

Minutes
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
FLORIDA BOARD OF ACUPUNCTURE
The Sheraton – Ft. Lauderdale Airport
1825 Griffin Road
Dania, Florida 33004
Friday, December 7, 2007 at 9:00 a.m.
(954) 920-3500

Call to Order/Roll Call

Zong Lan Xu, AP, Chair, called the meeting to order at 9:15 a.m.

Members Present:

Zong Lan Xu, AP, Chair
Frank Ervolino, AP, Vice Chair
Gregory Gunter
Katherine Teisinger, AP
Qun Wang, AP
Renee Skuban, AP

Board and Department Staff:

Barbara Edwards, Board Counsel
Pamela King, Executive Director
Ronda L. Bryan, Program Administrator

Prosecuting Attorney

Matthew Casey, Assistant General Counsel
Allison M. Dudley, Assistant General Counsel

Members Absent:

None

Court Reporter:

Official Reporting Service, Inc.
(954) 467-8204

REVIEW OF MINUTES

Tab 1 – September 14, 2007, General Business Meeting

Action Taken: After review of minutes and notation of corrections, Mr. Gunter moved to approve the minutes as corrected. Mr. Ervolino seconded the motion and carried unanimously.

LICENSURE

Tab 2 – Michelle Whittaker

The applicant was present without counsel.

Action Taken: After much discussion, Mr. Gunter moved to grant a CONDITIONAL license, that the applicant be placed on probation concurrent with her criminal probation, with the intent that if she violates the criminal probation her license could be revoked. The motion was seconded by Ms. Teisinger and carried with Mr. Wang opposed.

Tab 3 – Robert J. Herbst

The applicant was present without counsel.

Action Taken: After much discussion, Ms. Teisinger moved to grant licensure. The motion was seconded and carried unanimously.

DISCIPLINE

Determination of Waiver

Tab 4 – Juan J. Martinez, A.P. – case number 2007-03351

The respondent was not present or represented by counsel.

Mr. Casey represented the Department. Mr. Gunter and Mr. Wang were recused due to participation on the probable cause panel.

The complaint against Mr. Martinez was presented to the Board for allegations of violating Section 457.109(1)(s), Florida Statutes (2006).

Ms. Skuban moved to find the respondent in default. The motion was seconded and carried unanimously.

Ms. Xu moved to adopt the Findings of Fact. The motion was seconded by Mr. Ervolino and carried unanimously.

Ms. Skuban moved to adopt the Conclusion of Law. The motion was seconded by Mr. Ervolino and carried unanimously.

Mr. Ervolino moved to adopt the materials into the record. The motion was seconded by Ms. Skuban and carried unanimously.

Action Taken: After discussion, Ms. Teisinger moved to impose the following penalty:

- Letter of Concern
- \$500 fine to be paid in 30 days
- 6 months probations to include compliance with previous final order

The motion was seconded by Ms. Skuban and carried unanimously.

Action Taken: After discussion, Ms. Skuban moved to grant the Departments motion to recoup costs in the case in the amount of \$315.43. The motion was seconded by Ms. Xu and carried unanimously.

Tab 5 – Roberta Certner, A.P. – case number 2007-03347

The respondent was not present or represented by counsel

Mr. Casey represented the Department. Mr. Gunter and Mr. Wang were recused due to participation on the probable cause panel.

The complaint against Ms. Certner was presented to the Board for allegations of violating Section 457.109(1)(s), Florida Statutes (2006).

Ms. Xu moved to find the respondent in default. The motion was seconded by Ms. Teisinger and carried unanimously.

Mr. Ervolino moved to adopt the Findings of Fact. The motion was seconded by Ms. Skuban and carried unanimously.

Mr. Ervolino moved to adopt the Conclusion of Law. The motion was seconded by Ms. Skuban and carried unanimously.

Mr. Ervolino moved to adopt the materials into the record. The motion was seconded by Ms. Skuban and carried unanimously.

Action Taken: After discussion, Ms. Skuban moved to impose the following penalty:

- Letter of Concern
- \$500 fine to be paid in 30 days
- 6 months probations to include compliance with previous final order

The motion was seconded by Ms. Teisinger and carried unanimously.

Action Taken: After discussion, Mr. Ervolino moved to assess cost in the amount of \$430.97. The motion was seconded by Ms. Xu and carried unanimously.

