



Draft
**ACUPUNCTURE BOARD
MEETING MINUTES**

DCA Headquarters 2, Sacramento

FULL BOARD MEETING
May 17, 2012

Members Present

AnYork Lee, L.Ac., Chair
Charles Kim, Public Member, Vice Chair
Robert Brewer, Public Member
Paul Weisman, Public Member
George Wedemeyer, Public Member

Staff Present

Janelle Wedge, Executive Officer
Spencer Walker, Staff Counsel
Christie Loftin, Examination Coordinator

Guest List on File

1. Call Meeting to Order and Establishment of Quorum

Quorum was established. Meeting called to order at 8:47 am.

2. Election of Officers

An York Lee was elected Chair. Charles Kim was elected Vice-Chair.

3. Approval of February 16, 2012 Meeting Minutes

CHARLES KIM MOTIONED TO APPROVE THE FEBRUARY 16, 2012 MEETING MINUTES WITH THE FOLLOWING CORRECTIONS/AMENDMENTS GEORGE WEDEMEYER SECONDED THE MOTION. 5 – 0 – 0 MOTION PASSED.

- A. CORRECTIONS: In Future Agenda Items, in last sentence “Member Weisman replied that he is gathering a group that will address the enforcement issue of prostitution in Acupuncture Clinics.” It should be Wedemeyer not Weisman.
- B. CORRECTION: In the Education Committee Report Paul Weisman said I do not recollect asking if TOEFL requirements were discussed. Recommendation was made that the entire sentence be stricken.

4. Chair's Report

- A. **Background Paper:** Chair Lee encouraged the Board to focus on this paper and complete it within their term.
- B. **Questionable Examinee Transcripts:** Chair Lee requested that the Board initiate an investigation into some questionable examinee transcripts.
- C. **Asian Expo:** Spencer Walker, Staff Counsel said he saw Chair Lee and Vice Chair Charles Kim at a ribbon cutting ceremony in Asian Medical News and asked if they would like to report on the event. Vice Chair Kim stated it was an Asian Expo arranged by Tonggo University and was also supported by the Korean news media and the Korean Acupuncture Association. It was the first time they invited all the vendors and schools to share their information. He noted that it was successfully organized with around sixty vendors and booths. Staff Counsel Walker inquired if Chair Lee and Vice Chair Kim participated as members of the Board or as individuals. Vice Chair Kim said they participated as individuals.

5. Executive Officer's Report

- A. **Board Update:** We have filled the position for the licensing desk. We are looking to fill Ben Bodea's former position before the end of the fiscal year. The one position that will remain vacant is Kristine's. Since she is on a year's maternity leave she is not expected to return until January.
- B. **Budget Update:** For your reference you have the budget/expenditure report through the end of April. We are in really good condition through the end of this year. Rent will increase substantially on July 1st. We were given a six month reduced rate so we will need to pay attention to that line item.
- C. **Resignation:** After thirty eight years with the department – twenty-one of which have been with the Acupuncture Board I am resigning/retiring as of June 30th.
- D. **Board and Meeting Members Response to Resignation:** Chair Lee and Board member Robert Brewer, Staff Counsel Walker, Paul Truman and Christie Loftin expressed their appreciation of Executive Office Janelle Wedge's excellence as an Executive Officer.

6. Acceptance of Resignation of the Executive Officer

VICE-CHAIR KIM MOTIONED TO ACCEPT THE RESIGNATION OF EXECUTIVE OFFICER JANELLE WEDGE. GEORGE WEDEMEYER SECONDED. 3-1-1 MOTION PASSED.

