



Approved June 20, 2008
ACUPUNCTURE BOARD
MEETING MINUTES

LAX Crowne Plaza
Los Angeles, CA

FULL BOARD MEETING
Tuesday, March 11, 2008

Members Present

Adam Burke., L.Ac., Chair
Kenny Cherng, L.Ac., Vice Chair
Robert Brewer, Public Member
Cary Nosler, Public Member
Larry Yee, Public Member

Staff Present

Janelle Wedge, Executive Officer
LaVonne Powell, Legal Counsel
Mary Howard, Administrative Coordinator
Cathy Hardin, Education Coordinator
Christie Loftin, Examination Coordinator
Kristine Brothers, Enforcement Coordinator
Benjamin Bodea, Administrative Technician

Guest List on File

1. Call to Order – Adam Burke, Chair

Board Chair Adam Burke called the Acupuncture Board meeting to order at approximately 13:45. Roll was taken and all members were present establishing a quorum.

2. Chair Report – Adam Burke

Board Chair Adam Burke had the following announcement: 1) The Board is in the process of recruiting a consumer (Public) member and a professional member and that progress is being made with a good selection of candidates.

3. Executive Officer's Report – Janelle Wedge

Executive Officer Janelle Wedge had the following announcements: 1) Introductions of the Acupuncture Board's new staff. Our new Education Coordinator is Cathy Hardin. Our new Enforcement Coordinator is Kristine Brothers and our new Administrative Technician is Benjamin Bodea. 2) Presented brochures depicting the planning stages of the DCA's proposed week long centralized Board Meetings wherein all the DCA Boards and Agencies meet in the same location.

Robert Brewer asked, "What is the effect of the ongoing budget crisis on the Acupuncture Board?" Janelle Wedge responded that the Board is not affected at the moment since we are solely special funded. Mary responded that she has not heard of any budget cuts as of yet.

4. Approval of Meeting Minutes

a. November 2, 2007

The minutes of November 2, 2007 were reviewed by the board.

CARRY NOSLER MOVED AND LARRY YEE SECONDED THE MOTION TO APPROVE THE NOVEMBER 2, 2007 MEETING MINUTES. MOTION CARRIES UNANIMOUSLY

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

a. Haleh Alizad

Janelle Wedge reported that Haleh Alizad has petitioned the Board to obtain a new license without the requirement to take the test. Her license was originally issued in 1993. She last paid for renewal in July of 2002 which carried her through the end of 2004. Her license was subsequently canceled, effective July 31st 2007 for failure to renew within a three year period. During that time frame, she moved to Iran to take care of family. When she returned she discovered that we never received the 2005 payment. She has included a lot of information to the board to show that while she was in Iran she was still involved in Acupuncture. She has submitted CE certificates from an association she was active with in Iran.

Ms. Alizad was not present at the meeting. Ms. Alizad had spoken to Mary Howard informing her that she was not sure if she could make it to the meeting.

Adam Burke asked if anyone has scrutinized her CE certificates and if there “units” are equivalent to ours. Janelle Wedge responded that she did not but that she saw CE certificates for when Ms. Alizad had returned to the states. Adam Burke noted that petitioner had continued practicing acupuncture in Iran on Diplomats and foreign workers.

b. Bill Sweeney

Janelle Wedge reported that she had received a call from Bill Sweeney and he has withdrawn his petition.

CARY NOSLER MOVED AND LARRY YEE SECONDED THE MOTION TO REISSUE TO HALEH ALIZAD AN ACUPUNCTURIST LICENSE WITHOUT HAVING TO TAKE THE CALIFORNIA LICENSING EXAM AGAIN. MOTION CARRIES UNANIMOUSLY.

6. *Administrative Business*

a. Budget Report

Mary Howard provided the Board with the budget expenditures (based on expenditures through January 31st, 2008). The report indicated projections of a 16% surplus at the end of the fiscal year. Mary stated that the Acupuncture Board has no big purchases planned for the rest of the year except for a new phone system to go into the office which has not yet been encumbered. This will cost about five thousand (\$5,000.00) dollars but the overall savings will pay for itself in less than a year from the staff’s understanding.

Larry Yee requested that staff produce the breakdown for the examination costs for the board members (from the Office of Exam resources as well as CPS (Examination contractor))

A public member asked if the money that Gov. Schwarzenegger borrowed from the Board Surplus a few years ago was returned. Janelle responded that it has been returned.

b. Legislative Update

Mary reported on the following bills:

AB 54 – there was just a meeting on this last week that added a technical or non-substantive change. It is still working its way through Legislature.

