



Approved November 20, 2008
**ACUPUNCTURE BOARD
MEETING MINUTES**

Evergreen Facility
Sacramento, CA

**FULL BOARD MEETING
Friday, June 20, 2008**

Members Present

*Adam Burke, L.Ac., Chair
Kenny Cherng, L.Ac., Vice Chair
Robert Brewer, Public Member
Charles Kim, Public Member
Larry Yee, Public Member*

Staff Present

*Janelle Wedge, Executive Officer
Cathy Hardin, Education Coordinator
Christie Loftin, Examination Coordinator
Benjamin Bodea, Administrative Technician*

Guest List on File

1. Call to Order – Adam Burke, Chair

Chair Adam Burke called the Acupuncture Board meeting to order at approximately at 8:50 AM. Roll was taken and all members were present establishing a quorum.

2. Chair Report – Adam Burke

Acupuncture is really making considerable strides at a national level, getting much more legitimization and recognition of the importance of this medicine, as well as the importance of pluralistic perspectives. I think more and more people recognize how important it is to have different ways of looking at the human body, healing and addressing these complex chronic issues we're dealing with today. Also recently, the NCCAOM had a strategic planning meeting in San Francisco. I had dinner with the director and heard some very exciting initiatives they are working on at the National level. I'm a research advisor with AAAOM and again am very involved in some interesting National Database efforts to look at the nature of the medicine in terms of herb and acupuncture issues. There is a lot, though not directly related to CAB, going on which further indicates that we are a part of a really interesting and dynamic profession right now. That's all for my report. I now hand it over to Janelle Wedge for the Executive Officers Report.

3. Executive Officer's Report – Janelle Wedge

Executive Officer Janelle Wedge introduced the Board's newest public member, Charles Kim. He was appointed about four months ago. Charles is really excited to be here as a public member of the Board. His background is in non-profit work. He's been working in the non-profit field for the last thirty (30) years as well as doing advocacy work. He's here to help this Board make hopefully wise and good decisions for the consumers as well as the practitioners. He thanks the Board and the Public for this opportunity.

Janelle informed the Board of the departure of our public member Cary Nosler from the Board. He had other commitments and for personal reasons had to resign. We hate to lose him. He had a lot to contribute and has in the past.

Janelle informed the Board of the agenda for the Professionals Achieving Consumer Trust Summit which the Department is sponsoring. She pointed out that our Board Meeting is scheduled for Thursday November 20th. This will most likely replace our December meeting and hopefully we'll have new members on the Board by that time also. That concludes my report.

Charles asked if we are expected to participate in the entire session or just the board meeting. Janelle responded that the director of the Department of Consumer Affairs has asked that all of the members attend the Wednesday session where they are having a lot of different speakers on different subjects, as well as a get to know reception for all the Boards.

4. Approval of Meeting Minutes

a. March 11, 2008

The Board reviewed the minutes of March 11, 2008. Adam noted that these were the clearest most comprehensive minutes.

LARRY YEE MOTIONS THAT THE BOARD ADOPT THE MARCH 11, 2008 MINUTES. ROBERT BREWER SECONDS. 5 – 0 – 0 MOTION PASSES

5. Petition Pursuant to B & P Code Section 4967 (b)

a. Shelley Baldrige

Janelle reported that Shelley has petitioned to obtain a new license without the requirement to take the test. She had been previously licensed but it was cancelled. Shelley indicated that as she was applying for a duplicate license for a second office she received a letter from the board saying that the license was cancelled. The Board confirmed it had been cancelled. Shelley noted that this was the same year that both her National and her California license was up for renewal and must have just renewed her National License and checked it off in her mind. She doesn't remember a notice although she is aware that she is responsible. She stated that she is the sole provider for her family, and between her husband starting up a business, their small son and being busy working she was prevented from thinking about it further. She has a busy practice and takes anywhere between 45 – 95 CEUs per year. She feels she is a good practitioner and has served the public well. Adam opened the Board up to questions. Larry asked when her license expired. Shelley responded March of 2007. Larry approximates fourteen months. Janelle highlights that it was in March of 2007 that the license was cancelled further pointing out that it had been delinquent three years prior to that. This is because it is not cancelled until it has been delinquent for three years.

Adam asked if she wouldn't have gotten a renewal a year before it was cancelled. Janelle responds that this is usually the case. We send a notice out initially saying that the Board hasn't received their renewal but doesn't think we send out another notice in two years. Christie confirms that they send one saying it's delinquent and then that's usually about it. Adam asks for Shelley to clarify what year she renewed her National license. Shelley stated 2004 the same year that this license was due to be renewed and for whatever reason, she doesn't know if it's the mail or the mail in her office but she did not get a renewal notice. She renewed her national license that year and thinks that she didn't even think about it, just checked it off her mental list. There was no notification until she happened to apply for the duplicate license this year only to find that it had been cancelled. Adam again clarifies that if in 2004 she had gotten a notice she would have received another in 2006. Janelle confirmed. Adam inquired as to the location of all of Shelley's CEU as being taken at Five Elements. Shelley confirmed. Adam noted with appreciation the immense number of hours but questions their status for sub-group clinic and study groups. Shelley explained that every six months they have a teacher who does a two day seminar of whatever topic and then clinic days in their office and they also attend clinic days in other offices. The Instructor does consultations in Shelley's practice. Shelley presents five people and we go over them, treat them and do follow-up. This is also available at other people's offices. Usually there are at least three days every six months that Shelley spends with her. Larry asks if Shelley had ever been delinquent prior to this. Shelley says she has not. Adam asks for the date her license was awarded originally. Shelley responded she has been practicing since 1991.

LARRY YEE MOTIONS TO ALLOW SHELLEY BALDRIDGE TO RECEIVE A NEW LICENSE WITHOUT RETAKING THE CALE. KENNY CHERNG SECONDS. 5 – 0 – 0 MOTION PASSES

Kenny suggested that when the Board sends out the Delinquent notice with certified mail. Janelle responded that the delinquent notices are not sent out by our office but through the Employment Development Department who prints out our notices and our licenses. They are automatically sent out through there. We don't personally put them in the mail ourselves. Adam asked if we are notified when there is a delinquency. Janelle responded that the Board receives a list of the delinquencies. Adam asks how many do you have per year. Janelle did not have that figure with her. Adam posited that if it is not an inordinate number it might be a helpful practice to the practitioners to be reminded. Adam says he knows he'd like to get one if he forgot to renew. Janelle declared she will check on that. Larry asked that when we send an important notice such as this delinquency, if there is a way for us to get a confirmation that it's been sent out and/or received. Being an Executive Secretary of his association, he knows that sometimes there are checks that people say they've sent me but he has yet to receive. Christie pointed out that they do get a notice thirty days before their license will expire in the first place. Once the renewal payment is not received and they expire we send out a delinquent notice. So there are really two notices. And then it is always on the website. If one wants to check their license they can see its status any day of the year. Insurance companies do this as well and this is how a lot of calls on delinquent notices come in because these companies check in on it before they pay claims and then they see that this license is delinquent and they will call the Board to confirm.

Adam asked again if both of those notices come out automatically from the same office. Janelle confirmed and added that she will check on how many delinquencies per month and what the cost would be for certified mail. Adam asks if there were any abstentions. There were none. The motion was approved and Shelley will be issued a new license. Larry asked they have to pay any

penalties. Janelle responded that there is a delinquency charge but in her case she is just going to be paying a fee for a new license but not any delinquency charge. The Board is not reinstating her license but reissuing a new license.

[Adam postponed Item 6 until counsel arrived. The Board moved on to Item 7.]

7. Administrative Business

a. Legislation Update

Janelle pointed out that there is a change in the agenda itself, only because we are waiting for items that we need legal counsel. We are waiting for representation to come. AB54 is the Healthcare coverage bill formerly about Worker's Comp. This bill was last amended in March. It passed through the senate and was referred to the Senate Committee on Appropriations and is currently scheduled for a Hearing on June 23. AB65 is the bill for live customer service agents. Currently scheduled for a hearing in the Senate Committee on Appropriations on June 23. AB2746 which is the bill that establishes the private post-secondary act of 2008 creates a successor to the Bureau of Private Post-Secondary and Vocational Education under the DCA. It is currently being held under submission.

Adam asked to elaborate on being held under submission. Janelle asked Deborah (in the audience) what a bill held under submission meant. Deborah answered that to her it meant that the bill is probably dead but the Board has another one, the Perata bill, which will probably move. Janelle continued saying they're going to let AB2746 go and work on SB823. So they are waiting to see what happens on the other bill. SB823 has passed out of the Assembly Committee on Appropriations on June 18th. It was also amended June 9th, which actually amends our section of law 4939 with a new amendment from when the bill was first introduced. It has to do with the approval of schools and colleges. It changes the section referring to, 'within three years of initial approval by the Board, each program so approved by the Board, shall receive full institutional approval under article 3.5 and so on and so forth, as it existed on June 20, 2007 and then cites the proposed section of law, chapter 8 part 59 division 10 of the Education Code. That is the only change that is specific to our law. SB963 does not have any changes made to it. It is very important to the Board. Janelle stated that this is the bill that the Senate Business and Professions Committee was going to use as a way to extend our Sunset Date next year. We are due to sunset July 1, 2009. This bill is to be amended to extend our date as well as 5 other boards within the department so they don't run into the same problem as they did this year where several Boards are going to become a bureau for a six month period and then reconstituted as a Board. The bill is scheduled for hearing on June 24 in the Assembly Business and Professions Committee. Hopefully the bill will be amended by that date. It is an important bill for us to follow and watch.

Adam asked what the extension date will be. Janelle answered no, whether it's going to be just for one year so that they can decide how they are going to handle sunset review – whether they will do away with it or leave it to the heads of the department such that if someone is not doing their job as a Board then turn it over for individual legislation to take care of them or through the Budget process. Janelle is not certain they really know what they are looking to do which is why the bill could be sitting out there. SB1157 was almost like a spot bill. Nothing has been done to it since it was introduced. Then SB1779 is the Omnibus bill of the Department. It adds the Acupuncture Board to Section 800-801. That's a great bill for the Board. It will require that those who have provided professional liability insurance to one of our licensees and there has been a claim or settlement against them of three thousand or more must be reported to us and then we maintain it. As of right now there is no required reporting to the Board so we really don't know our acupuncturists' activities; this is important to the Board. That is scheduled for hearing on June 24th in the Assembly Business and Professions Committee.

Adam asked if the Board had any discussions on specific items. Janelle asked if the Board wanted to take a position on any of these bills or just watch. Adam noted his concern about AB865 the Live Customer Agent and the burden to it could pose to a board like ours. He asked if this is something the Board could easily accommodate.

Janelle responded that she believes it to be burdensome and thinks the Department has taken an opposed position. Adam then directs staff to be in watch mode.

b. Legislative Proposals (Business and Professions Code)

Janelle had nothing to report on Legislative proposals. The board was not able to obtain an author for any of our bills this year so it's kind of a wait and see what happens next year.

Adam asked if there are any meetings scheduled in the summer with potential authors. Janelle confirmed that there were meetings planned with a couple of them but at present don't have any so it won't be till the next legislative session that we'll be following any of those. She continued that the Major issue before the Board today is on our Continuing Education regulations. We have received disapproval from the Office of Administrative Law with recommended changes that need to take place within the regulations themselves and the different processes when filing regulations. A copy of the regulations with those sections highlighted in yellow has been included. They were not major but still needs to have the Boards approval to proceed. This entire process has to be completed, filed and wrapped up no later than July 24, 2008 or the entire regulation packet will be denied and we'll have to start our work from scratch again. Adam asked to have their concerns summarized. Janelle elaborated that some of it was minor, such as with regards to our forms. For example on the first page, we're adding one of the reference sections that was not previously stated. This is more of a correction of what they currently show. When we incorporated any of the forms, such as the provider application, the

active/inactive application, the correct wording is, “it is hereby incorporated by reference”. It actually has to state that. Section 1399.42 was always an agreement of the Board that we remove the term ‘Approved Provider’ and just use the term ‘Provider’ but it had not been marked out. It’s just one of those legal requirements indicating how you reflect or show that. These were suggested changes on page four by the Attorney. He’s been wonderful. He’s guided me all the way through. In my report I failed to mention with regard to a change in staff. Mary Howard has left the board. She had been trying for a promotion for years and the way the State is structured unless you have a certain amount of staff in your office you can’t have a manager position and that was her goal. She did in fact obtain a manager position. But she is the one who prepared a lot of this so I’ve been filling in and being clued in by the attorney. I’ve been sending him piecemeal. He’s indicated some of the changes that he knows will make it through such as on page four, “Completed by the participant on the quality usefulness of the course”. He felt that was important. Then on page five, it was just how it was represented. You have to show the periods behind the subsection numbers. Seems minor but it wasn’t going to make it through the Office of Administrative Law. Adam asked if they were fine with our delineation of course categories. Janelle responded that it had no problems. However she still has to expand on that a little in the final statement of reasons and do an addendum to that. But again, he is helping me all the way through. So a lot of it is just changes. The major change on page seven where it shows all of this as being deleted - removed from the regulation – is because we’ve incorporated the actual form by reference, there was no reason to show the duplication; have the form and then the requirements stated along with it. That being said Janelle awaits the Board’s OK to proceed with it or whether additional changes are necessary.

Charles asked about instructors on page eight. He asked how does the Board handle speakers from foreign countries who give presentations without a California license and if this is even possible. Cathy answered that on the next page, there are requirements for people that are not licensed acupuncturists or if they are licensed in another country they can teach under the guest acupuncture law.

ROBERT MOVES THAT THE BOARD APPROVE THE UPDATE TO SECTION 1399.480 – 1399.489.1. CHARLES SECONDS. 5 – 0 – 0 MOTION PASSES

Janelle recommended moving on to the Education business. Cathy can give a report on the school site visit to St. Luke whose representatives were present.

8. Education Business – (Discussion/Action)

a. School Site Report on St. Luke University

Cathy asked the board to ask her any questions they had about her report. Adam asked to summarize the report for everyone’s benefit.

Cathy addressed the Board stating that she and Janelle visited St. Luke University on April 16, 2008. They are located in Pomona, California. We toured the school. We reviewed the student and faculty files at the school. We also toured the clinic and spoke with the president Mr. Young Dae Kim, who is here today, as well as the CFO and Director of Admissions and Records David Kim, also present today. The school started in February of 2004. They did receive approval from the Bureau of BPPVE. It was a temporary approval that was extended beyond the sunset date of that Bureau. So at the Sunset date, they were eligible to sign the voluntary agreement with the department which is why we can consider them for approval at this point. Their student files contained all the forms that they should contain. They were in good order as well as their faculty files. They grant a Masters of Science in Oriental Medicine. They currently have thirty-one students who are enrolled in the program. The program is currently not offered in English. It is offered in Korean and Chinese, although they do have plans to start an English program as they get more students matriculating at their school. Their curriculum does meet our requirements. Their clinic was certainly sufficient for the school.

Adam asked if Cathy had any concerns with their application. Cathy responded that there were some concerns with the financial stability of their school. Currently a significant portion of their funding is donations from Mr. Kim. They have started a fund with Bank of America wherein they set-up a fund to insure that they always had money in case anything should happen where they would have to refund a large number of students tuition. At this point they had to set up that fund and send us proof of that.

Adam noted that they are granting students scholarships to recruit students because they are not CAB approved. They intend to reduce those scholarships once they have approval. Cathy confirmed, adding that this will help with the funding as well. Janelle asked the Board if they wished to address any questions to the school representatives since they were present.

Larry asked to have someone from the institution come up and say a few words. Adam invited the president, Mr. Young Dae Kim, to speak of his school or his vision for it.

Young Dae Kim introduced himself to the Board and stated that written on the steps of the school, the first aim is to support missionaries for the third world and second is to recognize and introduce to the Western world how excellent Eastern medicine is.

