

**MINUTES**

**UTAH  
ACUPUNCTURE  
LICENSING BOARD  
MEETING**

**August 7, 2012**

**Room 475 – 4<sup>th</sup> Floor – 9:00 A.M.  
Heber Wells Building  
Salt Lake City, UT 84111**

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

**ADJOURNED:** 11:47 A.M.

**Bureau Manager:  
Board Secretary:**

Noël Taxin  
Karen McCall

**Board Members Present:**

Todd A. Mangum, MD, Chairperson  
Regan Jay Archibald, LAc  
Natalie Clausen, LAc

**Board Members Absent:**

Michele Zabriskie  
Vacant Position

**Guests:**

Sean K. Chang, Represented Tao Sun  
Anita Pascoe  
Trisha Phaklides  
Brent Ottley, UAAOM  
Bea Hammond, UAAOM  
Kris Justesen, UAAOM

**DOPL Staff Present:**

Karl Perry, Assistant AG

**TOPICS FOR DISCUSSION**

**DECISIONS AND RECOMMENDATIONS**

**ADMINISTRATIVE BUSINESS:**

Swearing in of Regan J. Archibald, LAc, as a Board Member

Ms. Taxin conducted the swearing in of Mr. Archibald as Board member. The Board welcomed him.

**MINUTES:**

The minutes from the January 30, 2012, Board meeting were read.

Ms. Clausen made a motion to approve the minutes with minor revisions. Dr. Mangum seconded the

motion. **The Board vote was unanimous.**

Ms. Taxin, Update on Board Appointments

Ms. Taxin thanked Dr. Mangum for his service for the past eight years and then she explained that Dr. Mangum completed his second term as a Board member on June 30, 2012, but the Division has not been notified regarding who the new Board members will be. She stated when a term has been completed the Board member may continue to serve for up to six months in order to maintain continuity. She stated the Division is hoping to hear from the Governor's office by September or October and she will notify the Board of the names of the Doctor and two Acupuncturists appointees.

**Ms. Clausen asked if the Board could meet on Tuesdays in the future.**

**Mr. Archibald commented Fridays are best for him but with advanced notice he could do most days.**

Ms. Taxin responded she will review the schedule and try to accommodate Ms. Clausen's request.

**Ms. Clausen asked when the term for the public person expires.**

Ms. Taxin responded it will expire June 30, 2013.

**Ms. Clausen asked for the names of those who were recommended to serve on the Board.**

Ms. Taxin responded names are given to the Board when an appointment is made as there are several levels where changes could be made.

Explanation for the Review of Patrick Sellers' Application

Ms. Taxin explained Mr. Sellers applied for an Acupuncture license in Utah. She stated the application was not complete and he had a yes answer on the Qualifying Questionnaire. Ms. Taxin stated an incomplete letter went out requesting information be submitted for a complete application. She stated Mr. Sellers was slow to submit the requested information. Ms. Taxin stated Ms. McCall contacted Mr. Sellers regarding submitting the additional documentation and

he voiced reluctance to provide it.

Mr. Perry commented Ms. McCall then contacted Nevada and obtained the information.

Ms. Taxin stated additionally verifications were requested and Mr. Sellers had said he did not want to supply verifications. She stated Mr. Sellers had a Utah Chiropractic license and had indicated on the application that the license expired. She stated when she verified the status; the Utah record has denial of renewal due to failure to complete a CE audit. Ms. Taxin stated the Utah Chiropractic license renewal was denied based on his failure to complete the CE audit. She stated Mr. Sellers also had a Real Estate Appraiser license in Nevada which he voluntarily surrendered and when Ms. McCall contacted the Nevada Real Estate Board she was informed Mr. Sellers surrendered the license in lieu of disciplinary action which made the surrender disciplinary and reportable to the Federal Database.

