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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
Meeting Minutes
August 15 & 16, 2019

LOCATION:

Sun Room
Five Branches University
1885 Lundy Ave, Suite 108
San Jose, CA 95131

Board Members Present

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

Staff Present

Benjamin Bodea, Executive Officer
Salwa Bojack, Legal Counsel
Jay Herdt, Licensing Manager
Matt Nishimine, Central Services Manager
Tammy Stadley, Exam Coordinator
Cricket Borges, Enforcement Coordinator

Guest List on File

Full Board Meeting – Thursday, August 15, 2019

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

Board President, Dr. Amy Matecki (President Matecki), called the meeting to order at 9:34 a.m.

Exam Coordinator, Tammy Stadley (Stadley), standing in for the Policy Coordinator, called the roll.



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Members Present:

5 Present – Matecki, Chan, Cimino, Kim, and Li.

2 Absent – Harabedian and Osorio

5-0-2 Quorum Established

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

President Matecki thanked Five Branches University for hosting the meeting and staff for helping to coordinate and prepare for the August meeting.

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

No comments were made.

President Matecki called to recess until 10:00 am PST

**4. Petition for Early Termination of Probation – 10:00am
Gregory Willis (AC 17472) PETP-1A-2015-93**

Stadley called roll.

Members Present:

6 Present – Matecki, Chan, Cimino, Kim, Osorio and Li.

1 Absent- Harabedian

Jill Schlichtmann (Schlichtmann), Administrative Law Judge, Office of Administrative Hearings presided over this hearing and identified Alice Wong (Wong), Deputy Attorney General for the people of the State of California.

The Board heard the petition for Early Termination.

Matecki called for an hour lunch break at 12:05pm PST



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Stadley called roll to reopen the meeting after the lunch break.

Members Present:

6 Present – Matecki, Chan, Cimino, Kim, Osorio and Li.
1 Absent- Harabedian

7. Preview and Possible Approval of the June 13-14, 2019 Board Meeting Minutes (Dr. Amy Matecki)

MOTION:

President Matecki motioned to approve the June 13-14, 2019 minutes.

Member Osorio seconded the motion.

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

6-0 motion passes

8. Executive Officer’s Report (Ben Bodea, Executive Officer)

(A) Staff Update Regarding Vacancies

Executive Officer Ben Bodea (EO Bodea) announced that Tammy Graver, Board Liaison, has retired. EO Bodea also noted that Van Martini, CE Coordinator, has taken a promotion at another state agency. The Board will be seeking a replacement for both positions. Additionally, the previously vacant Education Coordinator position will be filled by Monday (8/19/19).

(B) Budget Update – Fund Condition

Staff Services Manager, Matt Nishimine, presented the Board’s fund condition. For complete presentation, please refer to the presentation materials under agenda item 8b in the Board’s August 15-16, 2019 meeting materials. Nishimine relayed the Department of Finance’s (DOF) concerns with the Board’s structural imbalances when deliberating the possibility of continued funding for updates to our IT systems. If the fee audit is not implemented in January 2021, DOF will not approve continued funding for the IT improvements as the Board’s structural imbalances will be exacerbated, driving the Board towards insolvency.



(C) Board Member Services Update

Nishimine noted that he is the point of contact for any board member needs that may arise. Nishimine also explained that Jenna Dennis and Erica Bautista will also be assisting with this responsibility.

Nishimine then presented plans to develop a voluntary training program for Board members. The program will provide Board members with the skills, knowledge, and insight needed to lead the regulation of the Acupuncture profession forward as effectively as possible during their tenure.

9. Enforcement Report (Cricket Borges, Enforcement Coordinator)

(A) Q3, FY 18-19 Enforcement Report (Amended)

Enforcement Coordinator Cricket Borges (Borges) presented the amended enforcement data and statistics from quarter three (Q3) of fiscal year 18-19. At the former meeting, Member Harabedian noted discrepancies in initiated investigations by the Board. The error has been corrected and the report was presented with correct values.

(B) Q4, FY 18-19 Enforcement Report

Enforcement Coordinator Borges presented the enforcement data and statistics from quarter four (Q4) of fiscal year 18-19.

Vice President Chan (VP Chan) made note of the category defined as “office conduct” under complaints for unprofessional conduct and inquired as to what kind of activities would fall under that category. VP Chan also asked about wide discrepancies between reports for unprofessional conduct in Q3 and Q4 (36 and 10, respectively.) VP Chan suggested that these cases can be reduced through continuing education or an emphasis on this topic at the schools educating future acupuncturist licensees.

EO Bodea commented that staff is currently in the process of developing continuing education requirements pertaining to ethics and professional conduct by licensees.

10. Review of the Capital Accounting Partners Fee Audit Report (Dan Edds, Consultant)

Dan Edds (Edds), Capitol Accounting Partners, opened his presentation on the fee audit report by commending EO Bodea, CSM Nishimine, and Board staff in their cooperation and contributions to the successful fee audit.