Adam presented that he knows there are a number of excellent Acupuncture Colleges in Korea, seven or eight of them at least as well as a number of other less notable but also excellent schools. He then asked if Mr. Kim could confirm if people that pass the CALE, the California exam, can actually go back and sit for an exam in Korea. Young

Dae Kim stated no but that the process is currently changing. Adam posited that somebody here, hypothetically, in a few years could... Young responded that many Koreans and Chinese come here to prepare when their home country is Asian. Adam continued, stating another issue the Board is ultimately looking at today is related to English Language requirements for students attending these programs. Adam asked what is St. Luke University's standard for English Language training or equivalency. Young responded that his school has an ESL program approved by BPPVE in 2004 but at this time there is no English because they are not approved yet. They do have Korean and Chinese languages approved. Adam asked if Young's students have to have some degree of English language proficiency. Young answered that most of them understand English but not fluently. Adam inquired as to the TOEFL requirement. David Kim answered that as far as requirements go, St. Luke does not have that at this point. Adam stated that it is an ACAOM requirement. Kenny asked for clarification regarding the school d.b.a. St. Luke University in 2006 but having received BPPVE approval in 2004 for the school. Young answered that after the application was submitted in 2003, our application was reviewed... Kenny asked what name was the school under in the 2003 application. Young answered that it was the same name, Saint Luke University. Kenny continued asking why did they apply as a DBA in 2006. Young stated that it was under the church name. The Church owned the school but after a member discussion the name was changed for the efficiency of running the school. Charles asked if the school was owned by the church as a non-profit. Young answered yes and that they already have the IRS 501c3 form. Charles asked if the school's goal was to promote a religious purpose. Young responded that they are a religious charity school. Charles then asked if the report was correct in saying that they had have thirty-one students. Young corrected the figure saying they have thirty-nine students. Charles then asked what the school's future plan was. Young said that all the students want to become acupuncturists. Some of them would like to go to third-world countries as missionaries with acupuncture license. Charles asked if they can practice in foreign countries with the California license.

Young stated he was uncertain but that the students want to practice. Adam stated that personally he always thinks of Acupuncture students as California consumers. I teach at the University and some of my students want to go to acupuncture school and I support them if they want to do that but I also have a sound conversation with them about the realities of needing to be able to do business and all the other practicalities of surviving as an acupuncturist. Adam then asked where Young imagined, other than missionary activity, his students practicing. Young answered that most of the students want to work as acupuncturists here. Some of them who have Korean Card, want to be missionaries with an acupuncture license. Most missions have health care problems. Adam stated that another concern that came up the last meeting was if you have students who graduate who are very limited in their English proficiency they are going to be very geographically confined to practice in areas like China town or Korea town in LA. Those are very competitive zones and I'm very afraid that new students are not going to survive if they don't have some English proficiency. David answered that they will be implementing English requirements. At this point all the students understand and are able to converse in English at a business level. Adam stated that that's very practical. Charles asked what percentage of your students are I20 students at this point.

David answered zero percent at this point. They are all in California. However pending approval we plan to take them on as well. Adam asked if we need to take any action on this specifically. Janelle answered that the must approve or deny the school. Adam remarked that it's funny we don't see people before they get to this point. Cathy stated that it's possible and in the future she can give the Board a progress report on the review of the applications.

Adam asked if that would be useful for people. Cathy stated that what she does when an application comes in is the following. What is printed off our web page are about 14 pages which equals about two large binders of documents that the school sends in. Then I have the initial review checking that all required documents are included. If not, I send them a letter asking for those documents. I then review it again to make sure it meets our requirements for each section. At that point they are ready for a site visit, which is what we did with this school. Then after the site visit I write this report for you. But I can certainly give you a report on the application before the site visit. Larry asked if there is anything in Cathy's report that would exclude them from approval. Cathy responded that there was nothing that didn't meet our requirement which, if it was the case, I would note in the report. Larry stated that he just wanted to get it on the record. Adam stated since we're moving potentially towards this process being assumed by a National Accrediting Agency, would we want schools at this point, moving forward, to be able to have capabilities of meeting those standards (presuming the CAB is really reflective of those standards it would probably not be an issue but). Janelle said that to do that without it being specified in statutes or regulations would not be enforceable.

Robert asked if it was a typo, that the library houses approximately 250 books. Young answered that there were three thousand books. Charles then asked if CAB has ever approved any schools with a probational or conditional status. Cathy answered that a conditional status is valid. Robert asked if staff had any concerns that our guidelines and requirements in terms of the curriculum being taught and the quality of education is in anyway outside of what we approve on any level. Cathy responded not from what we saw. It's largely based on syllabi that were submitted with the application but they fulfill those requirements. Kenny asked how the separate funding worked and how secure it is. Janelle responded that with regards to the Emergency fund she is not certain. Our main concern when we reviewed the school period was how financially secure the school was. Again, the donations keeping the school afloat were from Mr. Kim. Our concern was what if something happens to Mr. Kim there would not be anything for the students to fall back on. That's when this emergency fund was set up. Not certain how secure that is or who it is made payable to. David answered that it's under a St. Luke's savings account and this being a 501c3 there are certain rules and laws that say that

we cannot touch this for any purposes except for charitable or specifically for the school. So our guideline for keeping this secure is the law. Charles asked if there are any bond requirements. Cathy answered that there is not a bond requirement from our regulations nor is there one from under the previous BPPVE regulations. She does know that they did have a requirement for financial stability. As far as she knows it did not require for something as specific as let's say a bond. So she doesn't know what their criterion was for financial stability when they went for a school visit. The Board does have a financial stability requirement but nothing as specific as a bond. Young stated that his understanding of the BPPVE requirements is that the school must keep 125% of its expenditures.

Charles stated that the Board's concern was protecting the students. He serves at a school in Southern California and they're losing money by over one hundred thousand a year. He knows there are other schools in Southern California especially teaching Oriental Medicine. He wishes them success but the Board must think about the financial stability of the school and how to protect the students. David replied that since the school began there has been a debt of about twenty thousand dollars per year. The funding that is in place is good for at least the next four or five years and our upcoming budgeting and forecasting plans are in place. Debt is getting smaller and there will be a surplus in the future. Robert asked the staff if the Board has ever approved conditionally upon an annual financial review or period of time.

Janelle answered that for that specific purpose she is not certain but doesn't see why the Board couldn't and then once the Board reviews their financial records, once they are no longer giving scholarships but are actually running on the tuition they receive, I don't know why we couldn't do that. Cathy added that her understanding of the regulations is that the Board can choose what form an approval takes. So if the Board wants to conditionally approve the school that is fine. It's the Board's prerogative what these conditions are. Adam asked if they would then be allowed to advertise to their students that they are CAB approved and if they would actually qualify as conditional at that point. Janelle answered that they would be CAB approved at that point. Up until that point, any student who has enrolled and goes through the program would qualify for the exam. We would stipulate that at the end of whatever time frame you are giving them they must show that they can remain afloat and then they could accept new students with that forming and they don't have approval. Adam asked if they can't accept new students while the conditional is in effect. Cathy responded that they can and that they are an approved school as long as they are meeting the conditions established by the Board. Charles asked Young to confirm that this school is owned by a religious organization. Young confirmed. Charles asked to know which organization. David answered that the school has now replaced the religious organization. It was initially owned by Eastern United Korean Church and that church went through a name change and eventually the mission of this organization became more school based. Charles then asked if the legal owner is a non-profit organization. David replied that the legal owner is now St. Luke University. Charles stated that he understands that it is a non-profit however you have been putting in a large amount of money every year. He knows you don't have unlimited funds to put into it even though it is a good commitment. David responded that they do seek large sums of donations outside of the school and hopefully that will increase as the school matures. Adam asked who those donations would come from. David answered that hopefully alumni and people interested in acupuncture outside of the school. Young then states that for the last four years the school doesn't have any financial problems, even though the school is not yet approved. After approval, many applicants will come to the school because it is the only one in the Eastern Los Angeles area. Right now, there are more than ten applicants if we receive approval. So I hope that many of the students want to study at this school after receiving approval. Adam asked that if the Board did a conditional it could be one year or two year or could be renewed every year until we're satisfied or how would that work. Cathy responded yes, whatever the Board wants. Larry asked if they know what their break even point is and how many students do they need to attend to meet their costs. David answered that they do have enough students at this point. They are giving up to 50% tuition through their scholarships. Larry continued asking if they know how many students they need to run their operations. Somewhere along the line, as we alluded to, you will become self-sufficient and hopefully it will run by itself instead of by outside donations. David estimated forty to forty-five students. Robert asked if your students are on 50% scholarships at this point what is going to happen to their scholarship when you are approved. David answered that if a student was admitted with a scholarship, it would finish out the two years. We'll have more students recruited and the scholarships will become merit or need based. Robert clarified that the current students are covered under whatever conditions they started under. Adam stated that in these days of scarce dollars a concern would be having donations being the fiscal basis of your business. Potentially a conditional approval might be satisfied. Robert stated that staff seems satisfied with the academic aspects of the school. My only concern is the financial well-being of the school so as to protect the students. Larry proposed that the Board approve St. Luke's application for CAB accreditation and amend it so that there is a conditional stipulation presented by my fellow board members. Adam asked what kind of conditions would the Board like to see. Robert said he would like for the Board to conduct an annual financial review to have them present us annual financials for three years which should get them time to recruit new students who are paying the whole way. Larry accepted the friendly amendment. Cathy asked to clarify if the Board is going to say that at the end of three years they will have to show a positive balance or is this just for the Board to review the finances and make a determination whether their comfortable with where the school is at that point. Robert replied that if they showed positive cash flow based on operations and ongoing donations we should be fine. Three more years will give St. Luke University seven years in business which should be enough history to come to a decision. Adam clarified that the Board was looking for a positive cash flow at the end of the three year period. Larry clarified that this would be including donations as Robert had mentioned.

**LARRY YEE MOTIONS TO ACCEPT THE STAFF'S RECOMMENDATION TO APPROVE OF ST. LUKE'S APPLICATION FOR APPROVAL WITH THE CONDITIONS THAT THE BOARD REVIEWS ST. LUKES FINANCIAL ANNUALLY FOR THREE YEARS AND TO SEE THAT ON THE THIRD YEAR THE UNIVERSITY HAS A POSITIVE CASH FLOW (FROM INCOME AND DONATIONS). CHARLES KIM SECONDS THE MOTION. 5 – 0 – 0
MOTION PASSES**

Janelle addressed the Board stating that our legal counsel, LaVonne Powell, has been very ill. We are fortunate to have Legal Counsel George Ritter fill in for her. I would like to introduce George to all of you.

Adam thanked George Ritter for coming saying we appreciate you being able to make it. Let us move to item six. If Mr. Kavoussi will please come up.

**6. Petition filed by Ben Kavoussi Pursuant to Government Code Section 11340.6 –
Request to Repeal Section 1399.434 of Title 16, Article 3.5 of the California Code of Regulations**

Ben Kavoussi said, “Thank you. I would like to call Dr. Stumpf, an education doctor and also Dr. Priebe, a licensed acupuncturist, as witnesses, since I’m not a licensed acupuncturist. My background is in the history of sciences and also medical research. Regretfully, the former chair of UC Davis physics Department, Dr. Garret, couldn’t make it due to health reasons. We also have a doctor Prissam, Mammalian physiology specialist. I’m more comfortable reading from the text.” Adam said that was fine.

Ben continued, “Thank you again Board Members and public audience. I would like to make a disclaimer. The comments I’m making here are not to put the profession down. I am a staunch proponent of acupuncture and related modalities. I have several publications on that. Also I’m not addressing any schools, I know there are representatives here, there are also Doctors of Chiropractic medicine and Doctors of Acupuncture and these people do a wonderful job treating people. My concern is the state of California and the Department of Consumer Affairs as well as the California Board of Acupuncture which I’m addressing. My name is Ben Kavoussi as I mentioned. I’m the primary of a recent article on the Neuroimmunology of Acupuncture which is included in the handout you have received. This work is based on the work of Kevin J. Tracy, an MD who has been doing research in the state of New York, part of the Feinstein Institute of Medical research where he has been able to modulate the innate immunity using electrical current. This is most definitely how acupuncture works. Acupuncture is a means of autonomic tone. To achieve autonomic tone therefore to sedate the innate immunity, that’s why you have anti-inflammatory properties. My intent has been misinterpreted by the Board in a letter dated April 5, 2008. I complained to the executive officer, a Mrs. Janelle Wedge, about basing the teaching or practice of acupuncture based on ancient Chinese metaphysics. I have not made any demand for the repeal of California regulation 434 Criteria for approval of Acupuncture and Oriental Medicine training programs. However, in a letter dated May 26, 2008, I have requested the repeal of the implicit – the key word here is implicit – endorsement of the teaching of Vitalism and metaphysics as required in the before mentioned regulation. So, to clarify the matter, I would like to remind the Board and the audience what Vitalism means. Vitalism is a doctrine that stipulates that the functions of a living organism are due to a vital faculty distinct from physical, chemical forces. This vital faculty or force distinguishes living organisms from non-living matter. This faculty is often referred to as Life Force, Energy, Élan Vital by the philosopher Bergson, which some equate with the soul. Or because the doctrine that stipulates that the processes of life are not explicable by the laws of physics or chemistry alone and that life is in some part self-determining. Vitalism was the fundamental dogma of Natural Sciences and Medicine in the West until the nineteenth century where disease was believed to derive from interruptions to the flow of a vital principle, called pneuma, and imbalances in the four humors. Eastern traditions have similar notions such as the Qi tradition in Chinese medicine, Ki in the Japanese Kampo system and Doshas in Ayurvedic medicine. I would like to remind the Board that Vitalism was disproved in the nineteenth century by Friedrich Wohler who showed that it is possible to synthesize an organic substance in the laboratory. Louis Pasteur has disproved a related concept called spontaneous generation. More recently, Stanley Miller, during a landmark experiment in 1953, demonstrated that organic substances could be created by very simple physical processes from inorganic substances. I would like to remind the Board that this kind of scientific edict of the California Business Code (from here abbreviated by BPC) section 4927, the California Court of Regulations section 434, requires the teachings of metaphysics, vitalism and numeral pathology through the teachings of principles and theories of Acupuncture and Oriental Medicine based upon the belief of a vital force called Qi, that is not definable by the laws of physics and chemistry alone. In addition, a survey of the reference books by the California Licensing Examination shows that the Board also implicitly endorses notions associated with Metaphysics and Taoist religious philosophy such as Yin-Yang, Cosmic Energy, Primordial Life Force, and Five Elements which are found in the following publications endorsed by the Board. These publications are for reference listed here as well as your website. The association of these concepts with metaphysics and the religion called Taoism can be verified based on the following references. The first references are there, including the Encyclopedia Britannica. Please be reminded that the Acupuncture Board of California, the Department of Consumer Affairs and the State of California are by law prohibited from entanglement from any type of religion, including pantheism (one believes that every thing in this world is part of God), polytheistic (several gods), monotheistic, (Christianity, Islam, Judaism) or non-theistic (such as Taoism). Please refer to Torcaso v. Watkins (1961) page 495, note footnote eleven concerning the categorization of Taoism as a religion by the US Supreme Court. I have copies here of Torcaso v. Watkins. Footnote eleven, “Among religions in this country which do not teach

what would generally be considered a belief in the existence of God are Buddhism, Taoism....” Also be reminded that the Board, the Department of Consumer affairs and the State of California are by law prohibited from endorsing, advancing, representing the interest of groups, organization, schools that base the teaching and practice of medicine in California on Eastern metaphysics and religious philosophy. In addition, accessing an individual’s ability to practice healthcare in California based on non-secular principles – the key word is non-secular – found in the above mentioned publications is prejudicial to those who do not believe in vitalism, metaphysics or religion or those who oppose the reintroduction of metaphysics and religion in biomedical sciences. Only the teaching of secular notions such as biomedical sciences or evidence-based empirical practice should be required by the Board, requiring the teaching of traditional tenets of Chinese medicine for the approval of Acupuncture training program as defined by section 434 entangles the Board, the Department of Consumer Affairs and the State of California with metaphysics and religious philosophy. This implicit endorsement should be repealed. The teaching of certain notions at the sole discretion of individual groups or organizations and their knowledge should not be compulsory to pass the California Licensing Exam. I would like to summarize by pointing out the seven Qi points. This is a take home message. I did not request the repeal of 434. I have requested the repeal of the implicit endorsement of training curricula that teaches Vitalism and metaphysics (notions such as Yin, Yang, and Qi). By tacitly endorsing the teaching of the tenets associated with metaphysics and Taoist Philosophy, such as Qi, Yin, Yang, the Board is in violation of State and Federal Laws. The teaching of acupuncture should not be based on that and should only be based on biomedical sciences and empirical clinical support, supported by evidence. BPC 4937 acknowledges that acupuncture is a process based on scientific principles. Article 3.5 section 1399.434 includes language such as ‘oriental diagnosis’ and Oriental medicine principles and theory that are in fact based on pre-scientific and metaphysical concepts. The licensing examination should not be based on metaphysics and Taoist philosophy. I would like to ask the Board the following four questions if I may. Four questions that you can answer simply by yes or no. This is for the record. Does the Acupuncture Board of California, the Department of Consumer Affairs or the State of California endorse any type of current or ancient religion, metaphysics, spirituality or non-secular philosophy, not limited to Christianity, Judaism and Islam, and including Hinduism, Buddhism, Confucianism or the Old Religion of Northern Europe, Wicca or Taoism?”

