

**MINUTES**  
**UTAH**  
**ACUPUNCTURE LICENSING BOARD**  
**BOARD MEETING**

**April 8, 2010**

**Room 464 – 4<sup>th</sup> Floor – 9:00 A.M.**  
**Heber Wells Building**  
**Salt Lake City, UT 84111**

**CONVENED:** 9:04 A.M.

**ADJOURNED:** 10:45 A.M.

**Bureau Manager:**  
**Board Secretary:**

Noel Taxin  
Karen McCall

**Board Members Present:**

Pamela Bys, L.Ac, Chairperson  
Brent Ottley, L.Ac  
Todd A. Mangum, MD

**Board Members Absent:**

Michael A. King  
Michele Zabriskie

**Guests:**

Tyehao Lu  
Lynne Morgan  
Joni Clayton  
Ben Hammond, L.Ac  
Ming De Yu  
George Zhang (China Acupuncture Clinic)  
Casey Hill  
Sheron Frannel  
Michelle McOmer, UTAH MEDICAL  
ASSOCIATION

**DOPL Staff Present:**

Karl Perry, AG

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**

**MINUTES:**

The minutes from the November 13, 2008 Board meeting were read.

Dr. Mangum made a motion to approve the minutes as

read. Mr. Ottley seconded the motion. **The Board vote was unanimous.**

Ms. Taxin informed the Board and guests of the change the Division has made to post minutes to be approved on the website and repost them after they have been approved.

**The Board thanked Ms. Taxin for the information.**

## **DISCUSSION ITEMS:**

### Acupuncturists Ordering Lab Tests

Ms. Taxin explained some questions came to the Division regarding Acupuncturists ordering lab tests for patients. She stated her staff informed the callers that ordering lab tests is the practice of medicine and is not in the Law for the scope of practice for Acupuncturists. She stated Kris Justesen had called her some time ago regarding this question and had said California has it in their Law. She stated Ms. Justesen disclosed she has been ordering lab tests for many years. Ms. Taxin again stated Acupuncturists ordering a lab test is unlawful in Utah as the Law does not allow it. She stated Acupuncturists may read a lab test.

Ms. Taxin stated she was given the example of an Acupuncturist noticing a possible thyroid disorder on a patient and then ordering the lab tests to confirm their assessment. Ms. Taxin stated she advised the individual to refer the patient to their Physician for a possible thyroid problem and then after the test and diagnosis is confirmed by the Physician, the Acupuncturist may treat the patient.

She stated she has suggested to Ms. Justesen to open the Law to include ordering lab tests if she believes it should be in the scope of practice.

Ms. Taxin stated she contacted NCCAOM regarding the issue and was informed California, Arizona and possibly a few other States allow ordering lab tests in the Acupuncture scope of practice but the lab education received is very basic and each State writes their own Law regarding requirements and scope of practice. She stated she arranged for someone at

NCCAOM to meet telephonically today for this discussion but NCCAOM had been contacted by someone from the Utah Association and due to the conflict they created, NCCAOM decided it would be best to write a position statement on the issue vs. meeting with the Board, Utah Association and interested parties. Ms. Taxin concluded the issue is not a discussion item unless the Association wants to open the Law and make amendments. She stated if an Acupuncturist chooses to order lab tests it is against the Law at this time.

Ms. Bys stated she looked up information on the ACAOM education and Standards and found the education received on lab tests is very basic for an understanding and not about learning how to diagnose and treat. She stated it is subjective to the school on how they read it and what they want to teach. She read the sections to the Board. Ms. Bys stated an individual may complete more education and learn more regarding diagnosing and ordering lab tests if they desire but with the basic education the Acupuncturist should be able to read lab reports. She stated much more education is required to diagnose and order lab work.

Ms. Taxin reminded the Board and guests they should coordinate with the patient's Physician.

Mr. Ottley commented there is also the legality of the issue. He stated he reviewed the Law to determine if something could be addressed by Rule but there is nothing in the Law to address by Rule. He stated the Board's/Division's hands are tied and the discussion should move to the Association meetings. Mr. Ottley stated the California Law specifically and explicitly allows for Acupuncturists to use lab work for oriental diagnosing.

Ms. Taxin voiced understanding the frustrations. She stated the Association should contact the Utah Medical Association for discussion and collaboration.