Edds explained basic assumptions taken to complete the study, goals of the study, and the overall process for determining costs of each business process and how these costs should be distributed across various fees to licensees.

Edds explained the method by which it was determined that the fee audit utilized quality data to produce quality results. Edds and Nishimine explained that the Board is and has been providing services at no cost to the requestor; services that the Board has the authority to charge for. The projected revenue from fees at current rates versus actual revenue received only differed by 0.9%, demonstrating the high quality of data provided by the Board and assuring the method employed to project and assign costs would be accurate.

Edds explained that through this analysis, combined with the analysis of the fund condition provided, the Board must raise revenue or cut costs to remain solvent moving forward.

Edds singled out enforcement costs, noting that every fee audit performed for similarly situated Boards must devote significant efforts towards assigning these costs, which the Board has limited control over. Attorney General costs are rising 33%, posing high cost pressures on the enforcement expenditures of the Board. Edds explained several methods used to allocated enforcement costs:

- Assign to individual licensees as an overhead function, the higher the processing cost of a license, the more cost allocated;
- Assigning cost based on what or who triggers the enforcement activity; and
- Assigned on a flat cost per license.

Staff recommended, and Board members agreed, to assign costs associated with enforcement in two ways. External costs assigned to the Board, such as by the Attorney Generals Office, investigations pro rata, etc. are assigned to all fees, while the direct costs associated with Board enforcement staff are allocated 100% to biennial renewal fees.

Edds noted that the Board is not in a financially sustainable position. Currently, the proportion of our enforcement costs relative to our total spending (30-35%) is half of that seen in other similarly situated Boards (65-70%.) The Board does not have site inspection authority, but if it does seek and gain the authority, currently masked enforcement costs would rise. The Board has long term goals of adding enforcement staff, which would raise enforcement related costs substantially, due in part to the direct staff benefits paid to enforcement staff and in part due to more violations resulting from increased capacity and authority for inspections.



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Edds recommended that the Board set fees to recover full costs and maintain additional reserves that would sustain the Board for three to six (3-6) months of expenditures in times that revenues do not meet expenditures. Further, Edds recommended raising the statutory cap to cover the regular fee increases described here and to give the Board the ability to raise fees as needed over the next few years. Additionally, Edds recommended the Board establish guidelines pertaining to pricing and how the Board would prefer certain costs are allocated to or subsidized by certain fee types. Last, Edds recommended that the Board conduct a fee audit every three to five years to reassess revenue, costs of business processes, and how the regulatory landscape has changed to the extent that it would necessitate additional changes to the Board's fee schedule.

VP Chan inquired about cost recovery efforts surrounding enforcement actions. It was explained that these cost recovery efforts are often unsuccessful and as a result is an unreliable source of funding. Our budget can't be constructed assuming any consistently significant cost recovery from licensees subject to enforcement action. EO Bodea noted that an Administrative Law Judge could waive the fees associated with enforcement action against the licensee. VP Chan asked if we had data on how successful the Board is in cost recovery efforts overall. Nishimine explained that these values have fluctuated between \$130,000 and \$60,000, and the Board must set fees assuming we will recover no costs due to their inherent unreliability.

Edds then noted how enforcement costs are distributed in other Boards, many of which have multiple licensee types. This presents multiple new methods to assign enforcement costs across different licensees. Edds reiterated the importance of regular fee audits, as the regulatory landscape and cost pressures can change substantially from one year to the next.

13. Education Report (Jay Herdt, Licensing Manager)

To accommodate scheduling concerns of attendees, this agenda item was moved up.

Herdt explained to the Board the current state of the curriculum review and approval process for education programs. All programs under review are currently out of state. Herdt explained how many programs are currently under review by the Board and shared relevant statistics as to how often/quickly applications are reviewed.

Herdt shared the current efforts towards auditing continuing education compliance of those who have a renewal date in August. Herdt then shared statistics on the amount of continuing education providers that are currently approved, as well as statistics surrounding the prevalence of tutorial program approvals and participants.



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Herdts then shared statistics from computer-based CALE over 10/1/18- 6/30/19. 329 passed and 39 failed, presenting an 89% pass rate. School specific statistics are available in the presentation materials for use by the programs, if they wish.

VP Chan asked about the percentage of approved CE courses over a certain period, which was not available. Herdt commented that staff do not have specific numbers on approval rates, although the approval rate for continuing education course applications are generally high. VP Chan noted there was around 50 approved courses per licensee. EO Bodea explained that courses can vary significantly with respects to the numbers in attendance; some courses are webcast and reach over a hundred participants, while others may only have a handful of attendees.

Public Comment

A commenter said it was necessary to raise standards for the approval of continuing education providers and expressed concern that the education providers only care about “price,” instead of the quality of education provided to Acupuncturists.

Dr. Matecki then opened public comment for item #7 and item #8, to which there was none.

Dr. Matecki then opened public comment on item #9.

A public comment was provided noting to the Board how valuable the enforcement report is to the students for a teaching tool. It shows students what the most common complaints are concerning and how to avoid practices that could result in a complaint.

