

CALIFORNIA ACUPUNCTURE BOARD

444 North 3rd Street, Suite 260, Sacramento, CA 95814-0226
Phone: (916) 445-3021 / FAX: (916) 445-3015
E-mail: acupuncture@dca.ca.gov Web: www.acupuncture.ca.gov/

State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



Approved May 18, 2007 **ACUPUNCTURE BOARD MEETING MINUTES**

The Sportsmen's Lodge Hotel
Studio City, CA

**Full board Meeting
Friday, February 23, 2007**

Members Present

Steven Tan, M.D., L.Ac., Chair
Kenny Cherng, L.Ac., Vice Chair
Robert Brewer, Public Member
Adam Burke, L.Ac.
Peichin Cheng, Public Member
Cary Nosler, Public Member
Larry Yee, Public Member

Staff Present

Janelle Wedge, Executive Officer
LaVonne Powell, Legal Counsel
Mary Howard, Administrative Coordinator
Nancy Molinar, Education Coordinator
Christie Loftin, Examination Coordinator
Corey Miller, Administrative Technician

Members Absent

Guest List on File

1. Call to Order and Establishment of a Quorum – Dr. Steven Tan, Chair

Board Chair Steven Tan called the Acupuncture Board (board) meeting to order at approximately 8:49 a.m., roll was taken. All members were present except Cary Nosler. A quorum was established. Mr. Nosler joined the meeting at approximately 9:50 a.m.

2. Approval of November 3, 2006 Meeting Minutes

The minutes of November 3, 2006 were reviewed and approved. There was public comment (David Karaba) that the meeting packets made available to the public did not contain a copy of the draft minutes. Executive Officer Janelle Wedge stated that it was her understanding that minutes were not public until approved by the board.

ADAM BURKE MOVED AND ROBERT BREWER SECONDED THE MOTION TO APPROVE THE NOVEMBER 3, 2006 MINUTES. MOTION PASSED UNANIMOUSLY.

3. Chair Report – Dr. Steven Tan

Board Chair Dr. Steven Tan gave a brief report on the Strategic Planning Workshop, which took place on February 2, 2006, and stated that Rich Mallory would be joining us later to go over the 2007 Strategic Plan. He instructed that comments would be limited to five minutes during the Regulatory Hearing, and two minutes for the remainder of the meeting.

4. Executive Officer's Report – Janelle Wedge

Executive Officer Janelle Wedge congratulated board members Steven Tan, Adam Burke, Peichin Cheng and Kenny Cherng on their unanimous Senate Confirmation. A reminder was given to all board members they must attend a new board member orientation within one year of their appointment, if they have not already done so. She reported that there had been difficulty scheduling the August board meeting in San Diego due to lack of meeting site availability, and requested that the May and August board meeting locations be switched. She proposed that the

August 10, 2007 meeting be moved to San Francisco, and the May 18, 2007 meeting be moved to San Diego. There were no objections. Board meeting locations for the remainder of 2007 will be as follows:

- May 18, 2007 – San Diego August 10, 2007 – San Francisco November 2, 2007 – Sacramento

5. SPECIAL ORDER OF BUSINESS – REGULATORY HEARING

Amend Title 16, California Code of Regulations as follows:

(Previously noticed in California Regulatory Notice Register, Notice File #Z-06-1226-02, publication date of January 5, 2007. Notice also sent to the Acupuncture Board’s general mailing list and continuing education providers) Continuing Education – Amend sections 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, and 1399.489.1.

Steven Tan introduced himself as the chair of the Acupuncture Board and stated that he would be presiding over the regulatory hearing, which deals with modifying the board’s continuing education regulations. He stated for the record that the hearing date is February 23, 2007 and the beginning time is approximately 9:01 a.m. He explained that the purpose of the hearing was to receive oral and written testimony concerning the regulatory proposal described in the hearing notice and that all testimony should address six standards – necessity, authority, consistency, clarity, non-duplication, and reference. He also explained the procedure for testifying and that all recommendations or objections will be included in the final statement of reasons and become a part of the rule-making file.

