



Approved May 6, 2010
ACUPUNCTURE BOARD
MEETING MINUTES

Westin Hotel
San Diego, CA

FULL BOARD MEETING
February 23, 2010

Members Present

Robert Brewer, Public Member, Chair
Charles Kim, Public Member
AnYork Lee, L.Ac,
George Wedemeyer, Public Member
Paul Weisman, Public Member

Staff Present

Janelle Wedge, Executive Officer
LaVonne Powell, Staff Counsel
Christie Loftin, Examination Coordinator
Cathy Hardin Schau, Education Coordinator
Kristine Brothers, Enforcement Coordinator
Benjamin Bodea, Administrative Technician

Guest List on File

1. Call to Order and Establishment of a Quorum

All members were present. Quorum established. Meeting started at 8:40 AM

2. Chair's Report

Chair Brewer asked for a panel to study curriculum, Primary Care as focus and discuss Integrative Medicine.

3. Executive Officer's Report

Janelle Wedge presented the Board the Budget Report with expenditures through 12/31/09. She also noted that the Board will not be renewing the lease this year and will be looking to move towards the end of 2010. Due to further Budget constraints all of our future meetings will have to be in a state facility. The Office has received a scanner and all future meeting materials will be posted on our website.

4. Director's Report

a. Consumer Protection Enforcement Initiative

Kimberly Kirchmeyer, Deputy Director of the DCA, introduced herself and updated the Board on the Department's efforts with the Consumer Protection Initiative.

b. SB 1441: Uniform Standards

Kimberly Kirchmeyer updated the Board on SB 1441 and asked that the Board have an agenda item dedicated to bring the language of the guidelines to discussions. She requested that the Board to authorize Janelle Wedge to implement any uniform standards that do not require legal authority, such as regulations or legislations, so they can immediately be put into effect. An agenda item will be placed on each future agenda updating on the status of SB 1441. Future Board meetings will be able to be web cast.

c. SB 139 Healthcare Workforce Data

Kimberly Kirchmeyer updated the Board on the SB 139: Healthcare Workforce Data.

5. Approval of November 19, 2009 Meeting Minutes

LaVonne Powell noted an error on the minutes for the November 19, 2009. On page 4, the third line from the bottom should read for 'allegedly fraudulently reporting'.

CHARLES KIM MOTIONS TO ADOPT THE MINUTES WITH THE INDICATED AMENDMENT. PAUL WEISMAN SECONDS. 5 – 0 – 0. MOTION PASSES.

6. Ethical Decision Making Training

LaVonne Powell shared additional information not covered during the Board Member Orientation and reviewed proper proceedings and communications among the Board Members.

7. Legislation Update

Janelle Wedge summarized the following bills, including their current status.

- a. AB 1391 (Eng) – Extension of Board's Sunset Date** – Passed to the Senate B&P committee. Department is opposed unless the Board amends the bill to just a two year (instead of six) extension until a review process is put in place.
- b. SB 1111** - Has now become a bill that has proposed language. Actual language will be brought to next meeting. This bill will improve our office's Enforcement processes.
- c.** A bill was recently introduced by US Senator McCain that has to do with supplements and their labeling. Janelle will keep the Board informed on its progress.

**CHARLES KIM MOTIONS TO SUPPORT SB 1111.
PAUL WEISMAN SECONDS. 5 – 0 – 0 MOTION PASSES**

Charles Kim asked for access to Legislative Updates. LaVonne Powell recommended the California Legislative Counsel Site subscription service that allows individuals to track bills of interest.

8. Administrative Business

- a. Draft Board Member Administrative Procedure Manual**

LaVonne Powell introduced the draft Board Member Manual that centralizes information regarding processes and procedures for our Board Members. Robert asked to place this on the Agenda for the next meeting.

b. California Public Records Act

With so many communications going to the Board Members, it has been recommended that a requirement be made that the public see on our website all public communications the Board Members have had. LaVonne Powell commented that this should be put in the Board Member Administrative Procedural Manual and that the Board should discuss this policy at the next meeting. George Wedemeyer stressed that the board should have a process to not have to present inflammatory messages. AnYork Lee suggested that the posting should be based on a Consensus of the Board. LaVonne Powell and Janelle Wedge will come to the next meeting with some suggestions. The public was in favor of greater transparency.

