



ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

Members of the Board

Dr. Amy Matecki, M.D., L.Ac,
President, Licensed Member
Kitman Chan,
Vice President, Public Member
Francisco Hsieh, Public
Member
Jeannie Kang, L.Ac,
Licensed Member
Ruben Osorio, Public Member
Vacant, Licensed Member
Vacant, Public Member

CALIFORNIA ACUPUNCTURE BOARD
DRAFT MEETING MINUTES
Friday, October 20, 2017

LOCATION:
Department of Consumer Affairs
HQ2 Hearing Room
1747 North Market Blvd
Sacramento, CA 95834

Board Members Present

Dr. Amy Matecki, M.D., L.Ac, President, Licensed Member
Kitman Chan, Vice President, Public Member
Jeannie Kang, L.Ac, Licensed Member
Ruben Osorio, Public Member

Board Member Absent

Francisco Hsieh, Public Member

Staff Present

Benjamin Bodea, Executive Officer
Kristine Brothers, Enforcement Coordinator
Marc Johnson, Policy Coordinator
Terry Sinkovich, Exam Coordinator

Legal Counsel Present

Salwa Bojack, Esq.

Guest List on File

FULL BOARD MEETING

1. Call to Order, Roll Call and Establishment of a Quorum

Board President Amy Matecki (Matecki) called the meeting to order at 9:00am. Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 4 – Matecki, Chan, Kang, Osorio. Member absent: 1 – Hsieh. 4-1 Quorum established with two licensed members present.

2. Opening Remarks (Matecki)

President Matecki welcomed everyone to the meeting, and announced that per the

Board's Administrative Manual, she has appointed Kitman Chan (Chan) as Board Vice-President. She also noted the Board has two vacancies and encouraged any interested parties to apply.

(Moved up) 16. Public Comment on Items Not on the Agenda (Matecki)

President Matecki announced that public comments would be limited to two minutes or less. She introduced Christopher Castrillo, the new Deputy Director, Board and Bureau Services for Department of Consumer Affairs (DCA). Mr. Castrillo provided a brief background on himself and explained his goal to implement DCA's strategic plan. He also introduced several new staff members from Board and Bureau Services, and reminded the Board of upcoming training available for Board members.

There were no public comments made on this item.

3. President's Report (Matecki)

President Matecki reported she was part of an ad-hoc committee with Board Member Jeannie Kang who reviewed the Sunset Review Report, which will be presented to the Board later in the meeting.

There were no public comments made on this item.

4. Presentation on Medical Waste Management and the Role of Acupuncture Licensees by the California Department of Public Health

Johnson introduced Matt Sheehan (Sheehan), a staff scientist with the California Department of Health (CDPH), who presented on the Medical Waste Management Act (Act) and how it applies to Acupuncture licensees. Sheehan outlined why acupuncturists are considered medical waste generators; why acupuncture needles are considered medical waste; containment and disposal options for sharps waste, and finally, registration requirements for acupuncturists.

There were no public comments made on this item.

5. Executive Officer's Report (Ben Bodea)

Executive Officer Ben Bodea (EO Bodea) gave his report to the Board.

(A) Staff Update

EO Bodea noted the Board has one vacancy in the Licensing unit, and that the Board has held interviews but the position has not been filled. He also noted the Board was recruiting subject matter experts and potential candidates can fill out their applications on the Board's website.

(B) Budget Update

Matt Nishimine (Nishimine) with the Department of Consumer Affairs (DCA) budget office, provided a budget update. He noted that he would normally be providing year-to-date expenditure and revenue projections at this board meeting, but due to changes in DCA systems the information was not available for the meeting. Vice President Chan was concerned about the expenditures of the Board over the revenues, and that the

Board was going to have a shortage of cash flow. He wanted this to be analyzed. Nishimine agreed that the Board was operating with a structural imbalance, with a fund reserve of nine months which is considered healthy but would come up with a plan going forward. He also noted they were beginning to build the 2018 budget. Vice President Chan asked about changes and revisions to the Budget if needed; Nishimine replied they could do so, and that the Board had flexibility to increase enforcement related costs. Discussion continued about the Board's ability to raise fees. Nishimine said the Board could increase fees via a statutory change or regulatory moves. He noted a statutory change would be a two year process, and recommended a fee analysis be completed.

