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BOARD MEETING Meeting Minutes June 24-25, 2021

LOCATION:

Web Ex Teleconference

Board Members Present

Dr. Amy Matecki
Kitman Chan
John Harabedian (June 25 only)
Dr. Yong Ping Chen, Ph.D.
Hyun “Francisco” Kim
Shu Dong Li, Ph.D.
Ruben Osorio

Members of the Board

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

Staff Present

Benjamin Bodea, Executive Officer
Fred Chan-You, Legal Counsel
Heather Hoganson, DCA Legal
Jay Herdt, Licensing Manager
Marisa Ochoa, Central Services Manager
Cricket Borges, Enforcement Coordinator
Kristine Brothers, Policy Coordinator
David Bruggeman, Policy Analyst

Full Board Meeting – Thursday, June 24

1. Call to Order, Roll Call, and Establishment of Quorum

Board President, Dr. Amy Matecki (President Matecki), called the meeting to order at 12:31 p.m.

Policy Analyst, David Bruggeman (Bruggeman), called the roll.

Members Present

5 Present – Matecki, Chan, Chen, Kim, Li



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5-0 Quorum Established

2. President's Remarks

President Matecki thanked members of the public and schools for working closely with the Board in supporting the Occupational Analysis. She also thanked the Board members for their continued work and support. She noted that the report on the Education and Research Committee meeting (Item 14) will be postponed to the August Board meeting due to member availability.

3. Public Comment on Items Not on the Agenda

No public comments were offered at this time.

4. Public Comments Received by the Board

Member Osorio joined the meeting.

Since the last Board meeting, there were three public comments received. All of them concerned AB 918, which is now a 2-year bill. As it is no longer on this year's legislative calendar, those comments were not included with the meeting materials.

5. Review and Possible Approval of the March 2021 Board Meeting Minutes

No discussion or public comment on the minutes.

MOTION

Member Chen motioned to approve the March 2021 Board meeting minutes.

Member Osorio seconded the motion.

Vote

Yes: Matecki; Chan; Chen; Kim; Li; Osorio.

6-0 motion passes

6. Executive Officer's Report

(A) Budget Update – Fund Condition

Ben Bodea (EO Bodea) introduced Nguyet Nguyen from the Department of Consumer Affairs Budget Office, who reviewed the Board's Fund Condition Statement and Expenditure Projection Report (available in the meeting materials). While the office did



not currently see any issues or concerns, they anticipated considering a fee study and fee increase in the future.

(B) Staffing Update

Since the March Board meeting the Central Service Manager position has been filled. A new Enforcement Analyst position will be filled starting July 1.

Staff continues working on the office move, which is currently scheduled for September.

President Matecki asked when a fee study might be considered? EO Bodea notes that would be likely in the 2023-24 timeframe (this would be consistent with the Board's Strategic Plan). Board staff may seek a Budget Change Proposal to ensure sufficient funds for the audit.

Member Chen noted that the move will put the Board staff in a bigger space that costs less. Bodea confirmed that the price per square foot of the new space is less than the current rate.

Member Kim asked how the recent fee changes have affected the financial outlook. EO Bodea noted that the projections in the budget documents incorporate the fee increases except for the continuing education course application fees. Staff does not have enough data to make projections on those CE fees, and the next fee study should be timed to allow for gathering that information.

No public comment.

7. Business Modernization Update

Staff have completed three implementation periods of the business modernization process to date. New online services include payment by credit card, acupuncture license renewal, wall license application/renewal/cancellation, initial license application, and exam applications. Future functions to be implemented are continuing education application processes, license verification, wall license replacement processes and enforcement.

Member Kim asked about various functions available online. Herdt reviewed the list of what is currently available, which includes: license renewal, wall license management, licensing exam applications, initial license applications, exam retake applications. What is under development right now includes dashboards for continuing education providers and licensees, out-of-state license verification, wall license replacement and transitioning between active and inactive status. EO Bodea noted that it is just the



exam applications that can be done online, the licensing exam itself is not available online.

No public comment.

8. Board 2018-2022 Strategic Plan Status Update

EO Bodea reviewed the progress made on the Board's 2018-2022 Strategic Plan (available in the meeting materials). He noted for Goal 3.1 in Education that the Board will not be reviewing regulatory language related to AB 2190 at this (June 2021) meeting. Also, the reference to AB 3333 in Goal 4.6 should be to AB 3330.

