



Bill Richardson
Governor

STATE OF NEW MEXICO
REGULATION & LICENSING
BOARD OF ACUPUNCTURE & ORIENTAL MEDICINE

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REGULAR BOARD MEETING

DRAFT MINUTES

Medical Board Office

2055 S. Pacheco Street, Suite 400

Conference Room

Santa Fe, New Mexico

January 25, 2006 at 9 a.m.

Board Members Present: Anna C. Hansen, Chair, Pubic Member
Fiquet Hanna Duckworth, DOM, Vice Chair
Angelique Cook-Lowry, DOM
Kartar S. Khalsa, DOM
Gary Perkowski, Public Member
Caroline Colonna, DOM
Dennica Padilla, Esq., Public Member

Board Members Absent: Katar S. Khalsa, DOM

Legal Counsel: Corliss Thalley, Assistant Attorney General

Staff Present: Rosemarie L. Ortiz, Administrator
Cynthia Graystone, Administrative Assistant

Others Present: See Sign in sheet

- I. CALL TO ORDER & ROLE CALL: Chair Hansen called the meeting to order at 9:05 a.m. Roll was conducted and it was determined a quorum was present. Kartar Khalsa, DOM was absent and Dennica Padilla arrived late.
- II. APPROVAL OF AGENDA: Mr. Perkowski MOVED to approve the agenda as presented and to address AG matter first as AAG Thalley can only attend the morning session of the meeting. Dr. Duckworth SECONDED the motion, which PASSED unanimously.
- III. APPROVAL OF MINUTES (5 min)
 - A. Approval of August 17, 2005 Meeting Minutes: Mr. Perkowski MOVED to approve the minutes as presented as presented. Dr. Cook-Lowry SECONDED the motion, which PASSED unanimously.
 - B. Approval of September 28, 2005 Meeting Minutes Mr. Perkowski MOVED to approve the minutes as presented. Dr. Duckworth SECONDED the motion, which PASSED unanimously.
 - C. Approval of October 14, 2005 Special Meeting Minutes: Were approved previously at the November 11, 2005 Regular Board Meeting.
 - D. Approval of November 17, 2005 Regular Meeting minutes Mr. Perkowski MOVED to approve the minutes as presented as presented. Dr. Colonna SECONDED the motion, which

PASSED unanimously.

IV. ELECTIONS:

A. Chair Nominations & Election: Elections were tabled until the arrival of Ms. Padilla per the advisement of AAG Thalley. Chair Hansen opened elections up for Chair nominations. Ms. Padilla NOMINATED Dr. Duckworth for Chair. Dr. Duckworth accepted the nomination. Mr. Perkowski NOMINATED Anna Hansen for Chair. Anna Hansen accepted the nomination. Dr. Duckworth, Dr. Colonna and Ms. Padilla voted for Dr. Duckworth to serve a chair. Chair Hansen, Dr. Cook-Lowry and Mr. Perkowski voted for Anna Hansen to remain chair. There was a tie vote. Chair Hansen will remain chair until elections are held again at the next regular board meeting.

B. Vice Chair Nominations & Election: Tabled until the next regular board meeting.

V. EXECUTIVE SESSION (Addendum) 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.

A. #05-15

VI. DECISION ON MATTERS DISCUSSED IN EXECUTIVE SESSION: No Discussion

VII. APPROVAL/DENIAL ITEMS

A. Approval/Denial of Licenses issued from 11/18/05 – 1/20/06: Ms. Graystone presented a reporting indicating DOM licenses issued from November 18, 2005 to January 20, 2006 and recommended the Board ratify the approval of such licenses. Mr. Perkowski MOVED to approve the licenses issued on the report generated from November 18, 2005 through January 20, 2006. Dr. Cook-Lowry SECONDED the motion, which PASSED unanimously.

B. Approval/Denial of CADSSupervisors: Ms. Graystone presented a report indicating the CADSSupervisors registrations issued from November 18, 2005 through January 20, 2006. Mr. Perkowski MOVED to approve the licenses issued on the report generated from November 18, 2005 through January 20, 2006. Ms. Padilla SECONDED the motion, which PASSED unanimously.

