



Bill Richardson
Governor

STATE OF NEW MEXICO
REGULATION & LICENSING

BOARD OF ACUPUNCTURE & ORIENTAL MEDICINE

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Edward J. Lopez
Superintendent

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Boards & Commissions
Director

Rosemarie L. Ortiz
Executive Director

**SPECIAL BOARD MEETING
MINUTES**

Medical Board Office
2550 Cerrillos Road, Third Floor
Superintendent's Conference Room
Santa Fe, New Mexico
March 9, 2006 at 7:30 p.m.

Board Members Present:

Fiquet Hanna Duckworth, DOM, Chair
Angelique Cook-Lowry, DOM, Professional Member
Caroline Colonna, DOM, Professional Member
Anna C. Hansen, Pubic Member
Dennica Padilla, Esq., Public Member via Teleconference
Kartar S. Khalsa, DOM, Professional Member via Teleconference

Board Members Absent:

Gary Perkowski, Public Member

Legal Counsel:

Corliss Thalley, Assistant Attorney General, Absent

Staff Present:

Rosemarie L. Ortiz, Administrator
Cynthia Graystone, Adm. Assistant

Others Present:

See Sign in sheet

I. CALL TO ORDER AND ROLL CALL: Chair Hansen called the meeting to order at 7:30 pm.

II. ROLL CALL: Roll was conducted and it was determined a quorum was present with Chair Hansen, Dr. Duckworth, Dr. Cook-Lowry, Dr. Colonna and Ms. Padilla in attendance. Dr. Khalsa and Mr. Perkowski were absent.

III. OLD BUSINESS:

1. Presentation by Mr. William Waggoner, Attorney at Law, on Chiropractic issues: Mr. Waggoner briefly informed the Board of his background. Mr. Waggoner graduated from UNM School of Law, worked with the Legislative Finance Committee and is now in private practice with a focus on litigation.

Mr. Waggoner reviewed both the Acupuncture & Chiropractic statutes. He pointed out areas where the practice of acupuncture by Chiropractors clearly violates numerous laws within New Mexico. The Chiropractic Board's proposed rule revision was discussed. The purpose of the Acupuncture and Oriental Medicine Practice Act was discussed and various sections were referenced to include 61-14A-2 through 61-14A-4 and 61-14A-6 of NMSA 1978. The definition of surgical needles is defined in the Acupuncture and Oriental Medicine Practice Act and is considered a therapeutic modality. The Chiropractic Act expressly excludes the use of invasive

procedures as acupuncture clearly pierces human skin. There is nothing in the Chiropractic Act that indicates Chiropractors can use needles or surgical procedures at all. The proposed revision has not been challenged and the Board of Acupuncture & Oriental Medicine can challenge this rule.

Mr. Waggoner further cited an example of scopes of practice that have been expanded. The statutes referenced include 61-14A-4.1 and 61-14A-8.1 NMSA 1978 of the Acupuncture and Oriental Medicine Practice Act. Mr. Waggoner reported 61-14A-19 NMSA 1978 addresses penalties which can be imposed as it appears unlicensed practice of acupuncture and oriental medicine will be occurring. Unlicensed practice is considered a misdemeanor.

Mr. Waggoner briefly reviewed the Chiropractic Practice Act and referenced 61-4-10 and 61-4-12 NMSA 1978 as means to pursue litigation as Chiropractors would clearly be practicing outside their scope of practice.

In conclusion, Mr. Waggoner indicated the Attorney General Opinion prepared for the Chiropractic Board is extremely flawed and is challengeable. The term "meridian therapy" is used in both the Naprapathy rules and the Chiropractic rules and creates a conflict as neither board has a definition of meridian therapy. The Board was informed that an injunctive relief can be filed, which will declare right or other legal relations and can be initiated by any one.

Mr. Waggoner stated that the Board of Acupuncture & Oriental Medicine has grounds for pursuit of legal action with regard to this matter and expressed a desire to represent the Board should it pursue litigation. Mr. Waggoner's fees would not exceed \$10.0, which would be billed at \$175.00 an hour. Any costs over \$10.0 would be covered by Mr. Waggoner.

Dr. Skoog, Legislative Chair for the Oriental Medicine Association of New Mexico (OMANM), indicated the recently adopted revisions by the Chiropractic Board are harmful to the acupuncture and oriental medicine profession and seeking a declaratory judgment is the preliminary step in this process. Dr. Skoog asked how the Board will move forward regarding this issue. OMANM is waiting to see what the Board is doing with regard to this issue.

Dr. Duckworth MOVED to direct staff to seek a special commission from the Attorney General to hire an independent attorney to pursue legal action against the Board of Chiropractic Examiners. Ms. Padilla SECONDED the motion. All members voted in favor, with Dr. Colonna abstaining. Motion PASSED.

Dr. Duckworth MOVED to hire Mr. Waggoner as legal counsel via a special commission from the Attorney General to seek a Declaratory Judgment against the Board of Chiropractic Examiners (BCE) regarding the adoption of controversial rules within the BCE rules. Total fees are not to exceed \$10.0 with Mr. Waggoner's hourly rate at \$175 per hour. Mr. Waggoner will consult with OMANM on this matter. Dr. Cook-Lowry SECONDED the motion. All members voted in favor, with Dr. Colonna abstaining. Motion PASSED.

2. Discussion of letter from Dr. Doggett, Chiropractic Board: No Discussion occurred. Members read the correspondence from Dr. Doggett. Dr. Duckworth MOVED to table this discussion until the April 5, 2006 Rule Hearing and Regular Board Meeting. Dr. Cook-Lowry SECONDED the motion. The motion PASSED.

VI. TIME, DATE & LOCATION OF NEXT MEETING: July 12, 2006, Location to be determined at a later date.

VII. ANNOUNCEMENTS/PUBLIC COMMENT: No Comments

VIII: ADJOURN: Ms. Padilla MOVED to adjourn at 5:45 p.m. Dr. Colonna SECONDED the MOTION, which PASSED.

Submitted by Rosemarie L. Ortiz 7/12/2006
Rosemarie L. Ortiz, Board Administrator Date

Approved By: Fiquet Hanna Duckworth 7/12/2006
Fiquet Hanna Duckworth, Chair Date