Ms. Taxin explained Mr. Sellers Acupuncture application was received October 27, 2011, and a conditional denial was sent on October 27, 2011, giving Mr. Sellers 30 days from the date of the letter to submit requested information or his application would be denied. She stated he called and requested an extension of the conditional denial deadline and Ms. McCall extended the deadline from November 27, 2011 to December 9, 2011.

Ms. Taxin stated she denied Mr. Sellers application on December 16, 2011, based on the following:

1. Mr. Sellers Nevada Appraisal license voluntarily surrendered in lieu of disciplinary action for unprofessional conduct by not completing appraisals appropriately which is classified as disciplinary action in the Federal Registry, Appraisal Commission, the Nevada Real Estate Division's Disciplinary Report and the Nevada Real Estate Division website; and
2. Mr. Sellers misrepresenting the status of his Utah Chiropractic license as being expired. The narrative Mr. Sellers submitted regarding

his yes answers on numbers 3 and 4 of the “Qualifying Questionnaire” does not include failure to submit his documentation for the continuing education audit on his Utah Chiropractic license and the denial of that renewal in 2006. Such misrepresentation to the Division is deemed unprofessional conduct and is evidence of a lack of moral turpitude and character.

She explained when an application is denied the applicant has the right to request Agency Review within 30 days of the denial and Mr. Sellers had made the request. Ms. Taxin stated the Administrative Law Judge requested the application be remanded back to the Board to review.

Ms. Taxin clarified that in her letter of denial she interchanged the words of moral character with moral turpitude. She stated the Judge explained they do not have the same meaning. Ms. Taxin then read the definitions and stated she maintained Mr. Sellers had a lack of moral character based on his misrepresentation and actions in Nevada.

**Dr. Mangum asked how Mr. Sellers obtained an Acupuncture certification in Idaho prior to going to an Acupuncture education program.**

**Mr. Archibald responded Idaho might have allowed Mr. Sellers to do Acupuncture with an Idaho Chiropractic license.**

**Ms. Clausen asked if the failure to renew the Utah Chiropractic license might have been Mr. Sellers choice.**

Ms. Taxin responded that might have been the case but Mr. Sellers did try to renew the Chiropractic license by submitting a renewal form and the fee and then claimed he did not receive the letter regarding the CE audit. She stated the Chiropractic renewal was denied by the Division based on the lack of completing the CE audit. Ms. Taxin stated he documented on his Acupuncture application that his Utah Chiropractic license had expired.

Ms. Taxin requested the Board to listen to Mr. Sellers and make a recommendation after their meeting to let the denial stand or to issue the Utah Acupuncture license. Ms. Taxin stated if the Division (Board) denies the application on remand, the final decision shall provide a detailed discussion of the reasons for denial including the applicable law and relevant facts considered, demonstrating the logical steps by which the Division (Board) arrived at its ultimate conclusion.

**Mr. Archibald asked if the Division would have contacted Mr. Sellers to notify him of the CE audit when he tried to renew.**

Ms. Taxin responded yes. She stated the renewal form and fee were received March 31, 2006, and an audit letter was sent out April 5, 2006, to the Nevada address on the renewal form. She stated Mr. Sellers would have had until May 31, 2006, the expiration date, to submit documentation of completing the CE requirements.

Mr. Perry stated Mr. Sellers needs to understand that when an agency requests information he needs to supply that information in a timely manner.

**Mr. Archibald asked if Mr. Sellers would be allowed to reapply if the Board recommended the denial stand.**

Ms. Taxin responded usually denial letters give advice or recommendations regarding if or when an applicant may reapply. She stated if the Board recommends licensure they need to be clear on the importance of practicing within the scope of Acupuncture practice and that he cannot work within the scope of a Chiropractic Physician unless he receives that license and additionally suggested he resolve the Chiropractic license status.

## **APPOINTMENTS:**

**9:45 am**

Patrick Sellers, Acupuncture Applicant, and Joseph Hatch, Legal Counsel, Application Discussion

Mr. Sellers and Mr. Hatch met with the Board.

