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#### Members of the Board

**Dr. Amy Matecki**,  
M.D., L.Ac., President  
**Kitman Chan**,  
C.P.A., Vice President  
**John Harabedian**, Esq.  
**Ruben Osorio**  
**Bradley Cimino**,  
M.A., L.Ac.  
**Hyun “Francisco” Kim**,  
M.S., L.Ac.  
**Shu Dong Li**, Ph.D.

### **BOARD MEETING** **Approved Meeting Minutes** **March 28 & 29, 2019**

#### **LOCATION:**

Department of Consumer Affairs  
Hearing Room, Suite 186  
1747 North Market Blvd.  
Sacramento, CA 95834

#### **Board Members Present**

Dr. Amy Matecki, M.D., L.Ac, President, Licensed Member  
John Harabedian, Public Member  
Bradley Cimino, L.Ac., Licensed Member  
Hyun “Francisco” Kim, L.Ac., Licensed Member  
Shu Dong Li, Ph.D., Public Member

#### **Staff Present**

Benjamin Bodea, Executive Officer  
Salwa Bojack, Legal Counsel  
Jay Herdt, Licensing Manager  
Matt Nishimine, Central Services Manager  
Kristine Brothers, Policy Coordinator  
Cricket Borges, Enforcement Coordinator

#### **Guest List on File**

### **Full Board Meeting – Thursday, March 28, 2019**

#### **1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki)**

Board President, Dr. Amy Matecki (Matecki) called the meeting to order at 9:40 a.m.  
Policy Coordinator, Kristine Brothers (Brothers) called the roll.

#### **Members Present:**

5 Present – Matecki, Harabedian, Cimino, Kim, and Li.  
2 Absent – Chan, Osorio.  
*5-2 Quorum established.*



## **2. President's Remarks (Dr. Amy Matecki)**

President Matecki welcomed new Board members, Bradley Cimino, Hyun "Francisco" Kim, and Shu Dong Li, and provided a brief introduction of each.

President Matecki announced agenda items from Day 2 of the meeting would be moved to Day 1 as follows: agenda item 5 - Executive Officer's Report, agenda item 7 – Regulation Update, and agenda item 9 – Education Report. President Matecki also announced that agenda items from Day 1 of the meeting would be moved to Day 2 as follows: agenda items 12 and 13 – Closed Session related to the Executive Officer Evaluation.

## **3. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)**

No comments.

## **4. Update on the Board's Business Modernization Plan (Sean O'Connor, Project Manager, Office of Information Services, Department of Consumer Affairs (DCA))**

Sean O'Connor appeared on behalf of DCA to provide a presentation on the Board's business modernization initiative. O'Connor explained his role as project director and how he provides Board staff IT consultation guidance during the selection of a new IT system. O'Connor provided a background on the business modernization initiative and the different stages of the California Department of Technology's Project Approval Life Cycle project. The presentation was concluded by pointing out that the Board has completed stage two, and stages three and four will be completed soon with project implementation mode beginning in fiscal year 2019/20.

## **5. Update from the DCA (Patrick Le, Assistant Deputy Director, Board and Bureau Services, DCA)**

Patrick Le provided the Board with an update from DCA and highlighted some accomplishments from 2018, including holding licensing and enforcement work groups, Substance Abuse Coordination Committee meetings, Director quarterly meetings, and Leadership teleconferences. Le also provided a look ahead to 2019 and went over the new administration, the Governor's budget, Assembly Bill 2138, changes to the Uniform Standards Related to Substance Abusing Licensees, and reminders for Board Member training and requirements.

## **6. Presentation on the Administrative Procedure Act Affecting Administrative Adjudication Process (John Gatschet, Deputy Attorney General, Office of**



### **the Attorney General)**

John Gatschet, the Board's Deputy Attorney General Liaison, presented an informative overview of the administrative disciplinary process, including the role of the Office of the Attorney General (OAG) and its constitution, what kinds of cases and allegations the OAG represents, and the disciplinary process that starts with the drafting of a pleading that can either be resolved through a settlement or going to an administrative hearing. Gatschet also explained the role the Board has in their decision-making related to the different disciplinary actions that can be taken.

#### Public Comment:

The following comments were made:

- The first commenter commented on his exposure to licensees not knowing about specific instances of unprofessional conduct, like not having a bell or intercom. He indicated that he would like to be able to communicate these kinds of things to CalATMA's members for prevention.
- The second commenter asked a question related to the application of AB 2138 and whether it provided more leniency in taking away licenses from practitioners. Gatschet responded that AB 2138 just addresses license applications and limits the timeline to seven years.

### **7. Review and Approval of the October 25-26, 2018 Board Meeting Minutes (Benjamin Bodea, Executive Officer)**

EO, Benjamin Bodea presented the October 25-26, 2018 meeting minutes. There were no changes made.

#### **MOTION:**

Member Harabedian motioned to approve the October 25-26, 2018 Board Meeting Minutes. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Absent; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Absent.

