STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
CALIFORNIA ACUPUNCTURE BOARD
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Approved August 19, 2010

ACUPUNCTURE BOARD MEETING MINUTES

DCA Headquarters
Sacramento, CA

FULL BOARD MEETING
May 6, 2010

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

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

1. Call to Order and Establishment of a Quorum

Quorum established. Meeting called to order at 8:36AM.

2. HEARING: Petition for Reinstatement of Surrendered License
Petitioner: Dong Hyun Chang (Case No. PRRL-1A-2009-182)

Board heard Petition

3. CLOSED SESSION

The board convened in closed session pursuant to Government Code Section 11126 (C) (3) to deliberate and take action on petitioner's hearing and disciplinary matters.

4. Chair's Report

Chair Brewer yielded the floor to LaVonne Powell. LaVonne Powell introduced the Acupuncture Board's new Legal Counsel, Senior Staff Counsel Spencer Walker. Spencer walker served as the Senior Advisor to the Director of the Department of Consumer Affairs. Prior to that, Mr. Walker was vice president of legal affairs and chief corporate counsel for Azteca Construction. From 2001 – 2003 he served as a Deputy Attorney General III at the Attorney General's Office and from 1996 – 2001 he was an attorney in private practice as well as serving in some capacity for private firms. LaVonne shared that he is aware of this Board's issues and where the Board is coming from. In the past he was the assigned attorney for the Pharmacy Board, Optometry, Athletic Commission and the Bureau of Automotive Repair. Spencer Walker thanked LaVonne and said he looks forward to working with the Board.

Chair Robert Brewer stated that the Director of the Consumer Affairs will be addressing the Board today. He also noted that the Blue Ribbon panel selection process is nearly at an end. There will be a small discussion on this later in the day but most of the discussion will be brought up in the panel.

5. Executive Officer's Report

Janelle Wedge announced that the Senate Rules Committee has reappointed Robert Brewer to the Board. The Board's office will be relocated next to the Headquarters building later this year in December or January. There will be a Board Member and Advisory Member Training Day on Tuesday, July 27 at the Sacramento Public Library. Janelle Wedge has submitted to the board copies of three months of the Department's Enforcement Improvement Plans for review. She also submitted a copy of 2009-2010 Expenditure Report through March 31st, with projected expenditures through the end of the fiscal year. It is projected that the Board will have a surplus of 8.4%. The Revenue Report of 2009-2010 which shows the projected income through the end of the year. There is a small decline from previous years and the figures will be tracked.

Due to several schedule conflicts, the July 26th Board Meeting has been moved up to July 8, 2010 in Sacramento.

Janelle Wedge also noted that this meeting was the first that the Packet was available to the public in Digital Form and as such no packets were printed. Members of the public have shared that the documents were difficult to find on the website. Future agendas will specify where the documents will be available.

6. Director's Report

Tabled to after the Lunch Break.

7. Approval of February 23, 2010 Meeting Minutes

ANYORK MOTIONED TO APPROVE THE MINUTES. GEORGE WEDEMEYER SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

8. Legislation Update

AB 1391 (Eng) – Extension of Board's Sunset Date – On hold for now since all of the Departments Sunset dates will be handled in another Bill.

SB 1111 (Negrete McLeod) – Consumer Health Protection Enforcement Act - Failed.

SB 1171 (Negrete McLeod) – Revises Sunset Review Law and Dates – This will extend our sunset date to January 1, 2013 for a review in 2011 – 2012. Not currently in the Bill but it will be.

SB 1172 (Negrete McLeod) – Probation and Diversion Programs – Will allow the Board greater disciplinary abilities against licensees who violate their Disciplinary Probation.

S. 3002 (McCain) – Dietary Supplement Safety Act of 2010 – No further activity since introduced.

9. Administrative Business

a. **Draft Board Member Administrative Procedure Manual**

Janelle Wedge presented the Board with the changes Legal Counsel asked for from the previous meetings.

