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*Approved September 15, 2009*  
**ACUPUNCTURE BOARD  
MEETING MINUTES**

DCA – Evergreen Facility  
Sacramento, CA

**FULL BOARD MEETING  
Tuesday, June 16, 2009**

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**Members Present**

*Robert Brewer, Public Member, Chair  
Kenny Cherng, L.Ac., Vice Chair  
Adam Burke., L.Ac,  
Charles Kim, Public Member  
Larry Yee, Public Member*

**Staff Present**

*Janelle Wedge, Executive Officer  
LaVonne Powell, Counsel  
Christie Loftin, Examination Coordinator  
Cathy Hardin, Education Coordinator  
Kristine Brothers, Enforcement Coordinator  
Benjamin Bodea, Administrative Technician  
**Guest List on File***

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**1. Call to Order – Robert Brewer, Chair**

Board Chair Robert Brewer called the meeting to order at 8:45 AM.

**2. Chair’s Report – Robert Brewer**

Robert Brewer introduced himself as the new Chair of the Acupuncture Board. He noted that he will maintain how meetings have been run. He would like all speakers to limit their talks to the 3 minute time limit so as to accommodate the agenda within the time the Board has a quorum.

**3. Executive Officer’s Report – Janelle Wedge**

Janelle addressed that numerous personnel changes have occurred throughout the department including Carrie Lopez stepping down as Director of the DCA effective April 3. Scott Reid, Chief Deputy Director, left the DCA in March and accepted the Governor’s appointment as Undersecretary at the State and Consumer Agency. Patty Harris has been appointed as Acting Chief Deputy of DCA. Rosario Marin stepped down on March 5 and Fred Aguiar has replaced her as Secretary. Charles Kim has received Senate confirmation with interviews completed for the remaining openings. On April 15<sup>th</sup> Janelle attended a Roundtable meeting to discuss disparities in service in underserved communities. The Department is asking that the Board form a committee to address some of the questions raised there and have a response for the Conference tentatively scheduled for 2010.

The new Chinese version of the Consumer Guide to Acupuncture has finally come in and the Korean version is currently being translated. The Department can now produce these pamphlets in house and the next brochure should not take as long.

The 2008-2009 budget report has been included to reflect the reduction by furloughs. Janelle Wedge is in the middle of revising our Budget to reflect the Governor mandated 15% reduction (contract line items, purchase orders and supplies) and will bring these values at the next meeting.

The Governor has proposed that several small Boards and Bureaus be merged to help save costs. Due to the Budget Crisis, all future meetings until June 2010 will be held in Sacramento.

**4. Approval of February 19, 2009 Minutes**

LaVonne indicated a correction to Section 10 Subsection c. Replace reimbursement in the first sentence with QME's. Adam noted the misspelling of 'action' in the title of Section 10 Subsection D.

**ADAM BURKE MOTIONED THAT THE BOARD ACCEPT THE MINUTES WITH THE NOTED CHANGES. CHARLES KIM SECONDED.**

**5 - 0 - 0 MOTION PASSED**

**5. Ethical Decision Making Course (LaVonne Powell)**

LaVonne Powell presented for the Board Members a review of Ethics in Decision Making. The objectives are to create an awareness of the potential ethical dilemmas one may encounter and to support strategies for resolving those dilemmas. This is a part of the State's efforts promote good government practices.

**6. Legislation**

Janelle Wedge summarized the following bills, including their current status. The Board did not take a formal position on any of the bills.

AB 48 – California Private Postsecondary Education Act of 2009

AB 1260 – Reducing CAB Quorum requirement from five to four members

AB 1310 – Healing Arts Practitioners Database

AB 1390 – Set CAB Sunset Date to January 2017

SB 43 – Health Professions Cultural and Linguistic Data Collection

SB 599 – Workforce Development

SB 638 – Regulatory Board Operations

SB 762 – Healing Arts

SB 819 – Omnibus Bill – reporting malpractice lawsuits over an amount to the Board

SB 821 – Omnibus Bill – changes quorum requirement from five to four

**7. Examination Business**

**a. August 5, 2009 Licensing Examination**

Janelle Wedge informed the Board that the August 5, 2009 exam will take a different format. Due to the high number of applicants asking for accommodations to have a break to eat, a break has been added to the exam format. After two and a half-hours of testing, the examinees (except for those with learning disabilities who have applied for special accommodations) will receive a forty-five minute break to eat and stretch.

