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Members of the Board

Dr. Amy Matecki, M.D., L.Ac.,
President, Licensed Member
Kitman Chan, Vice President,
Public Member
John Harabedian, Public
Member
Ruben Osorio, Public Member
Vacant, Licensed Member
Vacant, Licensed Member
Vacant, Public Member

BOARD MEETING APPROVED Meeting Minutes October 25 & 26, 2018

LOCATION:

Alta Bates Summit Medical Center
2450 Ashby Avenue
Auditorium # 3
Berkeley, CA 94705

(this meeting was not webcast)

Board Members Present

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

Staff Present

Benjamin Bodea, Executive Officer
Erica Bautista, Administrative Coordinator
Salwa Bojack, Legal Counsel
Kristine Brothers, Enforcement Coordinator (10/26 only)
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator
Tammy Stadley, Exam Coordinator (10/26 only)

Guest List on File

Full Board Meeting – Thursday, October 25, 2018

1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki)

Board President Amy Matecki (Matecki) called the meeting to order at 9:40 a.m.
Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 4 – Matecki, Chan, Harabedian, Osorio. *4-0 Quorum established with one licensed member present.*



2. President's Remarks (Dr. Amy Matecki)

President Matecki had nothing to report.

3. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)

A commenter had several items asking for more transparency on exam results, more discussion about acupuncture colleges, and more discussion on the entry level acupuncture doctorate/post graduate training programs.

4. Petition for Reinstatement of a Surrendered Acupuncture License – Pill Han (AC# 14493) – 9:30 a.m.

The Board heard the petition for reinstatement of a surrendered acupuncture license for Pill Han.

5. Petition for Reinstatement of a Revoked Acupuncture License – Steven Chen Jing Xia (AC# 8907) – 11:30 a.m.

The Board heard the petition for reinstatement of a revoked acupuncture license for Steven Chen Jing Xia.

CLOSED SESSION (Dr. Amy Matecki)

6. Pursuant to Government Code section 11126(c)(3), the Board will convene in closed session to deliberate on a decision to be reached in the above Petitions.

The Board went into closed session at 2:05 p.m. to deliberate on the above petitions.

RECONVENE OPEN SESSION

The Board resumed open session at 4:15 p.m.

7. Discussion on Whether to Proceed with Previously Discussed Rulemaking Packages and Prioritization (Marc Johnson, Policy Coordinator)

Policy Coordinator Marc Johnson (Johnson) opened on the item noting that in the past staff had provided the Board a list of existing regulations the Board has approved. At the direction of Executive Officer Ben Bodea (EO Bodea) and President Matecki, the Board will review approved regulations as an ongoing discussion at Board meetings.



*(A) To Amend Existing Section, Title 16, CCR § 1399.451(a) –
Treatment Procedures: Hand Hygiene Requirements*

Johnson explained this proposed regulation was approved in 2014 but has not been acted upon. He referred to the memo in the Board packet which laid out various scenarios, including keeping the text as is; directing staff to research and update or abandoning the regulation. Johnson then read aloud the approved proposed text and noted the basic requirements set out in the text are current with standard practices. Staff recommended keeping the text as is and proceeding with the rulemaking. Board agrees. No motion was required as text was already approved by the Board.

Public Comment: None.

*(B) To Amend Existing Section, Title 16, CCR § 1399.455 –
Advertising Guidelines: Display of License Number in Advertising*

Johnson noted this regulation was approved in 2013 and has not been acted upon since. He reviewed the existing text already approved by the Board and noted other Boards have similar regulations. Staff identified concerns with the text, including the unclear nature of it, the phrase name, and the license number of the establishment. Discussion commenced on the scope of the regulations and whether it should apply to large acupuncture groups, or if a specific name style for acupuncture licensee should be adopted, or if such a regulation was even needed. President Matecki proposed abandoning the regulation.

Public Comment: None.

MOTION:

Board Member John Harabedian (Harabedian) motioned to drop the regulatory package for 16 CCR § 1399.455 and to notify the public via the website. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – No; Harabedian – Yes; Osorio – Yes.

3-1 motion passes.

