



BOARD MEETING MINUTES June 23, 2023

LOCATION:

Web Ex Teleconference

Staff Present

Benjamin Bodea, Executive Officer
Ryan Marcroft, Legal Counsel
Kayla Watson, Legal Counsel
Jay Herdt, Licensing Manager
Marisa Ochoa, Central Services Manager

Members of the Board

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

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

Meeting commenced at 9:04 a.m.

Roll call taken. All members present. Quorum established.

Item 2 – President’s Remarks

Board President John Harabedian (Harabedian) welcomed members, staff, and the public to the meeting.

Item 3 – Approval of Minutes

The Board tabled the approval of the April 7, 2023, Board Meeting Minutes to the next board meeting.

Item 4 - Executive Management Report

(A) Strategic Plan Announcement

Executive Officer Benjamin Bodea (E.O. Bodea) announced that the Acupuncture Board (Board) is working with Department of Consumer Affairs (DCA) on the translations of the Strategic Plan Environmental Survey into Chinese, Korean, and Spanish.

(B) Budget Update

Sarah Hinkle from the Budget Office presented the Board's fund condition and current year expenditures. The Budget Office does not have any concerns with the Board's funds and will continue to monitor the Board's budget. Additionally, the Board is spending well within its authorized budget.

Board Member Kim inquired about the suggested month-in-reserve by the Sunset Review Committee. E.O. Bodea replied that according to the Budget Office, four to six months is a healthy reserve, and the Board is in the good fiscal shape.

(C) Licensing Report Q3 FY 2022-23

Licensing Manager Jay Herdt (Herdt) declared that the Board met the requirements of AB 107 which allows for military spouses who are licensed in another state to become licensed in California temporarily for a one-year period.

The Business Modernization project completed adding a Continuing Education search tool on the Board's website that is accessible to external users and shopping cart feature was introduced to allow providers to pay for multiple course applications in one transaction rather than having to pay for each individually.

Mr. Herdt next reviewed the data for Licensing, Continuing Education, Tutorial, Training Programs, and Exam results.

Board Member Chen inquired about wall licenses, wanting to know if more licensees have resumed their practice or if licensees have started new business. E.O. Bodea responded that since the new wall license is a new requirement, it is still lagging behind the licensees. However, the Board will continue its outreach to encourage licensees to be compliant with the wall license requirement.

(D) Enforcement Report Q3 FY 2022-23

E.O. Bodea reviewed the complaints/convictions and investigations data for quarter three of 2022-23 Fiscal Year (January 1 – March 31, 2023).

Board Member Chen asked what is behind the improving enforcement statistics. E.O. Bodea responded that the vacancies for the two enforcement analyst positions have been filled and the analysts have started moving the cases forward.

Public Comment

A public comment was made questioning the long process times of closing a case, particularly to one case where the criminal case was previously dismissed. E.O. Bodea responded that the Covid-19 pandemic and staffing issues affected processing times of cases. He added that criminal cases and administrative cases differ on the type of actions a person can be accountable for.

A public comment was made asking if the number of tutorial program students increased in the past few years. E.O. Bodea stated that there isn't much change on the number of tutorial programs based on previous years. Historically, it hovers between 40-50 participants.

Item 5 - Legislative Report – Reviewed bills with positions taken and new bills

Policy Coordinator Kristine Brothers (Brothers) discussed the 2023 legislative session calendar. Thereafter, she discussed AB 1264, the Board's Sunset Review Bill. The bill

extends the Board's authority to regulate the profession of acupuncture for an additional four years to January 1, 2028. The bill also establishes the definitions and criteria for supervising acupuncturists and acupuncture assistants. It would also allow students who meet the specified criteria to perform needle removal, among other specified supportive acupuncture procedures, in a setting unaffiliated with their education.