(C) Outreach Update

EO Bodea reported on outreach items, such as a stakeholders meeting to review curriculum requirements and an updated professional associations list on the Board's website.

(D) Strategic Plan Update

EO Bodea noted the Board completed Item 3.1 (evaluation of curriculum standards) with a stakeholder meeting, and Board staff was reviewing Item 3.4 (TOEFL requirements for foreign applicants).

There were no public comments made on this item.

6. Enforcement Report (Kristine Brothers)

Enforcement Coordinator Kristine Brothers (Brothers) gave her report to the Board.

(A) Q3 16-17 Enforcement Report

Brothers reported that during the quarter, the Board received a total of 96 complaints, and closed and referred to investigation 78 complaints. She also reported the average intake time was three days, and that 27 criminal charges and convictions were received, 18 were received on applicants, and nine were received on licensees. Seven disciplinary actions were requested with 16 pending at the attorney general's office, and the Board filed five accusations and statements of issues. For formal participant trends, Brothers noted the current quarter shows a 75 percent increase in complaints referred to the Office of the Attorney General for discipline, going from four complaints referred in last year's quarter four to seven complaints in this year's quarter four.

A public comment was made wondering about an increase in complaints; Brothers replied the increase was from unprofessional conduct complaints. There were no further public comments made on this item.

7. Education Report (Jay Herdt)

Education Coordinator Jay Herdt (Herdt) gave his report to the Board.

(A) Status of Curriculum Reviews

Herdt reported there were 34 approved acupuncture training programs, and three programs had completed their clinical corrective actions and have had their curriculum

approved by staff. He also reported ten training programs which have submitted their curriculum and clinical corrective actions that are pending staff review.

(B) Bureau for Private Postsecondary Education (BPPE) and American College of Acupuncture and Oriental Medicine (ACAOM) Collaboration

Due to an error in spelling on the agenda, this item was not taken up. The title should have read 'Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

(C) Continuing Education Update

Herdt reported a total of 2,089 continuing education course applications were processed through the end of quarter three, and there were 540 approved education providers and 33 approved acupuncture tutorials in process. Board Member Jeannie Kang (Kang) asked how the 2,089 applications compared to other Boards; Herdt did not know but said the number was very typical of Board numbers compared to last year.

Public comment was taken on the item. A commenter was concerned about the number of classes taught per day at 10, and wondered how live courses taught over the internet were able to improve a licensee's skillset. There were no further public comments made on this item.

8. Examination Update (Terry Sinkovich)

Exam Coordinator Terry Sinkovich (Sinkovich) provided the Examination update.

(A) August 23, 2017 California Acupuncture Licensing Examination (CALE) Statistics

Sinkovich reviewed the recent exam statistics. She noted there were a total of 229 first time test-takers, with the overall pass rate of 75 percent.

(B) Re-taker Test Statistics

Sinkovich reported there were 382 repeat test takers, with an overall pass rate of 27 percent.

Overall, the pass rate was 56 percent for English, 56 percent for Chinese, and 60 percent for Korean. Sinkovich then noted the pass rates by schools. Member Kang asked about several schools which had a pass rate of zero; Sinkovich replied that several schools did not have applicants for the exam. Vice President Chan wondered why the pass rate was so low for re-takers. He felt the schools needed to address the issue.

Public Comment was taken on the item. A commenter felt Member Chan had brought up an important point and noted his school offered courses to review for free, and did everything they could to help students pass again. A second commenter agreed with the first comment and wondered what happened to the five-failure rule, and that his school had a limit internally to four times in taking their exams. He felt the Board should explore a remediation process. Another commenter wondered about the national exam versus the California exam.

Dr. LeOndra Clark-Harvey, from the Assembly Committee on Business and Professions, observed that the Board meeting was run very well and appreciated the

reports from staff. She asked the Board for a breakdown of spending on the CALE for the upcoming Sunset Review. Executive Officer Bodea replied that the breakdown was located in the Sunset Report in the CALE exam section and more specific information could be requested once the Board and public had reviewed the information.