A public commenter suggested that there should be increased education surrounding laws and regulations and that the Board provide licensees with these books which contain most statute and regulations affecting acupuncturists.

10. Review of the Capital Accounting Partners Fee Audit Report Cont. (Nishimine, CSM)

Nishimine started by thanking Dan Edds and Capitol Accounting Partners for their help in preparing the fee audit. Under this proposal, the Board will implement a fee “floor”, as captured in the handout entitled V1, and a “cap”, as captured in the handout entitled V2. This will allow the Board to account for current costs and enable the Board to raise fees as necessary to account for future cost pressures.

Nishimine noted the dedication of Staff in their duties of protecting consumers and serving licensees. Nishimine also noted that the Board and staff are aware of the



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impacts fee increases have on businesses.

The Acupuncture Board loaned the State \$5,000,000. \$4,000,000 was repaid in FY 16-17, and the remaining \$1,000,000 will be repaid before the close of FY 19-20. Under current law, the Board cannot raise fees until all loans to the State have been repaid. As the loan will be repaid this fiscal year, this will be the Board's first opportunity to raise fees as proposed.

Nishimine then proceeded to explain the chart which displays annual volume of each work process, total revenue for each process, and what projected revenue would look like under the proposed fees while holding process volume relatively constant

Nishimine explained that each column displayed the Board's losses for every process and its associated fee. The fee audit found that the Board was undercharging for every fee category it has. Nishimine noted that the Board loses \$22,000 for every Acupuncture Tutorial Program application processed. The renewal fee is different, however, from other fees, as it is used as a "catch all." Other fees should be set at or near the actual cost to the Board, while other costs are assigned to the renewal license fee.

The fee audit showed "V1," or the floor fee amount, as the minimum required for the Board's revenue to match costs.

As for Continuing education courses, the Board is proposing to implement a "tiered" pricing system based on the hours of each course. The other new fees are implemented as required by AB 779 (Low, 2019) and were adjusted accordingly as part of the fee audit.

Nishimine then showed the Fund Condition statement in three different scenarios; without fee increases, with the floor fee increases (described in "V1"), and, with the cap fee increases (described in "V2"). Nishimine also noted how the proposed changes would account for costs associated with the Board's business modernization process, as well as build the Board's contingent fund towards DOF recommended levels of three to six (3-6) months reserve balance.

VP Chan asked how increased costs are accounted for in different models. Nishimine explained that V1 is the minimum we need for projected costs next year, while the fee level cap described in V2 accounts for rising costs associated with staffing, enforcement, and prorata costs. Board Member Bradley Cimino (Cimino) asked why there are not larger differences in reserve funds between V1 and V2 models. Nishimine noted that V2 accounts for some of the more predictable costs associated with long-term goals of the Board, including the hiring of additional enforcement staff. If the Board does not realize increased costs or chooses not to hire more staff, then the Board will



not raise fees towards V2 accordingly. Cimino asked how cost recovery plays into our budget. EO Bodea noted that cost recovery was touched on earlier in the meeting and that staff does track how much money we recover as part of enforcement actions. Nishimine, reiterated that the Board cannot rely on cost recovery due to its inconsistency and as such, we should raise fees to account for such costs.

Dr. Matecki asked about enforcement costs, which is currently at 35% of total Board costs, while other Boards are at 70%, and if V1/V2 would cover increased enforcement related costs. Nishimine noted that costs can be absorbed in the short term, but if there are increased inspection actions due to new authority given by the legislature, the Board's enforcement costs as a proportion of total costs will rise closer to that of other boards. However, Nishimine noted that every board is different, so doing comparisons between programs, like Medical Board, may not yield results fit for extrapolation. Nishimine noted that the proposed fee structure is good for this Board's structure. EO Bodea has noted that the ceiling, and this floor/cap model, is good for the Board as there are costs absorbed by the Board that are hard to account for. For example, the Board plans to absorb the credit transaction fees when licensees can pay renewal fees online.

No Public Comment Received

11. Discussion and Possible Action to Seek Statutory Amendments to Business and Professions Code §§ 4970 and 4971 for Increases to Certification and Tutorial Program Fees (Nishimine, CSM)

Nishimine again explained the Board's current fiscal situation, noting the Board must generate sufficient revenue to account for rising costs. The Boards revenue are short of expenditures by \$2.1 million and in 2022 the Board will become insolvent.

Therefore, it is imperative we adjust fees to remain solvent. The fee audit was performed to gain insight as to what costs each process poses to the Board. Nishimine noted that the reasoning given under item #10 applies to this item as well. The statutory amendments incorporate both the V1 "floor" and V2 "cap" into statute.

VP Chan Motioned to Approve option 1, approving the proposed amendments to BPC Sections 4970 and 4971 and directing staff to seek an author to sponsor a bill to implement the proposed fees through legislation in the 2020/2021 legislative calendar year. Kim seconded.