A. Assistance from the DCA to Locate an Executive Officer:

Jeff Sears – Personnel Officer for the Dept. of Consumer Affairs was introduced and echoed the positive sentiments made about Janelle Wedge. Jeff Sears explained the process to choose another Executive Officer: This process will take 3-4 months depending upon reach is for candidate pool. The Board will pick two members for a Selection/Search committee and they will work with Jeff Sears and his staff. This process includes: Reviewing the duty statements for the functions that you want an Executive Officer to perform, determining what qualifications to screen for and advertising for a specified period of time. The Selection Committee reviews the candidates' applications, selects the candidates to be interviewed and conducts interviews. Spencer Walker and the legal office and Human Resources or the Board Relation's office can provide assistance. The Selection Committee will make the recommendation to the Board regarding the final candidates or can recommend a

candidate to Board. The full board has to make the decision at a public meeting. Salary and other benefits are discussed with the selected candidate. Then there would be an announcement when that candidate accepts the position. If this process goes past June 30th the Board has the option to appoint an interim executive officer. That person is appointed as the Executive Officer position on an interim basis so that person can receive the salary and benefits appropriate to the Executive Officer. Jeff Sears said he would provide a one page timeline/synopsis of this process to Chair Lee.

B. Appointment of Search Committee for the Executive Officer Position

Vice Chair Charles Kim and Board Member Robert Brewer were chosen for the Selection Committee. They will prepare the job description and finalize the list to give it to the Department of Consumer Affairs. They've asked Janelle Wedge if she would be willing to serve as the interim annuitant. She will let them know if that will fit in with her schedule. They hope to have the position posted next week with an application deadline of June 15th, 2012. The DCA will forward applications to the Board by June 19, 2012. The DCA will set up interviews on June 25 and 26. Vice Chair Kim and Board Member Brewer will have a conference call on the 27th to finalize the list of candidates to be brought to the full board for interview. The goal is to narrow the candidates to two or three and have a closed session meeting on July the 16th. Then hopefully we will have a candidate to present at the August Board meeting.

7. Petitions Pursuant to B & P Code Section 4967(b) – (Discussion/Action)

- A. Thorunn Birna Gudmundsdottir (license cancelled 6/1/07) Petition granted based on history of clinical experience, education and continuing education units taken.

CHARLES KIM MOTIONED TO REINSTATE THE LICENSE. PAUL WEISMAN SECONDED. 5-0-0 MOTION PASSED.

8. Legislation Update – (Discussion/Action)

- A. AB 72 (Eng) - Health Care Coverage: Acupuncture - Bill to include Acupuncture in Health Care Coverage did not pass.
- B. AB 1889 (Fong) - Practice Examination Legislation to reinstitute a practical/clinical exam as part of the licensing requirement. This Bill has gone through the Assembly side and has been referred to the Committee on Appropriations and it has not yet been heard. Executive Officer Janelle Wedge requested that the Board state their position.

GEORGE WEDEMEYER MOTIONED TO OPPOSE THE BILL TO REINSTITUTE THE PRACTICAL/CLINICAL EXAM. PAUL WEISMAN SECONDED 3-2-0 MOTION PASSED

- C. SB 1488 (Yee) – Traditional Chinese Medicine Traumatologist Certification – This bill introduced by Senator Yee is for certification for Traditional Chinese Medicine Traumatologist. This Bill has passed out of the Senate Business Profession and Economic committee and has been ordered to its third reading. There was previous bill similar to this that the Board opposed. Since this has gone through a third reading they want to know the Board's position.

CHARLES KIM MOTIONED TO OPPOSE THE BILL TO PROVIDE CERTIFICATION FOR TRADITIONAL CHINESE MEDICINE TRAUMATOLOGIST. ROBERT BREWER SECONDED.

3-2-0 MOTION PASSED

- D. SB 1239 (Price) – Sunrise Legislation This bill extends the Board’s Sunset date by two years. I think at last Board meeting we discovered a section. There was a date in one of our sections that prevented us from making any regulatory changes. Senator Price also included that change to eliminate the date from section 4939. This bill has replaced an appropriations/suspense file. Does the Board have a position on this bill? The Board members did not take a position on this bill

Chair Lee related the background and overview of upcoming agenda items 9, 10 and 11 in order to give the committee a clear direction. He asked that the Board members be very clear within the background paper regarding the Acupuncturist as a primary care provider.

9. Blue Ribbon Panel

- A. Purpose: The purpose of the Blue Ribbon Panel was to create a place where discussions and agreed upon points of view can be met in order to have everyone working together.
- B. Issues to be addressed: The panel never met. The blue ribbon panel’s assignment had been delegated to the Education Committee. Member Robert Brewer’s opinion was that the BR panel should be abolished.