9. Regulatory Update (Johnson)

Johnson provided a regulatory update. He noted most of the regulatory packages were being worked on at a staff level, except the revision of Disciplinary Guidelines, which the Board previously approved. He hoped the Guidelines would be submitted to the Office of Administrative Law (OAL) early next year, and stated the SB 1246 regulatory package was in effect and the Board was working under the process now. He also noted OAL had approved the Free and Sponsored Health Care events rulemaking package and the regulation was now in effect.

Public Comment was taken on the item. One commenter wondered if institutions could apply on behalf of students under the free and sponsored health care events regulations. Another commenter asked what the requirements were under the new regulation. Johnson referred her to Board's website, which describes the process.

10. Legislative Update (Johnson)

Johnson reviewed a list of legislative bills the Board is tracking. He noted most of them were dead for the year, and a legislative update would be provided at the Spring 2018 Board meeting.

There were no public comments made on this item.

11. Review and Approval of May 26, 2017 Board Meeting Minutes (Johnson)

Johnson presented the draft May 26, 2017 Board meeting minutes for approval. There were no changes made.

MOTION:

Member Kang motioned to approve the February 24, 2017 Board meeting minutes as presented here today. Vice President Chan seconded the motion.

Vote:

Matecki – Yes; Chan – Yes; Hsieh – Absent; Kang – Yes; Osorio – Yes.

4-0-1 motion passes.

There were no public comments made on this item.

12. Review and Approval of August 4, 2017 Board Meeting Minutes (Marc Johnson)

Johnson presented the draft August 4, 2017 Board meeting minutes for approval. There were no changes made.

MOTION:

Member Kang motioned to approve the August 4, 2017 Board meeting minutes as presented here today. Vice President Chan seconded the motion.

Vote:

Matecki – Yes; Chan – Yes; Hsieh – Absent; Kang – Yes; Osorio – Yes.

4-0-1 motion passes.

There were no public comments made on this item.

13. Presentation of Comments Received at the July Stakeholder Meeting (Johnson)

Johnson provided an overview of comments received at the July Board stakeholder meeting, which was facilitated by DCA's Strategic Organization, Leadership and Individual Development (SOLID) Office. He noted the Board organized the meeting by notifying all licensees, schools and associations via the Board's mailing list and over 20 individuals attended. He felt it was a very collaborative meeting, which covered two ongoing issues. Letters on the issues, as well as a summary of comments made at the meeting, are posted on the Board's website.

The first item discussed was the clinical hours required for acupuncture training program approval. Johnson reported several stakeholders felt the hours were too prescriptive, or should align with ACAOM's standards. He also noted there was a lot of discussion about the term physically present. The second item discussed was the use of online education for acupuncture training programs, which Johnson pointed out as an emerging issue for the industry. Stakeholders have commented on the need for clarification on the grey areas and increase in demand in those types of delivery systems. Member Kang felt the stakeholder meetings were very healthy and important. She noted some of the related statutes and regulations were very old and more discussion was needed.

Public comment was taken. The first commenter thanked the Board for holding the stakeholder meetings and felt it was a positive experience. She noted several letters have been sent encouraging the Board to be in line with other Boards and commission standards. She wanted to make sure the Board was going to action on the feedback and asked the Board to provide clear communication on what the next steps were. Legal Counsel Salwa Bojack (Bojack) reminded the Board that the stakeholder meeting was just information gathering, and the Board would need to gather the information and agendaize discussion of it as a future agenda item. A second commenter agreed with the first comment made and thanked the Board for holding the meeting.

14. Review of the Draft Sunset Report (Ben Bodea)

EO Bodea presented the Board's 2017 Sunset Report for the upcoming 2018 Joint Sunset Review Oversight Hearing. He noted that board staff has been working on the document since May, and the formatting was similar to past Sunset Reports.

EO Bodea reviewed the document page by page. He noted a minor change to page six; minor changes on page seven; on page eight Vice President Chan was concerned about ending balances on budget chart. EO Bodea replied he would have budgets look into it and also recommended a change to table four and a typo on page 13. On page 22, Vice President Chan raised concerns about the continuing education audit numbers; discussion commenced on the audits. EO Bodea noted changes to the spacing of tables; listing enforcement definitions on page 30; adding bullet points to question 48.

