



Approved 11/2/07
**ACUPUNCTURE BOARD
MEETING MINUTES**

Cathedral Hill Hotel
San Francisco, CA

**FULL BOARD MEETING
FRIDAY, August 10, 2007**

Members Present

*Steven Tan, M.D., L.Ac., Chair
Robert Brewer, Public Member
Adam Burke, L.Ac.
Cary Nosler, Public Member
Larry Yee, Public Member*

Members Absent

*Peichin Cheng, Public Member
Kenny Cherng, L.Ac., Vice Chair*

Staff Present

*Janelle Wedge, Executive Officer
LaVonne Powell, Legal Counsel
Mary Howard, Administrative Coordinator*

Guest List on File

1. Call to Order – Dr. Steven Tan, Chair

Board Chair Steven Tan called the Acupuncture Board (board) meeting to order at approximately 8:45 a.m. Roll was taken and all members were present except Peichin Cheng and Kenny Cherng. A quorum was established.

2. Chair Report – Dr. Steven Tan

Board Chair Dr. Steven Tan stated that he did not have anything to report but wanted to remind the public to limit comments to two minutes and they will have one opportunity to address the board per subject and to focus on addressing the board not each other.

3. Executive Officer's Report – Janelle Wedge

Executive Officer Janelle Wedge reported on the following: **1)** our Secretary had accepted a promotional opportunity with the department, so we will be recruiting and interviewing to fill the vacancy; **2)** she attended the DCA Director's retreat in Santa Rosa on July 31 through August 2. Majority of all executive officers and bureau chiefs were present. She reported that it was a very positive experience, meeting with other executive officers and learning that several boards have the same concerns we do as far as departmental operations; and **3)** Acupuncture Board staff would be representing the board at DCA/BAR's booth at the California State Fair in late August.

4. Approval of May 18, 2007 Meeting Minutes

The minutes of May 18, 2007 were reviewed. Adam Burke mentioned that in Item 11c – referencing the proposed modification to 1399.483(b)(1)(B) of the proposed continuing education regulations, the term “biomedical” needs to be corrected to “biomechanical” (Note: this term is only incorrect in the May minutes, not the modified language of the regulations.)

ADAM BURKE MOVED AND ROBERT BREWER SECONDED THE MOTION TO APPROVE THE MAY 18, 2007 MEETING MINUTES WITH THE ABOVE NOTED CHANGES. MOTION PASSED UNANIMOUSLY.

5. Petition Pursuant to B&P code Section 4967

a. *Cynthia Riggs* – Janelle Wedge reported that this was a follow-up to Ms. Riggs petition at the May meeting to have a new license issued without having to take the examination (her previous license had lapsed). At the request of the board, Ms. Riggs provided the board with additional documentation relevant to her keeping current with her license in Virginia, taking numerous hours of continuing education, and shows no reports of violations.

ROBERT BREWER MOVED AND ADAM BURKE SECONDED THE MOTION TO GRANT CYNTHIA RIGGS A NEW LICENSE WITHOUT HAVING TO TAKE THE LICENSING EXAMINATION. MOTION PASSED UNANIMOUSLY.

6. Administrative Business – (Discussion/Action)

a. Budget Report – Mary Howard, Administrative Coordinator

Mary Howard provided the board with expenditure projections for FY 2006/07 and that at the November meeting she would provide an update on our fund condition. In summary, our budget is in good shape. There was discussion as to what happens to the money we don’t spend and it was explained that it reverts to our fund and we need legislative authority to spend that money.

b. Legislative Update

Mary reported on the following bills:

AB 54–health care coverage–No change since March 29; still in Assembly Committee on Health

AB 636-acupuncture-No change since April 10; still in Assembly Committee on B&P

AB 865-live customer service agents- No change since April 24; still in Assembly Committee on B&P

AB 1025-professions and vocations-scheduled for August 20th hearing in Senate Appropriations. Legal Counsel Lavonne Powell explained that the department is in opposition to this bill as it would prevent any licensing profession under the Business and Professions Code from denying licensure based on a criminal conviction (misdemeanor or felony) that has been dismissed on specific grounds. After discussion, the board felt that it should oppose the legislation and submit a letter of opposition prior to the August 20th hearing.

