



New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION
Board of Acupuncture and Oriental Medicine
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REGULAR BOARD MEETING
Thursday August 21, 2008 at 9:00 a.m.
State Capitol Building - 3rd Floor, Room 309
419 Old Santa Fe Trail, Santa Fe, New Mexico

"DRAFT MINUTES"

MEMBERS PRESENT: Caroline Colonna, DOM, Chairman
Alix Bjorklund, DOM
Angelique Cook-Lowry, DOM
Anna Hansen, Public Member
Cynthia Archuleta, Public Member
John Pieper, Public Member
Barbara Maddoux, DOM

BOARD STAFF: Betsy Glenn, Assistant Attorney General
Martha L. Gallegos, Board Administrator
Stephen Oliver, Team Leader
Diane Vigil-Hayes, Exam Administrator
Andrew Vallejos, Boards & Commissions Division Director

OTHERS PRESENT: See Sign-In Sheet (Exhibit A)

I. CALL TO ORDER AND ROLL CALL

Chairman Colonna called the meeting to order at 9:07 a.m. Roll call was taken and it was determined that a quorum was present.

Dr. Colonna introduced the two new board members, Dr. John Pieper and Dr. Barbara Maddoux.

II. APPROVAL OF AGENDA

Chair Colonna **MOVED** that Items A and B under New Business be moved after the Correspondence section and before Public Comment. Dr. Cook-Lowry **SECONDED** the motion. Motion **PASSED** by unanimous decision.

Ms. Hansen **MOVED** to approve the agenda with the amendments. Dr. Bjorklund **SECONDED** the motion. Motion **PASSED** by unanimous decision.

III. APPROVAL OF BOARD MEETING MINUTES

A. December 7, 2007 Regular Meeting Minutes - Ms. Hansen expressed her concerns that the minutes were not accurate:

- She states that on page 3, what she said was she is not happy that there are no Rx people on the committee from the Board.

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- At the end of the meeting Chair Colonna appointed Dr. Cook-Lowry to the Rx Committee and removed Ms. Hansen. Ms. Hansen is requesting that it be reflected in the minutes.
- The numbering is incorrect on the minutes and would like it corrected to avoid confusion.

Ms Gallegos stated she would check the tapes for verification and get the minutes corrected.

IV. GUEST SPEAKERS

Chair Colonna proceeded to introduce the guest speakers.

A. Betsy Glenn, Attorney General, Civil Division Director - AG Glenn gave a brief overview of her previous memo regarding her opinion on the scope of the prescriptive authority. (See Exhibit B). Her review is limited solely to a legal review interpretation of the statute.

Chair Colonna stated she would like an emergency rule that would remedy the situation of what is going on with the Rx2 practitioners. Because of AG Glenn's memo, the practitioners believe they cannot continue to practice some of what they have practiced before and are currently practicing. AG Glenn stated the best solution is to go the legislature to request for an amendment to the statute that clarifies what the legislature intended to authorize.

Dr. Cook-Lowry asked that because of the fact that they have been doing what they are doing for the past nine years, do they have to accept AG Glenn's memo and continue doing what they are doing until they can get to the legislature. AG Glenn stated the board is free to reject her legal advice. The problem with that is, if something were to happen the Attorney General's office would not be able to represent the board in a lawsuit. AG Glenn stated that when changing the language in the statute just say exactly what it is they want to be able to do.

Ms. Hansen **MOTIONED** not accept Betsy Glenn's opinion. Motion **FAILED**. Chair Colonna **MOVED** to accept Betsy Glenn's opinion and defer to the legislative committee, the writing of the legislation to allow for the Rx practitioners to continue practicing what they were taught to practice and defer the language to the legislative/rules committee that would write the proper legislation. Dr. Bjorklund **SECONDED** the motion. Discussion. AG Glenn stated that with this motion, it is left up to the individual practitioners how they want to continue to practice. Dr. Cook-Lowry asked if Regulation and Licensing had any information to offer for clarification before the Board made their decision.

Chair Colonna introduced Superintendent Kelly O'Donnell.

B. Kelly O'Donnell, Ph.D., Superintendent, Regulation & Licensing - Attorney General's opinion was shared with Governor's office. The basic consensus and directive to Ms. O'Donnell from Governor Richardson was to seek to insure that AG Glenn's opinion was abided by. She recommends strongly, that the Board, in the very near future, clarify what it seeks for the statute to say, get a proposal in place, and move forward with statutory change. Dr. Cook-Lowry expressed her concerns of what they are allowed to do until then. Ms. O'Donnell's opinion is that instruction to the practitioners should come from Board.

