

**DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE
FLORIDA BOARD OF ACUPUNCTURE**

**MINUTES
GENERAL BUSINESS MEETING
JUNE 1, 2012**

**Grand Hyatt Tampa Bay
2900 Bayport Dr.
Tampa, Florida 33607
(813) 874-1234**

CALL TO ORDER

Katherine Teisinger, Chair, called the General Business Meeting to order approximately 9:04 a.m. Those present for all or part of the meeting included the following:

MEMBERS PRESENT

Katherine Teisinger, AP, Chair
Melody Clancy, AP, D.O.M., Vice Chair
Greg Gunter, Consumer Member
Barbara Rezmer, Consumer Member

STAFF PRESENT

Paula Mask, Program Operations Administrator
Jacqueline Clahar-Anderson, RSII

MEMBERS ABSENT

Min Tian, AP, D.O.M., Ph.D. (excused)
Barbara Thurman, AP (excused)

COURT REPORTER

Dempster & Berryhill Court Reporting
Phone: 813.229.8225
Fax: 813.229.8722

BOARD COUNSEL

Lee Ann Gustafson, Esq.
Assistant Attorney General

Please note the meeting minutes reflect the actual order agenda items were discussed during the meeting and may differ from the agenda outline.

An audio of this meeting can be found by clicking on "Audio Files" at http://www.doh.state.fl.us/mqa/acupunct/acu_meeting.html

REVIEW AND APPROVAL OF MINUTES

Tab 1 March 2, 2012 General Business Meeting

Action Taken: Mr. Gunter made a motion to approve the minutes without corrections. Ms. Clancy seconded the motion which carried unanimously 4/0.

ADMINISTRATIVE PROCEEDINGS

Acupuncture Applicants

Tab 2 Thomas J. Osterhout – Endorsement by NCCAOM

Mr. Osterhout was present without counsel.

Action Taken: After discussion, Mr. Gunter moved to approve the license with the following conditions:

- Probation for 2 years;
- He must self-report any infractions during probation; and
- He must appear at the board meeting scheduled at the end of the probationary term and submit a current criminal history report.

Ms. Clancy seconded the motion, which passed unanimously 4/0.

Tab 3 Yvonne Hernandez-Munoz - Exam

Applicant was present with Jonathan Wald, Academic Dean, East West College of Natural Medicine a representative of East West College. Applicant was duly sworn in by court reporter.

Action Taken: After discussion the applicant was given the option of either waiving her right to having a decision made on her application within 90 days of completion or to have her application withdrawn. Ms. Hernandez-Munoz verbally waived the 90 day requirement.

Action Taken: Mr. Gunter moved to table the application for 1½ years from the date of the filed order allowing her to obtain the prerequisite college requirements. Ms. Clancy seconded the motion, which passed unanimously 4/0.

Ms. Teisinger requested board staff to correspond with East West College of Natural Medicine clarifying massage therapy hours are unacceptable.

Tab 16 Michelle Sigler - Endorsement by NCCAOM (Addendum - New Item)

Applicant was not present nor represented by counsel.

Action Taken: After discussion, Ms. Clancy moved to approve the license with the following condition:

- Ms. Sigler must submit documentation of graduation from the Academy of Five Elements on or before September 15, 2012. If the transcript is not submitted by such date the application will be denied.

Ms. Rezmer seconded the motion, which passed unanimously 4/0.

Tab 4 REPORTS

Board Chair Report – Katherine Teisinger

Ms. Teisinger indicated the Board of Chiropractor Medicine has a rule which does not allow them to advertise as an Acupuncture Physician in the phone book; however, there is a new phase of advertising where Chiropractors are now using the internet to advertise. Ms. Teisinger asked staff to write a letter to the Board of Chiropractic Medicine addressing the possible infringement of this rule and if they would consider enforcing this rule to state all forms of advertising.

Amy Sear, who was present, agreed with the board on writing a letter to the Board of Chiropractic Medicine. However, since this type of situation has occurred before, Ms Sear suggested they should contact the Board of Chiropractic Medicine individually, since this has worked in the past.

Ms. Gustafson recommended licensees report any violation in order for the Board of Chiropractic Medicine to be made aware of the violation.

Action Taken: After discussion it was the consensus of the board for the Chair to write the letter.

Board Counsel Report – Lee Ann Gustafson, Esq.

a. June 2012 Rules Report

Rule 64B1-3.004 Acupuncture Examination

Ms. Gustafson asked the board to ignore the tentative adoption date on this rule since it will be discussed as a later item on the agenda.