*(C) To Adopt New Section, Title 16, CCR § 1399.469.4 –
Prohibited Sexual Acts*

Johnson reviewed the history of the proposed regulation noting the language was approved by the Board in 2014. Originally, the Board desired to obtain more authority to



discipline licensees who allow their places of business to become places of prostitution, where the licensee is not directly engaging in sexual acts with patients. Staff was finding that many licensees were not subject to that authority and that criminal charges were being dismissed or plea bargained away. The text was also reviewed by the Office of the Attorney General who provided feedback on the proposed language. Johnson read aloud the text from the regulation and referred to Business and Professions Code Section (BPC) section 731 as the authority cited. Legal Counsel Salwa Bojack (Counsel Bojack) explained that the section sets out the violation of specified Penal Code provisions and penalties, such as sexual assault and pandering, as qualifying as unprofessional conduct.

Johnson explained that staff has concerns about citing Section 731 as a reference, that the Board would be required to have a conviction as basis for an action, and the Board would want the authority to take administrative action on the conduct itself. EO Bodea also pointed out that the Business and Professions Committee had asked why the Board does not pursue actions on cases evidencing prostitution, and he had responded that the Board's current authority would not allow for an administrative action without a criminal conviction. EO Bodea recommended having Counsel Bojack look further into the issue and bring back changes to the next meeting. Board agreed.

Public Comment: none.

8. Discussion on Amending Title 16, CCR §§ 1399.483, 1399.489 (Continuing Education Ethics Requirements) (Marc Johnson)

Johnson provided a short history on the regulation, which was approved in 2012 and then updated in 2016 by the Education Committee, quickly reviewing language used by other regulatory Boards which have a similar requirement. Johnson discussed that the Physical Therapy Board of California requires two Continuing Education Units (CEUs) in Ethics every renewal cycle, and that the Board of Chiropractic Examiners requires two CEUs every year for a total of four CEUs per renewal cycle. Staff has made changes to the 2016 regulation by adding provisions to 16 CCR §§ 1399.483 and 1399.489. Johnson read aloud the proposed text.

Counsel Bojack explained that the new text was inserted into existing regulations to work within the framework of existing law. She explained that the self-assessment portion of 16 CCR § 1399.483 regulation was contained within existing law in Subsections C and D, and the language was just replicated for consistency purposes. She also explained that the new regulation was plugged into 16 CCR §1399.489, and licensees would find CE requirements there and note the regulation did not apply to inactive licensees. Johnson raised the issues cited by the Education Committee in



2016, including definition of ethics and designation as category 1 or 2 CEUs.

Discussion commenced on the Ethics requirement as category 1 or 2. Counsel Bojack explained that category 1 courses are those that are related to clinical matters or health care to patients, and the requirements depend on how you define ethics. EO Bodea felt more clarity was needed if each course in law and ethics applied to the practice of acupuncture and if that would make it a category 1 course; both felt the definition was open-ended. Dr. Matecki agreed and wondered what other Boards are doing with an ethics requirement; the Board directed staff to perform additional research and bring it back to a future meeting. EO Bodea also recommended defining the active and inactive status in part C of §1399.489; Board agrees.

President Matecki referred the item to the Education Committee.

Public Comment: None.

9. Discussion on Current Legislation (Marc Johnson)

Johnson reported on legislative bills from the 2017-2018 legislative session that the Board had previously taken support, watch, or, oppose positions at the June 28, 2018 public meeting.

(A) AB 767 (Quirk-Silva)

Master Business License Act

The Board had taken a watch position on this bill. Johnson reported it had been vetoed by the Governor.

(B) AB 1659 (Low)

Healing arts boards: inactive licenses

The Board had taken a support position on the bill, which was signed into law by the Governor. Johnson noted the bill would have little impact on the Board.

(C) AB 2138 (Chiu and Low)

Licensing Boards: denial of application: revocation of licensure: criminal conviction

The Board had taken an oppose position on the bill, due to it not being in line with the Board's primary mission of consumer protection. The bill was signed into law by the Governor. Johnson reported the bill would have an impact on the Board's enforcement operations and would require regulations to implement.