9. Examination Business

a. February 16, 2010 Examination

The Examination was held in Ontario, CA for the first time. Examinees were happy to have a Southern California location. The passing score workshop will be taking place next week after which the Board will have the results.

b. Tracking Multiple Test Takers

Robert Brewer stated that there are enough test-takers that have taken this exam so many times that he would like a formal investigation be carried out on these individuals and the institutions they come from. LaVonne Powell suggested the Board direct the Executive Director to use Enforcement resources to research this topic. She recommended that Janelle Wedge only share this information with the Chair so as to not have other members need to recuse themselves when making a decision. AnYork Lee asked about increasing the number of questions in the databank. Janelle Wedge noted that since the exam is offered in three languages, doing this very costly and time-consuming. The Board instructed Janelle Wedge to begin investigating the institutions that have multiple test-takers and reporting with statistics.

10. Education Business

a. Update Pending School Applications

Education Coordinator Cathy Hardin Schau updated the Board on the six schools applying for approval. Nine Star will be reporting back to us for the May meeting. Staff is still waiting on the Governor's approval to visit the Hawaiian school. We're waiting on more information from Hong Guk International University in Los Angeles and Health Medicine University in Palo Alto. The Phoenix Institute in Arizona had a strong application and we're waiting on a little more information. Golden State University recently submitted an application that has not yet been reviewed.

b. Update on School Annual Report Filings

Schools are required to file an annual report with our office every year. AIMC is currently behind in submitting their report by almost a year. Cathy Hardin Schau and Janelle Wedge have both sent letters asking for the required materials. They stand to lose approval if they do not contact us. Board requested to place AIMC on the Agenda for the

next meeting and ask them to come out to answer questions and produce the required data. The Board has the authority to place a school on probation, suspend or cancel their approval.

c. Proposed Regulatory Language for Transfer Credit

Janelle Wedge noted that this is the language adopted with exception of the addition of item I4. This reads, ‘at least one academic year of residence must be completed in an Acupuncture and Asian Medicine Training program approved by the Board’. AnYork Lee indicated a conflict between a school approving transfer credit and the accrediting agency says that you can’t accept 100% due to their requirements. LaVonne Powell stated that this is occurring right now. Jack Miller of Pacific College responded that the university adheres to the stricter standard. Megan Haungs added that the schools are responsible to apply transfer credits that adhere to CA standards.

GEORGE WEDEMEYER MOTIONS TO NOTICE THE PROPOSED LANGUAGE ON TRANSFER CREDIT AMENDING SECTION 1399.435 AND TO BRING IT TO A PUBLIC HEARING TO START THE REGULATORY PROCESS. PAUL WEISMAN SECONDS. 5 – 0 – 0. MOTION PASSES.

d. Proposed Changes to Admission Prerequisites

George Wedemeyer proposed changes to current admission prerequisites. The intention is to have the anatomy, physiology and pathophysiology from a WASC accredited (or similar accrediting body) institution completed before they enter the school. Robert Brewer asked for the purpose of this if it’s already a part of the basic sciences requirement. Ted Priebe commented that the regulations state only a survey in those classes which are not up to bachelors level. Jack Miller of Pacific College responded that though a survey may not be appropriate, Acupuncture Schools necessitate having more than a survey of these classes. Public comments were given asking for more information on the topic before the Board makes a decision. AnYork asked for more study of this before a decision is made.

e. School Accountability/Reporting Requirements

The Board requested discussion regarding a school’s accountability to the students. AnYork Lee pointed out that Medical Schools are more competitive than Acupuncture schools and thus raise the bar. LaVonne Powell suggested that the Board look at setting alarms when a school’s pass rate drops below a certain level. She also noted that the Board should look at the statistics of other Boards. Neil Miller observed that the big schools already take on this responsibility but the smaller schools may have need of greater guidance. Paul Weisman stated that just because the pass rate is low doesn’t mean the schools are not performing up to par. The California Bar has a lower pass rate than medical schools. This can mean that the exam tests for knowledge more thoroughly and insures that your practitioners have a minimum competency. LaVonne added that compared to other Boards, Acupuncture has relatively little complaints on quality of care, indicating good practitioners. It was pointed out that the Board will soon be able to see the results of malpractice cases and there will be a prohibition on gag-clauses. Robert Brewer will create a Committee/Task Force to take on Education Accountability. He will be taking nominations and appointing members to the group in the coming weeks.

