

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, December 3, 2020

Time: 2:00 p.m.

Place: Virtual <https://dcca-hawaii-gov.zoom.us/j/97387173276>

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

Staff Present: Relley Araceley, Executive Officer
Risé Doi, 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
Rochelle Araki, Secretary
Erin Emerson, Secretary
Kawehionapua Mau, Secretary

Guests: Dr. Wai Low
Becky Jacobs
Catherine

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 2:04 p.m.

Approval of the Minutes: Chair Kroll opened the floor to discussion of the open minutes of September 16, 2020 and October 1, 2020, as well as the Executive Session minutes of September 16, 2020.

The following amendments to the September 16, 2020 open minutes were requested by Chair Kroll (underlined material added, while bracketed material is to be deleted):

- Page 3, paragraph 2
(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.
- Page 8, paragraph 2
Chair Kroll said that the scope of practice for an acupuncturist is more than just the insertion of a needle (but as it also includes dietary counseling, herbal counseling, lifestyle counseling as well as teaching acupressure – which can be done through telehealth.

It was moved by Vice-Chair McMenemy, seconded by Ms. Foreman, and unanimously carried to approve the open minutes of September 16, 2020, with amendments, and the open minutes of October 1, 2020, as is.

It was moved by Vice-Chair McMenemy, seconded by Ms. Foreman, and unanimously carried to approve the Executive Session minutes of September 16, 2020.

Executive Officer's Report: a. Update on staffing and plans for future board meetings

Executive Officer Araceley asked if there were any questions from the public regarding "Update on staffing and plans for future board meetings".

Ms. Takahashi advised no one had raised their hand.

Executive Officer Araceley advised that after this meeting he will no longer be the Executive Officer for the Board of Acupuncture. The role will be transitioning to Executive Officer Doi. However, he will continue to work with incoming Executive Officer Doi on a number of issues specific to the Board of Acupuncture as she transitions into her role, including the Hawaii Administrative Rule (HAR) changes.

Executive Officer Araceley informed the Board that Ms. Araki will be transitioning out of the role of secretary for the Board of

Acupuncture. Although he is uncertain of the timeline, the new secretary transitioning in will be Ms. Emerson.

Executive Officer Araceley explained that as of January, Ms. Takahashi and Ms. Akasaka-Toyama will no longer be assisting with running the virtual Board meetings. He then advised that the Board meetings will continue to be held virtually, but he will be sure to inform everyone in the event of a change.

Executive Officer Araceley opened the floor to the Board for questions.

Vice-Chair McMenemy asked who will take over Ms. Takahashi and Ms. Akasaka-Toyama's roles in assisting with virtual meetings.

Ms. Araki confirmed that other secretaries will be utilized to fill their roles.

b. Office of Information Practices New Virtual Meetings Proposal

Executive Officer Araceley asked if there were any questions from the public regarding "Office of Information Practices New Virtual Meetings Proposal".

Ms. Takahashi advised no one had raised their hand.

Executive Officer Araceley asked the Board if they have any concerns or opinions on the Office of Information Practices New Virtual Meetings Proposal.

Vice-Chair McMenemy said that she is concerned that the proposal extends to post-pandemic meetings, once travel has resumed. Her preference is to travel to Oahu for in-person meetings once it is safe to do so.

Chair Kroll also sees the value of meeting in person. She voiced her concern that it may be difficult to recruit new Board members from neighbor islands if there is not the enticement of travelling to Oahu. She asked Vice-Chair McMenemy and Dr. Foreman if travel to Oahu could be seen as a benefit to outer island Board members.

Vice-Chair McMenemy weighed the pros and cons of interisland travel for meetings but feels that there is more benefit to meeting on Oahu in person. Given the benefits of in-person meetings, she

doesn't feel that meetings should remain virtual post-pandemic in order to save on the cost of travel.

Chair Kroll acknowledged that while there is a savings of travel costs, there are additional staffing costs to virtual meetings. Costs may break even.

Dr. Foreman discussed the value of in-person meetings, particularly as a new member. She feels it is important to have in-person interactions and get the "lay of the land" by attending meetings on Oahu.

Chair Kroll summarized that the Board's preference is to meet in person, once it is safe to do so.

Executive Officer Araceley advised that he will relay the opinions of the Board to the Administrators.

c. Update on Hawaii Administrative Rules (HAR) Chapter 16-72 amendments

Executive Officer Araceley asked if there were any questions from the public regarding "Update on Hawaii Administrative Rules (HAR) Chapter 16-72 amendments".

Ms. Takahashi advised no one had raised their hand.

Executive Officer Araceley advised that Supervising Executive Officer Quiogue noted two concerns with the rule amendments drafted by the Board.