Christie Loftin reviewed the following figures for the August 5, 2009 exam. Six hundred and six (606) have paid for the exam. Three Hundred and thirty eight (338) are signed up for the English exam, one hundred and fifty (150) for the Korean exam and one hundred and eighteen (118) for the Chinese exam. Summer exams tend to have a higher number of examinees than the winter exam, with this years numbers showing forty-one (41) more applicants than last year's August exam.

**b. February 16, 2010 Licensing Examination**

Janelle announced that the February 16, 2010 exam will be offered for the first time in Southern California at the Ontario Convention Center.

**c. Examination Book/Reference List**

Janelle presented the Board with its book reference list – one side showing the existing list and the other those recommended by the Subject Matter Experts who write the questions. John Chen's The Chinese Medical Herbology and Pharmacology Book and Chinese Herbal Formulas received many letters of support from the Acupuncture community. *Robert Brewer asks that the Board Staff look into the significance of the Book Reference list and bring it to the next Board meeting.* Steven Stumpf urged the Board to issue guidelines on how books are selected and Subject Matter Experts are selected. He also urged that the Acupuncture Licensing Act and Primary Care be more represented on the exam. Adam Burke stated that a list such as what the Board currently has, or a more expanded listed, should be kept more for schools and students than for the exam. Liza Goldblatt commented that NCCAOM has an extensive booklist and book review process. Liza urged that the Board discuss this further at a future meeting. Robert Brewer agreed.

**d. Herb and Formula List**

Janelle introduced the Formulas and Herbs that Subject Matter Experts have recommended the Board approve for addition to the Board's list. Adam Burke noted that these herbs and formulas need to be tested for on the exam. He suggested a panel of Subject Matter Experts review these herbs and formulas to decide on best common practice. John Chen supported the review of the current Herb/Formula List so as to reflect contemporary Common Practices as well as setting up a more formalized Herb/Formula submittal process. He indicated that in the modern medical system it is crucial for Acupuncturists and Doctors to understand interactions between drugs and herbs. Robert Brewer suggested that a group be established to look at modernizing the drug/herb list such that Acupuncturists may prescribe herbs with confidence that it won't interfere with the patients pharmaceutical prescriptions. This would further bring Acupuncture into mainstream medicine. LaVonne Powell noted that the Board should go back to the Occupational Analysis and look at it in terms of these issues. In the next Occupational Analysis, practitioners should be asked what herbs and formulas are used and then you can test on these. When the exam questions are tied to the Occupational Analysis it is legally defensible. She suggested that someone from the Office of Exam Resources be there when these issues are brought to the public and the practitioners prior to the next Occupational Analysis. Steven Stumpf commented that input from outside the Occupational Analysis is necessary so as to update the practice of acupuncture. Jacques Mora Marco shared his disappointment with the reduction from 17% to 11% covering the herbal portion when 30% of the curriculum is devoted to it. He stated that it is unfair to the students. Neil Miller urged the Board to raise the minimum level of education required and increase the curriculum hours. He also noted that there is no massage therapy on the exam, as well as no more herb identifications.

**e. Limitation on the Number of Times an Individual Can Sit for the Licensing Exam**

Janelle presented a list denoting the number of times an examinee may take the licensing exam of the various California Boards. Robert Brewer noted that the Medical Board sets the limit at four and that looks like a viable choice for such an essential occupation. Bill Mosca asked that the Board bring statistics showing the percentage of people passing after one test, two tests, and onward. Liza Goldblatt suggested that if an examinee fails two times the Board can institute a regulation mandating remediation to be able to take the exam the third time, and more remediation the more times the exam is taken.