f. Continuing Education Audits

From August 1, 2009 to January 21, 2010, 55 randomly selected audits have been completed. Of those, 22 have been referred to Enforcement for a follow-up. This is usually because the practitioner took a course that was not approved or the certificates that they submitted didn't match up with their renewal form. Not all of those go to an enforcement action but I still do send them to Enforcement. Providers also are sent to Enforcement for actions such as issuing certificates for classes not approved by our Board. Part of the citation requires that they complete the courses that are invalid and their license is placed on hold until that is completed. Cathy Hardin Schau is working out a way to audit the providers by attending the classes. Kristine Brothers will bring statistics on the Audit at the next meeting. Janelle Wedge noted that once word gets out that our Board is carrying out the random audits the number of violations goes down.

11. Enforcement Business

a. Enforcement Case Report

Enforcement Coordinator Kristine Brothers presented to the Board the Enforcement Case Report. Robert Brewer asked if we are within our timelines for enforcement cases. Kristine responded that currently it takes our Board a year with the largest portion of time taken up with the investigation. LaVonne Powell noted that the Board will see a dramatic drop in response time once the Board's Special Investigator has started. Paul Weisman asked if there is a high percentage of people practicing with a false or expired license. Kristine answered that although there are a number of practitioners that we've found practicing without a valid license, a majority of these are not aware that they've not appropriately renewed. A few of these people do consciously practice without a license and pursue these by referring them to city and county prosecutors for criminal charges.

b. Mail Ballot

A model ballot has been drafted that more accurately reflects the possible actions, including recusal. LaVonne recommends that members still send in a vote even if you vote to have a case for discussion, in case you can't hold the discussion. Staff is also looking for shorter turn-around times on the votes to help expedite enforcement.

**ANYORK MOTIONS TO ADOPT THE NEW MAIL BALLOT FORM.
CHARLES KIM SECONDS. 5 – 0 – 0 MOTION PASSES.**

Kimberly Kirchmeyer shared with the Board that the department is looking to make it possible to vote online. The department is also looking to change the amount of time that a Board has to vote on the decision. This is to reflect the Department's commitment to the new Enforcement Timelines.

c. Disciplinary Guidelines

LaVonne Powell that staff still needs to incorporate SB 1441 standards (Uniform Standards on Substance Abuses). This will be back to you in May to be voted on. At the same time we'll be tracking SB 1111 so that we can make any changes to the guidelines that it may effect.

d. Primary Care Definition

George Wedemeyer proposes to adopt the definition of Primary Care the California Code of Regulations Title 22 Section 51170.5. Robert Brewer stated that he does not

feel that definition complies with the current legal definition of an Acupuncturist's scope of practice by limiting to just biomedicine. Ted Priebe stated that Acupuncturist are not trained appropriately to give Primary care and thus the need for this change. By adopting this you would be able to change the educational requirements. LaVonne Powell responded that changing the definition will not change the educational criteria. George Wedemeyer asserted that this is a physiologically based medicine but it's currently being presented as mystical, thus requiring greater explanation in scientific terms. Jack Miller of Pacific College agrees that greater scientific terminology is important but that this process is already underway. This field is evolving and you'll continue to see improvement. Paul Weisman asked if Jack Miller feels that practitioners know enough to be able to refer clients to Medical Doctors once the need arises. Jack Miller responded this concern is addressed in the curriculum which he expects to continue to evolve. George Wedemeyer asked to table this discussion to the next meeting in May. Chair Robert Brewer called for individuals who are interested in this topic to leave their names with the Executive Officer

e. Herb-Drug Interactions

Janelle Wedge shared with the Board the idea of releasing monthly articles explaining Herb-drug interactions. She has asked John Chen for help in validating the Pharmacy Boards releases on Herb-Drug Interactions. John Chen, acupuncturist and pharmacist, shared he reviewed the article and pointed out several inconsistencies. He agrees with Janelle Wedge that it would be beneficial to update our Board's lists and release, on our website, updates on herb-drug interactions. Janelle commented that the Acupuncture Board has updated their list based on John Chen's recommendations. LaVonne Powell recommended that we approach the Pharmacy Board now so that we can begin getting all the Boards on the same page.