VIII. OLD BUSINESS

A. Appointment of Hearing Officer for Complaint #04-009, Hong Lu.: AAG Thalley informed the Board that a Hearing Office would need to be appointed for the Hong Lu disciplinary hearing scheduled for March 8, 2006. AAG Thalley suggested the Board appoint a board member to serve as hearing officer. AAG Thalley briefly explained the disciplinary hearing process and purpose. The Hearing Officer will obtain findings of fact and make a recommendation to the full board. AAG Thalley stated the Hearing Officer would receive testimony from the Attorney General's Litigating Division representing the State and the attorney representing Hong Lu, DOM.

Dr. Duckworth suggested appointing Ms. Padilla as hearing officer as she has a legal background. AAG Thalley suggested that a professional board member might benefit more than a public member in serving as the hearing officer. Mr. Perkowski indicated that he has experience in disciplinary hearings and would volunteer with assistance from AAG Thalley.

Dr. Duckworth MOVED to appoint Mr. Perkowski as hearing officer. Dr. Colonna SECONDED the motion, which PASSED unanimously.

B. David Abell, Esq., Correspondence: Ms. Ortiz read from the November 17, 2005 minutes to refresh board members on this subject matter. An excerpt from the minutes was read as follows:

"Mr. Abell briefly informed members of the situation regarding IV's and infusion therapies and Dr. Jay's inquiry. In 2001 Dr. Jay took the certification course and there were certain drugs that were allowed under 16.2.2 NMAC to be injected. Some of these substances include: nutritional, vitamins, glandular products, herbal medicine, homeopathic medicine, etc. and are permitted to be injected by Rx1 or Rx2 licensees under the rule in effect in 2001. There was no distinction of how the substances could not be injected (i.e. intradermal, subcutaneous and intravenous). The only change they are concerned with is IV and infusion therapy. When the course was taught in 2001, the scope clearly covered IV's and infusion therapy. This change has required Dr. Jay to pull these procedures out of her practice entirely. There is currently no mechanism for Dr. Jay to reincorporate these into her practice without Dr. Jay having to go through the full Rx2 certification program. This is a problem, as Dr. Jay only wants to continue to provide IV therapy of the substances under Rx1. To do this, as the rules require, Dr. Jay will have to take an additional 160 hours. Mr. Abell stated that when a procedure becomes a part of a practice it almost becomes a property right.

Dr. Jay is asking the Board to grandfather a handful of those that took the extended prescriptive authority course in 2001 or to provide some sort of means to allow a practitioner to become certified or to meet the board's requirements in a reasonable fashion."

Dr. Duckworth reviewed the Rx History prepared by herself and Ms. Ortiz. According to Board interpretation IV's were never in the scope of practice of a DOM licensed at the extended prescriptive authority (Ex/Rx1) when Dr. Jay was certified. AAG Thalley indicated there is an assumption by Dr. Jay and Mr. Abell that IV's were in the scope of practice in 2001. The Board interprets its on rule and has indicated IV was not part of the scope of practice for a DOM certified at extended prescriptive authority (Ex/Rx1). Dr. Duckworth also indicated that if IV's was taught in 2001, it was not in the scope of practice.

Solutions including requiring Dr. Jay to take courses to certify her to the expanded prescriptive authority (Rx2) level within 5 years or to adopt a modular approach for prescriptive authority qualifications were discussed.

Dr. Duckworth and Dr. Cook-Lowry were directed to meet to determine a solution and inform Mr. Abell and his client Jan Jay, DOM of a possible remedy to this matter, keeping consistent with legal review and acknowledging ambiguity. Mr. Abell asked if a remedy could be implemented in the interim of addressing this issue. AAG Thalley indicated there are no remedies and what is decided must be applicable to all DOM's affected.

C. Future Exam/Board Meeting Schedule Review: Ms. Ortiz suggested board members

determine upcoming meetings so schedules can be cleared in advance. The following dates were proposed tentatively: March 29th, July 12th and November 1st.

