

**MINUTES  
DEPARTMENT OF HEALTH  
BOARD OF ACUPUNCTURE  
GENERAL BUSINESS MEETING  
September 17, 2010**

**The Hyatt Regency  
9300 Airport Blvd.,  
Orlando, FL 32827  
(407) 825-1234**

**CALL TO ORDER**

Katherine Teisinger, Chair, called the General Business Meeting to order approximately 9:15 a.m. Those present for all or part of the meeting included the following:

**MEMBERS PRESENT**

Katherine Teisinger, AP, Chair  
Barbara Thurman, AP, Vice Chair  
Melody Clancy, AP, D.O.M.  
Barbara Schwartz, AP  
Min Tian, AP, D.O.M., Ph.D.  
Greg Gunter, Consumer Member  
Barbara Rezmer, Consumer Member

**STAFF PRESENT**

Anthony Jusevitch, Executive Director  
Paula Mask, Program Operations Administrator

**COURT REPORTER**

American Court Reporting  
407.896.1813

**BOARD COUNSEL:**

Lisa Comingore, Esq.

**DEPARTMENT PROSECUTING ATTORNEY:**

Patricia Smith, Assistant General Counsel

*Please note the meeting minutes reflect the actual order agenda items were discussed during the meeting and may differ from the agenda outline.*

**APPROVAL OF NEW EXECUTIVE DIRECTOR**

**Tab 1 Review and Approval of Mr. Anthony Jusevitch, Executive Director**

Ms. Clancy made a motion to accept Mr. Jusevitch as the Executive Director for the Board of Acupuncture. Ms. Schwartz seconded the motion which carried unanimously 7/0.

**REVIEW AND APPROVAL OF MINUTES**

**Tab 2 June 11, 2010 General Business Meeting**

**Action Taken:** Mr. Gunter made a motion to approve the minutes. Ms. Schwartz seconded the motion, which passed unanimously 7/0.

**DISCIPLINARY PROCEEDINGS**

**Settlement Agreement:**

**Tab 3 Yao Wu Lee, A.P. Case # 2005-51357, 2006-38122 PCP: Gunter & Wang**

Respondent was present with his wife, Louisa Lee. Ms. Smith represented the department. Mr. Gunter was recused as he was on probable cause panel. Dr. Gropper was present and represented the Professionals Resource Network (PRN). All were sworn in by court reporter.

The department filed an administrative complaint alleging a violation of sections 457.109(1)(x), 457.109(1)(m), F.S., in case # 2005-51357, and section 456.109(1)(c), F.S., in case # 2006-38122. Ms. Smith stated Mr. Lee had signed a Professionals Resource Network (PRN) contract.

**Action taken:** Ms. Thurman moved to adopt the Settlement Agreement as presented:

- Reprimand
- Pay \$1,000 fine within sixty (60) days from the date of the filed Final Order
- Pay \$6,774 costs within thirty-six (36) months from the date of the filed Final Order
- PRN evaluation
- 3 years probation effective upon reinstatement of the respondent's license
  - Respondent shall not examine or treat any female patients without another female present in the room
  - Respondent shall comply with PRN

Ms. Rezmer seconded the motion which carried 6/0.

## **PROSECUTOR REPORT**

Informational. No action needed.

*(Agenda moved out of order)*

## **REPORTS**

### **Tab 9**

#### **A. Board Chair Report – Katherine Teisinger**

Ms. Teisinger advised she did not have a letter advising compound pharmacies on the purchasing ability of an acupuncturist certified in injection therapy.

A lengthy discussion was held and the board stated acupuncturist can provide law and rules to suppliers and acupuncturists also may change supplier.

The addendum to the agenda included an e-mail entitled Administrative Notice and Caveat or in the Alternative a Request for Rulemaking to set a formulary of injectables. No action was taken.

## **ADMINISTRATIVE PROCEEDINGS**

### **Examination:**

#### **Tab 4 Richard Greene – Continued from December meeting**

Mr. Green indicated via email he would not be able to attend the September 17, 2010 meeting. He submitted a current transcript indicating he is currently enrolled in school and in the process of completing the required 450 hours in herbal study.

**Action Taken:** Mr. Gunter made a motion to table the application as Mr. Greene has not completed the required program at this time. Ms. Thurman seconded the motion which carried unanimously 7/0.

**Tab 5      Natalie Doliner – continued from March Meeting (addendum – original application)**

Ms. Doliner was present and sworn in by the court reporter. Ms. Doliner submitted a new application with fees and an updated transcript showing additional hours completed. The board reviewed the transcript verifying completion of 60 college credits from an accredited postsecondary institution.

**Action Taken:** After discussion, Ms. Clancy made a motion to approve for licensure. Ms. Schwartz seconded the motion which passed 6/0. Ms. Rezmer was out of the room for vote.