Dr. Mangum stated he is in favor of Acupuncturists ordering lab tests but they also need to understand what they are ordering. He stated lab tests are very

complicated and the practitioner needs to pay attention and know what to watch for, know what is critical or alarming and there should be a standard for the type of lab tests an Acupuncturist may order and how to read what they order. He stated he would give his support if there is specific education and testing.

Ms. Bys and Mr. Ottley responded after Association discussion the next step would be to determine the education, examination, appropriate lab test and how to read them.

**Mr. Lu voiced agreement with Dr. Mangum. He stated Ms. Justesen had stated there is nothing in the Law that says Acupuncturists can or cannot order lab test and she wondered if DOPL would remain neutral or silent on the issue. He stated he is new to the issue of lab reports as the Association just started to talking about it about a month ago. He stated if he sees something or suspects something he tells his patients to go see a Western Physician. He stated those from China who have the education of a medical doctor order lab tests and read them in China but cannot do it in Utah. He stated the Association will need to have further discussion.**

Ms. Bys stated if those from China want to work here as an MD they would have to be licensed as an MD.

**Ms. Hammond stated she still has an active license in California. She asked if she could request lab tests based on her California license.**

Ms. Taxin responded no and explained that an individual who is licensed in another State has to be licensed in Utah to practice in Utah.

**Mr. Zhang stated Chinese medicine is different than US medicine. He stated the Acupuncture Clinics in China have a Physician and an Acupuncturist and if the practitioner wants lab tests in the US they have to ask for specific tests, i.e.: lab tests for the heart or stomach. He stated the Acupuncture practitioner treats all things and is not specific to lab tests ordered by the medical**

**doctor because they are not based on the same diagnosis.**

Mr. Ottley summarized everyone agrees there are a number of lab tests and it is a legitimate issue that should be looked at. He offered to talk with Ms. Justesen.

Ms. Bys again stated the Association is who makes the decision/recommendation for changes in the Law.

**Ms. Clayton stated she is a patient who trusts her Acupuncturist as her primary care practitioner. She stated she does not trust Physicians. She stated the patient needs to be considered as Chinese medicine has been in existence for a long time. She stated her Acupuncturist takes time to work with her and knows her as a patient.**

Ms. Taxin voiced understanding of Ms. Clayton trusting her Acupuncturist. Ms. Taxin explained each license type has Laws and Rules and their own scope of practice. She stated if the Association believes something should be in their Law they need to address it and change the Law. She stated the Board/Division have the job of protecting the public and the Association protects the licensees. She stated it is good Ms. Clayton has such a good rapport with her Acupuncturist but there are good and bad practitioners in all professions. Ms. Taxin stated each profession has established its own scope of practice for Utah practitioners to follow and Acupuncturists are among them.

**Ms. Clayton responded Physicians misread reports as well as anyone else.**

Mr. Ottley stated no one disagrees with Ms. Clayton but the place for her frustration and anger is the Association and the Legislature to make Law changes.

**Ms. Yu explained she was a medical doctor in China but cannot be licensed as a Physician here. She stated she had some health issues and was told she needed surgery. She stated she went to her Acupuncturist in China and now is able to walk.**

**Ms. Yu stated she believes the trained Acupuncturist should be able to treat for everything.**

**Ms. Morgan commented she is thinking of the future and believes the professionals need to have more dialogue to try to blend Western medicine with current medicine. She stated she works in a hospital setting and the lab results she reviews are very helpful for treatment.**

Board members stated they had been receiving calls, e-mails regarding the lab ordering issue. They asked how they should respond in the future.

Mr. Ottley stated it is a positive for the guests to visit and observe the Board meeting to know and understand the Board functions.

Ms. Taxin stated Board members should not independently be answering questions or e-mails regarding licensing questions. She stated they should send those questions to her and, if appropriate, she will put them on the agenda for the whole Board to review and discuss so they are all the same page prior to her responding. She stated Board members are then not put in an awkward position. Ms. Taxin stated Board members may also be Association members but not in Association Board positions. She stated she has discussed with Ms. Justesen opening the Law and putting in the language of "as defined by Rule" so the Board/Division have the authority to write specifics in the Rule. She stated if a Board members answers questions outside a Board meeting they put themselves at risk as individuals believe it is a Board statement. She stated as long as the Board discusses issues and makes decisions in a Board meeting they are legally covered and backed by the Division and AG's but if they make independent statements and decisions they have no legal backing because that would be violating the Open and Public Meeting Act.

