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**BOARD MEETING
Meeting Minutes
December 17-18, 2020**

LOCATION:

Web Ex Teleconference

Board Members Present

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

Members of the Board

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

Staff Present

Benjamin Bodea, Executive Officer
Fred Chan-You, Legal Counsel
Jay Herdt, Licensing Manager
Kristine Brothers, Policy Coordinator

Guest List on File

Full Board Meeting – Thursday, December 17, 2020

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

Board President, Dr. Amy Matecki (President Matecki), called the meeting to order at 12:02 p.m.

Policy Coordinator, Kristine Brothers (Brothers), called the roll.

Members Present:

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

7-0 Quorum Established



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**Note: Members Harabedian and Li confirmed connection at 12:12 p.m.*

2. President's Remarks (Dr. Amy Matecki, President)

President Matecki noted that this year everyone had to make changes to how they operate during the pandemic. Professional associations, training programs, continuing education providers and other stakeholders have all been challenged to continue serving the public.

President Matecki observed that the fee increases were coming at an inopportune time, but there has been progress. The Board is meeting online, more courses are available online, and associations have increased their activities to address the challenges their members are facing right now.

President Matecki was reminded of the Board's 2018 strategic planning sessions. One of the guiding values chosen in those sessions was collaboration. President Matecki noted that this value has been an important reason why the Board has been able to do what it has during this time and will remain critical while we move through our challenges.

President Matecki closed her remarks by thanking Department of Consumer Affairs (DCA) and Board staff for their flexibility and diligence in maintaining Board operation. She also thanked Board members for their continued service.

3. Public Comment on Items Not on the Agenda (Dr. Amy Matecki, President)

A commenter asked for a pointer to the specific action of the Governor that designated acupuncturists as 'essential.' He also noted that CalATMA has requested the Board address the issue of bleeding since 2018.

4. Update from the Department of Consumer Affairs (Carrie Holmes, Deputy Director for Board and Bureau Relations)

Deputy Director Holmes (Holmes) introduced herself noting one of her responsibilities covers board member appointments. She reported that members' terms will expire effective June 2021 after which they can start a one-year grace period; and could be re-appointed if they have not already served two terms. She said that Board members seeking reappointment have different procedures depending on their appointing authority.

Deputy Director Holmes then described the many steps that the Department and the State have taken to respond to the pandemic. To minimize exposure and maximize service to the public, the Department and its staff conduct its work remotely as much as practical. For those services that must be done in person, public health measures have been implemented across the Department. The State and the Department have taken



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steps to limit expenditures as well as hiring, and are working to address an expected five percent budget reduction to take place no later than the 21-22 fiscal year. Holmes closed her remarks noting that the shift to telework includes training for Board staff and Board members.

5. Discussion and Possible Action on the Waiver for Clinical Distance Education (Herdt)

Licensing Manager Jay Herdt (Herdt) presented a summary of the discussion on a Waiver for Clinical Distance Education held by the Education and Research Committee (ERC) meeting before today's Board meeting. Herdt first noted that the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) has updated their waiver language since the meeting materials were developed. Under the new language, at least 25 hours of the 150-hour clinical application requirement must be live (allowing 125 hours to be distance education). And, at least 250 hours of the clinical training requirement must be live (allowing up to 450 hours to be distance education).

Herdt noted that current law and regulations do not allow for distance education. He then summarized current regulations going over the clinical hour requirements pursuant to California Code of Regulations (CCR) section 1399.434(h).

Herdt explained that these requirements are difficult to comply with during the pandemic based upon the requirement that the Clinical Supervisor be physically present. Educational and training programs for acupuncture in California must be approved by ACAOM. Without this approval their students could not receive federal financial aid. Herdt described ACAOM's waiver program, which is a temporary waiver of curriculum requirements to allow for some clinical hours to be done through distance learning.

Herdt then compared the ACAOM waiver terms with the current regulatory requirements. Required hours for clinical observation and clinical practice are very close. The Board requires 100 more hours for clinical practice as ACAOM but the same hours of clinical observation.

Herdt mentioned that the Board would require a mechanism to approve a waiver, and Governor Newsom's Executive Order N-39-20 allows state regulatory boards to seek waivers of regulations and laws. Staff has developed a draft waiver for the Board's consideration. Herdt indicated the waiver would align Board requirements with the ACAOM waiver, with one exception. The Board waiver would allow for a limited number of clinical hours to be done through distance learning. There would be no change in content or in how many total hours were required.

The proposed waiver would also reduce the required percentage of clinical hours done at a clinic owned and operated by the school from 75 percent to 50 percent. Given



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the changes in this proposed waiver language, staff felt it necessary for the ERC to review it prior to Board approval, which was done.

ERC Chair Harabedian noted that the waiver would be temporary and limited, and he considers the proposed language reasonable, which the ERC as a whole agreed. Member Kim agreed that the waiver language is acceptable. He noted that students still need hands-on training in the clinic setting, but it doesn't have to be a school-owned clinic. President Matecki showed support for the waiver. While she emphasized the temporary nature of the waiver, she felt it may be worth considering what parts of the waiver should be made permanent. Member Chen conveyed support but expressed concern about ensuring the quality of clinic instruction done away from the school facility. President Matecki noted the concerns and emphasized the temporary nature of the waiver.