AB 865 – Live Customer Service Agents – As of last week it’s still not scheduled for a hearing

AB 2746 – Resurrection of Private Post-Secondary Agency – Introduced February 2008. No hearing yet.

SB 823 – Private Post-Secondary Education Act – No activity since August

SB 840 – California Health Care System – No activity since July of 2007

SB 963 – Regulatory Boards – Creating the Office of the Consumer Advocate – Still no activity yet.

SB 1157 –Spot bill just introduced and is only going to make very technical non-substantive changes.

c. Legislative Proposals (B&P Code)

Janelle Wedge reported that the staff had drafted proposed language for several proposals the Board had agreed to move forward with at previous meetings. Several legislators were contacted but all were overloaded. At the moment there is no room to introduce bills. The department has assured Janelle Wedge that there is still a possibility for these bills to get introduced this year. 4933 was submitted to lower the quorum requirements from five to four for the Acupuncture Board. This was going to be part of the departments Omnibus Bill but the senate Business and Professions Committee had a few problems and new language is currently being drafted.

Adam Burke inquired about the language of 4935. He asked about why the change from misdemeanor to felony. LaVonne Powell responded that the charge would be either a misdemeanor or felony so as to give leeway in some violation situations, especially unlicensed practices where there was patient harm. Currently, we can issue citations. She states that most healing arts boards are trying to have the charges be a “wobbler” (either/or) so as to give some consideration to the deputy district attorney since very few of them are willing to take the case if the charges are only misdemeanors.

Ted Priebe, chairman of the Education Committee of the National Guild of Acupuncture and Oriental Medicine voiced the organization’s desire the Board approve the motion to withdraw the proposal (4939) and reconsider language.

Neil Miller asks if the Acupuncture Board can release press releases or news (in a “news” section on the CAB website) may be made available to the public

7. Education Business

a. Status of School Site Visits

Cathy Hardin reported that CAB scheduled a site visit with St. Luke University for April 16th, 2008. She is currently going through the applications pending at the moment. There are plans for a trip visit Piedmont University in May or June. CAB is still waiting for a response from Nobel University. Robert Brewer asked if CAB has a completed application on file from Nobel University. Cathy responded that we do but they have not submitted anything new or contacted us since July of 2007. Cathy also reported that the applications for Kingston and California Union must still be reviewed.

b. Proposed Language from Jack Miller, Pacific College of Oriental Medicine

Regarding Amendments to CCR section 1399.434(h) – Clinical Training

Tom presented the issue on Jack’s behalf. The language was worked on so as to reflect changes to the use of the word ‘ownership’ as pertaining to schools and clinics. The restriction of twenty-five percent of the total clinic hours restricted Pacific College’s ability to get the clinic up and running in their partnership with Children’s Hospital. Jack Miller also had looked at the reworked language and after review had no other changes to make.

Adam Burke had two things to say: 1) The use of the word ‘oriental’ and ‘traditional Chinese’ medicine does not adequately relate these health disciplines. ‘Asian’ may be a better word but that doesn’t encapsulate the Ayurvedic movement that is growing in the US. He suggests the term ‘East Asian’ be used. 2) the last paragraph of the first page was stricken deleting any description of oversight. Tom Haines replies that it’s hard to physically supervise four people in four separate rooms, so the language Adam Burke spoke of was added to the last sentence of the preceding paragraph, “Students shall consult with the clinic supervisor before and after treatment.” Bill Mosca urged that before the board takes action on supervised vs. non-supervised clinical hours that we allow enough time for further analysis. He added that he would like to see an addition to the four criteria listed for clinical experience that requires clinical facilities be substantially equivalent. Lastly for criteria four, he suggests that it reference the code rather than duplicating code. As changes are made to the scope of practice within code they would just roll over into the regulation as well. Benjamin Dierauf added that what really needs to be looked at is the 25% cap on the hours being done outside of the school owned facility. Perhaps making a change such that 25% can be done in other clinics and an additional

25% could be done in hospitals. Kuk Yul Choi stated that in regards to the use of English language, he strongly encourages English be used but that we should not be so ready to let go of dialogue in other languages seeing as how we only stand to lose a great pool of knowledge. Hugh Morison also asked that after twenty years, what has happened that the system has not worked to put us and provided the opportunities for licensees to participate in mainstream medicine. He attributed this to the reluctance of many acupuncture practitioners to follow the physiological model of medicine. Hugh also asked the Board to provide the educational oversight so that the average graduate can work in the medical mainstream.

