



ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

APPROVED REVISED
California Acupuncture Board
Meeting Minutes
February 14, 2014

First Floor Hearing Room
1747 North Market Blvd., Sacramento, CA 95834

Board Members Present

Michael Shi, L.Ac, President, Licensed Member (MS)
Kitman Chan, Vice President, Public Member (KC)
Jeannie Kang, L.Ac, Licensed Member (JK)
Jamie Zamora, Public Member (JZ)
Hildegarde Aguinaldo, J.D., Public Member (HA)
Francisco Hsieh, Public Member (FH)

Board Legal Counsel Present

Spencer Walker

Staff Members Present

Terri Thorfinnson, J.D., Executive Officer (TT)
Tammy Graver, Board Liaison
Terry Sinkovich, Examination Coordinator
Ben Bodea, Education Coordinator
Kristine Brothers, Enforcement Coordinator (KB)
Marc Johnson, Policy and Regulatory Coordinator

- 1. Call to Order and Quorum established.**
- 2. Election of Officers for Chair and Vice Chair.** Michael Shi was re-elected President and Kitman Chan was re-elected Vice President.
- 3. Opening Remarks.** Michael Shi wished everyone Happy Chinese New Year.

4. Petition for Early Termination of Probation:

Yihan Fang, AC 4603 (Case No. PETP-1A-2010-197).

5. Petition for Early Termination of Probation:

Kisoo Song, AC 7495 (Case No. PETP-1A-2008-135).

CLOSED SESSION

6. Pursuant to Government Code Section 11126(c) (3) the Board convened in closed session to deliberate on the Petitions and take action on disciplinary matters.

7. Pursuant to Government Code Section 11126(a) (1) the Board met in closed session to conduct the annual evaluation of the Executive Officer.

OPEN SESSION – Announcement Regarding Closed Session

8. Minutes for the May 23, 2013 and November 14, 2013 Board meetings were approved.

9. President's Report. MS reported on meeting with the Chinese delegation. Their mission was to get to know the status of TCM overseas. He explained that the Board had two Stakeholder meetings: one in Northern California and one in Southern California. TT prepared a presentation about workforce data which is on the Board's website. The discussion focused on the challenges facing the profession. It was also the kick-off for the Occupational Analysis. Three of the four committees met last month. The new structure of committees is for the majority of the Board work to be completed in committees.

10. Executive Officer's Report. Katie Le was introduced as the newest Board staff. TT explained that the Governor's Budget had authority for three new Board staff. Those positions need to be approved by the Legislature in this legislative session. TT further explained the budget process. DCA Budget Chief, Taylor Shick was introduced to answer any specific budget questions. The question about where unspent money goes was answered. It was explained that it goes back into the Board's special fund. Other questions that were raised included: when the fiscal year ends, how budget projections are estimated, how the budget is created. All questions were answered.

There was a question about staffing temporary versus permanent staff, which TT explained the difference between the position types. Temporary staff does not need any authority to create, but it is limited to part-time at 1500 hours per year. TT went on to explain that to date the Board has under-spent its budget approximately \$760,000 per year. This year the amount has decreased significantly due to increased staff and enforcement expenditures. Drawing attention to the enforcement line items in the

budget, TT explained that every enforcement category has significantly increased across the board this year due to increased enforcement work. Even though our performance measures are still high, we are doing more enforcement work than in the past. Eventually, with more staff the budget may turn into a structural deficit in which we expend more than we take in as revenues. However, for now and years to come, the Board has a financial cushion to deal with that deficit. TS explained that while the Board has a reserve, it is unable to raise fees, but as the Board gets closer to spending down its reserves, DCA budget staff will work with the Board about shifting to fee increase proposals. We would look at what fees are at the statutory cap or what fees the Board can raise through regulations.

TT provided an update on the status of the occupational analysis. Phase 1: the stakeholder input process has drawn to a close. Now we are in Phase 2: the subject matter expert phase that involves interviews and subject matter expert workshops. After this phase, the final phase involves surveying licensees and the final report. The next California Acupuncture Licensure Exam is February 20th in Long Beach, a new location for Southern California.

TT provided an update on the Sunset Review hearing that is set for March 17, 2014 and encouraged stakeholders to attend the meeting. The Board will send out materials and hearing dates and times to the list-serve as soon as we know more. TT provided an update on the Strategic Plan 2013-2017. The staff met with SOLID training staff to create an Action Plan for the strategic plan. The Action Plan will be presented as a separate agenda item today, but an initial explanation of the role of the action plan was provided to demonstrate that the Board was on track with its strategic planning implementation. The purpose of the Action Plan is to provide more specifics on how each of the goals and objectives are to be accomplished, by whom and by a targeted completion date.