Public Comment: Tom Haines, Pacific College of Oriental Medicine (PCOM). 1) Section 1399.481(c) – he was concerned about this section being deleted and wanted it to remain. Legal Counsel LaVonne Powell explained that since 1399.481 was being amended to specify that “those persons, organizations, schools or other entities seeking approval” can be considered as continuing education (CE) providers, that subsection (c), which specifies that “acupuncture schools and colleges which have been approved by the board...” can be considered as providers, would be redundant. The amendment would not preclude schools and colleges from being considered/approved as CE providers. 2) Section 1399.485 – PCOM feels that that the Acupuncture Board should not be micromanaging the qualifications of instructors, such as requiring specified experience; this should be left up to the CE providers, as there are excellent instructors out there. 3) 1399.489 – PCOM disagrees with the five-hour limitation of CE courses in Category 2. They understand this requirement is in statute, but still disagree with the limitation.

Public Comment: Marilyn Allen, American Acupuncture Council (AAC). Section 1399.489 – would like to see the five-hour limitation lifted. While in school students generally focus on medicine issues; and as a licensee they should be allowed to earn and apply more CE credit in business management issues. Also, since malpractice cases are on the rise, acupuncturists need to learn more about hospital protocol, how to manage their business, patient relations, and how to run a productive business.

Public Comment: Lonni Anderson, L.Ac. Section 1399.489 – would like to see the five-hour limitation lifted. It is a difficult road for new licensees and it is difficult to start business with out the tools to allow them to practice ethically. Many new licensees fail because of lack of business education – especially acupuncture business management. Would like to see the board consider allowing licensees to earn and apply a percentage of practice management hours over a two to five year period. Continuing education should include business management and the laws and regulations.

Public Comment: Bill Mosca, California State Oriental Medical Association (CSOMA). Indicated there were four areas that CSOMA recommended be changed – 1399.483, 1399.484, 1399.489, and 1399.489.1. Mr. Mosca summarized CSOMA’s written comments that were mailed to the board and presented during the regulatory hearing.

Public Comment: Tom Haines, Pacific College of Oriental Medicine (PCOM). Section 1399.484(b). He feels there should be more “wiggle room” for providers who need to make changes to their approved course, when it is same course/same instructor. Indicated that a change was made to PCOM’s symposium one to two days before it started and that the Acupuncture Board did not approve it.

Public Comment: Young Chun, **Association of Korean Asian Medicine and Acupuncture of California (AKAMAC)**. Was concerned about continuing education providers who offer courses and acupuncturist comes for 2-3 hours and leaves without taking whole course and is still issued a certificate showing completion. Says this is happening a lot and something should be done.

Chairperson Tan asked if there was any more public testimony. Seeing there was none he closed the regulatory hearing at approximately 9:27 a.m.

6. Special Guest: Charlene Zettel, Director – Department of Consumer Affairs

Dr. Steven Tan introduced Charlene Zettel, Director – Department of Consumer Affairs.

Charlene Zettel gave a brief introduction and overview of The Department of Consumer Affairs. She thanked the board members for their service and time, the staff for their excellent work and commitment to the service of the licensees and the public, and the guests for being part of a democracy. She gave highlights of the issues DCA is focusing on. She noted that a more user-friendly DCA web-site is under development. She stated that she has been appointed by the Governor to a new position and will be leaving DCA as of March 12, 2007.

7. Administrative Business – (Discussion / Action)

a. Adopt/Modify Regulatory Amendment to Title 16, California Code of Regulations, sections 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, and 1399.489.1 from Regulatory Hearing

The Board utilized the written changes submitted by the California State Oriental Medical Association (CSOMA) (**Attachment 1**) as a working document and is incorporated as part of the meeting minutes. Board modifications to the original proposed language are displayed in Attachment 1.

KENNY CHERNG MOVED AND CARY NOSLER SECONDED A MOTION THAT THE BOARD ADOPT CHANGES AND AMENDMENTS AS DISCUSSED AND SEND OUT A 15-DAY NOTICE TO MODIFY LANGUAGE. BOARD ALSO DELEGATES TO THE EXECUTIVE OFFICER THE AUTHORITY TO ACCEPT ALL COMMENTS AFTER THE 15-DAY NOTICE, UNLESS THE BOARD RECEIVES NEGATIVE COMMENTS, AND TO PROCEED WITH THE RULEMAKING PROCESS. MOTION PASSED UNANIMOUSLY.

b. Proposed Urgency Legislation – Bureau of Private Postsecondary and Vocational Education Sunset

Legal Counsel LaVonne Powell updated the board on the BPPVE sunset scheduled to take place on July 1, 2007. She summarized the proposed urgency legislation that would amend the licensing statutes for the affected boards. Concern was voiced regarding the possibility that a lack of regulation may occur. LaVonne Powell recognized the need for regulation of schools, and recommended that the board approve the amended language to sections 4841.5, 4980.40, 4939, 7362, and 8207 of the Business and Professions code.

