



APPROVED MEETING MINUTES ACUPUNCTURE BOARD MEETING

February 20, 2015

1747 NORTH MARKET BOULEVARD,
HQ HEARING ROOM
SACRAMENTO, CA 95834

Acupuncture Board Members

Michael Shi, L.Ac, President, Licensed Member
Kitman Chan, Vice President, Public Member
Hildegarde Aguinaldo, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member
Vacant, Licensed Member

The Board plans to webcast this meeting on its website at <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limitations on resources. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

<https://thedcapage.wordpress.com/webcasts/>

Board Members Present: Michael Shi, Kitman Chan, Francisco Hsieh, Hildy Aguinaldo, Jamie Zamora. **Absent:** Jeannie Kang--not available and no agenda posted on location so Legal Counsel disallowed her to join meeting in late afternoon.

Staff Present: Terri Thorfinnson, Tammy Graver, Katie Le

Legal Counsel: Spencer Walker, Michael Santiago

FULL BOARD MEETING - 9:00 a.m.

- 1. Quorum established.**
- 2. Opening Remarks.**

Board President wished everyone Happy Spring Festival and explained that in Chinese Medicine there are seasonal cycles with specific time frames that are celebrated. He thanked Spencer for his dedication and solid legal guidance that has been critical to the Board's meetings and business. Board members added their appreciation for his work.
- 3. Election of Officers: President, Vice President.**

Motion to nominate Michael Shi for President made by Francisco Hsieh, seconded by Hildy Aguinaldo. Vote: Michael -yes, Kitman -yes, Francisco-yes, Jamie- yes. *Motion approved 5-0.*

Motion to nominate Hildy for Vice President made by Michael, seconded by Jamie. Vote: Michael-yes, Kitman-yes, Francisco- yes, Hildy-yes, Jamie-yes. *Motion approved 5-0.*

4. Approval of Board Meeting Minutes for November 14, 2014.

Motion made by Jamie, seconded by Francisco. Michael-yes, Kitman-yes, Francisco-yes, Hildy-abstained, Jamie -yes. *Motion approved 4-0-1.*

5. President's Report.

Thanked Legal Counsel, E.O. and Staff. The staff has been busy with daily operations. Exam staff is busy preparing for March 3rd exam, education staff have been busy conducting school site visits. The goal is to complete all 21 in-state schools by March. The staff is busy with legislative policy and tracking. The office remains very busy. Over the past half year, he has spent time in the field meeting with associations and attending their various celebrations and meetings. He was invited to attend the Southern California Korean Association AKAMAC December celebration. He also attended the formative announcement for the new combined association in Northern California AACMA, formerly CCAA and UCPCM. He has encouraged associations to have open communication with the Board and to make the extra effort to have a unified voice in terms of associations.

He reiterated the policy that any changes to the agenda must be made well in advance and no later than 15 days prior to the meeting date because open meetings law requires 10 days notice and 5 days for posting on the website. The process for approving the agenda involves the office, legal and DCA so requests must be made well in advance to accommodate this complex review.

6. Executive Officer's Report.

BreEze. Brandon Rushman provided an update on BreEze implementation. Over the past three years the department has undergone implementation of the new computer database called BreEze, which was divided into three release phases. There have been significant challenges in release one with the initial 10 boards. The timeline was lengthened. As a result of the challenges we encountered, we restructured release two to address deficiencies from release one and to restructure and reconsider the contract with the vendor due to the cost overruns and volume of software issues. It was decided by the DCA Director to end the Accenture contract and step back and plan for release three. BreEze is wholly financed by the Boards. All Boards have paid for the development of release one and two. We have provided the E.O.s with the charges for BreEze development costs. We have eliminated the charges to the Acupuncture Board for the vendor costs for release one and two. However, there are investment benefits that release three will be able to take advantage of later. We are currently figuring out the costs of how we plan to handle release three, but the message is that we are committed to BreEze and its full implementation. Board members asked about costs, cost benefit and the implementation time line. The original budget was \$23 million and the projection is \$96 million, but only \$37 million has been spent to date. The Board questioned why the huge difference in cost. It was explained that it is the implementation problems, the need for added staff and the vendor contract that drove up the costs. The EO commended the DCA Director for making a bold and wise decision to rethink this contract given the problems and rising costs. The move to end the vendor contract will save everyone money. Concern was raised about how the Board could staff BreEze because it requires dedicated staff for a minimum of 2-3 years and the Board does not have the staff to dedicate to BreEze so that remains a huge unsolved future problem for the Board. That is why staffing becomes critical to be able to cover daily operations and BreEze implementation. The issue has been raised with DCA that our Board will need staff or assistance. Brandon concurred that BreEze requires the Board's best staff for a

solid full time commitment of 2 years during which they are not available for daily operations. The other point raised by the EO was that the cost remains unknown to the Board so it is difficult to be fiscally prepared for the cost.