Adam asked if Ben had a copy of these questions. Ben said most certainly. Adam stated that the Board will answer your questions after you have finished reading all of them. Robert asked counsel if the Board is required to answer these questions now or can they be taken under advisement. George responded that, “You can take them under advisement. Since he has petitioned, there is a thirty day requirement in the ADA. If he is willing to waive that requirement to give the Board more time to consider this. That would be a possible option.”

Ben said he would consider another thirty (30) days which would bring the total up to sixty (60) days from today. Adam said he presumes the Board won’t need those and to proceed please.

Ben said, “I shall proceed. Question two, does the Acupuncture Board of California, the Department of Consumer Affairs or the State of California seek to sponsor, promote or further any organization that bases the teaching of healthcare on faith, metaphysics or any of the current or ancient religions, metaphysics, spiritualities or non-secular philosophies?”

Question three; does the Acupuncture Board of California, the Department of Consumer Affairs or the State of California endorse the teaching of Vitalism, meaning that living organisms possess a non-physical force or energy that gives them the property of life? Finally, does the Acupuncture Board of California, the Department of Consumer Affairs or the State of California promote the belief in the existence of a metaphysical cosmic force called Qi that is not explicable by the laws of physics and chemistry alone? Please respond to these questions within sixty days.”

Adam stated that he would like to go over these singularly and asked George for any suggestions. George responded that the Board could deliberate. “As far as the process, if you want to try to conclude the whole process today you can, otherwise, if you want you can put this over so everybody would have a chance to review these materials. To do the latter, you would have to reschedule another meeting within the 60 days and I’m not familiar with your schedule requirements. He’s obviously presented a lot of material here and that is certainly a factor.

Ben said, “perhaps it would be possible to address this during the next meeting in September. I happen to be a Reservist. If I happen to be called to duty I would like to have the response in written form mailed to me somewhere so I won’t be coming to the meeting.”

George stated, “What the Board has to do, regardless of which decision it makes, it has to prepare, it either has to notice this matter for rulemaking by accepting your petition. Or alternately, if it rejects it, it has to prepare a written statement for the reasons why it is rejecting your petition. That, of course, is sent to you presumably at this address and then we also have to file that with the Office of Administrative Law. Then it will go into a notice registry that is published by that agency.”

Ben K said, “This address is fine. I have copies of the US Supreme Court ruling, a citation of Taoism as a religion, for your convenience, in the back.” Adam said this was fine and asked Janelle when the next meet was scheduled for. Janelle responded that the next meeting was scheduled for September 8th.

Adam observed that the Board does have an issue obtaining quorum. We have to have a full board (five members). Ben asked for a resolution and if that was something that was within the process.

George replied, “A resolution is more of an informal thing. In my experience it’s for something like commending someone for their service. Typically, the Board is going to issue a pronouncement in the form of a regulation. In a sense, when the Board takes action on this, it will have embodied in the documents that are prepared what you might consider a resolution for whatever reasons it’s basing its decision on.” Ben said he was fine with that.

Adam suggested the Board take a ten minute break and reconvene at 10:15

Adam reconvened the meeting at 10:23 and asked Mr. Kavoussi if his other two guests had any comments. Ben said, “I have

two comments. If you were to refer to *Torcaso vs. Watkins (1961)* in footnote eleven. This citation of the US Supreme Court was based on the Encyclopedia Britannica from which I will read two sentences from for the record.

“The Taoist treatise *Quay Nan So*, book of master of Qui Nan, describes how the one primordial breath (Yuan Qi). Spacing into the light, the yang breath formed the heaven and the heavier crude Yin breath, which formed Earth. The diversification and the interaction of Yin and Yang produced the ten thousand things. In philosophy we call that Cosmogony. This is the equivalent the first chapter of the Torah called Genesis. The idea of Qi, yin and yang are often referred to as the two breaths, Qi means air, breath or vapor, originally vapor arising from cooking cereal. Yang soon came to mean the cosmic energy, the Primordial Breath. It’s the name for the chaos state of unity in which the original life force, what I call Vitalism, is not yet diversified into the faces that the concept of Yin and Yang describe. Qi, according to another Dictionary, the *Shambhala Dictionary of Taoism* (1996) referred in the document I gave you. Chi means air, vapor, breadth, ether, energy, also temperament, strength, atmosphere, central concept in Taoism and Chinese Medicine. In the Taoist view, Qi is a vital energy, the life force, the cosmic spirit that pervades all and imbibes all things and there are more synonyms with Primordial Qi.”

Adam asked if this could be kept short. Ben agreed saying, “Sure. One more comment, the concept of Qi referred to in the hand-out the Department of Consumer Affairs, Acupuncture Board, with the name Arnold Schwarzenegger has put out. Qi is referred to a couple of times. Here on page four and five it is referenced and the symbol of the Yin and Yang, which is a religious symbol, is displayed right here. Thank You.”

Steve Stumpf addressed the Board saying, “Good Morning. Steve Stumpf, National Guild, Educational Committee. Just a couple of comments here. I think it’s poignant that at time when the Board may be excited, or the Chair may be excited about closer affiliation with NCCAOM, stronger profile of Acupuncture and Oriental Medicine within the research initiatives, it is really important that the Board understand that it should be promoting affirmative actions towards, or affirmative movements towards integrative medicine, science based medicine, evidence-based medicine. It’s not that the language of Qi Meridians and Five Elements is unusable or doesn’t have a place (metaphorical perhaps) and Mr. Kavoussi makes this clear in that the Board is not trying to regulate what schools are trying to teach. However, there needs to be a disentanglement by the Board with the kinds of messages that are being sent out and I strongly encourage the board to consider what Mr. Kavoussi is trying to introduce as worthwhile and I hope that you give him serious consideration.”

Ted Priebe addressed the Board saying Ted Priebe. I am a licensed Acupuncturist since 1983. I’m also, for the record, an appointed member of the Medical Evidence Evaluation Advisory Board for the Work Comp division and have been for four years. I’m also the education and research chair for the National Guild. One of the things that we presented along with Mr. Kavoussi’s presentation is that we developed for the Board, which I stated last time when I was here in March, that we would give a written document on the Occupation Analysis in relation to these very issues. One of the things that I want to address here which is something that continues to be overlooked by this Board for a number of years and I’m still baffled why this happens. So I’m just going to read from this one section on Terminology. We are licensed as Primary Care so we have an obligation to teach core competencies required by the Institute of Medicine also required by the State and sections of the majority has been spoken about. This continues to be a problem with licensing, book references and so forth. Using Chinese Pinyin terms to explain diseases to patients and the public and other healthcare providers or insurance companies is inappropriate. These terms are incomprehensible to other health care providers, insurance companies. Pinyin terms are individual syllables used by the Chinese to teach foreigners how to pronounce Chinese characters. Pinyin is verbal short hand. Like slang, we’re dealing with tens of thousands of Chinese written characters. There are four hundred phonetic Pinyin terms. They are applied to all Chinese characters. The use of Pinyin terms along with the tone assigned to the character is used only in speech. It cannot be applied as a written substitute for actual Chinese characters and is therefore unacceptable as a method for conveying written meaning. So having said that, do we need to get rid of all these terms? No. What we need to do is define them. We need to have a definition when we are using these terms, along with the anatomy, physiology or pathology to give these any type of meaning at all. Otherwise you are just misleading the public. It is dangerous to the public health because we have practitioners who don’t know how to translate those terms into biomedical terminology for them to be able to refer patients when they need to. That is a huge problem not only in this state but across the country but a majority of acupuncturists in this country live and practice in this state. So this board has an obligation to require those definitions along with teaching common core competencies of primary care as required within current statutes. Also along with this issue is the reference book list. The current CAB book list is inconsistent with California laws and regulations. It is also inconsistent with scientific evidence, the history of medicine and also the stated of vision of this Board. You have to be consistent. There needs to be a way and our questions to this Board are, “One, what is the Board’s guideline and criteria for including titles on the CAB book reference list. Two, once on the list, referenced textbooks are periodically evaluated to determine their validity and consistency with mainstream medical education and the laws and regulations and history of scientific evidence.” So we need a procedure to add those. We’ve submitted a very large number of books and articles in relation to what the scientific evidence shows - historical documentation. To only adopt metaphysical-based books as you’ve referenced for testing is inconsistent with statutes, it doesn’t protect the public interest which this Board has an obligation to and it basically caters or panders to the school system that it doesn’t want to commit to a different standard. We’ve also submitted, and I understand the incorrect use of resolution, however this Board needs to look at and adopt...

Robert apologized for interrupting but observed that while related this was separate business from Mr. Kavoussi on some levels. Ted asked what was separate about it. There is a discussion about separation of language and religion from this Board’s obligation to produce primary-care providers using science and physiology as it states in the law which has been ignored for the last twenty years. Adam asked Ted to summarize.

Ted stated that this Board needed to eliminate the religious and vitalistic metaphysical references from the CC&R

(1399.434), the book reference list, CALE and the facial analysis on the CAB website and the Consumer's Guide and develop criteria based on scientific evidence, proof and reproducibility that supports course content, reference selection, CAB publication, occupational analysis and license exams such that they are consistent with all other primary care professions. Charles asked if Ben considered the practice of Oriental Medicine as religion or religious activity. Ben replied that he did not. He actually published a paper recently proving that acupuncture works on neuroimmunology. The fundamental tenets of acupuncture that he questions... see, acupuncture, like anything else, was formed in an era where the fundamental tenets were intertwined with the Taoist philosophy and therefore inherently it has tenets in it that emanate from Taoist philosophy. Adam asked to hear from counsel in regard to this issue. George advised to ask for other comments. Adam asked for comments from other audience members.

Megan Haungs introduced herself as being with the American College of TCM of San Francisco. She said, "I've listened to the issues and looked over the Acupuncture training program and I really can't find anything that this is metaphysical in the language. We talk about certain principles and theory and I think all disciplines have certain principles in theory behind. Sometimes there are larger issues that may blend into other religious philosophy. Basically, every discipline has some underlying principle and theory and that certainly what we teach. We do teach some of the historical documents and I think it's important for any student of any discipline to understand the historical principles of that particular discipline and also to understand the evolution. As I look over the 1399.34 we do have some principles, other than that there I really do not see any mention of any kind of philosophical principles. The words basically primary care responsibility, psycho-social assessment... it's pretty straight forward language. Some of the other issues we need a little explained to work on but it seems very straight forward. The other thing is that the Council of Colleges of Acupuncture and Oriental Medicine, which is a group of about sixty colleges, meeting twice a year. In 2005 we undertook a survey of the schools to find out how our offsite clinics we were working at to get a sense of where were our interns placed. Three years ago, we had a large number of hospitals where our interns were working at, community clinics, there were 104 all together and we're now undergoing a renewal of this survey to see what's happened in the last few years. Our students are working in places like San Diego Hospice, Boston Medical Center, UC LA Arthur Aston Health Center, and Center for Community Medicine at Stanford University that we deem that our students have an adequate education to work in a facility with this integrated care. We would just like to say that our student's training does prepare and this is 104 clinics and hospitals that are having our students work there. They have affirmed that our students have the training to work in these places. Thank you."

Ron Zaidman, introduced himself saying he is "president of Five Branches University. I want to repeat what Ms. Haungs just mentioned. As you know, thirty percent of the program that we do now, of the academic hours, is in western medicine. So we are, I believe, meeting our responsibility for primary health care with that requirement since 2005. Also, to refer to our medicine as religion, I think would not resonate with any of our faculty, students or alumni. Modern medicine did come out of the Catholic Monasteries but I think if someone says that modern medicine is an extension of Catholicism, they would say, 'well, in a sense, it is but it really is it's own medicine' and I think the same sense is here. To say that our medicine is not related to physics, and going back to Pasteur and Vitalism, I think it's going too far back, just as we would go back to Catholicism. A very modern scientist, Albert Einstein, equated energy and mass and Qi is energy. It is in one of the more modern formulas. So to say that Qi is energy and that it is antiquated is not correct. Energy is a modern concept, there is an atomic bomb to prove it and this is the concept we talk about."

Bill Mosca commented saying, "CSOMA does not have a position on this so I'm going to speak just a few personal comments. I'm a bit confused by what the petitioners are actually asking for here. On the one hand, they seem to be saying that the theory of this medicine is metaphysical, vitalistic and faith-based. On the other hand, I heard that the principles are internally coherent but we simply need to define them in a bio-medical fashion. To me it's difficult to reconcile those two positions. I don't really understand if the medicine and the terminology or the theoretical principles are coherent and they work, why do we need to define them in biomedical terms? I don't see what that adds necessarily. I would also point out that while there are clearly Taoist roots to this medicine, extending back thousands of years, there has been thousands of years of evolution of this medicine and that has largely been an empirical process of evaluating what works and what does not work. The language that we currently use is, I would claim, difficult to translate clearly into biomedical and scientific terms. I think it is a challenge for all of us to do that increasingly and I encourage research that furthers our understanding of the scientific underpinnings of the medicine. I don't view this as a religion by any stretch. I believe that all of the principles of this medicine can be ultimately explained through scientific principles of one sort or another. I don't think we have the scientific understanding, currently, to do that. So really what we have are some terminologies acting as place holders for concepts that are not fully understandable based on our current scientific knowledge."

Skye Sturgeon introduced himself saying, "I'm currently a professor at the Acupuncture and Integrative Medicine College in Berkeley and former president and one of my focuses there was to develop the integrative medicine part of our program. I have a background in western medicine, a former toxicologist, biochemist, radio-immunoassay endocrinology. I also teach Qi Gong, pharmacology, I've taught all kinds of courses at various colleges in the United States. I am also aware that we mainly teach traditional Chinese Medicine, I would like to point out that it is a very old tradition going all the way back to 1949 when our medicine was put through the Dialectic Materialism of the People's Republic and it's questionable if any religious aspects survived what we teach. If we start talking about western medicine and where mathematics, physics came from, you start to talk about the Greeks and the Romans and the Arabs. There are religious underpinnings to every endeavor. However, one of the things that I have done in my teaching, and in teaching Qi Gong specifically, is I bring out facts like glycolysis, which, being a biochemist, I can write glycolysis on a blackboard right now and I can show you how that is completely consistent with Qi and

Air Qi gives you Righteous Qi and then I can break it down into five elements and show you how each part of the equation corresponds to the five elements. We are talking about different paradigms of understanding here. They are different and they are attached to language. These languages approach the same reality from different perspectives. Sometimes when people speak two different languages, you have to be able to translate. Someone has to have the ability to translate one into the other. I think we do that every single day and some practitioners are able to do this better than others and some can't but that doesn't mean that there isn't truth there. As you mentioned before, we're talking about outcomes. How you arrive at outcome, how you arrive at patient healing is what we're doing here. It has nothing to do with religion. I don't think the State of California or the Acupuncture profession is endorsing any kind of religion whatsoever. I think what we are doing is teaching a subject matter which has tentacles that go in all different kinds of directions and we should provide as much context and information for the people that are studying this medicine that is possible. This has nothing to do with religion. It has to do with providing healing for people and that's all I have to say.

Steve Stumpf stated that he's been a health professions educator for eighteen years at the USC School of Medicine and also a provost at an Acupuncture college in Los Angeles. It makes a big difference what you teach in the classroom. It has a tremendous impression that is lasting on the practitioners. Clearly there is bias in this profession and among Acupuncture schools towards metaphysical concepts. Yes, you can measure atomic energy. There is a unit for it. I don't know anybody that has measured Qi but we still teach that.

Ted Priebe said, "Just wanted to clarify what I had said before about language. I wasn't saying that the language that's being used is somehow translated differently. Chinese characters are totally different. If you look at any of the current books that have the original Chinese characters in them. They don't talk about meridians; they don't talk about make-believe energy or organs. All these things can be explained with physiology – all those functions. The problem with using the language the way it has been and currently is being used in practice and in schools as they teach it is they don't match those words and also made up words by the French which get's translated into English. They are not the original characters. We know what the original characters said because we a number of validations from that by numerous sinologists throughout the world, not just from here. So practicing evidence-based medicine is what the requirement is in California as well as the United States. The new model of medicine, by the way, is the Bio-psycho-social model, which has now been adopted in law in California for the first time. That is totally consistent with what this medicine actually started out with. Chinese medicine is the first Bio-psycho-social medical model. Allopathic medicine has evolved to understanding them. Part of the terminology and part of the education that needs to be looked at is what our law actually requires us to do. We are licensed as primary care. This Board has an obligation to make sure that students get a primary care education so that they can function with a practice; so that they can get jobs. Currently most practitioners do not have a job. I know tons of people out there that call me everyday saying, 'I don't have work... I don't know how to integrate into the medical system... What do I do?' Well, we have other options, we have continuing education, we have those kinds of things but the core competencies have to be taught in the schools. You can't just teach metaphysics and leave the rest of it out and that is what is being done and this Board has an obligation to make sure that that is being done"

Ben addressed the Board stating, "I would like to briefly answer some of the questions. Regretfully, what I had feared has happened. First of all, I never questioned the validity of Acupuncture or any traditional medicine. I have the publication to back it up that it can be used to treat chronic inflammatory diseases and perhaps cancer. Nonetheless, the tenets of Acupuncture are intertwined with religious philosophy and the audience, or practitioners, or schools, are authorized by law to teach whatever they want to teach. Nonetheless, you, the State of California, you cannot endorse one set of metaphysical tenets over another set of metaphysical tenets. The only thing you can endorse by law is secular tenets. Therefore, we requested the books to be changed. This was the subject of my presentation. I don't question the validity of Acupuncture. I don't question Chinese Medicine. I think people are doing an incredible job treating people but the rules of the game are secularity. You have to endorse secular notions and you cannot endorse non-secular notions."

