



1747 N. Market Blvd., Suite 180  
Sacramento, CA 95834  
P 916.515.5200 F 916.928.2204  
[www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)



## **BOARD MEETING Meeting Minutes March 25-26, 2021**

### **LOCATION:**

Web Ex Teleconference

### **Board Members Present**

Dr. Amy Matecki  
Kitman Chan  
John Harabedian  
Dr. Yong Ping Chen, Ph.D.  
Hyun “Francisco” Kim  
Shu Dong Li, Ph.D.  
Ruben Osorio

### **Members of the Board**

**Dr. Amy Matecki**, M.D., L.Ac., *President*  
**Kitman Chan**, C.P.A., *Vice President*  
**John Harabedian**, Esq.  
**Dr. Yong Ping Chen**, Ph.D., L.Ac.  
**Hyun “Francisco” Kim**, M.S., L.Ac.  
**Shu Dong Li**, Ph.D.  
**Ruben Osorio**

### **Staff Present**

Benjamin Bodea, Executive Officer  
Fred Chan-You, Legal Counsel  
Jay Herdt, Licensing Manager  
Cricket Borges, Enforcement Coordinator  
Kristine Brothers, Policy Coordinator  
David Bruggeman, Policy Analyst

### **Full Board Meeting – Thursday, March 25**

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

Board President, Dr. Amy Matecki (President Matecki), called the meeting to order at 11:32 a.m.

Policy Analyst, David Bruggeman (Bruggeman), called the roll.

#### **Members Present**

7 Present – Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio



### *7-0 Quorum Established*

It was noted that agenda item 10 (report from the Licensing and Examination Committee) will be moved to after agenda item 3 (Public Comment on Items Not on the Agenda).

## **2. President's Remarks (President Matecki)**

President Matecki expressed her appreciation for the continued support and work of practitioners in serving the public and working with the Board. She noted the beginning of the Occupational Analysis Survey for the state licensing exam and encouraged participation. Four Continuing Education units will be available to those who participate in the analysis, which concludes May 5th. President Matecki ended by thanking the Director of the Department of Consumer Affairs and reaffirming the Board's focus on public protection.

## **3. Public Comment on Items Not on the Agenda (President Matecki)**

The sole commenter noted the importance of history in making good decisions moving forward. In their opinion the questions of the Little Hoover report are relevant today and for the upcoming sunset review. They have forwarded those questions, and their answers, to the Board.

## **4. Report from the Licensing and Examination Committee Chair on March 24, 2021 Committee Hearing (Kitman Chan, Licensing and Examination Committee Chair)**

(Was Item 10 on the Agenda)

Committee Chair Kitman Chan (Chair Chan) noted that the Committee met earlier in the day to discuss regulatory changes around AB 2190 and the use of foreign credential evaluators to assess education and training. Executive Officer Ben Bodea (EO Bodea) went into additional detail. Any evaluator used by the Board would have to be a member of NACES (National Association of Credential Evaluation Services). While the regulations would decrease the potential number of evaluators Board staff can work with, it allows for greater scrutiny of them.

Board Member Chen emphasized the importance of evaluating foreign credentials to ensure state standards. President Matecki concurred, noting that existing language was outdated. Board Member Kim asked if the agency Board staff works with is the same agency doing review of other health care professionals. EO Bodea noted it is not.



No public comment either before or after the motion.

### MOTION

*Member Chan moved to approve the proposed regulatory text for 16 CCR Sections 1399.411, 1399.413, 1399.414, 1399.416, 1399.416.1, 1399.416.2, 1399.417, and 1399.419, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive grammatical and/or technical changes to the package, and set the matter for hearing, if a hearing is requested by the public.*

Member Chen seconded the motion

### Vote

**Yes:** Matecki; Chan; Chen; Harabedian; Kim; Li; Osorio

**7-0 motion passes**

## **5. Review and Possible Approval of the December 17-18, 2020 Board Meeting Minutes (President Matecki)**

### MOTION

*Member Harabedian motioned to approve the December 17-18, 2020 minutes.*

Member Kim seconded the motion.

### Vote

**Yes:** Matecki; Chan; Chen; Harabedian; Kim; Li; Osorio.

**7-0 motion passes**

## **6. Executive Officer's Report (Ben Bodea, Executive Officer)**

### *(A) Budget Update – Fund Condition*

EO Bodea noted that even with the fee increase, the Board is projected to go insolvent in four years. A fee study is planned regularly, with the next one expected sometime during the next 2 fiscal years. (The CE course fees implemented by AB 3330 (2020) are not accounted for in the expenditures projections calculations as there is insufficient data since the fee is new.).



Member Chan asked about options to fix what appears to be a persistent funding issue. EO Bodea notes that spending remains within authorized limits, but reserves are decreasing. He anticipates the next fee study should help identify areas of concern.

*(B) Staffing Update*

The Board recently added staff in Policy and Enforcement positions and is finishing the hiring process for a Central Services Manager. It still needs Enforcement staff and Board staff are working to show history of need through part-time employees and moving them into permanent positions.

*(C) Business Modernization Update*

Jay Herdt updated the Board on the progress of the Business Modernization project. The project is designed to roll out in phases, with three phases rolled out to date.