Additionally, under the statutory provisions related to the wall license this bill would delete the requirement that an acupuncturist to be responsible for Asian massage services at their place of practice. This is a technical cleanup item since Asian massage is already included under BPC section 4937, and all acupuncturists are responsible for the services provided by them and their businesses. The Board could potentially receive an increase in complaints due to the pre-licensed practitioners now permitted to carry out treatments. However, in fiscal year 2021-2022, the Board received complaints on less than one percent of the population of active licensees. Given that, a small rise in complaints can occur since acupuncture assistants increases the population of individuals who can conduct treatments.

Board Member Chen advised that the language to be used to define an acupuncture assistant should be easy for the consumer to understand.

Public Comment

Two public comments were made inquiring if there is a training that can be provided for existing medical staff and if the acupuncture assistant position is a completely different role from existing medical assistants or nurses. The commenter also wanted to know the educational requirements or the certification requirements to become an acupuncture assistant.

A third public comment was made asking if a certificate is needed for someone to be an acupuncture assistant and if upon termination of the program, the function of an acupuncture assistant automatically terminates.

A fourth public comment was made pointing out that it is not legal for medical doctors to direct a nurse to handle a needle. The commenter also suggested that the acupuncture assistant should have training.

E.O. Bodea directed the public and the board members to the link that will take them directly to the bill language. It was explained that the acupuncture assistant should be enrolled in an approved educational and training program and having completed at least a minimum of 700 hours of clinical practice. At 700 hours, acupuncture students would have completed their Clean Needle Technique course.

AB 1264 – Staff recommended a Support position.

MOTION

Board Member Chen moved that the Acupuncture Board take a Support position with respect to AB 1264 [Berman] as introduced on February 16, 2023, for the reasons discussed.

Board Member Kim seconded

Vote

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

6-0

Motion Passes

E.O. Bodea added an additional item for the Board to address for this bill, to ask the B&P Committee for complaint driven site inspections authority. Presently, the Board does not have site-inspection authority to go into an acupuncture clinic beyond the public area of the clinic or the authority to view medical files without the licensee's approval.

Board Member Matecki stated that she is supporting the Sunset Bill.

Board Member Kim asked if the Medical Board has similar site-inspection authority. Policy Coordinator Brothers stated that staff looked at the Board of Optometry, Veterinary Medical Board, Respiratory Therapy Board, and Physical Therapy Board. E.O. Bodea further clarified that investigators would not be looking to observe treatments.

MOTION

Board Member Matecki moved that the Acupuncture Board take a Support position to direct the Executive Officer to work with the Business and Professions Committee to address the Strategic Plan item on attaining site-inspection authority for it and its designee, for the reasons discussed by members.

Board Member Osorio seconded

Vote

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

6-0

Motion Passes

AB 765 – Staff recommended a No Position.

Policy Coordinator Brothers stated that this is a bill regarding medical specialty titles, designations for physicians and surgeons. This bill was brought up at the last board meeting by the public. However, since then, the bill is dead for 2023. The Board previously had a watch recommendation, but given that the bill is dead, staff recommend that no position be taken at this time.

Public Comment

A public comment was made asking if the bill pertains to medical doctors being able to perform acupuncture.

Board President Harabedian reminded the public that comments that are outside the purview of the item being discussed should be reserved for public comment for items

not on the agenda.

Item 6 – Regulatory Report

Policy Coordinator Brothers started off by pointing out that there has been a slight change in the look and presentation of the Regulatory Report. Staff wanted to mirror the DCA Regulation Unit's snapshot of the rulemaking process and capture all of the phases. Brothers proceeded to summarize the status of each regulatory package the Board has in progress.

The Board recessed from 10:35 a.m.-10:50 a.m.

Roll Call taken at 10:50 a.m.

Members Present

5 Present: Harabedian, Osorio, Chen, Li, Matecki

Quorum Established

Member Kim had connectivity issues. He thereafter rejoined the meeting at 11:07 a.m.

Public Comment

A public comment was made regarding the education and training approval by the Board versus approving schools, how it affects the profession and the regulation of the profession.

E.O. Bodea responded by stating that this is addressing changes that happened back in 2016 and 2017, where the Board no longer became the approver of training programs, but of the curriculum. For educational and training programs, they require three approvals to be considered approved. He underlined what Policy Coordinator Brothers noted in Item B of the regulatory report, that this is going to be just more cleanup on what was not addressed when the Board did the regulatory item around 2018.