ROBERT BREWER MOVED AND LARRY YEE SECONDED A MOTION THAT THE BOARD TAKE AN OPPOSE POSITION ON AB 1025 AND SUBMIT A LETTER OF OPPOSITION PRIOR TO THE AUGUST 20TH HEARING. MOTION PASSED UNANIMOUSLY.

AB 1525-interim continuation of BPPVE provisions-bill was approved by the Governor and took effect July 1, 2007.

SB 136-asian massage-No change since April 23; still in Senate Committee on B&P

SB823-reconstitution of BPPVE-amended July 17 and referred to Assembly Committee on Appropriations; DCA took an opposed position on the 7/2 version of the bill, but has not taken a position on the 7/17 version

SB 963-regulatory boards-amended June 25 and referred to Assembly Committee on B&P. DCA has taken an opposed position on this bill and has indicated it is a two-year bill. There was discussion that there are currently safeguards in place for monitoring boards, i.e. sunset review and that this bill is not necessary.

ADAM BURKE MOVED AND ROBERT BREWER SECONDED A MOTION THAT THE BOARD TAKE AN OPPOSE POSITION ON SB 963. MOTION PASSED UNANIMOUSLY.

SB 840-single payer health care coverage- this bill is not on the legislative grid and was brought up at the May meeting. Although the bill's provision would include acupuncture as a covered service, there is concern that acupuncturists would not be considered primary care providers under the bill, requiring patients to get a referral for acupuncture treatment. There was some discussion whether this bill involved insurance coverage for acupuncturists and a motion was made to support in concept. However, the motion was withdrawn once it was determined that it did not involve insurance coverage; it was decided to watch the bill and get more information on the impact to the board or licensees before taking a position.

c. Update on Amendments to Continuing Education Regulations (Title 16, CCR, Sections 1399.480 through 1399.489.1)

Mary Howard reported that since no opposition or adverse comments were received in response to the modified language that was proposed at the May 18th meeting, that staff would be completing the regulatory package and submitting to Office of Administrative Law for review and approval.

7. Strategic Plan

Janelle Wedge presented an update on the board's strategic plan as follows:

Subsequent to the May meeting and information presented by Antonette Sorrick, "unlicensed activity" has been added as a strategic goal.

Goal 1: Advance higher education standards:

Objective 1.1 Clarify issues regarding the title of doctor – will be addressed later on during meeting.

Goal 2: Review, clarify and disseminate the scope of practice: assigned to Robin and Christie, who are still researching and should have something to present at the November meeting.

Goal 3: Promote ethical conduct of licensees and students; part of goal was to disseminate information in different languages. Staff has met with DCA Outreach regarding translating and will have revised guide translated as well.

Objective 3.3 Enable Spot Inspections – there was discussion regarding whether the board should seek legislative authority to conduct spot inspections. This would require contracting with Division of Investigation to perform the spot inspections as it would have to be done by peace officers. Additional discussion followed based on the main issue being prostitution and how to educate the public and licensees that this needs to be stopped. Suggestions included creating a task force, adding information on the board's website and newsletter, and requesting associations to get the word out to their membership. Board chair Steven Tan asked that this item be placed on the next meeting agenda and to request ideas from the public on how to address the issue of prostitution in conjunction with the practice of acupuncture.

Goal 4: Reduce or eliminate unlicensed activity: This has been added since last meeting and staff along with legal counsel will draft legislation to be introduced next year. Possibly the Senate Business and Professions Committee would agree to have this legislation in their omnibus bill as it is not controversial.

Goal 5: Clarify the process of school approval: No update since last meeting.

Goal 6: Re-evaluate and improve continuing education standards: Nancy will provide an update at the November meeting.

Goal 7: Improve communication with the industry and consumers: Staff is working on the newsletter and hope to have out in the fall; looking into having various publications translated; staff has represented the board at the California State Fair.