Public Comment – Commenter noted that AACOM is going to English-only, which commenter considers in conflict with California standards. They asked what the criteria are for being subject matter experts. Commenter noted that calls for changing standards have persisted with little action. Want to work with Board to be proactive in preventing violations. Feels plan to communicate the practice and regulation of acupuncture to the public is something commonly called for with little action. Commenter is optimistic this time will be different. Noted that there have been consumer guides to acupuncture published by the Board before. Wants this issue on a future agenda.

9. Licensing Report, - Q3, FY 2020-21

Herd started by thanking everyone for participating in the Occupational Analysis. Participation was 2795, 23.6% of active licensees.

Herd reviewed licensing data for Q3 (January-March 2021) of fiscal year 2020-21. Active licensee numbers were relatively flat, a slight decline over the last three years. There are slight increases in inactive, cancelled, and delinquent numbers. Continuing Education numbers continue to be affected by the Governor's Executive Order delaying compliance with continuing education requirements.

Member Kim commented that all continuing education courses are available online. Kim asked if the fee increase affected the numbers for continuing education. Herdt believes it's too early to tell. Many applications are in process, and there have been few comments received to date. Bodea noted there is usually a push at the end of the year (previous quarter) to help promote courses. Chen asks how many courses are offered online. Herdt noted that any approved course is currently allowed to be provided online. There may be some currently offered in person, but Herdt expects the vast majority are available online. Chen offers that some providers may be challenged



by providing courses online. Chen also notes that the pandemic may explain some of the decline in numbers.

EO Bodea updated the Board that the waiver for clinical distance education is currently under review by the Governor's office.

President Matecki observed that in the case of physicians that some early retirements may have been prompted by the pandemic, it's possible this is happening with acupuncturists. Kim echoed this observation. Chen noted that the licensees she interacts with have been very busy. President Matecki noted that the post-pandemic period may be an opportunity to serve the public more.

Public Comment – First commenter, a continuing education provider, noted that they have heard from many providers who have stopped getting California approvals entirely, others are cutting back. They hope the Board continues to monitor this, they believe there will be an overall drop off in offerings, independent of the number of course applications. Still wondering about the Board's response to the fee situation, feels the Board should be involved in finding a way forward.

Second commenter noted that associations are providing continuing education offerings to their members, CalATMA doing a lot of translation of these offerings. Sees this as Californians investing more in CE.

The Board recessed from 1:54-2:15

Roll Call taken at 2:16 p.m.:

Members Present

6 Present: Matecki, Chan, Chen, Kim, Li, Osorio

6-0 Quorum

10. Enforcement Report – Q3, FY 2020-21

Enforcement Coordinator Cricket Borges reviewed the Q3 Enforcement data summarized in the meeting materials. She noted that in areas with few cases, average time to completion can become skewed by a single complex case.

Member Chan wondered why there was a relatively large number of misrepresentation cases. Borges noted that in some circumstances there are members of the public that assume a provider is a doctor. The Board doesn't receive many of these cases. Member Chan asked how the public can distinguish those providers who



are doctors? EO Bodea indicated that the Board cannot investigate without a complaint. Enforcement does not go out actively seeking these matters. Board staff have worked with DCA on notices for the public on this issue, but the different degrees available for acupuncturists can confuse matters. An investigation is completed if there is a complaint and the status of licensees is confirmed at that time.

President Matecki was curious about the fraud cases compared to misrepresentation. Typically, the fraud cases are related to billing. Cases related to unprofessional conduct are usually matters of misrepresentation. If further investigation uncovers fraud related to the misrepresentation, then we can recategorize the matter.

Public Comment – Commenter wanted a committee workshop on enforcement. Committee could answer questions about what constitutes various violations to avoid future charges. Much better to have a meeting with a public and licensee member along with some of the schools. Happy to see decrease in sexual misconduct charges.

11. Legislative Report and Update of 2021 Legislative Bills of Interest to the Board

Policy Coordinator Kristine Brothers (Brothers) reviewed the Legislative Calendar for 2021. Final deadlines for bills to be signed into law this year will be in August and September.

The status of legislation addressed at this meeting reflects changes through May 28th.

The report is in a different format than previous meetings, starting with bills where the Board has taken a Watch position. They are:

AB 2, AB 29, AB 54, AB 107, AB 646, AB 885, and AB 1236.

Brothers reviewed the status of each of these bills, for which staff are not recommending any changes in position. Detailed analyses are available in the meeting materials.