Staffing. Our EO is still filling our OT vacancy and re-classifying the exam position into a higher-level classification to address the workload.

Budget. Terri briefly mentioned to check out the newly designed website. It is designed for mobile users, computer users and menu users. We re-designed the links so no link was more than 2-3 clicks away. In reviewing the budget, Terri highlighted the structural deficit and the balanced budget as both realities. She explained that expenditures had increased due to increased staff, Enforcement, exam costs and increased overhead. She explained that budgets are set at least one year in advance, so line items can appear inaccurate as a result. Board members asked why facilities costs are in deficit. There was a cost overrun in exam due to the exam audit. She explained that she initially submitted a BCP to request the additional appropriate authority but was asked to withdraw it, so it is reflecting as a cost that exceeds the line item. Board members asked about whether the Enforcement costs are recoverable and the answer is yes, that is a special focus for the EO. The Board can recover costs through settlements, orders, and citations. It is difficult to obtain full costs, but Administrative Law Judges (ALJ) often reduce recovery amounts to a fraction of the costs. Last year, enforcement recovery was estimated at \$186,000 and the Board recovered \$30,000, which was an increase from the past in which recovery was \$20,000. This year, mid year, we are already at \$25,000 so we are set to exceed our prior year's recovery. The final budget point is that this fiscal year, the Board is projected to be within \$50,000 of their budget--much closer than in past years. The Board questioned the increased expenditures and indicated that it was time for the Board to consider increasing their fees to eliminate the structural deficit. It was referred to the Executive Committee for further discussion.

School oversight. The Board's school oversight is anchored by an impressive list of Subject Matter Experts. We were looking for highly experienced experts to assist the Board with evaluation of curriculum and clinical compliance.

Enforcement. While the majority of our complaints are related to unprofessional conduct, we are seeing an increase in complaints in unlicensed activity. That is due to people in the communities around the state reporting it to the District Attorney's and to the Board. This represents a huge public safety issue and we are very aggressive in following up in this category. Criminal convictions, fraud, incompetence and negligence still remain high in terms of complaints. We are within our target intake of 9 days. If you look at the investigation and AG's stage--that is not within our control. Despite our having only one enforcement staff, Cricket is continuing to work on a high volume of cases. There were questions raised about whether the unusually high number of convictions are occurring among licensees or applicants prior to being licensed. If it is occurring among new licensees, then we need the education committee to assess if there are any CEUs that can address the issue. We are unable to separate the data in this way due to the way it is coded. Based on observation, a significant number of convictions are by those applying for licensure because they must undergo a background check and all convictions show up during that process. Overall, our enforcement efforts have resulted in decreasing our processing days by 300 since the last reporting cycle--that is huge. There was concern expressed about how the data distorts what is happening. The system was designed to capture time and was not built with the ability to provide break down details. The way to do data analysis is to move the data into research software to

crunch the numbers. It is unknown what additional capacity for data analysis BreEze will bring. There was a request to have a written narrative for the enforcement data.

Exam. As you will hear later in the meeting, we have completed the Occupational Analysis and will be moving to audit the National Certification Exam. There was some confusion that the decision to go to the national certification exam has been made, and just to clarify, that decision has not been made. By law, any other licensing exam must be audited to determine whether it meets California's standards. The results of the audit will provide information to facilitate a discussion about the exam.

7. Board Administrative Manual revisions.

Changes were made to reflect the title of Board President and Vice President rather than Chair and Vice Chair. The Chair will remain the title of committees only. Motion to approve changes by Hildy, seconded by Michael. Michael-yes, Hildy-yes, Kitman-yes, Jamie-yes, Francisco-yes. *Motion approved 5-0.* No public comments made.

8. Report and Recommendations by Education Committee Regarding Schools Seeking Approval of Acupuncture Training Programs

Yuin University. There was concern expressed by the volume of non-compliance changes and whether they were really completed and the fact that we do not see a class or clinic. The clinic visits are very important in evaluating both the curriculum and the clinical training. The clinical review of the medical charts shows us whether the curriculum and clinical training has occurred in compliance with our regulations. The patient file should list the patient condition, assessment, diagnosis, treatment, treatment plan including herbs and clinical reasoning for each step. The school can cut and paste the curriculum, but the competency is reflected in the medical charts and clinical evaluation--that is why the clinical site visit is critical to the Board's ability to evaluate compliance. California is unique because Acupuncturists are one of the 7 Physicians in Worker's Compensation so it is critical that students learn medical and legal knowledge. School's staff answered questions and explained the history of the school and their commitment to high quality education and complying with the Board's standards. Motion to approve school and was amended to add a stipulation that the Board re-visits the school in 6 months for a clinic site visit by Jamie who agreed to the amendment, seconded by Michael. Michael- yes, Hildy-yes, Jamie-Yes, Kitman-yes, Francisco-yes. *Motion approved 5-0.* No public comment.