Ms. O'Donnell proceeded to read the letter she received from Governor Richardson. The letter directs the Regulation and Licensing Department to cease and desist from publishing regulations that expand prescriptive authority at this time. (See Exhibit C)

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Dr. Colonna **RETRACTED** her motion on the table after discussion, and deferred the motion over to Dr. Maddoux. Dr. Maddoux **MOTIONED** to accept AG Glenn's opinion, and the Board support Rx practitioners to be able to practice as they have been trained, and continue to do so in the interim until new legislation can be proposed and the statute can be rewritten. The legislative committee and the rules committee will begin immediately to work on clarifying the language so it will be clear to everyone. Dr. Pieper **SECONDED** the motion. Motion **PASSED** by unanimous decision.

C. Andrew Vallejos, Boards & Commission Director - Mr. Vallejos explained the transmittal process for legislation. He explained the reason for not submitting the transmittal for legislation to the Governor's office was because it was not voted upon by the Board. It is not too late to submit for the legislative session but there are no guarantees. He discussed the role of the Board versus the role of the associations. With a Board, there is a little more bureaucracy involved. If the board would like to propose legislation then the process would be to go through the process of getting a board consensus. It then goes through Regulation and Licensing who will submit the transmittals. It could or could not be accepted. Two versions of acceptance: It could be accepted and they will want it to be a Governor's Bill, which would be part of the Governor's initiative. This is rare. The other way is, permission will be granted to go ahead with a legislative proposal but it would be that the board would have to go lobby it. The other path to legislation is through association bills. An association has a first amendment right to propose any legislation it wants. It is walked through by the association and the association does everything in its power to persuade the legislators. The distinction between the two is the board is there to license the people and to protect the health and welfare of the citizens. The association has the same values but it is not their main goal, their main goal is to progress their profession. Mr. Vallejos urged the Board to put forward a process to form a parameter for the expanded practice. He stated there is a good chance they won't be able to change statute because it just changed in 2007. He advised the Board to move forward with the rule improvising implementing the four modalities. People that should be involved in the process for the rules should be the Board, Regulation and Licensing, Board of Pharmacy, Attorney General, and the Public.

At 10:30 a.m. the board recessed for a break.

At 10:45 a.m. the board reconvened.

V. BAOM ETHICS

A. Code of Conduct - Ms. Gallegos read the Code of Conduct out loud. Chair Colonna **MOVED** to form an ethics committee to form a more thorough Code of Conduct, specifically in the area of conflict of interest. Dr. Maddoux **SECONDED** the motion. Discussion. Motion **APPROVED** by unanimous decision.

B. Open Meetings Resolution - Dr. Bjorklund **MOVED** to accept the Open Meetings Resolution. Dr. Cook-Lowry **SECONDED** the motion. Motioned **PASSED** by unanimous decision.

VI. OLD BUSINESS

A. Detox Committee report (rules proposal and rules hearing date) - Dr. Bjorklund stated that the committee is almost done with the rules with the exception of the language for the NADA

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training, which is still being discussed. The committee is requesting a rule hearing for Detox. Chair Colonna **MOVED** to have a rules hearing just for Detox rules. Dr. Bjorklund **SECONDED** the motion. Discussion. Ms. Hansen reiterated that the trainers who are already qualified to teach auricular detoxification could still be trainers. The rules have already gone through the rules committee once. They can go directly to a rules hearing once the final changes have been made. Motion **PASSED** by unanimous decision.

B. RX/BOP Joint Committee report and action items - Dr. Maddoux reported on the update for the committee. The joint committee conducted extensive research and discussion, and voted on a definition for bio-identical hormones. The definition reads as, "Bioidentical hormones are compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body, including desiccated thyroid". Dr. Maddoux **MOVED** to accept the definition of bio-identical hormones that the joint committee voted on. Dr. Colonna **SECONDED** the motion. Motion **PASSED** by unanimous decision. Dr. Maddoux stated that the committee is working on a formulary with research ongoing, which will be discussed and reviewed.

Dr. Colonna **MOVED** to move all of New Business to follow Correspondence. Ms Hansen **SECONDED** the motion. **MOTION** passed by unanimous decision.