As of May 28th, the amendments to AB 54 are such that it no longer affects the Acupuncture Board.

The Board has taken an oppose position on the next group of bills, which are:

AB 339, AB 918, AB 1386 and SB 772.

Brothers reviewed the status of each of these bills, for which staff are not recommending a change in position.

As of May 28th, the amendments to AB 339 are such that it no longer affects the Board.



The last group of bills in the review are bills the Board has not reviewed or taken a position on. They are:

AB 810, AB 1026, AB 1273, AB 1468, SB 607 and SB 731.

In a change from past practice, if the Board is taking a Watch position, no vote is required.

AB 810 – Staff recommends a Support position.

No public comment

MOTION

President Matecki moved that the Acupuncture Board take a Support position with respect to AB 810 (Flora) as introduced on 02/16/21 for the reasons discussed by members and staff and as reflected in the staff memo.

Member Kim seconded

Vote

Yes: Matecki, Chan, Chen, Kim, Li, Osorio

6-0 motion passes

AB 1026 – Staff recommends a Watch position.

Member Kim agrees with recommendation. No other Board member comments.

AB 1273 – Staff recommends a Watch position.

Member Kim agrees with position. No other Board member comment.

AB 1468 – Staff recommends a Watch position. Bill does not affect the Board but would affect the profession.

Member Kim agreed with staff recommendation. No other Board member comment.

SB 607 – Staff recommends an Oppose position.

President Matecki and Member Osorio would like the Board to take a Watch position. No other Board members commented or expressed objections to the Watch position.

SB 731 – Staff recommends a Watch position.



Member Kim would like to see what other Boards are doing with respect to this bill, he supports taking a watch position. No other Board member commented.

President Matecki thanked Brothers and Bruggeman for their work on the report.

Public Comment – First commenter, David Quackenbush for CSOMA, which sponsors AB 918. It is a two-year bill, and that CSOMA is having conversations with stakeholders to work on improving the bill.

Second commenter, echoes praise of Brothers on the increasing quality of the legislative report. CalATMA agreed with most everything in the report. Is in support of AB 1468 but understands why Board is taking a Watch position. Agreed with staff on Opposition to SB 607. Commenter has not seen the amendments to AB 918 reported on in Acupuncture Today. Author's office indicated there were no amendments. Those associations who have opposed AB 918 continue to oppose the bill. Might be appropriate to revisit once Occupational Analyses are completed for both CALE and NCCAOM exams.

The Board recessed from 3:51-4:00

Roll Call taken at 4:01 p.m.:

Members Present

6 Present: Matecki, Chan, Chen, Kim, Li, Osorio

6-0 Quorum

12. Regulations Update

Policy Analyst David Bruggeman updated the Board on the status of regulatory packages in process since the March Board meeting. The progress of those packages is summarized in the meeting materials. It was intended for the Board to review regulatory language in connection with AB 2190, but that has been delayed, most likely to the August Board meeting.

Questions were raised by Member Kim about intended filing dates for the regulatory packages on law and ethics requirements for continuing education and on telehealth.

Public Comment – First commenter wanted Board to be aware that ACAOM standards are much less than those of California. They would like CalATMA to work with Board and staff on developing the language for these packages.



Second commenter asked why continuing education course approval fees were not a part of Section 100 process.

Third commenter with California Acupuncturists United Association has had successes with providing continuing education courses online. This technology has allowed for having presenters from outside the state and the seminars have been well received.

EO Bodea notes that there are opportunities for public comment at Board meetings and after Board has approved regulatory language. As regulations go through the approval process there will also be opportunities for public comment, both at a public hearing and during a public comment period. A Section 100 process allows for technical, non-substantive changes. This was used for the fee schedule as the only changes were in the amounts, not in the existence of the fees.

13. Consumer and Professional Association Reports

CSOMA – Nell Smircina, President. AB 918, sponsored by CSOMA, was discussed earlier. CSOMA has seen a 40 percent growth since beginning of shutdown. One school has had all of their students join the organization. Increased engagement around advocacy work. CEs offered monthly as member benefit, will continue through end of year.

CAUA – Continued to describe successes of organization's CE offerings. Working online has allowed for more offerings, and in preserving traditional methods. Interest in system extends to other states and countries. While CAUA is back to offering live seminars, it will continue to have online offerings. Has seen lots of success with using acupuncture and herbs in addressing COVID-19 related matters.