c. Discussion Regarding English Language Competency Requirement

Janelle reported on her research into the English Discussion. It has been brought to her attention that a majority of the health care related fields require that the applicants be able to show they are fluent in the English Language. At this point she is inquiring about which direction the Board wanted to move in. In her research she ran across, in the US code under Public Laws, certification requirements for foreign health care workers. Legal Counsel, LaVonne Powell, pointed out that this primarily dealt with H2 visas as applied to the Nursing shortage. Thus when nurses, already licensed in their respective countries, come to the US to fill in the shortage they must pass the TOEFL examination and then become licensed in California. Janelle reported that, ‘any alien that seeks to enter the US with the purpose of performing labor as a healthcare worker shall present to the Consular Office a Certificate from an equivalent independent credentialing organization approved by the Attorney General, that the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services.’ Janelle advised that this might be a good direction for the Board to lean towards. Kenny Cherng said that he was aware that all schools right now have the requirement that before students get into training they need to have a TOEFL score of 450 or so. Janelle Wedge responded saying that she is aware of the schools accredited by ACAOM have that requirement. For those that have completed the program in another language, a TOEFL score of at least 450 must be obtained and a mean score on the TSE and then it states, “the applicants who do not satisfy this requirement may be considered for admission with English as a Second Language but must satisfy the proficiency requirement in English before clinical experience.” These are the ACOM requirements right now. Adam Burke commented that every health profession in the United States has English language proficiency. He continued saying that having language barriers prevents access to the integrated healthcare system and that’s where one is really closing the door on these types of healthcare. This is one of those issues that we are out of step with the majority of healthcare professions in the US. It seems like an important thing for us too, as a Board. Cary Nosler agreed. He said, ‘We pay homage to the traditional roots of the discipline; to acknowledge and respect it. At the same time, we’re talking about some of the issues of having acupuncturists in hospitals. It’s not just physiology, as Hugh said; there is also a language concern. The maturation of acupuncture as an accepted legitimate medical alternative will depend on having access to a wider group of the public because of the language acceptance. I think it would certainly help the board in terms of duties that we have to focus on this. For example making sure the questions on our standardized tests have the same meaning in all three languages. This way we can guarantee our results in terms of compliance with the people that are taking the test.’

Steven Stumpf states that there is relevant information that it is the acupuncture profession that consistently avoids integrative practice. Most recently this would be evidenced by turning away from the first doctorate professional program by ACAOM. David Karaba pointed out that this brings up the issue of whether ACAOM is really proficient in being a gatekeeper for a certain level of competency. Hugh Morison indicated that a TOEFL score of 450 does not mean that one is fluent in reading, writing and speaking English. Janelle commented on Hugh’s comment saying that, ‘the Board never stated that it was adopting ACAOM standards. We were looking at putting the language requirement for licensing. This would be the Boards requirement without using ACAOM standards.’

Bill Mosca stated that an English requirement might slow the flow of information from Asia into the US. On the other side, Bill continued, the ability to communicate with first responders, in emergency situations, is crucial. He also pointed out that students still have a couple of avenues beyond the ACAOM accredited institutions that would allow people into the profession, namely CA’s tutorial

program and the Foreign Equivalency, neither of which have an English Proficiency requirement. Neal Miller stresses that this issue needs further discussion.

CARRY NOSLER MOTIONS AND KENNY CHERNG SECONDS TO CONTINUE ENGLISH PROFICIENCY DISCUSSION AND MAKE IT A RESEARCH TOPIC. THE MOTION PASSES UNANIMOUSLY.

8. Examination Business

a. February 13, 2008 Licensing Examination

Christie Loftin reported that on February 13, 2008 we had the CA Licensing Exam. We had 501 candidates that showed up and took the test; 317 took it English, 87 took it in Chinese and 97 took it in Korean. The pass rates for English test takers was 50%, for Chinese test takers 52% and for Korean test takers 65%. A printout of the school-by-school breakdown was handed out.