Recommended Order

Tab 6 – Elham Kharabi, A.P. – case number 2004-27932

Ms. Edwards provided direction to the Board on the procedure for acting on a Recommended Order case.

Ms. Dudley represented the Department. Mr. Gunter and Mr. Wang were recused due to participation on the probable cause panel.

The complaint against Mr. Kharabi was presented to the Board for allegations of violating Section 457.109(1)(j), Florida Statutes (2004).

The respondent was present and represented by Louise R. Caro, Esq.

Respondent's Exceptions:

Ms. Edwards reviewed each of the exceptions with the board. The board made a determination that several of the exceptions did not meet legal requirements that necessitated a response.

Action Taken: After much discussion, Mr. Ervolino moved to decline to hear the respondent's exceptions 1-9, and 13-15 based on exceptions not meeting the requirements

provided in Section 120(1)(k), Florida Statutes. The motion was seconded by Ms. Teisinger and carried unanimously.

Exception 10: After much discussion, Ms. Teisinger moved to deny exception 10 based upon the finding of competent and substantial evidence. The motion was seconded by Ms. Skuban and carried unanimously.

Exception 11: After much discussion, Mr. Ervolino moved to deny exception 11 based upon the finding of competent and substantial evidence. The motion was seconded by Ms. Skuban and carried unanimously.

Exception 12: After much discussion, Ms. Teisinger moved to deny exception 12 based upon the finding of competent and substantial evidence. The motion was seconded by Mr. Ervolino and carried unanimously.

Exception 16: After much discussion, Ms. Teisinger moved to deny exception 16 based upon the finding of competent and substantial evidence. The motion was seconded by Ms. Skuban and carried unanimously.

Action Taken: After presentation by both parties and further discussion, Mr. Ervolino moved to adopt the Findings of Fact. The motion was seconded by Ms. Skuban and carried unanimously.

Action Taken: After additional discussion, Ms. Xu moved to adopt the Conclusions of Law. The motion was seconded by Mr. Ervolino and carried unanimously.

Action Taken: After much discussion, Ms. Teisinger moved to adopt the Administrative Law Judges recommended penalty of:

- Reprimand
- \$1000 fine in 9 months
- Suspension of Licensure for 6 months
- Probation for 2 years – to include PRN evaluation and compliance with recommendations within 30 days

The motion was seconded by Mr. Ervolino and carried unanimously.

Motion for Costs: After much discussion, Ms. Teisinger moved to impose costs in the amount of 23,902.78 to be paid within 5 years. The motion was seconded by Ms. Skuban and carried unanimously.

Prosecutor's Report

Mr. Casey provided an overview of the cases that handled to date in 2007. He noted that there were currently 23 cases open in various stages of prosecution.

Lunch Break 12:30 p.m. – 1:15 p.m.

CORRESPONDENCE

Tab 7 – Correspondence from Machele Perkins re: Herbal Injection

After much discussion, the consensus of the board was that no reply was necessary.

REPORTS

A. Chair Report – Zong Lan Xu

No Report

B. Board Counsel Report – Barbara Edwards

Ms. Edwards provided an update on the status of the following rules:

64B1-3.004 – Acupuncture Examination

Action Taken: After discussion, a motion was made by Ms. Skudan to approve the following language:

The Board currently approved as the Florida examination for licensure the NCCAOM examination, consisting of the Foundations of Oriental Medicine Module and the Acupuncture with Point Location Module.

The motion was seconded by Mr. Wang and carried unanimously.

64B1-4.001 – Acupuncture Program Requirements

Action Taken: After discussion, it was the consensus of the Board to hold a Rules Workshop.

64B1-6.005 - Standards for Approval of Continuing Education Credit

The Board received a request for a Rule Workshop.

Action Taken: After discussion, it was the consensus of the Board to hold a minimum of three Rule Workshops. Two of the Rule Workshops will be held by conference call and one face-to-face to be held at the next scheduled meeting.

64B1-7.0015 – Continuing Education Requirements

Action Taken: After discussion, it was the consensus of the Board to move forward with the language. Please see attachment A.

C. Board Director Report – Pamela King

Tab 9 – Topics

Ms. King provided an overview of the current pending issues. Ms. Teisinger requested that staff add to the pending list a mailing to licensees about sexual misconduct.