**5 - 0 motion passes. 2 absent.**

### **8. Board Committees and Member Assignments (Dr. Amy Matecki)**

President, Matecki announced the 2019 Committee assignments:



- Education and Research Committee – Chair, John Harabedian and Member, Hyun “Francisco” Kim, L.Ac.
- Licensing and Examination Committee – Chair, Kitman Chan and Member, Bradley Cimino, L.Ac.
- Executive and Legislative Committee – Chair, Ruben Osorio and Member, Dr. Amy Matecki, MD, L.Ac.
- Enforcement Committee – Chair, Hyun “Francisco” Kim, L.Ac. and Member, Shu Dong Li

## **9. Executive Officer’s Report (Benjamin Bodea)**

*Originally agendized as item 5 of Day 2.*

### *(A) Staff Update*

EO Bodea announced the two new managers that were recently hired: Jay Herdt, Licensing Manager and Matt Nishimine, Central Services Manager. He also explained staff has several vacancies: Seasonal Clerk, Administrative Technician, and an Education, as well as an Enforcement analyst. It was also announced Kristine Brothers is the new Policy Coordinator.

### *(B) Budget Update*

Central Services Manager, Matt Nishimine provided a summary of the Board’s current FY 2018/19 budget and proposed budget for FY 2019/20. He also went over the Governor’s Budget highlighting the different parts and explained what each line item means. Nishimine explained that the Board did not submit a Budget Change Proposal (BCP) for FY 2019/20 during the fall process; however, DCA submitted a DCA-wide BCP, which was included in the Board materials and indicates the Board’s contribution at \$44,000.

It was summarized that in FY 2018/19, the Board is scheduled to collect \$23,000 in reimbursement authority and the Board’s net appropriation is \$3,409. Nishimine also reported that staffing indicates a three-year average of 10.5 authorized, plus temporary help staff, which is an authorized 12 positions. This points to an average vacancy of one-and-a-half positions over the last three years.

Member Harabedian asked if the twelve positions the Board is authorized for are also budgeted for as well. Nishimine explained that the Board is budgeted for the positions’ salaries and benefits.

The Board’s fund condition was also presented, which acts like a checkbook, showing





the Board's revenues coming into our account, minus the Board's expenditures. Nishimine pointed out that the Board will be repaid one million dollars from its 2011 general fund loan in the FY 2019/20 year. He also pointed out that it has been estimated that the Board's expenditures were \$2.8 million last fiscal year.

It was explained that the budget's months in reserve are declining showing a structural imbalance. Nishimine segued into an update on the Board's fee audit and announced the Board entered into a contract with a third-party vendor. The fee audit should begin in May 2019 and should take two-to-three months to complete. The license renewal fees and other costs, such as enforcement, will all be taken under consideration to ultimately eliminate the structural imbalance.

Nishimine went over the Budget Report provided by DCA which shows historical expenditures. The current FY 2018/19 year shows \$1.2 million for the Board's personal services budget. Additionally, he provided the Board an introduction to an Architecture Revolving Fund (ARF) that shows \$250,000 that acts as a savings. He explained that these funds will be put towards tenant improvements in the staff's office suite. The budget report was concluded by noting the Board is projected to have a savings of \$91,000, putting the Board under budget.

Lastly, Nishimine presented the DCA-wide BCP and went over the Department's different requests of five different units to familiarize the Board with the whole BCP process.

### *(C) Outreach Update*

EO Bodea noted he and Jay Herdt, Licensing Manager (Herdt), attended Chinese Medicine Day on March 17<sup>th</sup>, 2019, celebrating its 90<sup>th</sup> anniversary with other members of the Chinese medicine community.

EO Bodea indicated he and Herdt met with the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) where they discussed the linkage study that is coming out of the NCCAOM. The timing of the Board's occupational analysis was also discussed which allows the Board and NCCAOM to compare proper psychometrics and equivalency. EO Bodea also noted that the NCCAOM certification route for California licensees was also reviewed. He recapped that NCCAOM has put the route provided to California licensees before each of the participating states, and each of these states are currently determining whether or not the certification will be accepted as opposed to requiring an examination of all four modules. It was noted that Washington state will not accept NCCAOM certification, instead requiring the taking of all four NCCAOM examination modules. He further stated that NCCAOM will update their website as states make their determination.



The last item under the outreach update was an introduction to the Board's new booklet designed with the help of DCA's Office of Public Affairs and Office of Publication Editing and Design which explains to the public what the Board does and how the Board does it. The Board approved the release of the publication.

#### Public Comment:

The following comments were made:

- The first commenter noted New Mexico will have a meeting in May 2019 on the issue of the national exam for reciprocity. He indicated a ruling hasn't been made but as of now they want the exam.
- The second commenter asked if the California Acupuncture Licensing Exam (CALE) and national exam were psychometrically equal and EO Bodea referred the commenter to the 2015 Audit Report available on the Board's website.