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(D) AB 3142 (Low and Hill)

Acupuncture Licensure Act: Acupuncture Board

This bill is the Board’s Sunset bill, on which the Board took a support position. The bill was signed into law by the Governor and extends Board operations for four years until 2023.

(E) SB 1448 (Hill)

Healing arts licensees: probation status: disclosure

The Board had taken a watch position on this bill, which was signed into law by the Governor.

Public Comment: None.

10. Possible Approval of the June 28-29, 2018 Meeting Minutes (Marc Johnson)

Johnson presented the June 28-29, 2018 meeting minutes. There were no changes made.

Public Comment: None.

MOTION:

Member Harabedian motioned to approve the June 28-29, 2018 Board Meeting Minutes as presented, and, to delegate authority to the Executive Officer to make technical, non-substantive changes. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

Recess until Friday, October 26, 2018 at 9:00 a.m.

President called the meeting into recess at 5:35 p.m. until Friday, October 26, 2018 at 9:00 a.m.

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AGENDA – 9:00 a.m., Friday, October 26, 2018



11. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki)

President Matecki called the meeting to order at 9:02 a.m. Johnson conducted roll call.

Members Present: 4 – Matecki, Chan, Harabedian, Osorio. *4-0 Quorum established with one licensed member present.*

12. President’s Report (Dr. Amy Matecki)

A) Welcoming message and meeting information

President Matecki welcomed everyone to the meeting.

B) 2019 Meeting Calendar

The Board announced the following meeting dates and locations in 2019:

- February 28 and March 1, 2019, in Los Angeles.
- May 16 and 17, 2019, in Sacramento.
- August 15 and 16, 2019 in the Bay Area.
- November 7 and 8, 2019 in San Diego.

Public Comment: None.

13. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)

The following comments were made for items not on the agenda:

- The first commenter wanted the Board to clarify designations of “Dr.,” stating that consumers need to be informed. He also asked to see regulations enacted which would require licensees need to state their training, also asking for more clarification on transfer credit biology requirements for students.
- The second commenter was concerned about vacancies on the Board.
- The third commenter wanted discussion on the quality of CE courses and asked the Board to review the issue of dry needling performed by physical therapists.

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14. Executive Officer’s Report (Ben Bodea, Executive Officer)

(A) Staff Update



EO Bodea noted he was in the hiring process to fill two open positions for the Board.

(B) Budget Update

EO Bodea reported the Board's budget was in good shape with a budget surplus of \$300,000 and the Board was transitioning into a new financial recording system called Fi\$Cal. He also referred to the analysis of the fund condition, with reserves standing at 13.9 months, but with projected reserves decreasing in the coming fiscal years.

He recommended initiating a fee study to make sure the reserves stay healthy. Vice President Kitman Chan (Chan) agreed and pointed out the falling reserve levels in 2019 and 2020 and felt the Board needed to raise the revenue. EO Bodea pointed out that a fee increase would require a legislative change, recommending the Board authorize a fee study as the first step.

MOTION:

Vice President Chan motioned to initiate a fee study and grant authority to the Executive Officer to initiate the study. Member Harabedian seconded the motion.

Public Comment: None

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

(C) Outreach Update

EO Bodea reported that the Board has been trying to reach out to all associations to register with the Board, so their information can be displayed on the website.

Public Comment: None

15. Enforcement Report (Kristine Brothers, Enforcement Coordinator)

Enforcement Coordinator Kristine Brothers (Brothers) provided the Enforcement report.

(A) Q4 17-18 Enforcement Report

Brothers reported a total of 59 complaints received, 58 closed and sent to investigation, and the average intake time was six days. 136 investigations were pending, and 72 investigations were closed. Four cases were sent to the Office of the Attorney General and sixteen disciplinary cases were pending at the close of quarter four.

She also highlighted a significant decrease in unprofessional conduct complaints in quarter four. Brothers noted enforcement staff has been working on business process mapping during quarter four, which will affect the Board's case aging in future quarters,



but that staff have resumed their regular duties.