CHARLES KIM MOTIONED TO ADOPT THE DRAFT BOARD MEMBER ADMINISTRATIVE PROCEDURE MANUL AND ALLOW JANELLE WEDGE AUTHORITY TO MAKE GRAMMATICAL ADJUSTMENTS. ANYORK LEE SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

b. Proposed Regulation: Retroactive Fingerprinting Requirement

Janelle Wedge noted that a regulatory hearing was held and no public comment was given on the proposed regulation of Retroactive Fingerprinting Requirements. She stated that when it is adopted by the Office of Administrative Law they will our office would then have to notify licensees. Janelle Wedge suggested to the Board that they adopt January 1, 2011 start date for the requirement. Thus starting on January 1, 2011 licensees who are licensed prior to January 1, 2001 will be required to have a Live Scan performed to renew their license. It is expected that by January 2013 all licensees will be fingerprinted.

GEORGE WEDEMEYER MOTIONED TO AMEND THE PROPOSED REGULATION TO INCLUDE THE EFFECTIVE DATE OF JANUARY 1, 2011 FOR THE FINGERPRINTING DURING THE RENEWAL PERIOD OF 2011 – 2013. PAUL WEISMAN SECONDED. VOTE: 5 – 0 – 0. MOTION CARRIES.

c. Process for Reviewing Petitions Regarding Cancelled/lapsed Licenses

LaVonne Powell asked the Board to consider adopting the process used when reviewing petitioners whose license has lapsed but do not want to take the examination to have a new license awarded. This will be the process that the petitioners would follow to prove to the public that they are safe to practice. LaVonne noted that it is a more effective use of the time wherein the committee (comprised of Board Members) will hear the petitioners and make a recommendation to the Board during the meeting.

PAUL WEISMAN MOTIONED TO ADOPT THE PROCESS FOR REVIEWING PETITIONS REGARDING CANCELLED/LAPSED LICENSES. CHARLES KIM SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

6. Director's Report

Director Brian Stiger introduced himself to the Board and public. He mentioned that he has worked with Janelle Wedge when he was the Executive Officer of the Board of Chiropractic Examiners. He informed the Board that Executive Office of the Department is looking to spend more time at Board Meetings so as to be a more direct voice for where the administrations stands on the various projects. He shared that the biggest priority is enforcement. The Budget Change Proposal (BCP) for greater enforcement has a great chance of passing. There is a BCP for an Information Technology Project that will replace our current CAS system. Our department has initiated an Enforcement Academy that we encourage all Boards Enforcement staff to attend to help them get positive results. SB 1111 has failed and although disappointed, we are encouraging the Boards and Bureaus to pull some of the provisions out of that bill and move it through regulations. These will allow your Executive Officer to do her job better with regards to enforcement. Director Stiger asked that the Board to take a comprehensive look at the Continuing Competency, where CE's are a part of it but including also specific courses or exams so as to insure a practitioners minimum level of skills. The Department encourages all the Boards to provide their meeting materials online to allow the public to come to meetings more informed.

10. Examination Business

a. February 16, 2010 Examination

Janelle Wedge shared that the exam in Ontario, CA went very well and the Board is prepared to go back next year for the February exam. The overall results were a 61% pass rate. The test was developed using the information from the last Occupational Analysis. The statistics are what was expected though a little higher than the last exam by 3%. Robert Brewer asked if there are other professions in the healing arts that have requirements for a school's pass rates. LaVonne Powell responded that the LVN Board and the Board of Registered Nursing did have a trigger that if their graduates pass rates fell below a certain percentage it would put the schools on review. Robert Brewer asked Janelle Wedge to inquire as to these conditions and responses and report back to the Board.

b. Require Graduates of Foreign Schools to take Course on United States and California Laws

Janelle Wedge noted that Charles Kim asked at the last meeting to discuss this issue. Janelle Wedge stated that this would be treated like the Clean Needle Technique requirement where even if the foreign applicants who took 100% of their courses at a foreign school would still be required to take a course that would cover our laws and regulations here in the United States/California. Liza Goldblatt commented that she would be happy to bring comparisons of the various state/country laws as pertaining to potential requirements when practitioners are trained in another country. Marilyn Allen of the American Acupuncture Council shared that she teaches laws and ethics at a lot of schools and the majority of people getting into trouble with regards to their licensing have no clue what's in the Laws and Regulations book. She supports and encourages the Board to pursue this requirement. Ted