#### **10. Regulation Update (Kristine Brothers, Policy Coordinator)**

*Originally agendized as item 7 of Day 2.*

Brothers provided an update on the regulations the Board is currently working on during the 2019 calendar year. It was explained that the list may not be complete and is subject to change, depending on the legislative or executive action.

- AB 2138:  
Involves the denial of applications and revocation or suspension of licensure for a criminal conviction. It was explained that proposed regulatory text for discussion and possible adoption would be brought to the Board later in the Board meeting. The projected filing date with Office of Administrative Law (OAL) is August 2019.
- SB 1441:  
Involves the implementation of Uniform Standards related to Substance Abusing Licensees and the Board's update of its Disciplinary Guidelines. Brothers noted that proposed regulatory text and amendments to the Disciplinary Guidelines for the Board's review and possible adoption would be brought to the Board later in the meeting. The projected filing date with OAL is August 2019.
- SB 1448:  
Brothers explained this law is effective July 1, 2019 and requires licensees on probation to disclose the licensee's probation status to patients. It was noted the implementation of this law would be done through the Board's Disciplinary Guidelines as a probation condition which would be reviewed later in the



meeting. The projected filing date with OAL is August 2019.

- **SB 1246:**

The Board already passed some regulations to move to approving curriculum as opposed to the programs itself. The current regulatory package set for work in 2019 is to align the regulations with the statutes and do some clean up with the terminology for curriculum approval versus training programs. Staff has identified some of the problematic language and amendments are being drafted. The projected filing date is December 2019.

- **AB 2190:**

Involves the implementation of developing an application process criteria and procedures for approval of a credentialing evaluation service. An update was provided indicating that staff has developed proposed regulatory language and applications relating to it, which is under review. The projected filing date is December 2019.

EO Bodea further clarified staff has been communicating with evaluation services, seeking to develop standards that the bill requires.

Lastly, Brothers noted the DCA-wide BCP requested new attorneys within the Legal Affairs Division for the development of a new regulation unit where they will work with Boards in establishing a more comprehensive rulemaking calendar and timelines for staff to meet.

## **11. Education Report (Jay Herdt, Licensing Manager)**

*Originally agendized as item 9 of Day 2.*

- ***Status of Curriculum Reviews***

Herdt started his report with an overview of the Board's oversight of acupuncture training programs. He noted there are currently 35 approved acupuncture training programs as defined by Business and Professions Code section 4927.5, subdivision (a). It was explained that the Board does compliance reviews on the current schools who can qualify people for the licensing exam. The Board has completed 28 program reviews who are in full compliance. The remaining seven training programs that require review have submitted curriculum to the Board and clinical corrective actions in response to past site visits. These are pending staff's review. All of these reviews are for out-of-state schools.

Herdt noted there are three first professional doctorate program curriculums that have been approved by the Board that met the Board's requirements, the Bureau of Private



Post-secondary Education's (BPPE) requirements and have an approved Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) accreditation status.

It was also noted that Southern California University School of Oriental Medicine and Acupuncture of Los Angeles lost Board approval and ceased operations in December 2018. This was due to struggles the school had with completed accreditation. Two applications for Board approval of curriculum were received in the second quarter of FY 2018/19, which are currently under review.

Herdts explained those training programs that wish to change their curriculum, must complete an application for Board approval of curriculum to make such changes.

- *Continuing Education (CE) Audit Report*

Herdts provided an update of the CE audit and indicated the Education desk is progressing through the 2015/16 fiscal year CE audit process. Sixteen months of the CE audit letters have been processed through November 30, 2016. Herdts explained that staff will be auditing two months' volume of licensees to address the back log. Then going forward, CE audits will be conducted on a monthly basis.

- *Continuing Education Report*

Herdts highlighted that in quarter one and two of 2018/19, 1,595 CE course applications were processed. There are currently 588 approved CE providers.

- *Tutorial Program Report*

Herdts reported the Board currently has 45 approved active tutorial programs in progress. Five tutorial programs were completed, an additional five tutorial programs were approved, and two tutorial programs were terminated in quarter one and two of FY 2018/19.

Dr. Matecki asked if students at White Water Institute in Cupertino, California, who only has Board curriculum approval, not BPPE approval or ACAOM accreditation, are currently treating patients. Herdts indicated the Board does not do site visits, which is a concern, but the school indicates students are not treating patients. Herdts further elaborated that ACAOM does introductory site visits so they will be able to see what is going on.

Harabedian asked if there are some out-of-state training programs that the Board does not conduct curriculum reviews. Herdts pointed to Business and Professions Code section 4927.5 which ensures applicants accepted for the licensing exam are from schools with approval from BPPE or the state's equivalency, ACAOM accreditation, and curriculum approval from the Board. Harabedian voiced concern regarding the transparency of which schools have approved curriculum and Herdts noted there is a list





of schools with approved curriculum on the Board's website.