*(D) Board Services Accepting Credit Card Payments*

At this time, credit cards are accepted for exam and license applicants, as well as acupuncture and wall license renewals. Credit cards for probationers, tutorial students, CE Providers, and CE courses will be rolled out over the next several months.

Member Chen asks if traditional forms of payment are still acceptable, and why there is no space to attach copies of continuing education course transcripts. EO Bodea indicates the Board would like to phase out checks, given the significant overhead involved. Paper forms are still available, though the online application process is encouraged. A list of continuing education courses is not required with application but would be required of the licensee to submit if selected for CE audit.

At present, notices for renewal go out 60 days before the renewal date. Forms are not included with this notice, just a link to the Board's online renewal system. Ideally this notice would shrink to a postcard, with online only renewal a future possibility.

No public comment.

**7. Licensing Report Q2, FY 20-21 (Jay Herdt, Licensing Manager)**

Herdt reviewed the Licensing data for the second quarter of fiscal year 2020-2021 (September-December 2020). There have been slight increases in Inactive and Delinquent status licenses. No apparent drop in Continuing Education applications. While exam changes and pandemic concerns seem to contribute to a recent decline in exam takers, that decline predates those events going back to the Board's transition to computer based testing; with greater availability of testing sites and dates,



applicants are not rushing to get licensed but taking their time to prepare for the test. Several Board members commented on the passing rates for exams. Member Kim would like to see numbers on passing rates from students in approved out-of-state programs. Member Chan expressed some concerns over the pass rate dropping and was wondering about ways to improve the pass rate of those retaking the exam. Herdt noted that the percentage retaking the exam has dropped since 2018. There are currently no limits on retakes, but the Board could consider that matter if it chooses. The state Office of Professional Examination Services is pleased with how the exam is performing. An overall pass rate between 60-65 percent and a low pass rate for retakers are not bad things.

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The Board recessed from 1:06 to 1:36 p.m.

Roll Call taken at 1:36 p.m.:

Members Present

6 Present: Matecki, Chan, Chen, Kim, Li, Osorio

*6-0 Quorum*

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**Public Comment:**

First commenter expressed concern over big changes in pass rate and whether exam was secure. Claims that language requirements are being eliminated by AACOM and new doctoral programs have no Board oversight. Board should place this on a future agenda.

Second commenter shared they are encouraged to hear that the Board has consumer interests in mind. Thanked meeting moderator for doing a great job.

The next commenter noted that ensuring a high passing rate is not the job of the Board. Top schools should have top passing rates.

The final commenter echoed earlier concerns about the security of the exam, citing issues of questions being distributed from online exams

Herdt clarified that the California acupuncture licensing exam is administered via computer at a testing site and it is not an online examination)





## 8. Enforcement Report Q2, FY 20-21 (Cricket Borges, Enforcement Coordinator)

Borges reviewed the second quarter enforcement data from fiscal year 2020-2021 (September-December 2020). Borges noted that a small number of cases that take a long time can easily skew the percentage information. In response to Board member questions, Borges noted that the pandemic likely affected case processing times because of limited hours and staffing at relevant places. It's unclear how much of an impact this has been. Numbers to date are on track for an average year.

### Public Comment:

A commenter was interested in more information about scope of practice violations. They think it would help to communicate common issues or areas of misunderstanding to the profession. Commenter also expressed frustration about cases where licensees waited a long time for disposition, especially when it goes past the point where relevant local authority had dismissed matter. ADA lawsuits against acupuncturists, are they outside the purview of the Board? Wants more interaction with the Board, not just opportunities for comment.

## 9. Legislative Report of 2021 Legislative Bills of Interest to the Board (Kristine Brothers, Policy Coordinator)

After reviewing the 2021 Legislative calendar for the California Assembly and Senate, Brothers presented on bills of interest that have been introduced by the Legislature so far in the 2020-2021 session.

**AB 2** – Staff recommended a Watch position

No public or Board member comments.

### MOTION

*President Matecki moved that the Acupuncture Board take a Watch position with respect to AB 2 [Fong] as introduced on December 7, 2020, for the reasons discussed by members and as reflected in the staff memo.*

Member Chan seconded

### Vote

**Yes:** Matecki, Chan, Chen, Kim, Li, Osorio

**6-0 motion passes**



**AB 29** – Staff recommended a Watch position

President Matecki noted that the Board already makes a good effort to comply with public notice requirements related to meetings and has been quite transparent. Member Kim echoes concerns expressed by staff over the burden the bill might entail.

**MOTION**

*Member Kim moved that the Acupuncture Board take a Watch position with respect to AB 29 [Cooper] as introduced on December 7, 2020, for the reasons discussed by members and as reflected in the staff memo.*

Member Osorio seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Kim, Li, Osorio

**6-0 motion passes**

**AB 54** – Staff recommended a Watch position.

*(Member Harabedian has rejoined the meeting)*

No public or Board member comments.

**MOTION**

*Member Chan moved that the Acupuncture Board take a Watch position with respect to AB 54 [Kiley] as introduced on December 7, 2020, for the reasons discussed by members and as reflected in the staff memo.*

Member Li seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

**7-0 motion passes**

**AB 107** – Staff recommended a Watch position

No public or Board member comments.

