



## BOARD MEETING MINUTES October 26, 2023

### LOCATION:

1747 North Market Boulevard  
Suite 186  
Sacramento, CA 95834

### Remote Access via Web Ex Teleconference

#### Staff Present

**Benjamin Bodea**, Executive Officer  
**Ryan Marcroft**, Legal Counsel  
**Brennan Meier**, Legal Counsel  
**Jay Herdt**, Licensing Manager  
**Marisa Ochoa**, Central Services Manager  
**Kristine Brothers**, Policy Coordinator

#### Members of the Board

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

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

Meeting commenced at 9:05 a.m.

Roll call taken. All members present. Quorum established.

### Item 2 – President’s Remarks

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

Executive Officer Benjamin Bodea (E.O. Bodea) requested that agenda Items 10 and 9 be moved up in the agenda. Hearing no objections from the board members and the public, the request was accommodated.

### Item 10 – Closed Session

The California Acupuncture Board (Board) convened to a closed session to confer with and receive advice from legal counsel and deliberate regarding the following matter:

*A.F. Rothschild Fund v. Harabedian, et al.*; San Mateo County Superior Court, Case No. 23-CIV-00708

### Item 3 – Review and Possible Approval of Board Meeting Minutes for April 7, 2023

Board members reviewed the minutes from the April 7, 2023, meeting.

#### MOTION

Board Member Matecki motioned to approve the April 7, 2023 meeting minutes.

Vice President Chen (VP Chen) seconded.

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

**6-0**

**Motion Passes**

Public Comment

A public comment was made requesting a public commenter be identified in meeting minutes during board meetings.

**Item 4 – Review and Possible Approval of Board Meeting Minutes for June 23, 2023**

Board members reviewed the minutes from the June 23, 2023, meeting.

**MOTION**

Board Member Osorio motioned to approve the June 2023 meeting minutes.

Board Member Kim seconded.

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

**6-0**

**Motion Passes**

Public Comment

A public comment inquired how comments in future agenda items can be included on upcoming board meetings.

**Item 9 – Discussion and Possible Action to Reconsider Previously Approved Text, Authorize Initiation of a New Rulemaking and to Adopt New Text to Amend Section 1399.469 in Title 16 of the California Code of Regulations: Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees.**

Policy Coordinator Kristine Brothers (Brothers) gave a brief background of the memo. The package incorporates three different bills: SB 1441, which is the actual uniform standards related to substance-abusing licensees; SB 1448, which is a mandatory probation status disclosure; and AB 2138, which deals with denial of applications and criminal convictions. The Board last reviewed the proposed language to update the disciplinary guidelines and implement the uniform standards during the December 2020 Board meeting. Amendments to the proposed language establish a presumption that the licensee is a substance-abusing licensee if the conduct is found to be a ground for discipline which involves drugs and/or alcohol. This gives notice to the licensee that they have the burden of rebutting that presumption. The Quarterly Report Form was also incorporated in the language. Finally, changes were made to improve the document as a whole.

**MOTION**

*VP Chen moved to rescind the Board's December 2020 order to initiate a rulemaking for this proposal, relating to Articles 6.1, 6.2, and section 1399.469 of the California Code of Regulations (CCR), Title 16, and approve new Articles 6.1, 6.2, and the newly proposed regulatory text for section 1399.469, including the incorporated disciplinary guidelines and quarterly report presented at this meeting. The Board authorizes initiation and possible adoption of new text as follows:*

*Direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day comment period and no hearing is requested, authorize the Executive Officer and Board staff to take all steps necessary to complete the rulemaking and amend section 1399.469 and adopt new Articles 6.1 and 6.2 of Division 13.7 of Title 16 of CCR as noticed.*

Board Member Kim seconded.

**Vote**

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

**6-0**

**Motion Passes**

Public Comment

A public comment was made asking if the Board has a process on how to disseminate the updated disciplinary guidelines and implementation of the uniform standards.

E.O. Bodea replied that the Board will be posting an update on the Board's website about the recently approved regulations. The Board will also be sending out email notifications to licensees as well as external stakeholders who are subscribed to the Board's mailing list, and a notification by postal mail to the licensee's address of record.