CalATMA – With over 500 members will continue to offer quality CEs at low prices. Working on legislative package for next year in conjunction with other associations. Annual meeting is scheduled for October, will be held online. Three bills in development – Asian massage, lasers, therapeutic bleeding. Having discussions, including with physical therapists, on many bills and topics, including dry needling. Planning several celebrations statewide for October 24 Acupuncture/traditional medicine day. Spring seminar next year scheduled for two days in Napa.

14. Report from Education and Research Committee Chari on June 24, 2021 Committee Meeting and Possible Action on any Recommendations

The Committee meeting scheduled for this date was cancelled. The Committee will address the topics on the agenda for this meeting in the future.



15. Future Agenda Items

President Matecki confirmed the Education Committee next meet before the August Board meeting. Member Kim suggests Board review Western/clinical science and compare those requirements with other DCA Boards. (Legal Counsel Chan-You confirmed that this is a request for a future Committee meeting.)

Public Comment – First commenter echoed suggestion to review western/integrative medicine, possibly included with the discussions intended to take place at this meeting. Wants to discuss doctoral programs and whether they are in the best interests of California consumers.

16. Adjournment of Day One

Meeting Adjourned at 4:40 p.m. PDT.

Day Two, Full Board Meeting, June 25, 2021

17. Call to Order, Roll Call and Establishment of a Quorum for Day Two

The meeting was called to order at 9:32 a.m. PDT.

Members Present

7 Present: Matecki, Chan, Chen, Harabedian, Kim, Li, Osorio

7-0 Quorum

18. President's Remarks

President Matecki emphasized that the Board remains focused on its highest priority - public protection.

19. Public Comment on Items Not on the Agenda

There were no comments offered on this topic at this point in the meeting.

20. Review of the Consumer Protection Role of the Board

Board Legal Counsel Fred Chan-You (Chan-You) outlined the Board's role in protecting consumers, which is its primary role. The Board protects the public in the following ways: 1) Ensuring that someone meets the minimum statutory requirements



for licensure, 2) Enforcing violations of the Practice Act, 3) Pass relevant regulations related to the Practice Act, 4) Prevent unlicensed activity. Its role is primarily administrative. The Board's mission does not include regulating medical or acupuncture products, addressing amounts to be charged for services, the economic viability of the profession, promotion of the profession or protecting the business interests of acupuncture related industries.

Enforcement is limited to the provisions of the Practice Act. If regulatory or enforcement authority is wanted for something not covered in the Practice Act, legislative authority must be sought. In Chan-You's experience, the Board has been very conscientious in its consumer protection role.

Board comments – Member Harabedian asked what prompted the presentation. Chan-You noted that recent questions at previous meetings concerned the Board's scope and mission, and that it was a good time for a review. EO Bodea noted that herbal task force requests and the fee conversations prompted the staff to ensure that the public understood the Board's role and scope.

Member Kim asked if incorporating recent changes in health care provisions and practices into curriculum review would be within Board's purview. Chan-You confirmed that it is, as the Board has authority over school curriculum.

No Public Comment

21. Review of the Board's Role Concerning Requests for Public Comment

Counsel Chan-You covered the basics of the Open Meeting Act and public comments. Public comments allow the Board to get input as it is making a decision, and they provide the Board additional information they may not have access to. Having this different perspective is an important part of the Board's deliberations.

The public cannot be disruptive and using offensive language is not permitted. Restrictions on time for comment are reasonable. Unlimited amounts of public comment can impact the ability of the Board to function effectively. In Counsel's experience, limits of 2-5 minutes have been common. It is also reasonable to restrict comments if members of the public are repeating previously made points.

The Open Meeting Act does not require the Board to engage in a back-and-forth with the public nor does it obligate the Board to answer questions from the public or provide legal advice or analysis on any given issue. A Board can answer questions from the public during public comment, but it is not required to.



EO Bodea noted that this item was placed on the agenda to inform the public and the Board about its roles. In the last few meetings there have been comments suggesting that questions don't or won't get answered, and this was an opportunity to review the relevant laws and regulations.

Public Comment – First commenter asked about a possible forum for a back and forth with the Board and stakeholders.

EO Bodea noted that the public and stakeholders can address questions to the staff. Staff cannot give legal advice but can point out relevant laws and regulations. Staff are prepared to address questions and direct them to the proper personnel as needed.