Public Comment:

The following comments were made:

- A commenter voiced some concern over out-of-state continuing education providers who falsely advertise courses as Board approved. He felt there was no recourse for those licensees who take these unapproved courses and wanted to see approved courses listed on the Board's website. He requested this issue of CE courses being offered just as a money maker be set for a future agenda item. It was also requested the Board's oversight and discussion of standards of doctorate programs be set for a future agenda item as well.
- A commenter stated a concern over the quality of CE courses and requested the Education Committee establish standards and fees to establish qualified providers in the future.
- A commenter commended the Board's CE process and efficiency of approval. He also conveyed his concern over audited licensees being fully aware of the 50% maximum requirement for distance CE. He also wanted to be sure licensees were aware of the enforcement over these kinds of CE compliances.
- A commenter stated concerns over what constitutes distance learning, and whether or not hands-on training could not be offered online or through distance learning. She also voiced her concerns with the quality of CE courses.

**12. Review and Discussion of the Board's Continuing Education Process (Jay Herdt, Licensing Manager)**

*Originally agendized as item 9 of Day 1.*

Herdt presented an overview of the Board's CE process, including the requirements for licensees, parts of the provider application, and how a course is approved. President Matecki asked if patients can receive treatment during a course to which Herdt clarified that CE instructors can demonstrate. Herdt also explained the provisions of being a guest acupuncturist in response to President Matecki's concern with out-of-country practitioners who lecture during a course and then see patients in a clinic.

Member Kim asked if other healing arts boards have similar category requirements as the Board regarding the categorization of CE in two different groups based on subject matter. Herdt was not familiar with other Boards having a similar requirement but assured these boards have other specific areas where there are certain criteria.

Member Harabedian questioned the Board's authority over CE non-compliance and



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Herdt explained the Board's enforcement and citation process over such violations. Herdt went on to explain that staffing resources are challenging to proactively audit providers or courses; however, some audits are being performed on distance courses. EO Bodea further clarified that audits of licensees' CE compliance are conducted regularly. The presentation was concluded with a recommendation for licensees to check the Board's list of approved courses on the Board's website.

### **13. Discussion and Possible Action to Initiate a Rulemaking to Adopt Section 1399.469.4 Substantial Relationship Criteria Under Title 16, California Code of Regulations (Salwa Bojack, Legal Counsel)**

*Originally agendized as item 12 of Day 2.*

EO Bodea provided a brief introduction to Assembly Bill (AB) 2138 and explained the bill deals with new applications for licensure. He further noted that the Board cannot consider a criminal act that is not substantially related, nor can the Board consider a crime that happened more than seven years ago as a basis for denying a license.

Counsel Salwa Bojack introduced the first memo in the meeting materials that explained the implementation of substantial relationship criteria. Prior to AB 2138, Business and Professions Code section 481 stated boards shall develop substantial relationship criteria; however, the Board does not have a regulation on substantial relationship criteria. She further pointed out that staff has brought two separate options for implementing substantial relationship criteria.

Counsel Bojack explained the differences between both options presented. She noted that option 1 text is modeled after what other boards already have in regulation for substantial relationship criteria. Option 1 is the more simple and straightforward implementation of AB 2138 that responds to the three criteria required by AB 2138.

She noted that option 2 is a bit longer because it gives examples of crimes or professional misconduct or acts that might be substantially related. The eight examples of crimes and acts weren't provided by the Legal Affairs in response to AB 2138, but is some pre-existing language that some other boards already had incorporated. It was noted that staff recommended option 1. She also pointed out that the examples in subdivision (c) of option 2 takes away the clarity insofar as Administrative Law Judges or applicants may think the list is all-inclusive, and AB 2138 does not require a list of examples.

Counsel Bojack also indicated that a new change that AB 2138 implements is adding a reference to Business and Professions Code section 141 which authorizes boards to consider crimes committed in outside jurisdictions that are substantially related, as well as professional misconduct. She also pointed out that boards are encouraged to adopt



uniformity with each other, which the provided language accounts for.

President Matecki reiterated that option 1 is simple and clear. Member Harabedian stated he preferred option 1 over option 2 due to the risk of others assuming the list of examples is exhaustive and causing confusion. He noted that option 1 seems cleaner.

#### **MOTION:**

Board Member Harabedian motioned to approve the proposed regulatory text of option number 1 of Title 16 California Code of Regulations section 1399.469.4, direct staff to submit the text to the Director of Consumer Affairs and the Business Consumer Services and Housing Agency for review. And if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Absent; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Absent

**5 – 0 motion passes. 2 absent.**

#### **14. Discussion and Possible Action to Initiate a Rulemaking to Adopt Section 1399.469.5 Criteria for Rehabilitation – Denial of Licensure Under Title 16, California Code of Regulations (Salwa Bojack, Legal Counsel)**

*Originally agendized as item 13 of Day 2.*

Counsel Bojack noted that the options being presented are modeled on how other boards have it in regulation. She also stated that Business and Professions Code section 482 requires boards to develop rehabilitation criteria. She further noted that AB 2138 requires that boards consider two specific items for rehabilitation: whether or not an applicant has completed a criminal sentence successfully and any other rehabilitative information.