ROBERT BREWER MOTIONED TO DISBAND THE BLUE RIBBON PANEL. CHARLES KIM SECONDED.

5-0-0 MOTION PASSES

10. Discussion Regarding Board’s Utilization of Committees

- A. Executive Committee: Members: Chair Lee and Vice Chair Charles. Responsible for expenditures, revenues, funding condition, executive officer selection, evaluation, legislation, regulations, policy procedures and special administrative projects.
- B. Education Committee: Members: Robert Brewer, George Wedemeyer and AnYork Lee. Responsible for issues related to acupuncture, educational standards, school application approval process, tutorial programs and continuing education.
- C. Examination Committee: Members: Robert Brewer and Member George Wedemeyer. Responsible for development and administration issues/contracts, and miscellaneous issues.
- D. Enforcement Committee: Members: Charles Kim and Paul Weisman. Responsible for scope of practice, disciplinary decision, probation monitoring and reinstatement and miscellaneous issues.

It was recommended that the Examination Committee and the Enforcement committee have two members as much of the information they review is sensitive/private in nature and should not be open to a public forum.

Assignment: Chair Lee asked each group to go through the Sunset and Review Committee Background paper and identify items relative to each committee and present that at the next board meeting.

11. Discussion Regarding Board’s Involvement in Trying to Clarify Scope of Practice.

- A. Chair Lee: Regarding the scope of practice, initially the Acupuncturist only used the needle as a modality to practice. Now a different law extends to herb, cupping, massage or other supplements as described in the law. No secondary modality or other non-licensed practitioner can also do it. Our scope of practice primarily is using the needle as a modality. The Education Committee will focus on what the needle can do for the patient. In the past, acupuncture had tried to expand education to become MD. No matter how many hours we study we are licensed acupuncturist. We are still using the modality allowed by the law. We cannot prescribe the drugs. We are not a physician. So our scope of practice is limited by the modality. Member Wedemeyer expounded on the Board's involvement into trying to clarify scope of practice. He stated that the board doesn't need to redefine the scope of practice. We should write better regulations so graduates are better prepared for licensure. CAB is trying to address primary care and related issues, diagnosis – which is considered meddling in legislative determined scope of practice. CAB needs to stop these discussions and move on to regulatory matters within its mission such as approving schools. The job of every board is to protect the public and interpret the statute. Former CABs chose to write regulations and interpret the statute so as to ignore primary care and emphasize TCM Traditional Chinese Medicine and training. We can rewrite these regulations to place more emphasis on primary care as a condition for school approval and better training. The Board has elected to make TCM the focus of the acupuncture training programs to the detriment of the graduates who are adversely affected by being unable to find work in healthcare. These graduates are also unprepared to interact or work collaboratively with mainstream providers. This is public health safety issue. Chair Lee reiterated that our scope of practice is limited by the modality that we use. Needle, exercise and herbs, massage. We want the focus to be what the law says and what we can use in the law.

