

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: Wednesday, September 16, 2020

Time: 2:00 p.m.

Place: Virtual <https://dcca-hawaii-gov.zoom.us/j/91310728379>

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

Staff Present: Relley Araceley, Executive Officer
Rise Doi, Executive Officer
Daniel Jimenez, Executive Officer
Kelly Suzuka, Deputy Attorney General (“DAG”)
Karyn Takahashi, Secretary to DCCA Director Catherine P. Awakuni Colon
Terry Akasaka-Toyama, Secretary to DCCA Deputy Director Jo Ann M. Uchida
Charlene L.T. Tamanaha, Licensing Administrator
Ahlani Quiogue, Supervising Executive Officer
Rochelle Araki, Secretary
Kelly Wei, Secretary

Guests: Dr. Wai Low
Soraya Applegate

A short video was played to explain procedures for this virtual meeting and how members of the public can participate and interact with the Board during the meeting.

Call to Order: There being a quorum established, Chair Kroll called the meeting to order at 2:02 p.m.

Approval of
the Minutes:

It was moved by Vice-Chair McMenemy, seconded by Ms. Roos-Marr, and unanimously carried to approve the open minutes of February 6, 2020 meeting with amendments.

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

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] CMS is now covering 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] Acupuncturists are not yet CMS providers and the power to add a provider type lies with the US Congress, not with CMS.

The decision lists who can provide acupuncture as follows:

Physicians in accordance with applicable state requirements.

Physician assistants, nurse practitioners/clinical nurse specialists, and auxiliary personnel may furnish acupuncture if they meet all applicable state requirements and have:

- A masters or doctoral level degree in acupuncture or Oriental Medicine from a school accredited by the Accreditation Commission on Acupuncture and Oriental Medicine (ACAOM); and
- current, full, active, and unrestricted license to practice acupuncture in a State, Territory, or Commonwealth (i.e. Puerto Rico) of the United States, or District of Columbia.

[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 in the following statement:

All types of acupuncture including dry needling for any condition other than cLBP are non-covered by Medicare.

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.] Acupuncturists must provide care as Auxiliary personal, which requires the least restrictive level of supervision. 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.

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 1304 HEATHER M BECKER-BRUNGARD
ACU 1305 EDWIN M N WILTSE
ACU 1306 ELISABETH M SHERMAN
ACU 1307 JOYCE M TOWNE
ACU 1308 REYNOLD S L WONG
ACU 1309 ANDREA M WILEY
ACU 1310 NINA T HAMID
ACU 1311 BARBARA J AKANA
ACU 1312 ASHLEY C COOPER
ACU 1313 VIRGIL S TANIZAKI
ACU 1314 DAVID B KITTS
ACU 1315 CLARA K SONG
ACU 1316 SOOK KIM
ACU 1317 JESSICA L MYRICK
ACU 1318 ALAN P LLOYD
ACU 1319 HAN YANG
ACU 1320 CYNTHIA H BODAS
ACU 1321 CRYSTAL-ANN WEIDNER

b. Applications

Upon a motion by Chair Kroll, seconded by Vice-Chair McMenemy, it was voted on and unanimously carried to deny the following application pursuant to HAR §16-72-17 and HRS § 436E-13.

1. Use of Doctoral Title
 - i. Han Yang: ACU-1319

Executive Officer's Report: a. Introduction of Executive Officer Risé Doi

Executive Officer Araceley introduces Risé Doi who is transitioning into the role of the Executive Officer for the Board of Acupuncture.

b. Clarification on continuation of teleworking measures including the continued use of digital conference meetings and office operations throughout 2020

Executive Officer Araceley confirming that the Board will continue to hold virtual Board Meetings for at least the rest of 2020 and will try and adhere to the already scheduled Board meeting dates. The office and staff are teleworking and are available to help. The building is open to the public from 7:45am to 12:00pm.

Vice Chair McMenemy asked Executive Officer Araceley when the next Board meeting will be. Executive Officer Araceley stated that it will try to adhere to its already scheduled Board meeting dates, which is October 1st.

c. Clarification on duties delegated to the Executive Officer from the Board of Acupuncture including the review and approval of license applications, applications for use of doctoral title, and intern applications.