Counsel Bojack went over the differences between options 1 and 2. She explained that option 1 gives the Board more discretion in consideration of whether or not an applicant successfully completed their criminal sentence. If the Board finds that the applicant successfully completed their criminal sentence, but isn't sufficient in showing rehabilitation, the Board can go on to subdivision (b) and look at other specific rehabilitation criteria.

Counsel Bojack pointed out that option 2 provides the Board less discretion such that if an applicant completed their criminal sentence, the Board shall find the applicant made a showing of rehabilitation. Subdivision (b) would only apply if the applicant did not



complete their criminal sentence. She also noted that there is some case law that says simply satisfying one's criminal sentence doesn't necessarily constitute rehabilitation, which is a sway toward option 1.

President Matecki commented on her desire to provide the Board with more discretion. Member Harabedian also echoed similar sentiments and favored option 1 for providing more flexibility for the Board to consider the facts before them.

**MOTION:**

Board Member Harabedian motioned to approve the proposed regulatory text of option number 1 of Title 16 California Code of Regulations section 1399.469.5, direct staff to submit the text to the Director of Consumer Affairs and the Business Consumer Services and Housing Agency for review. And if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Absent; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Absent

**5 – 0 motion passes. 2 absent.**

**15. Discussion and Possible Action to Initiate a Rulemaking to Adopt Section 1399.469.6 Criteria for Rehabilitation – Suspensions or Revocations Under Title 16, California Code of Regulations (Salwa Bojack, Legal Counsel)**

*Originally agendized as item 14 of Day 2.*

Counsel Bojack explained the regulation before the Board is for the implementation of rehabilitation criteria for suspensions and revocations required by AB 2138. She further specified that it is very similar to the last regulation that deals with applicants; however, this regulation involves the disciplinary process of licensees.

Counsel Bojack outlined the differences of options 1 and 2, explaining that option 1 allows the Board to consider whether or not there has been rehabilitation based on successful completion of a criminal sentence, and if the Board doesn't think so, subdivision (b) can be applied. She stated option 2 was more prescriptive in that the Board shall find the licensee rehabilitated with the completion of a criminal sentence and can only consider subdivision (b) if (a) is not applicable.

Member Harabedian voiced preference for option 1 for its flexibility. President Matecki agreed with Member Harabedian. Counsel Bojack went on to point out that subsections (a) (1) through (5) and (b) (1) through (5) are not criteria specifically required by AB 2138, and instead are based upon various boards' regulations already in place.





## MOTION:

Board Member Harabedian motioned to approve the proposed regulatory text of option number 1 of Title 16 California Code of Regulations section 1399.469.6, direct staff to submit the text to the Director of Consumer Affairs and the Business Consumer Services and Housing Agency for review. And if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Absent; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Absent

**5 – 0 motion passes. 2 absent.**

## **16. Discussion and Possible Action to Initiate the Rulemaking Package on the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (Kristine Brothers, Policy Coordinator)**

*Originally agendized as item 15 of Day 2.*

Brothers provided a brief history of the regulation, the requirements from the 16 Uniform Standards, the required update to the dated disciplinary guidelines, and the different iterations the Board has seen since 2012.

She further explained there are three different options healing arts boards can use in defining what is a substance abusing licensee.

- Option 1 creates a rebuttable presumption that a licensee is a substance abusing licensee, that says once grounds are established that involve drugs or alcohol, the licensee is considered to be a substance abuser unless evidence rebuts that presumption.
- Option 2 allows for a determination to be made after a clinical diagnostic evaluation that a licensee is a substance abusing licensee.
- Option 3 is the option the Board has been brought in the past and requires the Board to prove at hearing that the licensee is a substance abuser.

It was highlighted that of the nine boards who implemented the uniform standards through rulemaking, only one board used option 3, three boards used option 2, and five boards used option 1. Brothers noted staff recommended option 1 that is the majority choice and gives notice to the licensee to rebut the presumption. It was further explained that option 2 was rejected due to lack of clarity and it possibly being problematic for Administrative Law Judges when faced with a violation that involves



drugs and or alcohol when sufficient rehabilitation has been provided by the licensee. Option 3 was also rejected due to the obligation of the Board having to prove that a licensee is a substance abuser, which may be hard to prove. Brothers presented the regulatory text of options 1 and 3.

Counsel Bojack elaborated that the licensee may be best positioned to offer mitigation and rehabilitation evidence, as opposed to the Office of the Attorney General. She also explained that option 2 is more restrictive where a clinical diagnostic evaluation would be required in every circumstance of a violation involving drugs or alcohol. Not only could this be expensive for the licensee and/or applicant, but, sometimes, unnecessary if the Board or ALJ determines there is sufficient evidence of mitigation and rehabilitation presented without a clinical diagnostic evaluation. She stated option 3 puts all the burden on the Office of the Attorney General who may not be in the best position to have all the information about someone's rehabilitation.

