



NOTICE OF ACUPUNCTURE BOARD ENFORCEMENT COMMITTEE MEETING

Friday, May 26, 2017

Upon conclusion of the Research Committee until completion of business

Location:

Tai Chi Studio – 2nd floor

**Yo San University of Traditional Chinese Medicine
13315 W. Washington Blvd., Los Angeles CA 90066**

Enforcement Committee Members

Hildegarde Aguinaldo, Chair, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member

AGENDA

ENFORCEMENT COMMITTEE MEETING

- 1. Call to Order and Establishment of a Quorum (Aguinaldo)**
- 2. Public Comment for Items Not on the Agenda**
The Committee may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))
- 3. Update on Enforcement Committee Assignments (Bodea)**
- 4. Approval of January 17, 2014 Enforcement Committee meeting minutes (Johnson)**
- 5. Approval of May 29, 2015 Enforcement Committee meeting minutes (Johnson)**
- 6. Approval of December 14, 2016 Enforcement Committee meeting minutes (Johnson)**
- 7. Future Enforcement Committee Agenda Items (Aguinaldo)**
- 8. Adjournment**

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THE FULL BOARD AGENDA, AS WELL AS COMMITTEE MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT

www.acupuncture.ca.gov

Please Note: Committee meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204

Enforcement Committee

#4

Approval of January 17, 2014

Meeting Minutes



ACUPUNCTURE BOARD

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

**CALIFORNIA ACUPUNCTURE BOARD
DRAFT ENFORCEMENT COMMITTEE MEETING MINUTES**

January 17, 2014

**Department of Consumer Affairs
Kitman Chan, Public Member
1625 North Market Blvd., First Floor Hearing Room
Sacramento, CA 95834**

**Teleconference Meeting Location:
Hildegarde Aguinaldo, Chair, Public Member
Jeannie Kang, L.Ac, Licensed Member
Ronald Reagan State Building
300 South Spring Street, Auditorium
Los Angeles, CA 95834**

AGENDA

Enforcement Committee Meeting - 1:05 p.m.

Enforcement Committee Members

*Hildegarde Aguinaldo, Chair, Public Member
Kitman Chan, Vice Chair, Public Member
Jeannie Kang, L.Ac, Licensed Member*

- 1. Quorum established.**
- 2. Opening Remarks.** Hildegarde Aguinaldo (HA) welcomed everyone and made note that five members of the public were at the Los Angeles meeting location.
- 3. Committee Procedures.** Executive Officer Terri Thorfinnson (TT) provided background on the issue. This is a follow-up from the October 25th meeting in which HA requested that the Committee consider more formal procedures for how committees operate than what currently exists in Board's Administrative Manual. This is the first time in years the committee structure has been public by virtue of the number of committee members (more than two) on each committee. HA questioned how the agenda items were assigned to the committee. Spencer Walker (SW) explained that items assigned to the committees should be Board driven items assigned by the Board and be in compliance with our strategic plan.

HA asked for additional clarification from SW on process for how the Committee should approach these issues. SW explained that the Committee can discuss the issues and make a recommendation at the upcoming Board meeting. The Board then has the discretion to reject the Committee recommendation and address the issue as a Board issue at the Board meeting.

4. Standardized Malpractice form 801 requires a legislation change

(Discussion). TT provided an introduction for the issue. It is a sunset review issue; the timing of this discussion is to ultimately have the Board address this issue before the upcoming sunset review hearing. The Board needs statutory authority to create and require this form which would be added to the Business and Professions Code section 801.

Kristine Brothers (KB), Board Enforcement staff, explained that in 2009, through Senate Bill 819, the Acupuncture Board was added to BPC Section 800. As a result, the Board must retain any judgments, settlements or arbitrations resulting in death or injury of the patient, amounting to damages of \$3,000 or more. Since fiscal year 2010/2011, we have received six complaints--all related to malpractice. In 2011/2012 we received three and for 2012/2013 we did not receive any complaints.