(B) Q1 18-19 Enforcement Report

Brothers reported 36 total complaints received in the quarter, with 37 closed and sent to investigation, with an average intake time of seven days. At the close of the quarter, 113 investigations were pending and 16 were closed. She noted the complaint volume was comparable to last year's quarter one.

Public Comment:

Two comments were made on the item:

- The first commenter wanted awareness and further clarification on the frivolous nature of some of the complaints.
- The second commenter agreed with the first comment and wanted to see a breakdown of substituted claims for enforcement resulting in injury. She also wanted to know how to file a complaint for unlicensed practice, and how that is shared between Boards.

16. Education Report (Jay Herdt, Education Coordinator)

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

(A) Status of Curriculum Reviews

Herdt reported a total of 37 approved acupuncture training programs, with 25 of those in full compliance. He also reported three doctoral training programs which have met the Board's curriculum requirements, each with a different degree name. Herdt felt the naming conventions of each of these new programs are confusing, noting that ACAOM does not have a standard, allowing member training programs to name as the doctoral degrees. The Board has no jurisdiction over the naming of degrees.

Herdt then noted there were five applications for Board approval of curriculum and one with pending BPPE approval.

(B) Continuing Education and Audit Report

Herdt reported the fiscal year 2015 and 2016 audits were continuing, with staff randomly selecting ten percent of renewing populations per month. CE course applications processed in quarter one of fiscal year 2018 totaled 831 with 547 current and valid CE providers.

EO Bodea also noted the Board has previously directed staff to look closely at CE applications and only approve hands-on instructional techniques for live courses. Herdt noted that staff has been denying hands-on courses for distance education courses. EO



Bodea noted that there has been push back from several CE Providers, but that staff are holding the line.

(C) Update on the Continued Collaboration with the Bureau for Private Postsecondary Education and the Accreditation Commission for Acupuncture and Oriental Medicine

Herdt noted the BPPE and ACAOM were continuing to work collaboratively.

Public Comment:

Several public comments were made on the item:

- A comment was made asking the Board to review school/CE courses, specifically seminars where a speaker will bring their own needles which could potentially cause damage.
- A commenter wanted the Board to ensure that patient vital signs were being taken as part of clinical training.
- A comment was made asking the Board to hold a stakeholder meeting for determining how courses would be categorized and how they would be taught.
- A commenter asked how the Board can continue to monitor provider quality and what the qualifications for a provider might be.
- A commenter commended the Board for helping to upgrade the quality of continuing education.
- A commenter raised the possibility of the Board limiting the amount of time instructors from outside the state can teach at CE courses.

17. Update on Transition to Computer-Based Testing for the California Acupuncture Licensing Exam (Tammy Stadley, Exam Analyst)

Exam Coordinator Tammy Stadley (Stadley) informed the Board about the computer based testing process which is now being used in lieu of a paper/pencil exam, which was only offered on a biannual basis. Stadley reported that the Board has activated its contract with PSI Testing Centers and that computer-based testing for the licensing exam has gone live. The exam content and number of questions has not changed, but the exam is now available continuously six days a week at 17 testing locations in California. She also reported the application process has not changed, and exam test statistics would be available within three to six months after the Board goes through an initial vetting period. Stadley further reported 278 new applications have been received and 197 have been fully approved for the exam; 17 people have already tested using the new process.



Public Comment:

- A commenter had concerns about exam security, and what measures could be taken to ensure security.
- A commenter appreciated the work the Board has done to put the exam online, but noted her membership wants to see the exam move toward NCCAOM reciprocity. She wondered when the pass rates from the exam would be broken down.
- A commenter asked how many languages the Board would offer for the exam and had concerns about the difficulty of foreign applicants applying for the exam.
- A commenter wondered about the item banks exam questions were drawn from.