Kristine Brothers (KB) provided the enforcement report explaining enforcement data. In response to Board requests to see more long-term data, she created some annual charts of enforcement data. She showed a graph depicting aging cases but explained that the measure only included the investigation phase, not the subsequent disciplinary phase including DOJ and hearings. It was pointed out that few cases can skew the performance targets upwards to increased disciplinary days; whereas, more cases tend to lower disciplinary days. She answered questions from Board members. The most common question is why the intake number does not match the number of cases. The answer is that each category numbers are a point in time for that category; and, typically, cases take more than a year to complete. Therefore, pending cases include cases from last year's intake. It was also pointed out that there are an unusually high number of criminal charges and convictions. This is something that should be looked at by the Education Committee. MS confirmed that it would be reviewed by the Education Committee.

11. Committee Updates.

Education Committee. MS reported on the January 17, 2014 Committee meeting. All five Committee members were in attendance. The Committee reviewed two school approvals application requests. The Phoenix Institute of Herbal Medicine and Acupuncture (PIHMA) was recommended for Board approval by the Committee. The New York Chiropractic College- Finger Lakes School Acupuncture and Oriental Medicine (NYCC-FLSAOM) application for school approval was reviewed and was recommended to the Board to deny the application due to deficiencies in clinical supervision that the school refused to correct. The number of continuing education providers and the continuing education process as an issue referred by the Board to the Committee for consideration. The discussion focused on the fact that there are 800 plus CE providers serving 12,000 licensees. There was concern that the quality of these courses may not be very high. The Committee is continuing to discuss this issue.

Enforcement Committee. HA reported that the three members of the Committee were in attendance at the January 17, 2014 meeting. The Committee discussed the need for recommending legislative authority to create a standardized 801 reporting form. This was a recommendation from the Sunset Review Committee. TT explained that the need for Legislative authority is because the Board is not receiving many reports and anecdotal evidence indicates that there are more unreported settlements and actions that the Board does not receive. Having the authority to create a standardized form would require reports to be provided to the Board. The recommendation from the Committee was for the Board to approve seeking legislative authority to create a standardized 801 reporting form. This issue is to be discussed later as a separate agenda item. The remaining committee issues that were discussed and are agenzed later included updating the hand hygiene regulation and the proposed prostitution prevention regulatory change.

Examination Committee. FH explained that the Committee discussed several issues. The first issue discussed was to place a cap on the number of times applicants can retake the California Acupuncture Licensure Exam (CALE). The Committee is continuing that discussion. The second issue discussed was the Herb List in the Exam Preparation Guide, which the Committee decided to leave to the Exam Subject Matter Experts. The third issue that the Committee discussed was the August 2012 exam results. The Committee reviewed the Investigation Report and the Independent Expert Report that concluded nothing was wrong with the exam. The Committee concluded that the Board has sufficiently addressed concerns raised about the exam results and that the matter was closed.

12. Assignment of Strategic Goals and Objectives to Board Committees:

- Goal 1 – Licensing
- Goal 2 – Enforcement (Enforcement Committee)
- Goal 3 – Education (Education Committee)
- Goal 4 – Professional Qualifications (Education Committee)
- Goal 5 – Outreach
- Goal 6 – Administration

Please see document at end of these minutes for committee assignments.

MS went through each Goal and objective and assigned them to their respective committees to work on accomplishing the goals and objectives. There was public comment that claimed that the Objective 5.4 does not need to be accomplished because there is no mandate for acupuncturists to go to electronic medical records under the Affordable Care Act. They offered to provide the Board a written document related to electronic medical records. Other comments included the fact that there was no mention of the accreditation and national exam issues in the strategic plan.

13. Final Decision on School Applications:

Phoenix Institute of Herbal Medicine and Acupuncture (PIHMA). KC motioned to approve the school, FH seconded. MOTION TO APPROVE PIHMA AS AN APPROVED SCHOOL PASSED BY THE BOARD 6-0.

New York Chiropractic College- Finger Lakes School Acupuncture and Oriental Medicine (NYCC-FLSAOM). KC motioned to deny school approval, seconded by FH. MOTION TO DENY NYCC-FLSAOM AS AN APPROVED SCHOOL PASSED BY THE BOARD 6-0. Like the Committee, the Board felt strongly about the school's non-compliance with clinical supervision standards, and that it is a threat to public safety and violated the Board's curriculum standards. Public comment from several speakers indicated that this was an unrealistic standard and that none of the schools were in compliance with the Board's clinical standards. The Board clarified that this is an existing regulation so there has been no regulatory change.