**MOTION**

*Member Chen moved that the Acupuncture Board take a Watch position with respect to AB 107 [Salas] as amended on February 25, 2021, for the reasons discussed by*



*members and as reflected in the staff memo.*

Member Harabedian seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

**7-0 motion passes**

**AB 339** - Staff recommended an Oppose position

No public or Board member comments.

**MOTION**

*President Matecki moved that the Acupuncture Board take an Oppose position with respect to AB 339 [Lee] as introduced on January 28, 2021, for the reasons discussed by members and as reflected in the staff memo.*

Member Chan seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

**7-0 motion passes**

**AB 646** – Staff recommended a Watch position

No public or Board member comments.

**MOTION**

*Member Osorio moved that the Acupuncture Board take a Watch position with respect to AB 646 [Low] as introduced on February 12, 2021, for the reasons discussed by members and as reflected in the staff memo.*

Member Harabedian seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

**7-0 motion passes**

**AB 885** – Staff recommended a Watch position

No public or Board member comments.





## MOTION

*Member Kim moved that the Acupuncture Board take a Watch position with respect to AB 885 [Quirk] as introduced on February 17, 2021, for the reasons discussed by members and as reflected in the staff memo.*

Member Li seconded

### Vote

**Yes:** Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

**7-0 motion passes**

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The Board recessed from 3:02 to 3:16 p.m.

Roll Call taken at 3:16 p.m.:

### Members Present

7 Present: Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

7-0 Quorum

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**AB 918** – Staff recommended a Oppose position

Board member comments:

President Matecki wanted to hear from everyone on this legislation. Member Chan described his perspective on the last time switching the exam came up – in 2016. Considers California standards much higher than national/NCCAOM standard. California's exam is less expensive (even with recent fee increase). The primary priority for the Board is public protection.

Member Kim notes a divide within the profession on this matter, stating that the NCCAOM is not a board that exists at the national level and is not recognized as such by federal agencies. He believes the sponsoring organization, the California State Oriental Medical Association, wants to use the bill as means to expand the job market, but disagrees with the approach. He inquired with people in the VA system reporting that they seek veterans, or practitioners established in the medical system with a background in acupuncture. Member Kim doesn't see this as a national exam push. He asked if the sponsor has contacted the Board. EO Bodea replied that he has been



in touch with CSOMA and their office since the bill has been introduced.

Member Li emphasizes a need to keep standards high and to keep the community safe. Member Chen notes that the 2018 Sunset Review raised good points about the two systems. It would not be appropriate to consider the NCCAOM exam the equivalent of national board certification since California is not part of its system. NCCAOM won't conduct due diligence with respect to applicants in the way California does, and there will be other ways to work around California standards. There would be limited legislative control over NCCAOM concerning fees and requirements.

EO Bodea confirmed that NCCAOM would have control over what is charged. The Board would need to develop a California supplemental to the exam, testing what NCCAOM exam doesn't cover. All three modules of the NCCAOM would have to be used. Board oversight of the examination would be reduced to little or none.

Member Chen emphasizes the need for an informed and accountable decision on this step. Important to be careful about proceeding.

*(Member Harabedian has left the meeting)*

President Matecki notes that we have no sense of the cost for developing or administering the supplemental exam. Hard to see how the switch reduces costs for California or students in California. Online test administration has its advantages. Herdt notes the California exam is administered via computers at a testing site but is not online. EO Bodea indicated the sponsoring organization will likely have something to say later in the meeting. He then noted that there is no national standard right now, with the push for the NCCAOM exams as an effort on the part of CSOMA to establish one. States take different approaches. The most recent exam audit shows NCCAOM exam covers most, but not all the competencies required for California licensees. EO Bodea sees professional associations as key to efforts to establish a national standard. He notes that much like in 2016, other associations oppose the bill, and the Board has already received many comments from stakeholders in opposition to the bill.

Member Kim notes that the Medicare agency is working on acupuncture coverage but lacks enough information to determine qualifications. An expanding job market needs improved standards, not watered-down standards.

Member Chan moves to adopt the recommended Oppose position.

### **Public Comment**

Nell Smircina, CSOMA President. The bill only changes the exam and is not seeking to



lower standards. This has been a concern for CSOMA since 2012, and they have been working with stakeholders, including the Board. Open to consider changes. Licensed acupuncturists working at the VA need NCCAOM certification and licensure. The Board would have more time to focus on other tasks if bill passes.

Hongmei from Cal Acupuncture United Association expressed their organization's opposition to the bill. It's a weakening of standards. Doesn't consider NCCAOM certificates a national standard. Sees California exam as ensuring high quality licensees. Doesn't want NCCAOM to have exam monopoly outside of California. Bill doesn't consider results of 2016 audit of NCCAOM exams. Costs will go up.

Third commenter has a specific concern with the bill, that the test language is weak. They don't see a shortage of practitioners, and wonders if measure is intended as a cash grab. It will be hard to undo the bad outcomes anticipated from this bill.