18. Update from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) (Dr. Kory Ward-Cook, CEO of NCCAOM)

Dr. Kory Ward-Cook (Dr. Ward-Cook) opened by thanking the Board for the opportunity to speak and referred to the report contained within the Board packet for information. She included an overview of NCCAOM's governance structure and a review of the NCCAOM Job Analysis completed in 2017, which she noted was done on the same cycle as the Board's in 2016. She shared that the blueprints for NCCAOM's exam are online. The four exam modules, which she explained were offered in a linear format, are available in Chinese and Korean, but there have only been a small number of applicants for those languages. Dr. Ward-Cook noted that NCCAOM would be developing a new assessment product for compounding, based on industry demand. She also described the new reciprocal route, which was available for California licensees to obtain NCCAOM certification without passing the exam. Finally, she discussed the process NCCAOM used to come up with the reciprocity program and asked the Board to explore how each programs' continuing education programs align.

Dr. Matecki asked why acupuncturists licensed after 2016 cannot apply for the NCCAOM reciprocity based on the previous job analysis. Dr. Ward-Cook replied they were looking into that question and it was under consideration. EO Bodea asked about the cost of the NCCAOM certification route. Dr. Ward-Cook replied it was \$750 and \$260 for a four-year renewal. EO Bodea asked for any additional licensing requirements in addition to California's. Dr. Matecki inquired about other states and reciprocity with the reciprocal route for California's licensees. Dr. Ward-Cook noted requirements of other states varied and some require full certification, but it was changing all the time. Dr. Matecki followed up by asking if states requiring NCCAOM Certification would accept this route for California Licensees without having to take all four modules of the NCCAOM exams. Dr. Ward-Cook was unsure as she did not have exact numbers yet.



EO Bodea asked if there was any enforcement action that was applicable to licensees. Dr. Ward-Cook replied that NCCAOM has a strict code of ethics and two staff working in that area, and they work closely with all states with sanctions. EO Bodea raised concern about the use of ‘board certified’ and ‘national board certified’ by NCCAOM; Dr. Matecki agreed it could be considered misleading. Herdt asked about the costs of NCCAOM certification. By his calculations, the reciprocal route costs \$750 and \$1,795 to get full NCCAOM certification. Dr. Ward-Cook confirmed those costs and stated NCCAOM was working on the issue.

Public Comment:

- The first commenter wondered about the difference in education standards in California and felt the quality of education was important.
- The second commenter was concerned about the NCCAOM cost and the burden on the student. She also wondered about the difference in education hours and how NCCAOM would show that its exam is different from California.
- A third comment shared their organization’s view that all acupuncture should be at the doctorate level.
- A fourth comment was made wondering if there would be one exam to pass and practice anywhere.
- A fifth comment wondered about the wording of NCCAOM’s trademark for “nationally certified” acupuncturists.

Recess was taken from 11:07 a.m. until 11:28 a.m.

19. Updates from Acupuncture Professional Associations

Johnson called upon the invited acupuncture professional associations registered on the Board’s website to present on their association’s history, membership, services offered, and their views on acupuncture-related issues. He referred to a copy of the invitation letter in the packet which was sent to all professional associations registered with the Board and noted multiple associations had responded and would be presenting.

The following associations presented at the meeting:

- Michael McCulloch, California Association for Acupuncture Tutorials
- Victoria Tuan, American Society of Chinese Medicine
- Ra Adcock, California State Oriental Medical Association



- Francisco Kim, Association of Korean Asian Medicine and Acupuncture of California
- Wei Wei, American Association of Chinese Medicine and Acupuncture
- California Acupuncturist United Association
- Steven Stumpf, National Guild of Acupuncture and Oriental Medicine
- Cameron Blamey, American Acupuncture Council

Public Comment: None.

Lunch was taken at 12:15 p.m. Meeting resumed at 1:09 p.m.

20. Possible Approval of Amendments to the 2018-2022 Acupuncture Board Strategic Plan (Ben Bodea)

EO Bodea reviewed additional updates to the Board's Strategic Plan. Most of the updates were made for greater clarity and understanding. On page four, some abbreviation changes were made, and on page seven the goal area for licensing was revised for the Board to seek legislative or regulatory authority to require a passing test of English for a foreign applicant. Goal 1.3 was revised to strike through the note to 'educate licensees' as the Board is really seeking compliance from licensees. On page eight, capitalization changes were made, and more clarity was added to Goal 2.5 by specifying the regulations to which the Board was referring. On page nine, in the goal area of education, more specificity was made to refer to researching and developing transfer credit evaluation policies and procedures to ensure compliance with education requirements.