12. Board Oversight of Schools

A. Role of BPPE in Both the Approval and Oversight of Acupuncture Schools

Deputy Bureau Chief Wenzel presented the history and current role of the Bureau of Private and Post-Secondary Education. The Bureau for Private Post Secondary Education was sunset on June 30th in 2007 and came back into existence in January 1st, 2010. Because of a lack of appropriation in the legislature and a hiring freeze and budget stalls we actually hired our first staff in November of 2010. Our Compliance Inspection staff was hired in October 2011 and on May 1st of this year we actually hired our Quality of Education and our Education Specialist. I would like to address how we process applications for institutions and little bit about our over-sight processes and then active investigations. I can tell you that we have three active investigations regarding Acupuncture Institutions. **New Institutions:** The new legislation changed the way we process applications. It eliminated requirements for an on-site inspection and the temporary approval of Institutions. New institutions are basically receiving a paper review. We have four institutions with new applications pending. If we see an Acupuncture Program or an Oriental Medicine Program included in the list of programs that they want to commence with we do look for approval from the Acupuncture Board. I do know we had several programs that commenced during the sunset period and we are still working through some of those applications because they do have other deficiency issues. The new law actually requires any institution that offers a program of study that will lead to licensure be approved by the licensing entity, if approval is required. The quality of education unit hired the Education Specialist on May 1st of this year. They will be reviewing renewal applications because we have a lot of programs that are out there that were approved by the prior Bureau which continue to exist. We will probably be doing site visits with those. We will be reaching out to staff of the Acupuncture Board for recommendations as far as subject matter in those areas where we feel we need some expertise. As far as compliance inspections they commenced last October. It is comprised of a two part process where we are looking at what we call the desk inspection piece where we look at catalogues and enrollment agreements, curriculum, faculty. Finally we actually have an on-site inspection, where our inspectors go out to that facility and they are

looking for compliance with the statutes and regulations. Chair Lee asked the Bureau how they dealt with the situation regarding students that graduate, and obtains their license from a school with a low requirement. Ms. Wenzel answered that they have no statutory or regulatory authority to mandate a certain employment level for graduates but do ask institutions to report their employment via a performance fact sheet and disclose that to all potential students so the students are aware of what the placement rates are that particular institution before enrolling into that school. Member Wedemeyer asked about immigration mills and how the Bureau would be approaching schools that bring international students to California. For example, the student does not really attend classes and they are just using their student status as a way into the country. Because I know they have “busted” schools for this. Ms. Wenzel responded, as we go through the compliance inspection process and as we look at these renewal applications, assuming these institutions are licensed, that should sort itself out and we should be able to take actions against the institutions. We do work with various enforcement entities such as Immigration and Naturalization Services. Ms. Wenzel also stated in response to an inquiry regarding three schools that were under investigation that that the Board would be notified if a school was denied approval to teach acupuncture.

B. Discussion Regarding the Placement of Acupuncture Training Programs Approvals on Probation for Poor Pass Rates:

Chair Lee asked the Board to consider setting up a standard so schools with ongoing poor pass rates could be placed on probation. Other professions have rules and regulations for poor pass rates. This item could be added to the review that is currently done for schools. Board Member Wedemeyer suggested for pass rates schools should be reviewed annually against a basic standard for assessing a school’s performance. We could tell when a school is doing a good or poor job on preparing graduates to enter the workforce by looking at the pass rates for that school of its graduates, and the sit rate of graduates. Any school that does not pass 70% on the CALE will be put on probation and given two years to hit the mark. If it fails to show 70% of graduates pass the CALE then that school is deemed to have failed to train students adequately and the school will be dropped from the CAB approved list. Every school must make an annual report on the number graduates who sit for a licensing exam. If less than 85% of graduates sit for any Acupuncture licensing or certification exam then that school will be placed on probation and given one year to hit the mark. If it fails then that school is deemed to have failed to perform as a legitimate training program and the school will be dropped from the CAB approval list. Vice Chair Kim asked if it was possible to make a motion to input a moratorium of the new school approval until we come up with some criteria for approval and probation. Legal Counsel Spencer Walker replied that we cannot do this. The law requires us to process the applications. You cannot place a moratorium. Additional discussion followed including having a suggestion to have a provision like Board of Vocational Nursing that allows paperwork to place an approval on probation if the school’s average is 10% below the national average. Member Wedemeyer thought it would be one of the main ways to control the quality of our students coming out and ensure the safety of our students, as well as one of the priorities that the board must deal with. Spencer Walker replied, the Board needs to make that clear; these things need to be prioritized in light of the fact that Janelle is retiring and there are many things pending. You can direct the Executive Officer to have staff draft language and have it presented at the next Board meeting.