Ms. Gustafson advised the documentation necessary for the licensure application is basically a forms rule which was just published. Ms. Gustafson stated she was uncertain as to what would happen since the Joint Administrative Procedure Committee's (JAPC) attorney has taken the position the board will not be allowed to adopt any new rule that incorporates forms in the rule. Ms Gustafson indicated she will see if this rule goes through the process or not. Ms. Gustafson also indicated there was some discussion the Department of Health would handle incorporating all the forms into a rule; however, the new interim General Counsel disagrees with that position.

64B1-4.012 Acupoint Injection Therapy

Ms. Gustafson advised this rule has not been promulgated as it basically started as a formulary. Ms. Gustafson informed the board she had first noticed the rule assuming this was the rule the board wanted to amend. Since there was an objection it was re-noticed without a rule number.

Action Taken: After discussion Ms. Clancy made a motion to withdraw the rule. The motion was seconded by Mr. Gunter which passed unanimously 4/0.

64B1-9.001 Disciplinary Guidelines

Ms. Gustafson advised this rule was filed April 12, 2012 and became effective May 2, 2012. The amendments to this rule related to section 456.0635, Florida Statutes.

(BREAK 10:00 a.m. and reconvened approximately 10:21 a.m.)

b. Renewed Objection to Amendment of Rule 64B1-3.004 Acupuncture Examination based on allegations of violations of Section 120.54, F.S.

- **Emails from Richard A. Freiberg, OMD, DAC, AP, LAc**
 - **64B1-3.004, FAC Objection #1 - Action Taken: No response.**
 - **64B1-3.004, F.A.C., Objection #2**

c. Email from Richard A. Freiberg, OMD, DAC, AP, LAc

- Immediate Demand for a SERC Re: 64B1-3.004, F.A.C.

Action Taken: Ms. Gustafson stated if a member of the public submits a lower cost regulatory alternative, the board is obligated to prepare a Statement of Estimated Regulatory Cost (SERC). If this is not done the rule is subject to challenge later. Ms. Gustafson indicated she did not believe this objection and demand actually submits a lower regulatory cost alternative because the first suggestion as a lower cost regulatory alternative is to not amend the rule, and that is always a lower cost regulatory alternative, but it is not a lower cost, it is a new cost. If they don't want the rule, the rule can be challenged.

The second lower cost alternative Ms. Gustafson had difficulty finding it to be a lower cost regulatory alternative for the following reasons: 1) At least part of it has nothing to do with the exam, for example, (reading from draft submitted) paragraph (2)(b) indicates applicants who apply for licensure under 64B1-3.004(2)(a) indicates zero hours herbal education is required as a prerequisite for

licensure. Ms. Gustafson's opinion is this is not valued grounds for having a lower regulatory cost alternative and is really irrelevant to whether or not you add modules to the examination.

In paragraph (2)(a) Ms. Gustafson stated since a SERC has been requested, this could be a basis for rule challenge if one is not prepared. Her recommendation is the Executive Director should prepare a SERC. As was discussed in the last meeting, last year the board had a total of 137 applicants, including applicants who were not required to take any exam. The cost of implementing the 1st year of regulation would not exceed \$200,000. The alternative is not to prepare the SERC and rely on the fact that these are not lower cost alternatives. To be cautious Ms. Gustafson recommended preparing a SERC since the rule could be challenged if a SERC is not prepared. Ms. Gustafson stated she did not believe Mr. Freiberg had grounds to file that challenge because he does not have to take the new exam.

Ms. Gustafson's recommendation is to prepare a SERC on Rule 64B1-3.004, and consider adding specific language for all applicants who enter the 2 year course of study in Acupuncture prior to February 1, 1998. The applicant will be held to the standards for licensure that were in place at the time they were originally granted licensure. As discussed before this is not a retroactive rule, it is only going to apply for people who apply in the future after 2014.

Ms Gustafson recommended Mr. Jusevitch prepare a SERC and the board authorize her to write a letter to Mr. Freiberg. With the letter she will send him a copy of the SERC advising him we are not adopting either one of the lower cost regulatory alternatives in part because neither one of them are lower cost regulatory alternatives.