Item 7 – Discussion and Possible Action to Amend Sections 1399.483, 1399.489, and 1399.489.1 in Title 16 of the California Code of Regulations: Continuing Education: Law and Ethics Requirement

Policy Coordinator Brothers briefed that the item is regarding proposed language the Board already approved and was submitted to the regulatory unit for initial review. Edits were recommended and it is being brought to the Board for consideration.

For Section 1399.480, subsection (a)(4), staff is proposing a new definition of half hour. It is defined to be at least twenty-five minutes of participation in the context of Continuing Education (CE). This is necessary for clarity since an hour is already established as being at least fifty minutes of participation in the Board's regulation under the same section. Additionally, staff is updating category 1 CE hours required to restore a license to active when a licensee has been inactive for less than a year under Section 1399.489.1.

For Section 1399.483, subsection (e), the additional requirement that all courses in law and ethics include a self-assessment by the licensee is being removed after determining that the inclusion was only to align with the requirement under subsection (d)(2) for independent and home-study coursework. Existing language requires self-assessment based on the delivery method of CE, not the subject matter.

For Section 1399.489, subsection (a), the proposed amendments clarify that all licensees on active status shall complete fifty hours of CE every two years as a condition of renewal. The previous language added a retired license status as an exception to this requirement. However, this presented an authority issue since the Board currently does not have a retired license designation and regulation.

For Section 1399.489, subsection (c), this is a new subsection creating the requirement of four hours of CE in law ethics to be taken for every two-year renewal period. This subsection has been reworded to better align with the existing requirement under subsection (a) and to provide more clarity that the four hours is required as a condition of renewal.

Policy Coordinator Brothers pointed out that staff is proposing to add a 0.5- or one-half hour to the twenty-two hours of category 1 CE that is required of licensees restoring their license to active status when their license has been inactive for less than a year. This amendment is to address the .5 that is missing from the calculation that previously identified the minimum category 1 CE, and so 22.5 hours is truly half of 45 hours. Currently, it states twenty-two hours. It is missing 0.5 hours, therefore making the correction for consistency and to provide further clarity.

Public Comment

A public comment was made inquiring if the additional four hours is separate from the fifty hours required to renew an acupuncture license.

E.O. Bodea answered that the four hours would be part of the fifty hours but that four hours must be in laws and ethics.

A second public comment was made asking what would be included in the law and ethics course.

E.O. Bodea responded that the Board wanted to leave it open because the profession should be establishing ethical standards. The Board should then be supporting and enforcing them.

Board Member Chen made a comment that the implementation of the mandatory four hours of law and ethics was noteworthy and inquired what the standard content should be in the course.

Policy Coordinator Brothers responded by stating that there are no new standards or requirements for providers. It is only requiring licensees to take law and ethics every two years for their license renewal.

MOTION

Board Member Chen motioned to rescind the Board's March 2021 order to initiate a rulemaking for this proposal and instead authorize a rulemaking using the proposed language with all the changes to Division 13.7, Article 8, Sections 1399.480, 1399.483, 1399.489, and 1399.489.1. The Board authorizes initiation and possible adoption of new text as follows:

Direct staff to submit the text to the Director of the Department 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 changes to the package, and set the matter for a hearing if requested.

If no adverse comments are received during the 45-day comment period and no hearing is requested,

Amend Sections 1399.480, 1399.483, 1399.489, and 1399.489.1 of Article 8 of Division 13.7 of Title 16 of CCR as noticed.

And authorize the Executive Officer to take all steps necessary to complete the rulemaking.

Board Member Osorio seconded

Vote

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

6-0 motion passes

Item 8 – Review and Discussion of Stakeholder Survey on Approved Curriculum Requirements

Education Coordinator Sarah Rankin (Rankin) discussed the May 20, 2022, Public Stakeholder Acupuncture Training Curriculum Meeting as well as the results of the survey that was sent out to stakeholders.