Public Comment

The first commenter noted that ACAOM has the same standards for clinical training conducted on campus as for clinical training done away from campus. When there are accreditation visits training handled on and off campus is reviewed.

The second commenter, CalATMA's representative Neal Miller, indicated that CalATMA supported the waiver motion. Post-COVID syndrome has been an issue for patients in their clinic and something heard in conversation with schools. The commenter mentioned a need for a higher minimal level of competency in acupuncture programs, particularly for herbal medicine and telemedicine.

The third commenter expressed support for the waiver and noted that in their experience, students benefitted from having opportunities in clinical settings outside of acupuncture schools.

MOTION

Member Harabedian motioned that Board staff work with the Department of Consumer Affairs and the Governor's Office to develop a waiver for clinical distance education.

President Matecki seconded the motion.

Vote

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

7-0 Motion passes

6. Discussion and possible action on the Regulatory Language for Licensed Acupuncturist Practice of Telehealth (Herdt)

Herdt went over the memo prepared by staff for the Licensing and Examination



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Committee (LEC) on the implementation of a telehealth regulation. The LEC has recommended that the full Board consider the memo. It reflects the input of staff and stakeholders.

Governor Newsom issued Executive Order N-43-20 to encourage the use of telehealth services to both reduce exposure to health care workers and to maximize the ability of Californians to obtain health care services. Both licensees and the public have asked the Board questions about telehealth services for acupuncture and the Board issued a statement providing general guidance for licensees on providing telehealth services.

Business and Professions Code section 2290.5 provides statutory authority for licensees in the healing arts to provide services over telehealth. Based on that authority Board staff has determined that additional guidelines and regulations are needed and have drafted proposed regulatory language. The LEC was asked to review the language and provide any amendments, which they have.

Herdt then read the proposed language. To provide acupuncture via telehealth the acupuncturist's license must be current and valid, the patient must be in California and subject to California laws and regulations, and the acupuncturist must obtain informed consent from the patient for providing services via telehealth. Such informed consent must include provisions specific to telehealth. The licensee would determine that telehealth is appropriate after considering several factors. The licensee must also be competent in delivering acupuncture services via telehealth, based on the licensee having relevant knowledge, skills and abilities. The licensee must take reasonable steps to transmit data securely, notifying the patient immediately of any known data breach or unauthorized dissemination of data. The licensee must follow all other provisions of the Acupuncture Licensure Act, acupuncture regulations, other provisions of law and standards of care for the State. Failure to comply with these laws and regulations, as well as the laws and regulations for telehealth in another state that the licensee or patient would be located, constitutes unprofessional conduct.

President Matecki thanked staff for their work on this project. Chair of the LEC, Member Kitman Chan (Chan), indicated the LEC agrees with the recommendation. Member Chan asked staff for more research and felt the change should be temporary. Member Yong Ping Chen (Chen) thanked the staff for their work and felt the proposal should be advanced to the Board for discussion. From Member Chen's perspective, there are limited applications for telehealth in acupuncture, focused on what can be done with internal medicine rather than needling. Member Chen raised two questions for discussion: Should the language specify what practices can and cannot be done via telehealth, and should the Board establish a standard consent, or have the stakeholders present consent language to the Board for approval.

Executive Officer Ben Bodea (Bodea) then outlined for the Board some changes staff



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and legal counsel have identified since the LEC met earlier this morning. Bodea encouraged the Board to keep this as a full Board meeting item, and to move to place this issue on the 2021 Rulemaking calendar. Revised language would be brought back to the Board for review at a future Board meeting.

Dr. Matecki commented that her experience over the last few months suggests telehealth can have advantages for acupuncturists and their patients. She also sees potential for more collaborations through telehealth. Member Kim noted that the use of telehealth is expanding, but it will require safety measures. It will be important to have continuing education available for acupuncture and telehealth.

Public Comment

The first commenter commended the Board for acting quickly on the matter of telehealth. The commenter noted that CalATMA is working on a telemedicine presentation and that other stakeholders and associations in the profession have provided online resources or have otherwise been discussing telehealth and acupuncture. The commenter wanted to confirm that herbal medicine was part of the telehealth conversation.

The second commenter encouraged the Board to provide specific language for obtaining consent from patients.

Executive Officer Bodea confirmed that the language would include the scope of the acupuncturist that is viably delivered via telehealth. For the delivery to be viable, the standards of care must line up with the delivery of service.

Motion

Member Harabedian moved to include telehealth on the 2021 rulemaking calendar, and for the Board to consider revised regulatory language at its next meeting.

Member Chen seconded the motion

Vote:

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

7-0, the motion passes.

7. Review and Possible Approval of the August 27, 2020 Board Meeting Minutes

The Board members had no comments on or changes to the draft minutes for the August 27, 2020 Board meeting.

