

MINUTES

**UTAH
ACUPUNCTURE
LICENSING BOARD MEETING**

January 31, 2011

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

CONVENED: 9:03 A.M.

ADJOURNED: 11:28 A.M.

Bureau Manager:

Noel Taxin

Board Secretary:

Karen McCall

Board Members Present:

Pamela Bys, L.Ac, Chairperson

Brent Ottley, L.Ac

Todd A. Mangum, MD

Michael A. King

Michele Zabriskie

Guests:

Kris Justesen, L.Ac., UAA

Marianne Frost-Higgins

Tyehao Lu

Lisa Flater

David Flater

Bea Hammond

Mark Montgomery

Natalie Clausen

DOPL Staff Present:

Ray Walker, Division Regulation & Compliance
Officer

Karl Perry, Assistant Attorney General

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

MINUTES:

The minutes from the September 30, 2010 Board meeting were read.

Ms. Zabriskie made a motion to approve the minutes as read. Mr. Ottley seconded the motion. **The Board vote was unanimous.**

APPOINTMENTS:

9:30 am

Review of Rule amendments and Public Comment and the Amendment Process

Ms. Taxin explained she had filed the Board approved proposed Rules for a hearing but received public comments regarding concerns about the administering injection and the citation noted for sanitation requirements. She stated the comments voiced significant concerns which caused her to let the filing expire and request further Board discussion. She stated when the Board discussed including administering injections in the proposed Rules she was not sure it was in the Acupuncture scope of practice. Ms. Taxin stated she did check into it with Ray Walker, DOPL Regulation and Compliance attorney. She stated Ms. Justesen had explained that language was in the Chiropractic Law under unprofessional conduct and their scopes are similar. She stated she revised the wording a bit and with Mr. Walker determined it would be appropriate to include it in the proposed Rules.

After the Rule filing she reviewed the public comments. Ms. Taxin stated the question came up regarding if it is within the scope of practice for Acupuncture and allowable in the current Statute. She explained if she had pushed for the Rule to be approved without Statute authority she would be requested to explain to the Legislature why she violated the Statutes intent. Ms. Taxin stated questions came up regarding why Chiropractors are allowed to do injections and Acupuncturists cannot. She stated she does not regulate Chiropractors and if they did something outside their scope of practice then they will be explaining to the Legislature.

Ms. Taxin stated she needs to be very clear that she regulates Acupuncturists and it has been determined by review with the AG's office, Mr. Walker, Division Regulation & Compliance Officer, and herself that there is no Statutory authority to include administering injections in the Rules.

Mr. Walker stated the Chiropractic Law and the Acupuncture Law are two different practice Acts.

He stated the practice of Acupuncture has been defined by the Legislature and the Chiropractors have a broader scope of practice. Mr. Walker stated the focus for today is on the Acupuncture Law only and any changes to the Rules must fall under the Law area of 58-72-102(4)(a) and (b). He then read that section of the Law.

Ms. Taxin invited Ms. Justesen and the public visitors to comment following the reading of the public comments.

Mr. Perry, AG, stated a Rule may be written to clarify Statute if Statute gives authority. He stated there is not any questionable area of the Statute to expand the scope of practice to include injections.

Ms. Taxin responded she and the Board believed something could be included under 58-72-102(b) as the use of needles would be an adjunctive therapy. She stated it is taught and used in Oriental Medicine.

Ms. Taxin then read additional public comments. She stated there is a reference to the Department of Health Standards of Practice for sanitation in this proposed Rule. She mentioned some Acupuncturists are audited by the Health Department based on their standards while others are not. She stated when she reviewed the Health Department website the information was not clear and was difficult to locate so she is proposing to remove that language. Ms. Taxin mentioned she also reviewed the Acupuncture Code of Ethics and could not locate information regarding sanitation.

Ms. Taxin continued offering public comment regarding if injections are in the scope of practice for Acupuncture. She stated she agreed with the public comment and would be more comfortable with the Association opening the Statute to give authority for Acupuncturists to perform injections instead of a backdoor approach of amending a Rule.

Ms. Taxin stated another public comment suggested the word "non-prescription" in the proposed Rule be replaced with "non-scheduled substances" as a DEA number is required for all controlled substances. The

person commented the language change would then cover homeopathic medications and other substances not listed. Ms. Taxin stated this person was also concerned about licensees being competently trained to do injections. She stated another public comment was to add to the list of injectables dextrose, sarapin, and procaine.

Dr. Mangum asked if the discussion is to encourage and recommend a Law change.

Ms. Taxin responded yes. She stated she believes public guests have come to discuss why the injectable language is not already in the Law, how to put it in and what language to use. She stated the Board should listen to the public comments and concerns but the Board does not have the authority to make Law changes.

Mr. Walker explained the Board is advisory to the Division and not a policy making entity. He stated the Division is a policy making entity but it is rare that the Division Director will make a decision contrary to a Board recommendation. He stated the issue is to go with the intent of the Law and not broaden the scope of practice without the intent of the Legislature. He stated implicit Rule making authority would say “as further defined by Rule” and the Acupuncture Law does not have that included in the scope of practice section. Mr. Walker explained when the Law lacks that standard or is ambiguous then the Board/Division has to set standards to regulate the profession. He stated the Acupuncture Law clearly outlines the Legislative intent. Mr. Walker stated the Division generally does not expand the scope of practice and/or unprofessional conduct as the Law has to be referenced to write the Rule. He stated if the Board/Division or public believe there are practitioners who are going beyond their scope of practice a Rule of clarification could be written for unprofessional conduct. He stated what the Board cannot do is write definitions in a way that makes Acupuncture like Physicians, Chiropractic Physicians, Nurse Practitioners or Physical Therapists. He stated the scope of practice area

would have to be expanded and redefined.