Board members and Division staff were introduced.

Mr. Hatch explained he was hired by Mr. Sellers when the Division denied the application for Acupuncture licensure. He stated he assisted Mr. Sellers in making an appeal to the Department Executive Director and she had remanded the review and decision back to the Board.

**Mr. Perry explained the Board was informed of the denial and the circumstances of the application review and have been given a copy of Mr. Sellers' application and additional information.**

Mr. Hatch commented Mr. Sellers has no memory of receiving the Utah 2006 CE audit letter. He stated Mr. Sellers did satisfy the 2006 CE requirements for his Idaho license and his Nevada license. He stated when Mr. Sellers did not receive the renewed license for Utah he assumed he submitted the renewal form and fee too late. Mr. Hatch stated Mr. Sellers was living and working in Nevada at that time and renewing the Utah Chiropractic license was not really a concern for him.

**Following the legal discussion of Mr. Hatch and Mr. Perry, Mr. Archibald asked Mr. Sellers why he is no longer practicing as a Chiropractor.**

Mr. Sellers responded he was involved in a serious auto accident which left him disabled for several years.

**Ms. Clausen asked when Mr. Sellers decided to go to Acupuncture school.**

Mr. Sellers responded he practiced Acupuncture in Idaho under his Chiropractic license for years and obtained education courses here and there. He stated he later decided to get an Acupuncture license and went to school for the education, took the examination and received the NCCAOM Certification so he could be licensed to practice as an Acupuncturist. He stated he is not sure he wants to go back and get his Chiropractic license again as Acupuncture is easier for him.

**The Board reviewed the Nevada disciplinary action and supplemental information in the application.**

**Dr. Mangum stated Mr. Sellers claimed he did not received the Utah CE audit information and it appears to be a pattern for him as he had also said he was unaware of the Nevada appraisal issue and did not follow through on that. He stated Mr. Sellers stated he moved and did not receive information but he did give a new address and still claimed he did not receive information.**

**Mr. Perry explained the Utah Division did not receive the Nevada information from Mr. Sellers. He stated Ms. McCall contacted the Nevada Board and received the information from them when he voiced hesitancy to provide it. He stated Mr. Sellers may have provided the information to the Department in his appeal but did not provide it with his initial application.**

Mr. Sellers asked who Ms. McCall contacted.

**Ms. Taxin responded Ms. McCall contacted him and he had said it was not the business of the Division as it had nothing to do with Acupuncture and he did not want to supply the information. She stated Ms. McCall then contacted Joanne Gierer in Nevada and obtained the information.**

**Mr. Perry asked Mr. Sellers what he has been doing since he submitted his application.**

Mr. Sellers responded he has been surviving as best he could with his wife being employed and he assisting a friend in Idaho occasionally with his chiropractic practice.

**Ms. Clausen asked Mr. Sellers thoughts on what happened in Nevada since the denial was based on moral character.**

Mr. Sellers responded the economy had died, and a complaint was filed by the client who did not like the appraisal he provided.

**After further discussion, Ms. Clausen made a motion to approve the application for licensure.**

**Mr. Archibald seconded the motion.**

**The Board vote was unanimous.**

**Ms. Taxin commented Mr. Sellers Chiropractic license is listed as denial of the renewal. She stated he will be required to disclose the denial if he applies for any type of license in another State and will have similar problems again if he does not accurately reflect the status. Ms. Taxin suggested Mr. Sellers obtain the CE and apply for reinstatement of the Utah Chiropractic license. She stated when Mr. Sellers renews his Acupuncture license he will also be required to disclose the denial of the Chiropractic license.**

**Ms. Taxin stated she will issue the Acupuncture license and Mr. Sellers should receive it within a week.**

#### **DISCUSSION ITEMS:**

##### **Acupuncture Assistants**

Ms. Taxin stated the Division has received several phone calls regarding Acupuncture assistants and their scope of practice, i.e.: pull needles, insert needles, etc. She questioned the Boards position on the use of assistants.