Motion

Member Harabedian moved that the Board approve the draft minutes for the August



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27, 2020 Board meeting as written

Member Kim seconded the motion.

There was no public comment.

Vote:

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

7-0, the motion passes

Recess taken from 1:40 until 2 p.m.

Roll Call Attendance Taken.

Members Present:

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

7-0 Quorum present.

8. Discussion and Possible Action regarding Regulations as a result of AB 2138 Licensing Boards to Amend 16 CCR §§ 1399.469.4, 1399.469.5, and 1399.469.6: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction (Brothers)

Brothers provided a brief history of the AB 2138 rulemaking package and pointed out the three separate comment periods that occurred. The key provisions of the law, which became effective July 1, 2020, were summarized. The purpose of reviewing each of the public comments received from the initial 45-day public comment period and second 45-day comment period was explained to the Board. Brothers provided that the rulemaking process required the Board to review and consider each comment received. Each comment and Board response would be made part of the final rulemaking record as part of the Final Statement of Reasons. The summary of each comment and recommended response were prepared in consultation with, and based upon, direction given by the Board's Executive Officer.

Brothers summarized seven total comments from a letter received by Root and Rebound Reentry Advocates and Community Legal Services of East Palo Alto in congregation with 18 other organizations. Brothers also presented each proposed response on each comment for the Board's consideration. In addition, Brothers provided a summary of an email received from Licensed Acupuncturist, Dixie Wall, which was received during the second 45-day comment period when the proposed language was noticed once more as part of an amended notice. A recommended response for the Board's consideration was also presented.

Member Kim asked if the proposed regulations to implement AB 2138 were similar to



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other DCA boards to which EO Bodea explained they are. EO Bodea also indicated that the first letter with the seven comments was sent to several other boards when their proposed language was noticed and their interpretation parallels Board staff's interpretation as well.

The Board collectively reviewed and considered each of the proposed responses and voted.

MOTION:

President Matecki moved to direct staff to accept the comments, but reject the action(s) requested in the proposed comments, provide the response to the comments (as indicated in the meeting materials), remove the gender pronouns to refer to the actor, specifically applicant or licensee, and use when completing the regulatory process, as authorized by motion at the Board's June 26, 2020, meeting.

Member Kim seconded the motion.

Vote:

Yes - Matecki; Chan; Chen; Harabedian; Kim; Li; Osorio.

7 – 0, motion passes.

Public Comment

First commenter requested that the proposed responses be edited to ensure gender neutral pronouns be used.

Second commenter showed support of the Board's action and also requested that the proposed responses be made gender neutral.

9. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, CCR § 1399.469 (Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees and the Incorporation of SB 1448 and AB 2138) (Brothers)

Brothers provided a brief overview of the Disciplinary Guidelines regulatory package that incorporates implementation of SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), SB 1448 (Hill, Chapter 570, Statutes of 2018), and AB 2138 (Chiu, Chapter 995, Statutes of 2018). Brothers explained the purpose of bringing the proposed language and Disciplinary Guidelines back to the Board was to align the sections of the Guidelines that incorporate AB 2138 language with the modified AB 2138 text amendments approved by the Board at its June 26, 2020 meeting.

Brothers pointed out a new revision date as part of the text for Title 16, CCR § 1399.469 and went over the amendments to the Guidelines (a document incorporated by reference) on pages 12 – 15 that now reflect the modified text approved by the Board.



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Additionally, another change on page 52 concerning the inclusion of optional term #29 as a recommended minimum penalty for violation of Business and Professions Code section 480 was noted by Brothers.

The Board discussed the changes and a vote was made.

MOTION:

Member Harabedian moved to approve the proposed amended regulatory text for Title 16, Section 1399.469, and to direct staff to submit the text to the director of consumer affairs and the Business Consumer Services and Housing Agency for review, and if no adverse comments are received, authorize the executive officer to take all steps necessary to initiate a rulemaking package, make any non-substantive technical and/or grammatical changes to the package, and schedule the matter for a hearing if requested.

Member Osorio seconded the motion.

Vote:

Yes - Matecki; Chan; Chen; Harabedian; Kim; Li; Osorio.

7 – 0, motion passes.

Public Comment

CalATMA's representative, Neal Miller, reported the association's support of the motion.

10. Establishment of the 2021 Board Meeting Calendar (Bodea)

The following dates were set for Board meetings in 2021:

March 25-26

June 24-25

August 26-27

November 4-5

The August and November meetings would also likely involve reviewing some of the material Board staff will be gathering for sunset review as the Board is up for its review in 2021.

11. Future Agenda Items (President Matecki)

Board members were invited to make suggestions for topics for future Board meetings. Member Harabedian asked about the status of the bleeding presentation from CalATMA. EO Bodea indicated that the presentation could be done in the first or



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second meeting of the year, barring any need to respond to crisis situations. Member Kim requested the Board address additional clinical training opportunities for students outside of the school-owned clinics, which may include making the Clinical Distance Education waiver language permanent. Member Kim also suggested telehealth as a future Board meeting item. Member Chen would like the Board to address how to regulate the practice of herbal medicine in acupuncture. EO Bodea noted that the business modernization process, sunset review and other projects are also scheduled for 2021.