David Quackenbush, with CSOMA. Reiterates intent of bill – replace California licensing exam with the NCCAOM exam. Have started conversations about changing current language to an either/or option. Want to move forward from 2016 letter from Board encouraging this move. Should let California students take one exam and get national certification. He reported that currently 30-40 percent of California acupuncture students take the NCCAOM exam. Bill might relieve costs and other burden staff currently dealing with. Bill will only impact graduating students. Based on conversations to date, they would want implementation no sooner than 2023. Bill will not affect the hour requirements for acupuncture programs or the hour requirements to sit for the exam.

Fifth commenter is not in favor of requiring the NCCAOM exam. Argues that NCCAOM is not accepted in the same way across the 47 states that do accept it. Commenter favors a national standard, and if California exam is deemed superior to NCCAOM, it should be seen as an example for a national standard.

Sixth commenter is member of American Society of Chinese Medicine, which opposes the bill for unclear language around the NCCAOM exam.

Seventh commenter is with California United Acupuncturists Association. Its members are worried about the bill and the organization will likely oppose it.

Eighth commenter is with American Association of Chinese Medicine and Acupuncture, which opposes the bill. They believe it will weaken the profession. They consider NCCAOM certification misleading, while California exam is of high quality. They would not want NCCAOM to have a monopoly on the exam, and do not think a



single national exam can account for variations in training.

Ninth commenter is an acupuncturist with the Academy of Chinese Culture and Health Sciences, echoing many previously noted criticisms of the bill.

The tenth commenter notes that the NCCAOM renewal fee is notably lower than the Board's. At present it costs a student \$1,440 every four years. While people keep saying hours and requirements will change, that is not part of the bill. Thought that the 2016 review indicated the two exams were of comparable quality. If people don't get the national certification the Veterans' Administration wants, the agency will hire other professions that can do acupuncture.

Neal Miller spoke on behalf of CalATMA. They have been contacted by all Chinese and Korean associations in opposition to the bill. Current highest hour standard is Nevada's, with over 5,000 hours required. This is not an NCCAOM bill but is sponsored by CSOMA. Many issues with the bill. Some culturally based, some speculative, some based in fact. There was a lack of outreach to other associations. Board will kill this bill (NOTE: Board cannot actually kill bills, but the Board can take positions on them).

Ron Zaidman of Five Branches University indicated they would oppose the bill as it is premature. Believes profession can unite around national standards and/or a national exam. We have portability under current law, and the bill would limit us rather than expand our scope.

Final commenter is with the United Acupuncture Association. Conversations on this topic go back over 24 years. A national exam would have to account for all the local variation. The Veterans' Administration is focused on its interests, not those of the Board or the profession. Commenter supports the Board position.

### **MOTION**

*Member Chan moved that the Acupuncture Board take an Oppose position with respect to AB 918 [Quirk-Silva] as introduced on February 18, 2021, for the reasons discussed by members and as reflected in the staff memo.*

Member Chen seconded

### **Vote**

**Yes:** Matecki, Chan, Chen, Kim, Li, Osorio  
(Member Harabedian was absent for the vote)

**6-0 motion passes**



**AB 1236** – Staff recommended a Watch position

**AB 1386** - Staff recommended an Oppose position

**SB 772** – Staff recommended an Oppose position

No public or Board member comment on any of these bills.

### MOTION

*Member Kim moved that the Acupuncture Board take a Watch position with respect to AB 1236 [Ting] as introduced on February 19, 2021; that the Acupuncture Board take an Oppose position with respect to AB 1386 (Cunningham) as introduced on February 19, 2021; and that the Acupuncture Board take an Oppose position with respect to SB 772 (Ochoa Bogh), as introduced on February 12, 2021 for the reasons discussed by members and as reflected in the staff memo.*

Member Li seconded

### Vote

**Yes:** Matecki, Chan, Chen, Kim, Li, Osorio

**6-0 motion passes**

## 10. Regulations Update (Brothers)

Brothers summarizes the status of Board regulatory packages as of the meeting date. She notes that the retirement status license package will not be brought to the Board at this meeting.

No public comment.

## 11. Report on the Commencement of the Occupational Analysis (Herdt)

Herdt described the Occupational Analysis as a critical component of revising the California Acupuncture Licensing Exam. It helps the exam writers identify gaps in practice areas, laws and regulation that need testing. The Board is providing 4 Continuing Education Units for completing the Analysis. It is available to take until May 5, 2021.

A member of the public asked where the Analysis could be accessed online. There is a link in the What's New section of the Board's website. Board Member Chen recently finished the Analysis, considered it well-designed, and is interested in how it compares





to previous editions. Both the 2008 and 2015 versions of the Occupational Analysis are available online. The participation rate last time was quite low, under 20 percent. The Board is offering the CEU's as a way of encouraging participation.

The item was tabled for further discussion on Day Two of the Board meeting.

## **12. Future Agenda Items (Dr. Amy Matecki, President)**

None offered from the public or the Board.

## **13. Adjournment of Day One**

Meeting Adjourned at 5:19 p.m. PDT.

### **Day Two, Full Board Meeting, March 26, 2021**

## **14. Call to Order, Roll Call and Establishment of a Quorum for Day Two (Dr. Amy Matecki, President)**

The meeting was called to order at 9:36 a.m. PDT.

