



ACUPUNCTURE BOARD

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**CALIFORNIA ACUPUNCTURE BOARD
APPROVED ENFORCEMENT COMMITTEE MEETING MINUTES**

January 17, 2014

**Department of Consumer Affairs
Kitman Chan, Public Member
1625 North Market Blvd., First Floor Hearing Room
Sacramento, CA 95834**

**Teleconference Meeting Location:
Hildegarde Aguinaldo, Chair, Public Member
Jeannie Kang, L.Ac, Licensed Member
Ronald Reagan State Building
300 South Spring Street, Auditorium
Los Angeles, CA 95834**

AGENDA

Enforcement Committee Meeting - 1:05 p.m.

Enforcement Committee Members

*Hildegarde Aguinaldo, Chair, Public Member
Kitman Chan, Vice Chair, Public Member
Jeannie Kang, L.Ac, Licensed Member*

- 1. Quorum established.**
- 2. Opening Remarks.** Hildegarde Aguinaldo (HA) welcomed everyone and made note that five members of the public were at the Los Angeles meeting location.
- 3. Committee Procedures.** Executive Officer Terri Thorfinnson (TT) provided background on the issue. This is a follow-up from the October 25th meeting in which HA requested that the Committee consider more formal procedures for how committees operate than what currently exists in Board's Administrative Manual. This is the first time in years the committee structure has been public by virtue of the number of committee members (more than two) on each committee. HA questioned how the agenda items were assigned to the committee. Spencer Walker (SW) explained that items assigned to the committees should be Board driven items assigned by the Board and be in compliance with our strategic plan.

HA asked for additional clarification from SW on process for how the Committee should approach these issues. SW explained that the Committee can discuss the issues and make a recommendation at the upcoming Board meeting. The Board then has the discretion to reject the Committee recommendation and address the issue as a Board issue at the Board meeting.

4. Standardized Malpractice form 801 requires a legislation change

(Discussion). TT provided an introduction for the issue. It is a sunset review issue; the timing of this discussion is to ultimately have the Board address this issue before the upcoming sunset review hearing. The Board needs statutory authority to create and require this form which would be added to the Business and Professions Code section 801.

Kristine Brothers (KB), Board Enforcement staff, explained that in 2009, through Senate Bill 819, the Acupuncture Board was added to BPC Section 800. As a result, the Board must retain any judgments, settlements or arbitrations resulting in death or injury of the patient, amounting to damages of \$3,000 or more. Since fiscal year 2010/2011, we have received six complaints--all related to malpractice. In 2011/2012 we received three and for 2012/2013 we did not receive any complaints.

HA asked whether we have any reason to believe that the numbers are due to low reporting and not low incidence of malpractice. KB replied that it is impossible to determine how much information we are not receiving. HA asked KB to explain how the Board receives information from the National Practitioner Data Bank. KB explained that having query capability with the NPDB is something the Board is interested in doing, but we do not have the ability now. Instead of a standardized form, HA asked whether simply having query capability would solve this problem. HA asked about the role of subject matter experts in reviewing cases. KB explained how subject matter experts assist the Board in determining cases to prosecute.

Public Comment. A question was posed about how the \$3000 versus the \$30,000 was arrived at for this law. A follow-up question raised the small amount of \$5,000 would be considered a frivolous claim, so it would not need to be reported. There was an additional comment about whether the form really compels insurance carriers to report information that they are already not reporting.

5. Prostitution prevention: Proposed regulatory language (Discussion).

The Board's enforcement experience has shown that it needed some additional authority to deal with prostitution prevention. The Acupuncture Board is proposing its own regulations prohibiting sexual activity on the premises. Violation of this provision would allow the Board to take disciplinary action.

The language would amend CCR Section 1399.450: "Where an acupuncture license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, employees, patrons or customers, including but necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility." This would give the Board the authority that is needed to bring forth enforcement actions related to prostitution.

KB explained that currently many prostitution charges involving employees get plead down to lesser violation that is not at all related to prostitution. Otherwise, there is a charge against an acupuncturist that gets plead down and then it is no longer deemed a substantially-related conviction any more for enforcement purposes. So, the Board is

currently limited by our regulations in effectively prosecuting the real source--the real problem--that licensees are lending out their licenses for prostitution.

HA asked why "employers were not included in the proposed language and requested it be included. Other committee members supported the proposed regulatory change. HA closed Board discussion.

Public Comment. One comment applauded Board's creativity but wondered why the language had to specify who is involved. Another comment could not understand why such behavior would occur at an acupuncture office. A follow-up comment questioned why the need for the wording premises, structure or facility. The response was that in cases where services are offered in tents, mobile vans for free events that would be outside the norm office structure.

6. Review of current hygiene regulations (Discussion).

KB provided the introduction of the issue. The Board's hand washing regulations in CCR Section 1399.451(a) are out of date and are not consistent with the health care industry standards that are issued by the Center for Disease Control (CDC) and the California Department of Public Health. The existing regulation text does not allow for alcohol based hand rubs. Research into hygiene indicates that hand washing is recommended for visibly soiled hands but alcohol-based sanitizers should be used on a routine basis. The Board's existing Infection Control Guidelines match more closely with health industry standards, but our regulation does not. The proposed regulation would integrate alcohol based sanitizers. Committee agreed the update was needed and it was a long overdue update.

Public Comment. There was a suggestion to not revise the regulation and just change the Infection Control Guidelines.

HA concluded this agenda item discussion and public comment.

7. Future Agenda Items.

Committee decided to wait for the action plan for the strategic plan that was being created by CAB staff and SOLID to determine future issues for the committee. There was discussion about how agenda items discussed today can be considered and voted on by the Board. SW advised that issues could be raised at the Board meeting either if they were on the agenda or they could be raised from the Committee report. There was also clarification that Board members not on specific committees can observe from the audience, but they cannot participate in the discussion. No motion to adjourn needed to adjourn committee.

8. Adjournment.

THE COMMITTEE MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT
www.acupuncture.ca.gov