

MINUTES

**UTAH
ACUPUNCTURE LICENSING
BOARD MEETING**

January 30, 2012

**Room 402 – 4th Floor – 9:00 A.M.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 9:07 A.M.

ADJOURNED: 10:21 A.M.

Bureau Manager:

Noël Taxin

Board Secretary:

Karen McCall

Board Members Present:

Todd A Mangum, MD

Michael A King

Natalie Clausen, L.Ac.

Board Members Absent:

Regan J. Archibald, L.Ac., Excused Today

Michelle Zabriskie

Guests:

Tyehao Lu

Kris Justesen, L.Ac.

Jake Dinsdale, State Auditor

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Swearing in of Natalie Clausen, L.Ac., as a Board Member

Ms. Taxin conducted the swearing of Ms. Clausen. Board members welcomed her.

Board Chairperson

Ms. Taxin explained the chairperson and Board member, Pamela Bys, has resigned due to a move out of the area and Natalie Clausen is her replacement. She stated Mr. Ottley resigned and Regan Archibald is his replacement. Ms. Taxin explained the Board will need to nominate a new chairperson.

Mr. King nominated Dr. Mangum. Ms. Clausen seconded the motion. The Board vote was unanimous.

Ms. Taxin stated Dr. Mangum's term will expire June

30, 2012 and he has served two terms so will not be eligible for reappointment, however, the Law was changed last year to allow Board members to continue to serve for up to six months if a replacement has not been appointed. She stated the UMA usually submits the recommendations for the MD replacement but the Utah Acupuncture Association may also submit recommendations.

Ms. Taxin stated Mr. King's term will also expire June 30, 2012 and he has requested he not be reappointed.

Board members inquired about Ms. Zabriskie as she has been absent often.

Ms. Taxin stated she will contact Ms. Zabriskie regarding her absences.

MINUTES:

The minutes from the February 1, 2011 Board meeting were read.

Dr. Mangum made a motion to approve the minutes as read. Mr. King seconded the motion. The Board vote was unanimous.

BUSINESS FROM PREVIOUS MEETING:

Continue Discussion Regarding Administering Injections being within the Acupuncture Scope of Practice

Ms. Taxin stated the Board discussed Acupuncturists injecting substances and using controlled substances at the February 1, 2011 meeting and the possibility of including it in their practice by writing a Rule. She stated she has talked with the Attorney General's office and the Division Attorney and it has been determined the Law will not allow for a Rule to be written and if the profession wants their scope of practice expanded the Law will need to be opened. She stated at the February 1, 2011 meeting Dr. Mangum made a motion for it to be discussed further with the Attorney General's office and the Division Attorney. Ms. Taxin stated their position continues to be a Rule is not possible and the Law will need to be opened. She stated Ms. Justesen told her she contacted Holly Richardson for language to be put in the Law and then Ms. Richardson resigned without verifying if anything was put in place.

Ms. Justesen stated Ms. Richardson had the language to put in the Law and she has talked with Ben at Legislative Research and Peter Asplin but has not been able to obtain a copy of the final draft to see if Ms. Richardson put in administering, injecting or if she put in prescribing. She stated she administers to patients herbs as there is nothing in the Law that specifies they can or cannot use them.

Ms. Taxin stated there is usually language in a Law which specifies the scope of practice. She explained administration of a drug or medication is something the practitioner/licensee gives the patient while the patient is in the office. She stated administration or dispensing of an oral or an injectable homeopathic medication would need to be clarified by Law.

Ms. Justesen stated Acupuncturists rub herbs on the patient and will need to have that clarified. She stated Guna, the company, wanted the language to be specific and state “herbs include homeopathic’s in all dosage forms”. She stated Acupuncturists send a copy of their license to the companies they purchase from for proof of their license and the company will then sell to them.

Ms. Taxin stated she has never seen a Law include the language of “in all dosage forms”. She suggested they specify the language to include what they want to perform but to keep in mind they do not write Laws for a company but for the practitioners.

