



Amended and Approved November 2, 2007
Approved August 10, 2007
ACUPUNCTURE BOARD
MEETING MINUTES

Bahia Resort Hotel
San Diego, CA

FULL BOARD MEETING
FRIDAY, MAY 18, 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
Larry Yee, Public Member

Members Absent

Cary Nosler, Public Member

Staff Present

Janelle Wedge, Executive Officer
LaVonne Powell, Legal Counsel
Mary Howard, Administrative Coordinator
Nancy Molinar, Education Coordinator
Robin Saenz, Enforcement Coordinator
Corey Miller, Administrative Technician

Guest List on File

1. Call to Order – Dr. Steven Tan, Chair

Board Chair Steven Tan called the Acupuncture Board (board) meeting to order at approximately 8:41 a.m. All members were present except Peichin Cheng, Larry Yee, and Cary Nosler. A quorum could not be established at that time, so only that business that did not require a quorum or vote was conducted.

2. Chair Report – Dr. Steven Tan

Board Chair Dr. Steven Tan stated that he did not have anything to report but wanted to remind the public to limit comments to two minutes.

4. Executive Officer's Report – Janelle Wedge

Executive Officer Janelle Wedge reported that DCA has a new director, Carrie Lopez, and provided some background information on Ms. Lopez. Ms. Wedge pointed out the discussion at the last meeting regarding the board's community outreach efforts. She stated she and Mary Howard, Administrative Coordinator, were working on producing a newsletter and asked the board members for ideas for articles. She discussed the Department of Consumer Affairs' outreach efforts at the State Agency Expo in Arcadia on May 19th and 20th. She noted that consumer guides may be distributed at the California State Fair as well as county fairs.

5. Administrative Business – (Discussion/Action)

a. Budget Report – Mary Howard, Administrative Coordinator

Mary Howard provided the board with expenditure projections and the analysis of fund condition reports

and explained that the department's budget analyst provided information used for the projections. Adam Burke mentioned that enforcement expenses were the largest budget item. Ms. Wedge stated that as of July 1, 2007, the Acupuncture Board staff will assume the responsibility for probation cases from Division of Investigation. She noted that recently there has been a surplus in the budget, but this is not normally the case.

6. Examination Business – (Discussion/Action)

a. August 7, 2007 Licensing Examination

Due to the absence of Christie Loftin, Examination Coordinator, there was no discussion held regarding statistical information for the upcoming licensing examination.

b. Applicant Tracking Services (ATS) Ad-Hoc Reports

Discussion took place regarding the capabilities of the new Ad-Hoc reporting programs, which are currently being tested. Per suggestions from the public, Ms. Wedge stated that she would look into the possibility of having Office of Examination Resources provide some detailed examination results.

7. Enforcement Business – (Discussion/Action)

a. Enforcement Case Report

Executive Officer Janelle Wedge provided an enforcement update as follows: **125 new complaints were received in the period of July 1, 2006 through May 9, 2007**; 80 complaints were for unprofessional conduct. A breakdown of the 40 current, open cases classified as unprofessional conduct through May 9, 2007 was reviewed. As of May 9, 2007, there were: 66 new and prior complaint cases pending in-house; 34 formal investigations pending with the Department of Investigation; 13 open disciplinary cases pending; and 19 open probation cases. There was discussion regarding the possibility of making complaint statistics and descriptions of common violations available to licensees through the newsletter and web-site.

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

Board Chair Steven Tan called the meeting back to order at approximately 9:38 a.m. All members were present except Larry Yee and Cary Nosler. A quorum was established. Mr. Lee joined the meeting at approximately 9:56 a.m.

9. Approval of February 23, 2007 Meeting Minutes

The February 23, 2007 minutes were reviewed. Robert Brewer commented that there was an error on Item 7b – that the motion made was by Robert Brewer, not Robert “Burke” There was public comment (David Karaba, NGAOM) that the February 23, 2007 meeting packets made available to the public did not contain a copy of the November 2006 draft minutes. LaVonne Powell, Legal Counsel stated that subsequent to the February meeting, draft minutes are now made available to those attending the meeting. She further stated that the February minutes would be amended to include the public comment relating to the availability of draft minutes.