No Public Comment Received



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

Motion passes 6-0

12. Discussion and Possible Action to initiate a Rulemaking to Increase Board Fees, including Acupuncture Tutorial Fees and Continuing Education Fees (Nishimine, CSM)

Nishimine explained this item's memo is nearly identical to the previously discussed memo, except that this relates to the regulatory language instead of the statutory language. Nishimine noted that the Board may seek an emergency regulation, expediting the process by which regulations can be adopted.

EO Bodea explained there would be three votes for each section amended.

Motions

Motion for Amendments to CCR §1399.460

Member Kim motioned to approve option 1, approving the proposed regulatory text for Title 16, CCR Section 1399.460, directing 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, authorizing 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.

Member Cimino Seconded

No Public Comment Received

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

Motion passes 6-0

Motion for Amendments to CCR §1399.461

Member Osorio motioned to approve option 1, approving the proposed regulatory text for Title 16, CCR Section 1399.461, directing 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, authorizing 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.

VP Chan seconded.

No Public Comment Received.

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

Motion passes 6-0

Motion for Amendments to CCR §1399.462

VP Chan motioned to approve option 1, approving the proposed regulatory text for Title 16, CCR Section 1399.462, directing 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, authorizing 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.

Member Kim seconded.

No Public Comment received

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

Motion passes 6-0

20. Discussion and Possible Action to Initiate the Following Rulemaking Package on Curriculum Oversight Authority (Herdt, Licensing Manager)

SB 1246 (2014) removed the Board’s authority for program oversight and instead made the Board’s role pertain to the approval of curriculum offered instead of schools. The Education Committee has reviewed and approved the proposed amendments and are now bringing them to the Board for approval.

The main goal of this is to align Board regulations with statute and to remove duplicative or erroneous language in our regulations. These changes will also improve clarity and



organization.

Motion for amending CCR §1399.415

Member Kim motioned for approval of option 2 and to approve text as amended, changing “tutor” in subdivision (a) with “tutorial supervisor”

Member Cimino Seconded the motion.

No Public Comment Received

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

Motion passes 6-0

Discussion on amending CCR §1399.416

Herdt explained the memo, in which it is explained that the proposed amendments require transcript evaluation services to send results directly to the Board, instead of to the prospective licensee who in turn sends the materials to the Board.

Motion for amending CCR §1399.416

President Matecki motioned to approve option 1, amending 1399.416.

VP Chan seconded the motion.

No Public Comment received

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

Motion passes 6-0

Discussion on Amending CCR §1399.434 and Repealing CCR §1399.435

Herdt explained the memo detailing the proposed regulatory changes to the Board. Herdt noted that removing unnecessary language from 1399.435 and combining it all under a newly amended §1399.434. The committee is also proposing to retitle Article 3.5 from “acupuncture Training Programs” to “Approved Educational and Training Programs” to be in line with statute.



This will result in increased clarity and ease of compliance by the regulated public.

Herdt then went through the list below of each amendment:

- Retitling of CCR §1399.434 from “Criteria for approval of acupuncture and oriental medicine curriculum” to “Criteria for approval of acupuncture educational and training program curriculum” to align with the statutory term from BPC §4927.5.
- All of CCR §1399.435 is proposed to be repealed. However, some subsections will be moved under CCR §1399.434, as specified below.
- The introduction of CCR §1399.435 was not moved under CCR §1399.434 because there are no longer different curriculums contingent on an applicant’s enrollment date. Therefore, this preamble is no longer relevant or necessary.
- Subdivision (a) of CCR §1399.435 was not moved under CCR section 1399.434, which is a requirement that candidates have completion of 60 semester units/90 quarter credits of education at the baccalaureate level. This subdivision is not being retained because it is not a requirement that aligns with the curriculum standards under the Board’s purview. Rather, this is a requirement that the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) ensures is being upheld by the programs when accreditation is granted.
- Subdivision (b) of CCR §1399.435 was not moved under CCR §1399.434 because this requirement is duplicative of BPC 4927.5 (a)(2), which is the provision requiring Bureau for Private Postsecondary Education (BPPE) approval for an approved educational and training program.
- Subdivision (c) of CCR §1399.435 pertains to the development of a self-study evaluation process required for training programs. This subdivision is not being retained and moved over because this is currently a requirement of ACAOM accreditation, which makes it unnecessary and duplicative.
- Subdivisions (d) through (f) of CCR §1399.435 have been moved over to CCR §1399.434 as subdivisions (i) through (k) but no amendments to content are suggested.
- Subdivision (g) of CCR §1399.435 has been moved to CCR §1399.434 as subdivision (l). The words “educational and” have been added to existing language to reflect the statutory term “educational and training.” The word “program” has been removed and replaced with “curriculum” because CCR §1399.434 covers curriculum requirements and not the program as a whole.



