

**Minutes
Department of Health
Florida Board of Acupuncture
General Business Meeting
The Hyatt Regency
225 Coast Line Drive East
Jacksonville, Florida 32202
June 23, 2006 @ 9:00
(904) 588-1234**

Call to Order/Roll Call

Zong Lan Xu, AP, Chair, called the meeting to order at 9:14 a.m.

Members Present:

Zong Lan Xu, AP, Chair
Frank Ervolino, AP, Vice Chair
Gregory Gunter
Paulette Karr, AP
Katherine Teisinger, AP
Qun Wang, AP

Board and Department Staff:

Daniel Biggins, Board Counsel
Ronda L. Bryan, Program Administrator
Christy Robinson, Program Administrator

Prosecuting Attorney

April Skilling, Assistant General Counsel

Members Absent:

Gloria Rosello (excused)

Court Reporter:

Statewide Reporting Service
(904) 353-7706

Review of Minutes

Tab 1 – March 20, 2006, General Business Meeting

Action Taken: After discussion, Mr. Gunter moved to approve the minutes with the following corrections:

Page 2, Line 11 - should read “evaluation” instead of “elevation”

The motion was seconded by Ms. Teisinger and passed unanimously.

Prosecutor Report

Ms. Skilling indicated that there were 18 total complaints and cases open as of today’s date. Of the 18 cases, 7 cases are scheduled for PCP following today’s meeting and 5 cases will be submitted to the next PCP meeting. The remaining 6 cases includes 2 cases pending outcome of criminal cases, 1 case under legal review and 3 cases pre-DOAH negotiation status.

Licensure

Tab 2 – Tzong Jiunn Wu

Mr. Wu was present without Counsel.

Mr. Wu's application was presented to the Board for review because his transcript is short 300 hours of supervised instructions in Oriental Medicine.

After much discussion, Mr. Wu requested to withdraw his application.

Action Taken: A motion was made by Mr. Gunter to accept Mr. Wu's request to withdraw his application. The motion was seconded by Ms. Teisinger and passed unanimously.

Endorsement

Tab 2a – Paul Reinhardt

Mr. Reinhardt was present without Counsel.

After much discussion, Mr. Reinhart requested a continuance and waived his rights to the 90-day requirement under Chapter 120.60, Florida Statute.

Action Taken: After discussion, a motion was made by Mr. Ervolino to continue the application based on applicant's request to file a Petition for Variance and Waiver and accept applicant's waiver of Chapter 120.60, Florida Statutes. The motion was seconded by Mr. Wang and passed unanimously.

Legislative Discussion

Tab 3 – 2007 Proposed Legislation

Ms. Bryan asked the Board if they wanted to resubmit the proposed legislative language for Chapter 457.105, 457.107, 457.109 and 457.116, Florida Statutes to the Department for consideration in their 2007 legislative package. Please see attachment A.

Action Taken: After discussion, a motion was made by Mr. Gunter to resubmit Chapter 457.105, 457.107, 457.109 and 457.116, Florida Statutes, proposed legislative language to the Department for consideration in their 2007 legislative package. The motion was seconded by Ms. Karr and passed unanimously.

Break 10:30 – 10:50

Board Counsel Report – Daniel Biggins

Tab 4 - Rules Report

64B1-6 – Continuing Education

No proposed language pending.

64B1-9.005 – Definitions & 64B1-3.001 – Definitions

Mr. Biggins provided an update and overview of the correspondences from JAPC’s. Mr. Biggins recommended that the Board repeal the current rules that are in effective and submit the proposed language for consideration.

Discussion of JAPC Concerns with Rules 64B1-3.001(6) and 64B1-9.005(3)&(4), F.A.C.

Amy Sear, A.P., FSOMA, President – Ms. Sear noted that she did not support the last proposed language but is in favor of the new proposed language.

Isali Ben-Jacob, A.P. – FAOM – Mr. Ben-Jacob was not present.

Paul Reinhardt – AOMNC, Executive and Lobbyist – Mr. Reinhardt noted that the Coalition would support the proposed language.

Richard Freiberg, A.P., AOMNC – Mr. Freiberg noted that the Board does have the authority for the advertising rule.