Public Comment

The first commenter noted topics that had been brought up before (dry needling, bloodletting, lasers and Asian massage) and suggested additional topics. The Board should address COVID guidelines, increasing the minimal competency requirements of educational programs, and clean needle technique.

The second commenter would like the Board agenda to include laser acupuncture as part of the scope of practice.

The third commenter indicated that the Council of Colleges on Acupuncture and Herbal Medicine has also been working on an educational presentation on clean needle technique. It is fully online, and the commenter, Valerie Hobbs, who co-chairs the effort) offered to make a presentation on it should there be interest in placing it on the agenda.

12. CLOSED SESSION

13. Pursuant to Government Code Section 11126 (a) (1), the Board will Meet in Closed Session to conduct an Evaluation of the Executive Officer.

Closed session began at 3:28 pm.

14. Return to OPEN SESSION

Open session reconvened at 4:39 pm.

15. Adjournment (Dr. Amy Matecki, President)

Meeting Adjourned at 4:40 pm.

Day Two, Full Board Meeting - Friday, December 18, 2020

16. Call to Order, Roll Call, and Establishment of Quorum for Day Two

(Dr. Amy Matecki, Board President)



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Meeting started at 9:32 am.

President Matecki called the Board to order. Brothers called the roll:

Members Present

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

7-0 Quorum Established

17. President's Remarks (Matecki)

President Matecki noted the hardships the Board faced in 2020, thanked the stakeholders for their work with the Board through this time. She then deferred to her remarks provided on day one.

18. Public Comment on Items Not on the Agenda (Matecki)

The first commenter noted the recent fee changes for renewal of continuing education (CE) courses and explained why these would pose an undue burden on large providers of CE courses. The commenter does not have a problem with the other new fees for CE courses, just the \$10/credit hour fee for renewal of courses. The commenter believes there are many possibilities for addressing this fee, including a bulk rate discount.

The second commenter represents AAMCA and is also concerned about fees. They suggested holding off on implementing the fees until after the COVID-19 pandemic. Further, the commenter objects to the new wall license fee of \$50 per wall license.

19. Executive Officer's Report (Executive Officer Ben Bodea)

EO Bodea updated the Board on its financial standing, personnel numbers and business modernization processes.

(A) Budget Update – Fund Condition

The Board's financial standing is solid, with reserves on hand low, but within acceptable limits. Fluctuations in expenditures and income can be traced to the investments for business modernization and the fee increase coming into effect in January 2021.

(B) Staffing Update

Bodea noted that staff vacancies continue to be filled, and the staff has been great in addressing the workload amidst the challenges of the pandemic.

(C) Business Modernization Update

Herdt addressed the business modernization process. To date, license renewal and exam applications have been moved online, including payments. The second phase of



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the project is moving the wall license application and payments processes online, as well as cashiering the continuing education processes from the back office. That phase is currently in progress. The third phase involves moving the rest of the continuing education program functions online, along with examination retakes, which should begin early in the new year.

Member Kim asked about any connection between the fee increase and the modernization processes. Bodea indicated they were somewhat contemporaneous. He is optimistic that the fee increase coupled with time savings and streamlined processes from the modernization effort will provide the Board greater financial stability.

President Matecki asked about the endpoint of the project. Bodea anticipated that the remaining rollout of functions will take place over the next six months with an additional year of maintenance and operations and smaller developments. Matecki asked about remaining costs for the project and Bodea noted that most of the project expenditures have been paid out, with maintenance costs being most of what remains.

Public Comment

The first commenter thanked the staff, singling out Kristine Brothers, for all their hard work during the pandemic, especially with the additional resource challenges they faced.

The second commenter wished to echo concerns raised under the previous agenda item about continuing education fees for distance learning courses.

The first commenter would like the minutes to reflect who attends the meetings and who says what. The commenter echoed the concerns raised earlier over fees, and noted that few of the organizations and associations in the profession were at Board meetings. These meetings are a source of information for the profession and CalATMA is working to better disseminate meeting information to those who couldn't attend.

Board Legal Counsel Fred Chan-You (Counsel Chan-You) noted that speakers are not obligated to identify themselves at Board meetings.

20. Enforcement Report – Q1, FY 20-21 (Bodea)

EO Bodea presented the enforcement data for the first quarter of the 2020-2021 fiscal year (July-September). Complaint numbers are down. Average intake cycle time has increased, but it is still well within the 10-day target. Average total case time has decreased, remaining below the target time of 200 days. Citation numbers have been steady. However, intake cycle time and total completion time for these cases have both increased. Attorney General initiated cases are within historical trends.

Member Kim asked about possibly creating courses to address some of the common issues arising from enforcement actions. Bodea noted that Board staff will continue to



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look at enforcement data for trends. If the Board wants to develop a course on its laws and regulations, it can. It would be worth considering working with associations and other stakeholders who are engaged on the matter.