ROBERT BREWER MOVED AND LARRY YEE SECONDED THE MOTION TO APPROVE THE AMENDED LANGUAGE. MOTION PASSED UNANIMOUSLY.

c. Legislation

Janelle Wedge introduced Neal Miller, Acupuncture Integrated Medicine Specialists (AIMS), to present the board with information regarding the four bills that AIMS is sponsoring this year.

1. AB 969 (Eng) – Continuing Education

This bill would delete the restriction that no more than five of the required continuing education hours may be spent on issues unrelated to clinical matters. There was discussion regarding striking the five hour limit. There was no opposition from the board.

CARY NOSLER MOVED TO SUPPORT AB 969. MOTION DIED DUE TO LACK OF SECOND.

LARRY YEE MOVED AND ROBERT BREWER SECONDED THE MOTION TO TAKE A WATCH POSITION AT THIS TIME. CARY NOSLER OPPOSED. MOTION PASSED 6-1.

2. AB 636 (Levine) – Scope of Practice

This bill would expand the scope of practice to include the use of low-level laser stimulation in acupuncture. The board thoroughly discussed the issues of training, the requirement of additional regulation, safety standards, and the expansion of the scope of practice to include new technology. Additional information and input were provided by Neal Miller - AIMS, and Bill Mosca – CSOMA. It was brought to the attention of the board that at this time, the FDA has not approved any low-level lasers for use.

CARY NOSLER MOVED AND ADAM BURKE SECONDED THE MOTION TO TAKE A POSITION TO SUPPORT THE CONCEPT BUT THAT ADDITIONAL INFORMATION WOULD BE REQUIRED BEFORE ANY FURTHER ACTION COULD BE TAKEN. MOTION PASSED UNANIMOUSLY.

3. SB 136 (Cedillo) – Asian Massage

This bill would further define Asian Massage as related to the scope of practice in acupuncture. Neal Miller – AIMS, stated that proposed language striking “Asian Massage” and adding “Tui Na” was submitted to the Senate. Discussion was made regarding the term “Tui Na”. The board agreed that the newly proposed language to remove the term “massage” was appropriate, and that this may help to clarify the scope of practice.

CARY NOSLER MOVED AND ADAM BURKE SECONDED THE MOTION TO SUPPORT THE BILL WITH THE PROPOSED LANGUAGE. MOTION PASSED UNANIMOUSLY.

4. AB 54 (Dymally) – Workers Compensation

This bill would amend Section 4600 of the Labor Code relating to workers’ compensation. Neal Miller – AIMS informed the board that this bill was introduced to the Assembly on December 14, 2006, he stated that this bill would help to make acupuncture a part of universal healthcare. The board did not take any position on this bill.

d. Proposed Regulatory Language Amending CCR 1399.434(h) and 1399.436(b)

This proposed regulatory language amendment was developed, and brought to the board based on the motion to accept the Education Committee’s recommendation to modify CCR section 1399.436(b), which passed unanimously at the previous board meeting on November 3, 2006. This regulatory language changes the percentage of amount of clinical instruction which shall be in a clinic which is owned and operated by a training program, from 75% to 50%.

ADAM BURKE MOVED AND CARY NOSLER SECONDED TO MOTION TO ACCEPT THE PROPOSED REGULATORY LANGUAGE. MOTION PASSED UNANIMOUSLY.

e. Budget Report – Mary Howard, Administrative Coordinator

Mary Howard explained the Expenditure Projection and the Analysis of Fund Condition Reports. She stated that information for the reports was provided by a Department of Consumer Affairs budget analyst. Dr. Steven Tan noted that based on the reports provided, there would be a surplus in the budget until Fiscal Year 2010.

8. Education Business – Nancy Molinar (Discussion / Action)

a. Alhambra Medical University (AMU) School Site Visit – Nancy Molinar, Education Coordinator

A school site visit was conducted by Nancy Molinar - Education Coordinator, Janelle Wedge - Executive Officer, and private practitioner Laurel Holloway, Ph.D., L.Ac. on February 6-7, 2007. AMU Vice President Patricia Yeh, Academic Dean Jerome Jiang and Clinic Director Megan Hah were present, and answered questions from the board. Patricia Yeh thanked the board and the staff. Nancy Molinar recommended that based on the outcome of the site visit, that the board grant full approval.