Neil Miller addressed the Board saying, "After listening to all the testimony, I am hopeful that the Board will reject the request. I've been practicing for over twenty years and when I started there were very few books on the subject at all that were translated into English. In the evolution of this medicine there are a lot more books. More books, especially in the last three or four years, have begun to explain physiologically with more and more research. Mr. Kavoussi had an article, I wouldn't change the entire educational and licensing process based on one article or book. I know that on the agenda there is place for to review more books. I hope that the Board will be open to bringing in some new books that will open the door to this evolutionary process. I think the request is over the top and that you will reject it. I think that is in the best interest of the profession and the public."

George said that, "the discussion, though illuminating and interesting, has kind of gotten far a field. The issue before the Board here is its regulations. That is the only issue that should be addressed in this petition and the way I read the petition is that these regulations are written in a way that somehow favors or establishes religion in violation of the constitution. Again, this is the first time I've looked at this regulation and it has to do with academic standards for schools that the Board approves and I don't see that any of these regulations are discriminating or promoting one religion over another. They simply have minimum standards of academic curriculum that these schools must meet in order to be approved to meet the training standards of the Board. If you take the logic of the petition to its ultimate extreme, you end up doing the very thing they are complaining about – that is you put the Board in the position of discriminating against religion, which is equally a violation of the constitution as the establishment of religion. I think that the commenters have pointed out here, the fact that you use religious terminology does not necessarily mean that you are establishing a religion. I take a basic example; every jurisdiction I'm aware of has a law that says you can't commit murder. That same law is in the Ten Commandments. Are those laws promoting the Jewish religion? I don't

really think so; it's a facially neutral thing. So I think when you look at the context that this regulation, to suggest that it is somehow promoting religion and needs to be amended, in my opinion it kind of collapsed because whether there are religious overtones in the teachings or the terminologies in the textbooks, there maybe, may not be but that is not the issue before the Board. I think the issue before the board is are these regulations unconstitutional, do they need to be changed, and I don't believe they are."

Robert asked if the Board could take action today on this.

Adam commented that, "personally, I've been an acupuncturist for over twenty years and I recognize, as one of our speakers said, that post-Maoist Chinese medicine, in China, in the United States was radically stripped of its spiritual history I wouldn't call it religious. And I wouldn't even call Taoism spiritual – there is secular Taoism, religious Taoism and medical Taoism, all of which are quite different from each other historically. And frankly, given the evolution of the medicine, as has also been suggested, it has evolved radically far even pre-Maoist times from the Taoist roots when you have the wandering mendicants up in the mountains collecting herbs and leading monastic lives. But even they were on a path of personal self-actualization. I wouldn't call that religious. Religious Taoism really evolved much later after the roots of Taoism appeared. Taoism, I would say, is more of a nature oriented philosophy which is materialistic in its essence in some ways. And the fact that we don't understand everything about our medicine scientifically, western medicine doesn't either frankly. I'm a big advocate of getting this medicine integrated because I want our students to have jobs also. I'm with you there, absolutely. Finding the best way to do that, working with the schools, professional agencies, the national accreditation groups, all of you, however we can do that, is fantastic. Getting some new text books is probably a good idea. We will probably talk about that a little later. I personally am very fond of philosophies. I'm a big fan of Joseph Campbell for example. World philosophies are tremendously important, I think, for human understanding. Campbell talks about, he such a good speaker on this very type of an issue, that you can talk about a devil or an angel, or you can talk about a destructive energy and a constructive energy. One's energy and one is anthropomorphized in the form of a little being in the form of a little being sitting on your shoulder with one saying 'eat the candy' and the other saying 'don't eat the candy'. It all depends on how you look at it and I tend to look at things, in Chinese medicine, for example, fundamentally metaphorically. We do not know what Qi is. We do not know what a lot of these phenomena are but, as someone else has said, it's empirical science that has evolved over thousands of years. When you read the works of someone like Sun Si Mio, you can tell that that was a brilliant human being who also studied Taoism and Buddhism because he wanted to understand human beings. He wasn't really Taoist or Buddhist per se, you can't be both I suppose, I don't know but he was a brilliant human being who wanted to understand the complexities of human illness. For me, the reason I think the tradition mixed with the modern is so important is because the modern alone is inadequate. My sister is a physician. Hardcore-mid-west-takes-aspirin-preventatively kind of doctor; that's the way she grew up. I'm the eastern, she's the western. That's our family. She's at the point in her life, like most of us, you get to forty or fifty things start to fall apart. Guess who she's going to now for her care. Us, because Western Medicine is now making her more ill with the antibiotics and all the other strategies. If you biomedicalize it all, my big fear and this is why I'm in the university and one of the reasons why I went back to the university is if we strip the history and the philosophy and the understanding of that, we have shut out millennia of understanding of human illness that could enrich our understanding of healing people. That would be such a historic loss. I hope that we can understand it through science because there's a brilliant light but it will probably be after I'm gone. I don't think we'll completely understand these things. As an example, Medical Acupuncture, which is by the American Medical Acupuncture Association, is mostly MDs. One of their recent articles was on Horary Acupuncture which Mr. Kavoussi said makes no sense looking at time. Biorhythms are an example of that phenomenon. I mean, it's just part of our human nature as we live in time and space. That is probably one of the most hardcore Acupuncture journals in the United States and they just published an article on Horary Acupuncture. Not necessarily a good article but none-the-less. Journal of Alternative and Complementary Medicine, also Mary-Ann Lieber, hardcore, very big science journal editor – Distant Healing. They don't know how but some of the people at the Institute of Noetic Sciences, which was founded by an Astronaut, up in Marin, they are doing research on distant healing. Their principle investigator is a physicist. They are getting their research published in the best physics journals in the United States. They're trying to show the physical nature of these phenomena. We don't understand them but it's not metaphysics. I mean I wish there had been more metaphysics when I was in school and I don't imagine schools have gone backwards. I imagine they are going more towards integrative medicine. I personally did not find much at all in my training twenty years ago. That's just my two cents."

Steven Stumpf stated that, "if there is an issue that hasn't been articulated, I think it's that there is a bias. Mr. Kavoussi has not asked, and he made that clear, for a repeal of 1399.434. He's asked for an endorsement, effectively, of the Board to support integrative approaches. Training in hospitals and community clinics is fine. That is a really good way to experience, as an acupuncture student, what it's like to work in mainstream medicine. However, there are very few acupuncturists that actually work in mainstream medicine and this profession is hurting because of that. In order to be more prepared for that there needs to be more discussion and diversity in the discussion about other approaches, specifically mainstream medical approaches to primary care. That needs to be an integral part and there needs to be more discussion about that. There is a dearth of discussion about that. Often, folks in the profession react defensively to protect what is perceived as an assault on Acupuncture traditions so widely that even in the discussion of the history of Acupuncture. Is it fifty years old? Is it twenty-five hundred years old? That needs to be discussed more and I would like to see the Board as the leading light in California and in the country about how Acupuncture is directed, should move in that direction and support that and that's what I think this petition is about."

Adam asked counsel to reiterate what the petition is about.

George responded, "Well on its face it certainly isn't. He's filed it as a rule-making petition and the Board has an obligation

to respond to it, either to accept it or deny it. On the ADA rules, as far as that gentleman's comments about endorsing certain approaches is something entirely different. If the Board would like to consider separately, you are certainly free to do that and that is not, as I read it part of the rule breaking."

Robert stated that, "it's a weighty subject and one we've all given a lot of thought to and will continue to do so as we look at the integration of Acupuncture into mainstream and into wider acceptance within more traditional western modalities of medicine and I think it is something that those of you who have been with us in the last two years since I've been here has seen that we've made significant strides towards creating and building those bridges, both of understanding and acceptance. And the work, I've just received your articles, Mr. Kavoussi, that you forwarded but I did read them last night rather late and I apologize if I've been yawning this morning but I had to have my dictionary with me because I'm not a doctor but there was a lot of very good information and this was exactly the kind of research that is needed to help continue building those bridges and understanding the physical processes of what actually happens when you put the needle in from the point of insertion to the point of completion of the process. This is absolutely critical and vital to the future of this profession so please don't stop. That being said I would like to make a motion."

ROBERT BREWER MOTIONS THAT THE BOARD REJECT MR KAVOUSSI'S PETITION. LARRY YEE SECONDS. 5-0 – 0. MOTION PASSES.

Adam thanked everyone for presenting very solid ideas. George said he would prepare a draft for Adam's signature. Adam thanked George for showing up and asked Cathy to pick up where she had left off.

8b. Education Business – Status of School Site Visits

Cathy directed everyone's attention to the table she had made of the current school applications that are currently in the office. The first school on the table is Nobel University. The last thing that Cathy had done back in mid-May was send them another letter for updated information. She both faxed and put that letter in the mail as well as phoning them and spoke with someone at the school informing them that they would be receiving this fax and letter. Since that time and up to a couple of days ago, she has yet to receive any information from them. The letter that she sent requested that they submit information to the Board by May 23. She sent them a letter on June 18 explaining that their application was considered abandoned and they would need to re-apply to be considered for school approval. St. Luke we've already discussed. For Kingston, Cathy has received all the materials asked for and is in the process of doing more review there. Piedmont, the same thing, after having requested the information in April, she received it and is working on reviewing that. She is still in the process of reviewing California Union University's initial application.

c. Letter of April 2, 2008 Regarding Interpretation of Section 1399.435 (g)(4)

Janelle addressed the Board stating, "I've included a copy of the letter I've sent to all the schools on April 2. There were a lot of questions regarding transfer credit issues. Once you started reviewing that section of law, it was apparent that we had been interpreting it different than the wording itself. So I sent out a letter to all the schools telling them that this was the current interpretation and that they no longer accept transfer credit of Western Science courses from foreign students. Obviously, that has caused a stir in a lot of the schools and I've included copies of some of their letters opposing this decision. If you go to Tab J, I've included proposed regulatory amendment to that section that would allow the schools to accept the transfer credit for western Science courses from foreign schools as long as they have the foreign documents/transcripts evaluated by a credentialed evaluation service and the verification of authenticity of the documents. That is where we have run into problems, especially this year, that the evaluation services are evaluating a piece of paper that someone provides them. They clearly say it's a photocopy without verifying that it's legitimate – that the institution actually exists or even came from that institution. I think it's very important that it's the school's responsibility to verify the legitimacy of those documents and in that case they can accept the transfer credit for those courses. Then I've taken it one step further. In the past we've had issues. I think Ron would appreciate this, that the Tai Qi and Qi Gong courses fell under the fifty percent transfer limitation so I've included just the exercise therapy within the one hundred percent transfer rule. This seems to be an issue with all the schools and hopefully this will take care of all those problems. I'm happy to take a look at the wording, if anyone has any suggestions."

Adam asked for comments. He stated that he and Janelle had a conversation about the proposed regulatory amendment. Instead of just having an A, the Board would potentially have an A and a B, where A would basically say that all foreign education documents must be submitted to a credentialed evaluation service to verify authenticity, so that that is very explicit. Adam said he is uncertain if the Board would want to specify. Janelle stated that she is not sure if the Board is allowed to. She continued saying, "I can submit that question to her. Currently we have, for the foreign trained students, evaluated their documents through a service that belongs to NACES. Well, it's our understanding that very few of those companies actually verify the authenticity of the documents, so I think it's important when we talk about it that this portion is covered but I will check with LaVonne if we want to identify the specifics. I only know of one that Christie and I have met with. They go the full circle of verifying everything."

Adam asked if there is only one or two agencies that the Board is confident do that level of authentication. Janelle responded that some of the schools might be aware of that but that's the only one that Christie has run into and she's dealt with a lot. Janelle thought it was WES.

Christie stated that she and Janelle talked to the gentleman for about two and a half to three hours and learned so many things. He said that even several of the services on the NACES did not authenticate. They have no problem taking the money and giving the student the information they need but it's never verified. A lot of them are 'verified' with photocopies only. They are not even original transcripts. He says that you get something that you think is an original but it isn't. Christie said she is sure he'd be more than glad to even come and speak to the Board.

Adam stated that the point then was to make sure the students went to an actual school. Christie replied yes and there are many places where you just pay and get any degree you want.

Ron Zaidman stated that, "We use to use WES, Western Education Services, and we switched because NCCOAM, the National Examination, was using ACRO. Our research has shown that WES does a more in depth job."

Janelle asked if ACRO also verified the logistics. Ron said he only spoke briefly to his admissions officer and she was saying that they don't do the same in-depth verification.

Adam stated that NCCAOM gets significantly fewer foreign students sitting for their exam so it's not as important an issue for them. He then asked if now is the appropriate time to discuss the one hundred percent. Janelle replied that that is what the issue is right now. Ron stated that there are two parts. In moving the exercise therapy up to the hundred percent, it does resolve the issue of not requiring someone who has done five years of Qi Gong to do fifty percent. However, he's not sure what article four of section 94770 is. Janelle stated that once they pass legislation to revive the Bureau of Private Post-Secondary in whatever form, this section will change. This is the former section of law for BPPVE for schools.

Ron continued saying one thing that happens with Qi Gong and Tai Qi is that people usually take it at an institute that is not accredited. They are normally at a different level. So by putting it there to avoid not requesting that people take those types of programs at accredited colleges. Keep the hundred percent but not add that requirement that it be from an accredited school. The wording of exercise therapy refers to the Tai Qi and Qi Gong, so we might want to use different words from exercise therapy, maybe Energetics. Janelle replies that that would still fall under the requirement that it be at a school that is approved under. That would change. Adam joined in saying that otherwise it would be hard to authenticate. Ron agreed saying that at the time all academic transfers were within a certain categories and the only two that weren't were Qi Gong and Tai Chi because those were normally at schools under a different category.

Janelle said that it fell under the fifty percent which wasn't identified as being taken at a school that wasn't a school approved under the Department of Education. Ron continued saying that could be that by putting at one hundred percent we couldn't take any credit. Adam then asked if putting that item back at fifty percent is Ron's suggestion. Ron answered that he thinks the issue we were looking at is that we didn't want to request someone who has done Qi Gong for four years to still do some introductory Qi Gong class, which is what we're doing in the program so maybe we need to create a third category, which is one hundred percent but not within this specific item. Adam stated that that's for Qi Gong and Tai Qi specifically and it wouldn't be authenticated through the same pathway presumably. Ron responded that the school will look at if the school exists, get some reference that it could be a school of Qi Gong in Arizona, that there is a transcript and that the program has validity but it would not be at the accredited level, normally what section four is. Janelle offered to add a subsection just for exercise therapy (Qi Gong, Tai Qi). Cathy added that it's B2D – Exercise therapy, the exact wording is Exercise Therapy. Janelle stated that is why she used that wording originally but it looks like the Board needs to move it to its own separate section to take care of that issue.

Megan Hans said that one other option talked about and passed was number 5 for fifty percent. One of the issues for the staff was the phrase "in individual subjects" had been inserted and that posed some of the problems. An individual subject may be herbs, which is a vast subject, or Tai Qi, which is typically one credit or so at individual schools and so we had talked at a previous meaning about deleting the term individual subjects so that one could look at the whole section of Acupuncture and Oriental principles, theories, treatments and procedures, fifty percent being able to be transferred in either by transfer credit or by challenge exam. In this way, another category did not have to be invented. Megan said she was very much in support of the language for the Foreign Students Transfer.

John, Vice President of Academic Affairs of Southern California University of Health Sciences, stated that we are in favor of the proposed changes and even about the exercise therapy recommendations as well. They use Western Education Services and are very pleased with their verification. WES does a very good job for us, both for the Acupuncture and our Chiropractic transcripts.