First concern, HAR 16-72-14 Formal Education and Training Requirements:

The minimums that are being cited in terms to the language that states "that is equal or higher than the current ACAOM requirement," is not justified by the current HRS Chapter 436E. It is recommended the language be removed as it conflicts with the HRS, which specifically states minimum hours. The HAR would be setting a higher standard than the HRS.

Chair Kroll summarized that because the statute has specific hours that are less than the proposed amendment to the rules, it is recommended the language be removed due to

the conflict. She explained that the reasoning for the proposed rule change was to increase the local standards to national levels, but that change would need to be made in the statute. The statute can be changed by the profession, an individual, or the Board.

Executive Officer Araceley advised that it is too late for the Board to submit an Administrative Bill for the upcoming legislative session.

Executive Officer Doi suggested that an acupuncture professional association could contact a legislator to have them introduce the change.

Chair Kroll confirmed there is active discussion within the Hawaii Acupuncture Association for that purpose.

Second concern, HAR §16-72-46 Renewals:

Executive Officer Araceley explained that in all other professions the statute that gives authority to the Board to require an audit for CE is specifically stated in the HRS. The previous opinion was that because there was some grey area, it might be acceptable for the Board to accomplish this in the rules. However, since the practice in other professions has been to provide the Board authority to audit for CE in the statute, he recommends the language be removed from the current HAR packet.

Chair Kroll asked if the reason for removing this language was to not hold up the approval of the rest of the amendments.

Executive Officer Araceley confirmed that the entire board rule packet could get held up due to the language of these two amendments.

Executive Officer Araceley advised that he is close to completing the justifications of the rest of the rule changes, barring these two concerns. Once these two concerns are addressed, Chair Kroll and DAG Suzuka can confirm the final wording of the amendments and the packet can be submitted.

Applications:

Ratifications:

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

Acupuncturists

ACU 1322 ERICA M L BASILIO
ACU 1323 EDWARD J ANTKOWIAK
ACU 1324 JOHNNY D POSEY II
ACU 1325 YUKIKO YONEZAWA-ALI
ACU 1326 JACQUELINE M JUNG

Interns

448 SARAH K JOHNSON
444 CHRISTOPHER A CAMPBELL
442 PAIGE C SCHMIT
447 YESHUAH H KAUHANE
443 LEAH B BAGGAO
446 CHARLEY SOMSANGUANSIT
445 TYLER C STATTIN
451 BILLY F SCHULTZE
450 BRITTANY R C FREITAS
449 GIULIANA E GASPARIN QUERO

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

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

Ms. Takahashi advised that no one has raised their hand.

Chair Kroll explained that at the last meeting the Board made changes to the HAR. However, Executive Officer Araceley had brought forward recommendations to remove some amendments in sections HAR 16-72-14 and HAR 16-72-46 as they conflict with the statute. In reference to HAR 16-72-14, she recognized that while the reason for the change was that the HRS has one of the lowest minimum hour requirements in the nation, it would appear the changes may not be properly implemented in the HAR. She asked

the Board if they had any input on the removal of the wording in HAR 16-72-14.

Dr. Foreman asked if the wording could be changed rather than removed.

Vice-Chair McMenemy asked if this was in reference to the changes in the October 1, 2020 meeting minutes which states “but not less than is found in 436E”.

Chair Kroll confirmed, yes, as she understands it.

Vice-Chair McMenemy stated that by law, it has to be the same as the statute.

Chair Kroll confirmed that as per the Attorney General’s office, the Board does not have the authority to exceed the statute. It creates an area of grey that could lead to conflict or confusion. She stated that the reason for the wording was to try to move to the national standard.

Executive Officer Araceley stated that when an applicant applies, the HRS sets the minimum requirements. Since the wording in the HAR amendment conflicts with the HRS by setting a different requirement, there will be confusion. If a higher standard needs to be set, it should be set in the HRS.

Vic-Chair McMenemy asked if they should leave the wording “...but not less than 2175 hours.”

Executive Officer Araceley said the language of “consisting of not less than 2175” or “1515”, can be decided. Specifically, he is recommending pulling away from the wording “that is equal or higher than the current ACAOM requirements.”

Vice-Chair McMenemy asked what HRS 436E states.

Executive Officer Araceley advised the HRS states the requirements as “...not less than 2175”, along with 1515 hours in acupuncture and traditional oriental medicine. The second portion states the clinical training requirement of 660 hours.

Vice-Chair McMenemy shared that it may be best to reference the statute in the rules, so that if the statute changes, the rules will

change along with it. She noted it is best to use the wording “as found in 436E statute”.

Chair Kroll concurred. Her thoughts are that it’s best not to state any specific hours, but instead use “according to 436E”.