VII. EXECUTIVE SESSION - A **MOTION** was made by Ms. Hansen to go into closed session, (pursuant to § 10-15-1(H)(1) through (3) to discuss complaints, licensing matters and issuance of notices of contemplated action, to deliberate in connection with administrative disciplinary hearings, to discuss pending or threatened litigation or updates on pending cases. Dr. Pieper **SECONDED** the motion. Roll call vote was conducted and the results were as follows: Caroline Colonna, Alix Bjorklund, Barbara Maddoux, Angelique Cook-Lowry, Cynthia Archuleta, John Pieper, Anna Hansen, Betsy Glenn and Martha Gallegos were present. **MOTION CARRIED**. The Board entered into executive session at 11:34 am to review and discuss the following cases:

- A. AOM 07-07;
- B. AOM 07-08
- C. AOM 07-09
- D. AOM 07-10
- E. AOM 07-11
- F. AOM 07-12-01
- G. AOM 07-12-02
- H. AOM 07-12-03
- I. AOM 07-12-04
- J. AOM 07-12-05
- K. 04-006
- L. 04-009
- M. AOM 05-03
- N. AOM 05-13
- O. AOM 05-14
- P. AOM 06-01
- Q. AOM 06-05
- R. AOM 06-06

The board came out of Executive Session and broke for lunch until 1:58. Dr. Colonna stated that nothing was discussed in Executive Session other than what was indicated in the original motion.

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VIII. DECISION ON MATTERS DISCUSSED IN EXECUTIVE SESSION (10 min)

A. AOM 07-07 - Ms. Hansen **MOTIONED** to dismiss and close complaint, **SECONDED** by Dr. Cook-Lowry. Motion **PASSED** by unanimous decision.

B. AOM 07-08 - Ms. Hansen **MOTIONED** to dismiss and close complaint, **SECONDED** by Dr. Cook-Lowry. Motion **PASSED** by unanimous decision.

C. AOM 07-09 - Ms. Hansen **MOTIONED** to dismiss and close complaint, **SECONDED** by Ms. Archuleta. Motion **PASSED** by unanimous decision.

D. AOM 07-10 - Ms. Hansen **MOTIONED** to dismiss and close complaint, **SECONDED** by Dr. Cook-Lowry. Motion **PASSED** by unanimous decision.

E. AOM 07-11 - Ms. Hansen **MOTIONED** to dismiss and close complaint, **SECONDED** by Dr. Pieper. Motion **PASSED** by unanimous decision.

F. AOM 07-12-01 - Ms. Hansen **MOTIONED** to dismiss and close complaint. In addition to the complainants letter, a notification shall contain a strong message that complainant must have the facts and proof to substantiate the allegations and and that the Board has allowed complainant to continue training CADS training possession even though it is not NADA training. The letter emphasize that this Board has accepted NADA protocol as a national **SECONDED** by Dr. Cook-Lowry. Motion **PASSED** by unanimous decision. In addition to the complainants letter, a notification shall contain a strong message that complainant must have the facts and proof to substantiate the allegations and that the Board has allowed complainant to continue training CADS training possession even though it is not NADA training. The letter emphasize that this Board has accepted NADA protocol as a national standard. Motion should also be unanimous decision. In addition to the complainants letter, a notification shall contain a strong message that complainant must have the facts and proof to substantiate the allegations and that the Board has allowed complainant to continue training CADS training possession even though it is not NADA training. The letter emphasize that this Board has accepted NADA protocol as a national standard. Motion should also be unanimous decision.

G. AOM 07-12-02 - Ms. Hansen **MOTIONED** to dismiss and close complaint, with a letter sent to the complainant to include the supervisor relationship guideline forms were submitted by the respondent. Motion **SECONDED** by Ms. Archuleta. Motion **PASSED** by unanimous decision. In addition to the complainants letter, a notification shall contain a strong message that complainant must have the facts and proof to substantiate the allegations and that the Board has allowed complainant to continue training CADS training possession even though it is not NADA training. The letter emphasize that this Board has accepted NADA protocol as a national standard. Motion should also be unanimous decision.

H. AOM 07-12-03 - Ms. Hansen **MOTIONED** to dismiss and close the complaint of unfounded violation of act or rules. Motion **SECONDED** by Ms. Archuleta. Motion **PASSED** by unanimous decision.

I. AOM 07-12-04 - Ms. Hansen **MOTIONED** to dismiss and close as to unfounded violation of act or rules. Motion **SECONDED** by Ms. Archuleta. Motion **PASSED** by unanimous decision.

J. AOM 07-12-05 - Ms. Hansen **MOTIONED** to dismiss and close as to unfounded violations of act or rules. Motion **SECONDED** by Dr. Pieper. Motion **PASSED** by unanimous decision.