Priebe noted that the Board should distinguish between institutional issues and programmatic review regarding school accreditation.

c. Clinical Examination

AnYork Lee had asked for this to be placed on the agenda. LaVonne stated that examinations such as these or oral exams are hard to legally defend since the interpretation was so subjective. The Board and Department have tried very hard to work with this. AnYork Lee stated that point location is an essential aspect of the practice and it should be reincorporated into the exam. Charles Kim agreed. Janelle Wedge noted that in the past the Clinical Examination was too subjective; the experts evaluating the responses, at times, couldn't agree on the appropriate placement. Bill Mosca asked that evidence indicating that the elimination of the clinical exam has caused the endangerment of the public be presented to the Board. Chair Brewer asked that this information be brought to the Board to be discussed on the Panel. If the data can be brought to the Board before the July 9 meeting then it may be placed on the agenda. Peter Fairfield shared that protecting the public also means insuring high standards and he noted a lack of good Point Location skills among many practitioners across the country. He stated that a point location exam would help that. Bob De Monet, Academic Dean of Pacific College of Oriental Medicine, shared that point location is not a viable test of knowledge as well as costing the tax payers much money in the act of holding the clinical exam. He urged that the Board work closer with schools to bring point location to a greater level of importance in the course work. Neal Miller shared that since the exams have changed it has been noted that new practitioners have had harder times with point locations as well as herbal identification. He also noted that there are efforts within the academic aspects of Acupuncture to create a standardized system of points among all the styles. Daisy Liu of CAOMA noted that this was her letter to the Board and she wants to ask the Board how it agrees on the high standards for the schools' curriculum. She also asked how can California insure the safety of the patients without the clinical exam. James Kim representing the Korean Acupuncture Association stated that most students understand the point location from text books but when it comes to actual people it is more challenging. He strongly urges the Board consider looking at the Clinical Exam again.

11. Education Business

a. Update Pending School Application

Cathy Hardin Schau reported that the school in Honolulu is still pending a site visit. The information from Hongik University is still waiting review. She is still waiting for additional information from Phoenix Institute of Herbal Medicine and Nine Star University is still pending review. Cathy noted that the Board has submitted to the Governor requests to visit universities outside of California and are awaiting response. Neal Miller wanted it on public record that the Acupuncture Board is funded by acupuncturists and the Boards enforcement actions.

b. School Site Report on Nine Star University

Cathy Hardin Schau prepared a follow-up report on Nine Star as well as receiving new syllabi for the curriculum and Janelle Wedge and she had conducted a second site visit. Robert Brewer addressed Philip Yang regarding the questions raised in the follow-up report. Phillip noted that the financial donations represent mainly from the rent which he donates and that in 2009 they've instituted tuition. Chair Brewer asked Phillip about the syllabi and course catalog discrepancies. Phillip addressed the issues brought up in the report. Cathy Hardin Schau replied that several descriptions were verbatim. AnYork Lee instructed Phillip to improve the descriptions to meet Board requirements. Member Weisman asked if Nine Star was increasing their coursework hours. Phillip responded that it was the original established hours. Janelle Wedge stated that the staff is concerned that after the initial visit and recommendations things have not been corrected after three opportunities before the Board.

CHARLES KIM MOTIONED TO HAVE NINE STAR UNIVERSITY CORRECT ALL THE OUTSTANDING CONCERNS ADDRESSED BY THE BOARD AND SUBMIT PROOF TO THE BOARD TWO WEEKS AFTER THIS MEETING. ANYORK LEE SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

c. Acupuncture and Integrative Medicine College (Review of Continued Approval)

Cathy Hardin Schau stated that this is in response to AIMC not submitting their Annual Report (due August 29, 2009). Teri Powers stated that she became president of AIMC in July 2009. AIMC is currently in the process of putting the information together and the school has changed their fiscal year to the Calendar year and as such a supplemental audit was conducted from July to December of 2009. With that they saw there were many problems with their accounting causing the replacement of the accountant. Ms. Powers stated that the school is turning around and that they are reporting a profit. Paul Weisman noted that there were a few notices mailed out to the school. Dr. Powers responded that the previous president moved twice since leaving the school and the first mailing she received from the Board was in April. LaVonne Powell indicated that the school has been late every year for the last four years. Dr. Powers stated that this is not regular for her. Chair asked if there are any other issues with the school or is it just the lack of information. Cathy responded that it's the lack of information.