14. Standardized Malpractice form 801 proposed legislation. Enforcement staff KB presented the need for seeking legislation. The problem is that the Board receives few reports and the Board believes that are settlements not being reported. In Fiscal year 2012/13, the Board did not receive any reports. The Sunset Review Committee recommended that the Board seek this authority. Approving the proposal to seek legislative authority for this form would resolve this issue and satisfy the Sunset Review Committee. There was further discussion about why the current law is not sufficient to require reporting. The fact that the Board receives few to no reports indicates the current statutory authority is not sufficient. JK motioned to seek legislative authority to create a standardized 801 reporting form, seconded by HA. MOTION APPROVED BY THE BOARD 6-0.

15. Proposed regulatory language for prostitution prevention.

KB began with a brief overview of the issue. **HA noted the previous enforcement committee meeting discussed the issue but did not formally adopt the motion.** This proposal would add a regulatory change to the condition of office regulatory section. It would prohibit sex in the office space and in effect create an administrative standard that would be violated by use of an acupuncture office for prostitution. Currently, prostitution is a crime that District Attorneys are not prosecuting, so the Board has no disciplinary recourse against providers who use their license for prostitution. This would

create an administrative action related to prostitution that would provide the Board the administrative authority to bring disciplinary actions against licensees who allow prostitution on the premises regardless of whether they were prosecuted for the crime or prostitution. This would prevent prostitution from spreading within the acupuncture profession. Board members all agreed with the proposed regulation.

MS asked for further public comment. None was made. JK motioned to adopt the language as underlined on the last page of the memo, seconded by HA. MOTION APPROVED BY BOARD 6-0. Motion to delegate authority to the executive officer to commence the regulatory process and to make non-substantive changes made by JK, seconded HA. MOTION APPROVED BY BOARD 6-0.

16. Proposed update of hygiene regulations. HA provided the explanation of why this regulatory change is needed and what it does exactly. The current regulations related to hand hygiene are outdated and non-compliant with health industry and public health standards. This change would bring our hand hygiene standard into compliance. The change would add the use of alcohol-based hand sanitizers. The Board member discussion reflected support and that the change is needed and uncontroversial. JK made the motion to approve proposed regulation and language, seconded by HA. MOTION APPROVED BY BOARD 6-0. Motion to authorize the executive officer to commence the regulatory process and make non-substantive changes by JK, seconded by HA. MOTION APPROVED BY BOARD 6-0..

Public comment raised the concern not to put this in regulations, which are cumbersome, but to simply amend the Infectious Disease Guidelines instead, which are not in regulations and can be easily changed. In the discussion it was determined that the Infectious Disease Guidelines are not actionable and updating the regulation is the only way to make it an actionable standard and update current outdated standards in regulations.

17. Proposed regulatory change that sets limits on the number of times applicants can re-take the CALE. This is an issue of concern that MS assigned to the Exam Committee for further study.

18. Regulatory Update List.

- Acupuncture Advertising Guidelines
- Continuing Education Ethics Requirement
- Consumer Protection Enforcement Initiative (CPEI)
- Sponsored Free Health Care Events
- Uniform Standards Related to Substance Abuse and Recommended
- Guidelines for Disciplinary Orders and Conditions of Probation

TT explained that staffing shortage and meeting preparation was causing delays in completing regulatory packages. JK expressed concern that regulatory packages were not completed and particularly CPEI and SB 1441. She specifically requested that CPEI

be completed by the next Board meeting. In setting priority next should be SB 1441 then Free Sponsored Health Events.

19. Requests Pursuant to B & P Code Section 4967.

Marlene Louisa Isidro (license cancelled 8/20/12) presented her request for a new license without having to retake the exam. JK moved to approve reinstatement, seconded by MS. MOTION APPROVED BY BOARD 6-0. Discussion included why should reinstatement be allowed because then everyone would simply let their licenses lapse and come to the Board to request reinstatement. The answer was the statute allows the option.

Poongwon Peter Lee (license cancelled 9/26/13) No show. Tabled by Chair.

Future Agenda Items. None.

Public Comment on Items Not on the Agenda. A comment requesting merged file of all materials. Reverse public comment and future agenda items on the agenda.

Adjournment.

BOARD MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT
www.acupuncture.ca.gov

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**Committee Assignments from Action Plan
February 14, 2014 Acupuncture Board Meeting**

Enforcement Committee Assignment

- ✓ Review existing disciplinary guidelines to identify revisions and update the regulatory standards language (p.11)

Education Committee Assignment

- ✓ Review international terminology standard including the World Health Organization (WHO) (p. 19)
- ✓ Review continuing education standards, course lists and review scope of required course work (p.20)

Exam Committee

- ✓ Review what regulatory changes would be required to shift to computerized exams (p.23)
- ✓ Propose a limit on the number of times a person can take the CALE (p.23)

Executive Committee

- ✓ Identify current training needs for Board members (p. 28)