HA asked whether we have any reason to believe that the numbers are due to low reporting and not low incidence of malpractice. KB replied that it is impossible to determine how much information we are not receiving. HA asked KB to explain how the Board receives information from the National Practitioner Data Bank. KB explained that having query capability with the NPDB is something the Board is interested in doing, but we do not have the ability now. Instead of a standardized form, HA asked whether simply having query capability would solve this problem. HA asked about the role of subject matter experts in reviewing cases. KB explained how subject matter experts assist the Board in determining cases to prosecute.

Public Comment. A question was posed about how the \$3000 versus the \$30,000 was arrived at for this law. A follow-up question raised the small amount of \$5,000 would be considered a frivolous claim, so it would not need to be reported. There was an additional comment about whether the form really compels insurance carriers to report information that they are already not reporting.

5. Prostitution prevention: Proposed regulatory language (Discussion).

The Board's enforcement experience has shown that it needed some additional authority to deal with prostitution prevention. The Acupuncture Board is proposing its own regulations prohibiting sexual activity on the premises. Violation of this provision would allow the Board to take disciplinary action.

The language would amend CCR Section 1399.450: "Where an acupuncture license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, employees, patrons or customers, including but necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility." This would give the Board the authority that is needed to bring forth enforcement actions related to prostitution.

KB explained that currently many prostitution charges involving employees get plead down to lesser violation that is not at all related to prostitution. Otherwise, there is a charge against an acupuncturist that gets plead down and then it is no longer deemed a substantially-related conviction any more for enforcement purposes. So, the Board is

currently limited by our regulations in effectively prosecuting the real source--the real problem--that licensees are lending out their licenses for prostitution.

HA asked why "employers were not included in the proposed language and requested it be included. Other committee members supported the proposed regulatory change. HA closed Board discussion.

Public Comment. One comment applauded Board's creativity but wondered why the language had to specify who is involved. Another comment could not understand why such behavior would occur at an acupuncture office. A follow-up comment questioned why the need for the wording premises, structure or facility. The response was that in cases where services are offered in tents, mobile vans for free events that would be outside the norm office structure.

6. Review of current hygiene regulations (Discussion).

KB provided the introduction of the issue. The Board's hand washing regulations in CCR Section 1399.451(a) are out of date and are not consistent with the health care industry standards that are issued by the Center for Disease Control (CDC) and the California Department of Public Health. The existing regulation text does not allow for alcohol based hand rubs. Research into hygiene indicates that hand washing is recommended for visibly soiled hands but alcohol-based sanitizers should be used on a routine bases. The Board's existing Infection Control Guidelines match more closely with health industry standards, but our regulation does not. The proposed regulation would integrate alcohol based sanitizers. Committee agreed the update was needed and it was a long overdue update.

Public Comment. There was a suggestion to not revise the regulation and just change the Infection Control Guidelines.

HA concluded this agenda item discussion and public comment.

7. Future Agenda Items.

Committee decided to wait for the action plan for the strategic plan that was being created by CAB staff and SOLID to determine future issues for the committee. There was discussion about how agenda items discussed today can be considered and voted on by the Board. SW advised that issues could be raised at the Board meeting either if they were on the agenda or they could be raised from the Committee report. There was also clarification that Board members not on specific committees can observe from the audience, but they cannot participate in the discussion. No motion to adjourn needed to adjourn committee.

8. Adjournment.

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

Enforcement Committee

#5

Approval of May 29, 2015

Meeting Minutes



**ACUPUNCTURE BOARD
ENFORCEMENT COMMITTEE MEETING
DRAFT Meeting Minutes
FRIDAY, MAY 29, 2015**

LOCATION:

**Department of Consumer Affairs
1747 North Market Boulevard
HQ2 First Floor Hearing Room
Sacramento, CA 95834**

**Teleconference Meeting Location:
320 West Fourth Street
8B Conference Room, 8th Floor
Los Angeles, CA 90013**

Enforcement Committee Members

*Hildegarde Aguinaldo, Chair, Public Member
Kitman Chan, Public Member
Jeannie Kang, L.Ac., Licensed Member*