**Ms. Frannel commented she spent four years in education in California and was allowed to order lab tests. She voiced questions regarding Chiropractic Physicians being allowed to do**

**Acupuncture. She asked what the Board's procedure is for Chiropractic Physicians and who determines if they have completed appropriate education as she has some concerns.**

Ms. Taxin responded the time to address her questions was prior to the passing of the Chiropractic Physician Law. She stated Chiropractic Physicians have their own scope of practice and she will give Ms. Frannel the name and phone number of the Bureau Manager over Chiropractors for her to contact for discussion and concerns for public safety. She stated if Ms. Frannel believes someone is violating the Law she should call investigations and not Acupuncture Board members. Ms. Taxin explained the Board would act as the jury if a situation went to a hearing for disciplinary action. She stated if they have heard the complaint they may be considered biased and be recused as jury members. She stated Ms. Frannel could also review the Chiropractic Law and Rule for information regarding licensure requirements and CE requirements. Ms. Taxin did clarify that Acupuncturists do not determine the scope of practice of Chiropractors and if the practice of Acupuncture is within the scope of Chiropractors Law and Rule then it is legal. Ms. Taxin stated the time to have addressed this issue was years ago and the Utah Acupuncture Association was aware of the issues. She stated there is some cross-over in professions but each should be sure they advertise and practice properly.

Dr. Mangum stated the Acupuncture Law now clarifies licensed Acupuncturists may use the title L.Ac for Licensed Acupuncturist. He stated licensed Chiropractors may not title themselves as Acupuncturists unless qualified by education.

Ms. Bys thanked the public for their comments.

Legislative Update

Ms. Taxin explained she received a phone call from the Acupuncture Association regarding Physical Therapists (PT) opening their Law to include the practice of Acupuncture. She explained that PT's are not interested in doing Acupuncture and do not plan to include it in their Law but if the Utah Acupuncture Association continues to push the PT's they could

include it in their scope of practice. She stated there is no Legislative update as there was nothing new in any professional Law which affects/includes Acupuncture. Ms. Taxin stated she would notify the Board and Association if there was anything to be concerned about.

**Mr. Lu commented his mother is a PT and stated the PT's were not thinking of including the practice of Acupuncture in their Law. He stated Ms. Lu had said the profession does not need to worry about PT's.**

**Dr. Mangum commented it is like Acupuncturists wanting to do lab work and move into another professions scope of practice and other professionals wanting to move into the Acupuncture scope of practice.**

Ms. Taxin responded the Association would need to write language for a Law change. She stated it would be appropriate for the Association to present the language to the Board/Division for review and discussion to be sure all are in agreement and then present it to the UMA. Ms. Taxin stated if the UMA voices opposition to the Statute changes to include lab diagnostics within Acupuncture scope the proposal probably would not pass at the Legislature.

**Mr. Ottley recommended the Association and Board review the California Law.**

**Ms. Frannel asked who represents the Division.**

Ms. Taxin responded she does as the Bureau Manager.

**Ms. Frannel stated the Association has been growing this last year. She stated she will take the suggestions back to the Association Board for discussion.**

Board Meeting Schedule

Ms. Taxin stated the next Board meeting has been scheduled for September 30, 2010. She explained due to budget issues other Boards have cancelled meetings if there are no agenda items. She stated if Ms. Bys or other Board members have agenda items to contact her

### Board Training on Responsibilities and Expectations

to schedule a Board meeting but if there is nothing to review or discuss she will cancel meetings. Ms. Taxin stated if there is a case and someone is put on probation she will notify Board members and schedule meetings at least quarterly.

Ms. Taxin stated the Board has the responsibility of protecting the public. She stated Board members should be fair, attentive and respectful and not have a personal agenda whether they are meeting with Board members, having a discussion with visitors or interviewing a probationer. She stated Board members should be respectful to other Board members as in the past this Board has had different view points and made statements sometimes that were not always kind or respectful. Ms. Taxin stated the Law and Rule must always be followed. She stated Board members should be willing to follow through and devote time to the Board's work. She stated Board members should have open and clear communications and be willing to withhold judgments as it is easy to jump to conclusions and not listen to a presentation. She asked the Board to recognize personal feelings and biases and should talk with her regarding these issues. Ms. Taxin stated if a probationer meets with the Board and anyone knows the probationer they should inform the Board of their knowledge and ask the probationer if they may be part of the discussion.

