

BOARD OF ACUPUNCTURE
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lt. Governor, as required by §92-7(b), Hawaii Revised Statutes (“HRS”).

Date: Thursday, February 6, 2020

Time: 1:00 p.m.

Place: Princess Likelike Conference Room
King Kalakaua Building, 3rd Floor
335 Merchant Street
Honolulu, Hawaii 96813

Members Present: Joni Kroll, D.Ac., Chairperson
Deborah McMenemy, L.Ac., D.A.O.M, Vice-Chairperson
Ellen Roos-Marr, Member

Excused: James Corcoran, Ph.D., Member

Staff Present: Relley Araceley, Executive Officer
W. Max Levins, Esq., Deputy Attorney General (“DAG”)
Kellie Teraoka, Secretary
Rochelle Araki, Secretary

Guests: None

Call to Order: There being a quorum established, Chair Kroll called the meeting to order at 1:01 p.m.

Election of Board Officers: None

Approval of the Minutes: It was moved by Vice-Chair McMenemy, seconded by Ms. Roos-Marr, and unanimously carried to approve the executive minutes of December 5, 2019 meeting as circulated and to approve the open minutes with amendments.

DAG Levins entered the meeting room at 1:05 p.m.

After discussion, the following amendments to the open minutes were requested (underlined material added, while bracketed material is to be deleted):

New Business:

A. Hawaii Acupuncture Association 2020 legislative proposals

Chair Kroll suggested that it would be a good time to [remove] strengthen the educational ties to the national standard of accredited schools, however the Board cannot make this revision, as it needs to come through the public.

Chair Kroll asked if the [Board] DAG agrees that all revisions should be submitted at once.

The scope of practice [will] could be determined in a different process between both Boards.

The Board moved out of order to agenda item 5. Applications.

Applications:

a. Ratifications

It was moved by Vice-Chair McMenemy, seconded by Ms. Roos-Marr, and unanimously carried to ratify the following list of licensees that have been issued:

Acupuncturists

ACU 1295 Sherry Lynn Mizumoto
ACU 1296 Tuyngoc B Nguyen
ACU 1297 Michelle Daniel
ACU 1298 Silvia Camile Thornton
ACU 1299 Laura C C Meisel
ACU 1300 Hans-Thomas Richter
ACU 1301 Anita C Marshall
ACU 1302 Jonathan Pinkston
ACU 1303 Abbey T Seiden

Interns

ACU 441 Siriporn J Jang

The Board moved back to its regular order of business.

Executive Officer's Report/Ongoing Business: a. Hawaii Administrative Rules ("HAR") Chapter 16-72 Revisions Update

Mr. Araceley distributed the HAR flowchart so that the Board could review the process that the revisions must go through. He explained that the draft is currently being formatted by the Administrative Services Office ("ASO"), which is step 1. The next step where the Board may need to take action is step 7 on the flowchart, if there are any substantive changes by the Legislative Reference Bureau.

Vice-Chair McMenemy asked if there is a specific timeline for these changes to take place. Mr. Araceley advised that he hopes to be at step 7 by the next meeting. Mr. Araceley will provide the formatted draft to the Board for review, once it is received from ASO.

New Business: a. CMS Announcement about Medicare Coverage for Acupuncture

Chair Kroll shared that on January 21, 2020, the Centers for Medicare & Medicaid Services ("CMS") announced that they will allow coverage for acupuncture for Medicare patients with chronic lower back pain. The challenge at the moment is that the rule making that CMS does and the statute that Congress does, do not list Acupuncturists as a provider type by Congress. CMS is trying to figure out how to implement this until there is an active Congress that can add Acupuncturists as a provider. The only providers who can do acupuncture for Medicare patients are licensed physicians and those with a masters or doctoral level degree in acupuncture or internal medicine from a school accredited by the Accreditation Commission for Acupuncture and Oriental Medicine ("ACAOM").

The ruling also defined that dry needling is acupuncture. Medicare is allowing up to 20 visits per year with 12 visits in the first 90 days. Currently, they have 3 levels of supervision for an Acupuncturist for any provider. Physicians have direct access. The lowest level is called the appropriate level which requires supervision and has yet to be defined. Billing has yet to be determined but overall, this is a big step forward.

Mr. Araceley asked Chair Kroll if the Board should revise their rules to ensure that the practice is defined in a way that insurance companies will provide coverage. Chair Kroll is unsure at this point, but knows that The National Certification Commission for Acupuncture and Oriental Medicine is working on aligning everything. Mr. Araceley asked the Chair Kroll if Acupuncturists

require their patients to sign Health Insurance Portability and Accountancy Act (“HIPAA”) forms in their offices? According to Chair Kroll, all Acupuncturists have their patients complete HIPAA forms and store those files confidentially.