KENNY CHERNG MOVED AND ROBERT BREWER SECONDED THE MOTION TO APPROVE THE FEBRUARY 23, 2007 MEETING MINUTES WITH THE ABOVE NOTED CHANGES. MOTION PASSED UNANIMOUSLY.

10. Petition Pursuant to B & P Code Section 4967(b)

a. Cynthia Riggs

Janelle Wedge summarized Ms. Riggs' request to have her cancelled acupuncture license reinstated without having to retake the exam. Ms. Wedge provided background information on Ms. Riggs' licensure, and noted that under current regulations cancelled licenses can not be reinstated, but a new license can be issued if the former licensee proves to the satisfaction of the board that they are qualified to practice acupuncture. Following discussion, it was decided Ms. Riggs needs to provide information relative to her active practice in Virginia before the board considers issuing her a new license.

ADAM BURKE MOVED AND ROBERT BREWER SECONDED THE MOTION TO TABLE THE ISSUE UNTIL THE AUGUST MEETING PROVIDED THAT REQUIRED ADDITIONAL INFORMATION BECOMES AVAILABLE. MOTION PASSED UNANIMOUSLY.

11. Administrative Business – (Discussion/Action)

b. Legislation

Mary Howard explained that information used for the updated chart was taken directly from the official California Legislative information website, and was current as of May 8, 2007. She summarized the bills that may impact the board, and provided any updates that became available after the February board meeting.

1. **AB 54 (Dymally) – Worker’s Compensation**

This is a two-year bill that would require health care service plans and health insurers to provide coverage for acupuncture under a group plan or policy. On March 29, 2007, this bill was referred to the Assembly Committee on Health.

2. **AB 636 (Levine) – Scope of Practice**

This bill would expand the scope of practice of an acupuncturist to include the use of light on patients. The board had passed a motion to support the concept of this bill pending further information at the February 23, 2007 meeting. The first hearing for this bill was cancelled by the author. This is a two-year bill.

3. **AB 865 (Davis) – Live Customer Service Agents**

This bill would require state agencies to have live customer service agents answer the phone during business hours, it has no impact on board members and only affects board staff.

4. **AB 969 (Eng) – Continuing Education**

The board took a support position on the original bill at the February 23, 2007 meeting. Since then, this bill has been completely rewritten and no longer relates to the practice of acupuncture.

5. **AB 1525 (Cook) – Private Postsecondary Education**

This bill provides for continuation of specified functions of the BPPVE by the DCA. As of May 8, 2007, it had passed the Assembly Committee of Appropriations, and was sent to the Assembly Floor. Ms. Powell noted that AB1525 does not contain the desired language, but it should not disrupt anyone from being licensed.

6. **SB 136 (Cedillo) – Asian Massage**

This bill would define “Asian massage”, and would require regulatory changes prior to January 1, 2009. At the February 23, 2007 meeting, the board passed a motion to support this bill. On April 23, 2007, the hearing in the Senate Committee on Business Professions and Economic Development was cancelled by the author. This is a two-year bill.

7. **SB 823 (Perata) – Bureau of Private Postsecondary Education**

This bill would reconstitute the bureau as the Board for Private Postsecondary Education in the DCA. This bill can only be approved if AB 1525 is also approved.

8. **SB 840 (Kuehl) – Single-payer Health Care Coverage**

This bill would establish the California Universal Healthcare System and would make all California residents eligible for specified health care benefits. It would cover acupuncture treatments if they were determined to be medically appropriate by the individuals’ health care provider.

Antonette Sorrick, Deputy Director of Board Relations for the Department of Consumer Affairs, introduced herself and stated that the DCA has taken an opposed position on **AB 865**, and **SB 136**. She provided information as well as the Department’s position on the following bills.

9. **AB 1025 (Bass) – Professions and Vocations: Licensure**

This bill would provide that a person may not be denied licensure or have his or her license suspended or revoked based on a criminal conviction that has been expunged from their record. DCA has taken an opposed position on this bill.

10. **SB 963 (Ridley-Thomas) – Sunset of Regulatory Boards**

After the sunset of a board, this bill would create a successor board in the Department of Consumer Affairs that has the same duties, powers, responsibilities, and jurisdiction of the previous board. The DCA has taken an opposed position on this bill.