### Members Present

7 Present: Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

7-0 Quorum

## **15. President's Remarks (Dr. Matecki)**

President Matecki defers to her remarks from yesterday. She notes how much the Board has been able to do at a distance. The President notes the Occupational Analysis (OA) is ongoing and encourages licensee participation. Matecki thanks everyone at the Department of Consumer Affairs for their support of the Board.

## **16. Public Comment on Items Not on the Agenda**

There were no comments offered on this topic at this point in the meeting.

## **17. Report on the Commencement of the Occupational Analysis (Herdt)**

Echoing remarks from the first day of the meeting, Herdt described the OA and noted the Board is offering CEUs for its completion. It was developed in cooperation with the



Office of Professional and Exam Services. Deadline is May 5<sup>th</sup>, and a report assessing the NCCAOM exam is available on the Board's website.

Commenters noted the need for a high participation rate. The analysis was noticed to licensees by postal mail and through the licensee email listserv. Unfortunately, there has been a lot of returned mail. While giving the Board an email address is optional for licensees, keeping a current mailing address is required by regulation. The new online renewal system will capture this more easily. The Board does not currently use social media.

### **Public Comment:**

First commenter shared the link several places, wanted to know if one could make comments about the analysis.

Neal Miller from CalATMA said the organization has sent it to its membership and has developed resources in other languages to assist those from whom English is not their primary language. More such assistance would be useful.

The next commenter raised an item that they will bring up at a more appropriate point in the meeting.

It was noted that there have been difficulties for some in logging into the meeting. The Board will reopen for comments on items not on the agenda later in the meeting.

The fourth commenter noted the Analysis is only in English, but the licensing exam is given in three languages.

## **18. Consumer and Professional Associations Reports**

### **CSOMA – Nell Smircina**

CSOMA thanks the Board for its flexibility with the agenda. Noting AB 918 and the discussion on it during the first day, they consider it an exciting moment for the profession, which had not advanced any legislation on acupuncture in some time. CSOMA has experienced 40 percent growth since the pandemic, with more corporate sponsorships and member benefits. A new issue of its journal is expected soon.

### **CalATMA, Neal Miller**

CalATMA now has roughly 550 members. It has developed 3 potential bills to address problematic language and new techniques. The organization offers many CEUs each month and is doing a lot of translation work to make things available in Chinese,



Japanese and Korean. Current projects include working on an essential worker designation for acupuncturists to address problems with inconsistent treatment across counties.

## 19. Presentation of CalATMA of Therapeutic Blood Withdrawal

Neal Miller made a presentation to the Board, primarily covering the topic of therapeutic blood withdrawal, historically referred to as bloodletting or bleeding.

Miller noted that bleeding/bloodletting was one of many terms that he and others want updated to a more modern description like therapeutic blood withdrawal (TBW). Another example would be the use of the word 'Oriental.' He mentioned that TBW is mentioned in regulations for acupuncture curriculum (1399.434, referenced as 'bleeding') but is not part of the scope of practice. He argues that anything covered in curriculum should be part of the scope of practice, and changes to that effect would not constitute an expansion of the scope of practice. There are also items in the regulations for acupuncture (cupping, moxibustion) that are not acupuncture.

Miller argued that the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) standards can be used as a guide for revising problematic terms in current California regulations. The Little Hoover report noted inconsistencies between regulations and the scope of practice and Miller suggests it would be a good idea to look for and address such inconsistencies in current regulations.

President Matecki noted that acupuncture for pain management is well understood, but many physicians aren't familiar with the discipline. Miller suggests that since TBW is part of training, adding it in the scope is not really an expansion. Member Kim agrees with Miller that things need to be updated, and would like the Board to discuss this, possibly developing language for legislation. Member Chen is concerned about going too far in what would be acceptable practice for TBW. Miller believes training addresses appropriate limits and suggests there is a difference between failing to meet the standard and excessive technique. Member Osorio echoes interest in putting topic on the Board's agenda. Matecki notes that while there may be an insurance code for the practice, carriers may still benefit from education on the practice.

Miller noted that CalATMA has legislative vehicle to clarify, not expand, scope of practice.

### Public Comment:

The first commenter thanked the Board and Mr. Miller for engaging on the topic.



Echoes Millers' point about issues around these techniques not being new. Would like to know what the Board can do to move forward on achieving the change Miller identifies.

Second commenter notes that TBW courses cover safety extensively.

Third commenter echoed interest in making sure statutes and regulations match stating it is our profession and licensees need to claim their procedures. Wants guidance from the Board on what to do next to address the mismatch.

Fourth commenter noted that cupping, while in scope of practice, is not acupuncture.

Fifth commenter noted continued problems with insurance coverage for acupuncture. Perhaps going to a doctoral degree requirement would provide some greater facility to the profession to be recognized and dealt with more fairly.

EO Bodea expresses appreciation for the profession raising the issue. While Board cannot act at this time, it could do so in response to a bill with this language and/or on this topic. Message from the profession is that the technique is safe and effective. Board role is not to define scope, but to enforce the scope established by the legislature.