Laura McCloud, FSOMA Lobbyist – Ms. McCloud encouraged the Board Members and audience to write individually to the Secretary of the Department of Health and request that the Boards proposed legislative language be submitted to the legislators for consideration.

It was recommended that Mr. Ervolino prepare a draft letter to the Secretary of the Department of Health requesting support of the proposed legislative language.

Action: After much discussion, a motion was made by Ms. Teisinger to repeal Rules 64B1-9.005 and 64B1-3.001(6), F.A.C. and withdraw the amendments made at the last meeting. The motion was seconded by Mr. Gunter and passed unanimously.

Action: After further discussion, a motion was made by Ms. Karr to notice rule development on the proposed advertising language and approve the language with the noted changes. The motion was seconded and passed unanimously. Please see attachment B.

General Business

Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA) – Zong an Xu, Frank Ervolino, and Ronda Bryan

Ms. Xu provided an overview of the meeting. Ms. Xu noted that Mr. Ervolino was elected as a board member of FAOMRA and Ms. Bryan was elected secretary of FAOMRA. Ms. Bryan noted that she and Mr. Ervolino have already started working on assignments for their newly appointed positions. Ms. Bryan also noted that FAOMRA is still trying to increase their membership and participation at their meetings.

Reports

Board Chair Report – Zong Lan Xu

Board Director Report – Pamela King

Tab 5 – Pending Board Issues

Ms. Bryan provided an update and status on the pending issues.

Long Range Plan

Ms. Bryan asked the Board Members if they had any recommendations or changes to the Long Range Plan. It was the consensus of the Board to accept the Long Range Plan as submitted.

Board Liaison

a. Legislative & Rules – Zong Xu

Update provided under tabs 3 and 4.

b. Continuing Education – Paulette Karr & Frank Ervolino

No Report

c. Examination & Endorsement – Zong Xu & Paulette Karr

No Report

d. Unlicensed Activity – Frank Ervolino

Update provided under New Business.

e. Budget – Gregory Gunter

Tab 6 – Budget

Informational Only

f. Consumer Protection – Gloria Rosello

No Report

g. Community Relations – Katherine Teisinger

No Report

Old Business

New Business

Mr. Ervolino noted his concern about laser acupuncture still being performed in Florida by unlicensed individuals.

Amy Sear, FSOMA, President, stated that she has been receiving calls from licensees about performing ear stapling. The Board referred Ms. Sear to Rule 64B1-3.001, F.A.C., which states that the use of staples in the practice of acupuncture shall be prohibited. Ms. Sear indicated that she would notify her members of the prohibition.

It was the consensus of the Board to do letters to the unlicensed activity office informing them of the infection that can occur while doing ear stapling and to address laser acupuncture.

Next Meeting

September 29, 2006 – Tampa, Florida

Adjournment

The meeting was adjourned at 12:25 p.m.

ATTACHMENT A

457.105 Licensure qualifications and fees.--

(1) It is unlawful for any person to practice acupuncture in this state unless such person has been licensed by the board, is in a board-approved course of study, or is otherwise exempted by this chapter.

(2) A person may become licensed to practice acupuncture if the person applies to the department and:

(a) Is 21 years of age or older, has good moral character, and has the ability to communicate in English, which is demonstrated by having passed the national written examination in English or, if such examination was passed in a foreign language, by also having passed a nationally recognized English proficiency examination;

(b) Has completed 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment and completion of effective July 31, 2001, ~~in a authorized course of study~~ an authorized 4-year course of study in acupuncture and oriental medicine, which meets standards established by the board by rule, which standards include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, western pathology, western biomedical terminology, first aid, and cardiopulmonary resuscitation (CPR). However, any person who enrolled in an authorized course of study in acupuncture before August 1, 1997, must have completed only a 2-year course of study which meets standards established by the board by rule, which standards must include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, and western pathology. Additionally, any person who enrolled in an authorized 3 year course of study in acupuncture and oriental medicine prior to July 31, 2001, must have completed 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment in an authorized 3 year course of study in acupuncture and oriental medicine, and completed a 3 year course of study in acupuncture and oriental medicine which meets standards established by the board by rule.