K. 04-006 - Ms. Hansen **MOTIONED** to dismiss and close complaint, as statute of limitations has expired. Motion **SECONDED** by Ms. Archuleta. Motion **PASSED** by unanimous decision.

L. 04-009 - Ms. Hansen **MOTIONED** to dismiss. The BAOM received from Bernalillo District Court, an Early Order and Release on conditional discharge, therefore dismissing the case. Ms. Archuleta **SECONDED** the motion. Motion **PASSED** by unanimous decision.

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M. AOM 05-03 - Ms. Hansen **MOTIONED** to dismiss and close. Dr. Cook-Lowry **SECONDED** the motion. Motion **PASSED** by unanimous decision.

N. AOM 05-13 - Ms. Hansen **MOTIONED** to dismiss and close. Dr. Cook-Lowry **SECONDED** the motion. Motion **PASSED** by unanimous decision.

O. AOM 05-14 - Ms. Hansen **MOTIONED** to dismiss and close. Ms. Archuleta **SECONDED** the motion. Motion **PASSED** by unanimous decision.

P. AOM 06-01 - Ms. Hansen **MOTIONED** to dismiss and close. Ms. Archuleta **SECONDED** the motion. Motion **PASSED** by unanimous decision.

Q. AOM 06-05 - Ms. Hansen **MOTIONED** to dismiss and close. Ms. Archuleta **SECONDED** the motion. Motion **PASSED** by unanimous decision.

R. AOM 06-06 - Ms. Hansen **MOTIONED** to dismiss and close. A letter to respondent will be included that the Board request he remove his advertising from the Acupuncture section of the Yellow Pages or a complaint will be filed with the Massage Board. Dr. Cook-Lowry **SECONDED** the motion. Motion **PASSED** by unanimous decision.

IX. ADMINISTRATIVE ACTION ITEMS

A. Christin Hawbaker and Tim Hawbaker, request for refund - Ms. Hansen **MOTIONED** to refund the money. Dr. Bjorklund **SECONDED** the motion. Discussion. Dr. Maddoux **SECONDED** the motion. Motion **PASSED** by unanimous decision. After discussion on statute with AG Glenn, the Board **RETRACTED** their decision and Dr. Colonna **MOTIONED** that the Board could not refund the money per the statute. Dr. Bjorklund **SECONDED** the motion. The motion was **APPROVED** by unanimous decision. A letter to be sent to the Hawbakkers clarifying the reason for the denial.

B. Lyn Martel, request for refund - Ms. Hansen **MOTIONED** to process refund of \$225 for extern application fee. Dr. Bjorklund **SECONDED** the motion. Motion **PASSED** by unanimous decision. After discussion on the statute with AG Glenn, the Board **RETRACTED** their decision and Dr. Colonna **MOTIONED** that the Board could not approve a refund per the statute. Dr. Bjorklund **SECONDED** the motion. The motion was **APPROVED** by unanimous decision.

C. Robin Whitlow, DOM, request for waiver of late fees - Dr. Bjorklund **MOTIONED** that according to statute the Board cannot approve the request. Ms. Hansen **SECONDED** the motion. Motion **PASSED** by unanimous decision.

D. Robyn Debonet - Request for herbology exam extension - Ms. Hansen **MOTIONED** to give an extension to Ms. Debonet. The motion was **SECONDED** by Dr. Cook-Lowry. The motion **PASSED** by unanimous decision.

E. Mary C. Alvillar, request for refund - Ms. Hansen made a motion to write a letter stating that the Board is not able to give her a refund, but would allow an extension to give her the opportunity to be able to sit for the exam in May or October 2009. Dr. Colonna **SECONDED** the motion. The motion **PASSED** by unanimous decision.

F. FAOMRA Conference - Dr. Colonna **MOTIONED** to send Ms. Gallegos and a board member to attend the FAOMRA Conference on October 16, 17 & 18. Ms. Hansen **SECONDED** the motion. The motion **PASSED** by unanimous decision.

G. Renewals - Jurisprudence Exam - Discussion on a better way to deal with the jurisprudence exam electronically, where the system would give the answers that are incorrect and the licensee could review it on his own. Dr. Colonna **MOTIONED** to adopt a new rule to allow applicants for renewal to systematically pass the jurisprudence exam and have in place, a system whereby if they fail

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an answer there is a pop-up or a remedy so they can look up information and pass the question. Dr. Bjorklund **SECONDED** the motion. Motion **PASSED** by unanimous decision.

