



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

**California Acupuncture Board
Public Board Meeting
APPROVED Meeting Minutes
February 24, 2017**

**LOCATION:
1747 NORTH MARKET BOULEVARD
HQ2 HEARING ROOM
SACRAMENTO, CA 95834**

Board Members Present

Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Dr. Amy Matecki, M.D., L.Ac, Licensed Member

Board Member Absent

Hildegarde Aguinaldo, President, Public Member

Legal Counsel Present

Kelsey Pruden

Staff Present

Ben Bodea, Executive Officer
Kristine Brothers, Enforcement Coordinator
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator

Guest List on File

Acupuncture Board Members

*Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Dr. Amy Matecki, M.D., L.Ac, Licensed Member*

FULL BOARD MEETING – 9:30 AM

Agenda Item #1 – Call to Order, Roll Call and Establishment of a Quorum

Vice President Jamie Zamora (VP Zamora), acting as meeting chair in place of President Hildegarde Aguinaldo, who was absent, called the meeting to order at 9:30am. Policy Coordinator Marc Johnson (Johnson) called the roll.



Members Present: 6 - Zamora, Chan, Corradino, Hsieh, Kang, Matecki. Members Absent: 1 – Aguinaldo. **6-1 Quorum established.**

Agenda Item #2 – Opening Remarks

VP Zamora welcomed everyone to the meeting and noted President Hildegard Aguinaldo was absent from the meeting. He also announced that public comments were limited to two minutes per speaker. Finally, he announced Agenda Item # 10 and #11 being moved to the start of the meeting, and that Agenda Item #12 was going to be postponed. Agenda Item #13 was moved to the end of the meeting.

Agenda Item #3 – Public Comment for items not on Agenda

There were no public comments made.

(Moved up) Agenda Item #10 – Presentation by DCA’s Division of Investigation (DOI)

Rex Cowart, North Area Commander for DCA’s DOI, and Stephanie Whitley, Supervisor for DOI, gave a presentation on DOI’s role and services offered to the Board.

Public comment was taken on the item. A question was asked about how inter-agency complaints made to DCA were handled. Another commenter was concerned about other Boards not communicating with the Acupuncture Board on enforcement issues. Board Member Michael Corradino (Corradino) expressed concern on this issue too. Executive Officer Ben Bodea (EO Bodea) said the Board would work to open up more lines of communication with other Boards. A third comment was made regarding licensees working in Federal facilities.

(Moved Up) Agenda Item #11 – Presentation Regarding the Board’s Budget from the Department of Consumer Affairs’ Budget Office

Matt Nishimine (Nishimine), from DCA’s Budget office, presented on the Board’s budget and fiscal health. He noted there were really no changes to the 2016/2017 budget from the Governor’s budget which was released. He reported that fiscally, the Board was doing very well, and that the numbers presented were on the conservative side, except for the enforcement costs which were a bit higher.

Board Member Kitman Chan (Chan) felt the numbers showed expenditure over revenue – by \$700,000 by his estimate. He worried the Board would run out of money by 2018. He wondered if the budget could be revised. Nishimine replied that while the Board does have a known structural imbalance, there was a significant reserve (12 months) in the budget through 2018, and most Boards had fewer than six. He also noted there



would be a yearly appropriation which helps the situation, but the imbalance would remain and the Board would have to either reduce expenses or increase fees in the future.

A public comment was made wondering about the General Fund repayment to the Board.

Agenda Item #4 – President’s Report

VP Zamora had nothing to report.

Agenda Item #5 – Election of Officers

Due to the absence of Hildegard Aguinaldo, VP Zamora proposed moving the elections to the next scheduled meeting.

MOTION:VP Zamora made a motion to table the Election of Officers until the next scheduled Board meeting. Member Chan seconded the motion. Vote: Aguinaldo – ABSENT; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES; Matecki – ABSTAIN. 6-0-1 MOTION PASSES.

Agenda Item #6 – Staff Reports

a. Executive Officer’s Report (Bodea)

Executive Officer Benjamin Bodea (EO Bodea) reported the following:

1. Staff Update – The Board has put out hiring offers for two open Exam and Education analyst staff positions, and was expecting the process to finalize in the next month.
2. Budget Update – EO Bodea referred to Nishimine’s presentation and that the Board was doing well for a state agency.

b. Enforcement Reports (Brothers)

Enforcement Coordinator Kristine Brothers (Brothers) provided the enforcement report. She noted from the dates of October 1, 2016 through December 31, 2016, the Board had 85 complaints received and 73 were closed or referred for investigation. The Board has 124 investigations pending, and 71 investigations were closed. The average days from complaints receipt to closure of the investigation was 145 days. She also reviewed complaint trends, noting a drop in unprofessional conduct complaints.

Several public comments were made in support of the enforcement work done by the Board.

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Johnson then gave a brief report on a letter sent to all licensees regarding new Board regulations on the Consumer Protection Enforcement Initiative and BPC 138. He noted the letter was also available on the Board's website and a FAQ was being developed on the issue.