**f. Qualifying for Licensing Exam – Cyrie Barnes and Delores Heeb**

The individuals were not able to attend so the matter was tabled.

**8. Education Business**

**a. Update Pending School Applications**

Cathy Hardin reported on the status of the pending school applications. She has reviewed Nine Star University and saw that they did not meet the Boards requirements. She has sent them a report explaining where they were lacking. They have sent her new course syllabi and additional information. The school in Honolulu requires some more information which they have just sent but have not had the opportunity to look at it yet. This school will most likely not be visited. Another application from Hongik International University in Los Angeles has just been received but the review is not yet finished.

**b. Update on School Annual Report Filings**

Cathy Hardin presented a list of all the 2007-2008 fiscal year. Schools are required to submit their report within 60 days of the end of the fiscal year. Some schools were late getting the reports to us. Others schools had some issues in their catalog, supervisors who did not meet our requirement or a transfer credit policy that did not meet our requirements or was not there at all, which the Board specifically requires that it be published. The Board has not had a problem with the schools fixing what we point out. All in all no major issues found. Rob Brewer asked if there is a grace period for not submitting the annual report on time. Cathy Hardin explained that the only penalty would technically qualify as a failure to abide by the regulations which would allow the Board to suspend and/or revoke their approval. Due to the extreme nature of this penalty this is not commonplace. There is no monetary fine for not submitting the annual reports on time. Cathy Hardin suggested that a notice be issued prior to the due date so as to remind the schools to turn in their reports. Charles Kim noted that there needs to be a way to verify the schools annual report. Cathy responded that the surprise visits help facilitate just that. Janelle explained that doing much more would be cost prohibitive but that the school's test results would also be an indication.

**c. Independent Study – Proposed Regulatory Language**

Janelle presented that at the last Board Meeting the Board voted to add the TOEFL requirement as well as to allow transfer credit for courses taken outside the US be given. These regulations are in a regulation package that the Board is about to send through. Janelle shared her revisions of certain subsections that, based on past Board Meetings, are more in line with allowing independent study whilst keeping some limits on it. Janelle brought this language to the Board for review. Liza Goldblatt indicated that the language at the moment states that only three courses can be taken in independent study. LaVonne suggested that it be rephrased to show that only three independent study classes can be taken to complete courses to qualify for California licensure. Robert Brewer asked for that amendment be made to the language. Bill Mosca asked for a distinction to be made such that the number of course hours for semester schools and quarter schools are appropriately reflected. Liza Goldblatt suggested that we show the equivalent 12 quarter units and 9 semester units. Robert Brewer asked that the changes to the language of the Independent Study reflect the 12/9 unit distinction and be brought back before the Board at the next meeting.

**d. Limitation on Transfer Credit**

Liza Goldblatt, of ACTCM, presented that, had AB 1260 passed, the Board and schools would no longer have to struggle with the transfer credit issue. Since the bill failed, the colleges that are CAB approved can only transfer in 50% of the credits within a topic if from a non-approved college. She presented additional letters from Pacific College and the Oregon College requesting that the language on Transfer Credits be changed so as to allow for 100% of the credits be transferable if completed at an accredited or candidate college. She pointed out that the accreditation commission requires that all of the colleges have a residency requirement. This means that if a student transfers to ACTCM from

