

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

MINUTES OF MEETING¹

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: December 16, 2021

Time: 1:00 p.m.

Place: Virtual Videoconference Meeting – Zoom Webinar

Members Present: Joni Kroll, D.Ac., Chairperson
Deborah McMenemy, L.Ac., D.A.O.M, Vice-Chair
Brooke Foreman, L.Ac., D.A.C.M., Member

Excused: None

Staff Present: Risé Doi, Executive Officer (“EO”)
Kelly Suzuka, Deputy Attorney General (“DAG”)
Susan Reyes, Secretary

Guests: Esther Brown, Complaints/Enforcement Officer, Regulated Industries Complaints Office (“RICO”)

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

1. Call to Order: There being a quorum established, Chair Kroll called the meeting to order at 1:03 p.m.

2. Approval of Minutes: Chair Kroll opened the floor to discussion of the open session minutes and executive session minutes of the October 7, 2021 meeting.

As there were no comments, it was moved by Vice-Chair McMenemy, seconded by Dr. Foreman and unanimously carried to approve the open session minutes and executive session minutes of October 7, 2021, as circulated.

¹ Comments from the public were solicited on each agenda item. If no public comments were given, the solicitation for and lack of public comment are not explicitly stated in these minutes.

3. Executive
Officer's
Report:

a. Presentation: The role of Regulated Industries Complaints Office ("RICO") as an enforcement agency and how disciplinary action is taken

EO Doi stated that Esther Brown will be providing a brief presentation on the role of RICO as an enforcement agency and how disciplinary action is taken.

Ms. Brown explained that RICO is responsible for enforcing the licensing laws for professional vocational licensees, currently covering 52 different industries. RICO assists the Board in enforcing the licensing laws against licensed practitioners and unlicensed persons through the courts.

RICO reviews the complaints that are filed with their office and investigate complaints that merit investigation. If there appears to be potential licensing laws violations that RICO can prove with good evidence, then they will proceed with enforcement actions.

These actions are proposed through settlement agreements. RICO can also take a case through the contested case hearing process and a recommended order is issued.

The recommended order will come to the Board for review and the Board can act on this. Typically, the Board approves the settlement agreements and the contested case findings. There have been situations where the Board may defer or reject a settlement agreement or may have issues with the findings of a contested case proceeding.

Once the Board approves or issues the final order, the licensee is formally disciplined.

RICO also investigates cases of people who are engaging in unlicensed activity. RICO will file a lawsuit in circuit court with the judge serving as the final arbitrator. The judge issues an order and legal action is imposed on the unlicensed person.

There are various types of disciplinary actions:

- The most severe is revocation of the license. It may be for undisputed egregious conduct. Sometimes a licensee does not want to practice anymore and want to retire, so they voluntarily give up their license. The revocation prevents that person from practicing for a term defined by law, which is currently 5 years. To practice again, they will need to reapply for a license and be approved by the Board.

- Suspension of a license is for 5 years and during the suspension the licensee is not supposed to be practicing at all. RICO can impose that the licensee will need to satisfy education courses if there is an issue about knowledge or competency. A fine from \$500 - \$5,000 per violation depending on the profession will be imposed. Sometimes they do not take any formal action against the licensee if there was no bad intent or knowledge of the provisional licensing laws. RICO will issue a warning letter or give the licensee an education contact and use this to put in the file.
- No action taken because they have no jurisdiction in the matter, the complainant does not wish to cooperate, or they were able to resolve or amend the cases. The main reason is also insufficient evidence to proceed.

The vast majority, of the complaints comes from the public, customers of practitioners, patients, other licensees, Board members, anonymously and by tips. RICO will try to get the facts needed to investigate. It may be difficult without a person there to testify as to what they experienced or what they saw and to authenticate records or documents that they have in the files.