## **20. Discussion of the New Acupuncture Board Fees (Business and Professions Code sections 4970 and 4971) (Discussion only) (Bodea)**

EO Bodea noted this topic is a carryover from the December 2020 meeting when Board members requested continued discussion on Wall license fees and continuing education fees. The wall license fee was prompted by the 2019 fee study and the 2020 adjustment through AB 779. Stakeholders supported the implementation of the wall license (prior to the fee increase). Wall licenses/place of practice licenses are not unique to the Board. EO Bodea encourages licensees to not flout current requirements.

The Continuing Education fees at issue are specifically those for previously approved courses. Like the Wall license, they were brought up in 2019 and in 2020.

Board Counsel Fred Chan-You researched the matter of whether the Board could set a lower fee. The research indicated that legislature did not give the Board authority to set a fee lower than what statutory authority required. Not paying the fee would not prevent the course being offered. It would prevent licensees from receiving credits for those courses.

Board members had comments. Member Harabedian wondered why renewed



courses were charged the same as new courses. EO Bodea notes the continuing education fees cover more than the application, and include review, monitoring, auditing and enforcement. Board is currently challenged to conduct sufficient audits. Courses are limited to a certain number of hours, and shorter courses are easier to oversee.

Stipulating to a previously approved course being unchanged would save time on the application end, but would not reduce obligations in review, monitoring, auditing or enforcement. EO Bodea noted that continuing education is becoming an issue of interest for the Department of Consumer Affairs. Member Chen understands the need for the fees, and notes that in-person courses will have different needs than distance learning courses. Member Chan also understands the need for the fees, given the situation with Board reserves.

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The Board recessed from 11:43-11:52

Roll Call taken at 11:52 a.m.:

Members Present

7 Present: Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

*7-0 Quorum*

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### **Public Comment**

The first commenter likes the idea of attesting to whether a course has been modified or not. Disagrees with Board Counsel's analysis about Board ability to set a lower fee.

Second commenter notes that fee study did not consider renewal fees. Also argues that the renewal fee is effectively a tax. Believes smaller providers will go out of business.

Third commenter represents the American Association of Chinese Medicine and Acupuncture. Organization opposed to the Wall license fees. Asks if continuing education applications can be done online.

Fourth commenter has technical issues and we intend to return to them

Fifth commenter wonders if a plan couldn't be developed where continuing





education providers received some set number of approvals at no cost, a graduated scale.

Sixth commenter argues the fee is unprecedented and would lead to loss of content. Considers it a tax rather than a fee. References letter sent to the Board urging a new structure for renewal fees. Believes Board has a responsibility to solve this situation and has the authority to set a lower fee.

Fourth commenter is back. They are with Emperor's College and feels the Board should give special consideration to schools with respect to fees.

Seventh commenter is with the Academy of Chinese Integrative Medicine and Pain Management and believes that not all providers have quality programs. They would like to see that improve.

The eighth commenter sees the wall license as an unnecessary tax. They feel the process wasn't proper and is working with legislature to resolve this. Discusses school curricula and the trend toward increasing hours in doctoral programs. Issue is not going away. Recommends Board form a task force to address the matter. Agrees with many other commenters today, including the fee actually being a tax.

Member Kim echoed his feelings from yesterday, that discussions like the one happening now are better done within the profession. Once the profession has a sense of what to do they can approach the Legislature or the Board. Member Harabedian appreciates the staff's work on the matter and would like to see them continue to work with stakeholders. He believes we can find a way to have financial stability without losing providers.

EO Bodea closed the topic by noting the Board cannot make changes at this time, only the Legislature can. The Board will continue to do fee studies, and the continuing education fees have not been included in the current financial analysis of the Board. If the fees were taxes, Legislative Counsel would have identified it as such when the relevant bills were going through the legislative process.

## **21. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, CCR §§ 1399.483, 1399.489: Continuing Education Ethics Requirements (Herdt)**

The Board has discussed including law and ethics in continuing education requirements since at least 2012. The staff recommendation is a requirement of 4 hours of continuing education every 2 years. Inactive licensees would also need to complete this requirement to regain active status. The proposed regulations would



require a self-assessment test for all ethics courses (currently required only for independent/home study courses), indicate that students are not obligated to purchase any products, and would be required only for active licensees outside of their initial license period. The regulation package also includes non-substantive changes such as renumbering sections

Member Kim agrees with the staff recommendation, as does Member Chen.

**Public Comment:**

First commenter agrees with the need for the requirement but wonders where the 4 hours comes from. Commenter lists other acupuncture bodies that require fewer hours.

Second commenter likes the direction of the proposal and would like to know how they can comment on language as it proceeds.

Third commenter is Neal Miller from CalATMA, which is working on an ethics course and has been for some time. It would be extensive, many credit hours, well suited for training programs and continuing education (a 2-hour course). Within a few months of being able to apply for approval. Feels Board proposal is discriminatory (*Note – possibly because of the 4-hour requirement?*) and disagrees with the four-hour requirement.

The fourth commenter thinks it should be a two-hour requirement and wants to be involved in whatever group develops the course.

The fifth commenter emphasized the need for this kind of course, and to keep practitioners away from gray areas. They should take ethics courses every renewal cycle.

