on by AAAOM in conjunction with the American Herbal Products Association that could also be a good start for recommendations. Robert shared that he did receive requests to be on the committee but that a majority came from the compounding companies and that he would ask for more requests from Acupuncture practitioners.

d. Proposed Amendments to Section 1399.469 and Disciplinary Guidelines

Janelle presented the amended guidelines as directed by the board as well as the uniform standards with regards to substance abuse. Paul Weisman wanted to correct for the record on section 4955.1 which is part of the Acupuncture Licensure Act needs to be consistent with section 498 for the minimum penalty so both will read just revocation (page 11, 49551a and page 15 section 498) under securing license by fraud, deceit or misrepresentation. Charles Kim asked that insurance fraud also have revocation. Spencer Walker recommended that the Board keep their discretion in that situation. Charles Kim acknowledged.

PAUL WEISMAN MOTIONED TO ADOPT THE AMENDED GUIDELINES AND 1399.469. CHARLES KIM SECONDED. DISCUSSION OPENED.

Bill Mosca asked the Board to clarify the language regarding the minimum amount of units of continuing education for some of the guidelines.

CHARLES KIM WITHDREW HIS SECOND OF THE MOTION TO ALLOW FOR FURTHER LANGUAGE CHANGE.

Megan Huang discussed what is covered in her programs Ethics course. Spencer Walker stated that the minimum requirement for ethics should be removed since section 23 covers the requirement. Neal asked if the public can get access to these changes before the meeting. Janelle responded that this information, what we use to call the public packet is now placed on our website prior to the meeting. Bill Mosca addressed the hour requirement discrepancy stating that 30 hours are more realistic than 300 hours. Kristine Brothers stated that these guidelines are already in effect, the language stating 20 semester units and 30 quarter units. Megan Huang and Jean Jacques Marco stated that it should read 2 units with 20 semester hours or 30 quarter hours. Megan stated that at ACTCM the program consists of about 35 to 40 hours of ethics and Jean reported 40 hours for Emperor's College not counting the exposure they receive in the program in general, such as in Clinic with exposure happening by the second quarter. Hugh Morrison asked if it was required that the offender take the course at an acupuncture college. Spencer Walker replied that it could be any program regarding healthcare and ethics. Bill Mosca warned that having an hour requirement may be problematic w/out full knowledge of what programs are in place and their total hours or course content. Kristine pointed out condition 26 on page 29 that describes if you want someone to take coursework in a specific area that addresses that particular violation outlining the same amount of units/hours. Bill Mosca points out that 'the course' should read coursework. Paul Weisman states that the amendments should read thirty (30) hours of coursework. Board agrees.

PAUL WEISMAN MOTIONED TO ADOPT THE LANGUAGE AS AMENDED. CHARLES KIM SECONDED. 5 – 0 – 0. MOTION PASSED.

e. Dry Needling and Biomedical Acupuncture

Janelle shared that the Board has been asked to consider adding dry needling and biomedical acupuncture within the scope of practice (4937). AnYork Lee stated the he doesn't understand the need for the distinction; needling is needling. Robert Brewer stated that he didn't feel that there were any sources cited for any of the descriptions and he would be happy to take a look at it when provided. Neal Miller shared that he asked that this be brought before the Board and asks that the Board confirm that dry needling and biomedical acupuncture is clearly within the Scope of Practice of Acupuncturists such that our practice is not circumvented to the public by other people not subject to our responsibilities. He stated that Virginia licensed their first Biomedical Acupuncturist who happens to be a chiropractor and it allows them to perform an Acupuncturists function. Ted Priebe asserts that there are no additions that we must do to our Scope so as to have to include dry needling.

f. Blue Ribbon Panel Update

Robert Brewer shared there are great candidates that have presented themselves for the panel and that he is still taking resumes until tomorrow.

g. Infection Control Guidelines

Janelle Wedge is revisiting the issue for the Board to arrive at a decision. Robert addressed the concern of requiring acupuncturists having to wear gloves. Bill Mosca suggested amending the language to read not handling surfaces with blood or bodily fluids since they'll be manipulating the sterile end. Hugh Morrison asked why the Board adopt the Cal OSHA. George Wedemeyer agreed with Chair Brewer about not expecting acupuncturists to wear gloves. Ted Priebe stresses that gloves are a medical necessity. Spencer Walker acknowledged that primary care practitioners wear gloves and Acupuncturists have that status. Megan Huang asserted that non-gloved needling would not fall outside of OSHA standards so long as there was no expectation of coming into contact with blood or bodily fluids. Bill Mosca highlighted the difference between hypodermic needle and acupuncture needle; the former designed to contain blood or tissue in it and is not aware of a single instance in the US using single use needles of transmission of infectious disease. Paul Weisman asserted that it's important that the Board adopt something. Charles Kim reminded the Board that these are informal guidelines. Spencer Walker confirmed that the Acupuncturist would not be liable to discipline by the Board. Paul Weisman recommends changing the word shall to should wear gloves. AnYork suggests 'may'.