EO Bodea next reviewed page ten, which was revised to shorten the goal area to 'advocate'. Goal 4.2 was updated to specify feasibility of obtaining site inspection authority, not the feasibility of site inspection authority, with the goal of obtaining authority for site inspections. Goal 4.3 was revised for more legislative citation authority over curriculum violations or training programs to enforce existing curriculum requirements establishing regulations. A minor change was made to Goal 4.4 for specificity, and Goal 4.5 was changed to line up to current law and authority for penalties for BPC section 585. EO Bodea referred next to Goal 4.6, adding a reference to the correct BPC section, and minor technical changes to Goals 5.1 and 5.2. A technical change was made to Goal 6 at the top, and technical changes were made on page 13.

The Board agreed to the changes presented and EO Bodea recommended approval.

**MOTION:**

Member Harabedian motioned to approve the revised Strategic Plan for the Acupuncture Board. Member Osorio seconded the motion.

Public Comment: None.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.**21. Discussion of Acupuncture Licensure Standards and Reciprocity Throughout the United States (EO Bodea and Johnson)**

EO Bodea provided a short background on the item, which was prompted by discussion in the Board's Sunset Review background produced by the Business and Professions Committee. It discussed the Board's understanding of reciprocity and portability of the California acupuncture license to the rest of the United States. He noted the information provided was informational only. Johnson reviewed the information in the attachment, which lists statutory language and requirements of each state and if the state requires NCCAOM certification or both. He made several general observations:

- 46 states and the District of Columbia accept the NCCAOM exam or certification;
- Several states, such as New Jersey, New Mexico and Texas use a supplemental exam to the NCCAOM for their states' scope, laws, and regulations;
- Arizona, Alaska and Wyoming appear to allow either the CALE or NCCAOM as the licensing exam;
- Staff research identified 16 states that appear to allow their Board or Commission to review currently licensed applicants (in another state) for licensure equivalency in their state.

Johnson noted the Board may be able to enact a reciprocity or portability agreement with other states which have statutes authorizing as such, but that applicants who have been licensed in other states, with lower training requirements, would not be accepted in California.

Member Harabedian commented that the key was to figure out how the Board could allow reciprocity for licensees in this state and from other states without disrupting the Board's mission of protecting the health of consumers. He felt the Board was not concerned with whether licensees can go to another state and practice. President Matecki agreed and wondered how another state would accept the CALE and if there would be a process another state could accept. Further, she felt it was more of a



political issue. Member Harabedian agreed but wondered if other states had inquired about reciprocity with California. Johnson replied that his discussions with other states were informational only. EO Bodea raised the issue of framing; is it reciprocity or portability? He felt the issue really fell to the profession itself. Member Harabedian acknowledged that this discussion was a good starting point, but that the acupuncture profession had to take on the work from here on behalf of their licensees.

Public Comment:

- A commenter wondered why the California Acupuncture Board should have the burden to check out-of-state applicants' background to see if their education is equivalent to California. She felt it would create additional work for the Board.
- A second commenter pointed out there was an additional certification test used in Michigan, promising to email the Board with information.
- A third commenter raised the issue of other states lowering their standards from California's level.

22. Discussion on the Following Previously Discussed Rulemaking Package (Kristine Brothers and Marc Johnson)

- (A) *To Amend the Title of Division 13.7 of Title 16 of the California Code of Regulations;*
- (B) *To Adopt "Article 6.1. Citations" of Division 13.7 of the California Code of Regulations to Include Title 16, CCR §§ 1399.463-1399.468;*
- (C) *To Adopt "Article 6.2. Enforcement" of Division 13.7 of the California Code of Regulations to Include Title 16, CCR §§ 1399.469-1399.469.3;*
- (D) *To Amend Title 16, CCR § 1399.469 (Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees)*