Chair Kroll also mentioned another question that was posed – do all acupuncturists have to participate with Medicare? Once Congress defines Acupuncturists as provider types, they will determine set rules. They may decide if Acupuncturists are allowed to opt out or if they could be either participating or non-participating, but would still be required to follow guidelines.

b. 2020 Legislative Discussion

SB 2225 / HB 1807 - Relating to the Physical Therapy Practice Act

These bills are similar to HB 701 from last year which were sent off as a study but did not get funded. DAG Levins explained that many bills are passed each year but typically the Senate and House will only do a study if it is a concurrent resolution. Chair Kroll shared that she represented the Board at the first hearing. Since the Board has not yet met on this particular bill, she testified in opposition because it is similar to last year’s bill and the same issues were being raised. The Committee asked Samantha Preis (an Acupuncturist) the difference between dry needling and acupuncture. Ms. Preis replied that it is the same needle into the same trigger point. Chair Kroll opined the difference between the two, Acupuncturists may retain the needle a little longer than dry needling. The main difference is that dry needling tends to go directly into the muscle instead of obliquely like how Acupuncturists are trained to do. There is a higher risk of pneumothorax when the needle goes directly into the muscle.

The Committee Chair moved the bill forward with amendments recommended by the Board of Physical Therapy, and is now awaiting a Judiciary hearing.

Chair Kroll asked if it is possible to create a rule that if the Board of Physical Therapy adds dry needling into their rules, that they would need to work with the Board of Acupuncture to adopt those rules, since dry needling is a form of acupuncture. DAG Levins advised that it could be added into the statute or bill.

The American Medical Association recently created a CPT code for dry needling by Acupuncturists. It is the consensus of the Board,

given the information at hand, that they do not feel there should be any exemption for Physical Therapists to perform acupuncture. The Board's standards were already established for safe practice in their own profession. Hawaii has an adequate number of Acupuncturists in the State to serve the public. If the bill should move forward into the hands of Board of Physical Therapy, the Board of Acupuncture is requesting to work together to establish standards; to set the standards for training.

Chair Kroll also noted that the 43 states which allow physical therapists to perform dry needling, lack supervision and the courses they are recommending are not part of a nationally accredited program. The hours are self-reported with no direct supervision. In the 7 states where dry needling is not allowed, including Hawaii, they have a high density of Acupuncturist's practicing and strong licensing requirements for public safety overview.

It was moved by Vice-Chair McMenemy, seconded by Ms. Roos-Marr, and unanimously carried to oppose the abovementioned SB 2225 and HB 1807.

SB 2544 - Relating to Acupuncture

The bill was submitted by the Hawaii Acupuncture Association, sponsored by Senator Baker. The bill does not have a hearing date and the deadline to schedule is 2/27/20.

The bill is to remove outdated materials related to education standards that no longer apply. Chair Kroll asked for clarification on page 3 of the bill "(1) A formal program in the science of acupuncture (traditional oriental medicine) at an institute or school approved by the board". The Board does not approve schools, the schools are nationally accredited by ACAOM. The Board's rules set the standards for passing.

Chair Kroll asked about the foreign graduate portion of the bill that is being removed on page 6. If this is removed, then a rule will need to be submitted to have a third party evaluate to ensure the applicant meets all the requirements. Chair Kroll is in support of the bill but would like to have the foreign applicant portion of the bill remain and not deleted. Chair Kroll also asked for a change on page 4 of the bill "(2) provided that the nine hundred hours of the clinical internship program [~~may~~] **must** be obtained from the institute or school".

The Board is in support of SB 2544 but would like to have the route for foreign applicants remain clear and recommends that this portion remain in the bill.

It was moved by Vice-Chair McMenemy, seconded by Ms. Roos-Marr, and unanimously carried to support the abovementioned SB 2544, but keep the foreign applicant portion on the bill.

Other Board-related Legislative Bills

Mr. Araceley mentioned a new bill that is being introduced that allows reciprocity for military spouses based on licensure in another state; however, they would still need to meet the minimum licensure requirements.

Mr. Araceley added that if any other Legislative issues arise, he may need to schedule an emergency meeting, to which the Board agreed.

Public Forum: None

Next Meeting: Thursday, April 2, 2020
1:00 p.m.
Princess Likelike Conference Room
King Kalakaua Building, 3rd Floor
Honolulu, Hawaii 96813

Adjournment: Chair Kroll adjourned the meeting at 2:14 p.m.

Taken and recorded by:

/s/Rochelle Araki

Rochelle Araki, Secretary

Reviewed and approved by:

/s/Relley Araceley

Relley Araceley, Executive Officer

RA:rua
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Board of Acupuncture
Minutes of the February 6, 2020 Meeting
Page 7

- Minutes approved as is.
- Minutes approved with changes. See minutes of 9/16/20 meeting.