**Ms. Phaklides commented she had an associate who pulled out points as she had training for it. She stated she also received a message from Mr. Archibald regarding assistants but was unable to speak with him. Ms. Phaklides stated she has created a training program and teaches a basic course for Acupuncture assistants. She stated she believes her prior office manager called in complaints.**

**Ms. Clausen asked who certifies the assistants who complete Ms. Phaklides education program.**

**Ms. Phaklides responded she certifies them as there is no formal National certification.**

Ms. Taxin responded the Board would need to decide if something regarding assistants should be in the Law and what type of education should be required.

Mr. Perry commented if what assistants are doing falls under the practice of Acupuncture then they would need a license. He stated that a long term goal might be to include in the Law Acupuncture assistants and define their scope of practice.

**Ms. Justesen commented she believes assistants would fall under the adjunctive therapies.**

**Dr. Mangum questioned if using the word certification is appropriate when there are no standardized guidelines. He stated it would be helpful to have the guidelines standardized.**

**Mr. Archibald responded it does not take a lot of skill to remove needles and it is not dangerous. He stated if someone had an assistant they would probably want them to complete the NCCAOM clean needles examination and become certified.**

Ms. Taxin stated one of the issues that came up in the phone calls was the lack of wearing gloves and inserting needles through clothing and taking them out through clothing.

**Dr. Mangum responded it would not be necessary to wear gloves to insert needles but it would be necessary when removing them as there could be some blood at the removal site.**

**Ms. Clausen responded clean needling is in the certification and those individuals who were grandfathered into licensing could take the clean needle examination. She stated in China needles are inserted through clothing but it is not part of the clean needle procedure.**

**Ms. Phaklides commented she believes the complaint was in regard to her inserting needles through a compression garment on a gentleman.**

**Ms. Justesen commented she also has inserted needles through garments and clothing.**

**Mr. Chang voiced not understanding why the Board and the profession would think using an assistant who has not gone through an NCCAOM approved program is appropriate. He stated the Acupuncturist must have the NCCAOM certification to practice and Utah is allowing someone to teach people to be assistants without checking into the program or requiring NCCAOM guidelines and certification. He stated he does not believe it is appropriate and encourage the Board to set some NCCAOM guidelines for assistants and suggested the Board do their job in protecting the public.**

Mr. Perry responded he believes the Law would need to be changed and those using assistants should be careful because if they are doing anything that requires a license there could be problems.

**Mr. Sellers asked if anyone could be trained to do injections.**

**Dr. Mangum responded no.**

**Mr. Sellers stated most of the time Acupuncturists train their own assistants and delegate duties to the assistant.**

**Ms. Clausen asked if the Board believes removing needles can be delegated.**

**Dr. Mangum responded he delegates the removal of needles.**

**Mr. Archibald responded he pulls his own.**

**Ms. Clausen commented she generally pulls her own but taught someone who was going to Acupuncture school how to pull needles and has taught others also. She stated it is energetic for her to insert and pull the needles. She stated she believes an assistant is always under the supervision of a licensed Acupuncturist. She stated**

**sometimes issues can arise such as a hematoma but the Acupuncturist should be able to handle the issue. She stated there are rarely any issues of infection or any blood as the needles are so fine. She stated frequently patients will pull their own needles.**

**Mr. Ottley commented his sister is trained as an assistant and she is also a Massage Therapist but they decided she should not deal with anything in case something questionable happens as there are no guidelines defined and he does not want any problems. He stated he believes standards can easily be established.**

Ms. Taxin asked if any Legislation is being planned regarding assistants for the 2013 session.

**Mr. Ottley responded no.**

Mr. Perry stated he would like the scope of practice for assistants defined.