- Subdivision (g)(1) of CCR §1399.435 has been moved to CCR §1399.434 as subdivision (l)(1). This language has been amended to add the authority to accept coursework as credit when a course has been challenged by a College Level Examination Program (CLEP) exam as determined by the Board. Staff feels this is necessary to align with other academic institutions, as well as ACAOM, who all accept CLEP challenged courses for transfer students.
- Subdivision (g)(2) of CCR §1399.435 was moved under CCR §1399.434 as subdivision (l)(2). There are no amendments.
- Subdivision (g)(3) has been moved under CCR §1399.434 as subdivision (l)(3). This subdivision is amended to add the statutory term “educational and training curriculum.”
- Subdivision (g)(4) of CCR §1399.435 was moved under CCR §1399.434 as subdivision (l)(4). It has been amended to update the correct Education Code citation for BPPE authority.
- Subdivision (g)(5) of CCR §1399.435 was not moved under CCR §1399.434 because all Traditional Chinese Medicine programs in the US are accredited by ACAOM, therefore, ACAOM already oversees any transfer credit rules.
- Subdivision (g)(6) of CCR §1399.435 has been moved under CCR §1399.434 (l)(5). It has been amended to remove the requirement that record of a student’s transfer credit evaluation and award be filed with the Board upon request. This is unnecessary because transcripts documenting such an evaluation and award of transfer credit is already submitted to the Board by the educational and training program.
- Subdivision (g)(7) of CCR §1399.435 has not been moved under CCR §1399.434 as it is outside the Board’s jurisdiction to oversee transfer credit policies and procedures. ACAOM is the entity that oversees transfer rules.

Motion

Possible Motions for CCR sections 1399.434 and 1399.435

EO Bodea noted that §1399.434 (l)(3) should have “which is an educational or and training curriculum approved by the Board” changed to “which is an approved training or education program.”



Member Osorio motioned to approve Option 2, which includes the above changes as noted by EO Bodea.

Member Kim Seconded the Motion.

Public Comment:

A comment was received from the public, expressing concern about the titling of Article 3.5 not giving the full scope of the body of “Asian Medicine” as intended by the legislature when they passed the statute outlining requirements for those in the “Asian medicine” profession. The commenter commended Herdt for his efforts on this issue.

EO Bodea spoke to the lack of general agreement on what terms are appropriate for the profession. The commenter noted that the term “oriental” medicine was offensive to some and noted concerns that any changes implemented now could require further change to comply with the original intent of the law.

Legal Counsel Salwa Bojack (Bojack) noted that the change would be good for clarity, as it clearly demonstrates what the criteria are for an approved training or educational program as described in the Business and Professions Code.

Another commenter stated that in the mind of many people, acupuncture and traditional medicine are separate. The commenter noted that California played a leadership role among other states. Many other states are moving towards “oriental, Chinese, or traditional medicine” while the national accreditation programs are moving in a separate direction, dictating that schools must provide specific degrees. The commenter encouraged the Board to continue to play its leadership role in defining the purview of oriental medicine and what role acupuncture plays.

A commenter asked if the Board working with the legislature on the terminology from statute is within their purview.

A different commenter noted that schools don’t know how this will work out practically. They also noted that they can’t split the medicine, and, splitting up the professions, which are inherently intertwined, would degrade the integrity of the medicine and cause confusion about the medicine.

Member Kim expressed the importance for the Board, the profession, and the public to work together in discussing a solution that works for everyone.



Bojack suggested a straw poll of the Board be taken on the matter of changing the title.

A straw poll was conducted for removing acupuncture from the title.

The Board agreed to remove.

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

The motion was withdrawn with a 6-0 vote.

Motion was resubmitted with the removal of Acupuncture from the title.

President Matecki approved the motion.

Member Li seconded the motion.

No Public Comment Received.

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

Motion passes 6-0

Motions for Retitling Article 3.5

VP Chan Motioned to approve Option 1, retitling Title 16, Article 3.5.

Member Osorio Seconded.

No Public Comment received.

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

Motion passes 6-0

Discussion to Amend CCR §1399.437

Herdt went through the proposed changes listed in the memo. Herdt explained the changes to §1399.437 that governs the application process and that it will be the new location for the language removed from §1399.435.



Bojack asked about §1399.437 (f), which describes the form that will be used for application. Bojack suggested “requested for” be changed to “requesting” for purposes of clarity. EO Bodea agreed it sounds clearer.

Motion:

Member Kim motioned to accept option two, incorporating the changes requested by staff in addition to those outlined above.

Member Osorio seconded the motion.

No Public Comment Received.

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

Motion passes 6-0

Discussion to Amend CCR §1399.438

Committee and staff requested to add the word curriculum to §1399.438 and replace acupuncture with “approved educational and” for clarity purposes.

Motion:

Member Cimino motioned to approve option 1.

VP Chan seconded the motion.

No Public Comment received.

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

Motion passes 6-0

Discussion to Amend CCR §1399.439

This proposal addresses efforts by the Education and Research Committee to clarify the Board’s jurisdiction over curriculum and not the schools themselves. This section relates to requirements for school annual reports, which is no longer in effect. These changes are necessary to reflect the Board’s removed authority over training programs and address only its role in approving curriculum.