Johnson began with a brief history of the regulation and updates to the Disciplinary Guidelines (Guidelines), and noted staff was now proposing to integrate the Uniform Standards for Substance Abusing Licensees (Standards) into the overall document. He first reviewed the proposed regulatory text itself and pointed out changes, which include revision of the article headers and the reference to the Standards, which are now integrated into the Guidelines instead of a separate handbook. He highlighted the text change, which allows the licensee, who has been accused of substance abuse, to have a hearing to determine this. Counsel Bojack added that other boards have a Clinical Diagnostic Evaluation condition precedent as a trigger for the Standards to be applied, but was concerned the text does not define what a substance abusing licensee actually is. She also pointed out other boards have language which requires the licensee to rebut such evidence at the hearing as well; this shifts the burden of proof onto the



licensee charged with an act indicating possible substance abuse. EO Bodea was in favor of adding such language. Staff was directed to research both issues and bring back to the Board.

Johnson turned to the Guidelines handbook. He mentioned changes to page 4 in the introduction, including addition of text outlining special conditions; listing standard conditions first in front of optional conditions throughout the document; more clarity on page five with stipulated settlements and disciplinary orders. Brothers raised the deletion of a special condition applying to sex offenders which was deleted in the Guidelines because the only penalty for sex offenders is the revocation of a license, no exceptions. Counsel Bojack pointed out the special condition is only informational and that the reference would appear throughout the Guidelines. Staff was directed to re-insert the sex offender text appropriately elsewhere in the document.

On page 6, Johnson noted the general conditions were re-worked in a logical order. Counsel Bojack added that other Boards have used the language in their general conditions; she raised the issue on pages 50, 51, 52 and 53, which set out additional considerations. She was concerned which conditions would apply and the conditions at the end of the Guidelines would make the process burdensome; she recommended merging the section together cohesively. Board agreed. On page seven, Johnson listed the terms and conditions proposed for deletion; all terms and conditions were to be listed onto one page. He then referred to standard conditions numbered one through fifteen; in condition number three, the closing clause was moved to the intro for clarity; in condition number six, the words 'practicing within California' were added. Brothers raised concern about the changes to condition number six by pointing out that currently there is not a requirement for probationers to practice in the State of California.

Johnson noted that condition number seven added a restriction that a person cannot teach continuing education courses and there was addition of cost recovery language to condition number eight. He moved next to optional conditions by pointing out the term numbers were re-numbered as a global change. Optional condition 17 with a Board-requested change of 'approved'; addition of a psychiatrist to those who can perform an evaluation and a release that authorizes the evaluator to furnish to the Board the diagnosis. A note was added to the condition for clarity, and Johnson added that all numbers throughout the document would be written out as a global change. The billing monitor condition was added that only acupuncturists may be monitors, similar to other Boards.

Another global change was made to remove 'calendar' after a number of days listed. Optional condition 20 removed the first sentence, setting out that psychotherapy shall be conducted by a licensed psychologist with a clear and active license. Counsel Bojack stated the language for the condition was pulled from the Board of Psychology and



mirrors their condition since previously the condition did not specify a particular kind of health care professional. This allows for more specificity. Member Harabedian asked if this would apply to marriage and family therapists; there was some discussion over the different license types to perform psychotherapy. The Board opted to allow psychologists and psychiatrists.

Johnson mentioned the Board previously asked staff to research language for the no solo practice condition and staff recommended usage of language from the Medical Board. It prohibits a licensee from engaging in the solo practice of acupuncture when the respondent is sharing office space with another licensee or in sole practice; requires that if the Respondent fails to establish a practice within sixty days of the decision with another licensee, that the Board can issue a cease practice order within three days; and the condition also requires a five-day notice if the practice setting changes into a setting compliant with the decision. Board agrees with this addition. Condition number 24 was changed to require a licensee to pass the licensing examination within 18 months from effective date of the decision; Board agrees with this change. Minor wording changes were made to condition number 26. Johnson pointed out notes were added to condition numbers 26, 27, and 28, which are related to substance abuse, and how the conditions are to be used together. Counsel Bojack further explained those conditions are separate for the special conditions implementing the Uniform Standards, which would only apply if the licensee was determined to be a substance abusing licensee.

Recess was taken from 2:45 p.m. to 2:55 p.m.