**Mr. Archibald recommended requiring a clean needle examination once or twice a year for assistants.**

Ms. Taxin stated a lot of comments have been discussed today regarding the use or non use of Acupuncture assistants. She suggested the Board think about if Legislation should be passed incorporating Acupuncture assistants into the Acupuncture Practice Act and consider their scope of practice and what actions would constitute unprofessional conduct.

**Ms. Justesen responded there are several States who are in the process of defining a scope of practice for assistants but there is not currently a National standard. She recommended Utah wait to see what guidelines NCCAOM puts in place and then determine what is appropriate for Utah.**

Renewal and CE Audit Update

Ms. Taxin informed the Board that there were ten Acupuncturists audited for their continuing education (CE). She stated eight of those ten submitted their CE

and completed the audit. She stated there were two who did not complete the audit and have not attempted to renew their licenses. Ms. Taxin stated there were 97 Acupuncturists who renewed their licenses and 17 have not attempted to renew or reinstate.

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

Proposed Rules Review and Discussion

Ms. Taxin explained when a Law is written it sometimes includes language saying as defined by Rule and that gives the Board/Division the authority to write a Rule. She stated there may also be an area where it is implied for a Rule to be written. Ms. Taxin stated in the Law under Definitions, 58-72-102, it is implied that a Rule should be written to define modern research.

Ms. Taxin stated there has been discussion regarding if modern research is included within the scope of practice for an Acupuncturist to order lab tests and to do injections. She stated in regard to the injections it has been discussed in prior meetings that Acupuncturists may do homeopathic injections only but that it is not clear of authority in the Law and Rules. She stated it is important for practitioners to practice within the scope of their profession and education. Ms. Taxin explained to administer is to give the patient a medication now at the clinic and to dispense is to give the patient medication to take home. She stated there is currently no language in Law or Rule regarding injections or ordering lab tests. She suggested the Association look at the language and make it clear when the Law is opened again. Ms. Taxin stated she pulled the New Mexico Law as they allow for injections and lab testing but their scope of practice is more extensive than Utah's. She stated she also pulled Delaware, California, Arkansas and New York Laws to review.

**Ms. Justesen commented Colorado Law also allows for injections and ordering lab tests. She then stated it was intended in the new language to allow for those services.**

**Mr. Sellers stated Florida also has it in their Law.**

Ms. Taxin suggested the Board and/or Association submit a proposal of what modern research means, then she will write something for them to review. She stated since the Board/Association believes injections are within the scope of practice the language needs to be clear that injections are homeopathic only.

**Ms. Justesen explained the word research was used in the Law as the Legislative sponsor was comfortable with that word and then she resigned without writing the language that had been proposed. She stated Senator Hinkins assigned her to sit with the Legislative legal counsel and explain what they were trying to do. Ms. Justesen stated she explained NCCAOM has been adopted as the certifying body as they have in place education and examination standards that Utah has accepted and now have a bio-medicine program in place. She stated there was an issue with the Patient Centered Outcomes Research Institute (PCORI), which is a research program organization who has applied for a research grant. She stated the word research made sense in keeping up with the what is going on in health care in America.**

Ms. Taxin responded for licensure Utah requires NCCAOM certification and that practitioners abide by the current code of ethics. She stated NCCAOM and PCORI are separate entities.

**Dr. Mangum questioned if modern techniques covers the administration of injections.**

**Ms. Clausen responded the Law already allows Acupuncturists to administer. She suggested including under unprofessional conduct that Acupuncturists cannot dispense needle paraphernalia to patients.**

**Mr. Ottley voiced agreement with Ms. Clausen to clarify dispensing does not include needles.**

**Mr. Perry stated the Law does not specifically say injections.**

**Dr. Mangum commented administering would include injections, topical products, inhalation and oral.**

**Mr. Sellers commented Acupuncturists do dispense herbal capsules.**

**Mr. Archibald commented they also dispense a vitamin therapy.**

Ms. Taxin stated she will clarify and include the definition of dispense in the proposed Rules as the Division cannot act on something not defined. Ms. Taxin stated she will draft Rules and send them out by email for the Board and Association to review prior to filing them. She stated if the comments are complicated then the Board will need to meet again. Ms. Taxin asked if she should include approved injection training or training accredited by NCCAOM.