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Below are the recommended changes to CCR §1399.439:

- The title of CCR §1399.439 has been changed from “School Monitoring; Records; Reporting” to “Educational and Training Program Curriculum Monitoring; Records; Reporting” to align the terminology with the statutory term “educational and training program” pursuant to BPC §4927.5.
- Terminology has been aligned with the statute changing ‘acupuncture school’ to ‘educational and training program’ under subdivision (a).
- The Committee is also recommending moving up the reporting period from 60 days after the close of a school’s fiscal year to 90 days before, or earlier, the close of the school’s academic year. Moving the reporting period up allows the Board more time to review any curriculum changes prior to the start of the school’s new academic year. Academic year was specified instead of fiscal year because changes to curriculum are planned and aligned as part the academic year versus a school’s fiscal year end.
- Reference to the application for board approval of curriculum as defined in CCR § 1399.437 was added to specify that approved educational and training programs communicate annual curriculum changes through the same form used to apply for curriculum approval.
- Course catalog was deleted because the application for board approval of curriculum is only deemed complete when a copy of a current course catalog is included as set forth under CCR §1399.437 (a)(5). Therefore, it is unnecessary and duplicative to include the submission of a course catalog again in CCR §1399.439.
- Currently the Board requires approved educational and training programs to communicate any changes in faculty, however, the Board only has criteria related to clinic supervisors. Therefore, staff has removed faculty and replaced it with clinic supervisors to allow the Board to only receive information about changes to clinic supervisors.
- The Board does not have authority over a school’s administration, facility, or financial condition, so staff has amended CCR §1399.439 to remove all those references. The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), and the Bureau for Private Postsecondary Education (BPPE) are the entities that oversee these areas.
- A minor change to subdivision (b) changing the word ‘school’ to ‘curriculum,’ since the Board only has authority to review and evaluate curriculum, not the school itself.



- Subdivision (c) has been revised for clarity, so it is understood that all student records shall be maintained in English, at minimum. This is a non-substantive change.
- Subdivision (d) has been removed because the process for approved educational and training programs' communication of changes to curriculum have already been addressed under subdivision (a).

EO Bodea and Bojack noted clarity concerns in §1399.439 (a) and suggested edits accordingly after ascertaining what the stated policy goal was.

EO Bodea and Bojack suggested the Board consider the following language, “Every approved educational and training program shall be required to submit to the board at least 90 days before the close of the school’s academic year, the newly proposed curriculum for the following academic year on the board application for approved curriculum as defined in CCR §1399.437...”

EO Bodea then asked members of the public who were associated with schools to address the language.

A public commenter suggested it be changed to “at least 90 days before the implementation of the new curriculum”

The Board agreed to the suggested language.

Motions:

Option 2, as amended:

(a) “Every approved educational and training program shall be required to submit to the Board at least 90 days before implementation of the newly proposed curriculum on the application for board approval of curriculum as defined in §1399.437. The application shall also include a letter...”

Possible Motions for CCR 1399.439

Member Kim motioned to use Option 2 and to approve the suggested changes.

Member Osorio seconded the motion

No Public Comment received

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



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Motion passes 6-0

14. Recess Until Friday, August 16, 2019

President Matecki motioned for recess at 5:31pm.

DAY 2 AGENDA – 9:00 a.m. PST, Friday, August 16, 2019

15. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki, President)

President Matecki called the meeting to order at 9:34 a.m.
Exam Coordinator, Tammy Stadley (Stadley) called the roll.

Members Present:

4 Present – Matecki, Chan, Cimino, Kim

3 Absent – Harabedian, Osorio, and Li

4-3 Quorum Established

16. President's Remarks (Dr. Matecki)

President Matecki thanked all present for their contributions to a successful Board meeting.

17. Public Comment on Items Not on the Agenda (Dr. Matecki)

No public comment was received. Dr. Matecki noted that item 20 was moved to yesterday's agenda and wanted to provide quick summaries for members of the public that were not present to provide comment on the previous day.

Licensing Manager Jay Herdt (Herdt) summarized the changes adopted by the Board the prior day.

EO Bodea brought up 1399. 416, concerning the submission of credential evaluation, suggesting that "with the application for examination" be stuck for purposes of clarity.

Motion to approve the proposed regulatory text with the further amendment to strike the



language “with his or her application for examination” from §1399.416.

Pres. Matecki motioned to approve.

Cimino Seconded.

No Public Comment received.

Vote: Matecki- yes, Chan- yes, Kim- yes, Cimino-yes

Motion passes 4-0

18. Legislative Update (Ben Bodea, Executive Officer)

EO Bodea presented the bills moving through the legislature that are of interest to the Board.

The Board took an opposed position and AB 544 has been moved to the suspense file in the appropriations committee.

AB 633 would allow the Board’s within the Department of Consumer Affairs to raise fees based on rises in the Consumer Price Index. The Board supported this bill and EO

AB 778 required the Board to establish procedures for the approval of continuing education providers. The Board took a support position on the Bill and a hearing will be held in the Legislature next week, August 19th.