**Item 5 - Executive Management Report**

**(B) Budget Update**

Sarah Hinkle from the Budget Office presented the Board's fund condition and expenditure projections reporting that the Board is spending well within its authorized budget. The Budget Office will continue to monitor the Board's revenues and expenditures and report back to the Board with the expenditure projections as they continue to close fiscal months in the current fiscal year. Sarah also noted that one of the main factors driving the expenditure increase in future years is personal service adjustments which includes general salary increases as well as employee compensation and retirement rate adjustments.

Board Member Matecki inquired about the decline of total revenue, transfers, and other adjustments. E.O. Bodea responded that the Board is monitoring the situation since the economy is volatile.

Board Member Osorio asked why revenue from renewal fees went down. E.O. Bodea answered the projection shows to have less renewals because there were less exam and license applicants in the past few years.

### **(A) Strategic Plan Announcement**

E.O. Bodea reported that the Board has received the results of the Strategic Plan Environmental Survey and thanked the stakeholders that participated. The Strategic Plan Meeting is scheduled for the following day, October 27, 2023.

### **(C) Licensing Report Q4 FY 2022-23**

Licensing Manager Jay Herdt (Herdt) reported the data for Licensing, Continuing Education, Tutorial, and Training Programs.

### **(D) Licensing Report Q1 FY 2023-24**

Mr. Herdt reported the data for Licensing, Continuing Education, Tutorial, and Training Programs.

Mr. Herdt added that exam retakers are now allowed to retake the California Acupuncture Licensing Exam 120 days from failure of the test rather than the previous 180 days.

Board Member Osorio inquired why many active practitioners do not have a wall license. Mr. Herdt responded that it is a concern and the Board plans to do a significant outreach to the licensees.

### **(E) Enforcement Report Q4 FY 2022-23**

E.O. Bodea reviewed the complaints/convictions and investigations data for quarter four of 2022-23 Fiscal Year (April 1 – June 30, 2023).

### **(F) Enforcement Report Q1 FY 2023-24**

EO Bodea reviewed the complaints/convictions and investigations data for quarter one of 2023-24 Fiscal Year (July 1 – September 30, 2023).

### Public Comment

A public comment was made asking why a course is being denied and if the implementation of the wall license is achieving its purpose. The commenter also asked guidance on what constitutes incompetence or negligence.

Another public comment was made suggesting that there should be a mechanism in place where a licensee's status should not be cancelled if the licensee passes away and the relatives fail to notify the Board.

E.O. Bodea replied to the first comment by describing the complaint process that involves incompetence by licensees. E.O. Bodea responded to the second comment maintaining that by operation law, when a license is not renewed within three years from expiration, the license cancels.

President Harabedian thereafter asked for an example of incompetence and unprofessional conduct. Ms. Brothers explained Board staff uses the enforcement section of the laws and regs, specifically Section 4955, 4955.1, and 4955.2 as guide in categorizing cases. Furthermore, the categorization of cases may change during the investigation process.

A follow up public comment was made asking for guidance on a possible abandonment scenario and other instances that may constitute a violation. VP Chen and Member Osorio proposed continuing education regarding laws and ethics may be utilized to further educate licensees on unprofessional conduct and negligence. Board Member Li suggested that licensees may also take a more proactive role.

The Board recessed from 10:53 a.m.-11:05 a.m.

### **Item 6 - Legislative Report**

Ms. Brothers provided a report to all the bills that the Board has been tracking over the past year. Seven bills were chaptered.

- AB 1264, the Board's Sunset Bill.
- SB 544, Bagley-Keene Open Meeting Act: teleconferencing;
- AB 883, Business licenses: United States Department of Defense SkillBridge program;
- AB 1707, Health professionals and facilities: adverse actions based on another state's law;
- SB 259, Reports submitted to legislative committees;
- SB 345, Health care services: legally protected health care activities; SB 372, Department of Consumer Affairs: licensee and registrant records: name and gender changes.

President Harabedian asked for a clarification on SB 544. Legal Counsel Ryan Marcroft thereafter enumerated the different scenarios to which SB 544 is applicable.

#### Public Comment

A public comment was made stating that despite SB 544, the Board's history is to conduct board meetings around the state to get more people involved. A follow up comment was made asking if AB 996 was passed or put on hold. Ms. Brothers replied the bill is dead but may be brought up in 2024.

### **Item 7 – Regulatory Report**

Ms. Brothers summarized the status of each Board regulatory package in progress.

