

ACUPUNCTURE BOARD
Executive Officer's Report

Agenda Item: 3.0
Date: November 2010

- **Board Updates**

I join with Robert and the Board in welcoming our two new members. Their diverse background is a nice addition to our Board.

In accordance with Business and Professions Code Section 453, Board Members are required to attend DCA's Board Member Orientation within one year of their appointment. The next Board Member Orientation is set for Wednesday, December 1, 2010, at DCA Headquarters in Sacramento from 9:00 am to 4:30 pm.

As you may be aware, Cathy Hardin Schau, the Board education coordinator, transferred to the Department of Education. This was a promotion for Cathy and we wish her all the best.

On August 31, 2010, Governor Schwarzenegger directed all state agencies to cease hiring immediately, no exception. This severely impacted our ability to fill the Education Coordinator position. Just recently, we were informed they were allowing lateral transfers within departments (not department to department) and we have just now started to recruit to fill that position.

The Board's retroactive fingerprinting regulations were approved by the Office of Administrative Law on September 23, 2010 and became effective on October 23, 2010. To summarize, these regulations will require, as a condition of license renewal, licensed acupuncturists that were licensed prior to January 1, 2001 or for whom an electronic record of the submission of their fingerprint no longer exists, to furnish to the California Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search. Enclosed is a copy of the notice that will be sent with all renewal notices.

Things are moving forward for the Board's relocation to the new building at DCA headquarters. This move will have a significant impact to the Board's budget, especially if it occurs this fiscal year. Currently the Board pays approximately \$1.50 a sq. ft. for 3,132 net usable square feet. At the new location, the rent will be \$2.25 a square foot for 3,539 square feet. The \$2.25 is a recent increase from \$2.20 sq. ft. due to another Board backing out of the move due to the significant cost of the rent and the move.

- **DCA Update**

In preparation of a new administration, the department has been busy in succession planning. I will keep you of updated as information is received.

Attached is a copy of Board Meeting Protocols that was recently issued by the department's Legal Office. The Protocols lists three duties for board meetings, which are

- Giving adequate notice of meetings and agenda items.
- Conduct meetings in open session.
- Provide the public an opportunity to comment.

- **Budget Update**

As you are aware, we now have a budget. It has been a trying three plus months in trying to conduct business with no budget. But that is behind us as we try to move forward. The budget included reduction in personal services for state agencies:

- Workforce cap plan – 5% reduction in our personal services line item
- Personal Leave Program – one unpaid leave day per month for 12 months which equates to a 5% employee compensation reduction.
- State workers will contribute an additional 3% to their pension benefits
- Furlough Fridays ceased beginning November 2, 2010.

As mentioned, the budget required a “workforce cap plan” that reduces our Personal Services line item by 5%. We were able to achieve that 5% salary savings in 2009-2010 and again in 2010-2011 due to vacancies. However, in 2011-2012 the workforce cap will result in a permanent reduction in staff. Attached is a copy of the Board's Workforce Cap Plan.

IMPORTANT NOTICE

ACUPUNCTURE BOARD

New Fingerprinting Requirements for Anyone Licensed Prior to January 1, 2001

For those licenses expiring on or after January 1, 2011, the Acupuncture Board will require licensed acupuncturists **that were licensed prior to January 1, 2001 or for whom a record of the submission of fingerprint no longer exists**, to submit a complete set of fingerprints to the California Department of Justice (DOJ) **as a condition of license renewal**. Specifically, Title 16, California Code of Regulations, section 1399.419.2, requires that:

1. A licensee who was initially licensed prior to January 1, 2001, or for whom an electronic record of the submission of fingerprints no longer exists, shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.
 - o This requirement is waived if the licensee is renewed in an inactive status, or is actively serving in the military outside the country.
 - o A licensee will have to certify on the renewal form whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.
2. As a condition of renewal, a licensee shall disclose on the renewal form whether, in the prior renewal cycle, he or she has been convicted of any violation of the law in this or any other state, the United States, or other country, omitting traffic infractions under \$300 not involving alcohol, dangerous drugs, or controlled substances. In addition, a licensee must disclose any disciplinary actions against his or her license.