outside the state, they must complete a minimum of a full year at our college with some other colleges requiring more. Megan Haungs, of ACTCM, added that students transferring in from accredited colleges may have a huge amount of learning and have passed ACTCM's assessment tests but with only being able to transfer in 50%, they have to go back and take classes they've already taken. This only slows down their education and increases their financial burden. Liza Goldblatt asked if the Board would consider a one year residency requirement along with 100% transfer of credits. Steven Stumpf commented that this issue is not about someone in the U.S. transferring into a CAB approved college but about those individuals coming from international schools trying to transfer into California Schools. Adam Burke agreed that the 50% transfer rate is a challenge and is in support of looking at another system. Greg Sperber of Pacific College stated that what he sees is that most institutions outside of California do not require the herbal portion and as such enroll in the California schools to satisfy this requirement but this also makes it such that they must take several more years of schooling that they've already completed. Steven Stumpf stressed that regional accreditation is a higher standard than the other types. Neal Miller offered that the Board take Senator Correa's suggestion to bring the various parties together in a non-binding, non-confrontational joint legislative review of the issues with all interested parties present to decide what are the best standards for the State. Liza pointed out that the only difference between ACAOM and California standards is that California requires more hours. Steven Stumpf addressed that the main difference between California and ACAOM is that California recognizes acupuncturists as a Primary Care Profession whereas ACAOM does not. Robert Brewer asked for the notes from the Competency meetings that were held ten years ago.

**e. Clinical Training**

Greg Sperber of Pacific College presented to the Board a request that ownership of the clinical training areas need not be owned by the school. Currently the regulations state that these schools must have at least 75% ownership of these areas. He stated Pacific College's position is that if the school has a training site that is off campus and not owned by the school and the school retains all educational oversight and all the training modalities represented (up to 75%) then there should be no restriction to having ownership in these facilities. Adam noted his opposition to the use of 'student's prescribing' (4b of the proposition) and replacing it with 'performing'. Bill Mosca of CSOMA suggested that Section 4a and 4b simply reference statute as opposed to duplicating the language and having to come back and change it with a change in the statues. Greg Sperber stated he would bring the revision back to the board.

**f. Approval of Continuing Education Courses**

Steven Stumpf of NGAOM brought a complaint of certain classes that are offered as continuing education including iridology, I Ching and plant metaphysics and classes of that nature. LaVonne Powell responded that the complaint has been noted and that the Board does provide due process in the application for approval. Bill Mosca asked if the issue of offering Continuing Education for Acupuncturists that is outside of their scope of practice. LaVonne Powell responded that it may be beneficial to Acupuncturists to learn about practices outside of their scope of practice while ensuring that the Acupuncturists are aware that they cannot practice methods outside of their scope of practice. Cathy Hardin added that any CE course that teaches an acupuncturist how to use something that is within their scope of practice to treat something outside of their scope of practice is not allowed. If the course is teaching about conducting a treatment outside of their scope of practice it is not approvable, if it is about learning about a disease, even though its treatment may be outside of their scope, they would be able to submit it for approval since they are just learning about the condition. Adam Burke asked staff to bring a list of denied courses.

**9. Enforcement Business**

**a. Enforcement Case Report**

Kristine presented the complaints received from July 2008 to June 2009. There were 45 unprofessional conduct cases, 58 unlicensed/unregistered, 41 criminal charges/convictions and six (6) sexual misconduct cases. There were 12 cases of fraud, ten (10) cases of Non-jurisdictional, 9 cases of Incompetence/negligence and three (3) cases for unsafe/unsanitary conditions. One case was classified as other and 3 more for substance abuse/drug & mental/physical Impairment. The total is 188 cases. As of June 8, 2009 there are 44 pending complaints in-house, 45 formal investigations with the Division of Investigation, 20 disciplinary cases and 16 open probation cases. In this period of time there have been twelve (12) accusations filed with 7 of these became effective. Of those decisions, two licenses were revoked, one voluntarily surrendered, two were revoked to revocation at the state and placed on probation, one was a reinstatement on a probationary status and one was an early termination of probation that was denied.

Adam asked for a common case of unprofessional conduct. Kristine Brothers indicated false or misleading advertising, a violation of one of our standards of practice and regulation, negligence and gross negligence. Charles Kim asked if the number of cases has increased since last year. Kristine Brothers noted that due to the DCA's Unlicensed Activity Program, CAB staff has received more complaints. The Board has also renewed their contract with the Department of Justice allowing us to be more aware if one of our practitioners is convicted. Adam Burke asked if we could change the penalty of unlicensed activity from misdemeanor. Janelle Wedge reported that staff tried but because it would call for a jail sentence we were denied due to California's impacted jail system. Larry Yee asked if the budget cuts would effect our disciplinary actions. Kristine Brothers answered that the budget would not effect the Board's actions.