Brothers went through all the changes in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees implemented since the Board's last public meeting. Brothers specifically called out the new proposed probation condition #14, Disclosure of Probation Status. She explained this is a new condition which implements the changes of Senate Bill (SB) 1448 which goes into effect July 1, 2019. It requires all probationers to provide written disclosure to all patients or their surrogate that they are on probation, and the disclosure must contain certain criteria. The condition puts the Board in line with the bill and provides some deadline and logistical requirements to make it operational.

**MOTION:**

Board Member Harabedian motioned to approve the proposed regulatory text for Title 16 California Code of Regulations section 1399.469, to amend the title of Division 13.7 of Title 16 CCR; to adopt new article 6.1 of Division 13.67 of Title 16 CCR; to adopt new article 6.2 of Division 13.7 of Title 16 CCR; direct staff to submit the text to the Director of Consumer Affairs and the Business Consumer Services and Housing Agency for review; and if no adverse comments are received, authorize the executive officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing. Board Member Kim seconded the motion.

Vote: Matecki – Yes; Chan – Absent; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Absent

**5 – 0 motion passes. 2 absent.**

**MOTION:**



President Matecki motioned to adopt the proposed text for the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees revised March 2019, which is incorporated by reference into Title 16 CCR Section 1399.469, and direct staff to submit the text to the Director of Consumer Affairs and Business and Consumer Services and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing. Board Member Kim seconded the motion.

Vote: Matecki – Yes; Chan – Absent; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Absent

**5 – 0 motion passes. 2 absent.**

**Recess until Friday, March 29, 2019 at 9:00 a.m.**

**President called the meeting into recess at 3:33 p.m. until Friday, March 29, 2019 at 9:00 a.m.**

**DAY 2 AGENDA – 9:00 a.m., Friday, March 29, 2019**

**1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki)**

President Matecki called the meeting to order at 9:09 a.m. Brothers conducted roll call.

Members Present: 7 – Matecki, Chan, Cimino, Harabedian, Kim, Li, Osorio.  
*7-0 Quorum established.*

**2. President's Report (Dr. Amy Matecki)**

*A) Welcoming message and meeting information*

President Matecki requested that each new Board member provide an introduction and brief background on themselves. Members Cimino, Li, and Kim presented.

**3. Calendaring of 2019 Board Meetings (Dr. Amy Matecki)**

*Originally agendized as item 16 of Day 2.*

EO Bodea explained the rest of the Board meeting calendar should be re-calendared to accommodate the schedules of the new Board members. The following are the 2019 Board Meeting Calendar dates:

- June 13 and 14, 2019 in Los Angeles



- August 15 and 16, 2019 in the Bay Area
- November 14 and 15, 2019 in San Diego

## **20. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)**

The following comments were made for items not on the agenda:

- A commenter wanted the Board to research the issue of there being so many doctorate level degrees in the acupuncture industry. He is concerned there is too much confusion amongst the consumer. It was indicated that a requirement for licensees to disclose their background and education would solve the confusion.

## **21. Report from Education Committee Chair on March 28<sup>th</sup> Committee Meeting and Possible Action on any Recommendations (John Harabedian, Member)**

*Originally agendized as item 4 of Day 2.*

Member Harabedian summarized the Committee meeting and what was discussed. He recommended that the Board move the item for further discussion at the next Board meeting.

### **MOTION:**

Member Harabedian motioned for the Board to authorize the Education Committee to meet and work with staff on discussion to amend Title 16, CCR sections 1399.483 and 1399.489, and report to the Board at the next Board meeting.

Member Osorio seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

## **22. Legislative Update (Kristine Brothers, Policy Coordinator)**

*Originally agendized as item 6 of Day 2.*

*(A) Items Introduced in 2019 Legislative Session Pertinent to Acupuncture*

Brothers reported and introduced legislative bills from the 2019 legislative session for the Board to discuss and take positions on.

### **(i) AB 193 (Patterson) – Professions and Vocations**

The Board took an oppose position on this bill because the Board believes that all of the





licensing requirements for acupuncturists are necessary.

**MOTION:**

Member Harabedian motioned for the Board to take an oppose position on AB 193.

Member Osorio seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

**(ii) AB 613 (Low) – Professions and Vocations: regulatory fees**

The Board took a watch position on this bill due to the uncertain nature of how it may affect the Board.

**MOTION:**

President Matecki motioned for the Board to take a watch position on AB 613.

Member Chan seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

**(iii) AB 778 (Low) – Acupuncture: continuing education**

The Board took a support position on this bill as introduced on February 19, 2019 as it was discussed that it provided the Board with a good vehicle to make further changes to continuing education and continuing education providers.

