



**ACUPUNCTURE BOARD
ENFORCEMENT COMMITTEE MEETING
APPROVED Meeting Minutes
Wednesday, December 14, 2016**

**LOCATION:
ELIHU M. HARRIS STATE OFFICE BUILDING
MEETING ROOM #2
1515 CLAY STREET
OAKLAND, CA 94612**

Committee Members Present

Hildegarde Aguinaldo, Chair, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member

Enforcement Committee Members

*Hildegarde Aguinaldo, Chair, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member*

Staff Present

Ben Bodea, Executive Officer
Kristine Brothers, Enforcement Coordinator
Marc Johnson, Policy Coordinator
Kelsey Pruden, Legal Counsel

AGENDA

Agenda Item #1 -- Call to Order and Establishment of a Quorum

Chair Hildegarde Aguinaldo (Aguinaldo) called the meeting to order. Policy Coordinator Marc Johnson (Johnson) called the roll: Aguinaldo – present; Hsieh – present; Kang – present; Zamora – present. *4-0 quorum established.*

Agenda Item #2 – Discussion and Possible Action of Revised Disciplinary Guidelines (Brothers and Johnson)

Johnson opened by stating that the Acupuncture Board's (Board) Disciplinary Guidelines (Guidelines) have not been updated since 1996 and reviewed the history of the regulatory package. The new 2016 Guidelines before the Committee are considered amendments and updates to the 1996 version. He noted the issue has been on the Board's radar for many years, and staff had looked at other Boards that might be relevant. He also described the process once the Committee approves the Guidelines and the timelines once the item is approved by the full Board.

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Enforcement Coordinator Kristine Brothers (Brothers) read aloud the proposed text for 1399.469 and then began review of the document. She noted the updates to the formatting and general global updates through the document, a new table of contents, as well as a new introduction which refers to the new language defining a substance abusing licensee. Discussion commenced on Optional Condition #2 -- "Psychological Evaluation". Chair Aguinaldo asked if the reference to the DSM manual could be listed without referring to a particular document version. Brothers agreed and the change was made. There were no changes made to Condition #3 -- "Physical Examination" or Condition #5 -- "Psychotherapy". She then described the new Optional Condition #7 -- "Restrictions on Practice Techniques and Modalities" and the updates to Optional Condition #8 -- "Examinations". She noted Optional Condition #9 "Restitution" was not changed.

Chair Aguinaldo asked about the requirement in #10 which requires documents to be submitted by mail. She asked that "received by CAB office within 15 days" be added to the Guidelines; Johnson agreed and said it would change throughout the document. Brothers then reviewed Optional Condition #10 -- "Reimbursement for Probation Surveillance Monitoring" and Optional Condition #11 -- "Alcohol and Drug Abuse Treatment" which she noted was a new standalone Condition. Optional Condition #12 -- "Abstain from Drugs and Alcohol and Submit to Tests and Samples" was changed and rephrased for clarity. She also noted the Condition now has an exception for prescription drugs. Counsel Pruden recommended the controlled substances codes sections be restored; Board agreed.

Optional Condition #13 -- "Coursework" was explained. The requirement of 30 quarter units has been removed, and the Board is proposed to have discretion to determine how many hours based upon a case. The amended Condition would then allow the Board to determine how much coursework was needed. There was discussion about the number of units required and types of courses. EO Bodea pointed out licensees already have to complete 50 Continuing Education (CE) Units as a part of renewal, and one unit is equal to 15 hours, which can take some time to complete. Counsel Pruden reminded the Board that it can use its discretion to modify course hours on a proposed decision from an administrative law judge, but Board staff would research what other Boards do.

Chair Aguinaldo discussed submission of documents; she felt licensees needed to submit information by certified mail within 15 days. Counsel Pruden noted she has not seen other Boards require this, and wasn't sure how that would work in practicality. Brothers said some documents were done via email or regular mail, and that she encouraged email since it allows her to keep tabs. She then reviewed Optional Condition #14 -- "Community Service", which is an existing term which was made more specific, and another new Optional Condition #15 -- "Supervised Practice".