Steve Stumpf stated that he and his group are of the belief that there are too many acupuncture colleges. They believe that admissions requirements should be more restrictive not less restrictive. Transfer credit should be more restrictive not less. These pre-admission requirements, transfer requirements, the ease of entry in an acupuncture college and getting sufficient training is already a questionable proposition given the huge underemployment and unemployment of graduates. We urge the Board to tighten qualifications rather than loosen them.

Ron Sokolsky, from Dongguk Royal University, indicated as a point of information that the US Department of Education puts the onus of Transcript evaluation solely upon the school. It's up to the school to evaluate the service that they use and verify their credentials, as far as an evaluating service. So anything that comes out of the State's recommendation for services, may have a conflict. When I look at who to use for evaluation, the Cal State system usually has a list of recommended services.

Adam asked if that is a potential concern. It seems like the Board would want to make sure that we are covering our need of getting students who come from legitimate institutions. That is primary to me. Janelle replied that it is primary and agrees that it's the school's responsibility but the Board has to make it the school's responsibility sometimes and she's not sure that the list of services that is listed with the USDE... Ron S. said that most of these universities have their own list of evaluation services that students can use to have their transcripts evaluated course-by-course.

Janelle asked if Ron knew if it is for verification of legitimacy. Ron S. replied that he did not and this was the conversation he have had with the accreditation commission. Admission offices usually know what is and what is not a valid university in a foreign country. I know that if I receive a transcript from Kyung Gee University in Seoul, I know that it is a good school. I also know that there are a lot of very small schools. If you look at Korea as an example, there are schools that are approved by the government and there are schools that are provincially approved. Usually we look to the schools that are approved by the government not the provincially approved schools because there is a difference in the educational systems in those schools. So the institution has to do its own work when it comes to evaluating the school and the evaluation that is performed on those schools.

Janelle asked how one verifies that the transcript that is given to you is from that school. Ron S. replied that usually if you get them from Taiwan, you'll usually have a picture. There is some kind of cross-referencing that can be done with the transcript, either numerically or with a photograph. The same thing is true with domestic transcripts; one can get imitation transcripts from any major university that you want. It's an almost impossible task to guarantee one hundred percent that every transcript that you receive is authentic. If you do your due diligence you could weed out those.

Adam added that SF State has the largest proportion of foreign students. He could find out from his officer in charge of that what service they use.

Robert stated that it seems that while it is the school's responsibility to verify, as the accrediting Board, it is up to us to make sure that the schools are using the standards that we set. Basically, the Board's responsibility is making sure that the schools are using a service that is trusted. Robert added he would certainly want that as a consumer. Janelle asked if the Board wants her to come back with different language, are satisfied or should the Board wait for further research. She noted that the Board will be meeting again on September 8.

Adam noted that another item that came to mind was the notion that practice management from a foreign institution would possibly not be relevant in the United States. That is item number four there. Adam asked if people transfer practice management from foreign countries. He really couldn't imagine it and perhaps that can be struck. Janelle added that this section, however, isn't just for foreign students, it's for transfer credit in general. Adam asked if the Board could do something to just specify or highlight they verify authenticity. Janelle said she would check with LaVonne.

Kenny stated that he would like the issue to be clear so that the schools really follow the regulations and accept the credit transfer. Right now, before the Board passes these, the schools still cannot accept any foreign transcript unless we have these tests. Adam asked if enforcement could be postponed for a while. Janelle replied it can be and it's up to the Board, it's was one of the issues that the schools were going through. Adam replied the Board could pass it then and not have it enforced.

Janelle states that the regulations gives her the authority to go ahead and set up a public hearing for regulatory change for the Board's next meeting in September until such time that this regulation is filed with the Office of Administrative Law. We'll postpone enforcement of my April 2nd letter.

Adam stated that this would let Janelle's office move forward but the schools would not have to enforce it yet.

Sky observed that one of the problems that he's run into is that he used to work at a college in New York in Long Island that had a lot of people coming from Eastern Europe and the former Soviet Union with all kinds of degrees and asking for credits from schools that we had never heard of and we discovered that we were being given transcripts that were being created in Brooklyn. We depend upon the students to request from the schools and the schools send it to us and we don't really know if we're getting them from the schools or not. So instead, if the school requested the transcripts from the college, instead of having the student be the intermediary, may be one way of indicating whether one is talking to a real school or not.

Janelle asked if the transcripts are to come directly from the institution itself. Sky affirmed offering the example of the registrar or the mission's person, at our college would contact the university in question and have them send the transcript. Janelle asked if these colleges will accept one's request for a transcript as opposed to the student. Sky replied that he doesn't think they will but as a way to verify that a transcript has been sent. He thinks the student has to request that the transcript be sent. One would contact the school to see if there is a school and ask for a catalog and get something that you can then have an evaluation service actually look at. We were having evaluations services evaluate transcripts based upon materials provided by the students and they were all being made up.

Adam asked how the Board feels about moving forward with the stipulation that it wouldn't be enforced until the regulations were adopted.

KENNY CHERNG MOTIONS TO ACCEPT THE PROPOSED LANGUAGE AND TO HAVE THE HEARING AT THE NEXT BOARD MEETING AND TO POSTPONE THE ENFORCEMENT OF THE APRIL 2ND LETTER FROM JANELLE WEDGE UNTIL THEY ARE ADOPTED.

LARRY YEE SECONDS.

5 – 0 – 0

MOTION PASSES

Charles addressed the Board stating, "Coming from a consumer point of view, I have concerns of how we educate our Acupuncture practitioners. Our community is overly saturated. Every other block I see a clinic and all kinds of advertising and schools need students to sustain and run their business, however, it seems, like including St. Luke University too where I reluctantly said yes, however, as soon as they receive accreditation from whatever agencies, they will look outside. It seems that this license can be used as a way to obtain a permanent job here. I know there are language problems. I came here in 1975 and I had language problems and English is still my second language. As practicing oriental medical practitioners, in English, is very tuff when you learned it in different languages. I've been to many colleges and hear it from fellow practitioners and they think that now unless you

speaking English you probably can't survive. I think it is about time that all the Universities and agencies look into where we are in providing this education and the number of students coming out, taking the exam and passing. I know there were a couple of comments today of whether they can survive providing these services. I don't have the answers yet but everyone has to consider how it can be improved while at the same time dealing with these huge issues coming from other countries, namely fraud. The thing is who are the victims? We're the victims and I as a consumer will have serious questions. I think that in the future we can discuss how we can work together and would like to have the schools sustain the good students and make money so they don't have to go under. At the same time they need to educate good students and in return, I as a consumer, get quality services."

Adam responded with, "That is the kind of spirit that we want from a new Board member. You're the right guy for the job to improve our quality."

8e. Discussion Regarding English Language Competency Requirement

Cathy shared that she was looking to see if there were any regulations at state level for TOEFL requirements. There are ACOAM requirements which she didn't list on there. In order to accredit a school, ACAOM requires that the school require at least a 500 on the TOEFL if you go into the English language track of the school or 450 if you complete the program in another language. There is also a requirement for dentists, which is a little more general. The Commission on Dental Accreditation requires that in the case of applicants whose primary language is not English, a language proficiency examination must be considered prior to admission. So it doesn't have a specific standard but they do have to consider something. Other than that, the rest of the printout is correct.

Adam asked how many of these professions (dentists, MF therapists, MDs) are taught in languages other than English? Cathy responded that that was the other thing that she didn't look into specifically but from my understanding of all of the other professions listed here it's not necessarily teaching in another language but as far as she can tell, none of them offer the exam in another language.

Adam noted that that is a big distinction with our profession. Charles asked what is the basis for scores like 450 and 500. Cathy responded that she can't remember the organization that administers the TOEFL but I believe they have research that sets the levels of proficiency for their tests.

Adam opened by saying, "For those of you who weren't before, one of the reasons that this has come up as an issue is that at our last meeting there was an Administrative hearing wherein three of the four individuals had translators because they didn't speak English and I believe that three of the four were dealing with essentially selling their license for prostitution, which is a real problem for the profession. It dawned on me that there are people who are vulnerable. One of the ways to have someone be a slave is to bring them to a land where they are completely foreign and you don't acculturate them. They are trapped in their community and as the folks who were bringing up the petition earlier were suggesting, on just the issue of economic competition, if you are a new practitioner going into China or Korea Town, which is already saturated with old timers which have been practicing for 30 and you go head to head with them – I don't think so. That's how you end up making 10 or 20 dollars an hour and that is also bad for the profession. On that level, students being consumers, there is a real potential problem of throwing them out of that community when they don't have the English language competency. The other consumer at risk is the general community. If I can't make a living as an acupuncturist and I see I can make two hundred thousand dollars doing prostitution with my license – hello?! Pretty simple equation and I'll take the risk and probably a lot more people doing it that are being caught doing it so I'll take that chance. Who's hurt there? Who is the consumer there? It's not just Acupuncture patients anymore, but the whole neighborhood. Some of the big busts in San Francisco have been on 19th Avenue, a neighborhood area and that was an acupuncture prostitution center. My office that I was in for quite a while, down the block, somebody irked the competition. It was a house of ill-repute and now they're acupuncturists. So our landlord shut us down as a consequence, at least that was his excuse to get us out of there. So these hurt the broader community and obviously they are bad PR for the profession. If it's someone who has to do that because they are trapped linguistically then that is problematic. The third party that potentially suffers from that are patients who might have some serious problems that are not being understood by the practitioner that does not speak their language well. I'm all for cultural diversity and I'm studying language myself right now. I love languages and it's not that but about it being a consumer issue. If we've ever had a consumer issue for this Board, this is it. It might not appear that way at first but this is impacting the broader community, the patients and the acupuncturists as professionals. There are certainly a number of ways to help safeguard these communities by improving. People don't have to speak English fluently; my first Acupuncturist didn't speak much English at all. He was an awesome Doctor but at least we could communicate. It's that capacity to deal with 911 or whatever else you need. I think this is a really serious consumer issue."

Ron S. added that ACAOM also requires a TSE portion also IDP TOEFL which includes the TSE portion, so there are other avenues to assess an individual's ability to communicate English. That goes when one is entering their clinical phase of their training and he really strongly recommend that the Acupuncture Board and the State of California establish some type of Education Chair available for somebody from the institutions to sit in with the Board to discuss these issues or have some type of subcommittee for the institutions to meet so that everybody can brainstorm what goes on the campus in the clinic and how it is perceived by the Board. Ron S. is of the impression that there is a lack of communication between the Board and the Institutions and doesn't really see a lot of oversight from the Board as to how the institutions really do act and what they do with the curriculum that they have designed whether it is didactic or clinical.

Adam asked Ron S to clarify. Ron S. replied that institutions are left alone. We all know how to generate the paper,

whether it's the Board that wants to see the accreditation or the BPPVE. What is more difficult is to put into function, in actuality, not for all of the schools but for some of the schools, it's very difficult and unless there is some governing board that comes around on a regular basis, to look, to see what's going on, there really is no need to adhere to the letter of the law. I know that when I first started coming to meetings back in 1995, there was a statement made that the Acupuncture Board will start visiting institutional clinics to ensure that what is taught in class is actually brought into the clinical setting and I would really welcome that. I think most of the schools would appreciate that type of oversight and guidance.

Adam asked about the language issue. Ron S replied that it's the same thing with the language. I have students that come in with their TOEFL. They can sit right in front of me and cannot have a conversation but they want to go into the clinic with the 450 or 475 TOEFL. If you ask them where they got the test they respond from the school down the street. There are a lot of institutions that teach Oriental Medicine that also generates their own TOEFL. Just because the document is there, as with the transcript, does not mean it is a valid document. There needs to be closer oversight by the school and I think the Acupuncture Board needs to regulate a little closer.

Janelle commented that the Board's authority over schools is so limited. It was the Bureau of Private Post Secondary and Vocational Educational that had almost sole authority over what the schools did. Ours is strictly the curriculum and transfer credit. That's where our authority rests. Now if everybody wants us to, the law needs to be strengthened. Other than that we have no right.

Ron S stated that he is not trying to demean the Board but to ask for support. He cannot make a portion of the institution do something unless they know that there is some kind of consequence if they don't respond. Janelle responded that she would support something like that but thinks there is a misunderstanding on how much CAB can actually do. If the school doesn't comply with teaching to the curriculum then we can do something but outside of that... Ron S asked how is one to know if the school is teaching to the curriculum if you don't visit the school. Janelle responded that other than just the transcripts themselves and she's aware that we're right back at the verification of the transcripts but that is where CAB's authority rests.

Ron S stated that all he wants as an educator is to insure that when his students graduate they are more than successful in practice. He looked at the curriculum that is under 1399.434, the curriculum is good and there is a lot in there and there are a lot of schools, certainly, that really go to the letter of the law and they have the support mechanism within the institution to do that but at the same time there are schools that know how to state it, know how to write it but don't really push it, don't enforce it, and he thinks that is one of the reasons why there is such a low success rate in the schools in the state of California because the students, in some of the schools, cruise through. There is no enforcement by the state. There is no support for those that have to enforce those types of curriculum requirements.

Charles replied that it is very important to say that because what the Board is trying to do is improve the quality of education, especially when talking about an institution that educates our practitioners. It is Charles' hope that in the near future we can all get together and assess what are the issues and how we can improve and begin working together on them. If it is not in our jurisdiction then we'll find out whose it is. Unless we put our act together, someone else will and then this profession will be looked down on.

Ron S. addressed that it's already happening with the MDs and the physical therapists with their dry needling. It's on the line now. If we don't really take some proactive action on how to get things on track – educationally and professionally – were going to have a problem down the road.

Charles noted that the most critical group of Korean OMDs or Acupuncturists are medical doctors. His rotary club wouldn't bring in one acupuncturist as a member because the MDs were objecting to it.

Ron S. asserted that if we can work together and take down this barrier between this Board and the institutions, a lot more can happen in a quicker way.

Cathy suggested she could always go on more site visits. It's just a matter of the plane tickets.

Adam recalled that there was somebody on the Board before, maybe Cary or Robert, who talked about doing random visits. Robert noted that it was Cary.

Cathy offered that that's something that she'd like to start doing now that she's almost caught up. Janelle noted that she would talk to LaVonne but CAB doesn't have the legal right to do that. CAB has to have complaints or issues, that's when we have the right. Unfortunately, CAB is complaint driven.

Adam asked if CAB could do periodic visits. Janelle responded that that's back to an inspection but that she'd check with LaVonne on that.

Neil Miller asserted that this is a very important subject – English proficiency. He doesn't think it has any bearing on illegal activities except for the issue that needs to be addressed. He goes on to say that, "we could talk about it under enforcement. The biggest problem is communication amongst practitioners. If someone is being seen in a different part of town and they come to see me and they say I took these herbs and I got a rash and I called the doctor to find out what herbs are in there or 911 is a big one or communicating with other healthcare providers. That is the biggest disservice that we, as a profession, are not coming up to a standard and I do believe it is within your purview to protect the public and I believe it is in the best interest of the public to have a certain level of requirement for English proficiency. I don't know about the scores and all that stuff but it's just common sense that I as a health care practitioner should be able to talk to any other health care practitioner and find out what herbs they were doing that may or may not have a good effect. That is the biggest complaint as an organization that I hear from MDs that we talk to, is the inability to communicate with practitioners."

Adam wondered if any of the school representatives would like to share how they evaluate TOEFL or how they assess

language competency for foreign students.

Tom Haines of Pacific College noted that, "I'm not in admissions but I'll attempt to answer that, Megan probably has a better background in that. First, we only teach in English. We don't have a lot of foreign students come to our college. We're twelve hundred students, so we're one of the larger if not the largest colleges in the country. Primarily, the English proficiency must be such that they can understand the content within the didactic courses. That's a two way street. We also evaluate the professors. We just hired a Ph. D from Beijing, Barry Zhing, and he went through a rigorous process in getting evaluated on being able to communicate to the folks that speak English. On the other hand, with students, the primary concern is once they reach clinic. In clinic, they need to be able to converse with the supervisors and other interns and that's a little higher standard. So there are several gates that are used within our college that are used within our college to make sure that people are able to understand English and I agree with Neil that this is a large problem – communicating, if you have second language as English, that you make sure that it is at a level that you do no harm, so to speak."

John S of Southern University of Health Sciences adds that, "We use TOEFL but we also just have an English program and it's fully in English and really one of the driving reasons is one our missions, and vision, is to graduate successful practitioners and we feel that they would be limited if they were into small communities to be successful. So if they're practicing in the US, to have that English proficiency, we feel, is valuable to them to be successful when out practicing."

Adam asked where they get their TOEFL assessment.