Public Comment:

A commenter showed support for the bill and stated it's a good bill for the consumer, the profession, and for the Board. The commenter would like to work with the author to streamline the continuing education process.

**MOTION:**

Member Kim motioned for the Board to take a support position on AB 778 and direct the Executive Officer to inform the legislature and the author's office of this position.

Member Chan seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes



**7 – 0 motion passes.**

**(iv) AB 779 (Low) – Acupuncture: place of practice**

The Board took a support position on this bill as it was discussed that it would provide improved tracking of practice locations.

Public Comment:

A commenter showed support for the bill and stated it would give the Board a little more authority to restrict some of the unregistered and unethical use of using someone else's license.

**MOTION:**

Member Cimino motioned for the Board to take a support position on AB 779 and direct the Executive Officer to inform the legislature and the author's office of this position.

Member Li seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

**(v) AB 1245 (Low) – Acupuncture: advertising**

The Board took a support position on this bill because the inclusion of the additional terms, such as traditional, fits WHO's definition of acupuncture.

Public Comment:

A commenter noted that a good addition to the bill to address physical therapists and athletic trainers performing dry needling would be to add the term "dry needling". However, the commenter indicated the bill was great as is.

**MOTION:**

Member Kim motioned for the Board to take a support position on AB 1245 and direct the Executive Officer to inform the legislature and the author's office of this position.

Member Osorio seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

**(vi) SB 425 (Hill) – Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct**



The Board took a watch position on this bill but indicated a support for the spirit or intent of the bill as it promotes consumer protection. The Board was unclear on how some of the provisions of the bill would affect the Board.

Public Comment:

A commenter showed support for the bill due to sexual misconduct being a big problem, especially amongst schools where students may be too afraid to speak out. The commenter urged the Board to seek out amendments to the bill that would provide the Board jurisdiction over acupuncture schools to eliminate the problem.

**MOTION:**

Member Harabedian motioned for the Board to take a watch position on SB 425.

Member Kim seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

Public Comment for Items not on the Agenda:

A commenter informed the Board of AB 888 that requires physicians to inform both patients and minors, or guardians, of nonopioid options for treatment of pain including, but not limited to, acupuncture, chiropractic, physical therapy, occupational therapy, and mental health. The commenter requested that AB 888 be added to the next Board meeting agenda.

*(B) Site Inspection Authority*

EO Bodea provided a brief update that the Board is seeking inspection authority and staff will be turning their attention to working on such language to meet the Board's strategic plan item.

*(C) AB 434, State Web Accessibility (2017 Baker)*

EO Bodea introduced the Board to AB 434 which requires all state agencies to make their websites accessible and be ADA compliant. He noted there will be changes happening to the Board's website, and the materials uploaded to it, in order to meet the go-live date of July 1, 2019.

**23. Enforcement Report (Cricket Borges, Enforcement Coordinator)**

*Originally agendized as item 8 of Day 2.*

Enforcement Coordinator Cricket Borges (Borges) provided the Enforcement report.



### *(A) Q2, FY 18-19 Enforcement Report*

Borges reported a total of 88 complaints received, 90 closed or sent to investigation, and the average intake time was three days. The average number of days to close Division of Investigation (DOI) investigations as well as desk investigations worked by staff was 138 days. Two cases were sent to the Office of the Attorney General and 18 disciplinary cases were pending at the close of quarter two.

She also noted that no cases finalized in the disciplinary process within this quarter. Nineteen citations were issued and at the close of quarter two there were 37 probation cases active. Borges highlighted that the Board saw an increase in unlicensed/unregistered complaints, which increased from four in last year's quarter two to 23 in this year's quarter two. It was also pointed out that the average investigation time decreased by 20%. Borges reported an increase in accusations and statement of issues filed during this quarter compared to last year's quarter two.

Member Chan asked if there is any consistency or pattern to unlicensed/unregistered complaints coming in during the second quarter. Borges noted that the types of complaints fluctuate and there isn't any one particular type of allegation that comes in a particular quarter. She also indicated that some complaints have multiple allegations that can be in multiple complaint categories.

President Matecki wanted to see a breakdown of the unlicensed/unregistered complaints so the Board can have that information for outreach and prevention of these type of violations rising. EO Bodea indicated staff would look at different reporting options and bring that back to the Board.

#### Public Comment:

Three comments were made on the item:

- The first commenter stated the profession has also been wanting to see a further breakdown of the types of complaints received.
- The second commenter wondered if the Board ever conducted a comparison of the complaints received by the Board compared to other professions, encouraging this to be done.
- The third commenter asked Enforcement staff if reports of insurance fraud are reported to the Board from insurance agencies that perform audits. Borges indicated the only way the Board would find out about insurance fraud is if it resulted in a criminal conviction. It was also noted that the Board could find out about it through a complaint as well.