Committee Members Present in Los Angeles

Hildegarde Aguinaldo, Chair, Public Member
Jeannie Kang, L.Ac., Licensed Member

Committee Members Present in Sacramento

Kitman Chan, Public Member

Staff Present in Sacramento

Terri Thorfinnson, Executive Officer
Kristine Brothers, Executive Coordinator

AGENDA

Agenda Item #1 -- Call to Order, Roll Call and Establishment of a Quorum

Chair Hildegarde Aguinaldo (Aguinaldo) called the meeting to order at 1pm. Roll was taken: Aguinaldo – present in Los Angeles; Chan – present in Sacramento; Kang – present in Los Angeles. *3-0 quorum established.*

Agenda Item #2 – Opening Remarks

Chair Aguinaldo welcomed everyone to the meeting.

Agenda Item #3 -- Public Comment on Items Not on the Agenda

A commenter asked that Master Tung's acupuncture be included on the exam.



Agenda Item #4 -- Approval of Minutes: April 18, 2014, Committee Meeting

No changes were made.

MOTION: Committee Member Jeannie Kang (Kang) made a motion to approve the April 18, 2014 enforcement committee meeting minutes. Committee Member Kitman Chan (Chan) seconded the motion. Vote: Aguinaldo -- YES; Chan – YES; Kang – YES. 3-0 MOTION PASSES.

Agenda Item #5 -- Discuss and consider whether the Board should contract with National Practitioner Data Bank as recommended by the Sunset Review Committee

Executive Officer Terri Thorfinnson (Thorfinnson) opened on the issue, which was raised during the most recent Sunset Review. She reminded the committee that there has already been good discussion on the issue, and felt the Board was close to a decision. The committee discussed two options: 1. one-time lookup, which the committee didn't want and 2. continuous query, which the Board would do on a rotating basis of one-third of total licensees. She then mentioned only querying out-of-state licensees due to cost, and the costs per lookup have changed.

Chair Aguinaldo asked how many malpractice and adverse actions reports the Board was receiving. Enforcement Coordinator Kristine Brothers (Brothers) replied about 10-15, which were only in-state licensees. Member Kang asked about including the American Acupuncture Council databank reports in the queries. Staff will look into that. EO Thorfinnson asked which other reports may be missing. She mentioned attorneys and clients are required to report, and wondered about other state agencies, but noted they report to the national database. She also noted other Boards just query for out-of-state licensees.

No public comment was made on this item.

MOTION: Member Chan made a motion to recommend to the Board to conduct queries on out-of-state licensees and evaluate the number on the report. Member Aguinaldo seconded the motion. Vote: Aguinaldo -- YES; Chan – YES; Kang – YES. 3-0 MOTION PASSES.

Agenda Item #6 – Request Pursuant to Business and Professions Code Section 4967 (b) to waive exam as requirement for new licensure: James Skoien. Cancelled License AC 2562

The committee heard the request of James Skoien to waive the exam requirement to be issued a new license; the request would then have to be approved by the full Board.



A public comment was made in support of James Skoein.

*MOTION: Member Kang made a motion to recommend to the Board to approve James Skoien's request to be issued a new license and waive the exam. Member Aguinaldo seconded the motion. Vote: Aguinaldo -- YES; Chan – YES; Kang – YES. **3-0 MOTION PASSES.***

Agenda Item #7 – Future Agenda Items

Chair Aguinaldo wanted to make sure the committee continued discussion on AB 12 and regulatory items.

Agenda Item #8 – Adjournment

Meeting adjourned.