Hongik International University. The Education Committee recommends a denial based on the fact that the corrective action did not correct all of the non-compliance, so the school's training program does not comply with the Board's standards. Motion to deny school Board approval of their training program, seconded by Michael. Vote: 5-0. Michael-yes, Hildy-yes, Jamie-yes, Francisco- yes, Kitman- yes. *Motion approved 5-0.* No public comment.

9. Occupational Analysis Report presentation by Office of Professional Examination Services.

The presentation highlighted the findings of the Occupational Analysis (OA) and new trends. She explained the OA process and the fact that the OA determines the outline for future exams. There were three main types of providers: sole practitioner 59.8%, group setting 19.2 %, medical group or LLC was 9%. For income, 52.1% made over \$40,000. 47.2% had patients covered by general health insurance and 42.9% were covered by private insurance, HMO, PPO. Public comment. A question was asked about whether there was a comparison to the former OA and the response was that both the 2008 OA and this recent OA are on the Board's website. There was concern raised that the percentage of the exam dedicated to herbs declined from 17.5 % in 2008 to 10.5% in this OA. Despite the low percentage, schools still dedicate 30% of

time to herbs. Michael commented that schools should teach what is needed to practice, not gear training to the exam. There was public concurrence.

10. CPR equivalence course approval.

This issue was assigned to the Education Committee.

11. CPR issue regarding revised CPR course work by American Red Cross and American Heart Association non-compliance with Board regulations.

This issue was assigned to the Education Committee

12. Sunset Review Update.

The three priority issues for the Sunset Review are: Shifting school oversight to ACAOM, Auditing the National Certification Exam and Implementing BPC 138. All three of these priorities are being addressed, so the Board is on track. The EO summarized the Sunset Review chart that highlights the issues, status and Board action on each issue. See handout. No public comment.

13. Strategic Plan Update.

EO provided summary of strategic plan chart. The Board is on track for achieving its strategic plan objectives. See handout. Public comment related to whether BreEze would facilitate online license renewal.

14. Legislative Implementation.

EO explained what the bills require the Board to implement and that the Board has implemented both bills. SB 1159 removes a barrier to immigrants who lack a social security number by allowing them to use an individual taxpayer identification number (ITIN). The Board already expedites applications from military service personnel pursuant to AB 1057. Public comment. There was a request to add AB 41 to the Board's legislative update.

15. Regulatory Update

CPEI is still undergoing review with all levels of the Administration before it is submitted to the Office of Administrative Law for final approval and implementation. SB 1441 is still under review and revision- it has not been filed with OAL. Free and Sponsored Health Events is under review and has not been filed with OAL. BPC 138 is in the final revision stages for approval. The rest of the regulations remain in the research and writing stage. See handout. No public comments.

CLOSED SESSION.

16. Pursuant to Government Code Section 11126(a) (1) the Board will meet in closed session to conduct the annual evaluation of the Executive Officer

OPEN SESSION – Announcement Regarding Closed Session.

17. Request for Re-instatement of License

Ben Hekmania. Jamie moved to waive the exam requirement and have the Board issue him a new license, seconded by Hildy. Michael-yes, Hildy-yes, Jamie-yes, Kitman-no, Francisco-no. *Motion approved 3-2.* A request was made for staff to provide the calculation of CEUs completed, approved and needed in the memo in the future. No public comment.

Anna Bonas. Kitman moved to deny request to waive exam requirement for new licensure, seconded by Francisco. Michael-yes, Hildy-yes, Jamie-yes, Kitman-yes, Francisco-yes. *Motion approved 5-0.* No public comment.

18. Future Agenda Items.

19. Public Comment on Items Not on the Agenda. There was a request for the Board to reconsider denial of a foreign applicant to take the California Acupuncture Licensure Exam (CALE). Board Legal Counsel advised that the Board cannot respond and that his only remedy is to appeal to the Executive Officer asking for reconsideration. Other than that, there is no remedy. Another speaker asked the Board to consider supporting legislation regarding acupuncture school oversight. The concern was raised that ACAOM should not be the only accreditation agency overseeing acupuncture schools and that the Board's site inspection and reimbursement taken away by SB 1246 should be restored. The Board cannot be replaced by ACAOM. Another comment requested the Board review AB 41. Another comment suggested that the Board should raise funds by issuing fines for licensees that do not correct their addresses because we need correct addresses. Another speaker read a note from an exam applicant who was denied to take the CALE.

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.

20. Adjournment

**THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE
ACUPUNCTURE BOARD'S WEBSITE AT
www.acupuncture.ca.gov**

Please Note: Board 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