John S. stated that, "they can be from anywhere actually. We don't offer that on our campus per se. We do and are moving towards our mentoring program, which is our remediation program, where as people academically are not making it up to the standards, we may be moving into having the English as a second language, having their primary language in our tutoring while we still have our main curriculum in English as well. So those are some things we are moving towards to help our students both communicate better in English as well as the understanding of the coursework as they are moving through the discipline. They need to be proficient as they make it into the health field but also as they graduate but they are going to get lost if they don't understand English within our full English program."

Robert asked if they teach in multiple languages. John S. responded that they just teach in English. Kenny asked him what his TOEFL requirement is. John S replied five hundred.

Ron Z. of Five Branches noted, as was mentioned earlier, that ACAOM, the Accreditation Commission, does specify five hundred for the English program or four hundred and fifty for the Chinese and Korean program. His college simply follows those standards and, as John said, if someone is entering just shy of that they will be guided by the school to get to that standard as soon as possible.

Adam asked if they can get their TOEFL test anywhere.

Ron Z replied that the TOEFL tests are submitted to us by centers that do TOEFL testing, similar to SAT and other exams.

Adam stated that he had heard from several people this notion that some of the Acupuncture colleges do their own TOEFL testing somehow. To him that seems like there is a conflict of interest. He asked how could one have a TOEFL score and not speak English. Adam also asked then what the TOEFL score represents. Ron Z. responded that he will look into that. From what he's heard there was no concern about the legitimacy of the TOEFL scores.

Robert asked if it is within CAB's purview to add in our Foreign Language tests an English section which must be passed. Adam noted that it was an interesting idea that certainly would be a test of language competency.

Ron S. addressed that he had a caveat to the TOEFL test. There are two types. One of which is an institutional TOEFL which is a TOEFL exam that the school gives for the benefit of its students and they are not transferable between institutions. So if you are going to write language in regards to how you are going to require it be presented, he would make a recommendation that you eliminate the institutional TOEFL as being an acceptable means.

Adam noted that that was the issue and thanked Ron for the clarification.

Robert stated that putting it in the exam certainly takes Neil's concerns into account because we can test for what they have to know to be able to communicate with other practitioners within the acupuncture profession. Adam added that one could even put it in the Western Medicine section which is the most Western (hypothetically).

Bill Mosca said that LaVonne is not here today but he knows that she has mentioned in the past that there are some requirements in California, if he understands correctly, that if a certain percentage of examinees requested a different language that according to California Law it would have to be translated into another language.

Adam responded that that's the point and it might require a change of regulation or law but the issue is can you speak enough English to save someone's life who's having a heart attack or even to talk to Neil, down the block, about the case your sharing, that's a good time to test people because they are sitting for licensure.

Bill M. replied that it's not within the Acupuncture Act itself. It's actually written in another section of statute right now that if more than a certain percentage of the population that is taking the exam requested that...

Janelle clarified saying, "Currently the regs say you shall give the exam in English, Chinese and Korean and if more than five percent of the population requested the exam in another language then we also have to give it in that language."

Bill M. asked if that is in the Acupuncture regs. Janelle affirmed. Robert asked if the Board could change that. Janelle affirmed. Larry suggested CAB should do a little research.

Robert asked if we are at the point where the Board could direct counsel to explore language to change that, both the regulation and perhaps the exam. Janelle responded saying that if that is the direction the Board would like to move, yes. She thinks everybody is in agreement. Robert noted that the Board wants to be careful but also to move forward. If CAB has

a sunset of July 1, 2009 let's give it nudge. Adam noted that his only concern too is that the schools will have to implement that. It sounds like there is a reasonable amount of agreement, or at least not a significant amount of opposition, to having people being able to speak English. Janelle replied that she thinks they're just going to happen. The schools aren't going to have the responsibility of testing them. They're just going to have a requirement whether it's a prerequisite, or however they would write it in.

Adam stated that we wouldn't have the national TOEFL and these students would know and schools would deal with that however they would deal with that. He doesn't think it would affect schools much. Cathy added that a lot of the schools already do it since they want to be ACOM accredited. Adam affirmed adding that if we got rid of the institutional TOEFL, that would improve the reliability of TOEFL.

Robert noted that if the schools know their students are going to have to know their subject or at least be able to prove proficiency in order to pass the exam, they are going to have to make some shifts. Those that currently don't have it will have to and that is OK.

ROBERT BREWER MOTIONS TO DIRECT COUNSEL TO EXPLORE LANGUAGE TO REQUIRING ENGLISH PROFICIENCY AS PART OF THE CALIFORNIA ACUPUNCTURE LICENSE, PERHAPS INCLUDING IT IN THE EXAM.

CHARLES KIM SECONDS.

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(LARRY YEE ABSTAINS, WAITING ON LEGAL COUNSEL)

MOTION PASSES

9. Examination Business

a. August 12, 2008 Licensing Examination

Christie shared that the next exam is going to be August 12th up here in Sacramento. It has not been broken down by language yet. So far we have 250 retakers that have applied and we have 400 new people that have applied to take the exam. There will always be those that cancel at the last minute or don't show up but we have a rough estimate of a possible 650 people for the exam. That's probably the highest one that we've had or close to it.

Janelle added that our biggest battle, which Christie can share with the Board, is those requesting Special Accommodations. There are around 150 who have requested special accommodations for extended time and the majority is for extra time to eat. We are trying to make adjustments since this probably currently occupies perhaps almost as much as a third of Christie's time. Christie noted that, "it's almost as much as reviewing their applications cause it's letters that come forth and even though I do understand that it is a long day and a stressful day for them and I could easily understand that they need a bite to eat, or something to nourish them to keep brain activity going on but for them to get two and a half hours extra time for a five hour exam for two hundred questions when there are other people that are doing the same thing that don't get anything. We have researched other exams and they don't get near that time for eating purposes."

Adam asked if currently the exam is five hours straight and if the examinees can't eat.

Christie responded that the examinees are given granola bars and they are given water and they can go to the restroom any time they want, it is on their time. In the past, ten years ago or so, we had maybe ten or twelve people have special accommodations. Now we have, as Janelle said, 120 - 150, and it's because word has gotten around that you can just get your doctor to write you a letter to get you two and a half hours extra.

Adam asked if they get extra test time or extra break time. Christie affirmed that it was test time. Adam expressed that it was not right and Robert noted that it just doesn't work.

Christie said that the need for nourishment is understandable but some of these same people who complain the most and have their letters really don't take that much time at all. They might take maybe twenty minutes at the most out of their time to eat their meal. They can go to the back of the room and eat it when they want, a sandwich or some fruit. We also have some hard candy, I know it's junk but it will give them a little energy but they don't need two and a half hours and it's not fair to those who do take the exam that don't get the two and a half hours. So we're definitely checking into it to see what other exams do to give a break in between, but everybody gets it and it might be forty five minutes or an hour but it's not two and a half hours. Janelle noted that we're making adjustments accordingly.

Larry Yee asked how we got to two and a half hours. Janelle responded by saying,

"Actually years ago I believe the testing company recommended this because they did not have the facilities to test one group with extra time and this group with just food. They said that whoever wanted food and had a doctor's note we'll give them all time and a half. Well that got around. Now this was six or seven years ago and so now word has gotten around. If you have hypoglycemia you get two and a half hours extra time and with every exam there has been an increase. Now most doctors just say, 'with additional time to eat.' So this year, Christie has been sending a letter to the doctors verifying that we've received your notification that your patient needs food and time to eat however you have not stated any time frame so we are going to give your patient one hour extra time unless we hear from you to the contrary with documentation of why more time is needed. So far I don't think she's heard back from any doctor so I am assuming they are accepting the one hour extra time. We will be monitoring it during this exam, since Christie and I are there, to see how much time they actually use, and if the next exam we'll reduce it to a half hour but we're also exploring the possibility of dividing the exam the first hundred question in two and a half hour and then a short break then the next so that everybody has the same thing."

Adam noted that it makes sense from a test taking perspective. When he took it there was a lunch but it gave one a chance to rest and reenergize. So it's probably just good for test taking also. Christie agreed saying, "Absolutely. Get some nourishment, a little bit of space to think and get ready to go back in there because it is a very stressful day for them and a lot of them, since a lot of our schools are in Southern California, unfortunately have to fly up the day before, they're in a hotel room the night before. They're not used to a strange place. They have to wake up early. There is a lot of stress and I understand that but it just doesn't seem fair and that so many of them are getting the extra time."

Adam asked if we have to make any changes. Janelle responded that there is no need to make a motion on it. Robert added that he would like CAB to take a look at it. He likes the idea of splitting the exam. Here's the first half, you finish it in two and a half hours and then we pick it up, then you can have forty-five minutes, then you come back and we'll give you the second half. Janelle agreed. Divide the exam into two separate booklets so it's not as if they will have information to go look up during the break.

Bill Mosca of CSOMA stated that he thinks this is clearly an issue of herd mentality increasingly of students who have learned that if they're hypoglycemic it earns more time. Bill offered that it may not be as simple as just chopping the exam in half but cautions the Board to actually take a look at that because it may not be a valid assumption to assume that the first hundred questions of the exam are the equivalent to the second one hundred questions of the exam.

Janelle agreed with Bill but noted that they divided the questions up differently than how they have in the past. They used to have all of your diagnosis questions in one area and now it's been spread out. They started that a year ago. Bill added that it used to be that you'd march through each subject area and he knows that the last twenty questions or so pertained to the Laws and Regs. A lot of people started at the back because that was the simplest to get through. Janelle acknowledged that but clarified that that is no longer the case.

Tom Haines addressed the Board saying, "Before we get off the subject, I just wanted to beat the old drum about first time test takers. In your stats it looks like 39% will be retakers. Now we had a 59% pass rate on the last exam. I spent some time with the staff and found out our first time test taker rate is 72% which is a little more palatable. So we need to sort out the first time takers if that's any way possible." Janelle responded that she and Christie are so close. This time we ran into some issues with ATS but we're narrowing it down really quickly. Tom Haines added that as an indicator, it would also be helpful for my school to get feedback from the five areas as an aggregate. Also for the profession, it would be helpful if we had a composite for all schools by the areas, curriculum wise. It would really help.

Janelle noted that she had received a copy of Tom's application, the enrollment that shows that all of your students do in fact give you the authority to get their scores. It's just, again, working with ATS, we're learning to run our own queries that we can run a list on just your students and then able to, before we file those away, be able to copy those automatically and ship them out.

Tom Haines declared that he'll be dogging CAB till we get that. He's been keeping stats for the last twelve or thirteen years and it really goofs up his stats when he can't separate out the first time takers. It really distorts the picture. It looks like 50% of the population is not passing the exam when in fact the majority of that is going to be the retakers and then the more they retake the less chance they have of passing.

Robert noted that CAB had talked about that before and we had asked staff to go to the testing service to see how we could provide you with that information cause we all recognize that the more information you have about what your students are having to assess the better you can educate them. Janelle responded that the testing company themselves can't do that but he (Tom) has given her a copy of their enrollment application that has as a stipulation that the student gives the school the authority to have their scores reported (to the school).

Christie added that we do have a handful or two of people that maybe applied for the exam and got approval a couple of exams ago but never have taken it. So when they do take it, even though it's been maybe a year and a half or two years since they applied and got approved then that would be their first time taking it.

Adam asked if for our own purposes, from the testing service, we would be able to break down first and second by area as well as per school for our own internal use.

Janelle answered that she can have the sheets, a sub-score report, that shows what each student did in each of the five areas of the exam. She can have that information as to how the school performed. But the testing company doesn't have information on the school. It is information that we have to do internally.

Adam emphasized that we could use this concrete information about the efficacy of the school in training their student to evaluate the school itself. That might be the red flag we need to say that these are schools that need to be evaluated more closely. Students are paying a lot of money these days and they are not passing the Boards. They're getting ripped off and that is problematic.

Ron Z. reiterated that the Board used to publish first time takers versus second timers. That is a very important statistic, so if it could be organized in time for the next exam, a lot of potential students and schools will be grateful. On the examination, the recommendation by Mr. Brewer to do the exam, break then exam again, one of our faculty did do research for other medical examinations and that is the pattern they are using and I think we could follow the same pattern and support the reality of taking the exam.

b. Process for Reviewing Out-of-State and Out-of-Country Transcripts

Christie noted that right now, our foreign applicants are evaluated by Henry and he has the course by course evaluation

carried out on their transcripts by the evaluation services. Now as far as the school ones, there are only a few schools that I know of that if they do it, they don't send the reports to us but the schools feel like if they accept students there and they give them transfer credit then they will want a course-by-course evaluation report before even giving them that transfer. However, as far as I know, most schools don't do that. They just give them a challenge exam or something. She knows they all request a transcript, now whether the transcript is any good or not is the question. Janelle added that regarding the out of state transcripts, that would be identical to any of the transfer credit within the US. Christie verifies that we do have that transcript whether it's from a University or a community college. She verifies that the course they were given transfer credit for does appear on some transcript and that it is one of the requirements in the curriculum.

c. Exam Reliability of August 2007 and February 2008 Examinations

Janelle relayed to the Board that the one person who had asked for the information had left but here it is. He had asked for the exam reliability. So for the August 07 exam, it was an inter-item reliability of .934, which I understand is really high. For the February 08 exam the figure is .936. Adam noted that those are very good figures indeed.

d. Exam Contracts

Janelle noted that Larry had asked that we bring back the exam contracts for both OER and CPS. Larry replied he had wanted to take a look and fiscally review it. The exam was for 2007. Larry observed how the printing is taken care of and asked how do we protect the integrity of the test.

Janelle answered that with regards to the printing, CPS has their own print shop, it's done in house. Only so many people have access, a very small amount, two or three, to the print room. They do not get the exam itself until just days before. So really information can't leak out too soon there. All individuals who do have access in the print have some type of security agreement that CPS requires. Janelle shared that she had been through process before and it seems to be airtight. She believes the information to be secure. CAB is going through a new contract process right now with CPS and one of the questions is how come you are not using the Office of State Printing to do the printing of your exam booklets. Once you get out in such a large environment, you really have no control and this is the best way to go. It's a very secure area.

Larry asked how many days before the test do they print the booklet. Christie responded that it's not very many, perhaps five to seven days.

Janelle added that the individuals who have access to the exam itself when they are printing it have been employees of CPS for it seems like ten plus years. Not the new employees that come and go.

Christie said she believes that at one time we did get down to the minutes on who has it and for how long. Janelle acknowledged that they have a tracing system that tracks who views it and where it is located. Larry asked if we send it to them electronically. Janelle replied that she doesn't believe that it is electronically. We don't even have access to it. It actually comes from the office of exam resources which does the development. We all review it in one room and go over and see how it's lined up, do we have questions one through two hundred, and are there four options to each question. OER, Office of Exam Resources, the State office, takes the exam and locks it up till it's ready to be printed. Then they take it over and hand deliver it to CPS. There are only two individuals in OER that have access to the exam itself and then I believe that there are two or three people at CPS during the printing and numbering process and it's traced there. CPS brings the exam to the test site themselves.

Larry inquired if for the test package there is only one version for all languages. Janelle answered that she still thinks there is a version A and B but they're together. The company gets handed the two versions by OER. It's not something that CPS develops or mixes up the questions.

Adam queried if CAB had thought of a computerized version and if that is a challenge because of the languages. Janelle affirms that it is a challenge due to the interpreters. While we still give it in Korean and Chinese, you would have to have both of those at all testing centers. Adam hypothesized if we could do computerized if the exam was English only.

Janelle verified that it would be possible and then we would have the questions switched all the time and immediate results and a lot more security.

Christie noted that at one time we also offered it in Cantonese and Japanese as well for a total of five languages but now due to the reduced demand, below five percent, it's just down to the three.

e. Review of Book List/Herb List

Janelle noted that as CAB is going through the occupational analysis, this is good timing for revising the booklist. Three extra books that individuals have requested the Board add to their reference materials are included on this list. During the occupational analysis they request input on different books to add and then information is sent to the schools for their input. Other schools may have wonderful information about the quality of the books. We have to rely on the schools for information. We have no choice. We also take suggestions for books that are outdated.

Adam asked to confirm that we send the request to the schools. Janelle informed the Board that she has yet to do that. She is still waiting for information on the Occupational Analysis. Adam inquired if they can proactively send ideas to CAB. Janelle affirmed.

Ron Z noted that his school would prefer for something to be mailed to them so at least the faculty have a list of what CAB is presently using. Adam asked Ron if he would then add or subtract sources. Ron affirmed on both.

Tom H. added that, when CAB sends out the survey we might ask what sections of what book the individual/school uses. It would really help curriculum-wise to tie the curriculum to the resources in a more efficient manner. Adam queried who CAB sends it to at the colleges?

Tom replied the Academic Dean. Adam concluded that they all then get back to the Board. He noted that there are books that should be on this list but aren't.