### *(B) Acupuncture Board's Top Ten Violations Leading to Enforcement Actions*





EO Bodea presented a new informational flyer titled, Acupuncture Board's Top 10 Violations Leading to Enforcement Actions, that was developed to list the top ten complaints received by category with examples provided. He indicated the list is not exhaustive but would be helpful to put out to the public at this time.

Public Comment:

- A commenter asked if the unlawful practice of acupuncture category included Physical Therapists and other practitioners doing dry needling. The commenter also pointed out that the flyer lists the failure to sterilize instruments under the category of Failure to Follow Infection Control, however, instead should read, "failure to sanitize" since acupuncturists no longer autoclave.

**24. Update on Computer-Based Testing for the California Acupuncture Licensing Exam (Jay Herdt, Licensing Manager)**

*Originally agendized as item 10 of Day 2.*

Herdt provided a report on the California Acupuncture Licensing Examination's (CALE) transition to computer-based testing (CbT). Herdt noted that CbT went live October 1, 2018 and explained the Board's collaboration with the Office of Professional Exam Services (OPS), Office of Information Services (OIS), and the testing company, PSI in administering it. He indicated that most feedback from test takers have been positive.

Herdt also provided some statistics from exams taken during October 1, 2018 to March 16, 2019. During that time, there were a total of 309 test takers, the overall pass rate was 82%, the English language pass rate was 78%, the Chinese language pass rate was 93%, and the Korean language pass rate was 80%. The pass rate for first-time test takers was 90% and the re-taker pass rate was 59%. Herdt noted the next period in which statistics will be reported will be in mid to late October 2019, reporting on the period of April 1, 2019 to September 30, 2019. Thereafter, statistics will be reported every 180 days.

Herdt pointed out that the number of test-takers seem to be decreasing to which he attributes to some recent confusion with NCCAOM and the idea that students can schedule testing anytime. However, he did talk with OPS to get a sense of why the numbers may be dropping and it was assured that there hasn't been any kind of compromise with the test.

Member Chan commented on the re-taker's pass rate and asked if the Board was still interested in pursuing setting a maximum number of times someone is allowed to take the test. Herdt answered that from staff's opinion, he felt it was a valid thing to look into.

Public Comment:



Several comments were received on the item:

- A commenter had concerns about exam security, including rumors that modern technology has been used to compromise the exam.
- A commenter also voiced concerns over some of the alarming statistics but noted the Board won't have more answers until statistics by school are available.
- A commenter reported that she has heard very good responses from students and they appreciate that they no longer need to travel to complete the exam.
- A commenter suggested that a new question appear on the exam each time it is administered in order to address any potential fraud.

## **25. Updates from Acupuncture Professions**

*Originally agendized as item 11 of Day 2.*

Neil Miller from CalATMA presented an introduction to the new association and the work they have been doing in appointing positions and holding stakeholder meetings with Assemblymember Low. Miller voiced a request to work collaboratively with the Board on legislation, as well as the discussion of scope of practice issues like lasers, changes in technology, injection therapy, dry needling, and manual therapy. He also wanted to work together on advancing an entry level doctorate program and resurrecting the publication and distribution of the Consumer's Guide to Acupuncture.

### Public Comment:

The following comments were made:

- The first commenter also echoed Miller's desire to work with the Board on the standard of practice and for the safety of the consumer.
- The second commenter brought up a concern over live webinars versus on-site continuing education.

## **26. Election of Board Officers (Dr. Amy Matecki)**

*Originally agendized as item 17 of Day 2.*

*(A) Election for President*

Dr. Amy Matecki was elected as Board President.

### **MOTION:**

Member Osorio motioned to elect Dr. Amy Matecki as Board President.



Member Harabedian seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

*(B) Election for Vice President*

Member Kitman Chan was elected as Board Vice President.

**MOTION:**

Member Kim motioned to elect Member Kitman Chan as Board Vice President.

Member Cimino seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Cimino – Yes; Harabedian – Yes; Kim – Yes; Li – Yes; Osorio – Yes

**7 – 0 motion passes.**

## **27. Future Agenda Items (Dr. Amy Matecki)**

*Originally agendized as item 18 of Day 2.*

Member Harabedian requested that the continuing education for law and ethics requirement along with staff's research in how to further clarify the issue be set for a future agenda item.

EO Bodea noted that during prior public comments the following was requested to be added for future agenda items: entry-level doctorate discussion, consumer guide brochures, new technologies, manual therapy, and CPT codes.

A commenter requested a mandatory requirement for risk management in continuing education be set as a future agenda item.

## **28. Closed Session**

*Originally agendized as items 12 and 13 of Day 1.*

Pursuant to Government Code section 11126, subdivision (a)(1), the Board convened to consider the evaluation of performance of the Executive Officer.

**Closed session began at 12:45 pm.**

**Open session reconvened at 1:15 pm.**



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**29. Adjournment (Dr. Amy Matecki)**

*Originally agendized as item 19 of Day 2.*

**Meeting adjourned at 1:17 pm.**