~

The Board recessed from 12:56 to 1:32

Roll Call taken at 1:35 p.m.:

Members Present

7 Present: Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

7-0 Quorum

~

Licensing Manager Herdt summarizes the continuing education ethics requirement that was discussed before the lunch recess.



The requirements would typically be met with 2 hours in laws and regulations, with the other 2 in ethics. The four-hour requirement is consistent with requirements in place for other Boards in the Department of Consumer Affairs. Standards on ethics are usually developed by the profession.

EO Bodea noted the number of commenters who wanted to be involved in developing the language. The Board has been engaged with stakeholders on these requirements since at least 2016. There will be opportunities for public comment in the regulatory process. Bodea reviewed the language, and the changes agreed to in 2016 and 2018.

Member Chen emphasized the history behind the current language and moved to put the proposed regulation changes through the regulatory process.

**Public comment** continued.

Neal Miller from CalATMA reiterated his earlier comments that this is needed, and there is agreement within the community, and that his organization was being treated unfairly. Why four hours and not two? The Board should discuss this. Licensing Manager Herdt noted that the proposed language was consistent with many other boards in the Department of Consumer Affairs. Herdt noted that courses in this area should help address our concerns over unprofessional conduct and provide some stability for the independent workers in the profession.

### **MOTION**

*Member Chen moved to approve the proposed regulatory text for Title 16, CCR section 1399.482 and 1399.489, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive grammatical and/or technical changes to the package, and set the matter for hearing, if a hearing is requested by the public.*

Member Harabedian seconded

### **Vote**

**Yes:** Matecki, Chan, Chen, Harabedian Kim, Li, Osorio

**7-0 motion passes**

## **22. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, CCR §**



### **1399.452.1: Standards of Practice for Telehealth Services (Herdt)**

Licensing Manager Herdt outlined recent statewide actions that encouraged the practice of telehealth during the COVID-19 pandemic. The Board has issued guidelines in this area, and licensees have statutory authority (BPC section 2290.5) to provide services via telehealth. Staff believes further guidelines and regulations are needed. The Licensing and Examination Committee reviewed the proposed language at its December 2020 meeting. The Board requested additional amendments at its December 2020 meeting and for the amended language to be considered at this meeting.

The proposed regulations would be a new section, 1399.452.1 of the California Code of Regulations, titled “Standards of Practice for Telehealth Services.” The section outlines the necessary conditions for a licensee to provide acupuncture services via telehealth. The licensee must have a valid license in good standing. They must obtain informed consent and document this consent to provide services via telehealth. The licensee must determine whether delivery of services via telehealth is appropriate. The licensee is obligated to take reasonable steps to transmit electronic information securely and to notify patients immediately of any data breaches or unauthorized dissemination. The licensee must comply with all other relevant acupuncture laws and regulations.

Board Member Kim sees some overlap on this issue with the ethics matters discussed earlier. Perhaps issues around telehealth provision can be covered in continuing education courses. We have to make sure telehealth provision does not go outside standards of practice or ethics.

Member Harabedian moved to adopt the proposed language with an amendment encouraging the associations and other stakeholders of the profession to include telehealth in considerations of ethics.

#### **Public Comment**

First commenter sees this move as too late, with telehealth widely practiced. Can't look to associations to spread the information, only cover about a quarter of the profession. What do national organizations say? Is the Board actually going to stop what's already being done? Would seek amendment to require a referral for providing telehealth. Inclined to wait.

Second commenter would also seek to wait. There's been a lot of talk on this matter online. Commenter wants an opportunity to work with the Board on the matter.



Board Member Kim notes that some licensees are working this out online, but many have not due to language or technical limitations. Not sure what to change in the language but would like to postpone a vote to a subsequent meeting after hearing from staff.

EO Bodea seeks to better understand the interest in waiting. Intent of the language is to clarify in regulations how things are being done. The authority to do this is clear. Herdt and Member Chen both encourage those hesitant to read BPC 2290.5. Member Kim indicates his concerns have been addressed.

President Matecki and EO Bodea are both unsure about what stakeholders are concerned about. There will be opportunity to comment during the regulatory process.

### **Second Round Public Comment**

The first commenter noted they are not a telehealth provider and that no one on the Board is either. They don't believe enough is known about telehealth to set regulations at this time. Those engaged in acupuncture through telehealth likely outnumber those who don't and aren't engaged with the associations.

The second commenter is encouraged by the Board's actions and considers the process sound. Many faculty members are engaged in telehealth now. They feel the intent is clear, that it comes from the Governor, and thanks the Board for their actions.

Third commenter agrees with both previous commenters. Would like more clarification on the language and wants to make sure that practitioners not engaged in telehealth can understand what is going on. They also have other options for communications to acupuncturists.

EO Bodea notes that the Board has been discussing the telehealth issue since the start of the pandemic. Bodea would hope that those who have experienced issues would have spoken up by now. This language provides clarification to the authority that Board licensees have to facilitate telehealth.

Member Harabedian notes that the motion stands but would like to hear from other members. Member Kim better understands the rationale behind the regulation, and there will be an opportunity to revisit the issue should problems arise. Member Chen was expecting something more substantive from stakeholders on what to change. Members Osorio and Li agree that the Board should move forward. Member Chan notes future comment period would be a way to address future concerns. President Matecki sees this issue as a means of advancing the profession.