AB 779 adds the requirement for wall licenses to acupuncture licensees. EO Bodea explained the provisions of the bill and noted that the Board supports this bill and it is likely to pass.

AB 888 extends requirements that require prescribers discuss the risks of opioids and the availability of other non-pharmalogical treatments, including acupuncture, prior to the first subscription of opioids. The Board voted to support this Bill.

AB 1076 requires the Department of Justice to analyze records weekly to identify individuals eligible for release, to subsequently grant them relief, and to notify the superior court with jurisdiction of such relief. The bill was amended on August 12th, 2019 and was rereferred to the Appropriations Committee.



Counsel Bojack noted how this bill relates to AB 2138 and the Boards ability to take action against licensees. Bojack noted that arrest information on wrap sheets will be reviewed weekly to find those that were not convicted, relieving them of penalties associated with arrests for misdemeanors or felonies. With misdemeanors, the information can be wiped from the record if no criminal proceedings began and a calendar year had passed since the date of the arrest. For felonies, three calendar years must pass since the date of the arrest.

As for convictions, the DOJ must review those eligible for relief from conviction. The bill could be interpreted differently with regards to how this relief is denoted, either completely cleansing it from the record, or noting that relief was granted but keeping the contents currently in the record.

Counsel noted that AB 2138 narrows the scope of convictions considered in granting a license to the prior seven years, except in specified serious cases. If relief is granted pursuant to the changes proposed by AB 1076, while a licensee should be denied under AB 2138, they would not be due to the changes to the record pursuant to AB 1076. As a result, this bill requires more work and analysis. President Matecki noted the bill had been amended. EO Bodea explained that we could meet in November to discuss the bill and its amendments, if it passes.

President Matecki asked if there was public comment in relation to AB 1076.

A member of the public requested that the Board express concerns about those with criminal histories subverting the limited requirements surrounding license denials and revocations set forth by AB 2138; the implications on public safety. The commenter asked if it would be out of scope for the Board to revisit its neutral position on this to potentially oppose the bill. EO Bodea noted the list of support and opposition as listed in committee hearings on the bill. No boards representing healing arts professionals weighed in on the bill at the committee level. The commenter requested that the Board add its voice in opposition.

SB 53, places requirements on advisory committees that are part of larger committees. The Board opposed this bill, as it realizes substantial benefits in preparing materials for review for the public and the Board as a whole. The efficiencies and resulting benefit to public protection significantly outweigh the perceived lack in transparency resulting from current requirements placed on sub-committees or similar entities. It is unlikely to move forward this session.

SB 425 requires health facilities to report allegation of sexual abuse sexual misconduct



to the appropriate regulatory board if the accuser or representative submits a written allegation. The Board must investigate the allegation and the report, or any documents related to the allegation, would not be subject to disclosure. Willful failure of a health care facility to report would result in substantial civil fines not exceeding \$100,000. This was supported by the Board as it provides for public safety and consumer protection. It has been referred to committee with a hearing scheduled for the 21st of August 2019.

SB 601 would allow licensees to submit a request for waiver of fees as a result of natural disasters and associated economic hardship. It is scheduled for a hearing in the appropriations committee on August 21st, 2019. The Board did not take a position on this.

Public Comment:

A commenter noted that AB 888 is a two-year bill and seemed to be a “slam dunk” until the California Medical Association expressed opposition.

19. Regulations Update (Ben Bodea, Executive Officer)

(A) AB 2138 (2018 Chiu and Low)

Legal counsel has reviewed this, and it is now with the Department of Consumer Affairs for review.

(B) SB 1441 (2008 Ridley-Thomas) and Update of Acupuncture Board Disciplinary Guidelines

Board staff is working on the initial rulemaking package.

(C) SB 1448 (2018 Hill)

This will be combined with the rulemaking package in which SB 1441 is incorporated.

(D) SB 1246 (2014 Lieu)

Initial rulemaking package is currently in production.

(E) AB 2190 (2016 Salas)

Jay, Tammy, and Licensing Unit staff are currently working on language for this proposed rulemaking.



EO Bodea then went through the Board regulation tracking document which illustrates the status of all regulatory packages.

President Matecki called to recess until 10:30am

21. Discussion and Possible Action to Initiate a Rulemaking to Adopt Title 16, CCR §1399.419.3 Application for Retired Status; Retired Status; Restoration

Herd explained that licensees that are not suspended, revoked, or otherwise restricted could apply for a retired licensee status if this proposal is adopted, pursuant to BPC §464. Licensees would be required to submit an application and pay a fee of \$75 to handle costs of processing. Herdt outlined the process by which a retired licensee can re-instate their license to active status. Staff recommends that a retired licensee wishing to go back into active status should be required to retake the CALE, among other requirements, as listed.

VP Chan suggested that we state explicitly that the check should be made out to the California Acupuncture Board. Stadley noted that it should be made clear, on the form to go into retired status, that if the licensee should wish to reinstate their license, they will have to take and pass the CALE.