Public comment was made regarding additional bills, which had not been made available to the board before the meeting. No new motions were made.

c. **Update and Possible Action on Regulatory Amendments to Title 16, California Code of Regulations, Sections 1399.483 and 1399.487**

Janelle Wedge explained that board staff had sent out a 15-day notice in March with the suggested

modifications to Sections 1399.483 and 1399.484. As a result of receiving negative comments in response to this notice, further discussion and action was needed on the proposed regulatory changes. Additionally, there are some non-substantive changes needed for 1399.487. Following public discussion regarding the foregoing sections as well as a couple of other sections, the following modifications were recommended.

1399.483(b)(1)(B)

Remove the language “as it relates to acupuncture practice”

1399.483(b)(1)(E)

Change the term “ergonomics” to “biomechanical education”

1399.483(b)(2)(B)

Add the language “Breathing and other exercises, i.e. qi gong and taiji that are for the benefit of the licensee and not the patient”.

1399.483(e)

Remove the language “in the same room or obligate path as the educational activity”.

1399.484(d)

Remove the language “at least 30 days before the new course date”.

1399.487(d)

Technical, non-substantive change only.

ROBERT BREWER MOVED AND KENNY CHERNG SECONDED A MOTION THAT THE BOARD ADOPT THE ABOVE CHANGES AND AMENDMENTS AS DISCUSSED AND SEND OUT A SECOND 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.

d. Review and Possible Adoption of Board Logo

Janelle Wedge stated that she and Mary Howard had met with a DCA graphic designer, who had designed some samples of possible logos. She explained the meaning of the colors and symbols used in the logos. Antonette Sorrick commented that the DCA has a new logo, and other boards will be looking into the adoption of branding as well. The possibility of having a design contest for licensees and consumers was discussed, but Legal Counsel LaVonne Powell advised against this idea due to copyright issues. Discussion among board members took place and public comments were received. It was decided that the board was interested in the idea, but did not think any of the logos submitted were appropriate. Ms. Wedge said she would take all comments back to the graphic designer, and bring some more options to the August board meeting for review.

e. Review of New Design of the Consumer’s Guide

Janelle Wedge explained that the prototype provided was only for layout and design purposes, that if the board decided to change the Consumer’s Guide, the contents would be modified and updated as well. There was discussion regarding the option of having the guide available in multiple languages. The board was interested in the idea, and approved of the new layout and design.

12. Strategic Plan (Discussion/Action)

Executive Officer Janelle Wedge reported that although the 2007 Strategic Plan was adopted by the board at its February 23, 2007 meeting, several mistakes had subsequently been found in the Tactical Plan. Changes to the language in this section should be made in order to reflect the actual discussions and intentions of the board. She also reported that the Strategic Plan is an evolving document and will be on all future agendas to discuss the progress or addition of items.

a. Objective 4.2: Address Approval of Distance Learning

Kenny Cherng stated that the original discussion involved “online courses”, that regulations are already in place for “distance learning”. He noted that online education is a new issue, and needs to be evaluated. It was decided that “distance learning” should be replaced by “online courses”.

b. Objective 5.2: Widen Scope of CE Courses

This objective was to be eliminated by the Strategic Plan facilitator, but was inadvertently left in. Discussion regarding the options of widening the scope of CE courses took place. Steven Tan stated that this be stricken from the strategic plan.

c. Unlicensed Activity

Antonette Sorrick addressed the board, and stated that the Department of Consumer Affairs has added a task force to help with the issue of unlicensed activity based on their strategic plan, and urged the board to consider adding a similar strategic goal. LaVonne Powell provided information about the current regulations regarding unlicensed practice, and the steps necessary to give the district attorney more authority to determine the severity of the offense. After discussing this issue, the board decided to add a goal to the strategic plan to better deal with the issue of unlicensed activity.

ADAM BURKE MOVED AND KENNY CHERNG SECONDED THE MOTION TO ADD A GOAL TO THE STRATEGIC PLAN RELATING TO UNLICENSED ACTIVITY. MOTION PASSED UNANIMOUSLY.

13. Education Business

a. Committee Report and Recommendations

Steven Tan turned the meeting over to Adam Burke, Education Committee Chair, for a report on the April 12, 2007 meeting.