Ms. Taxin stated the last public comment received had no objection to Acupuncturists doing injections but voiced concern regarding how it was proposed in Rule without a Law change. She stated the person was unclear on the proposed unprofessional conduct and wanted clarification if injections are in addition to the scope of practice and how it will be monitored. Ms. Taxin stated there are some States that have included injections in the Acupuncture scope of practice and have oxygen, etc. available in the office in case of allergic reactions. She stated the person asked what will be required in Utah. The comment person noted there were no specific education requirements included and suggested it be included.

Ms. Taxin stated she redrafted the current proposed Rules and deleted the injection portion and amended the sanitation section. She proposed the Board approve the new proposed Rules and she will file them. She suggested the scope of practice issues regarding injections, lab testing and other things discussed expanding the Acupuncture scope be put in the Law.

Dr. Mangum commented there are many non-scheduled drugs and/or medications. He asked if scheduled drugs would be included.

Ms. Taxin responded no as Acupuncturists would not meet the criteria for a DEA registration or controlled substance (CS) licensure. She stated if the Association includes language for scheduled drugs and/or medications the Division would not give their support.

Ms. Justesen stated without further clarity in the Rule, Acupuncturists cannot order specific products for their business.

Ms. Taxin clarified if the products are RX they are out of the scope of practice an Acupuncturist to prescribe and they could not order or received certain medications without the DEA registration or CS license.

Following additional discussion by the Board, Association and public guests the Board recommended the Association open the Law and make changes in the scope of practice for Acupuncturists as the current Law does not allow an Acupuncturist to perform injections or many additional procedures taught in Oriental Medicine.

Dr. Mangum asked if a complaint is taken regarding an Acupuncturist doing injections would the licensee meet with the Board.

Ms. Taxin responded if a complaint was taken an investigator would be assigned to investigate and if unprofessional practice was taking place the licensee may ultimately meet with the Board to be monitored as a probationer or possibly go to a hearing. She stated the Board needs to be kept free from bias in case there was a hearing as the Board acts as the jury and, therefore, the Board does not hear the case information on an initial complaint.

Dr. Mangum made a motion to accept the new proposed Rule changes as written and for Ms. Taxin to file the Rule changes as soon as possible.

Mr. Ottley seconded the motion.

The Board vote was unanimous.

The public guests voiced continued disagreement with the Division's position that injections are not in the scope of Acupuncturists.

Ms. Taxin stated in order to consider their concern she, Mr. Perry and Mr. Walker will further research their position. Ms. Taxin stated the new proposed Rule will be filed without including injections and injections will be addressed at a later date.

Dr. Mangum made a motion for the proposed language regarding administering injections be reviewed at the next scheduled Board meeting.

Mr. Ottley seconded the motion.

The Board vote was unanimous.

Mr. King requested the information be e-mailed for Board review prior to the Board meeting.

Mr. King requested Ms. Taxin to e-mail the final proposed Rule language to the Board to review.

Ms. Taxin agreed to e-mail Board members.

DISCUSSION ITEMS:

Board Role as an Appointee

Ms. Taxin stated yearly she conducts Board member training which includes the Boards role and responsibilities. She stated she continues to receive questions which show her there is confusion on the role of the Division/Board and the process for Law and Rule changes.

Ms. Taxin then reviewed the role of the Board and the role of the Association. She stated in simple terms the Division (DOPL) role is to protect the health, safety and welfare of the public. She stated the role of the Association is to protect the profession.

Ms. Taxin explained the Board regulates and recommends licensure when necessary and, in collaboration with the Division, the Board recommends Rules to further clarify the Law.

Ms. Taxin explained one of the main roles of the Association is to protect the profession. She stated the Association could notify the Division/Board they want to open the Law and then bring language to the Board to review collaboratively with them.

Ms. Taxin explained the Board/Division write the Rules in collaboration with the Association. She stated a Rule cannot be written unless the Law gives authority.

Ms. Taxin stated the Board monitors any probationers, recommends disciplinary action in the form of letters of concern, warnings or probation, determines the passing score on examinations, acts as a jury in disciplinary proceedings, listens to the case and

determines what action is appropriate to take, conducts Board business including today's business to discuss Rule amendments. She stated anyone may request business be included on the agenda for discussion and she will include the item unless it does not apply to the Acupuncture Board. Ms. Taxin stated Board members can be members of the Association but cannot hold a position on the Association Board as it is a conflict of interest. She stated Board members in attendance at an Association meeting may state specific subjects were discussed in a Board meeting but they could not discuss the issues further at an Association meeting and could not make recommendations or decisions. They should recommend interested parties meet with the Board at the Division offices for further discussion and then notify her to include the information on the agenda for the next Board meeting.

Board members thanked Ms. Taxin for the clarification.

2011 Board Meeting Schedule

The Board noted August 1, 2011 is the next scheduled Board meeting.

Ms. Taxin stated Ms. McCall will contact Board members if another meeting is necessary.

NEXT MEETING SCHEDULED FOR:

August 1, 2011

ADJOURN:

The time is 11:28 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.

January 30, 2012
Date Approved

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

February 15, 2011
Date Approved

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