Board Member Chen pointed out that it would have been interesting if the survey had a comment section to better reflect the sentiments of the stakeholders. Specifically, the school's opinion under what circumstances they think something is sufficient or insufficient. Having more detail would be helpful. She also remarked that the Board should not put too much focus on the number or percentage of stakeholders who believe the curriculum is sufficient. Rather, focus should be placed on the percentage of stakeholders who found the curriculum to be insufficient and dig deeper into why.

E.O. Bodea commented that the 3,000 hours has been in place for almost fifteen years and has offered a satisfactory level of public protection. He added that although the survey respondents are anonymous, stakeholders are welcome to submit their comments to the Board.

Board Member Kim stated that perhaps the Board should look into the gainful employment rate of acupuncturists in the state and their contribution to the medical system in terms of patient care.

E.O. Bodea expressed that the Board would like to hear from professional associations

on gainful employment. It is not the Board's role to have gainful employment rather, it is the role for the industry to establish. He added that the Board is a regulator and it is up to the acupuncture industry to represent itself and identify where it can be in the health care system. Lastly, the Board exists to make sure that it enforces entry level competency standards.

Public Comment

The first public comment stated that acupuncture practitioners, based on the required 3,000 hours, does not have enough education. The curriculum competency fifteen years ago, when the required 3,000 hours was approved, is much different from today.

The second public comment inquired how many practitioners and how many schools responded to the survey.

Education Coordinator Rankin answered there were seventy responses to the survey online. She added that four organizations and one individual submitted their responses directly to the Board. The Board was not able to determine how many practitioners or schools responded to the survey since it was answered anonymously.

The third public comment agreed with the sentiment made by the second public commenter. The third public commenter also stated that the industry has entered the integrative medicine era. With this, there should be more subjects interconnecting the East and West and more integrated subjects.

A follow-up comment was made by the first public commenter. They mentioned that the previous speaker mentioned a very important term, integrative medicine. At the time the curriculum was determined for the Board, integrative medicine wasn't around. They reiterated that more education is necessary.

The fourth public commenter recommended that residency program, reference of training models, and additional training may be used to supplement the present program.

Board Member Kim suggested a regular subcommittee meeting to talk about regulations, scope of practice, and any items discussed on the agenda to get more insight from experts who are practicing.

Board Member Matecki voiced that she appreciated the public and the stakeholders who have supported the Board for the past few years. She encourages the leaders in their respective sectors to participate in coming up with future surveys. She adds that the Board is here to listen to the opinions of all stakeholders.

Of the 70 respondents who answered the survey, Board Member Chen wanted clarification on how many were licensees and how many were schools. E.O. Bodea responded by stating that the Board could not track how many were licensees and schools since the survey did not ask who the respondent was representing, whether it was an individual or a school. Board Member Chen then stated that considering the Covid-19 pandemic, the survey was a great effort by the Board to better protect the public.

E.O. Bodea made a point to let board members and the public know that the stakeholder survey meeting is available to view online at the Board's website. He then added that several schools did participate and shared their comments during that session.

Item 9 – Discussion on Agendizing Professional Updates

E.O. Bodea discussed the request of professional associations that they be provided an agenda item during board meetings for their professional updates. He explained the Board should not provide professional associations more time than the public and that they are equal stakeholders in the process. He suggested that professional associations send the Board their professional updates, such that it can be shared with board members, as opposed to taking up more time than the public would be allotted. Board members can review the updates, then the professional associations can comment on the issue that is being raised.

Public Comment

A public comment was made asking if the Board will mandate schools to include pediatrics in the curriculum.

Another public comment was made voicing that they respectfully disagree with the Board's position not to provide professional associations more time than the public. The commenter, who belongs in an association, stated that they are representing hundreds of people.

The last public commenter shared that their program includes pediatrics.

Board President Harabedian made a point of order addressing the first and last commenter. He reminded them that the comments do not relate to the present topic. He also expressed that he wouldn't be opposed to the idea of having one meeting of the year where the Board gets a series of presentations from associations in the profession.