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Brothers then noted Optional Condition #16 – “Obey All Laws” was amended to clarify the licensee must obey all laws; Optional Condition #17 – “Quarterly Reports” a minor amendment was made allowing the Board to extend probation and #20 – “Changes of Employment” now specifies an employment address. In Optional Condition #21 – “Tolling for Out Of State Practice Resident” she detailed changes which allow the probationer to take vacation of up to 2 weeks. Optional Condition #22 – “Employment and Supervision of Trainees” was added to restrict probationers from working as CE instructors; Optional Condition #23 – “Cost Recovery” was amended to allow installment payments for recovery of costs. In Optional Condition #24 -- “Violation of Probation” was amended to allow the Board to have continuing jurisdiction over a probationer; Optional Condition #25 – “Probation Monitoring Costs” was added. Counsel Pruden noted the Condition is technically not cost recovery, but is something that can be ordered in the actual judgement and thus needs to be separate.

Brothers continued the review of Optional Conditions. Optional Condition #26 – “License Under a New Optional Condition” allows the respondent to surrender their license if desired; Optional Condition #27 – “Severability Clause” states that each condition of probation is a separately existing condition; Optional Condition #28 – “Notification of Name, Address, Telephone Number, or E-mail Address Changes” was amended so probation monitors can get the most current contact information; and Optional Condition #29 – “Maintenance of a Valid License” was added to require the probationer to maintain an active and current license. She then noted that the penalty guidelines section in 1996 Guidelines was proposed to be removed, and a general provision section was added using some of the more general violations the Board sees.

Public comment was taken on the item. One commenter wondered about the Board’s inclusion of 12-step programs, and wondered why duration of participation was not specified. He also had an issue with qualifications of the monitors; he felt newly licensed acupuncturists could be put into that position. Counsel Pruden pointed out the Board was not seeing new licensees in that position. The Board opted to change that language to the same standards as supervisors for approved training program of 5 years.

MOTION: Chair Aguinaldo motioned to ask to staff to make changes discussed, and following completion of those changes to take the revised version to the full Board for discussion and possible adoption. Committee Member Jeannie Kang seconded the motion. Vote: Aguinaldo: YES; Hsieh: YES; Kang: YES; Zamora: YES. **4-0 MOTION PASSES.**

Agenda Item #3 -- Discussion and Possible Action on Prostitution Prevention and Condition of Office Regulatory Package; Possible Recommendation to Board (Johnson)

Johnson reviewed the history of the issue and noted that the Board originally passed the language back in 2014, and that staff had identified this regulation as one which

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needed to be rewritten. He said that some people were taking advantage of the Board's regulatory authority and the charges were being dismissed or pleas bargained away. The proposed language was originally placed into CCR Section 1399.450, but staff instead relocated it into CCR Section 1399.469.4. He specified that 1399.450(a) was shown as strike through on the Board materials, but they would not be removing that language; the new regulation would also not be adopting an article 6.5 as shown in the Board materials. He read aloud the proposed language for 1399.469.4.

Chair Aguinaldo wondered if there was any peril in defining sexual acts in this particular regulation where it could be defined elsewhere and conflict; Johnson noted that staff took the definition directly from the penal code and the only other Board with similar issues was the Chiropractic Board. Counsel Pruden read aloud the Chiropractic Board statute. There was discussion about how many potential cases there might be; Johnson replied there was about 5 a year.

There was no public comment on the item.

MOTION: *Committee Member Jamie Zamora motioned to approve the proposed regulatory language to section 1399.469.4 as presented and direct staff to notice the language for public comment without setting a public hearing and direct staff to make technical changes. Chair Aguinaldo seconded the motion. Vote: Aguinaldo: YES; Hsieh: YES; Kang: YES; Zamora: YES. 4-0 MOTION PASSES.*

Agenda Item #4 -- Future Enforcement Committee Agenda Items

Chair Aguinaldo asked about CE provider enforcement; EO Bodea noted it. There were no other items.

Agenda Item #5 -- Public Comment for Items Not on the Agenda

A public comment was made wondering when the Board would address the issue of dry needling.

Agenda Item #6 – Adjournment

Meeting adjourned.

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