Tom Haines commented that with a little more work on the statistics we could easily work out the figures for first time test takers versus re-takers. Adam Burke asked if the Board staff are working on this. Janelle Wedge responded that the staff is working on this and that she and Tom are going to have further discussion. The most recent statistics show the number of test attempts taken by that specific individual. Further work will show other sought after values. Adam Burke asked if the breakdown by topical areas will also occur. Robert Brewer strongly supported getting this data to better help schools fine tune the curriculum while at the same time helping the Board understand where the deficiencies are. Adam Burke stated that this would just make for better pedagogy. Steven Stumpf asked if the Board reports reliability for the exam. Janelle stated that reliability is done for the exam and though the figures aren't with her today, they will be at the next Board Meeting. Steven Stumpf asked if we're talking about a domain analysis. Adam Burke responded, "basically scores by area to help the teaching process get better feedback. Christie Loftin pointed out that each student gets the topical breakdown but nobody else gets to see that.

b. Occupational Analysis (OA)

1. Pilot Survey

Janelle Wedge introduced a copy of the pilot survey that was mailed to thirty acupuncturists, ones involved in working on the development of the survey. The survey is now ready to be mailed out en masse. The Board anticipates mailing four thousand surveys. Two thousand will be mailed to those with licenses five years or younger and the other two thousand for those who've had their license for over five years. It's a random selection but the process of selecting the recipients is referred to stratified random sampling, whereby they choose a certain amount of recipients by zip code. It's anticipated that the surveys will be mailed out in the next 30 days. Adam Burke pointed out that stratified random sampling increases the probability of getting good ethnic representation and income distribution. He said that it was a great survey and asked if there was a procedure for non-responders and for following up. Janelle responded that she had not asked but will.

Tom Haines brought up the issue of including income in the Survey. This is because the Federal Board of Statistics does not recognize Acupuncture. What NCCAOM is trying to do is gather the information necessary to qualify it as a profession. LaVonne responded that for an OA she doesn't understand the need to ask about income. She referred the Board to the two work studies carried out by the Registered Nursing Board and the Respiratory Care Board. Adam said that he will look at those before speaking to the NCCAOM committee.

**2. National Guild of Acupuncture and Oriental Medicine Letter of October 30, 2007
Regarding Occupational Analysis**

Hugh Morison addressed the Board stating that the National Guild has some strong thoughts about the OA. He proceeded to address his organization's thoughts of the first OA. To sum up, the National Guild believes the previous occupational analysis had many references to unsubstantiated, unscientific concepts of Chinese Medicine, many of which are belief systems and not facts, which are inconsistent with California Laws and Regulations. Hugh re-asserted that the regulations call for evidence based medicine and that the OA would be a far better instrument if it followed the intent of the statutes; primary care within scope, physiologically-

based medicine. He also addressed the Board's extensive use of pinion terms, stating that they are meant to help English speakers pronounce Chinese characters and are supposed to have the character right next to the term but rarely does this happen. He then stressed that nobody knows what an acupuncturist really makes or how many are in full time practice, part-time or not at all. Hugh also stated that reforming the OA will also help the CALE in that it would prepare new students for real world practice standards. Newly licensed acupuncturists should not have to struggle for four years before the medical system accepts them. Hugh requested, on behalf of the Guild, that the Board adopt a motion to recognize that acupuncture and Asian (Chinese) Medicine is consistent with current physiological and anatomical models of medicine. The pursuit of evidence through peer-reviewed journals and texts in the National Library of Medicine and equivalent organizations will become the standard by which the board will set its criteria to conduct educational oversight of our schools and educational programs.

Robert Brewer pointed out that being a lay person and as such a public member of the Board, he doesn't have the scientific background that acupuncturists do. However, being a consumer of acupuncture, it is precisely because it's larger in scope than western medicine and offers modalities of treatment and diagnosis that are not quite so apprehensible to the strictly reductionist western model of thought. He asserted that, "it is important that we be that bridge because we have to grow the rest of the world's view and as such I don't want to see us limiting ourselves. Adam Burke pointed out that the WHO does not define western biomedicine as the only viable form of medicine on this world and that's exactly what it sounds like Hugh is calling acupuncture. He further stated that he is, "in full support and encourages the Acupuncture profession to find ways to have access to institutional jobs in the US. The schools, the Board, the organizations, the practitioners and the students are all involved in that and though people are doing a good job, there is still a lot of work to be done. Therefore, to be critical of the profession, at this point, when it's really stepping forward into the field is to be, I think, unduly demanding. Your points are well taken and I think they are important for the field to be reflective and thoughtful of what it is doing but this current task analysis reflects the current medicine. I think it is quite reflective and very thoughtful and very comprehensive in terms of traditional Chinese medicine, which is what people are being trained to do in the schools. As Robert Brewer very astutely points out, to turn this medicine in to the sleeve of biomedicine is to ruin this medicine. To integrate western concepts into this medicine will make this medicine more comprehensive and brilliant but we don't want to strip the legacy of thousands of years have built and given us which will make American Medicine more pluralistic, more rich, provide opportunities to clients who are in need of care who are not being remediated by western treatments." Cary Nosler stated that, "as a person who is involved in transmission of that information to the public via interviews he is aware of the need of evidence-based medicine. The lag-time associated now with the kind of research that we would hope the "alternative" area would have, would be because of some of the very restrictions that the mainstream medical community has put on this type of knowledge and suppression in some cases of the competing healing alternatives. I acknowledge the shortcomings but I don't want acupuncture to be just an auxiliary arm and you mentioned healthcare practitioners, not just nurse practitioners but physician assistants as well. The reason they're so integrated is because they are a part of mainstream allopathic medicine and they are covered by insurance and it is part of their way of offsetting costs of the HMO and PPOs. So it's not just that they are more accepted, it's just part of the economic structure of medicine and how it's operated. I wouldn't want to strip acupuncture down and offer just a soft version of allopathic healthcare." Adam Burke reiterated Cary's point stating that, "the limitation of access is not a function of our limited education. There are tremendous cultural barriers within Biomedicine that prevent the doors from opening period. You, Hugh, have been a real leader in this area, which I have to applaud, of making an effort to do the outreach to biomedical institutions and getting those doors open. That's pioneering and we need more of that."