Regarding paragraphs (2)(a), (2)(b) and (3), Ms. Mask raised concerns about the language "the NCCAOM examination or comparable test as determined by the board" in Mr. Freiberg's objections. This would involve comparing the examinations and is costly. Ms Gustafson indicated it was extremely expensive to compare the examinations, and in order to have this done at all it would have to be prepared by Testing Services.

Action Taken: Ms. Clancy made a motion to approve the recommendations by counsel. The motion was seconded by Mr. Gunter which passed unanimously 4/0.

Mr. Gunter raised the issue of Mr. Freiberg's statement on Page 2 and point number one, and indicated board staff was verbally turning away from 50 to a 100 applicants for licensure. Ms. Mask stated board staff does not turn away applicants for licensure as we advise them on the laws and rules. Mr. Freiberg's statement accuses board staff of verbally turning away applicants due to a bias and misinterpretation of the laws and rules. Mr. Gunter indicated this was an inflammatory statement and unfounded and only serves to be contradictory to the purposes of this board. Ms. Gustafson further indicated board staff does not have the authority to tell anyone they could not apply for licensure. Ms Mask further stated if board staff had questions regarding an applicant's application or their education they would appear before the board just as they have today.

**• 64B1-3.004, F.A.C., Objection #3 (reincorporates Objections #1 and #2)
Objection to Agency Invalid Rulemaking (incorporation herein of previously filed objection #1 – Demand for Final Hearing and Objection #2 – Demand for SERC and Legislative Ratification and Low Cost alternative)**

Ms. Gustafson was uncertain as to what final hearing was being requested. Ms. Gustafson stated the way to challenge a rule is to file a rule challenge at the Department of Administrative Hearings (DOAH), and other than that Mr. Freiberg does not have a right to a hearing and a SERC was already addressed by the board. Ms. Gustafson indicated Mr. Freiberg continues to misunderstand the import of the provisions in Section 456.017 and the 180 days as mentioned in section 120.54(1)(b). The provisions in Chapter 120 states when new legislation is passed boards are required to start rulemaking implementation within 180 days of the date the statutes become effective. Ms. Gustafson further stated it does not mean if you do not have the rule in place within 180 days you can never have a rule again. Ms Gustafson stated this does not require any further action.

d. Letters to and from Marjorie C. Holladay Re: Rule 64B1-3.004, F.A.C.

e. Draft of rule amendment 64B1-3.004, Acupuncture Examination

Ms. Holladay advised based on the current proposed rule draft there will be no rule stating what national examination is board approved until October 1, 2014.

Ms. Gustafson drafted the following amendment for the board's approval.

64B1-3.004 Acupuncture Examination - The Board currently approves as the Florida examination for licensure the NCCAOM examination, consisting of the Foundations of Oriental Medicine Module and the Acupuncture with Point Location Module. Effective October 1, 2014, the Board approves as the Florida examination for licensure the NCCAOM examination consisting of the Foundations of Oriental Medicine Module, the Acupuncture with Point Location Module, the Biomedicine Module and the Chinese Herbology Module.

Action Taken: Ms. Clancy made a motion to approve the new rule draft. The motion was seconded by Mr. Gunter which passed unanimously 4/0.

f. Proposed Rule language – 64B1-7.0015, Continuing Education Requirement

Based on discussion at the March 2, 2012 meeting, Ms. Gustafson drafted an amendment to this rule.

Action Taken: It was the consensus of the board for Ms. Gustafson to amend the rule draft based on the board's discussion and present it to the board at the September 7, 2012 meeting.

Board Liaison Reports, if any

Application Examination & Endorsement – Katherine Teisinger

No Report.

Budget – Gregory Gunter

Mr. Gunter referred the board to the report in the agenda, Expenditures by Function report for period ending March 31, 2012. Mr. Gunter reiterated at the last meeting the board suggested Mr. Jusevitch would reassess the renewal fees. Ms. Mask indicated Mr. Jusevitch would bring to the next meeting a draft of the reduced renewal fees. Ms. Mask also brought to the board's attention a section of the budget report which states Chapter 215.32 Transfer of Funds where the Legislature took a sweep of the MQA Trust Fund with the Acupuncture portion being \$265,220.00.

Community Relations – Barbara Rezmer

Consumer Protection – Barbara Rezmer

No report.

Continuing Education – Barbara Thurman, Melody Clancy, Min Tian

No report.

Legislative & Rules – Katherine Teisinger

No report.

Unlicensed Activity – Melody Clancy

No Report.

NEW BUSINESS

Tab 5 Petition for Declaratory Statement – Removal of acupuncture needles from the patient.