Failure to comply with these requirements renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements. Failure to furnish a full set of fingerprints to the Department of Justice as required by the regulations is grounds for discipline by the Board.

Therefore, anyone licensed by the Acupuncture Board prior to January 1, 2001, needs to complete the following tasks:

- If you are a resident of the State of California, review the License Renewal Live Scan Instructions & Forms and download them here: [License Livescan Form](#).
- Licensees will have to complete the Request for Live Scan Service Form (BCII 8016) and go to a Live Scan site. You will have to pay the Live Scan operators a fingerprint processing fee of \$51 and a separate live scan rolling fee. Once your fingerprints have been scanned, the Live Scan operator will complete the bottom section of the form and return the 2nd and 3rd copies to you.
- Upon completion, please mail the 3rd copy of the completed Live Scan form, with the bottom section of the form completed by the Live Scan operator, to the Acupuncture Board at 444 North 3rd Street, Suite 260, Sacramento, CA 95811, to facilitate collection of your criminal history information from DOJ. You must retain a copy of the completed Live Scan form or another receipt of compliance for 3 years after your renewal date.
- A list of "California" Live Scan Sites are posted on the DOJ website at: <http://ag.ca.gov/fingerprints/publications/contact.php>
- **Live Scan fingerprinting is only available within the State of California. If you reside outside of California, please contact the Acupuncture Board at (916) 445-3021 to request the "hard card" fingerprint forms and procedures.**

All licensees are advised to immediately begin submission of your fingerprint records to DOJ to avoid lengthy processing delays during your license renewal period. Please do NOT wait until the last moment to submit your fingerprint records as lengthy processing delays will occur.



MEMORANDUM

DATE: October 7, 2010

TO: Executive Officers
Board Presidents/Chairs

FROM: *Doreatha Johnson*
DOREATHEA JOHNSON
Deputy Director
Legal Affairs

SUBJECT: Board Meeting Protocols

Three Duties for Board Meetings

1. Give adequate notice of meetings that will be held and agenda items.
2. Conduct meetings in open session.
3. Provide the public an opportunity to comment.

First Duty

Adequate Notice of Meetings and Agenda Items

1. Timely – Law requires 10 days notice to those on a mailing list and posting notice and agenda on your website.
2. Specific Notice – Detailed, itemized agenda, identifying all items of business to be conducted at the meeting.
 - Items not on agenda cannot be discussed nor can they be acted on.
 - Can't discuss items under the heading of "New or Old Business" unless they are specifically identified.
 - Test for Specific Notice --Is an item specific enough for a member of the public to reasonably ascertain the nature of the business to occur at the meeting?

Second Duty Conduct Meetings

Open Session

General rule: Meetings must be conducted in Open Session and all discussion and actions must take place in the public, unless specifically authorized by law to go into closed session, with regard to that item of business.

Vote in public. – Votes must be publically taken. Secret votes or votes by proxy are not permitted.

Closed Session

Business statutorily authorized to be conducted in closed session:

- Disciplinary matters;
- Preparing, approving or grading examinations;
- Pending litigation;
- Matters affecting personal privacy;
- Executive officer appointment, employment or dismissal.

Once in closed session, you can only discuss those matters that were identified as closed session on your agenda.

Third Duty Public Comment At The Meeting

General Rule

Must allow public comment on each open session agenda item.

Suggested script to be read at the beginning of the meeting:

The Board Chair will allow public comment on agenda items, as those items are taken up by the Board, during the meeting. Under the Open Meetings Act, the Board may not take any action on items raised by public comment that are not on the Agenda, other than to decide whether to schedule that item for a future meeting.

If any person desires to address the Board, it will be appreciated if he or she will stand or come forward and give his or her name, and if he or she represents an organization, the name of such organization, so that we will have a record of all those who appear. Please note that a person wishing to provide comment is not

required to identify him or herself when making public comment, but it is appreciated.