Item 10 – Discussion and Possible Action Regarding the Acupuncture Board's Executive Officer Salary Increase

Board President Harabedian remarked that the Board took up E.O. Bodea's performance review for the year. As part of the review, the board members proposed to recommend a pay increase for E.O. Bodea of the amount left for him to meet the maximum in his pay scale. The board members believe it is more than justified based on his performance and has proven to be deserving.

MOTION

Board President Harabedian motioned to give a pay increase to Executive Officer Bodea that will take him to the top of his pay scale.

Board Member Osorio seconded

Vote

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

6-0 motion passes

Public Comment

A public comment was made saying E.O. Bodea has clearly demonstrated his leadership and his ability to be a team leader. Also mentioned was his ability to understand the concepts to build a bridge between the public, the profession, and the legislature.

A second public comment stated that E.O. Bodea is an extraordinary person who has served both the Board, the government, as well as the profession, very professionally. They wanted to express his gratitude for the leadership E.O. Bodea offered the profession.

A third public comment was made affirming that E.O. Bodea is supportive of their school's and association's work, ideas, and suggestions.

A fourth public comment was made wanting to echo all the previous comments and laud the professionalism and responsiveness of E.O. Bodea and the staff of the Board. They added that the Board is professional, collegial, and responsive to the stakeholders' needs.

Item 11 – Election of Officers

E.O. Bodea explained the process of electing the two officer positions, the president and vice-president positions.

Board Member Chen nominated Board President Harabedian to be reelected as president. Harabedian thereafter accepted. E.O. Bodea asked for additional nominations and none were offered.

Board Member Osorio nominated Board Member Chen to serve as vice-president. Chen afterward accepted. E.O. Bodea asked for additional nominations and none were offered.

MOTION

Board Member Osorio motioned that Board President Harabedian be reelected president of the California Acupuncture Board.

Board Member Kim seconded

Vote

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

6-0 motion passes

Public Comment

A public comment was made saying that we have a very talented president. The commenter also congratulated the Board.

MOTION

Board President Harabedian motioned that Board Member Chen be elected as vice-president of the California Acupuncture Board.

Board Member Li seconded

Vote

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

6-0 motion passes

Item 12 – Public Comments for Items Not on the Agenda

The first public comment expressed satisfaction regarding the Board's Sunset Review. Nevertheless, it was noted that the Legislature left a few things out, one of them manual therapy or Asian massage. The commenter noted that when a person searches Asian massage online, it has a different connotation. They also inquired if the use of lasers is beyond the scope of practice.

The second public commenter updated the Board of his association's recent changes. They added that Tui Na is a better term than Asian Massage since it is more defined.

The third public comment spoke about wet cupping. They acknowledged that wet cupping is prohibited by DCA but retorted that wet cupping is a traditional treatment method that has been used for a long time. They added that it will be beneficial for the industry to permit wet cupping within the limits of Clean Needle Technique using lancet needles, while also restricting the amount of blood drawn. Lastly, they followed up on the issue of Acupotomy which was raised from the last board meeting.

At this point, President Harabedian left the meeting and Board Vice-President Chen presided.

The fourth public commenter agreed with the use of lasers. They also suggested another modality that may be considered, ASP semi-permanent needles.

The fifth public commenter discussed law and ethics, how it would be incorporated to what is already being taught at schools, and a committee on curriculum competency.

Item 13 – Future Agenda Items

Board Member Kim proposed a subcommittee meeting regarding the scope of acupuncture assistants in terms of public safety and clarification of what acupuncture assistants can perform.

Board Vice-President Chen would like to have more discussion regarding the curriculum when the Board receives more comments from the public and stakeholders. And based on the comments received, if the Board can do another analysis with more participants.

Public Comment

A public comment was made asking to have the issue of bleeding or wet cupping be put on the agenda for the next board meeting. They pointed out that it is in regulation, but it is not in statute. They sought to have some guidance from the Board.

Another public seconded the previous speaker. They also wanted a review of the business model of acupuncture in relation to opening an acupuncture business.

Item 14 – Adjournment

Vice-President Chen adjourned the meeting at 1:14 p.m.