Ms. Taxin stated it appears treatment terms are being misused, i.e.: administering, injecting, dispensing, controlled substances and prescriptions. She stated it is important for the Board to use the terms appropriately or other professions may misinterpret Acupuncturists trying to practice the scope of another profession. Ms. Taxin stated it appears the Board and Association desire Acupuncturists to be allowed to inject and dispense homeopathic substances which need to be determined if they are legend, controlled substances or herbal medications.

Dr. Mangum responded in regard to the dosages

there is a limited amount on what is sold in a homeopathic store. He stated there is a food store strength and a different strength that can be sold by a practitioner.

Ms. Justesen responded the proposed language would not be a Law change as it could be put in the Rule under R156-72-102. She stated the Rule could clarify the herbs and would have nothing to do with injections. She stated not all practitioners practice homeopathic which is different than oriental medicine. She stated this change will allow Acupuncturists to obtain the herbs and pellets they use in the dosage strength. She stated they then will be able to give herbs to their patients to take home with guidelines regarding amounts to be taken.

Ms. Taxin stated she will check with the attorneys. She stated as a Rule it would say in accordance with 58-72-102(4)(b)(ii) and put in language such as herbs include these dosage forms. She stated if patients are given the herbs or medications to take home it is dispensing.

Dr. Mangum stated Physicians are given free samples to give out to patients.

Ms. Taxin stated Dr. Mangum is correct and there is a Law for dispensing samples. She stated Physicians giving out free samples of medications is different from Acupuncturists dispensing homeopathic medications.

Ms. Clausen asked if Acupuncturists are allowed to sell vitamins in their office.

Ms. Taxin responded vitamins are not prescriptions and Acupuncturists may sell them. She suggested the Association clarify what will be allowed to administer and what will be allowed to sell out of the office.

Mr. King commented there are some medications Acupuncturists and Physical Therapists use that are available at Harmon's without a prescription. He asked if clarification of the language included

oral or topical homeopathic medications versus injectables would be clearer.

Ms. Clausen commented she also uses German remedies that say Injeel which she obtains from Europe through Sanum. She stated the packaging says injectable and if she obtains the same Injeel from the United States it say sips. She stated they are identical and she does not inject and uses them as sips. She stated she saves money by getting them outside the United States.

Ms. Taxin voiced surprise that Acupuncturists will sell medications that are obtained from Europe. She voiced concern about the safety, quality and storage of the products if they are not FDA approved and used as directed and/or not sent packed by a company.

Ms. Taxin stated she would speak with Karl Perry, AG, and Ray Walker again to clarify if the Division has the authority to write a Rule.

Ms. Justesen recommended Ms. Clausen assist Ms. Taxin when she talks with the Assistant AG and with the Division Attorney as she understands and would be able to clarify as Mr. Walker had indicated at the last Board meeting that the Division would be hard pressed to enforce the recommended Law change.

Ms. Taxin responded Ms. Clausen is only one member of the Board and is a new member, she recommended Dr. Mangum, Board Chairperson, review and discuss the issues with the attorneys. She then read Mr. Walker's comments from the February 1, 2011 Board meeting. Ms. Taxin stated the Law clearly outlines the intent and if practitioners are going beyond their scope of practice then the Board could write language regarding unprofessional conduct. Ms. Taxin stated if she writes a Rule there will be public comment and if the public believes the Acupuncture profession is trying to push something through again the public will comment and the Rule will not go through. She stated the Association and Board should not try changing little things by Rule when the Law needs to be opened and updated.

Dr. Mangum volunteered to assist Ms. Taxin when she discusses the issues with the Assistant AG and Mr. Walker, the Division attorney. He stated if the language were changed to oral, topical or inhaled it would exclude injections and that would protect the public.

Ms. Clausen responded there are other outlets available such as some German companies that have U.S. representation and the products are available through them. She stated someone brings her homeopathic products from Europe for her.

Ms. Taxin asked if the FDA regulates homeopathic products.

Dr. Mangum responded yes, the FDA does regulate but at a different standard than the regulation for Physicians.

Ms. Justesen reminded the Board of the potential legislation.