13. Fee Assessment for Continuing Education Course Approvals:

Chair Lee explained that the Board was considering a fee assessment for Continuing Education Course Approvals. Spencer Walker presented a chart he created to reflect what other Boards charge for licensing, renewal and continuing education course fees within the Department of Consumer Affairs. He said a Continuing Education Course Approval fee would require a statutory change. Chair Lee stated that the board currently has an initial fee of \$150.00 and an every two year renewal

fee of \$150.00 and we do not charge a course approval fee. Chair Lee asked for the Board's input and to divide this discussion into two parts. The first part, should we change the initial application fee of \$150.00 and the \$150.00 biennial renewal fee? The second part would be whether to assess a CEU course approval fee. (Information on the chart showed that all the other Boards charge a license renewal fee yearly, not every other year as the Acupuncture Board does and the fees were \$200.00 or more).

Board member suggestions included; raising the fee from \$150.00 to the \$200.00-225.00 range but to continue to keep the fee every other year as well as a suggestion to have the renewal fee to be changed to yearly, to consider assessing a \$35.00-40.00 Continuing Education Course approval fee, and having an official seal for the Continuing Education documents. Use an Accreditation Agency to monitor the courses and the counter argument of not using an Accreditation Agency to monitor CEUs. **Budgetary Change:** If we initiate a budgetary change that would allow the board to hire additional employee. According to Executive Officer the additional funds would assist with the approval of the courses, auditing, monitoring and investigation of the courses. Conjecture was made that additional fees would possibly provide about \$55,000-\$60,000 a year in additional income that would cover the basic salary of the person hired. Concern was expressed about whether the hiring freeze would allow us to hire an additional employee. There would also need to be a Business Change Proposal in order to get another position.

Public Comment: Bill Mosca- California State Oriental Medical Association wondered if these fees would simply be imposed but not actually solves the problem due to the hiring freeze where the governor just borrowed \$5,000,000 from the Acupuncture fund. He wondered if this additional revenue would just simply be borrowed by the governor. Yun Kim CEO of Emperor's College of Traditional Oriental medicine expressed concern that the increase in fees caused by a CEU course approval would be a financial burden on the robust thirty course CEU program that they offer as a service to their alumni. Lixin Huang President of American College shared that there are probably about seven CAB approved colleges that are currently offering doctoral acupuncture in Oriental Medicine Program. These students come for two years to the doctoral program and most of the schools doctoral programs also apply for CAB credits. This is a new fee and it would make the institutions charge more and would increase the student burden. Chair Lee: The Education Committee will look at the issues regarding this item and bring their findings back to the next Board Meeting.

Spencer Walker said that there was an action that the Board can take today that would satisfy the legislature. The staff recommendation was that the Board should review the CE course approval and auditing processes to determine if it has sufficient resources to operate an effective CE type program. The Board should seek legislative authority to assess a fee for CE course approvals. The Board can vote today to have section 4945 amended by way of Price's Sunrise Legislation Bill – SB 1239. The authority for the Board to assess a fee can be added to that bill. And then the Education Committee can deal with the other issues on whether or not you will actually assess a fee and if so by how much? My recommendation would be to at least have the authority to assess that fee.

Public: Bill Mosca- California State Oriental Medical Association: Thank you for reading that because I think it made very clear that the expectations of the committee were not that it raise it per course fee but rather is assess the auditing and approval functions and determine whether it has sufficient resources.

GEORGE WEDEMEYER MOTIONED TO HAVE BUSINESS AND PROFESSIONS SECTION 4945 AMENDED TO AUTHORIZE THE ACUPUNCTURE BOARD TO ASSESS A CE COURSE APPROVAL FEE BY WAY OF SB1239. CHARLES KIM SECONDED. 5-0-0 MOTION CARRIED.

14. Discussion Regarding Continued Utilization of the State-only Licensing Examination:

A debate occurred on whether or not to continue utilization of the state only California License Exam (CALE) or to consider the National Exam. Chair Lee presented data to reflect his stance that the California Licensing exam is superior to the national exam: For the examinees there is the cost. California only has one license, one fee. In the national exam it is divided into three subjects. And for California the educational standard is 3,000 hours but there are many other states that do not have the same standard as California. We cannot use just one standard for different states so the conclusion is that California is superior to the national exam. Member Wedemeyer presented reasons why he felt the CALE was excellent. He stated that the CALE is the best and only instrument available for demonstrating the failure of many training programs to adequately train graduates, to demonstrate competency by passing the licensing exam. CALE results are transparent and posted on the CAB website. The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), which operates the National Certification Exam, not licensing, does not release information regarding student performance so that individual schools can be evaluated. NCCAOM is anything but transparent. If the Board were to discontinue the CALE there would be no ability to oversee the performance of the program level. Just because the Board chooses not to act on decades of data is not a sufficient reason to scrap the only tool available to evaluate program performance. Chair Lee stated that this is just to clarify the historic issue so it will not carry over again.