On page 22, Johnson reviewed a new optional condition for the notification of probationer's status to employer, which the Board had requested using the Physical Therapy Board of California guidelines as a model. This condition requires respondent to notify all present and future employers during the probation of the reasons and terms and conditions of their probation. Board agreed with the addition. Discussion commenced on addition of a condition requiring notification to patients; it was noted that Senate Bill 1448 now requires such notification. The Board agreed to add this as standard condition number 16, which will also require renumbering of the conditions throughout the Guidelines as a global change. Brothers raised a concern about the notification of probationer's status to employer term. Specifically, Brothers raised a concern regarding the ten-day timeline that respondent is given to provide notification of their probation status to employer and to also provide evidence of this to the Board; she felt it should be 30 days. Board agreed.

Johnson reviewed optional condition 33, notification of probationer's status to employees, which was sourced from the Physical Therapy Board of California. Board



agrees with the addition, changing the timeline for notification to 30 days to match the previous condition.

Beginning on page 28, the special conditions implementing the 16 Uniform Standards were reviewed. Counsel Bojack explained the conditions were previously contained in a separate rulemaking but were now included in the Guidelines. She stated that since the Board already reviewed the 16 Uniform Standards at previous meetings all that was needed were the implementation sections. Standards number 14 and 15 are included, but not implemented administratively as the Board does not offer a diversion program, and, that such a program would be in lieu of probation.

Special Condition 34, referring to Clinical Diagnostic Evaluations, will be reviewed by staff to research what other Boards are doing using the condition as a 'gatekeeper' to the other Uniform Standards. Special Condition 35, notice of employer or supervisor information, is derived from Uniform Standard 3. Discussion commenced on the timeline for reporting for Special Condition 35. President Matecki proposed 14 days. Board agreed. Special Condition 36, relating to biological fluid testing, implements Uniform Standards 4, 8, 9 and aspects of 13. EO Bodea noted that DCA has convened the Substance Abuse Coordination Committee to review the testing requirements and that the condition may change. He will report back at the next Board meeting. Johnson next reviewed Special Condition 37, which implements Uniform Standard 5 and refers to substance abuse support group meetings. Special Condition 38 implements Uniform Standard 7 and relates to worksite monitoring requirements and standards. Special condition 39 implements Uniform Standard 10 and sets out what the Board must do if a substance abusing licensee condition is violated.

On page 37, the word 'recommendation' was substituted for 'recommendations' in the first sentence. On page 38, Johnson noted BPC sections 480 and 490 as listed violations were added at the request of the Board. Brothers recommended matching penalties from BPC section 490 up with BPC section 4955, subdivision (b), since they both pertain to substantially related convictions. Board agreed. Discussion commenced on adding of BPC section 4935 as a listed violation. Dr. Matecki asked if it would be feasible to tie this in with the unlawful practice of Acupuncture; EO Bodea stated it would. Brothers also noted the Board's Sunset Bill made the text from BPC section 4935 a little more actionable. Dr. Matecki asked staff to look into including it and recommend possible inclusions of the special conditions to all penalties and come back with a recommendation at a future Board meeting. It was noted the words 'if applicable' would be added to the special conditions listed as a global change.

Johnson next referred to page 45, fraud violation, and read aloud the change offering



revocation as the only penalty for committing fraud. Staff will bring back optional conditions for BPC section 4955, subdivision (h). He noted again several sections in the rear of the document – General Considerations, Evidence of Aggravation, language for Probation Orders – would be moved to the front of the document for clarity. Finally, the Index of Violations will have BPC sections 480, 490, and 4935 added.

No action was taken by the Board on the Guidelines. Staff will make changes and research additions as directed by the Board to bring back at a future meeting.

Public Comment: None.

23. Future Agenda Items (Dr. Amy Matecki)

Board members had no future agenda items.

Public Comment:

- A comment was made asking what the Board would recommend for acupuncturists who want to work at VA hospitals.
- A comment was made asking for CEUs to be offered to licensees if they attend petition hearings.
- A comment was made wondering about license certificates for massage.

24. Adjournment (Dr. Amy Matecki)

Meeting adjourned at 3:44 p.m.