Dr. Bass was not present.

Action Taken: After discussion Mr. Gunter moved to decline to take any action since the Petitioner did not identify a statute or rule for the board to interpret. Motion was seconded by Ms. Rezmer which passed unanimously 4/0.

Tab 6 Election of Officers

Board Chair

Ms. Teisinger addressed the board before proceeding with the election of officers. Ms Teisinger indicated as of November 2012 her term will end and suggested the board elect the person they would like to be the next board chair who will also possibly be on the board for the next couple of years. This she felt would be best for the board.

Action Taken: Mr. Gunter nominated Ms. Clancy as Board Chair. Ms. Rezmer seconded the motion which passed unanimously 4/0. Ms. Clancy accepted the Board's nomination.

Board Vice-Chair

Action Taken: Mr. Gunter nominated Min Tian as Board Vice-Chair. Ms. Teisinger seconded the motion which carried 4/0. Ms. Tian was not present for the Board's nomination.

Mr. Gunter publicly thanked Ms. Teisinger for her years of service to the State of Florida and the Board of Acupuncture. The Board and audience concurred.

Tab 7 Delegation of Authority

Ms. Mask submitted a delegation of authority chart for the members outlining certain situations when a particular duty could be delegated to the Chair, full Board, the Executive Director, the Program Administrator or the Board Counsel.

Action Taken: Ms. Clancy moved to accept the Delegation of Authority as outlined. Motion was seconded by Mr. Gunter and carried 4/0. Ms. Teisinger signed the Delegation of Authority.

Tab 8 Proposed 2013 Meeting Dates

The Board of Acupuncture voted on the following 2013 meeting dates and locations:

<u>Date</u>	<u>Location</u>
March 1, 2013	Orlando
May 31, 2013	Tampa
September 6, 2013	Tallahassee
December 13, 2013	Tampa

Action Taken: Mr. Gunter motioned the entire schedule be adopted as amended. Motion was seconded by Ms. Clancy which passed 4/0.

(BREAK 11:13 a.m. and reconvened approximately 11:24 a.m.)

Tab 9 Ratification of Licensure – 2/11/2012 through 5/17/2012

Action Taken: Ms. Rezmer moved to ratify the new licensees, license numbers 3089 through 3136. Mr. Gunter seconded the motion which carried 4/0.

Tab 10 Ratification of Continuing Education Courses – 2/15/2012 through 5/10/2012

Action Taken: Ms. Rezmer moved to ratify the continuing education courses which was seconded by Ms. Clancy and carried 4/0.

REVIEW OF CONTINUING EDUCATION COURSES

	<u>Provider Name</u>	<u>Course Name</u>	<u>Course #</u>
Tab11	Healthcare Medicine Institute	Safety & Ethics: Preventing Medical Errors #1	20-345722
Tab 12	Healthcare Medicine Institute	Safety & Ethics: Preventing Medical Errors #2	20-345916

Action Taken: Mr. Gunter made a motion to deny the two courses as the instructor does not meet the requirements of rule 64B1-6.005, F.A.C. Motion was seconded by Ms. Clancy and passed 4/0.

Tab 13 Grasshopper Education Making Moxa from California Mugwort 20-34762

Action Taken: Ms. Teisinger made a motion to approve this course. Motion was seconded by Ms. Clancy and passed 4/0.

Tab 14 The Therapeutic Alternative Ortho-Bionomy Phase Four-Focus on the Spine 20-34762

Action Taken: Ms. Clancy made a motion to approve this course. Motion was seconded by Ms. Rezmer and passed 4/0.

Tab 17 Jill Jaynes, AP Risk Management & Ethics of Insurance Billing 20-176583
(Addendum - New Item)

Ms. Jaynes faxed a request for the board to continue the discussion of this course to the September meeting due to not being able to adjust her schedule.

Action Taken: Mr. Gunter made a motion to table until the next board meeting. Motion was seconded by Ms. Rezmer and passed 4/0.

INFORMATIONAL

Tab 15 Acupuncture Renewal Report
Information only.

NEXT MEETING

September 7, 2012
Florida Hotel and Conference Center
1500 Sand Lake Road
Orlando, FL 32809
407-859-1500

ADJOURNMENT

Mr. Gunter made a motion to adjourn the general business meeting. Ms. Rezmer seconded the motion which carried 4/0. Meeting adjourned approximately 11:40 a.m.