Member Chan asked for more details concerning the data on cases involving professional misconduct. Bodea and Brothers noted that the category is a catch-all of sorts, where violations that don't fit another category well tend to be placed. Member Kim asked about impacts on enforcement due to the pandemic. Bodea noted that incoming complaints are down, but it is a little early to note a trend. For instance, an increase in violations due to failure to notice the Board of a change of address has occurred, and we may not see the full impact on the total numbers until later in the fiscal year. So far there has been an increase in citation-level activity (which can be handled by office staff) but a decrease in cases that require referral to the Attorney General. Member Chen encouraged stakeholders to communicate the laws and regulations to their members, as that can help address some of the violations.

Public Comment

A commenter noted the decrease in sexual misconduct charges, and restated a frequent concern expressed to the Board about the use of the term 'Asian massage' given its problematic associations. The commenter would like to see that term replaced in law and regulation. He concurred with the idea of using communication with students and licensees to increase understanding of laws and regulations and to decrease unprofessional conduct.

21. Licensing Report – Q1, FY 20-21 (Herdt)

Herdt reviewed the licensing statistics for the first quarter of the 2020-2021 fiscal year. Total numbers of licenses have remained stable, with mild fluctuations going back to the 2018-2019 fiscal year. New applications were greater than cancellations, and two educational and training programs lost their approvals due to a failure to receive accreditation. There was a high number of tutorial programs that lost approval, primarily due to failure to submit the necessary renewal and reports. The statistics for exam participation and pass rates for the second half of 2020 will be available shortly after the end of the year.

Herdt noted that the Occupational Analysis will be starting soon, and how important it is to have a high level of participation across the profession. The Board is offering four continuing education (CE) hours to licensees who complete the survey, which should encourage participation.

Dr. Matecki asked for clarification about the data on exam participation and pass rates. Herdt indicated they will be posted online as soon as available but not until the next Board meeting.



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Member Kim asked for the number of educational and training programs approved by the Board to which Herdt noted there are 34 approved in total. Bodea noted there are 16 approved educational and training programs in California. Herdt indicated he would include those numbers in future licensing reports.

Member Kim expressed concerns about the decline in licensee numbers and has observed a lot of retirements in both acupuncturists and other medical professions in part due to the pandemic. He considers more online education as a way to address this. Herdt echoed his observations about retirements increasing.

Public Comment

The first commenter asked if there were any indications of unusual pass rates or statistical anomalies in the examination data. The commenter also asked about any feedback on ACAOM's performance as an accreditor, relaying complaints heard over ACAOM's responsiveness to complaints against programs. The comments were concluded by echoing the importance of participating in the occupational analysis and applauding the approval of CE for participation.

The second commenter emphasized that their concern (and that of many of their colleagues) about the new fees was specific to the fees for renewal of a CE course. They believe the Board has the authority to adjust the fees to address their concerns.

Recess taken from 11:01 to 11:15 a.m.

Members Present:

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

7-0 *Quorum present.*

22. Legislative Report of 2020 Legislative Bills of Interest to the Board

Brothers noted that while Board members have information on all the bills the Board has tracked during the 2019-2020 Legislative session, the Legislative report will focus on the three bills of that group that were enacted into law.

(i) AB 2113

AB 2113 takes effect January 1, 2021. It requires agencies in the Department of Consumer Affairs (DCA) to expedite the initial licensure process for any applicant that provides sufficient evidence that they are a refugee, have been granted asylum or have a special immigrant visa. Programs have the authority to adjust their regulations to implement these provisions. The Board will need to change its printed application form through regulation and adapt the online licensing forms as well. Staff is working with the Office of Information Services to ensure the qualifying applications are flagged and



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moved within the queue. Brothers does not expect this to affect a large number of applications.

(ii) AB 3330

AB 3330 is the fee bill, which will take effect January 1, 2021, raising all fees and establishing a few new ones. There is a big implementation plan for this bill. Forms will be updated, the website requires changes, and new processes will have to be implemented to handle some of these changes. While staff will need to submit a regulatory package to implement some of the fees, many fees will be implemented by statute. The new fees will be integrated into the business modernization process.

(iii) SB 878

SB 878 requires each licensing board or bureau in DCA to post on their website for each license type, the average processing times for initial and renewal license applications. It becomes law July 1, 2021. DCA is leading the implementation of this law.

President Matecki noted the concerns raised during the meeting by stakeholders about the fees. She asked how a stakeholder might respond to these fee increases. EO Bodea noted that besides bringing their concerns to the Board, stakeholders can work with the Legislature to seek changes to these statutes. The Board staff tracks legislation of interest and discusses them at each Board meeting. The public can also track legislation online. Board staff attend legislative hearings and work to keep informed on legislative actions. Member Kim commented that there can be a role for associations in getting more participation from stakeholders as these bills are being developed. President Matecki indicated that getting involved earlier in the process makes it easier to affect the outcome.