**b. Proposed Amendments to Disciplinary Guidelines**

Kristine Brothers presented the proposed changes in the Disciplinary Guidelines. She noted that there is more direction for administrative law judges as well as the board on specific violations. Some conditions were also added that were not in the past guidelines. Robert and Adam both commented that the Guidelines are easier to read.

**CHARLES KIM MOTIONED TO APPROVE THE REVISED DISCIPLINARY GUIDELINES. ADAM BURKE SECONDED.**

**5 – 0 – 0. MOTION PASSED.**

**CHARLES KIM MOTIONED TO DELEGATE TO THE EXECUTIVE OFFICER TO RESPOND TO THE POSITIVE COMMENTS DURING THE PUBLIC HEARING COMMENT PERIOD FOR THE DISCIPLINARY GUIDELINES. LARRY YEE SECONDED.**

**5 – 0 – 0. MOTION PASSED**

**c. Infection Control Guidelines**

Janelle Wedge stated that the Board, as of yet, has not adopted their own Infection Control Guidelines and as such has drafted a version for the Board to adopt. The main form has been adopted primarily from the Board of Osteopathic Medicine and modified for acupuncturists. LaVonne stated that the Board take a look at all the guidelines out there and see where acupuncturists fit in and set that in the guidelines. Janelle noted that the OSHA standards have been included as reference. Adam Burke and Robert Brewer stated that for acupuncturists gloves would challenge the practice of the medicine. LaVonne Powell said that no adoption has to take place today but as long as the Board creates a committee to take a look at the infection control guidelines. Robert Brewer volunteered as well as Ron Sokulsky and Greg Sperber to make a recommendation at the next Board Meeting regarding the Infection Control Guidelines. Kenny Cherng asked if there was a regulation for practitioners to disclose their status if they have a blood borne disease. LaVonne Powell responded that there is no regulation but there is a standard of care that practitioners must adhere to.

**d. Bloodletting**

LaVonne Powell stated that this is the issue that led the Board to the Infection Control Guidelines. She added that this issue can be taken care of through the Infection Control Guidelines. The Board was in agreement.

**e. Recognition of Specialty Boards**

LaVonne Powell shared that with the number of Acupuncture Specialties available the Board should look at who is certifying these specialties. LaVonne Powell said that the Board must establish criteria as to what will qualify a group of practices as a specialty (or specialty boards). Adam Burke stated that he would like the profession to start looking for a National Standard. Neil Miller requests that the topic of specialty boards be placed on the Agenda for the next Board Meeting. Robert Brewer agreed.

**10. Public Comment Period**

Robert Brewer commended Adam Burke for the excellent job he had performed as the chair of the Acupuncture Board. Adam brought a balance to the myriad of voices that are present in such an alternative field working in mainstream medicine.

Neil Miller followed up on past talks putting forth a brief description of Asian massage and manual therapy. Neil presented that there are overlaps within the field of acupuncture on manual therapy and massage but still not constitute as chiropractic manipulation. He asked that this be placed on the next agenda. This would help the consumer be reimbursed for procedures that even now are being denied even though it is within the scope of practice. Robert asked to go ahead and put this issue on the agenda.

Liza Goldblatt commented on AB 1260. She noted that there is often a mix between politics and education. She pointed out the US Department of Education report and some material from NOMA.

Megan Haungs requested that CLEP (College Level Examination Program) Exams be allowed for transfer credit for the basic sciences. She would like this issue on the next agenda. She stated that CLEP is a good way of documenting that the student has received appropriate experience and learning. Robert asked for this to be placed on the Agenda.

John Chen asked that the Board reexamine the Herb/Drug Interactions as well as the Herbal formulas. He also asked for a standardized procedure for a school to get to use a textbook.

**11. Closed Session**

No Closed Session

**12. Adjournment**

Meeting adjourned at 1:24 PM.