Ms. Taxin stated having discussions outside the Board meeting is considered a violation of the open meetings act. She stated she believes one of her strengths is to be fair. She stated she was trying to be open and fair when she scheduled a discussion with NCCAOM. Ms. Taxin voiced frustration as people went around her by contacting NCCAOM until they backed out of the appointment. She stated her intent was to have some education and feedback. She stated she contacted NCCAOM about 6 months ago and requested the telephonic appointment and then informed them they might receive a few phone calls when the agenda goes out. She stated she had no idea until a few days ago that discussion with NCCAOM had become a huge issue. Ms. Taxin requested Board members to contact Ms. McCall if they are contacted with issues so they can be put on the agenda for Board

discussion if appropriate. She stated if Board members believe there are concerns they should contact her by e-mail regarding the concerns or send the individual to investigations. Ms. Taxin gave the example of applicants calling Board member to ask them to review their information to determine if they meet licensing requirements. She stated a person did this and the Board member had said they did meet requirements for licensure but he did not have the full application and all supporting documentation. Ms. Taxin stated the applicant did not meet qualifications and the application had to be denied. She stated if Board members do not want to forward the individuals with questions to her they should let her know the questions so she can include them on the agenda for discussion.

**Mr. Ottley responded he was contacted as if someone was lobbying him by sending him information. He stated he thanked them for the information and said he would review it in preparation for the Board meeting. He stated there were some pretty strong words saying the Board needs to fight for the Acupuncture licensees.**

Ms. Taxin again stated it is not the Board's duty. She stated she filter's many things as a kind of protection for the Board. She stated the purpose of a Board meeting is for discussion of issues and if Board members have decided the outcome prior to a meeting they are not being fair. She stated this Board has been known for arranging with the Association outcomes on votes prior to meeting. Ms. Taxin stated unbiased means the Board comes for discussion and voting without already deciding how the vote will go.

**Ms. Frannel stated Ms. Taxin's comments should be discussed at the next Association meeting. She asked if the Association should no longer contact Board members individually.**

Ms. Taxin responded yes, the Association should stop contacting Board members individually as that is a conflict. She stated if the Association has concerns they should contact her to request the discussions of the concerns to be included on the agenda for the

Board. Ms. Taxin stated she wants Board members informed but they should be informed through a Board meeting.

**Mr. Ottley and Ms. Bys commented how great it would be to have the reputation of being able to talk reasonably and rationally with the Association so Ms. Taxin is not flooded with phone calls and information that is inappropriate.**

Ms. Taxin responded she welcomes guests and has several Boards that have Association representatives, students and public people attend for discussion items.

**Dr. Mangum stated Ms. Taxin has helped make positive changes for the Board, Law and Rules where prior Bureau Managers have been difficult to work with and didn't have the best interest of the profession or public.**

**Mr. Ottley stated while he has served on the Board he has noticed the legal process has been slow and bureaucratic which can be frustrating. He stated the question today was a legal question for the Association.**

Ms. Taxin recommended the Board review the Law and Rule and always act with integrity as the public respects the position. She stated Board members are looked upon as role models and that is why people contact them. Ms. Taxin voiced appreciation for meeting today and stated she hoped the discussion was informative for the public in attendance. She stated the Board/Division and Association should be a team working together. She stated she would call a Board meeting to review the language if the Association will submit language to her. She recommended the Board and Association review the Law to be sure there is nothing else that needs to be changed or updated.

**NEXT MEETING SCHEDULED FOR:**

September 30, 2010

**ADJOURN:**

The time is 10:45 am and the Board meeting is adjourned.

*Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.*

September 30, 2010  
Date Approved

(ss) Pamela M. Bys, L.Ac.  
Chairperson, Utah Acupuncture Licensing Board

May 18, 2010  
Date Approved

(ss) Noel Taxin  
Bureau Manager, Division of Occupational &  
Professional Licensing