f. Use of Lasers

Michael Fox, licensed California Acupuncturist, asked the Board if the use of Laser Acupuncture within the scope of practice of licensed Acupuncturists in California or if it is prohibited, what are the possible enforcement actions. He pointed out the 1993 legal opinion not supporting devices classified as 'new devices'. In 2005, Class III cold lasers, were approved by the FDA for use in acupuncture and is approved in CA. Michael Fox pointed out that Chiropractors and advertising it as Needle-less acupuncture. LaVonne Powell noted that a regulatory action may be better suited to address this question as opposed to relying on a legal opinion or the Board's permission. She shared that Chiropractors were able include it by including the word 'light' within their scope of practice. Robert Brewer asked who teaches on its use and where are the controls and regulation on this device. Michael Fox responded that training currently comes from manufacturers who provide chiropractors with one day seminars on its use, generally on laser safety. As part of that training manufacturer's are also giving out acupuncture protocols and pointer devices to chiropractors and other health professionals to help them find the correct acupuncture points to use with the laser devices. Laser Acupuncture is legal in five states including Florida, Massachusetts and Wisconsin and has been approved in Europe for thirty years and used in China, Russia and Spain. He did not that although the training on the use of the laser is from the manufacturers, the training for the point location is from our field of practice. Ted Priebe noted that only one laser has been approved for work comp, a Microlite 830 laser,

specifically to treat Carpel Tunnel Syndrome. He stated that he felt more trials were necessary, suggesting that the Board could stop the advertising laser acupuncture by chiropractors since it's not within their scope of practice. Greg Sperber asked the Board to seriously take this issue up as there is a good amount of literature available. LaVonne suggested that legislation is quicker. Greg Sperber asked for a legal review on the safety of lasers. LaVonne Powell responded that there is no point if it's not in your scope of practice. To begin, the Board would have to make a policy decision if they wanted to move forward on standard of care regulations. Robert Brewer asked that the Board receive research on it showing how that this modality works before the Board makes a decision on it. Neil Miller shared that there are other health professionals already using lasers and recommended contacting the Chiropractic Board and have an open discussion on the issue.

12. Petitions Pursuant to B & P Code Section 4967 (b)

a. Peter Kwang Sik Yoo (license cancelled 2/1/04)

Peter Yoo was not present. His case was reviewed by the Board Members.

**GEORGE WEDEMEYER MOTIONS TO DENY THE PETITION.
PAUL WEISMAN SECONDS. 5 – 0 – 0 MOTION PASSES.**

b. Patricia Bedrosian (license cancelled 8/1/08)

Patricia Bedrosian was not present. Her case was reviewed by the Board Members.

**CHARLES KIM MOTIONS TO DENY THE PETITION.
GEORGE WEDEMEYER SECONDS. 5 – 0 – 0 MOTION PASSES.**

13. Future Agenda Items

AnYork asked to agendize the clinical portion of the exam. Charles Kim asked to agendize requiring foreign school graduates taking a class on CA/US laws. John Chen asked to agendize Safe Compounding of Herbs. Neil Miller asked to agendize the recognition of Specialty Boards.

14. Public Comment Period

Phillip Yang of Nine Star University spoke of furthering Western Medicine and Acupuncture integration within his school and clinic. John Chen asked if the distance education courses must provide a test. Cathy Hardin Schau responded that that is required. He also asked if the Herb Formula list could be brought to the next meeting for review. Next meeting will be on May 6, 2010.

Meeting adjourned at 4:55 pm.