8. Education Business

a. Proposed Elimination of Tutorial Program

Following is a summation of both written and oral testimony received regarding the possible elimination of the tutorial program, as well as a summation of board member comments. Copies of written testimony will be retained in the board's official meeting record and are available upon request.

Suggestions for improving program

- Enforce a more stringent tutorial program including mandatory weekly quizzes and monthly examination.
- Increase prerequisite educational requirements for new tutorial students, i.e. a bachelor's degree in a health related field.
- Increase Western medical training.
- Require that more Chinese medicine classes be taken with peers at acupuncture schools.
- Require exam reference text be used in tutorial programs and ensure that tutorial supervisors are current with new trends in the standard of care with Chinese-Western integration.
- Require passage of an acupuncture school proficiency exam.

Reasons to keep program

- Individual touch of the tutorial has innate value that cannot and should not be compared to an institution.
- Board should keep program as there is a mechanism in place to test competency of applicants.
- Pass/fail rate of tutorial applicants no worse than some individual schools and foreign applicants.
- Tutorial program adds diversity to the field of learning.

Concerns with keeping the program

- There is a concern about the abandonment of supervision for the student.

Board member comments

- With the number of acupuncture schools, it doesn't make sense to keep the tutorial program.
- In favor of tutorial program if improved.
- In favor of program but concerned about staff time and fiscal implications.
- There is nothing prohibiting an acupuncturist from working under a mentor once licensed.
- Want more statistics on number of failed or flunked students.
- Want to hear from more providers of tutorials.

Legal Counsel Lavonne Powell explained that if the board voted to eliminate the tutorial program, legislation would be drafted that would repeal current language. Additionally, once legislation passed, existing regulations would be repealed through a Section 100 regulatory change request. There would be a provision that would phase out the program, enabling current tutorial students to complete their program, as well as allowing those that have previously completed the program to compete in the examination process.

After receiving public testimony and discussing the issue, the board decided it was not comfortable with making a decision at this time, and would like to continue discussion at the November meeting.

b. Five Branches University (San Jose) School Site Visit

Janelle Wedge presented the board with the report on the site visit that was conducted by staff on July 26, 2007 of Five Branches University campus in San Jose. The school meets all the board's requirements and is approved by CPPVE and staff is recommending approval of the campus.

ROBERT BREWER MOVED AND LARRY YEE SECONDED A MOTION THAT THE BOARD ACCEPT STAFF'S RECOMMENDATION TO APPROVE FIVE BRANCHES' SAN JOSE CAMPUS. MOTION PASSED UNANIMOUSLY.

c. Status of School Site Visits

Janelle Wedge presented the board with an updated status report on pending school applications and site visits.

d. Review of National Accreditation and Candidacy Standards

Janelle Wedge briefed the board on what transpired at the May meeting, that there was discussion about the board considering accepting students who graduate from an out-of-state school that is not approved by the board, but whose acupuncture program is accredited by an accrediting agency recognized by the U.S. Department of Education. Legal Counsel Lavonne Powell emphasized we would not be lowering our standards and students must still meet the minimum curriculum requirements established in the B&P Code. If the board were to change current statute it would need to determine what level of accreditation would be acceptable – “candidacy” vs. “full approval”, etc. What was being presented to them today was a summary of the accrediting criterion used by both the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and the National Oriental Medicine Accreditation Agency (NOMAA). Public and board discussion followed and included clarification that the board would continue to approve California schools; a new statute could affect the transfer credit; if students don’t have the minimum coursework credits required by the board they would have to obtain the necessary coursework; and that accreditation is voluntary by schools. The board agreed in concept to the change and it was decided that staff would bring back suggested language at the November meeting.