A public comment was made thanking the Board for the letter mailed.

c. Education Report (Herdt)

Education Coordinator Jay Herdt (Herdt) gave the Education report. He updated the Board on the ongoing collaboration between the Bureau for Private Postsecondary Education (BPPE) and the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) to facilitate the implementation of Senate Bill 1246. There was a question about completing curriculum reviews within 30 days as required by SB 1246, but Herdt said the Board should have no problem doing so.

For continuing education operations, Herdt noted the unit continues to process a high volume of applications for CE course, an average of 280 per month, and felt the processing times were improving with additional staff. He also updated the Board on the Tutorial Program with 49 active tutorials currently in progress.

A public comment was made raising concern about the schools listed on the Board website as being in compliance.

d. Regulatory Update

Johnson presented the status of current regulatory packages approved by the Board.

Public Comment was taken on these agenda items. One commenter urged the Board to allow only Acupuncture Schools to be CE providers, another disagreed and felt associations can be good CE providers. Another commenter asked if the Occupational Analysis be offered in multiple languages. Several commenters urged the Board to adopt guidelines about CE providers and to review the high number of providers.

e. Legislative Update

Johnson reviewed legislation of interest to the Board. He highlighted SB 27, which would allow applicants for licensure who served in the military a waiver for their license fees. No positions were taken on Legislation.

A public comment was made urging the Board to support SB 27.

Agenda Item #7 – Presentation on the Role of a Regulatory Board (Pruden)

Legal Counsel Kelsey Pruden (Pruden) gave a presentation on the role of a Regulatory Board in California.

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A public comment was made asking why there has not been more legislative action by the Board. Another commenter brought up the issue of cupping.

Agenda Item #8 – Discussion of “Dry Needling” or Unlicensed Individuals Applying a Needle to the Human Body

EO Bodea opened on the issue of dry needling by other practitioners including Physical Therapists by referencing Business and Professions Code Section 4927 – the Board’s legislatively defined scope of practice -- and Board regulations on the training for acupuncturists. Board Member Michael Corradino (Corradino) noted there has been a lot of talk about this from the public and practitioners. He felt the topic was a bit of a slippery slope, and something the Board had to be careful with since no profession wants to limit any other profession from what they do. He also noted the Board cannot take requests from practitioners to fight for them for their scope of practice.

Counsel Pruden agreed and reminded the Board to be cautious of their discussion on the topic, esp. in light of the North Carolina versus the Dental Board Examiners case. In response to a question from VP Zamora, she noted the Board can investigate complaints on unlicensed practice. She also pointed out that if the Board decided to act on the issue in some manner, it would be best to have Legal Counsel look into the different avenues and actions beforehand. VP Zamora agreed and stated the Board would not be making a decision on anything. EO Bodea noted he was in contact with other Boards regarding this issue.

Board Member Jeannie Kang (Kang) observed there were a number of professional organizations and schools attending the meeting, and encouraged them to continue the conversation on this topic. She pointed out there was only so much the Board could do, and urged them to do diligent research on the issue.

VP Zamora introduced Jason Kaiser, (Kaiser) the Executive Officer of the Physical Therapy Board, who was invited by EO Bodea to attend the meeting. Kaiser noted that tissue penetration by a physical therapist is prohibited unless under specialty certification for either kinesiological electromyography or electro neuromyography. He also noted the PT Board has not received a complaint about physical therapists performing dry needling. He said physical therapists who may have been reported to do dry needling at Federal Veterans Hospitals are under the auspices of the US Military and often are not even licensed in California to do so, but may be under the respective state they are in. EO Kaiser also referred to the physical therapy scope of practice, beginning with BPC Section 2620.

Public Comment was taken on the item. The first commenter noted the Board is protecting the public interest. The second commenter asked the Board make an official statement on the issue. Another comment was made wondering who to submit a



complaint to and with which Board. Additional comments were made by an attorney who was involved in the lawsuit in California to prevent certain people from performing dry needling. He felt the Board did not have to worry too much about being sued individually on this issue. Another commenter felt dry needling was acupuncture and asked the Board to define it better. Further comments were made in support of educating the public more on the issue, and making dry needling a subject for acupuncture training.

VP Zamora closed the discussion by asking Legal Counsel to perform more research on the issue and come back to the Board at a later date.

Agenda Item #9 –Presentation Regarding How to Conduct a Meeting in Accordance with the Bagley-Keene Open Meeting Act (Pruden)

Counsel Pruden gave a presentation to the Board about the Bagley-Keene open meeting act and how the laws apply to the Board.

A public comment was made asking the Board to post the meeting agendas online sooner.

Agenda Item #14 – Consideration and possible action on proposed amendments to Title 16, CCR Section 1399.469 - Disciplinary Guidelines (Brothers and Johnson)

Johnson provided an overview of the Guidelines and the history of the issue. He noted the current Guidelines date to 1996 and an update was needed. The rulemaking package was reviewed by the Enforcement Committee in December and was approved with minor changes for staff to make prior to presentation to the full Board. He read aloud the changes to the proposed regulatory text in California Code of Regulations (CCR) Section 1399.469.