ANYORK LEE MOTIONED TO PLACE AIMC BERKELEY ON PROBATION. TO COME OFF OF PROBATION, THEY ARE TO PROVIDE TO THE BOARD FOR REVIEW THE ANNUAL REPORT (2008-2009) AND THE ADDENDUM (2009) AT THE JULY 8, 2010 MEETING AND PROVE THAT THEY HAVE ADDRESSED STAFFS CONCERNS AND THE BOARDS REQUIREMENTS. CHARLES KIM SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

d. Blue Ribbon Panel on Education, Accountability and Primary Care

Chair Brewer stated that the panel will be looking at topics that have been discussed on this Board in the last four years that he's been on it, the changes that are occurring in the profession as well as looking at the research that is being carried out by several organizations on the very topics we've discussed. These members will not be announced at this meeting but the number of appointments will be around seven. LaVonne Powell noted that these members will also be subject to the Open Meeting Act. Chair Brewer shared that the goal would be to have the group meet before the July meeting. Member Wedemeyer suggested that the Board adopt a definition of Primary Care prior to the meeting of the Blue Ribbon Panel. Chair Brewer responded that this definition would be drafted by the Panel. LaVonne Powell stated that Board has already devoted significant hours to this discussion at past Board meetings and the Chair is within his right to insist that this discussion take place within the Panel.

e. Approval of Continuing Education Courses

The Guild brought before the Board a list of courses that they found questionable as approved Continuing Education courses. Chair Brewer asked what determines approval of these courses. Cathy Hardin Schau responded that the regulations dictate the criteria and that she and sometimes a Subject Matter Expert handle the review of the courses. Member Lee suggested that some modalities that are taught do not use the proper terminology in the application paperwork to contextualize the practice. Member Weisman asked to agendize an ethics requirement to be a part of the Continuing Education requirements. Ted Priebe stated that although some of these courses are on the list due to semantic ambiguity other courses have no grounding within evidence based medicine. Peter Fairfield, L.Ac, stated that evidence-based medicine isn't entirely objective and the use of different systems of understanding not evidence-based still enriches the practice. Bill Mosca noted that it would be easier to regulate based on Member Weisman's suggestion of targeting areas that clearly show deficiencies. Limiting the CE courses to just within the scope of practice bars our practitioners from learning about health modalities outside of that scope. Michelle Lau honorary president of CAOMA urges the Board to look into greater regulation of Continuing Education.

f. Doctoral Level Programs of Acupuncture

Dr. Goldblatt, Executive Committee member of CCAOM, shared that her organization has taken up the discussion about the idea of a first professional doctorate. There is now a post-doctoral degree, the DAOM Doctorate. Eight colleges are approved in the country in these programs. In 2011, the accreditation commission that oversees these doctoral program will go to the Dept. of Education to have these programs formally approved. Michelle Lau, of CAOMA, is trying to promote the entry doctoral program but the concern is that it's not just a title but represents high level of skill. Ted Priebe, representing the Guild, noted that ACAOM does not meet the standards for first professional degree and thus can't support the doctorate or the DAOM degree. He stated that it's

premature to look at this until the Blue Ribbon Panel has had a chance to examine this. Chair Brewer noted that this is an exploratory discussion and it will be explored on the Blue Ribbon Panel.