(c) Has successfully completed a board-approved national certification process, is actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those of this state, or passes the national examination approved by the board, which examination tests the applicant's competency and knowledge of the practice of acupuncture and oriental medicine. At the request of any applicant, oriental nomenclature for

the points shall be used in the examination. The examination shall include a practical examination of the knowledge and skills required to practice modern and traditional acupuncture and oriental medicine, covering diagnostic and treatment techniques and procedures; and

(d) Pays the required fees set by the board by rule not to exceed the following amounts:

- ~~1. Examination fee: \$500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.~~
2. Application fee: \$300.
- ~~3. Reexamination fee: \$500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.~~
4. Initial biennial licensure fee: \$400, if licensed in the first half of the biennium, and \$200, if licensed in the second half of the biennium.

ATTACHMENT A (cont.)

457.107 Renewal of licenses; continuing education.--

(1) The department shall renew a license upon receipt of the renewal application and the required fee set by the board by rule, not to exceed \$500.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board shall by rule prescribe continuing education requirements, not to exceed 30 hours biennially, as a condition for renewal of a license. All education programs that contribute to the advancement, extension, or enhancement of professional skills and knowledge related to the practice of acupuncture, whether conducted by a nonprofit or profitmaking entity, are eligible for approval. The continuing professional education requirements must be in acupuncture or oriental medicine subjects, including, but not limited to, anatomy, biological sciences, adjunctive therapies, sanitation and sterilization, emergency protocols, and diseases. ~~The board shall have the authority to set a fee, not to exceed \$100, for each continuing education provider.~~ The licensee shall retain in his or her records the certificates of completion of continuing professional education requirements to prove compliance with this subsection. The board may request such documentation without cause from applicants who are selected at random. ~~All national and state acupuncture and oriental medicine organizations and acupuncture and oriental medicine schools are approved to provide continuing professional education in accordance with this subsection.~~ Any other provision of this chapter or chapter 456 to the contrary notwithstanding, the board may require continuing education providers to obtain board program, instructor and provider approval, prior to offering continuing education programs for licensure renewal credit and prior to licensees participating in the programs for licensure renewal credit. The provider approval and renewal fees as authorized in section 456.025 and determined by board rule are a pre-condition to provider approval and renewal. The board is authorized to enact rules to implement the provisions of this subsection, including determining the criteria for approval of provider qualifications and programs in accordance with this subsection.

ATTACHMENT A (cont.)

457.109 Disciplinary actions; grounds; action by the board.--

- (1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):
- (a) Attempting to obtain, obtaining, or renewing a license to practice acupuncture by bribery, by fraudulent misrepresentations, or through an error of the department.
 - (b) Having a license to practice acupuncture revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
 - (c) Being convicted or found guilty, or entering a plea of nolo contendere to, regardless of adjudication, in a court of this state or any other jurisdiction, of a crime which directly relates to the practice of acupuncture or to the ability to practice acupuncture. ~~Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.~~**
 - (d) False, deceptive, or misleading advertising or advertising which claims that acupuncture is useful in curing any disease.
 - (e) Advertising, practicing, or attempting to practice under a name other than one's own.
 - (f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department.
 - (g) Aiding, assisting, procuring, employing, or advising any unlicensed person to practice acupuncture contrary to this chapter or to a rule of the department.
 - (h) Failing to perform any statutory or legal obligation placed upon a licensed acupuncturist.
 - (i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed acupuncturist.
 - (j) Exercising influence within a patient-acupuncturist relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her acupuncturist.
 - (k) Making deceptive, untrue, or fraudulent representations in the practice of acupuncture or employing a trick or scheme in the practice of acupuncture when such scheme or trick fails to conform to the generally prevailing standards of treatment in the community.
 - (l) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral response from the recipient.