Executive Officer Araceley requested for the Board to clarify the duties that are delegated to the Executive Officer to give Executive Officer Doi a clear confirmation on the delegation of her responsibilities as the new Executive Officer for the Board of Acupuncture. It is Executive Officer Relley's understanding that as an Executive Officer, his duty is to approve license applications for Acupuncturist, Interns and the use of Doctoral title in Acupuncture. Approval is given to those that have met requirements based on the rules and regulations of the Board. Applicants for Doctoral title must meet requirements as stated in HAR §16-72-17 in order to be approved.

Executive Officer Araceley asked if there were any questions from the Board.

The Board had no questions.

Executive Officer Doi asked Executive Officer Araceley if the Board allows the Executive Officer to approve an application with one (1) DUI. Executive Officer Araceley stated that any “yes” answers in the application and any previous disciplinary actions are required to be reviewed by the Board for approval.

Upon a motion by Chair Kroll, seconded by Vice-Chair McMenemy, it was voted on and unanimously carried to accept and clarify the duties and responsibilities of the Executive Officer as stated in agenda 4. c.

Ongoing Business: a. Update on process of Hawaii Administrative Rules (HAR) Chapter 16-72 amendments and final clarifications

Chair Kroll asked if there were any public comments on Ongoing Business: Update on process of Hawaii Administrative Rules (HAR) Chapter 16-72 amendments and final clarifications.

Ms. Takahashi advised the Chair that Dr. Wai Low has raised his hand and would like to be recognized.

The Chair recognizes Dr. Wai Low.

Dr. Low stated that there were concerns from his fellow senior practitioners on the continuing education requirement. Dr. Low asked if the practitioners forget to renew their license within the 1-year restoration period, would they be treated as a new applicant and be subjected to the new rules and regulations – which is to graduate from an accredited school and pass the NCCAOM exam, or will they be grandfathered into not having to take the NCCAOM exam.

Chair Kroll asked Dr. Low for clarification on his question. Is he asking about the law in the statutes or the rules and regulations? The rules and regulations are currently in the process of change and the 1-year restoration can be addressed by the Board. If it's in the statute, then the 1-year restoration is something that the profession will have to change.

Vice Chair McMenemy states that the Board is only changing the rules for new applicants and are not changing the renewal law. If a licensee fails to renew within the 1-year and will need to reapply as a new applicant, then this new law will apply to them.

Dr. Low asked if there is any way that current licensees before a certain time frame can be grandfathered and will not need to take the current 4 module NCCAOM exam and only require the 2-exam module that they had already passed.

Chair Kroll asked Dr. Low for clarification that his concern is for restoring a former license, 13 months after its lapsed. Dr. Low replied "yes".

Chair Kroll thanked Dr. Low for his testimony and advised him that she is aware that the Association is working on statutory changes under 436E-9 that can possibly change restoration period from 1 year to 2 years. Chair Kroll's concern in adding a grandfather exemption is that the practitioner will not do the continuing education but instead let their license lapse and reapply. Chair Kroll however does agree that the new process might be a "real hardship" to some of the senior practitioners. Chair Kroll expressed that changing the restoration period from 1 to 2 years maybe a faster route and asked Dr. Low if this would satisfy the members. In reply, Dr. Low asked if the Board can do an Administrative bill on 436E. Chair Kroll stated that it's possible to add this into the next Board agenda and ask the public for testimony.

Executive Officer Doi asked Executive Officer Araceley on the timeline in introducing an Admin Bill. Supervising Executive Officer Ahlani Quiogue mentioned that it is too late to introduce an Administrative Bill for the 2021 session, the deadline was a couple months ago and that the Board will need to work with the professional association to extend restoration period from 1 year to 2 years in the statutes.

Chair Kroll asked what is the average time frame given by the other Boards for restoration. Executive Officer Doi replied "for Massage Therapy, it is also 1 year to restore your license and after that they would have to reapply as a new applicant". Vice Chair McMenemy stated that its also 1 year for California. Licensing Administrator Charlene Tamanaha advised Chair Kroll that there are many areas within PVL that do have a 1-year restoration period but there are also others that have longer periods (multiple years). She also added that this will need to be a statutory change and not an Administrative Rule change.

Chair Kroll asked for a clarification that the Board would not be able to make changes in the rules and regulations as this would be a conflict to the statutes. Licensing Administrator Charlene Tamanaha replied “yes”.