12. Enforcement Business

a. Enforcement Case Report

Enforcement Coordinator Kristine Brothers presented the report to the Board. She noted that this report includes active investigations. She noted that there were 50 CE audits from August 2009 to January 1, 2010. Of those 23 turned into citations. At that time there were five CE audits that were pending review. Director Brian Stiger suggested that staff present to the Board Members the time it takes for a case to get through enforcement. He also noted that the Executive Office will be watching these enforcement numbers closely.

b. Safe Compounding of Herbs

John Chen, William Egloff, and Al Stone presented information on the compounding of herbs. They spoke of labeling requirements and good manufacturing practices established. They wanted to inform the Board that a committee of the AAAOM, of which they are a part of, is currently working to derive good compounding and dispensing practices. Legal Counsel Spencer Walker encourages the Board to work with AAAOM to establish these guidelines as well as taking steps to form a committee on Herb Compounding. Chair Brewer agreed and called for volunteers to submit their names in the hopes that the committee will be announced at the next meeting. The AAAOM guidelines should be available on their website by late September/early October in pdf form.

c. Substance Abuse Coordination Committee Update

Janelle Wedge reported that the modified standards have been placed in the new Disciplinary Guidelines.

d. Disciplinary Guidelines

Member Weisman stated that the minimum penalty for insurance fraud, subversion of licensing exam and securing license by fraud/misrepresentation does not feel as if it's enough of a penalty. Charles Kim asked that the Board wait to make a decision until the July meeting. LaVonne Powell asked that the Board Members take their time and review the Guidelines and that the Board be prepared to vote on this at the July meeting. Chair Brewer asked that members submit to Janelle Wedge by the end of May 2010 any changes that they are considering so as to have it available to work on at the next meeting.

e. Recognition of Specialty Boards

Neil Miller shared with the Board that national organizations, including the Council of State Associations, and have started taking up the question of recognition of Specialty Boards. LaVonne reminded the Board that it might be easier to bring this about by finding some national organization and going with who they indicate, purely for the purposes of Worker's Compensation.

f. Auricular Acupuncture Exemption

Executive Officer Janelle Wedge was approached by an Assembly Member to introduce legislation to exempt social workers to be able to use Auricular Acupuncture to assist in the detox process. The legislation was not carried. Janelle Wedge asked the Board what its position is on this for future situations like this. Member Lee is not in favor. Member Wedemeyer is opposed.

ANYORK LEE MOTIONED TO NOT SUPPORT THE PRACTICE OF ACUPUNCTURE OUTSIDE OF LICENSED ACUPUNCTURISTS. GEORGE WEDEMEYER SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

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

a. Jun Wang (license cancelled 7.1.09)

The Board listened to petitioner's case.

CHARLES KIM MOTIONED TO ALLOW JUN WANG TO BE AWARDED A NEW LICENSE WITHOUT HAVING TO TAKE THE EXAM. PAUL WEISMAN SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

b. Wonchung Michelle Ryu (license cancelled 1/1/04)

The Board listened to the petitioner's case.

CHARLES KIM MOTIONED TO GRANT WONCHUNG MICHELLE RYU A NEW LICENSE WITHOUT HAVING TO TAKE THE EXAM. PAUL WEISMAN SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

c. Sung Soo Kim (license cancelled 12/1/02)

Petitioner was not present.

CHARLES KIM MOTIONED TO DENY SUNG SOO KIM A NEW LICENSE WITHOUT HAVING TO TAKE THE EXAM. GEORGE WEDEMEYER SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

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

The Board listened to the petitioner's case.

PAUL WEISMAN MOTIONED TO GRANT PATRICIA BEDROSIAN A NEW LICENSE WITHOUT HAVING TO TAKE THE EXAM. CHARLES KIM SECONDED. VOTE: 5 – 0 – 0. MOTION PASSED.

14. Future Agenda Items

AnYork Lee asked that when people come back to active status that the Board have more comprehensive requirements. He also asked to place investigating/scrutinizing the CE providers of those coming back to active status. Paul Weisman asked to agendize the addition of an ethics requirement for CEs.

15. Public Comment Period

Neal Miller asked the chair to clarify the purpose of the Blue Ribbon Panel. He also stated that the state budget should not affect the actions of the Acupuncture Board since it is self-funded. He also stated that he felt it was inappropriate to audit or review an approved provider simply because someone who has let their license lapse decided to take the course. He also warned of the ties of special interests and members of the board/committees and that he will research if there is any conflict of interest. Director Brian Stiger urged the Board to address the Disciplinary Guidelines at the next meeting.

16. Adjournment

Meeting adjourned at 5:30 PM