DAG Suzuka agrees this would be better as it removes the ACAOM language, which is the main issue.

After discussion between the Chair Kroll and Executive Officer Araceley, it was determined that they can make a motion on this either later in the meeting or after the next draft.

Moving onto the second concern with the amendments, Chair Kroll asked the Board if they had any input on the removal of the wording in HAR 16-72-46.

Vice-Chair McMenemy asked if the statute cites CEUs.

Chair Kroll advised the statutes do not. Since CEUs are not cited in the HRS, like other professions, it has created a grey area.

DAG Suzuka confirmed that HRS 436E-7, is broadly worded. There is a grey area whether the Board could make these changes to the HAR without a specific statutory reference. Since the rest of the DCCA boards have CEUs in their statutes, they may not want to go against the general policy that DCCA is trying to follow.

Chair Kroll summarizes that a precedent has been set by the statutes of the other Boards.

Chair Kroll questioned whether the wording on diplomat status is going to be in conflict in any way. She asked DAG Suzuka if they are still able to state they must maintain the Diplomat status.

DAG Suzuka said she needed a moment to research.

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

While DAG Suzuka researches Chair Kroll’s question, Chair Kroll recognizes Dr. Wai Low.

Due to technical difficulties, Dr. Low's audio was inaudible. While he reconnected via telephone, DAG Suzuka discussed Chair Kroll's question.

DAG Suzuka said that to the extent of Diplomat status for new licensees coming in, it's okay. However, for license renewals, it's tied to the CE issue again and it might be running into DCCA policy again.

Vice-Chair McMenemy stated that it is not a requirement for existing licensees to get or maintain that certification, only to have the 30 CEUs every renewal period.

DAG Suzuka advised that since it's just for new licenses after January 1, 2022, that should be okay, but that she will look into it further.

Chair Kroll asked Dr. Low if he would like to attempt to testify again.

Due to technical difficulties, Dr. Low called in to provide his testimony.

Dr. Low asked if someone were to apply with a masters in Acupuncture, without specialization in Chinese herbal medicine, if they would qualify for licensure.

Chair Kroll advised that they must pass the herbal exam. Assuming they meet the minimum hours, graduate from an accredited school, and can pass the exam, their schooling doesn't need to be in herbs.

Vice-Chair McMenemy concurred.

Dr. Low questioned if the exams are not going to change until the law changes.

Chair Kroll advised that the requirements on the exams will be changing. The discussion about the statute is only regarding hours and CEUs. The number of exams required will still be going through rules and regulations.

Executive Officer Araceley confirmed that was correct.

Chair Kroll summarized that yes, all the exams from the NCCAOM will be required for new licensure once the HAR changes go

through. The statute just says they have to meet those certain hours, until such time the statute is changed. They would have to pass the herbal exam.

Dr. Low is concerned that the herbal exam changes are not going to happen because the HRS sets the minimum standards. The draft of the rules will not be able to adopt the testing of herbal medicine and bio medicine, they have to stay the same until the HRS changes those standards.

Chair Kroll advised that was not the case. The issue with the amendments is regarding the minimum standards on hours. The testing requirement amendments can still be changed in the HAR.

Dr. Low reconfirmed that the exam testing requirements for licensure can be changed in the current draft of the HAR.

Chair Kroll confirmed, yes. She asked DAG Suzuka if she had any comment.

DAG Suzuka confirmed that is correct. The only changes in the draft being discussed are HAR 16-72-14 and HAR 16-72-46.

Dr. Low said that the change was fine. It was confusing in the beginning of the meeting to hear that the rule changes were setting a higher standard that conflicted with the legislature.

Chair Kroll explained that if you can pass those exams with the lower number of hours, it is acceptable as the statute currently reads.

Dr. Low says it's not fair for students that have completed an exam and others have not had to take the exam but are still able to be licensed.

Chair Kroll stated that many tests have been added over the years. 31 years ago, there was only one exam and now there are four, that is the evolution of the profession.

Dr. Low finished by stating that he would prefer to leave the wording of the HAR open without any numbers and thanked the Board for the opportunity to testify.

Next Meeting: Chair Kroll asked if there was any conflict in moving the next meeting from February 4, 2021 to February 11, 2021. There were no conflicts.

Next meeting: Thursday, February 11, 2021 – virtual meeting

Chair Kroll asked if there were any issues with the 2021 Board Meeting Schedule that was circulated. There were no issues.

Adjournment: Chair Kroll adjourned the meeting at 2:58 p.m.

Taken and recorded by:

/s/Erin Emerson

Erin Emerson,
Secretary

Reviewed and Approved by:

/s/Relley Araceley

Relley Araceley,
Executive Officer

RA:ee
12/3/20

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