- (m) Failing to keep written medical records justifying the course of treatment of the patient.
- (n) Exercising influence on the patient to exploit the patient for the financial gain of the licensee or of a third party.
- (o) Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, upon a finding of the secretary or the secretary's designee that probable cause exists to believe that the licensee is unable to serve as an acupuncturist due to the reasons stated in this paragraph, the department shall have the authority to issue an order to compel the licensee to submit to a mental or physical examination by a physician designated by the department. If the licensee refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or serves as an acupuncturist. The licensee against whom the petition is filed shall not be named or identified by initials in any public court record or document, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. An acupuncturist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of acupuncture with reasonable skill and safety to patients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the department shall be used against an acupuncturist in any other proceeding.
- (p) Gross or repeated malpractice or the failure to practice acupuncture with that level of care, skill, and treatment which is recognized by a reasonably prudent similar acupuncturist as being acceptable under similar conditions and circumstances.
- (q) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.
- (r) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.
- (s) Violating a lawful order of the board previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.
- (t) Conspiring with another to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising his or her services.

(u) Fraud or deceit or gross negligence, incompetence, or misconduct in the operation of a course of study.

(v) Failing to comply with state, county, or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious diseases.

(w) Failing to comply with any rule of the board relating to health and safety, including, but not limited to, the sterilization of needles and equipment and the disposal of potentially infectious materials.

(x) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The department shall not reinstate the license of an acupuncturist, or cause a license to be issued to a person it has deemed to be unqualified, until such time as the board is satisfied that he or she has complied with all the terms and conditions set forth in the final order and is capable of safely engaging in the practice of acupuncture.

ATTACHMENT A (cont.)

457.116 Prohibited acts; penalty.—

(1) A person may not:

(a) Practice acupuncture unless the person is licensed under ss. 457.101-457.118;

(b) Use, in connection with his or her name or place of business, any title or description of services which incorporates the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “oriental medical practitioner”; the letters “L.Ac.,” “R.Ac.,” or “A.P.,” or “D.O.M.”; or any other words, letters, abbreviations, or insignia indicating or implying that he or she practices acupuncture unless he or she is a holder of a valid license issued pursuant to ss.457.101-457.118

(c) Present as his or her own the license of another;

(d) Knowingly give false or forged evidence to the board or a member thereof;

(e) Use or attempt to use a license that has been suspended, revoked, or placed on inactive or delinquent status;

(f) Employ any person who is not licensed pursuant to ss.457.101-457.118 to engage in the practice of acupuncture; or

(g) Conceal information relating to any violation of ss. 457.101-457.118.

(2) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Other provisions of this chapter to the contrary notwithstanding, the Board is authorized to enact rules for the purpose of issuing a temporary permit to an acupuncture or oriental medicine practitioner who is not licensed in Florida, to engage in an acupuncture or oriental medicine related education program demonstration on one or more volunteers. Each such permit shall be non-renewable, shall be valid for no more than four consecutive days and shall only apply to a specific event at a specific location that is described in the permit.

ATTACHMENT B

Proposed rule language

Advertising

(1) Advertising by persons licensed or certified under Chapter 457, Florida Statutes, is permitted so long as the information disseminated is in no way false, deceptive, or misleading and so long as the information does not claim that acupuncture is useful in curing any disease. Any advertisement or advertising shall be deemed false, deceptive, or misleading if it:

- (a) Contains a misrepresentation of facts; or
- (b) Makes only a partial disclosure of relevant facts; or
- (c) Creates false or unjustified expectations of beneficial assistance; or
- (d) Contains any representations or claims, as to which the person making the claims does not intend to perform; or
- (e) Contains any other representation, statement, or claim which misleads or deceives; or
- (f) Fails to conspicuously identify the licensee by name in the advertisement.

(2) As used in the rules of this board, the terms “advertisement” and “advertising” shall mean any statements, oral or written, disseminated to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

(3) It shall not be considered false, deceptive, or misleading for any persons licensed or certified under chapter 457, Florida Statutes, to use the following initials or terms:

- (a) L.Ac.
- (b) R.Ac.
- (c) A.P.
- (d) D.O.M.
- (e) Licensed Acupuncturist
- (f) Registered Acupuncturist
- (g) Acupuncture Physician
- (h) Doctor of Oriental Medicine

(4) Any licensee who advertises through an agent or through a referral service shall be held responsible for the content of such advertising and shall ensure that the advertising complies with this Rule and Chapter 457, Florida Statutes.