EO Bodea moved onto section ten, which addresses previous background papers. He suggested adding the Board's current list of professional associations as an attachment. On page 51, Board Member Kang suggested capitalization changes and margin changes; and reminded of Dr. Clark's comment about CALE exam costs on page 53. EO Bodea replied he would show more clarity for the Board's costs. On page 48, Brothers proposed changes to the percentage of cases closed for discipline for the 2017 update. Moving to section 11, EO Bodea noted the issues identified by Board staff were not voted on by the Board for policy. He suggested agendaizing the items for the November Board meeting, so the Board can adopt positions on the issues; Board agrees.

EO Bodea noted one of the attachments was the new Board administrative manual, which was also listed as an agenda item for Board approval. He asked to begin review of the manual now ahead of the next agenda item; President Matecki agreed.

EO Bodea returned to the appendices from the Sunset report, reviewing the Board members meeting attendance; a list of legislation; regulation list; enforcement performance measures; and consumer satisfaction survey results. Brothers noted the enforcement chart was a summary but asked if the full report should be included; Board agrees the full report should be included. Vice President Chan asked for better clarity with colors of tables. EO Bodea next referred to the charts listing employee training. Discussion commenced on moving certain charts to the appendices for better readability.

Returning to the attachments, EO Bodea noted the Board's organizational charts, including committee memberships, and current organizational charts for Board staff. The final item reviewed was the Office of Professional Exam Services (OPES) review of the National Commission for Acupuncture and Oriental Medicine (NCCAOM) exam. President Matecki asked the conclusions from the OPES review be included; Board agrees. President Matecki also asked the costs to administer the CALE exam be included; Board agrees. EO Bodea concluded his review of the Sunset Report. The Board then asked him to complete the changes and bring back the report to the November Board meeting for final approval. Legal Counsel Bojack explained the process to bring the report back for final approval by adding it as an agenda item for the next meeting.

Public comment was taken. The first commenter was happy with the report, but was concerned about the NCCAOM exam coming to California, and was not ready to accept that happening. She asked the Board to postpone the national examination, and was concerned about the education hours and highlighted that as a concern. The second commenter was concerned about the herbal formulas on the national exam, and wanted to make sure the exam was in line with those requirements.

15. Review and Approval of Changes to the Board Administrative Manual (Bodea)

This item was reviewed as part of the draft Sunset Report. EO Bodea reviewed the changes, noting that page two had an updated list of Board Members, staff, and titles; multiple formatting and grammar changes; and additional recent history on the Board. He highlighted a new section on page ten which asks that future agenda items be submitted two weeks after the prior Board meeting, so that staff does not have a rush to prepare; Board agrees. He noted a change on page 11; multiple formatting and spacing issues on subsequent pages; and listing all the required training in separate sections on

page 22.

There were no public comments made on this item.

MOTION:

Vice President Chan motioned to approve Board Administrative Manual with the changes outlined in the packet today. Board Member Ruben Osorio seconded the motion.

Vote:

Matecki – Yes; Chan – Yes; Hsieh – Absent; Kang – Yes; Osorio – Yes.

4-0-1 motion passes

EO Bodea asked that the updated administrative manual be placed in the Sunset Report; Board agrees.

17. Agenda Items for Future Meeting (Matecki)

Public comment was taken. The first commenter had concerns about the national exam and its content, specifically the Worlsey school of acupuncture, and felt it had nothing to do with TCM. He felt an SME from California should look at the content, and also noted to herb section was not in line with current California requirements. He wanted it reviewed as a future agenda item.

Legal Counsel Bojack commented that the Board may want to discuss what they want to see on future agenda items taken from today's discussion. She highlighted the national versus the California exam as one item. EO Bodea pointed out OPES still needed to review the 2017 NCCAOM job-task analysis, which may inform future discussion. He also noted the new issues raised by the Board from the Sunset review and asked if the Board wanted to discuss those. Member Kang asked for those items to be placed on the agenda for the next meeting. President Matecki asked that new assignments for the committee members be added to the agenda.

Additional public comment was taken. The first commenter wanted the discussion of the two exams placed on the agenda, including exam quality and customer concerns. The second commenter also wanted discussion of the national exam placed on the agenda, and a discussion of dry needling. The third commenter also wanted discussion of the national versus the California exam placed on the agenda, and how to merge the two together. He also wanted discussion of manual therapy within the scope of practice.

There were no further agenda items offered.

18. Adjournment (Matecki)

Adjournment at 1:17 p.m.