BOARD AND COMMITTEE AGENDAS, MEETING MATERIALS AND MINUTES CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE: www.acupuncture.ca.gov

Enforcement Committee

#6

Approval of December 14, 2016

Meeting Minutes



**ACUPUNCTURE BOARD
ENFORCEMENT COMMITTEE MEETING
DRAFT Meeting Minutes
Wednesday, December 14, 2016**

**LOCATION:
ELIHU M. HARRIS STATE OFFICE BUILDING
MEETING ROOM #2
1515 CLAY STREET
OAKLAND, CA 94612**

Committee Members Present

Hildegarde Aguinaldo, Chair, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member

Enforcement Committee Members

*Hildegarde Aguinaldo, Chair, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member*

Staff Present

Ben Bodea, Executive Officer
Kristine Brothers, Enforcement Coordinator
Marc Johnson, Policy Coordinator
Kelsey Pruden, Legal Counsel

AGENDA

Agenda Item #1 -- Call to Order and Establishment of a Quorum

Chair Hildegarde Aguinaldo (Aguinaldo) called the meeting to order. Policy Coordinator Marc Johnson (Johnson) called the roll: Aguinaldo – present; Hsieh – present; Kang – present; Zamora – present. *4-0 quorum established.*

Agenda Item #2 – Discussion and Possible Action of Revised Disciplinary Guidelines (Brothers and Johnson)

Johnson opened by stating that the Acupuncture Board's (Board) Disciplinary Guidelines (Guidelines) have not been updated since 1996 and reviewed the history of the regulatory package. The new 2016 Guidelines before the Committee are considered amendments and updates to the 1996 version. He noted the issue has been on the Board's radar for many years, and staff had looked at other Boards that might be relevant. He also described the process once the Committee approves the Guidelines and the timelines once the item is approved by the full Board.

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Enforcement Coordinator Kristine Brothers (Brothers) read aloud the proposed text for 1399.469 and then began review of the document. She noted the updates to the formatting and general global updates through the document, a new table of contents, as well as a new introduction which refers to the new language defining a substance abusing licensee. Discussion commenced on Optional Condition #2 -- "Psychological Evaluation". Chair Aguinaldo asked if the reference to the DSM manual could be listed without referring to a particular document version. Brothers agreed and the change was made. There were no changes made to Condition #3 -- "Physical Examination" or Condition #5 -- "Psychotherapy". She then described the new Optional Condition #7 -- "Restrictions on Practice Techniques and Modalities" and the updates to Optional Condition #8 -- "Examinations". She noted Optional Condition #9 "Restitution" was not changed.

Chair Aguinaldo asked about the requirement in #10 which requires documents to be submitted by mail. She asked that "received by CAB office within 15 days" be added to the Guidelines; Johnson agreed and said it would change throughout the document. Brothers then reviewed Optional Condition #10 -- "Reimbursement for Probation Surveillance Monitoring" and Optional Condition #11 -- "Alcohol and Drug Abuse Treatment" which she noted was a new standalone Condition. Optional Condition #12 -- "Abstain from Drugs and Alcohol and Submit to Tests and Samples" was changed and rephrased for clarity. She also noted the Condition now has an exception for prescription drugs. Counsel Pruden recommended the controlled substances codes sections be restored; Board agreed.

Optional Condition #13 -- "Coursework" was explained. The requirement of 30 quarter units has been removed, and the Board is proposed to have discretion to determine how many hours based upon a case. The amended Condition would then allow the Board to determine how much coursework was needed. There was discussion about the number of units required and types of courses. EO Bodea pointed out licensees already have to complete 50 Continuing Education (CE) Units as a part of renewal, and one unit is equal to 15 hours, which can take some time to complete. Counsel Pruden reminded the Board that it can use its discretion to modify course hours on a proposed decision from an administrative law judge, but Board staff would research what other Boards do.

Chair Aguinaldo discussed submission of documents; she felt licensees needed to submit information by certified mail within 15 days. Counsel Pruden noted she has not seen other Boards require this, and wasn't sure how that would work in practicality. Brothers said some documents were done via email or regular mail, and that she encouraged email since it allows her to keep tabs. She then reviewed Optional Condition #14 -- "Community Service", which is an existing term which was made more specific, and another new Optional Condition #15 -- "Supervised Practice".