EO Bodea and Bojack added a requirement to comply with §1399.419.3 (b)(1-3) to §1399.419.3 (c) (11).

Motion:

Member Cimino motioned to approve the text including the above amendments.

Member Kim Seconds the Motion

Public Comment:

A commenter described that it is imperative we explain to students the tradeoffs between going inactive versus retiring, noting the challenge it can be to re-take and pass the CALE again.

Bojack brought up subsection (c) (10) as that could be construed to mean when they stopped practicing or to mean when they submitted the application for retired status. (c)(10) was struck, with (c)(11) being renumbered to (c)(10) and (c)(12) to (c)(11)



Public Comment:

Commenter brought up if someone had a license in another state, if they would be required to take the CALE as well, to which EO Bodea clarified they would be required to.

Kim moves to withdraw the motion.

Chan seconds.

Public Comment:

A commenter shared appreciation that the Board was following “Robert’s Rules” and parliamentary procedure.

Vote: Matecki- yes, Chan- yes, Kim- yes, Cimino-yes

Motion passes 4-0

New motion to adopt proposed changes and the changes outlined above for (c)(10-12)

Member Kim motions to approve the language.

Member Cimino Seconds

No Public Comment Received

Vote: Matecki- yes, Chan- yes, Kim- yes, Cimino-yes

Motion passes 4-0

22. Updates from Acupuncture Professional Associations

CalATMA (California Acupuncture and Traditional Chinese Medicine Association)

Neil Miller, on behalf of CalATMA, extended CalATMA’s appreciation to the Board for addressing dry needling and other issues surrounding scope of practice. Miller asked to place an item on the next agenda to address any concerns in statute or regs as issues come up. Miller also thanked the Board for their effort to reduce backlogs of enforcement cases and expressed relief that the number of sexual impropriety cases



have gone down. He noted that if the Board can work with associations and schools to improve professional standards and education, perhaps enforcement costs of the Board can stay relatively low or even be reduced.

The Center for Medicare and Medicaid Services is doing a research study into the efficacy of acupuncture for lower back pain. CalATMA sent a letter to CMS expressing concerns that California practitioners will not be able to participate due to the study only accepting those with NCAOM accreditation.

Miller asked that the Board weigh in and verify the main points of the letter they sent to CMS. Miller again asked if this could be placed on the agenda for the next Board meeting slated for November 2019.

Miller informed the Board that CalATMA's first annual meeting will be in September, in which they will be discussing issues surrounding continuing education and taking time to honor Assemblyman Low for his efforts in uniting the acupuncture community in California.

Miller then talked about bleeding, requesting that it be on the next Board meeting agenda in November 2019. CalATMA believes that it is within their scope of practice and cites "article 3.5 §1399.434 (b)(i)," presumably referring to Board curriculum standards. Miller stated that a prior EO had given the impression "Bleeding" techniques were not in their scope and CalATMA disagrees and as a result is seeking clarity.

Miller also thanked the Board for their willingness to work with the public and the profession on changes to §1399.434. Miller then brought up the "Consumer Guide to Acupuncture," noting it had not been republished since Governor Arnold Schwarzenegger left office and is a useful resource for consumers wanting to learn more about acupuncture.

Miller then noted that ACAOM has put forth proposals which split up the profession, stating that they plan to accredit acupuncture programs and herbal medicine programs separately. Miller noted that this would have a large impact on the profession and could pose problems because ACAOM has so much power in the profession. Miller stated he would keep the Board informed on the issue and commended the Board's willingness to accept feedback from the profession, schools, and the public.

Christy Vitiello, LAC, on behalf of the California State Oriental Medical Association (CSOMA), shared that Mike Morgan, L.Ac., has taken over as president of CSOMA. CSOMA has met with other state associations in their efforts to fight "dry needling." CSOMA met with the Deputy AG on insurance reimbursement discrepancies between other health professions and acupuncturists. DAG office gave them advice on how to proceed with challenging this practice. Vitiello then thanked the Board for their work.



Rona Ma, President of CalATMA, added that CalATMA joined the American Society of Acupuncturists (ASA).

23. Future Agenda Items and Meeting Dates (Dr. Matecki, President)

Member Kim would like updates on the CE Ethics requirements.

A commenter shared support of reviewing issues surrounding scope and also the State of Colorado's current disclosure requirements of degree types. California doesn't allow other license types to function in California, but with the increased practice of splitting up the profession and the proliferation of different types of degrees, it is imperative that the State and Board can ensure consumers are informed of what type of degree their prospective practitioner holds.

A commenter reiterated the problems surrounding degree fragmentation, urging for the creation of a task force with stakeholders from the schools, consumers, the Board, and the profession

President Matecki noted that the next meeting would be in San Diego, California.

24. Adjournment (Dr. Matecki, President)

President Matecki thanked Five Branches University for hosting the Board and thanked members of the public for their continued engagement and hard work towards helping the Board and the profession.

Meeting Adjourned at 11:45 AM PST.