Tom noted that some books increase the material they cover so as they increase we need to target what parts of these resources are most important.

Adam observed that it also might be interesting if a number of schools contribute and you triangulate by seeing who suggests the same books. This way everyone could have a recommend list for reference. Some of the books, like musculo-skeletal acupuncture, pain management, though very specific might be very interesting.

Neil commented that the book by David Kale has been recommended and is very good. Another book on risk management is not on this list but also very good. The Tao of Chinese Medicine, probably the best theoretical explanation in terms western science. Also coming perhaps under enforcement is Drug-Herb Interaction which would be John Chang's work which is absolutely essential that it be part of the list.

Adam asked if Neil could you send CAB your recommendations. Neil affirmed.

Robert implored everyone to please send recommendations for the book list. We want it to be as comprehensive as possible. Robert appreciated the reading a lot.

Adam asked about the herb list. Janelle responded that Neil is a good person to have for this because she had to go to him. She had an individual come to me regarding this list, a list of toxic or illegal herbs that cannot be used in the United States, that there are three herbs on the list that, according to this one individual, should not be here. Janelle inquired as to who had institutional history on how this list was created and... Neil. Wasn't it through having, years and years ago, through Richard Ko...?

Neil replied that, "the Department of Consumer affairs had an investigator, Richard Ko, who is now doing consulting work on this particular issue, so he would be a great person for the Acupuncture Board to bring in to discuss what he did working for the Government and now he's out in the public talking about drug-herb interaction. So he came up with the list, so if there is anything that's toxic on any level then it was put on this list. The 'Kitchen' herbs are honey, and the white part of the green onion, sulfur. There are a number of other herbs on this list that are used externally not internally. So yes, if you were to ingest it might kill you but we don't use it internally so I don't think it should be on the list. Regardless, I think that some of the herbs that should not be excluded from being tested on and I think that there are a number of medications that are toxic and they are used. There are a number of herbs that are toxic that are used. We are not along far along enough in the evolutionary process to be able to decipher between those that are toxic and those that you can find in the Kitchen and those that are used medicinally but I think that within the purview of the Board to test on all the herbs that are being used. We find that common formulas are not tested because they came up on a list that might have some toxicity to them."

Adam asked then if the recommendation was to review the list with an expert. Neil recommended to review the list with an expert and to begin the process which isn't a short process, to put together a... Robert inquired if this was to be a comprehensive review of the herbs used in practice. Neil responded that a task force should be assembled to discuss how to deal with this issue of herb drug interaction and toxicity of herbs and what is and is not being used. He continued, saying, "we have a license for a reason and that is to protect the public for Acupuncture. We've added herbs to our scope of practice. We started this about fifteen years ago when I first brought up the idea of ephedra. One of my patients parent's came in and they had ephedra pills that were being sold in school and ephedra started popping up in soda pop and all sorts of other things and I petitioned the Board many times to address the situation and to send out a public service announcement on the dangers of this. That we don't use it for weight loss or energy but what we actually do use it for. Well it's now off the market because it was so abused. As a practitioner, I now have a real difficult time to obtaining it from my pharmacy and the public doesn't have the advantage of this medicine. I think that the process should now be more formalized in terms of creating an educational process for the Board and a track for the public and the profession so that both are protected by allowing it to remain within our expertise to use as licensed practitioners and that license does mean something."

Adam asked since the Board is not necessarily an expert in that domain if he is suggesting a professional panel that would consult with the Board. Neil replied that, "well I think you should be aware of what is going on in the public and the profession. What the public has access to. Now some of that might not be within your realm because you regulate Acupuncturists but I think that it is in the best interest of the consumer that this Board communicate with other regulatory agencies about these issues and if something is being used in Chinatown or Korea town that is within our scope but should not be in the public realm, this would allow that those discussions take place and you could take a proactive role on getting those discussions started."

Adam confirmed that Neil is recommending Dr. Paul and Dr. Chen to come and present to the Board. Neil affirmed

that Chen and Ko, perhaps to have a task force to discuss what some of the issues are and maybe have that task force make a presentation to the Board. Neil recommended that we turn to Sky who has more experience than he does in this.

Sky addressed the Board saying, "I'm a former toxicologist and I got into this educational field because I went to the Council of Colleges, in Florida years ago, when they were presenting the California Compendium and they explained some misunderstandings that they had about the data that they were giving. I teach a course on pharmacology, pharmacognosy and toxicology of Chinese Herbs and I also teach drug interactions, I talk about endangered species, all of which are on this list for one reason or another. Your first statement here is inaccurate. These herbs are either illegal or considered toxic in the United States and are replaced with other medicinal herbs with similar properties and preparations. That last part is not true; *Fruitsa* (?) is still used. The other thing I would tell you, just to pick one example, is there is a saying in toxicology that there is nothing that is not toxic, that it is only based upon dose and the formulas of Chinese medicine have take the toxicity into account and as Neil has pointed out some of these are toxic only if taken internally and this is also pointed out in our medicine. So excluding herbs based upon some arbitrary understanding, for instance, even cinnabar is not toxic unless it's heated, so if it is heated and it is put on top of a pill that is really thought to be non-toxic. The whole question here of eliminating these herbs because they are toxic somehow is not addressing the issue that we use toxic herbs, either in safe doses or in ways in which the toxicity has been either reduced or eliminated by the addition of other herbs or by treatment of those herbs, according to traditional standards."

Adam asked Sky to clarify his recommendation.

Sky elaborated saying, "I don't understand why some of these herbs, some of which are very important to the medicine, are being excluded from testing based upon the fact that they might be toxic given in inappropriate ways or doses. I know that I got into this field because of my background in toxicology and one of the things I did as a site visitor for ACOM was to make sure that the schools were in fact teaching the toxicology of the herbs and that they're part of the curriculum, which, out of eleven campuses, I didn't find anybody doing a very adequate job of that. So the point is that it isn't that this information needs to be excluded but it needs to be brought forth so that people understand. In my classes, I teach that Chinese herbs are safe if used appropriately, the way you were taught to use them."

Adam questioned Sky asking, if he's a toxicologist, it is understandable that he would understand but most people that teach the herbal courses don't know that and maybe it's better to exclude things that we don't know much about than to include things that potentially are dangerous.

Sky responded that if you start eliminating toxic herbs because they are toxic then you are suddenly eviscerating the medicine. This is part of our fear of what the FDA is willing to do. And you notice that Ma Huang is not on this list. Adam acknowledged that he would play Devil's Advocate for a moment. He wondered, in terms of a solution, if a similar idea of bringing in a task force and asking them to do a presentation would accomplish anything.

Sky discounted that it would accomplish much. He's not one for task forces particularly, except that he thinks the subject matter should be taught in the curriculum. Sky acknowledged that Adam was right when he said that most herbal teachers don't know these things, so that someone who understands toxicology should be teaching these courses. This should be brought to light. He tells people what the toxic herbs are. He also points out that the CAB list is woefully incomplete. Instead, he suggested that you bring attention to the students of toxicology what the signs of toxic reaction would be and then what they should do in cases of overdose. Adam conceded Sky's point but returned that CAB inherited this list so it remains that we're looking for recommendations to improve the list. Adam asked Sky what he would recommend. Janelle also acknowledges that the list is so old that that is one reason we are bringing it forth now. This was developed in the early nineties.

Sky suggested revisiting the concept of having the list of herbs that one is not going to test on simply because they are potentially toxic. As a matter of fact, one would almost want to make sure that people were aware that they are potentially toxic. One would want to know that practitioners have an awareness that they are potentially toxic rather than saying don't worry about those because they are potentially toxic.

Adam addressed that he and others are not experts in toxicology, and therefore need to be informed. Sky asserted that the information is available and not hidden.

Adam asked Sky if he would want this to be part of the educational curriculum. Sky responded that it is a part of the requirement in ACAOM that the toxicology and pharmacognosy, which most people don't even know what that word means, are a part of the herbal training. This happens to be one of the courses he teaches and it is taught as a part of his school's herbal curriculum. Sky suggested that it be included in the herbal testing not excluded. He would be happy to participate in helping to develop this if CAB felt there was a need for a study of this. He thought it should be a part of the curriculum in the schools.

Bill Mosca emphasized Sky's last comment is a sound one. Bill doesn't see a whole lot of purpose behind this list. These are, if anything, herbs that one would want to put emphasis on testing in the exam rather than excluding them. They are taught currently in the colleges, they just are not tested on by the Board.

Adam pointed out that some of them are illegal, like placenta, and cannot be used in the US. Bill asserted that it is still taught in the colleges and often highlighted that it is illegal. There are endangered species on here rhino horn, tiger bones. These are all taught for academic purposes and it's clear in the instruction that those are endangered species and, Bill maintained, that we would want that practitioners are being trained appropriately along those lines. Additionally, there's included on this list another class. In addition to the toxic herbs and endangered species, there would be a third category of controlled substances. Cannabis seed is on here. It's not strictly illegal. If it's unable to germinate then it is

perfectly legal. It is in use and you can buy it, but it is typically irradiated to make it unviable. Robert asked how many herbs are in the Chinese Herbology. Sky answered five thousand. Bill Mosca stated that in California, something like three hundred sixty-five are tested on. Adam pointed out that the big pharmacopeias have five to seven thousand. Robert continued to ask, given that potential number, and given the relatively small number of potentially harmful herbs, if there is a reasonable method to insure some success to the process of going about it. Bill Mosca affirmed that this information is in texts and if the Board is testing against those texts, there is really no reason for the board to put this additional layer of excluding certain types of herbs. You're testing on 365 herbs and there is no need to go through that list and pull them out arbitrarily and say we're not going to test you on this. Adam stated that it is good to educate people about the endangered species or conditionally toxic. As well as Pharmacognosy, if you can give us an example. Sky explained that pharmacognosy is the ingredients in an herb, like some people might say the active ingredients, but they're not all active but the chemicals that exist inside the herbs. The California Compendium was done in 1995 and the information that came out of that compendium was very provocative and I would advocate that perhaps that needs to be done again. Truthfully, one can get placenta in herbal stores. One can get all kinds of things there that are still mislabeled, still adulterated and they are called Chinese herbs and I think it harms our profession if we're not paying attention to what is going on in those herbal settings.

Adam asked who does the Herbal Compendium. Sky answered that he thinks it was the California Department of Health Services or something like that. Janelle added that it was the Food and Drug Branch of the CA DHS. Sky affirmed saying that someone needs to say to them, that's old information and let's take another look. Janelle declared she would check with them. Neil shared that his clinic has a little over a thousand herbs. He believes we need to expand upon the 365 herbs that the CAB is testing on. Even the herbs that are approved in the curriculum have so many more herbs that are being taught in the schools and they are not being tested on and he thinks it is to the advantage of everyone that you assure the public that people know what they are doing.

Adam asked Janelle if this is also just informational primarily. Janelle affirmed. Adam asked that CAB make sure that the issues of Pharmacokinetics and Pharmacognosy are in the curriculum. Janelle agreed

10. Enforcement Business. Case reports.

a. Enforcement Case Report

Janelle relayed to the Board that Kristine wasn't there so she'd run through the list real quick. From July 1 07 thru June 20th, a total of a hundred and forty four complaints have been received. Sixty-six were unprofessional conduct. Twenty-five for unlicensed activity. Twenty criminal convictions or charges. Eight sexual misconduct. Eight fraud. Six that were non-jurisdictional. Four for incompetence. Three for unsafe or unsanitary conditions. Three for other and one for Substance Abuse/drug related. Currently there are forty-one complaints pending in house. Thirty-eight with the Division of Investigation in the department. Twelve disciplinary cases that are with the Office of the Attorney General and twenty probation cases.

b. Proposed Regulatory Amendments to Section 1399.453

Janelle shared with the Board a very frequently asked question in our office, which is how long do Acupuncturists have to keep records. There is absolutely nothing in any law that gives the time frame for Acupuncturists to keep their patient records. CAB used to recommend that they keep them the same time frame as Doctors but once you start doing research for doctors you see that they don't have a time frame as well. No law that stipulates that. Now if they are a part of a clinic, then there are some mandated requirements. Janelle used this as a suggested regulatory change that other health related fields, the Board of Occupational Therapy, has similar wording that keep their records no less than seven years following the discharge of a patient. Now this can be changed if you prefer five years but it is such a popular question over the years.

Bill Mosca responded that it's a complicated question because there's a whole series of state and federal laws that kick in here and his concern with, though he pointed out that he hasn't really looked into this, is that it may not be harmonized with other state and maybe you have looked at the state but with the Federal laws, HIPAA has certain requirements for record retention. He's aware that the State Board Comp system has certain requirements that are typically longer than seven years. Janelle queried if Bill thought it's longer than seven years. Bill Mosca responded that he believes it to be so. It's longer than the standard retention for MDs which is seven years.

Robert pointed out that there may have an expert in the room.

Adam asked Ted if he would mind coming up and sharing.

Bill M. also highlighted that there are some laws that pertain to pregnant women as well which affects retention for not only pregnant women but children as well because, by law, minors at the age of eighteen can file a suit for anything as far back as pre-natal.

Charles asked if there are any other states that have requirements. Bill noted that in the HIPAA there are some record retention regulations, though he doesn't know it off the top of his head.

Ted P. stated that, "a general rule in Work Comp and this applies also to HMO records and all the standard mix of

records, we have cases that go on for fifteen to twenty years so some of those records are going to stay there probably forever. Rule of thumb in our office is that we put files in storage after seven years but we never throw them away. They can come out at anytime especially if you have cross-over cases from personal injury or there are cases that have to do with the work comp system. Even some cases of the HMOs that we see will have cross-over in all those areas. Even though we don't have a written down time limit we probably should err on the side of caution and keep them as long as you can."

Bill added that he knows that AMA publishes recommendations for MDs regarding record retention. He thinks they put out three different schedules. One of the schedules is to retain them forever and there are two other alternate schedules that deal with the various laws and regs, both at state and federal levels.

Adam asked if Bill had access to that and if so if he could get that to Janelle. Bill affirmed. Adam acknowledged that it would be helpful and save him a little work.

Robert stated that he thinks we need to ask Janelle to gather more information on that. He asked if Board needed to do anything formal on this. Janelle observed that it sounded like the Board would like further investigation. She checked the Medical Board's website and they were the ones that were very clear that there is no general law requiring a physician to maintain medical records for any period of time but then it goes on and gives breakdowns for various conditions ranging from two to seven years. She used the seven years as the max because that appeared to be what was required with the safety code. She will do further research; She had not checked with HIPAA laws. She will check on the regulations and bring it back in September.

c. Lasers

Ted Priebe shared some insight on lasers from the Work Comp division on his research board. They looked at all the evidence, naturally, and were in agreement with the American College of Occupational Medicine, State and also ODG, which is Occupational guidelines, in that lasers have too many safety issues so they don't recommend them at all. In fact that is part of the new guideline. There is no good research that shows that they do anything other than being harmful. There is some evidence of tissue damage with low-level lasers as well as eye safety issues and so-forth, so they were just taken out of the schedule. They won't be paid for and there is no recommendation to use those. On Myofascial release, we categorized acupressure, massage, all things that are in our scope of practice fall under Myofascial Release or massage because there are already codes for those and they don't want to create any new medical codes for no particular reason. All those things will be deferred and have notations like those two codings. So we're covered under those and we don't have to do any of that.

Adam asked if there was a list and if it is common knowledge. Ted responded that he could get some of that to the Board. Some of it is in the office of administrative law. His group just finished the chronic pain guidelines. It'll probably be another two months but he should be able to get you excerpts of it.

Neil added that although the work comp system has dealt with the whole question of Myofascial release, it does remain a large question for insurance generally although it may be resolved from the perspective of work comp. Adam inquired if it was in terms of our scope covering it. Neil affirmed. Adam indicated that it might be interesting for us to have John Chan and Dr. Ko come and do an informational piece on the herb drug interaction. Adam asked Janelle, if CAB can potentially, for our own education for the next meeting, have Drs. Chan and Ko present. Janelle answered that she believes that both are in the Bay Area so that might be doable.

Ted addressed Neil's comments saying, "Neil brought up a good point here. Some of the insurance companies have limitations or say that some of these things are not within our scope of practice such as Soft Tissue Mobilization or massage or Myofascial release. It's been clear in the past, we've had written agreements that these are part of our scope of practice. It's going to take this Board identifying that and saying to the insurance industry that these are definitely in our scope of practice and they have been for years. The difference between some of these things that we're not allowed to use like joint manipulation or adjustment, those terms are chiropractic terms. All these other terms cross over into the other health professions. I know it has come up before because there has been some misinterpretation by some insurance industry people that these aren't under our scope and they get inconsistent validation from this Board. You either need to say it is or it is not part of our scope. If you make a statement that it is, then they'll be OK with it."