Ms. Taxin voiced frustration with the long discussion as she has repeatedly stated the changes need to be made in Law and now it is being reported the Association has proposed legislation changes which language has not been presented to this Board for discussion.

Ms. Clausen responded it did not come to Ms. Taxin as it was to be protected and then Ms. Richardson dropped the ball on following through. She stated the Association was given the choice of moving forward or dropping it this year and they wanted to move forward. She stated Mark Montgomery is now the president of the Association.

Ms. Taxin stated her understanding is Mr. Montgomery is the incoming president and Ms. Justesen is still the Association contact person as the Division has not been formally informed of any changes.

Dr. Mangum Question

Dr. Mangum stated at the last Board meeting they discussed the scope of practice including lab work. He asked for clarification if lab work is in the Acupuncture scope of practice.

Ms. Taxin responded it was discussed at the last Board meeting. She stated lab work is not specifically discussed or listed within the scope in the Acupuncture Law.

DISCUSSION ITEMS:

Legislative Update

Ms. Taxin informed the Board if she receives anything regarding a Legislative change she will call a meeting for the Board to review the information or if there are no concerns she will send the information out for the Board to review and respond back to her.

Renewal & Continuing Education Audit

Ms. Taxin explained licensed Acupuncturists renew by May 31, 2012. She reminded the Board of the renewal in 2010 when she realized there were renewal requirements in the Law of documentation of current and active NCCAOM certification or meet the same professional development requirements and the Rule states 30 CEU's within the two-year renewal period. She stated an audit was conducted after the 2010 renewal. Ms. Taxin stated this year a random audit is being conducted prior to the renewal date.

Ms. Justesen recommended saving the State/ Division money by requiring all licensees to submit a copy of their CE or NCCAOM certification when they renew. She stated NCCAOM has moved to a four year certification renewal so current certification is a little cloudy and it would be difficult to require licensees to submit a certificate three years after receiving certification.

Ms. Taxin thanked Ms. Justesen for the recommendation.

FYI

Ms. Taxin informed the Board of the Cease and Desist Order for Thea Yeager-Clark. She stated Ms. Yeager-Clark was not licensed in any occupation or profession in Utah but was practicing medicine and other professions including Acupuncture. She stated

Ms. Yeager-Clark agreed to the Cease and Desist but if it is found that she has continued to practice in any of the professions listed it she could be criminally charged.

Dr. Mangum asked how the Division becomes aware of unlawful practice.

Ms. Taxin responded there are several ways the Division becomes aware, for example a radio announcement, adverse comments and/or a complaint. She stated she is not sure how Ms. Yeager-Clark came to the attention of the Division for an investigation.

2012 Board Meeting Schedule

The Board noted the Board is scheduled to meet again July 30, 2012.

CORRESPONDENCE:

CCAOM Position Paper on Dry Needling

Ms. Taxin passed out the article from Valerie Hobbs regarding Dry Needling. She stated this has been a position paper for some time but was revised in November 2011. Ms. Taxin stated CCAOM has taken the following position: “(1) Dry needling is an acupuncture technique, and (2) any intervention utilizing dry needling is the practice of acupuncture, regardless of the language utilized in describing the technique.”

Ms. Clausen commented Ms. Taxin has said Physical Therapists (PT’s) are not trying to include dry needling into their Law. She stated it is included in several other States Laws. She stated she believes the Board should be aware as it is becoming a National trend to include Acupuncture or needling in PT Laws. She stated the Board may have different opinions and concern for public health and safety for PT’s to be doing Acupuncture.

Ms. Taxin stated the Utah Physical Therapy Law states PT’s do not practice Acupuncture. She stated their Law does not specifically address the use of needles.

FYI

Ms. Taxin requested Board members to contact her if they have any items to include on the July agenda.

NEXT MEETING SCHEDULED FOR:

July 30, 2012

ADJOURN:

The time is 10:21 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.

August 7, 2012
Date Approved

(ss) Todd A Mangum, MD
Chairperson, Utah Acupuncture Licensing Board

February 22, 2012
Date Approved

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