LARRY YEE MOVED AND ROBERT BREWER SECONDED THE MOTION TO GRANT FULL APPROVAL TO ALHAMBRA MEDICAL UNIVERSITY. MOTION PASSED UNANIMOUSLY.

b. Status of School Site Visits

Nancy Molinar reported that a site visit to Nobel University was tentatively scheduled for April 2007. The site visit date to St. Luke University is pending because the school is not ready for the board to conduct a site visit. The Atlantic Institute of Oriental Medicine at Ft. Lauderdale, Florida is also pending due to the out of state location of the school. She stated that more information would be available at the May board meeting.

9. Strategic Plan – Rich Mallory (Discussion /Action)

Rich Mallory, a private consultant hired by the Department of Consumer Affairs to facilitate the Strategic Planning Workshop, presented and briefly explained the draft Strategic Plan that was developed on February 2, 2007. The board discussed the proposed Strategic Plan. It was decided that task forces were not needed and to strike the words “task force” and replace with “committee” throughout the plan. It was decided an Education Committee meeting was needed before the May 18, 2007 board meeting, to discuss continuing education standards in the plan. Meeting date was not established. The board thanked Rich for his assistance in creating the 2007 Strategic Plan.

CARY NOSLER MOVED AND KENNY CHERNG SECONDED THE MOTION TO ADOPT THE 2007 STRATEGIC PLAN. MOTION PASSED UNANIMOUSLY.

10. Examination Business – (Discussion/Action)

a. January 17, 2007 Licensing Examination Statistics

Examination Coordinator Christie Loftin reported on the results of the January 17, 2007 licensing examination: of the 526 candidates that took the exam, 307 (58%) passed. The passing rate breakdown for each language was English – 169 (57%), Chinese – 50 (54%), and Korean – 88 (63%).

Ms. Loftin explained that, due to software limitations, at this time, the board is not able to provide additional statistics on the exam results. She noted that efforts are being made to satisfy the requests that more statistical information be made available regarding passing rates of first time test takers versus repeat takers, as well as additional information relative to the curriculum areas and information by school.

b. Limitation on Retaking Exam

Steven Tan reported that currently there is no limit on the number of times someone may take the CALE. He noted there are some licensing examinations with limitations, and started a discussion regarding the option of the board adopting a rule regarding this issue. Legal Counsel LaVonne Powell stated any restrictions placed on the number of times the exam can be taken by an individual would require legislative changes.

ROBERT BREWER MOVED AND PEICHIN CHENG SECONDED THE MOTION TO NOT ESTABLISH LIMITATIONS ON RETAKING EXAM. MOTION PASSED UNANIMOUSLY. THE ISSUE OF PLACING LIMITATIONS ON RETAKING EXAM WAS FORMALLY DROPPED.

11. Enforcement Business – (Discussion/Action)

a. Enforcement Case Report

Executive Officer Janelle Wedge provided an enforcement update as follows: **78 new complaints were received in the period of July 1, 2006 through February 14, 2007**; 49 complaints were for unprofessional conduct. A breakdown of the 28 current, open cases classified as unprofessional conduct through 2006 was reviewed. As of February 14, 2007 there were: 86 new and prior complaint cases pending in-house; 28 formal investigations pending with the Department of Investigation; 14 open disciplinary cases pending; and 20 open probation cases. There was discussion as to definitions and differences between sexual misconduct complaints versus prostitution/massage complaints. The board agreed that a report similar to the February 14, 2007 Memorandum regarding the breakdown of complaints by category should be reviewed at all future board meetings. There was discussion regarding the hiring of an Investigator. The strategic plan objective (3.3) regarding proposing legislation allowing random facility spot inspections was discussed.

b. New Devices – Cold / Hot Lasers

Neal Miller addressed the board and referred to AB 636. This issue was addressed and a motion was passed during the Administrative Business Discussion/Action (refer to Section 6c). No additional discussion was required.

12. Public Comment Period

Tom Haines – Pacific College: Wanted to point out that based on the number of complaints versus the number of treatments performed each year, the California Licensees have a “phenomenal” safety record.

Neal Miller, L.Ac., - AIMS: Agreed with Mr. Haines on the safety record, but thinks there are still some serious issues regarding enforcement. He stated that the board could be more aggressive with its enforcement actions, that the board, as well as the associations need to be more proactive in stopping many illegal activities.

13. CLOSED SESSION: Pursuant to Government Code Section 11126(c) (1) and (c) (3) to discuss/take action on examination, administration and disciplinary actions.

14. Adjournment

The meeting adjourned at approximately 2:27 p.m.