Ms. Brown stated that there are three sections of the RICO division:

1. Consumer Resource Center ("CRC") is the frontline for RICO and they receive mostly all the complaints/inquiries, averaging 7,000 annually. Of these they end up processing approximately 3,000. They intake, review and determine if they have enough to do an in-depth investigation and then process them.
2. The Field Investigation Section has experienced investigators who take the case and research to find the evidence and information that they need, especially if there are potential licensing law violations. Their investigations can run the gamut from being very simple by sending out a question and answer letter to the party and getting back answers in written form. Or, it can go more complex by contacting individuals, setting up interviews, request/subpoena records from third parties, consulting with industry experts on a novel issue or an issue that lay people did not understand. They work closely with the legal division if they have any questions about the law or how it is interpreted. If the investigation finds support for a possible licensing law violation, it is referred to the legal section, which is RICO's prosecution office.
3. The Prosecution Office consists of attorneys that will review the case and determine what to do with it. They could proceed with the prosecution, which will go the Board in the form of a

proposed settlement agreement or a contested case hearing. They may close the case if there is not enough evidence to support prosecution. The attorneys of the legal section have discretion and authority in managing their case load. Many licensees want to resolve the case and do not want to go through the hearing route, and these may end up settling after a hearing has been initiated. Through the efforts of the legal department, RICO takes hundreds of legal actions against licensees in the various professions every single year. They are also able to impose fines and judgments against many unlicensed persons.

Some of the challenges of the RICO division is due to the volume of complaints they receive annually, and it can take a while to process a complaint. More complex cases take time to investigate to the point where it is ready be referred to the legal department. RICO tends to prioritize complaints that involve significant consumer harm or imminent bodily harm to a person and underlying criminal conduct, including sexual misconduct. RICO will try to investigate these cases and pursue action as soon as they have enough evidence. It may take a while as the prosecutor who wants to get a conviction will not try to taint or disrupt prosecution. Sometimes they need to wait to get evidence to get access to witnesses and until the criminal prosecution runs its course. On the other hand, they do not have a statute of limitations, so it is okay for them to wait. Inevitably, if a licensee is convicted for a crime, RICO can take action on that conviction. This has been a great advantage to cases involving sexual misconduct for example. It is very common that victims do not want to be revictimized and going through the prosecutorial process and reliving it can be quite traumatic for them.

Ms. Brown stated from the last report that she reviewed, there were 700 licensed acupuncturists in the state. Since 2009, there has been only two cases of formal disciplinary actions and there were three cases involving unlicensed activity. It could be due to underreporting or that licensees are mindful of the law.

Chair Kroll clarified that the Board is never involved until the investigation is complete and the Board only approves or rejects the settlement agreements and final orders.

Ms. Brown responded that is correct. By law, the Board delegates the authority to RICO, including intaking of complaints, processing of complaints, and pursuing prosecution. The Board serves as the judge at the end, and the Board will approve or reject RICO's findings.

Chair Kroll said that the Board cannot make any suggestions or changes and can only either approve or reject the settlement agreement. If it is rejected, then the Board can make suggestions.

Ms. Brown responded, yes, that is correct.

Chair Kroll said that other acupuncturists have come to her with complaints and she directed them to file a complaint with RICO. Chair Kroll noted that it is great that people can file anonymously, but they should give enough information as possible so that it can be investigated. Chair Kroll asked if RICO will send a letter to a person if an anonymous complaint comes in that they are practicing without a license.

Ms. Brown responded yes, RICO will send a letter. The person may deny it, but they will be put on notice that someone is watching.

b. Hawaii Administrative Rules (“HAR”) Revisions – Update

EO Doi said that she received a draft back from the Administrative Services Office (“ASO”). She sent it to DAG Suzuka and Chair Kroll for one final review. EO Doi explained Chair Kroll had some suggestions.