Adam responded that it might be informationally useful to have a Myofascial musculoskeletal educational piece at the December meeting possibly. Not sure if people would be interested in that or not. This is an opportunity to get insurance reimbursement cleared up.

Robert requested that counsel prepare a statement to the insurance industry specifically regarding this issue and scope of practice and what's covered because this is an issue that affects a lot of folks.

Janelle noted that CAB has been asking for an updated scope of practice for a long time. LaVonne wanted us to contract out and have that study done. As to having that scope but Janelle said she will check with LaVonne though she is certain LaVonne is not going to give us a written document.

Ted addressed that there is already a scope of practice document that we produced in 1993. It was vetted fully for every modality we do. It includes all these things.

Robert inquired what does CAB need to do to add backbone to the claims that our licensees are making and being denied. Robert asked as to the kind of language we needed to give to the insurance companies to insure that our folks

are getting taken care of. Ted responded that CAB basically just needs to review what's been already done in the past and make a policy statement from the Board that this is part of our scope of practice and these are the codes that are validated and this is what we teach in our core curriculum. That's all it takes.

Sky commented about the herb-drug interaction. He wasn't sure why it was on the agenda but it is one of the reasons that brought him to the meeting because this is a part of the course that he teaches in toxicology. Adam asked if Sky would like to present as well.

Sky responded that he would be happy to present. There certainly are herb-drug interactions. There aren't a lot of Chinese herbs that have a lot of work that has been recognized at least in English but that should be a part of the curriculum as well knowing which drugs interfere with Coumadin, which causes problems with hypertension, all these things like this that need to be a part of the curriculum. Adam pointed out that he thinks it's one of the reasons that MDs don't take the medicine seriously in that acupuncturists don't know those issues well enough.

Janelle noted that CAB had tried to make it a requirement for CE for four hours of the drug-herb interaction course. The problem CAB ran into was that there was very few individuals to teach such a course and thus putting a restriction such that they couldn't obtain that course. Adam asked Janelle if she wanted to get a hold of John Chen. Janelle inquired about Richard Ko too. Adam asked if we needed all three. Charles emphasized that it would be advantageous. Adam acknowledged that they would all bring different perspectives and time could be set for half an hour. Sky pointed out that Richard was responsible for the compendium. Adam indicated that he'd heard Richard was very informative.

Megan pointed out that there is a requirement for drug-herb interactions in the curriculum under clinical medicine, patient assessment and diagnosis. Adam affirmed.

Robert asserted that it's very important that CAB have clarity on this, particularly moving forward as a profession. CAB has to know this stuff if we're going to be taken seriously and welcomed into the clinics. CAB has to know that what we do fully integrates with what they do and where it doesn't mix.

Bill Mosca noted that he, "provided for you some background information I didn't expect you to have it ahead but I'd go over it since we have a new member and some people were absent to hear the continuity of this. The law changed, it used to say that we could do oriental massage and there is no such thing as oriental massage. There is no code for it, there is just massage. The law changed and I began to try to get a definition of what that was so that we can interact with other healthcare professionals and in terms of reimbursement. So manual therapy and Myofascial release are the closest modern terminology that describes what it is that we do. The law changed from oriental massage to Asian massage. There is still no further definition. What I have here, and I'll just walk through real quick, you can read it at your leisure, but I'd like to have something put on the next agenda for a regulatory change and I can be specific about asking LaVonne because LaVonne has written her opinion. This is a letter that we wrote to an insurance company regarding a patient who was denied. We were denied reimbursement for manual therapy/Myofascial release. So we sent a letter to the insurance company. They sent it back saying that these are not within our scope of practice and I've been having the Acupuncture Board send out letters for the last five years now. There is a letter here from the Acupuncture Board that was approved by the DCA's legal department discussing these terms and why these terms are within our scope of practice. Then we felt that it was necessary to do legislative changes to add to the scope of practice but then we started getting into a turf war between the physical therapists and chiropractors and it really had nothing to do with what's in the best interest of the public and the cross-over. I've included in here the fact sheet from a bill that was done 2006, some background material on manual therapy, what it means definitions, a list of some suggested language that this Board had taken a support position on and the language was changed a little bit and the Board had to remove it's support of the position because two words were changed/amended in the background. There is also the CA State Senate B and P committee observation of the analysis of the bill and what it meant and who was in support of this bill, arguments in favor and against. Against this bill were the chiropractors, the physical therapists and a group COAMA that said the word Asian Massage supported prostitution and it was their bill that changed the wording from Oriental Massage to Asian Massage. So that didn't make any sense. I do have a letter to Senator Figaro explaining this. Last year we introduced the same bill that started off. We call it the Tui Na bill, it was amended. That bill fact sheet and background sheet are there. So I believe it is within the purview of this Board, and since you've sent out, and I have more than a dozen letters from the Board that were approved by the legal department saying that manual therapy and Myofascial release are within our scope of practice and the arguments that are being made against it. A chiropractor can bill for a chiropractic manipulation and also bill for manual therapy so in a work comp case or a general case they would bill for two separate procedures but when we were in legislative hearings, the chiropractors said that manual therapy and Myofascial Release is too close to chiropractic manipulation and there is joint manipulation that might take place in the process. So they're asking for both. They want two separate codes. They don't want to allow us to be included in one of those codes. So I ask the Board to put it on the next agenda for a regulatory change for this year. I spoke to the legal counsel who was visiting today (George) who said that if the board doesn't do this I could petition the Board to make a regulatory change but there is no need for that and the Board would then have to send out a notice that they're making regulatory changes to all the other regulatory agencies. The chiropractic associations and the physical therapy associations could testify but the chairman of the Chiropractor Board has sent a letter in support of the legislation. So you have the head of the Chiropractic Board on record supporting the terms Manual therapy and Myofascial release being included in our scope of practice with compelling reasons for that so I think there is enough background material on that for you to make a case and I'll be glad to get that to you immediately so we can put this on the agenda and make

the regulatory changes. It makes a lot less work for Janelle and the office to continually send out these letters and I'm getting more letters from more acupuncturists asking us what they can do and I will soon be directing more people. Whereas now it's five to ten letters a year, there could be hundreds of letters that are asking the Acupuncture Board."

Adam asked if Bill, in terms of educating us, since it is such an important issue for the profession around areas of insurance (which is huge for making this a profitable profession for people) if he could postpone needing to move that agenda forward immediately and have a similar kind of educational piece at our November meeting possibly around these issues of Manual Therapy and Myofascial Release. Adam felt that this way CAB will be making an informed decision.

Bill acknowledged that he would love to. He had done it for the Board twice before and doesn't mind doing it again. The Board actually has a DVD that he gave us to distribute amongst the members that he's still waiting to get back. The Board has the background material as well as two previous formal presentations on this subject. One stumbling block that we do have, which is the physical therapist's argument, is that the words Manual Therapy and Myofascial release don't appear in any of the curriculum. That the curriculum refers to Tui Na or Asian Massage and that is a change that needs to take place and the Board can give a directive to the educators that if we're going to include those terms then it should be taught within the framework of the definition which is within the broad definition of Asian Massage but it has some very specifics within Manual Therapy and Myofascial Release. Also to point out that it is accepted within Worker's Comp and has been accepted in Work Comp since 1988. So there is a precedence for this. There is a lot of history. He's glad to make another presentation. It's not even about the financial reimbursement but really has a lot more to do with communicating with other health care providers.

Adam stated that he appreciates Bill's perspective but it would be interesting or helpful if he had someone from the schools or another perspective who can present on this topic. That would, again, be a more full understanding for CAB rather than coming from one point of view. Adam doesn't think the issue is changing the terms in the schools but helping CAB understand what Tui Na means in relation to Myofascial Release and all that. Bill added that one of the deficiencies that CAB has are approved curriculum, approved books on the subject matter and that there are no exam questions on the subject. If there are, there's maybe one.

Adam acknowledged that it is a good point. The world is changing. The Nurses Board test that nurses take was just taken by one of my students and there were five herb questions on it now. That is huge. The world is changing, in both directions.

Bill said he wanted to understand the time frame and asked if CAB has another meeting in September in San Francisco and then another in November. Adam confirmed. Neil extrapolated that there would be no time to put this on the agenda for November to possibly get the regulatory change done this year. Adam confirmed again stating CAB is already doing the drug-herb interaction and there is only so much dog and pony we can handle and still get business done. It would be a lot to do. What do people think?

Robert stated that he thinks it is something that has been going on for a long time and considering that we don't know that we have another year that CAB probably needed to get this moving forward. Robert suggested to take the additional burden and get this fixed.

Adam is in agreement. It'll be a double header and have one in the morning and the other in the afternoon to break it up.

Neil points out that there is enough here with the fact sheets and the analysis from the Senate and the Assembly to give you sufficient information.

Adam added that it would be nice to get other input too just to help out with the bigger picture.

Janelle asked if Neil is asking for a regulatory change not a statute.

Neil confirmed saying, "a regulatory change. The other issue is on enforcement since it's not on the agenda. It's not new but it's in relationship to enforcement. We've discussed that prostitution is the number one problem. It's in isolated communities. Within the last month, there are fourteen new clinics within the Los Angeles Area (Orange County, San Fernando Valley and Downtown area) that are promoting prostitution where they have pictures of beautiful naked girls. One of them is a place that you closed down and I have a letter that closed them down and they said that they didn't know that the advertising is illegal but they've moved about six blocks further away so I will get that information to Janelle but I would hope that we could act on this and maybe send out some kind of public service announcement or send something out into this community that let's everyone know that this kind of sexual activity has no place in our profession and it would allow the public a place to know that if they see advertising of Acupuncture and they see this kind of activity that they have an access to report it and the profession has a responsibility to report it."

Bill Mosca asked to address the Board saying, "I wanted to flag something for the Board that dovetails nicely with the recent conversations we were just having and that is the broader issues around the scope of practice, some of the ambiguities there and how they get resolved. There is a letter that CSOMA has sent to the Board over a month ago. I spoke to Janelle about it but I don't know if it's percolated through the Board, in which we highlight a particular case that was a concern to us and I wanted, if you hadn't received that, to at least run through some of the basic shape of what it is. Essentially we were contacted by one of our members who was being denied malpractice coverage by MIAC Insurance, a Berkeley company. The basis of that denial was that she, in her advocacy, indicated that she practiced Gua Sha as part of her practice."

Adam indicated that he had talked to LaVonne a little about that.

Bill Mosca noted that apparently this came out of the Board in some fashion, from, he guesses, LaVonne, that there was a verbal transmission of information from LaVonne, he doesn't know the exact pathways, to MIAC which in the course of that conversation there was a misunderstanding or misinformation which led the insurance company to believe as part of Gua Sha, which is...

Adam clarified that there was a misunderstanding and CAB was trying to correct that. Adam asked if it got corrected.

Bill didn't believe it been corrected yet saying, "I spoke with Janelle and she indicated that it will be corrected. Our concern is somewhat broader than that which is really there shouldn't be any circumstances in which opinions are issued casually or verbally. I just think there is too much riding on scope of practice questions to treat them in a casual fashion where they're communicated verbally where there is too much potential for misunderstanding and as we've seen from this particular case, the ramifications are significant. Not only is our member not being insured through this carrier; been just denied blanket because the company is under the impression that Gua Sha is a dangerous technique. They are now excluding Gua Sha from any malpractice. All of our members now that are (insured by this company) out there are practicing without realizing that they've got no coverage for what their doing."

Adam asked what the remedy for that is because if LaVonne gives them correct information and they still decide not to cover it.

Bill answered that ultimately it's up to the company and we're going to do our bit, hopefully with the assistance of the Board, to correct that with this company. Bill said that the reason he's flagging it here is not so much of this particular case but the more general concern that by playing fast and loose with these questions of scope of practice, and by fast and loose he means a more casual treatment and particularly in a verbal form, it just leaves us vulnerable to... when the board gets a call regarding our scope of practice, it's our feeling that the response to that should be in writing.

Adam answered that Janelle had heard this and she should be able to find out from LaVonne what the actual interaction was. Janelle said that she was telling Bill that she had his letter and LaVonne had been out due to surgery and now she's very sick, but it is being addressed.

Bill confirmed this and just wanted to make sure that it was heard.

Adam reiterated that LaVonne was consummate professional in his experiences with her. Robert asked if, when folks call for opinion, do we generally just answer them or do we ask them to please submit their request for an opinion. Janelle answered that a lot of them we'll respond to on the phone. She thinks that is how most people do business and she doesn't want to cause problems for the profession by doing so but it's just a general way of doing business.

Bill felt that the appropriate response, in this case though, is to simply cite what is in regulation or statute rather than trying to layer an interpretation level and that is where we've gotten into problems in this particular case because it was an interpretation of scope of practice. Adam repeated that the error was on their side and he understood it to be incorrect.

Bill stated that he wasn't sure whose error it was but clearly there was something spoken that was misunderstood and that is his point. The code stated that CAB deals with the strict citation of this code. It's up to you to determine what that means.

Janelle pointed out that we're usually pretty good. If the question is more confusing than what we normally have, than just a very basic question that the existing legal opinion addresses, we do require it in writing because it's almost as if they are trying to get around...

Bill addressed that somehow this got around to LaVonne which indicates that it wasn't just a routine call to the Board that just got handled. It got to LaVonne and then somehow there was a response that was propagated back to the caller verbally and that is just a short-circuit that, in our view, shouldn't be happening.

Tom Haines shared with the Board that there are some exciting things going on in San Diego last week, the US Open. He was contacted a year ago to help conduct two wellness tents for the caddies, players and 6500 volunteers. Over 1500 treatments, massage, acupuncture and chiropractic treatment were given out. In fact, it was so well received that we'll probably be going to do the one next year at the US Open. The medicine is alive and it is desired. Tom went on to say that they did a lot of manual manipulation, not sure about those codes, but there were a lot of adjustment. They probably ended up with a list of about forty to fifty people looking for treatment because they were doing five hour treatments. Our practitioners would only put in five hour shifts, after two shifts they received season passes to the Open. Adam continued stating, "Actually, to give Tom a little credit, I'm very involved with the American Public Health Association and the past four or five annual meetings which have around twelve thousand people, we have been providing Acupuncture on the event floor which has huge exposure for people from all over the US in public health, most of whom have never had a treatment, and this year it's in San Diego and Tom and PCOM are providing Acupuncture service. Really helpful. Appreciate it."

Neil asked regarding the when Occupational Analysis is due. Janelle responded that all the responses are due June 30th. So once the responses are received, I believe the next evaluation of experts to start going through those responses are July 7th and 8th.

Neil stated that some people contacted him and said they got it while others called and said they didn't but want it. In the electronic age that we live in, people are making copies and sending them to people that didn't get it and it's a statistical problem. Neil asked if a thousand people answer it then would this not help you. Janelle stated that this would not help since it's a scientific random stratified sampling, meaning that CAB is sending it out randomly to so many

within a zip code. Robert added that if people are answering when they shouldn't then it will bias the report. Neil again stated that one would think that in the electronic age this is the kind of thing that should be out there and every Acupuncturist should have access to.

Adam explained that if you do a stratified random sample, for example, Japanese is not a language on the exam anymore because there are significantly fewer Japanese practitioners. So in a stratified sample one would sample more Japanese because if there were only two of them, the probability is that one will miss them in a random survey, so you want to make sure that you over-sample for those people, that's what stratification does. Ultimately, one screws up their sampling methodology, as Robert was saying, when you give it to your friends.

Neil answered that he understood that. He continued saying that, "In the course that we teach, the orthopedics course, you're teaching to a higher level but the Board and the test is not reflective, I don't know if those four hundred people who are certified in orthopedics, who have more education, who are required, are going to end up showing up if three people or ten people show up versus a large population. Some of the cities versus some of the more rural areas are not being counted so that raising the bar is not going to show up."

Adam stated that if there are four hundred of them there is a good chance you're going to get a good sample of them in a random sample. Adam asked how many Acupuncturists are in California. The Board answered about 7500. That is roughly five percent which is enough to get you results. Adam adds that we could over sample by modality if we wanted to. However, it's too late to do it for this survey but if it's a consideration, the Board could do it for people who practice Kiko Matsumoto style, orthopedic style, which would be part of the stratification. Neil asked if the survey was carried out every ten years. Janelle responded that it's every four or five.

Adam stated that this is something the Board could think about for the next survey, because that will be an interesting occupational orientation. Adam confirmed that it would work and would be doable. Adam emphasized that if CAB could track them somehow, we would have to get that list ahead of time and then randomize within that list but that is doable too. Adam asked if there were any other questions. Once, twice, going, going. Adam thanked everyone for coming. Meeting was adjourned at 13:51.