CHARLES KIM MOTIONED TO ADOPT THE GUIDELINES WITH THE CHANGE TO READ 'WHEN HANDLING SURFACES. PAUL WEISMAN SECONDED. PAUL WEISMAN REMOVED HIS SECOND. CHARLES KIM REMOVED HIS MOTION WITH A REQUEST FOR MORE INFORMATION. PAUL WEISMAN MOTIONED TO ADOPT THE GUIDELINES WITH THE LANGUAGE TO SAY 'GLOVES SHALL BE WORN WHEN TOUCHING BLOOD AND BODILY FLUIDS AND MUCUOS MEMBRANES AND NON-INTACT SKIN OF PATIENTS. GLOVES SHOULD ALSO BE WORN WHEN HANDLING SURFACES SOILED WITH BLOOD AND BODY FLUIDS' AND 'STERILE GLOVES SHOULD BE USED FOR SURGICAL PROCEDURES' AND 'WHEN PERFORMING PUNCTURE AND OTHER VASCULAR PROCEDURE'. GEORGE WEDEMEYER SECONDED. 5 – 0 – 0. MOTION PASSED.

h. Recognition of Specialty Boards

AnYork Lee recommends placing this on the item on the agenda for the next meeting to hear discussion on a recognition process. Ted Priebe asked if the Board has the ability to recognize the specialty. Spencer Walker responded that it would require a statutory change since it would have to recognize something not in its statutes. This Board is governed by the Business and Professions Code and the Government Code not the Labor Code or the Worker's Comp Statutes. Neal Miller noted that it would be to the consumers' advantage to know that there are higher level of training in various areas and that other Boards point to national accrediting organizations. AnYork Lee asked that he be given more information on the legal reasons the Board cannot recognize specialty boards.

11. Future Agenda Items

AnYork asked that the Clinical Exam be placed on the next agenda. Hugh Morrison requests that the Board put on the agenda discussion of Category One CE courses. Ben Kavoussi asked to place content of licensing exams on the Agenda. Ted Priebe asked to place working with BPPVE in applying to the US Dept of Education as a recognized agency. Monique Parker asked to address the Acupuncturist un/underemployment as well as graduating with high student debt. Also she would like to agendize the non-transferability of co-requisites to other primary healthcare fields. Elliot Wagner asked to agendize the Board's present a more in-depth report on CE's claimed but not taken in terms of enforcement. Neal Miller asked to agendize regulatory change necessary for a timely deadline for the program approval process. He would also like to agendize developing a vehicle to get substantive changes to our practice out to practitioners.

12. Public Comment Period

Philip Young of Nine Star University thanked the Board for their attention to their approval process. He stressed that his school has undergone the necessary changes required by the Board and will be reapplying. Bill Mosca commended the Board on the increased accessibility and suggested that the public packet be presented as one file and present in pdf as many of the in-office generated documents. Hugh Morrison presented classes he did not believe deserve Category One classification. Jean Jacques Marcos asked if the new booklist would be used for the Feb. 2011 or August 2011 exam. Janelle Wedge answered it would be for August 2011. Ben Kavoussi presented more classes approved for Category One that he believes are not qualified as science based medicine. Ted Priebe stressed the use of empirical evidence in determining the validity of a Category One course. Megan Haungs asked that everyone keep an open mind and desire for mutual understanding when looking at the issue of evidence based medicine as applying to Continuing Education. Neal Miller complimented the Board on their brochure as the Chiropractic Board had given it praises in a presentation. He asked that the Board create a public relations committee that will increase the Board's community outreach.

CLOSED SESSION

13. Pursuant to Government Code Section 11126(c)(3) the board will convene in closed session to deliberate and take action on disciplinary matters.

OPEN SESSION

14. Announcement from Closed Session and Adjournment

ROBERT BREWER MOTIONED TO ADJOURN AT 4:31 PM. PAUL WEISMAN SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

MEETING ADJOURNED