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Brothers then noted Optional Condition #16 – “Obey All Laws” was amended to clarify the licensee must obey all laws; Optional Condition #17 – “Quarterly Reports” a minor amendment was made allowing the Board to extend probation and #20 – “Changes of Employment” now specifies an employment address. In Optional Condition #21 – “Tolling for Out Of State Practice Resident” she detailed changes which allow the probationer to take vacation of up to 2 weeks. Optional Condition #22 – “Employment and Supervision of Trainees” was added to restrict probationers from working as CE instructors; Optional Condition #23 – “Cost Recovery” was amended to allow installment payments for recovery of costs. In Optional Condition #24 -- “Violation of Probation” was amended to allow the Board to have continuing jurisdiction over a probationer; Optional Condition #25 – “Probation Monitoring Costs” was added. Counsel Pruden noted the Condition is technically not cost recovery, but is something that can be ordered in the actual judgement and thus needs to be separate.

Brothers continued the review of Optional Conditions. Optional Condition #26 – “License Under a New Optional Condition” allows the respondent to surrender their license if desired; Optional Condition #27 – “Severability Clause” states that each condition of probation is a separately existing condition; Optional Condition #28 – “Notification of Name, Address, Telephone Number, or E-mail Address Changes” was amended so probation monitors can get the most current contact information; and Optional Condition #29 – “Maintenance of a Valid License” was added to require the probationer to maintain an active and current license. She then noted that the penalty guidelines section in 1996 Guidelines was proposed to be removed, and a general provision section was added using some of the more general violations the Board sees.

Public comment was taken on the item. One commenter wondered about the Board’s inclusion of 12-step programs, and wondered why duration of participation was not specified. He also had an issue with qualifications of the monitors; he felt newly licensed acupuncturists could be put into that position. Counsel Pruden pointed out the Board was not seeing new licensees in that position. The Board opted to change that language to the same standards as supervisors for approved training program of 5 years.

MOTION: Chair Aguinaldo motioned to ask to staff to make changes discussed, and following completion of those changes to take the revised version to the full Board for discussion and possible adoption. Committee Member Jeannie Kang seconded the motion. Vote: Aguinaldo: YES; Hsieh: YES; Kang: YES; Zamora: YES. **4-0 MOTION PASSES.**

Agenda Item #3 -- Discussion and Possible Action on Prostitution Prevention and Condition of Office Regulatory Package; Possible Recommendation to Board (Johnson)

Johnson reviewed the history of the issue and noted that the Board originally passed the language back in 2014, and that staff had identified this regulation as one which



needed to be rewritten. He said that some people were taking advantage of the Board's regulatory authority and the charges were being dismissed or pleas bargained away. The proposed language was originally placed into CCR Section 1399.450, but staff instead relocated it into CCR Section 1399.469.4. He specified that 1399.450(a) was shown as strike through on the Board materials, but they would not be removing that language; the new regulation would also not be adopting an article 6.5 as shown in the Board materials. He read aloud the proposed language for 1399.469.4.

Chair Aguinaldo wondered if there was any peril in defining sexual acts in this particular regulation where it could be defined elsewhere and conflict; Johnson noted that staff took the definition directly from the penal code and the only other Board with similar issues was the Chiropractic Board. Counsel Pruden read aloud the Chiropractic Board statute. There was discussion about how many potential cases there might be; Johnson replied there was about 5 a year.

There was no public comment on the item.

MOTION: *Committee Member Jamie Zamora motioned to approve the proposed regulatory language to section 1399.469.4 as presented and direct staff to notice the language for public comment without setting a public hearing and direct staff to make technical changes. Chair Aguinaldo seconded the motion. Vote: Aguinaldo: YES; Hsieh: YES; Kang: YES; Zamora: YES. 4-0 MOTION PASSES.*

Agenda Item #4 -- Future Enforcement Committee Agenda Items

Chair Aguinaldo asked about CE provider enforcement; EO Bodea noted it. There were no other items.

Agenda Item #5 -- Public Comment for Items Not on the Agenda

A public comment was made wondering when the Board would address the issue of dry needling.

Agenda Item #6 – Adjournment

Meeting adjourned.

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