Herd noted that Board staff had from late September 2020 to develop processes and systems for implementing the new fees. This included developing communications for all stakeholders affected, informing them of the new laws. Once the law is in effect, feedback can be gathered. President Matecki noted that the fee increase was coming at a bad time given the economic impact of the pandemic. Member Chen wondered if the Board had authority to postpone the fee increase, and if the fee increases are reasonable (and for whom they are reasonable).

President Matecki wanted clarification on the status of the bills the Board has been tracking but have not yet been discussed. Brothers emphasized that the other bills the Board has been tracking were not signed into law by the end of the session. They would have to be reintroduced in the next session if they were to become law. Brothers mentioned the website leginfo.ca.gov as a useful research tool allowing interested parties to track bills or search for bills on specific topics or with specific phrases in their text.



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Public Comment:

The first commenter raised whether the Board could postpone the fee increases. The commenter would like a better-quality pocket license.

EO Bodea noted that staff is working on an improved quality pocket license, and it should go to production once the Board has transitioned to the new system. Bodea would encourage the Board not to postpone implementing the fees as it would put significant financial strain on operations.

The second commenter, CalATMA representative Neal Miller, noted that CalATMA has been attending Board meetings consistently for many years. It supports the fee increases, but objects to the wall license fee as it was not handled in a transparent fashion. Given the data presented on enforcement earlier in the meeting, the commenter does not believe the wall license fee would be an effective means of combatting unauthorized practice.

The third commenter disagrees that the ability to change fees is limited to the Legislature. The commenter re-iterated that they object to the fees for renewed courses as excessive and believes many courses would be lost as a result. The commenter goes on to note that they believe language in sections 4970 and 4972 of the Business and Professions Code would allow the Board flexibility in imposing fees that would allow them to act on the course renewal fees without going to the Legislature.

The fourth commenter echoed the sentiment that the Board should be able to act on the course renewal fee without going to the Legislature. They felt the Board has not done a good job in communicating these actions to its stakeholders, and the material is not easily found on the website. It would also be helpful to have an online payment option.

The fifth commenter echoed the concerns over the course renewal fees brought by other commenters. The commenter would like e-Lotus's letter on the matter put on the agenda for the next Board meeting. They feel that the Board has the authority to implement a separate fee structure for course renewals, and it is urgent to do so to prevent harm to the profession and the public. They also feel the wall license requirement is unnecessary as people don't look at the expiration dates of licenses for other professionals.

Before continuing with other commenters, President Matecki noted that there will be time later in the meeting to discuss the fee increases.

The remaining commenters opted to defer their comments to that later portion of the agenda.



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23. Regulations Update (Brothers)

The Board reviewed the 2020 Regulatory Rulemaking Calendar and the status of each regulatory topic on the calendar.

Public Comment

A commenter asked the Board to consider regulations establishing a bulk fee schedule for previously approved continuing education courses.

24. Discussion of 2021 Implementation of the requirement for Wall Licenses (Brothers)

The new wall license legislation is separate from the new fees. The wall license requirements, AB 779, was passed into law in 2019, with an implementation date of January 1, 2021. The legislation was covered during all of the 2019 Board meetings.

Existing wall license regulations require licensees to, within 30 days, notify the Board that there is no place of practice or to register their place of practice. If licensees have more than one place of practice, they must obtain a duplicate wall license. Wall licenses must be placed in a conspicuous area within the practice location.

It has been an ongoing enforcement issue to ensure that all places of practice are registered. However, violations of this law are often found through the investigation of other violations, and the statistics may not accurately reflect the number of violations around the wall license.

Under the new law, licensees will need to register all places of practice. Each location will have its own wall license, with a unique identifier. One wall license comes at no charge with the initial acupuncture license. Each additional wall license is \$50. Wall licenses will expire every two years at the same time as the acupuncture license. Licensees that have no place of practice must notify the Board of this and carry a pocket license. Brothers noted that these changes were intended to help address those who do not register their places of practice. Other boards are making similar changes.

Brothers took questions and comments from Board members. Renewing wall licenses will be done in the same process as renewing the acupuncture license. Member Harabedian asked practitioners on the Board if they felt the new requirements were onerous, which commenters have suggested. While President Matecki noted her medical wall license lasts for longer than two years, she supported the new requirements. The pandemic is certainly straining everyone, so the timing may not be ideal. There may be ways to adjust the wall license fees that would be more acceptable.

Herd clarified some of the new regulations and noted what wasn't changing as well.



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The wall license renewal is rolling out by license expiration month, so not everyone will need to deal with it in January. Most licensees also have just one location. It would be more common for multiple acupuncturists to share a location.

President Matecki asked if combining both licenses and fees together rather than separate would help. Brothers indicated that the wall license is a separate kind of license, and many boards do handle different types of licenses. With the new online system, the burden on staff should be lower. While the licenses would be separate items, the new payments system should make it easier to handle all the payments at once. EO Bodea noted that putting the wall license fee into the acupuncture license fee would effectively subsidize licensees that require many wall licenses. The wall license fee is increasing from \$15 to \$50, which isn't far from the cost of inflation over the years since the fee was last set.