Several public attendees stepped forward to encourage the Board not to close further discussion and review of the California License Exam (CALE) versus the National Exam including Eugene London, a Commissioner with the National Certification Commission of Acupuncture and Oriental Medicine. He presented the following information: Early today I heard someone state that candidates are charged \$2400.00 to take the National Exam. The actual cost to the candidate, if they take every module is \$1200.00. I believe the total cost of the California exam is approximately \$500.00. If a candidate from California chooses to take both exams; if they want reciprocity with any other state of the union they must add those two fees together for a total cost of \$1700.00. The issue of looking at an exam are credibility, validity and legal defensibility. The National Exam has never been legally challenged. That is not true of the California exam. A candidate must take four modules comparable to what is required to reach a California license. The reason the NCCAOM created a modular exam was to meet the needs of the many diverse states that count on the National Exam. Some states for example, have herbs within their scope of practice. Some states do not, therefore it was requested that we make a separate exam for herbology so those states that do not require it, those candidates do not need to take that exam. The position of the NCCAOM has always been to work with each state individually to meet its requirements. Currently forty-five states use the NCCAOM for their credentialing process. Forty four of the forty-five states that have any regulatory procedures at all do use the NCCAOM exam as well as the District of Columbia. The only state that does not use that exam is California. Bill Mosca of the California State Oriental Medical Association articulated, I hope this isn't an issue that disappears from the Board entirely because I think it is important that the Board continue to examine the issue and look

at whether the NCCAOM Exam has improved. Hugh Morrison of the National Guild expressed his position that the California License Exam (CALE) was superior to the National Exam.

15. Future Agenda Items

Member Weisman asked to have Ethics, continuing education for the Acupuncturist and amount of hours needed for continuing education for foreign applicants covered. A meeting member asked for an agenda item to cover Scope of advertising - make it more clear what is allowed and what is not allowed. Member Wedemeyer would like the English only test- this is state law and the Board has not addressed it, the objective structure clinical examination and the TOEFL Requirement- (University of Southern California had the largest International student Body and their TOEFL is 600, the average is 450) to be on the next agenda. Board member Wedemeyer also would like to have someone from the State health department come and talk to us about Infectious Diseases in regards to the glove issue. Bill Mosca of California State Oriental Medical Association – wants all of the bills that are currently live to be on the next agenda. Ben Kavoussi would like the ongoing issue of the involvement of some acupuncture clinics with prostitution to be discussed. Lixin Huang President of American College of Traditional Chinese Medicine - I just want to make sure that the discussion regarding state only licensing continues to be addressed and not be completely dropped since 44 states out of 45 use the National Exam. Hugh Morrison from the National Guild of Acupuncture and Oriental Medicine would like to agendaize CE course titles.

16. Public Comments

Amy Mateki - Physician and Medical Acupuncturist: I just want to make a comment regarding language efficiency. I do not believe we should cancel the Chinese language on the Board Exam. Infection Disease control – It is very difficult to practice Acupuncture with gloves on both hands. She suggests that Board members try it first before you make the rules. Inquiry by meeting member about whether continuing education courses transfer from one career field to another for example from an RN to Acupuncturist. Bill Mosca- California State Oriental Medical Association made a comment about SB 628 –previously the traumatology – the bill has been gutted a second time with regard to the use of the title doctor. This is still a live bill taking language out of the Board’s hand. Hugh Morrison from the National Guild of Acupuncture and Oriental Medicine made an inquiry about what a subject matter expert do?

17. Adjournment: Meeting adjourned.