In order to allow the Board sufficient time to conduct its scheduled business, public comment will be limited to ___ minutes. Please make your comments focused and relevant to the duties of the Board. It is not necessary to repeat statements or views of a previous speaker, it is sufficient to state that you agree. Written statements should be summarized and submitted to the Board. They should not be read.

If as chairperson/president, I forget to ask for public comment on an agenda item, it is not because I intend to limit comment but just because I forgot. So in that situation, please raise your hand and I will recognize you.

Suggested script to be used for each item on the agenda:

1. Call the Agenda Item
2. Committee Presents the agenda item
3. Ask for a motion
4. Ask for a second, unless the motion is made by the committee (second is not needed)
5. Ask for board discussion.
6. Ask if there is public comment. [You may reverse the order of these 2.]
7. Ask if there is further board discussion.
8. Repeat the Motion
9. Take the vote

Suggested script for public comment on items not on the agenda:

The board values input from the public as part of its consumer protection mission. It invites and welcomes public comment during this section of the agenda. However, board members cannot engage in dialogue with those who testify during this section of the agenda due to constraints imposed on the board and its members by law. The law prohibits the board from substantively discussing or voting on any matter brought up during public comment. A member of the public who would like the board to discuss a general topic not related to a specific case involving one of its licensees can ask the board to consider placing the issue on the board's agenda for a future meeting.

If you have an application or disciplinary charges pending before the board, we ask that you not discuss the details of your case or pending complaint since the board members will be the "judges" and by law are not permitted to receive evidence or information that is not part of the administrative record in the case.

Disruptive persons:

The public has the right to express its disapproval, and may sometimes make emotional presentations. It is the board's duty and obligation to allow that public comment. Since the purpose of the meeting is for the agency to conduct its business, commenters shouldn't be permitted to thwart that purpose and may be

removed from the meeting if disruptive behavior continues after a request that it stop.

Suggested script to use when there is a disruptive person:

Under the Open Meetings Act (Government Code Section 11126.5), if you continue in this manner, I will ask you to leave the meeting and if you do not leave the meeting, you will be removed. Accordingly, I am asking you to discontinue your disruptive conduct so that all participants can be heard in an orderly fashion.

Miscellaneous

Wording of Motions

- Motions must be clearly worded.
- The test: Could a reasonable person reading the motion understand what the board meant to accomplish?
- Chair should restate the motion before the discussion and just before the vote is taken

Improper Disclosure of Information

- Improper for information received during closed session to be publicly disclosed without authorization of the body as a whole.

Role of the Attorney

The attorney's role during board meetings is to advise the agency of its obligations and authority under the law when it appears that the agency may be deviating from it, e.g. Open Meetings Act, quorum requirements, practice acts, regulations. In some cases, it may be necessary for the attorney to assist the agency in identifying an issue, framing a motion that accurately reflects the agency's deliberations and intent or seeking clarification from a speaker or board member.

When a problem is identified, the attorney is expected to assist the board in developing a lawful alternative method of accomplishing the board's goal.

It is not the attorney's responsibility or role to chair the meetings or direct the discussion. And the attorney should refrain from doing so even if requested to take on that role.

Department of Consumer Affairs

E.O. S-01-10

Workforce Cap Plan

(Additional 5 percent salary savings)

11/15/2010 7:37 AM

Board/Bureau/Division:

ACUPUNCTURE BOARD

	Target Reduction		
Type of Action	\$ 26,128	Positions (Identify Position #s)	Comments
Vacancies	\$23,412	606-110-8563-001	Board obtained this position effective 10-1-2010 through the CPEI BCP and have been unable to fill due to freeze. It is anticipated this position will remain vacant for 6 months.
Attrition			
Other (e.g. benefits, decrease in time base, temp help, etc.)	\$7,024	606-110-8563-001	Benefits
TOTAL	\$ 30,436		