The board requested Mr. Jusevitch to send a letter to the Florida College of Integrative Medicine, Attn: Lynn Thames, AP, MA, Dean of Oriental Medicine, explaining the situation with Ms. Doliner's education and being accepted into their program without the required 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment.

**Tab 6      Natalie Vause**

Ms. Vause was present and sworn in by court reporter. Ms. Vause applied June 22, 2010 and graduated from the Florida College of Integrative Medicine on June 19, 2010. Application was reviewed by board regarding the required 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment.

Since she did not have the required 60 college credits as defined by law and rule, Ms. Vause requested to be allowed to withdraw her application.

**Action Taken:** Mr. Gunter made a motion to allow withdrawal of her application. Ms. Clancy seconded which passed 7/0.

**Petition for a Declaratory Statement:**

**Tab 7      Matthew Enright, AP 1711 Re: Offering Acupuncture Services Virtually**

Petitioner was not present nor represented by counsel. Mr. Enright submitted a letter on September 13, 2010 advising he was unable to attend due to a prior commitment.

Mr. Enright petitioned the board to be allowed to recommend herbal therapies and homeopathic remedies via online consultation.

**Action Taken:** After discussion, Mr. Gunter made a motion to deny the petition as it is the board's responsibility to protect the health, safety and welfare of the public. Motion was seconded and passed 7/0.

**INFORMATIONAL**

**Tab 8      PRN Monthly report for April 2010**

Information only.

**GENERAL BUSINESS/CORRESPONDENCE**

## REPORTS

### Tab 9

#### **B. Board Counsel Report**

##### Rules Report

#### **64B1-4.0011 Documentation Necessary for Licensure Application - effective 8/5/10**

**64B1-4.012 Acupoint Injection Therapies** - Rule development published 9/3/10 and Ms. Comingore will present language at next meeting.

**64B1-8.001 Definitions** - Rule development published 8/7/09 and Ms. Comingore submitted proposed language.

##### **64B1-8.001 Definitions.**

(1) Needles: solid filiform instruments used in the practice of acupuncture. This includes, but is not limited to, dermal needles, plum blossom needles, press needles, prismatic needles and disposable lancets. Pursuant to Chapter 457.1085, F.S., all acupuncture needles that are to be used on a patient must be sterile and disposable, and each needle may be used only once.

(2) Sterilization: ~~the use of procedures which destroy all microbial life, including viruses, thereby creating sterility~~ kills all microbial life, including all bacterial spores, for instruments which enter tissue. ~~In acupuncture this technique is used for all instruments which pierce the skin including, but not limited to, filiform needles and plum blossom needles or those instruments that may come into contact with instruments that pierce the skin including, but not limited to, storage trays, forceps and guide tubes for needles~~ Sterilization is accomplished by subjecting clean items to steam under pressure (autoclaving), or to dry heat.

Specific Rulemaking Authority 457.104, 457.1085 FS. Law Implemented 457.1085 FS. History—New 5-6-87, Amended 12-23-87, 6-7-89, Formerly 21AA-8.001, 61F1-8.001, 59M-8.001, Amended 2-26-01,\_\_\_\_\_.

**Action taken:** Ms. Schwartz made a motion to approve the language. Motion seconded by Dr. Tian and passed 6/1 with Ms. Thurman opposing the motion.

**64B1-8.002 Monitoring Sterilization and Infection Control** - Rule development published 8/7/09 and Ms. Comingore submitted proposed language.

##### **64B1-8.002 Monitoring Sterilization and Infection Control.**

(1) Sterilization of ~~acupuncture needles and other equipment~~ other than acupuncture needles, when the equipment has penetrated tissue or has been exposed to blood, shall be accomplished by proper autoclaving according to the instructions of the manufacturer of the autoclave.

(2)(a) A sterilization indicator shall be used with each autoclaving to monitor the sterilization procedure.

(b) Strips must indicate both exposure to steam and 250° F.

~~(3) Non-sterilized acupuncture needles shall be sterilized prior to use:~~

(4) ~~(3)~~ All sterilized items must be stored and handled in a manner which maintains sterility.

~~(5)~~ ~~(4)~~ Each acupuncture office utilizing autoclave sterilization techniques shall post the sterilization procedures and shall maintain documentation of all autoclave service.

~~(6)~~ ~~(5)~~ It shall be the responsibility of the Acupuncturist to insure that personnel responsible for performing sterilization procedures pursuant to this rule shall be adequately trained.

~~(7)~~ ~~(6)~~ The procedures and equipment used for sterilization must have their efficacy tested periodically. Adequacy of steam under pressure (e.g., autoclave) must have its efficacy verified by appropriate biological monitoring at least once every 40 hours (2400 minutes) of use or at least once every thirty days, whichever comes first.

Specific Rulemaking Authority 457.104, 457.1085 FS. Law Implemented 457.1085 FS. History– New 5-6-87, Amended 12-23-87, 6-7-89, 11-13-89, Formerly 21AA-8.002, 61F1-8.002, Amended 2-22-96, Formerly 59M-8.002, Amended 2-26-01,\_\_\_\_\_.