ADAM BURKE MOVED AND ROBERT BREWER SECONDED A MOTION THAT THE BOARD ACCEPT IN CONCEPT THE DISCONTINUATION OF APPROVING AMERICAN SCHOOLS OUTSIDE OF CALIFORNIA AND INSTEAD ALLOW STUDENTS TO SIT FOR THE CALIFORNIA EXAM IF THEY GRADUATE FROM A TCM PROGRAM ACCREDITED BY AN AGENCY APPROVED BY THE U.S. DEPARTMENT OF EDUCATION AND MEET THE MINIMUM CURRICULUM REQUIREMENTS REQUIRED BY THE CALIFORNIA ACUPUNCTURE BOARD. MOTION PASSED UNANIMOUSLY.

e. Proposal from Pacific College of Oriental Medicine Regarding Amendments to CCR section 1399.434(h) – Clinical Training

- Jack Miller presented proposed language revising 1399.434 to allow 100% clinical training in acupuncture programs not owned and operated by an approved school and only up to 50% under specified conditions. Extensive discussion followed including concern about quality of clinical training and oversight; what percent of the training in a clinical training site located in a non-approved training should be acceptable; does the training site need to be owned and operated by an approved training program, etc. Steven Tan asked Jack Miller to revise his changes to take into consideration some of the items discussed and bring it back to the November meeting. Members of the audience requested that other schools be involved. Legal Counsel Lavonne Powell advised the group to be aware that any changes to the percentage now in regulations would need justification and underlying data to support the change.

f. Position paper dated May 17, 2007 from David Karaba, NGAOM

– David Karaba presented the board with an updated errata sheet and encouraged them to review the comparisons. He also inquired as to why the board doesn’t change the criteria for transfer credit. Legal Counsel Lavonne Powell stated that it is a matter of fairness and not being able to monitor out of state schools, and that when suggested statutory language is presented to the board the public will have another opportunity to comment.

9. Examination Business

a. August 7, 2007 Licensing Examination

– Janelle Wedge reported that there were 633 candidates for the exam and general consensus was that the exam was fair. There was public discussion as to when the board would have past exam statistics available by school, by first time takers, and by subject matter. Janelle reported that due to a change in the applicant tracking system used by DCA, that she has no way of projecting when this will be available but is working having the information available.

10. Enforcement Business

- a. **Use of the Title Doctor** – There was discussion about the use of licensing and degree titles by acupuncturists and whether the board can regulate the usage of such. Legal Counsel Lavonne Powell explained about Commercial Free Speech and that there is a difference between false and misleading. In order for the board to prove that title usage is misleading, a psychometrically-sound survey would have to be conducted to see if there is confusion amongst consumers (not licensees). After further discussion it was requested that board staff 1) bring back information on Oregon’s law about title usage, and 2) look at the board’s website to see what information is currently out there on the subject.
- b. **Update on the Use of Lasers and Intense Light Pulse Devices** – Janelle Wedge presented the board with information on a study that Board of Registered Nursing was conducting regarding Laser or Intense Light Pulse Devices and indicated this was for information purposes only.
- c. **Enforcement Case Report** - Janelle Wedge presented the board with an enforcement update and breakdown of complaints by category, indicating that between July 1, 2006 and June 30, 2007, there were 125 complaints received.

11. Public Comment Period –

Public Comments were received from the following individuals as items for the board to consider at a future meeting.

- Jack Miller (PCOM) 1) review of language requiring the clinic director and supervisor(s) to have five (5) years of licensed clinical experience. Indicated there are specialists within our medicine where it is difficult to get this experience, i.e. chiropractors who are now licensed as acupuncturists but less than five years. 2) Regulation of acupuncture assistants.
- Neal Miller (AIMS) reported that SB 840 is still alive and under its current version impacts consumers as it remove acupuncturists’ primary care provider status. He is asking that the board take an “Oppose Unless Amended” position. Steven Tan explained that the board is in support in spirit but waiting for more information. Neal indicated that it will probably be a two-year bill and asked that it be put on the November agenda and if still in its current form, to oppose it.
- Neal Miller also requested that the board consider incorporating manual therapy into its regulations since manual therapy is equivalent to Oriental Massage and Asian Massage and it would help to clear up the gray area. He indicated that the board supported this language (when board took a support position on SB 136).
- Hugh Morrison reported that in 2006 board members were given a copy of CAOMA’s evidence based guidelines for acupuncture/electro-acupuncture, and would like the board to consider adding this document to the reference list for the licensing exam. Steven Tan indicated that the board would take a look at it.

12. Adjournment

The meeting adjourned at approximately 1:50 p.m.