NEW BUSINESS

No Tab - Licensure Application

Ms. Bryan provided an overview of staff recommendations to the licensure application that would streamline the licensure process. The recommendations are as follows:

- 1) Page 2, Update the fee calendar years to reflect new licensure biennium
- 2) Page 2, Add Cashier check
- 3) Page 5, List licensure qualifying methods
- 4) Page 5, Add the option to receive correspondence by e-mail

Action Taken: After discussion, Mr. Ervolino moved to approve the changes to the licensure application. The motion was seconded by Mr. Gunter and carried unanimously.

Board Liaison Reports

Continuing Education Liaison – Ms. Skuban noted that the review of continuing education courses was going smoothly. She indicated that there was a small backlog, but that would be resolved in the near future.

Unlicensed Activity Liaison – Mr. Ervolino indicated that there were still a large number of individuals performing laser acupuncture.

Budget Liaison – Mr. Gunter noted that there was documentation provided regarding the budget in the materials under Tab 9.

Adjournment:

There being no further business the Board adjourned at 2:50 p.m.

Attachment A

64B1-7.0015 Continuing Education Requirement.

(1) As a condition of the biennial renewal of a license, each licensee shall complete a minimum of 20 credit hours per biennium of continuing education that meets the requirements of Chapter 457, F.S. Effective March 1, 2002, as a condition of the biennial renewal of a license, each licensee shall complete a minimum of 30 credit hours per biennium of continuing education that meets the requirements of Section 457.107, F.S. Pursuant to Section 456.033(2), F.S., each licensee shall submit confirmation of having completed a 3-hour HIV/AIDS course when submitting fees for the initial biennial renewal. Each biennium, the licensee shall complete a program awarding at least 5 hours of continuing education credit in Biomedical Clinical Competencies Programs as set forth in Rule 64B1-6.005, F.A.C. concerning the use of laboratory test findings. ~~Each biennium, the licensee shall complete a program awarding at least 3 hours of continuing education credit concerning the use of imaging findings.~~ Each biennium, the licensee shall complete a program on Chapters 456 and 457, F.S., and Rule Chapter 64B1, F.A.C., consisting of at least 2 hours of study.

(2) As a condition of initial licensure or renewal of license, each licensee shall complete a 2-hour course relating to the prevention of medical errors. The 2-hour course shall count toward the total number of continuing education hours required for the profession. The course shall be approved by the Board and include a study of root-cause analysis, error reduction and prevention, and patient safety.

(3) For the first renewal period after initial licensure, the licensee is exempt from the continuing education requirements of Rule 64B1-7.0015, F.A.C., except for the continuing education hours mandated for medical errors and the 3-hour HIV/AIDS course.

(4) Credit hours are not retroactive or cumulative. All credit hours must be earned within the biennium for which they are claimed.

(5) Continuing education credit up to a maximum of two hours will be awarded for each hour of attendance at a Board meeting at which another licensee is disciplined pursuant to Section 456.013(6), F.S. Only one credit hour will be granted for each hour of attendance.

(6) The Board and/or the Department will audit a number of licensees who are selected at random as is necessary to assure that the continuing education requirements are met. Each licensee shall retain such receipts, vouchers or certificates as may be necessary to document completion of the continuing education requirements for a period of 2 years following the biennium for which they are applied. Failure to document compliance with the continuing education requirements, or furnishing false or misleading information regarding compliance shall be grounds for disciplinary action under Rule 64B1-9.001, F.A.C.

~~(7) Other provisions of a rule of the Board notwithstanding, effective for the biennium beginning March 1, 2004, and ending February 28, 2006, all non-statutory continuing education licensure renewal requirements imposed by Board rule are suspended. No continuing education credits will be required for renewal of licensure at the February 28, 2006 renewal date except for the medical errors and HIV/palliative care requirements imposed by Sections 456.013(7) and 456.033, F.S., respectively.~~

Specific Authority 456.013, 457.104, 457.107, 457.108, 457.1085 FS. Law Implemented 456.013, 456.033, 457.107, 457.108, 457.1085, 457.109 FS. History—New 3-18-97, Formerly 59M-7.0015, Amended 4-25-00, 4-3-01, 11-24-02, 5-18-04, 5-30-07.