Public Comment

The first commenter returned to an earlier point that the Board has the authority to change the fees for renewal of distance education courses. The commenter cited Business and Profession Code section 4972 as allowing the Board to set lower fees.

The second commenter asserted that the wall license fee was not handled properly, and that the rulemaking process violated the Administrative Procedures Act and the Open Meetings Act. The commenter indicated they would not pay the fee and encouraged others to do so.

The third commenter had a series of questions. Would they be able to keep their very nice license from when they first received it many years ago? What is preventing them from using their pocket license as a wall license and claiming they have no place of practice? Will we be able to pay by credit card? They closed by asserting the fee increase for the wall license works out to \$1.46 per month.

The next commenter suggested that pulling the wall license fee back into the acupuncture license fee would be a good idea. They expressed concern that the wall license fee would prevent practitioners from working in clinics and/or to teach.

The fifth commenter wanted to know if other professions have to get a renewable wall license. They would like an explanation of why the pocket license couldn't serve the function of the wall license.

The sixth commenter believes the wall license is intended to help consumers recognize when a practitioner has an active license. They are skeptical about how many consumers would check these licenses. In addition to the increased telehealth interactions under COVID, it seems less likely the public would be in less of a position to check. The commenter questioned why have such a burden if it seems unlikely to achieve the desired goal.



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The third commenter returned for additional comment. The commenter asserted that the wall licenses would be very easy to fake, and that it would not be effective in serving the public.

Board Counsel Chan-You noted that the wall license fee (including renewal) has been set by law at \$50, and the Board has no discretion on this matter.

Recess taken from 1:05 to 1:20 p.m.

Members Present:

5 Present: Matecki, Chan, Chen, Harabedian, Kim

5-0 Quorum present.

25. Discussion of 2021 Implementation of the New Acupuncture Board Fees (Bodea)

EO Bodea began the session by outlining the new fee schedule that would take effect on January 1, 2021. The changes reflect the implementation of AB 3330. Some fees may require a Section 100 rulemaking to be implemented at the appropriate fee level. In those cases, there is a floor set for the fee that would be operative until the Section 100 process is approved. The raised fees represent the first increase in fees for many decades and reflects the recommendations of the recent fee study.

Member Kim was pleased to see the feedback from licensees and associations but noted that there had not been such feedback during the long development process.

Public Comment

The first commenter felt it wasn't feasible for providers to attend every Board meeting or review every recording of the Board's meetings. The commenter summarized earlier concerns they had raised on the impact of the fee for renewal of continuing education courses. The commenter referred to a letter sent to the Board by several acupuncture education providers. Without a bulk fee system in place, providers will drop a great number of courses, reducing income for teachers of these courses and keeping knowledge away from students and licensees. The commenter feels such a change can be implemented by the Board within its regulatory authority and does not require legislation.

The next commenter apologized for previous comments regarding the wall license. They re-emphasized their previous comments about the wall license being an inadequate measure for preventing fraud or other bad actions. They believe that fake wall licenses can be easily created, and that people will opt not to pay and/or rely on their pocket license.

The third commenter representing a continuing education provider noted they only



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object to the fees for renewal of continuing education. The new fees would change what they owe from \$75 per year to approximately eight to nine thousand per year. They feel they would have no choice but to retire courses or to make them unavailable for California CEU credits.

The fourth commenter objected to the short notice of this change, citing an email that went out on December 16th. The commenter echoed concerns raised by others about restricting knowledge, but also noted that the renewal process for previously approved courses would be unnecessary effort for both the Board and the provider, as they have been previously approved. The commenter felt the new fee was unnecessary, and the commenter recommended following NCCAOM's process for handling these renewals.

The fifth commenter believes that the extra fees for renewal of CE courses does not protect the public. The increase is significant, and overboard. It should be a flat fee and the Board should revisit this in regulation.

The sixth commenter considers the renewal fees to be excessive and believes the Board has authority through Business and Professions Code (BPC) section 4970 to make the necessary changes. The commenter would like to see a bulk rate fee system set up for renewals, similar to NCCAOM.

Before a second round of comments began, Counsel Chan-You noted that the provisions of AB 3330 set the fees in statute, and that changing them is not within the Board's discretion. EO Bodea noted that what discretion the Board does have with respect to the CE fee is within a range of \$10-\$20 per credit hour.

The seventh commenter outlined what a bulk rate fee system might look like. The commenter also indicated BPC section 4970 permits the Board to set fees below an established floor, provided it is done consistent with Section 4972. As the section does not specifically mention course renewals.

The eighth commenter noted an interest in ensuring credit card payments to the Board would be an option moving forward. They then reiterated their perspective that there is room for interpretation with existing laws and regulations and that the Board should consider it.

The ninth commenter agreed with other commenters who felt there is room for interpretation, particularly since there is no specific reference to previously approved or renewal course fees.

The tenth commenter pointed Counsel Chan-You to Chapter 4 of Section 308 of the Statutes of 2019. This was the authority amending Section 4970 of the BPC to allow the Board to set a lower fee, if done in accordance with section 4972.