**Ms. Clausen responded NCCAOM will approve injectable training.**

**Mr. Ottley responded NCCAOM already has injectable training in their program.**

Ms. Taxin stated she will define administering as the application of herbs, homeopathic or supplements based on traditional oriental medicine and modern research according to an NCCAOM approved training.

**Ms. Justesen commented the University of Utah may have some courses that would not be approved by NCCAOM.**

Ms. Taxin responded those who may have completed U of U courses could submit the course descriptions to NCCAOM and request they be recognized.

**Ms. Clausen asked if the Board could discuss ordering lab work.**

Ms. Taxin responded if NCCAOM offers the training for Lab tests then it would fall under approved programs.

**Mr. Sellers asked why ordering lab tests would not be acceptable.**

Ms. Taxin explained the Utah Medical Association believes lab work is beyond the scope of practice for Acupuncture and as it is the practice of medicine. She stated their position is that patients should be referred to their Primary Care Practitioner to order lab tests.

**Dr. Mangum asked if LabCorp will accept an order from an Acupuncturist.**

**Ms. Justesen responded yes. She stated she does not order lab test for diagnosing purposes but to gather information so she knows how to treat the patient.**

**Ms. Clausen responded she orders lab tests so she can refer patients back to their own doctor.**

**Mr. Sellers responded he orders the tests to be able to properly address patient deficiencies.**

**Ms. Clausen suggested the Rules include the practice of Acupuncture includes trigger points and dry needling.**

**Dr. Ottley commented it would clarify the scope in the use of needles. He stated it is not a turf battle but the Physical Therapists are trying to include acupuncture by using different words and no matter what words they use the techniques are the same. He stated the clarification would assist the profession in the future.**

Mr. Perry responded the Rules could define what the insertion of acupuncture needles includes.

Ms. Taxin summarized the Board's recommendations to put in the proposed Rules that Administering means the application of herbs, homeopathic or supplement based traditional oriental medical diagnosis and modern research by training, injection, inhalation, ingestion and topical to the body of patients or animals. She stated she will include the insertion of needles includes but is not limited to trigger point

therapy, ahshi points and dry needling techniques. And modern research means practicing according to acupuncture training as recognized through NCCAOM.

Ms. Taxin suggested she type it up, send it out for feedback from the Board and Association and then she will try to get a hearing for October. Ms. Taxin explained the Board is not required to attend Rule hearings but it is helpful for the chairperson to attend in case the Judge or public asks questions.

**Ms. Justesen asked if Ms. Taxin would now write an Order allowing Acupuncture licensees to order products from Pharmaceutical companies as they will need something to give them the authority to order.**

Ms. Taxin responded she does not have the authority to give approval for ordering products.

#### **CORRESPONDENCE:**

Tao Sun Letter Regarding Expanding Services

Ms. Taxin read Mr. Sun's letter regarding expanding the services he offers his patients to include an herbal formula for soaking the feet. Ms. Taxin stated Mr. Sun would not need another license. She asked if this is within the scope of practice for Acupuncture.

**The Board responded yes.**

**Ms. Justesen responded this practice would fall under the administration of herbs.**

Ms. Taxin thanked the Board and guests for their comments. She stated periodically she receives calls or letter with questions and tries to have the Board review the information and make a decision or recommendation. She stated she will contact Mr. Sun.

**NEXT MEETING SCHEDULED FOR:**

None Scheduled at this time unless one is needed.

**ADJOURN:**

The time is 11:47 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.*

November 30, 2012  
Date Approved

(ss) Regan J. Archibald, LAc  
Chairperson, Utah Acupuncture Licensing Board

August 24, 2012  
Date Approved

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