Ted Priebe, from the National Guild, addressed the Board stating that he is the only acupuncturist appointed to the Medical Unit for the Division of Workers Compensation on the Evidence Evaluation Advisory Committee. His committee has spent the last four years adopting criteria to evaluate research and we do have a document that went into effect in June

of 2007 which covers 11 areas of how to evaluate research documentation. The Biomedical model by our committee has been replaced with the Biopsychosocial model, which is the original model of Chinese medicine. Hence, he disagrees with the statement that we are going down the road of allopathic medicine. He feels that acupuncturist's limiting factor is their education. In regards to the OA, he stated that acupuncturists' have a responsibility to uphold the standards of Primary care and it should be reflected as a core competency in Acupuncturist Education. Adam Burke commented that since the OA is already in the mail, we could focus on working with Schools who have the doctoral programs since they would be doing the highest level of training towards integration. David Karaba of the National Guild stressed that it is important for Acupuncturist's to learn both approaches; Asian Medicine and the Western Allopathic System. He feels that the OA and the Statutes that require a certain degree of proficiency as well as a booklist that is not reflect of that.

Adam Burke asks for a review and consideration of the Booklist for the next meeting.

Ted Priebe added that just because a journal or article is peer-reviewed does not mean it meets the criteria of scientific evidence. Dr. Tam further pointed that there are still differences between TCM and allopathic medicine such that TCM tailors its treatment for each individual through specific herbs and actions; the systems vs. symptoms approach. Jack commended the Board Staff for a great Occupational Analysis. He says he's taken it twice and can see that it is evolving with the profession. He knows it takes time and he hopes to see today's comments incorporated into the next. Tom Haines asked Janelle if she piloted the survey. Janelle responded that it was.

9. Enforcement Business

a. Enforcement Case Report

Janelle Wedge gave a quick overview of the complaints received during the last eight months (July 1st 2007 through February 29th 2008). There have been a total of a hundred and one complaints. There is a breakdown given for each of the different categories. For future Board Meetings, once Kristine is a little more settled, we will give a breakdown of unprofessional conduct and exactly what fits into that category. As of February 29th 2008, there are sixty-seven pending in-house. Thirty-six are with the Division of Investigation. We have nine disciplinary cases pending and 17 probation cases. Neil North applauded the Board and Staff's actions. He had brought up some information about improper advertising and unlicensed practice and things that were less standard. Four of the five places reported have taken down their sign, changed it or gone out of business.

10. Public Comment Period

- a.** Adam Burke opened the floor to any public comments. Hugh Morison asked if anybody has any thoughts on the use of hand-held fluoroscopes by licensed acupuncturists. He wondered if it is legal or in the grey area. Neil Miller joined with Hugh in asking for further discussion on the use of lasers. He asked for a future committee meeting to address in-depth herbs, drug-herb interactions, lasers and to get more information in the interest of protecting the public. Adam asked Janelle to place this on the next agenda:

The use of lasers in acupuncture AND Discussion regarding Herbs and Herb-Drug Interactions.

Robert Brewer recalled that this was brought up a couple of meetings ago and we said we'd look into some white papers. Janelle Wedge responded saying that she is waiting on word from the Food and Drug Branch of the Department of Public Health, who has jurisdiction over new devices. They know our Board is interested. David Karaba asked the Board if they could elucidate the process of Transcript Analysis for out-of-state or out-of-country applicants for the CALE. Adam Burke requested this be addressed at the next meeting

11. Adjournment

The meeting adjourned at 3:42 PM.