D. Committee Assignments & Protocol: Chair Hansen appointed Dr. Colonna to the Chiropractic Committee and removed herself. Ms. Padilla is on the Auricular Detox Committee and Exam Committee. Selah Chamberlain, DOM, Oriental Medicine Association of New Mexico President indicated support for weekend meetings. Dr. Chamberlain requested participation on the Rules Committee. It was suggest Rob Skoog, DOM, OMANM, Legislative Committee Chair, contact Mr. Perkowski to discuss participation on the Rules Committee.

E. Auricular Detoxification Committee: Dr. Colonna referred Board Members to proposed changes to Part 16 of the Boards rules. Dr. Colonna indicated the changes are to clarify requirements for certification of CADS. The Auricular Detox Committee referred the proposed rules to the Rules Committee for rule hearing. There was discussion regarding the number of questions on the jurisprudence examination for CADS. The Committee directed staff to administer 15 questions and score ten (10) questions.

F. Continuing Education Issues: No Discussion

F. Educational Committee Issues: No Discussion

G. Exam Committee Issues: Dr. Cook-Lowry informed members that the December Exam was administered with only six (6) candidates for licensure. Dr. Cook-Lowry informed members of a meeting held with Superintendent Jaramillo regarding the Board deciding to hold only two exams fiscally due to budget restraints and a decrease in applicants. Members were reminded of decisions made at the November meeting to hold exams in March and October, as the exams would best serve the graduating classes. The Externship Certification program is available and students have the option to apply for externship while awaiting licensure.

Dr. Cook-Lowry informed members of a letter received by the Governor's Office complaining about the length of time from graduation to the next administered clinical skills exam by Mr. James Profitt. Regulation & Licensing Management directed staff to project budget status to determine if a third exam could be administered. Ms. Ortiz indicated that monies are available should the Board decide to hold a third exam. Ms. Ortiz informed members there is a surplus as no board members traveled out of state for the fall FAOMRA conference. Members asked if Mr. Profitt was present. Ms. Ortiz informed members Mr. Profitt called the Board office and upon explanation of the Board's decision in November of 2006 he indicated he would complained directly to the Governor's Office and the Board would hear from his attorney.

Dr. Colonna MOVED to maintain the current schedule, offering an October 2006 and March 2007 clinical skills examination. Ms. Padilla SECONDED the motion. Members in favor of the motion included Ms. Padilla, Dr. Duckworth, Mr. Perkowski and Dr. Colonna. Member opposed to the motion were Dr. Cook-Lowry and Chair Hansen. Motion PASSED.

H. Rx Formulary Committee: Dr. Duckworth reported the next Rx Committee will be held in the coming weeks.

1. Formulary Clean Up Discussion: Dr. Duckworth reported the Rx1 Competencies have been reviewed and approved for rule hearing. The Committee will now focus on Rx2 Competencies and skills.

2. Over the Counter Drugs and Cosmetics Discussion: Currently the Committee is working on fine-tuning the formulary. The Committee will evaluate moving over the counter drugs and cosmetics under the entry level DOM scope of practice. Dr. Cook-Lowry indicated that there is concern when DOM's purchase on their own. David Canzone, DOM, Rx Committee Member indicated the purpose is for clarification only. It was suggested to contact Dr. Bing on this issue as the Board should ensure that DOM's are trained to prescribe or perform these specific procedures.

3. Point Injection Therapy Discussion: Dr. Duckworth indicated that the Rx Committee has kept things simple and has put injection therapy back where it originally was. Dr. Duckworth gave a brief history on injection therapy. Originally DOM's could perform injection therapy. However, the Pharmacy Board indicated injection involves dangerous drugs, thus Rx1 and Rx2 were created. Dr. Abbate reported that injection therapy was in the 4-year educational program requirements originally. Currently, injection therapy is an elective. Dr. Abbate would love to see injection therapy back in the core curriculum.

4. Rx2 Competencies & Skills: The Committee will now begin to develop competencies and skills for Rx2. A meeting will be called in the next two weeks. Currently the Committee is awaiting a response from OMANM on the modular approach to Rx certification. ATEAM has no position and is in favor of people wanting to learn new things.