Chair Kroll said that there were a few things that she wanted to change:

- The use of the word “Oriental”. The Accreditation Commission for Acupuncture and Oriental Medicine (“ACAOM”) changed its name to the Accreditation Commission for Acupuncture and Herbal Medicine (“ACAHM”). The term “Oriental” is derogatory, and the profession is moving away from using that word and instead replacing the term “Oriental Medicine” with “Acupuncture Medicine” and “Herbal Medicine”. Acupuncture is the active insertion of needles and acupuncture medicine is the term that is used to describe everything inclusive of that.
- She noted that there may be statutory changes regarding the time period to renew an expired license and recommended changing the wording in the rules to state regarding statutory changes that the expired license can be renewed pursuant to the time period established by HRS 436E.
- She noted that the National Certification Commission for Acupuncture and Oriental Medicine (“NCCAOM”) has not changed their name and therefore “Oriental” does not need

to be removed from their name. Since there is wording of the “successor agency” already in the statute, it will be covered if they do change their name.

- She would like to revise, “also known as ~~Traditional Chinese Medicine, East Asian Medicine and kanpo~~ to East Asian Medicine, kanpo, and Acupuncture Medicine”.

Chair Kroll said that with the Board’s approval, she and Dr. McMenemy could work on going through editing the rules together and bring it to the Board for discussion at the next meeting.

After a brief discussion it was decided to continue to go through each one as follows:

- Accredited acupuncture program means a professional program in acupuncture and oriental medicine. The choices given is:
 1. Acupuncture and herbal medicine, or
 2. Acupuncture medicine

Chair Kroll said that in this case, she would like to replace it with “herbal”.

- Accredited Commission on Acupuncture and Herbal Medicine, because the name changed.

EO Doi suggested to Chair Kroll that if there are any changes to make it on the draft for her to enter the changes.

It was moved by Chair Kroll, seconded by Dr. Foreman and unanimously carried to have Chair Kroll and Vice-Chair McMenemy go through each one for any changes.

c. Letter to the Department of Health (“DOH”) regarding acupuncturists ordering lab tests – Update

EO Doi stated that there were no new updates to report.

d. 2022 Board Meeting Schedule

EO Doi stated that the 2022 board meeting schedule was sent to the Board members.

4. Applications

a. Ratifications

It was moved by Vice-Chair McMenemy, seconded by Dr. Foreman, and unanimously carried to ratify the following list of licenses that have been issued:

Acupuncturists

ACU-1355	JENNIFER M GOTO
ACU-1356	JOON HEE LEE
ACU-1357	SUMMY WHITE
ACU-1358	JENNIFER K CAMPBELL
ACU-1359	DAVID SANTANDER
ACU-1360	BRET GEORGE SHIMIZU
ACU-1361	PAMELA BAILINSON
ACU-1362	EMILY CATHERINE COX
ACU-1363	DAVID CURTIS MAGNUSO

b. Application for License – Acupuncturist

1. Hong Zhou

It was moved by Chair Kroll, seconded by Dr. Foreman, and unanimously carried to approve Hong Zhou's Application for License – Acupuncturist.

c. Reconsideration of Use of Doctor of Acupuncture Title

1. Han Yang

The applicant had submitted the correct requested documentation. It was moved by Chair Kroll, seconded by Dr. Foreman, and unanimously carried to approve Han Yang's Reconsideration of Use of Doctor of Acupuncture Title.

5. New Business: a. Legislative Delegation for 2022 Legislative Session

EO Doi stated that when bills are scheduled for hearing at the legislature, it is very quick and with short notice. She wanted permission to contact a Board member to help her draft testimony.

It was moved by Dr. Foreman, seconded by Vice-Chair McMenemy to delegate Chair Kroll to assist EO Doi to provide testimony during the legislative session.

6. Next Meeting: Thursday, February 3, 2022
1:00 p.m.
Virtual Meeting – Zoom Webinar

7. Adjournment: Chair Kroll adjourned the meeting at 1:47 p.m.

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Reviewed and Approved by:

Taken and recorded by:

/s/Risé Doi
Ris  Doi,
Executive Officer

/s/Susan A. Reyes
Susan A. Reyes,
Secretary

RD:sar

1/4/22

Minutes approved as is.

Minutes approved with changes. See 2/3/22 minutes.