The eleventh commenter expressed concern that California will lose CE providers as a



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result of these fees.

President Matecki thanked all the commenters in the discussion. Herdt, who was an active licensed acupuncturist for 18 renewal cycles, noted that with the tuition fees he's had quoted for several CE courses, that one student's tuition would cover the Board fee. It would appear that there are some numbers involved in CE that the Board is not seeing. Member Kim expressed willingness for the Board to work with stakeholders to see what can be done to address the concerns.

Counsel Chan-You asked President Matecki to put this item on the agenda for the next Board meeting. He indicated he would like to do further research on the issue.

EO Bodea emphasized the fees are effective January 1, 2021. Failing to display the wall license if practicing in a clinic constitutes unprofessional conduct. While the Board can't be in every location to check on this, it will be checked if a complaint has been filed. Any changes to CE fees will require going through the regulatory process, which on average takes one and a half to two years. It's worth noting that while the business modernization process is focused on licensees it will be available to CE providers later in 2021. Until that time, the Board will not be able to receive credit card payments for CE fees.

President Matecki asked how licensees and stakeholders can communicate with the Board. EO Bodea noted that all interested parties receive email communications from the Board if they sign up for the mailings, and stakeholders can send their positions to Acupuncture@dca.ca.gov. Member Chen wanted to know the best way for licensees to contact the Board, or what associations should be doing to inform licensees. Bodea noted that the public is welcome to sign up on the Board website to keep informed. Licensees are not automatically registered for these lists. Member Kim encouraged every association to attend the Board meetings, and to have someone focused on Board business and communications to attend these meetings. President Matecki indicated the issue will be put on the next Board meeting agenda.

26. Consumer and Professional Association Reports

CalATMA

The association was represented by Neal Miller, newly elected President. CalATMA saw a significant membership growth and is now the largest acupuncture association in the state. It elected new officers and trustees in October.. The first act of the new Board of Trustees was to establish a non-discrimination policy.

CalATMA continues to work with other associations on issues of importance to the profession. The matter of replacing the California exam in whole or in part with NCCAOM accredited tests remains divisive. The association has established a task force



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to research the matter and seek consensus in the profession. CalATMA has established a Government and Legislative Affairs Committee and is working on short- and long-term goals. CalATMA supported Assemblyman Low's AB 888 on non-opioid pain relievers and would support a similar bill in the next session.

CalATMA discussed the association's legislative goals. The association has hired a lobbyist and set up several committees and task forces.

CSOMA

Nell Smircina, President of CSOMA reported that the association considers 2020 a banner year, with significant increases in membership and activity. The organization was active in advocacy, filing several letters of public comment. It held national town halls and continued to publish its peer-reviewed journal. Looking forward, CSOMA intends to introduce legislation to elevate the profession, and wants to work with the Board on the sunset review process and any legislation that moves forward.

Academy of Chinese Culture and Health Science

Roy Zal commented on the new fees for the wall license and previously approved continuing education credits. Their comments echoed previous objections about the amount of the fees.

AACMA

Philip Yang shared that the organization is going through its election season. It elected new board members in December and will elect a president and vice-president in January. It continues to provide guidance for its members, especially on pandemic matters. It has been working with other associations in the field to keep up to date on changes in law and regulation.

California Acupuncture United Association

Hongmei Li asked on behalf of the association if it was possible to reduce the renewal fees in light of the pandemic and a reduction in insurance payments.

Public Comment

A commenter stated now was not the time for large increases in the fees for tutorials.

27. Future Agenda Items (Dr. Matecki)

Member Kim asked to see discussion about changing the clinical training requirement related to the required hours in a clinic owned and operated by the training program.

Member Chen asked to see telehealth covered, as well as the regulation of herbal medicine.



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Member Osorio echoed Member Chen's suggestion on herbal medicine and wanted to see credit card transactions on the agenda.

Public Comment

The first commenter asked to see the following topics on a future meeting agenda: bloodletting, dry needling, laser and light therapy, and use of the term 'Asian massage' by the profession. Additionally, the commenter believes a discussion is needed on increasing the basic level of competence in acupuncture graduates. This discussion should start in the Education and Research Committee.

The second commenter wanted laser acupuncture included on the agenda.

The third commenter wanted the new fees placed on the agenda, including a letter they had submitted to the Board. The commenter reiterated their belief that the Board had the ability to make needed changes without legislation. The commenter reiterated their concerns from earlier about the fee increase for tutorials and their supervisors.

The fourth commenter wanted the Board to consider delaying the implementation of the new fees to accommodate the pandemic-related economic challenges many practitioners face.

The fifth commenter echoed interest in having credit card transactions, laser acupuncture, and the CE renewal fee on the agenda. The following commenter echoed that interest in having the CE renewal fees on the agenda.

The final commenter was Sarah Jacobs, a Deputy Attorney General from the Office of the Attorney General and introduced herself to the Board as the Attorney General's liaison to the Board.

28. Adjournment (Dr. Amy Matecki, President)

Meeting adjourned at 3:11 p.m.