22. Presentation on CEU Requirements for Acupuncture Board and other Healing Arts Boards in the Department of Consumer Affairs

Brothers outlined the memo prepared for the meeting materials that compares continuing education requirements of seven healing arts boards and the Acupuncture Board. Boards compared with the Acupuncture Board are: Chiropractic Examiners, Medical Board, Osteopathic Medical Board, Naturopathic Medicine Committee, Physical Therapy Board, Physician Assistant Board, and the Board of Registered Nursing.

The review covered the continuing education requirements with an eye to highlighting areas of agreement and difference with the requirements in acupuncture and also addressed differences in license type. More details are available in the full briefing as part of the meeting materials.

President Matecki asked if some continuing education courses from the Medical Board be used to meet Acupuncture requirements? Bodea noted that the Board could look at accepting credits approved by other Boards. Herdt noted they could be used now if the course provider applies for approval through the Acupuncture Board. Bodea noted that this has been done, having providers for other Boards applying through Acupuncture through approval. But that is different from the Board simply accepting credits approved by another board. Brothers noted that Chiropractic Examiners and Board of Registered Nursing allow licensees to take some courses approved by other boards.

President Matecki stated that if the Board wanted to examine this possibility, it could start at the Committee level. EO Bodea stated his hesitation to allow a wide acceptance of units from other Boards would be a complication from a regulatory



perspective (handling complaints about CE providers or courses approved by other boards).

EO Bodea will direct staff to do further research, noting that some Boards do allow CEs for attending Board meetings. This work on CE requirements is part of the Board's Strategic Plan. Bodea notes that other Board use different terminology when discussing distance education and similar courses. Believes it would be beneficial to clarify our language and bring it in line with language used by other Boards.

President Matecki would like the Board to explore in more detail requirements for in person versus distance learning.

Public Comment – First commenter with CalATMA. Echoed support of reciprocal CEUs with other boards. Five hours too small, feels full 25 hours should be available for using other boards CEs. Suggests that NCCAOM approved courses should be fast-tracked for CE approval with the Board. Would like the Board to consider waiving CE requirements for initial license period. Time required for approving courses that have no significant changes to be reduced to 30 days from current 45.

Second commenter – Believed the pedagogy more important than delivery method. Would encourage a case by case consideration about distance versus in person. Some things that might seem better suited to in person really are fine or preferably in a distance delivery. Commenter is concerned about overmedicalizing offerings, wants to prioritize TCM, herbs, etc.

Third commenter – with Five Branches University. Noted that with good teachers and large crowds, schools do use cameras to provide close-up opportunities. So technique can be shown through distance education.

23. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, CCR §§ 1399.411, 1399.413, 1399.414, 1399.416, 1399.416.1, 1399.416.2, 1399.417, 1399.419; Application Process, Criteria, and procedures for Approval of a Credential Evaluation Service

Bodea indicated that action on this item has been tabled to a future date, most likely the August 2021 Board meeting.

24. Election of Board Officers

President Matecki thanked Board Vice President, Kitman Chan, the Board members, DCA staff, the Governor's office, and EO Bodea for their support during their service as



President the past four years. They will not be running again or seek office of Vice-President. President Matecki nominated Member Harabedian to serve as President. Harabedian accepted, noting that President Matecki deserves a break, and is willing to serve as President through the sunset review process.

EO Bodea asked for additional nominations. None were offered.

Public Comment – The first commenter thanked Dr. Matecki and expressed support for Member Harabedian's nomination. Pleased with how the Board has worked to protect the public under President Matecki's tenure.

The second commenter also thanked Dr. Matecki and the Board. Confident in the future of the Board.

EO Bodea asked for a second. Member Osorio seconds.

MOTION

President Matecki moved that Member Harabedian be elected President of the California Acupuncture Board, effective the end of the June 2021 Board meeting.

Member Osorio seconded

Vote

Yes: Matecki, Chan, Chen, Harabedian Kim, Li, Osorio

7-0 Harabedian elected

Member Chan nominated Member Osorio to the position of Vice President. Member Harabedian seconded.

Public Comment – Sole commenter expressed strong support for Member Osorio's nomination.

MOTION

Member Chan moved that Member Osorio be elected Vice President of the California Acupuncture Board, effective the end of the June 2021 Board meeting.

Member Harabedian seconded

Vote

Yes: Matecki, Chan, Chen, Harabedian Kim, Li, Osorio

7-0 Osorio elected



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25. Future Agenda Items

Dr. Matecki wanted the Board to continue its discussion about Continuing Education. There was no public comment on this item.

26. Adjournment of Day Two

President Matecki adjourned the meeting at 11:09 a.m.