1. Approval of Out-of-State Training Programs/Students Qualifying for Exam Who Have Completed an Acupuncture Training Program Not Approved By California

Adam Burke summarized the suggested language for B&P Code Section 4938. The proposal being discussed would eliminate the need for the Acupuncture Board to “approve” out-of-state acupuncture schools and would instead allow students who graduate from schools accredited by a national DOE accreditation agency to sit for the California exam. There was significant discussion regarding this issue and concerns from the public that the board would be relinquishing its oversight responsibilities. The public was reminded that students would still have to meet California’s minimum curriculum requirements and pass the exam before a license would be issued. This issue was deferred to the next board meeting and the board asked that the executive officer bring back additional information on the criteria used by the accrediting agencies.

2. Students Qualifying for Exam Who Have Completed an Acupuncture Training Program Not Approved By California

This issue is similar to 13(a)(1) and was also deferred to the next full board meeting

3. Adding an Exemption Under Section 4935(d) for Those Students Enrolled in a BPPVE Approved Doctorate Program

Adam Burke summarized the suggested language for B&P Code Section 4935(d), which would modify the provision for administering acupuncture treatment as part of an educational training. After limited discussion, it was decided that further research needed to be done. The issue was deferred to the next full board meeting.

4. Online Courses

During the April 12, 2007 Education Committee meeting, it was noted that allowing online courses as part of acupuncture training programs was currently being discussed at a national level, and no final decisions had been made. No motions were made.

5. Use of Title Doctor and Other Doctoral Titles

Adam Burke reported that there was a lengthy discussion regarding this issue at the April meeting.

Steven Tan invited the public to send in position papers on this issue for further discussion at the August board meeting. David Karaba of the National Guild of Acupuncture and Oriental Medicine indicated that he had submitted information on this issue, contained in his memo to the board dated May 17, 2007.

6. Clinic Externship Requirements

Adam Burke summarized the suggested regulatory language for Section 1399.434 regarding off-site clinical sites. Janelle Wedge informed the board that a regulatory packet would be created if they were interested in making any changes to this regulatory section. There was lengthy discussion regarding the importance of developing the best possible clinical experience in acupuncture training programs. Steven Tan asked the public to submit ideas for further discussion at August board meeting.

b. Evaluation of Tutorial Program

Adam Burke summarized a 2003 tutorial program survey, and noted the 75% CALE failure rate of tutorial students. Discussion took place, and public comments were made regarding the limitations of the tutorial program. The board agreed that the program is outdated, and the discussion to terminate the tutorial program will be added to the August board meeting agenda. It was decided that the tutors and students enrolled in the tutorial program would be sent a copy of the August meeting agenda, in the event they want to attend and testify. It was also discussed that students currently in approved tutorial programs should be provided a reasonable amount of time to complete the program and that the proposal did not affect those who had completed a tutorial program and are currently in the exam cycle.

d. Status of School Site Visits – Nancy Molinar, Education Coordinator

Nancy Molinar reported that she had made several attempts to contact Nobel University by phone and email in order to schedule a site visit, but had received no response. Site visits for the Five Branches San Jose campus, Kingston University, St. Lukes University and Peidmont University were pending. She stated the next visit would be to Atlantic University in Florida. Discussion took place regarding the internal limitations on out-of-state travel. Janelle Wedge recommended not conducting a site visit to Atlantic University, that according to our law, since the school has gone through the accreditation process, a site visit is not required.

ROBERT BREWER MOVED AND ADAM BURKE SECONDED THE MOTION TO ALLOW APPROVAL OF ATLANTIC UNIVERSITY WITHOUT THE SITE VISIT. MOTION PASSED UNANIMOUSLY.

14. Public Comment Period

Jack Miller – Pacific College: Requested that the schools no longer be required to complete the “Curriculum Requirement Form” for each student applying for the exam. Legal Counsel LaVonne Powell stated that, since it is not in the regulations, the board can not require the schools to complete the form.

David Karaba – NGAOM: Presented the board with a position paper with respect to the Education Committee meeting and agenda item 8, as per the suggestion of Adam Burke. He questioned the content of the draft consumers’ guide, and was informed that the draft was for design purposes only. He thanked the board for their time and consideration.

Bill Mosca – CSOMA: Brought up the issue of the use of low-level lasers in the practice of acupuncture.

Ron Sokolsky – DRU: Requested clarification regarding out-of-state schools. He was informed that the decision was not to approve out-of-state/country schools, but rather to approve students on a case by case basis.

15. Adjournment

The meeting adjourned at approximately 2:21 p.m.