**Action taken:** Ms. Thurman made a motion to approve the language. Motion seconded by Ms. Clancy and passed 7/0.

**64B1-9.001 Disciplinary guidelines, rule development published 4/9/10, proposed language attached (pages 4-6 in tabbed item)**

**64B1-9.001 Disciplinary Guidelines.**

(1) When the Board finds any person has committed any of the acts set forth in Section 456.072(1) or 457.109(1), F.S., it shall issue a final order imposing appropriate penalties as recommended in the following disciplinary guidelines.

(dd) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program. 456.072(1)(ii), F.S. The usual recommended penalty for the first offense shall be revocation and a fine of \$10,000, or in the case of application for licensure, denial of licence.

(ee) Failing to remit the sum owed to the State for an overpayment from the Medicaid Program pursuant to a final order, judgment, or Stipulation or settlement. 456.072(1)(jj), F.S. The usual recommended penalty shall be

|                       |  |   |
|-----------------------|--|---|
| <u>First Offense</u>  | <u>Letter of concern and a fine of \$500</u> | <u>Probation and a fine of \$2,500.</u>           |
| <u>Second Offense</u> | <u>Reprimand and a fine of \$2,500</u>       | <u>Reprimand, probation and a fine of \$5,000</u> |
| <u>Third Offense</u>  | <u>Suspension and a fine of \$5,000</u>      | <u>Revocation and a fine of \$5,000</u>           |

(ff) Being terminated from the state Medicaid Program pursuant to s. 409.913, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored. 456.072(1)(kk), F.S.

|                       |  |   |
|-----------------------|--|---|
| <u>First Offense</u>  | <u>Letter of concern and a fine of \$1,000</u> | <u>Probation and a fine of \$1,000</u>    |
| <u>Second Offense</u> | <u>Probation and a fine of \$1,000</u>         | <u>Suspension and a fine of \$5,000</u>   |
| <u>Third Offense</u>  | <u>Suspension and a fine of \$5,000</u>        | <u>Revocation and a fine of \$10,000.</u> |

(gg) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which related to health care fraud. 456.072(1)(ll), F.S. The usual recommended penalty shall be revocation and a fine of \$10,000, or in the case of application for licensure, denial of license.

**The board reviewed and made the following changes:**

(ee) Failing to remit the sum owed to the State for an overpayment from the Medicaid Program pursuant to a final order, judgment, or Stipulation or settlement. 456.072(1)(jj), F.S. The usual recommended penalty shall be Reprimand and a fine of \$2,500 up to Revocation and a fine of \$5,000

(ff) Being terminated from the state Medicaid Program pursuant to s. 409.913, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the

practitioner was terminated has been restored. 456.072(1)(kk), F.S. The usual recommended penalty shall be Probation and a fine of \$1,000 up to Revocation and a fine of \$10,000.

Action taken: Ms. Rezmer made a motion to approve the rule with amendments to (ee) and (ff). The motion included a request to Ms. Comingore to notice the rule to remove the word "needles" in 9.001(1)(w).

Motion seconded by Ms. Clancy and passed 7/0.

### **C. Board Liaisons**

#### **Application Examination & Endorsement – Barbara Schwartz**

No report.

#### **Budget – Gregory Gunter**

Informational. Mr. Gunter reviewed the Expenditures by Function report for period ending June 30, 2010.

#### **Community Relations and Consumer Protection – Barbara Rezmer**

No report.

#### **Continuing Education – Barbara Thurman, Barbara Schwartz, Min Tian, Melody Clancy**

Ms. Thurman will work with Ms. Comingore regarding the continuing education training guidelines for new board members. The training guidelines were submitted in the addendum materials.

#### **Legislative & Rules – Katherine Teisinger**

No report

#### **Unlicensed Activity – Melody Clancy, Barbara Schwartz**

No report

### **OLD BUSINESS**

None

### **NEW BUSINESS**

#### **Tab 10 Kory Ward-Cook, Ph.D., MT (ASCP), CAE re: Recent Changes to NCCAOM Exams**

Ms. Ward-Cook and Mina Larson updated the Board on the current National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) certification standards and recent changes to the NCCAOM examination.

#### **Tab 11 Proposed 2011 Meeting Dates:**

March 4, 2011

June 3, 2011 – Ms. Schwartz indicated she would not be at the June meeting.

September 16, 2011

December 9, 2011

Mr. Gunter motioned to approve the 2011 meeting dates. Ms. Clancy seconded the motion which passed 7/0.

**Ratification of Licensure:** Motion was made and seconded to ratify the licensure list.

**Ratification of Continuing Education Liaisons:** Motion was made and seconded to ratify the list.

Mr. Robert Booker, AP, DOM, appeared before the board and inquired about facility licenses. The board directed him to the Agency for Health Care Administration.

### **ADJOURNMENT**

The meeting adjourned approximately 3:30 p.m.