Brothers then began the presentation of the Guidelines document for the Board. She provided an overview of the changes requested in the Guidelines by the Committee to conditions number two, four, ten, eleven and twelve. Counsel Pruden advised the Board to review the entire document, not just the changes requested by the Committee. VP Zamora referred the Board members to the memo in the Board packet and asked to review the Guidelines page by page.

The Board began review of the Guidelines. Counsel Pruden asked if the Board might want to separate practice and billing monitor. Brothers replied that the monitor typically submits the plan to the Board, and the Board has the final say about the plan. She advised deleting the paragraph on page 9 of the Guidelines and restoring the phrase "once approved, the monitor shall submit to the Board a plan by which respondent's practice shall be monitored" and adding in "and the Board or its designee shall approve

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such a plan". Under optional condition #12, Vice President Zamora asked about marijuana if the respondent was legitimately prescribed as part of treatment. Counsel Pruden replied the law was changing constantly on the issue, but marijuana should be treated just like alcohol and it would be prudent to be added into the condition. Board agrees with the changes.

A public comment was made asking about the length of time licensees must be licensed in order to be a probation monitor. There was concern that new licensees would be monitoring a licensee who has been practicing for much longer. VP Zamora noted the Board has a vetting process for the monitors and thus far have not had any problems in this area.

Brothers continued review of the document. Counsel Pruden suggested adding "respondent at all times must maintain a clear and active license with the Board" into standard condition #21 and standard condition #23. She also suggested changing "valid" to "clear and active" throughout the document to better identify licensees. There was some discussion about inactive licensees who may be on probation; Brothers noted that inactive license status might make some of the probationary conditions moot, however the Board would still have jurisdiction over them. Counsel Pruden felt the status was okay either way, but licensees would still need to maintain an active license for purposes of rehabilitation. She also noted that the Guidelines could be deviated from at the Board's discretion.

Discussion turned to the recommended action by violation section of the Guidelines. Board Member Kang asked about the range of penalties for advertising, specifically BPC 651 referenced in the Guidelines. Counsel Pruden explained the range was standard, but recommended duplicating BPC Section 4955(c) in place of 651 in the Guidelines, with 3 years maximum and 1 year minimum. Board agrees. VP Zamora reviewed the remaining action by violation section and then the last sections of the Guidelines. There were no further changes made.

Public comment was taken. The first comment had concern about the definition of unprofessional conduct and the understanding of what that meant. He also had concern about advertising regulations and wanted to see changes.

*MOTION: VP Zamora made a motion to approve the proposed regulatory text for CCR Section 1399.469 and the proposed 'Acupuncture Board Disciplinary Guidelines Revised December 2016' as incorporated by reference with the changes made here today, and delegate the authority to the Executive Officer to make any technical and non-substantive changes that may be required and to adopt the proposed regulatory changes. Member Kang seconded the motion. Vote: Aguinaldo – ABSENT; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES; Matecki – YES. **6-0-1 MOTION PASSES.***



Agenda Item #15 – Review and Approval of December 14, 2016 Board Meeting Minutes (Johnson)

Johnson presented the December 14, 2016 Board meeting minutes. There were no changes made.

MOTION: VP Zamora made a motion to approve the December 14, 2016 Board meeting minutes. Member Kang seconded the motion. Vote: Aguinaldo – ABSENT; Zamora – YES; Chan – YES; Corradino – ABSTAIN; Hsieh – YES; Kang – YES; Matecki – YES. 5-0-1-1 MOTION PASSES.

Agenda Item #16 – Scheduling of 2017 Board and Committee Meeting Dates

VP Zamora scheduled future full Board meeting dates for Friday, May 5th, 2017 in Los Angeles; Friday, September 8, 2017 in San Diego and Friday, November 3, 2017 in Oakland.

Agenda Item #17 – Future Agenda Items

Member Corradino asked the Board to make a statement on the issue of dry needling as a future agenda item, and for staff to provide an update on the transition from the CALE to the NCCAOM exam. He also asked the Board to pursue further regulations on Acupuncture Advertising, and a committee meeting on scope of practice and further clarification on scope issue. Member Kang asked to form an ad-hoc committee to review the 'Consumer's Guide to Acupuncture' publication.

Public comment was made on future agenda items. The first comment noted the NCCAOM had more herbal testing than the CALE, and wants the Board to address the issue. A second commenter wants the Consumer's Guide to Acupuncture re-issued, further discussion on advertising, and a statement made by the Board on dry needling and manual therapy. A third comment was made asking the Board to look into enforcement of herbs and traumatology. Another comment was made referring the Board to a study on dry needling made by the CCAOM.

CLOSED SESSION

Agenda Item #13 -- Pursuant to Government Code Section 11126(c)(3), the Board will Meet in Closed Session to Deliberate on Disciplinary Matters Including Petitions, Proposed Decisions, Stipulated Settlements, Defaults, and Any Other Disciplinary Matters

The Board went into closed session on this item.



OPEN SESSION

Upon completion of the closed session, VP Zamora adjourned the meeting.

ADJOURNMENT at 4:15pm.