**Item 8 – Discussion and Possible Action to Reconsider Previously Approved Text, Authorize Initiation of a New Rulemaking and to Adopt New Text to Establish Section 1399.452.1 in Title 16 of the California Code of Regulations: Telehealth Services**

Ms. Brothers gave a brief background of the regulatory package. She stated the Board previously met on March 25, 2021, and voted to approve the proposed regulatory text. The Board also directed staff to initiate a rulemaking process. Afterwards, additional edits were made to address clarity and consistency. She then proceeded to discuss the changes that were made and recommended that the proposed edits be adopted after rescinding the Board's March 25, 2021, order.

President Harabedian asked what prompted the change, specifically on patient consent. Ms. Brothers replied that other boards, based on best practices, address informed consent in the same manner.

E.O. Bodea reminded that the regulation package is deriving its authority from a general BPC code that authorizes telehealth to several healing arts boards. The Board is codifying the package in the regulations and making it tailored to acupuncture services.

VP Chen asked if there are complaints pertaining to telehealth. E.O. Bodea answered he is not allowed to comment on any cases or complaints that haven't been finalized. He added he could not recall anything that has been finalized regarding telehealth.

**MOTION**

*Board Member Kim motioned to rescind the Board's March 2021 order to initiate a rulemaking for this proposal and instead authorize a rulemaking using the proposed language with all of the changes to Division 13.7, Article 5, section 1399.452.1. The Board authorizes initiation and possible adoption of new text as follows:*

*Direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested.*

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

*Adopt new Section 1399.452.1 of Article 5 of Division 13.7 of Title 16 of CCR as noticed.*

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

Board Member Osorio seconded.

**Vote**

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

## 6-0 motion passes

### **Item 12 – Committee Assignments**

E.O. Bodea announced the new committees and respective member assignments, reminding members and stakeholders that the goal of a committee is to start working on an issue before it goes to the full Board.

President Harabedian asked if new items from the public will go through the committees first before coming through the full Board. E.O. Bodea answered future agenda items are established by the Board President in coordination with the Executive Officer. President Harabedian followed up asking what committee Education falls under. E.O. Bodea responded Education would fall under the purview of the Licensing committee.

#### Public Comment

A public comment was made citing that there was a previous Education Curriculum Competency Committee and an Education Committee. It was noted that the committee recommended 3,800 curriculum hours instead of 3,000.

Board Member Kim remarked that more participation from schools, professional associations, and external stakeholders will lead to more suggestions that may develop into regulatory reform.

### **Item 13 – Setting 2024 Board Meeting Calendar**

The Board discussed meeting dates for 2024. Specific location and dates discussed were:

- San Diego, CA March 21-22;
- Los Angeles, CA June 6-7; and;
- Bay Area, CA August 8-9.

#### Public Comment

A public comment was made suggesting an earlier Board meeting should take place before the proposed March 21-22 date to give the Board ample time to provide feedback on a bill before the legislature goes into recess.

Board President Harabedian stated the Board will go along with the proposed date and instead do a teleconference meeting if the need arises.

### **Item 14 – Public Comments for Items Not on the Agenda**

A public comment was made expressing that WebEx is more limited compared to Zoom in terms of visualizing the proceedings as well as being able to share documents.

### **Item 15 – Future Agenda Items**

Board President Harabedian explained that future agenda items are put on agendas by the Board President in consultation with staff and the Vice-President. However, he

encouraged other Board members, as well as the public, to communicate with Board staff beforehand if they want an agenda discussed on future board meetings.

Member Matecki expressed her concern about herbal practice standards in general.

Board Member Kim suggested a discussion of disparity of income between licensees. He also floated the idea of an additional subspecialty training program.

#### Public Comment

A public comment was made stating there is now a congressional mandate for Veterans Affairs to cover acupuncture. In relation to this, acupuncture is now integrated in the Veterans Affairs system.

Another public comment was made outlining recommended future agenda items from the two previous years. The speaker also recommended education, scope, curriculum competency, law, ethics, Asian massage, occupational analysis, and workers compensation as future agenda items.

The last public comment stated that tui na is not being taught as a subject in school.

#### **Item 16 – Adjournment**

President Harabedian adjourned the meeting at 12:38 p.m.