5. Modular Approach: The concept of a modular approach to Rx certification was briefly discussed. The Committee is currently determining if Association of Traditional East Asian Medicine and Oriental Medicine Association will support a modular approach to Rx certification.

I. Rules Committee (60 min: Perkowski)

1. Part 2 Revisions: Mr. Perkowski MOVED to send Part 2 changes to rule hearing. Dr. Duckworth SECONDED the motion, which PASSED unanimously.

J. Legislative Committee: No Discussion

K. Monitor Settlement Agreement #01-001: Members expressed a desire to obtain more information from Dr. Breslin's supervisor as the supervision report is brief and there is no description of treatments and discussions. Dr. Khalsa will draft a letter to send to Mr. Breslin's attorney seeking a more in-depth evaluation.

IX. NEW BUSINESS (30 min: Ortiz/Various)

A. FAOMRA Spring Conference – Keystone, CO – May 3 - 10, 2006: Dr. Duckworth suggested the Federation be informed of Chiropractic issue. Chair Hansen suggested to send Ms. Ortiz, FAOMRA Secretary, Chair Hansen, FAOMRA Board Member and Dr. Khalsa to the spring meeting.

- B. Chiropractic Update: Ms. Ortiz informed members of the status of the chiropractic issue. The Attorney General has been asked for an opinion on this matter. In the letter to the Attorney General, opinions from Hawaii and Tennessee Attorney General's were included. Board members asked for guidance from AAG Thalley regarding this matter. AAG Thalley stated to contest a rule is unique and unusual. An AG opinion can be given and if that is not satisfactory to the Board, the matter can be addressed in District Court. The court will interpret the law and limit intensions. The court will look for erroneous procedures and give effect to all statutes. If there is a conflict this matter may not be harmonized. AAG Thalley also stated the Board does not define what other practitioners can do and posed the question, "Can the Board's statute challenge the 1st amendment?"
- C. Open Meetings Act Resolution: Mr. Perkowski MOVED to adopt the Open Meetings Act Resolution. Ms. Padilla SECONDED the motion, which PASSED unanimously.
- D. Code of Conduct: Mr. Perkowski MOVED to approve the Code of Conduct. Dr. Colonna SECONDED the motion, which PASSED unanimously.

X. ADMINISTRATOR'S REPORT (Ortiz)

- A. Budget Review: Ms Ortiz briefly reviewed the current budget status and indicated the Board had residual monies in personnel and employee benefits which can be utilized to administer a third examination if necessary. There is some vacancy savings as the full time employee awarded in July of 2005 by the legislature has not been filled yet.
- B. Correspondence
 - 1. Letter from Barbara Higgins, DOM: The Board reviewed correspondence from Barbara Higgins, DOM, BAOM Examiner, regarding the Board's decision to implement an herbal component to the board's clinical skills examination. It was suggested to recommend the Exam Committee review the pros and cons to implementing the herbal component.
 - 2. Letter from Francine Chavez, AAG, Litigation Division: The Board reviewed concerns from Francine Chavez, AAG, regarding receipt of NCA's issued by the Board. Ms. Ortiz informed board members of the increase in turnover in staff and that has significantly impacted the compliance section. Member discussed writing a letter to Kathleen O'Dea, Boards and Commissions Director, RLD, indicating the services of the Compliance Section were not adequate and the Board would like to hire their own investigators. Ms. Ortiz asked the Board to consider meeting with Ms. O'Dea to discuss possible solutions before hiring its own investigators. Chair Hansen and Dr. Duckworth will meet with Ms. O'Dea as soon as possible.

XI. TIME, DATE & LOCATION OF NEXT MEETING: March 29, 2006, Location to be determined at a later date.

XII. ANNOUNCEMENTS/PUBLIC COMMENT (2 MINUTE LIMIT)

XIII. ADJOURN: Dr. Duckworth MOVED to adjourn. Dr. Colonna SECONDED the motion. The motion PASSED.

Submitted by Rosemarie L. Ortiz 4/5/2006
Rosemarie L. Ortiz, Board Administrator Date

Approved By: Anna C. Hansen 4/5/2006
Anna C. Hansen, Chair Date