## MOTION

*Member Harabedian moved to approve the proposed regulatory text for Title 16, CCR section 1399.452.1, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive grammatical and/or technical changes to the package, and set the matter for hearing, if a hearing is requested by the public. The Board also communicates to the profession its interest in making sure telehealth is given due consideration in standards of ethics.*

Member Chen seconded

## Vote

**Yes:** Matecki, Chan, Chen, Harabedian Kim, Li, Osorio

**7-0 motion passes**

### **23. Discussion and Possible Action on the Regulatory Package Related to Align Curriculum Standards and Approval Related Regulations with Statute (David Bruggeman, Policy Analyst)**

Policy Analyst Bruggeman outlined the proposed actions for the Board in connection with the regulatory package for Curriculum Oversight Authority. The proposed changes offered at this meeting are an addition to the regulatory language the Board approved at its August 2019 meeting. Because the proposed changes in this regulatory package overlap with the proposed changes in the action the Board took on AB 2190, staff recommends that the Board revise the proposed regulations to ensure that only one package affects change in a single section of the California Code of Regulations (CCR). All changes to CCR section 1399.415 will be handled in this package, while all changes to CCR section 1399.416 were addressed in the package for AB 2190, which the Board approved earlier in this meeting.

Additionally, one of the changes approved by the Board in August 2019 was not accurately captured in the minutes, and staff is recommending the Board revise the minutes to reflect the change.

~

The Board recessed from 3:06-3:30 for staff and Board Counsel to clarify the necessary motions.



Roll Call taken at 3:31 p.m.:

Members Present

7 Present: Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

7-0 Quorum

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Bruggeman noted that previous Board action changed the required Board actions on this agenda item. Board member Harabedian asked clarifying questions about the remaining motions the staff recommended the Board make.

**Public Comment**

First commenter wanted to speak on applications of herbs, will make her comment during a subsequent comment period.

The Board is being asked by staff for two motions, one to amend the minutes of the August 2019 meeting and another to adopt regulatory language for CCR 1399.415

No public comment for either motion.

**MOTION**

*Member Kim moved to direct staff to correct page 19 of the August 15-16, 2019 Board meeting minutes. The specific change is to remove the first use of the word 'of' in the quoted text changing 16 CCR 1399.439*

Member Harabedian seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Harabedian Kim, Li, Osorio

**7-0 motion passes**

**MOTION**

*President Matecki moved to approve the proposed regulatory text for Title 16, CCR section 1399.415, direct staff to submit the text to the Director of Consumer Affairs and the Business, Consumer Services and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive grammatical and/or technical changes to the package, and set the matter for hearing, if a hearing is requested by the public.*



Member Osorio seconded

**Vote**

**Yes:** Matecki, Chan, Chen, Harabedian Kim, Li, Osorio

**7-0 motion passes**

**24. Future Agenda Items (Dr. Matecki)**

Member Chen would like to have a discussion focused on what services can be delivered over telehealth.

President Matecki would like to see a discussion of continuing education requirements and how the Board's requirements compare to other boards in the Department of Consumer Affairs.

**Public Comment**

First commenter asks for actionable steps to address the continuing education fee objections. Believes Board can act to reduce them and should do so quickly.

Second commenter notes the 50-hour requirement for continuing education is historical. Asks if a single CE course would be counted multiple times if offered in different languages and/or multiple times a year. Would like to see the following topics addressed by the Board: injection therapy, minimum hour requirements for curriculum, removal of racist and other problematic language from laws and regulations.

The third commenter wants to see the Board create renewal fees for continuing education courses.

Fourth commenter wants to see the Board to set up Continuing Education renewal fees, as well as a discussion of movement toward a national standard in the profession. Also wants to see consistency in definitions of practice in laws and regulations.

Fifth commenter proposes a council of associations in the profession around traditional medicine pain management and will send the full proposal to the Board.

Sixth commenter is with an herbs association and would like to see the Board discuss the provision of herbs in a future meeting.

Seventh commenter would like to see expanding scope to include injection therapy on a future agenda.

President Matecki solicited final comments from Board members. Members Osorio and Kim would like to see discussion of consent forms and whether the Board can or should



update them. Member Li would like to see consideration of herb, and for exercise therapy (qigong, tai chi). Member Chen notes that the forms are not required in regulations, but typically by malpractice insurance. Are licensees required to carry insurance? Member Kim noted that many of these topics are outside the scope of the Board's business and are more appropriately addressed by the profession and/or the legislature.

#### **25. Public Comments on Items Not on the Agenda (President Matecki)**

President Matecki offers the public a chance to comment on items not on the agenda. None were offered.

EO Bodea wanted to thank Regulatory Counsel Clay Jackson for his service to the Board. Jackson is leaving state service shortly after the Board meeting and has been a great help in guiding Board's regulatory packages through the regulatory process.

The Board's next meeting is June 24-25, 2021.

#### **26. Adjourn for Day Two (President Matecki)**

The Board adjourned at 4:35 p.m..