X. CORRESPONDENCE

A. Letters from NADA - Ms. Hansen **MOTIONED** that a letter be sent to all detox and training programs, that if the program is not NADA approved, make sure they are not using NADA material or symbols. Dr. Cook-Lowry **SECONDED** the motion. Motion **PASSED** by unanimous decision.

B. ATEAM - Dr. Colonna **MOTONED** to defer ATEAM request to the RX committee. Dr. Bjorklund **SECONDED** the motion. Motion **PASSED** by unanimous decision. Dr. Colonna **MOTIONED** to defer to the ATEAM Correspondence letter to the ethics committee. Dr. Maddoux **SECONDED** the motion. The motion **PASSED** by unanimous decision.

C. Nityamo Lian, DOM, MPH - Dr. Bjorklund **MOTIONED** to defer the letter to the ethics committee. A letter will be sent stating the Board does not regulate what the association does. Dr. Maddoux **SECONDED** the motion. Motion **PASSED** by unanimous decision.

D. Dr. Paul H. Stuetzer, Ph.D., DOM letter - Dr. Bjorklund **MOTIONED** that RLD forward the letter to the association, and send a letter to the doctor to go to the association. Dr. Cook-Lowry **SECONDED** the motion. Motion **PASSED** by unanimous decision.

E. Sophia Malaika, DOM, letter - Dr. Colonna **MOTIONED** to defer to the legislative committee and bring back to board with a recommendation. Dr. Maddoux **SECONDED** the motion. Motion approved by unanimous decision.

F. Expanded Practice Consultants - Glenn Wilcox introduced and explained what the expanded practice consultants consisted of and their purpose. They would like to be invited to participate in the expanded process. He is requesting that they are included in the Rx/BOP meetings and the legislative committee meetings.

XI. NEW BUSINESS

A. Election of Officers - Dr. Colonna **MOTIONED** to nominate Dr. John Pieper as Board Chair. Dr. Cook-Lowry **SECONDED** the motion. The motion **PASSED** by unanimous decision. Ms. Hansen **MOTIONED** to vote Angelique Cook-Lowry as the Board's new Vice Chair. Ms. Archuleta **SECONDED** the motion. Dr. Bjorklund **MOTIONED** to nominate Caroline Colonna as Vice Chair. A vote was taken: Ms. Hansen for Dr. Cook-Lowry; Dr. Bjorklund for Dr. Colonna; Dr. Maddoux for Dr. Colonna; Cynthia Archuleta for Dr. Cook-Lowry; Dr. Colonna for Dr. Colonna; Dr. Cook-Lowry for Dr. Cook Lowry; and Dr. John Pieper broke the tie voting for Dr. Colonna as the new Vice Chair.

B. Committee Assignments - Discussion of the board chair making the appointments of the committees outside of the meeting. The chair does not have to make the decision in a board meeting.

C. Exam Report (Vigil-Hayes)

1). Approval/Denial of DOM licenses issued - Ms. Vigil-Hayes read the list of new DOM's who recently passed the exam for approval by the Board. (See Exhibit D) Ms. Hansen **MOTIONED** to approve the list of candidates for licensure. Dr. Bjorklund **SECONDED** the motion. Motion **PASSED** by unanimous decision. Ms. Vigil-Hayes read the name of Kiiko Matsumoto -Euler for the approval of temporary licensure. Dr. Bjorklund **MOTIONED** to approve Dr. Matsumoto-Euler for temporary license. Dr. Pieper **SECONDED** the motion. Motion **PASSED** by unanimous decision.

2). Approval/Denial of CADS licenses issued - Ms. Vigil-Hayes read list of newly licensed CADS for approval by the Board. Dr. Colonna **MOTIONED** to approve new CADS applicants. Dr. Cook-Lowry **SECONDED** the motion. The motion **PASSED** by unanimous decision. Ms. Vigil-Hayes read the list of CADS supervisors for approval by the Board. Dr. Colonna **MOTIONED** to

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approve CADS supervisors. Ms. Hansen **SECONDED** the motion. Motion **PASSED** by unanimous decision.

3). Schedule 2009 Exams - Minutes to reflect the Board's consensus that has given RLD the authority to choose exam dates and inform the board. Testing will be scheduled after graduation, which will be sometime around May and October.

XII. PUBLIC COMMENT (2 minutes each)

XIII. TIME, DATE & LOCATION OF NEXT MEETING - Monday September 22, 2008 @ 9:00 am.

XIV. ADJOURN - Dr. Pieper **MOTIONED** to adjourn the meeting. Ms. Hansen **SECONDED** the motion. Meeting adjourned at 3:46 pm.