Chair Kroll asked if there were other comments. There were no added comments.

Chair Kroll asked Executive Officer Araceley if he had anything to add on the HAR process.

Executive Officer Araceley stated that the approved packet of the requested changes to the rule amendment were forwarded to DCCA’s Administrative Services Office and a ramsayer version is now available. The Board will have to move it forward to the next step based on the flow chart. Executive Officer Araceley mentioned that Chair Kroll requested for this to be discussed as there were some concerns coming from the public. Executive Officer Araceley stated that there will be a public hearing meeting specifically on the rule amendments, but there is no specific date set at this time. It will be in the news media 30 days prior to the hearing so that the public is aware.

Chair Kroll asked if there were anymore concerns on the ongoing business from the Board members. Vice Chair McMenemy stated that she has gone through the revisions and may want to revise some of the language. Licensing Administrator Charlene Tamanaha advised that the Board will need to work with Executive Officer Araceley and discuss if it needs to be amended before it gets printed by the DCCA ASO office. Vice Chair McMenemy went through all the drafts to compare and felt that some of the language needs to be addressed, such as the definition of acupuncture injection therapy – the phrase intramuscular needling (which was previously discussed by the Board) is not included in the current definition. Chair Kroll concurs with Vice Chair McMenemy that this phrase was missed.

Licensing Administrator Charlene Tamanaha suggested to take the draft and add what is needed and re-adopt the changes on the next Board meeting. She also advised the Board to create a Rules Committee to discuss and review any changes that must be made to the rules.

Chair Kroll appoints a Rules Committee composing of Chair Kroll and Vice Chair McMenemy to meet and create an updated draft for the Board to consider.

Chair Kroll asked if there were any further comments. There were no further comments.

New Business: a. Telehealth for licensed acupuncturists: Is telehealth acupuncture possible and are there guidelines for acceptable telehealth practices of acupuncture?

The Chair asked if there were any comments on New Business: Telehealth for licensed acupuncturists: Is telehealth acupuncture possible and are there guidelines for acceptable telehealth practices of acupuncture? There were no comments.

Executive Officer Araceley stated that this is a question asked by the public. Chair Kroll said that the scope of practice for an acupuncturist is more than just the insertion of a needle but also includes dietary counseling, herbal counseling, lifestyle counseling as well as teaching acupressure – which can be done through telehealth. Chair Kroll stated that the Governor’s proclamation however, did not include acupuncture for telehealth. Chair Kroll asked for clarification on how they can be included in the proclamation. Supervising Executive Officer Ahlani Quiogue stated that the Board can work with the Executive Director from the Profession and reach out to the Governor’s COVID team to see if additional language could be added to any of the emergency proclamation regarding a suspension of a particular law. Chair Kroll asked for a comment from Dr. Wai Low with regards to adding telehealth into the emergency proclamation. Dr. Low has no problem adding telehealth.

Chair Kroll asked Supervising Executive Officer Ahlani Quiogue for how the Medical Board added telehealth into the emergency proclamation. Supervising Executive Officer Ahlani Quiogue stated that the proclamation suspended the current statutes for a physician to practice telehealth. Chair Kroll said that since telehealth is not a part of the current statutes, then there is nothing to suspend on a proclamation.

Executive Officer Araceley stated that the reason why this was added to the agenda is because there is no specific section in the laws and rules that spoke of telehealth. Chair Kroll will add telehealth to discuss with the Rules Committee.

b. Practice of acupuncture during regarding COVID-19: Are acupuncturists allowed to practice during the current lockdown measures taken in response to COVID-19?

Chair Kroll stated yes, an acupuncturist is allowed to practice during the current lockdown. The first proclamation from the Governor’s office has included acupuncturist in the list of essential health care personnel and this has not been amended in any of the subsequent proclamations.

- c. How can an applicant make up the necessary “academic and clinical training hours” required by HRS 436E-5(d) if their graduating program required less hours?

Chair Kroll stated that an applicant can apply to a current accredited school, ask the school to accept all their transfer credits and advise the applicant what courses and hours needed to graduate and get a new diploma. Executive Officer Araceley concurs with Chair Kroll.

Next TBD.

Adjournment: Chair Kroll adjourned the meeting at 3:20 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
9/28/20

- Minutes approved as is.
- Minutes approved with changes.