

**BOARD OF NATUROPATHIC MEDICINE**  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

**MINUTES OF THE MEETING**

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Hawaii Revised Statutes ("HRS") section 92-7(b).

- Date: Friday, February 10, 2012
- Time: Immediately following the Public Hearing
- Place: King Kalakaua Conference Room  
King Kalakaua Building, 1<sup>st</sup> Floor  
335 Merchant Street  
Honolulu, Hawaii 96813
- Present: Michael Traub, N.D., Chairperson  
David R. Kern, N.D., Vice Chairperson  
Kevin Gibson, N.D., Member  
L. Martin Johnson, Psy.D., Member  
Audrey Ng, Member  
Candace Ito, Executive Officer  
Rodney J. Tam, Deputy Attorney General ("DAG")  
Faith Nishimura, Secretary
- Call to Order: There being a quorum present, the meeting was called to order by Chairperson Traub at 2:21 p.m.
- Additions and Revisions to the Agenda: It was moved by Dr. Kern, seconded by Dr. Johnson, and unanimously carried to add (c) Scope of practice - Psychotherapy under New Business.
- It was moved by Dr. Kern, seconded by Dr. Johnson, and unanimously carried to add (g) Senate Bill No. 122, S.D. 2 Relating to Naturopathic Physicians under Legislation.
- Approval of the November 14, 2011 Meeting Minutes: It was moved by Dr. Kern, seconded by Dr. Johnson, and unanimously carried to approve the November 14, 2011 meeting minutes as circulated.
- It was moved by Dr. Gibson, seconded by Dr. Kern, and unanimously carried to approve the November 14, 2011 executive session meeting minutes as circulated.

New Business:           a.       Consideration of Amendments to Chapter 16-88 Hawaii  
Administrative Rules

Dr. Traub called for a discussion on the proposed rule amendments. He related that with this rule amendment which establishes standards of practice, care, and ethics, the Board has completed its obligation in Act 22, Special Session Laws of Hawaii (2009) ("Act 22"). He added that no other state has these extensive standards of practice, care, and ethics in their naturopathic laws. The Board's proposed standards of practice, care, and ethics are being considered for adoption by the American Association of Naturopathic Physicians ("AANP") and the Oncology Association of Naturopathic Physicians ("OncANP").

It was moved by Dr. Kern, seconded by Ms. Ng, and unanimously carried to adopt the rule amendments presented at the public hearing.

b.       Orientation for Board Chairpersons

Dr. Traub attended an orientation for Board Chairpersons on December 6, 2011 held at the State Capitol.

He discussed the role of the Office of Administrative Hearings ("OAH") which is the division within the DCCA that is responsible for conducting administrative hearings in a neutral environment. Contested case hearings are conducted by Hearing Officers who submit to the Board the findings of facts, conclusions of law and a recommended order. The Board may accept, reject or modify the Hearing Officer's recommended order. Legal action taken against licensees is public information.

DAG Tam clarified that complaints are referred to RICO for review and possible prosecution by RICO staff attorneys. RICO may resolve the cases by entering into a settlement agreement, going to an administrative hearing, or taking no legal action on the complaint.

A settlement agreement is an agreement between RICO and the respondent. The settlement agreement would be reviewed by the Board and the Board can either accept or reject the settlement agreement. The Board would receive limited information about the complaint in order to protect the respondent's due process rights. If the Board rejects the settlement agreement, RICO

reevaluates the case and determines whether to renegotiate, request for a contested case hearing or dismiss the complaint.

The Executive Officer related that the Director gently reminded the board chairpersons that the role of board members is proper and safe conduct of licensees. Professions are licensed to protect consumers from harm. Members must be mindful that they are representing the State, not the profession or trade organizations. The Board's Deputy Attorney General and Executive Officer make sure that that the Board operates within its laws and rules. Board member behavior reflects how the public perceives government. The Board can increase public confidence in government.

c. Scope of practice - Psychotherapy

Members discussed an inquiry from Allied Managed Care inquiring whether psychotherapy is in the scope of a naturopathic physician.

Members reviewed its May 25, 1994 meeting minutes in which the Board determined that the practice of "psychotherapy" is within the scope of practice of a naturopathic physician.

Dr. Traub related that he refers patients for psychotherapy. Naturopathic physicians do not regard themselves as psychotherapists, although some specialize in that area. Dr. Kern added that naturopathic physicians provide counseling rather than psychotherapy. Dr. Johnson related that there may be a provision in the psychology law that specifies who can provide psychotherapy.

The definition of "naturopathic medicine" in HRS section 455-1 includes "behavioral medicine". The definition of "behavioral medicine" includes cognitive therapy which is a subset of psychotherapy.

DAG Tam suggested that the Board first research whether Hawaii Revised Statutes defines "psychotherapy" then determine whether psychotherapy is in the scope of practice of a naturopathic physician. The Board came to a consensus to defer this matter until it gathers more information.

Unfinished  
Business:

a. Naturopathic Physicians receiving drug samples

At its November 14, 2011 meeting, the Board discussed an email from Emily Jacque of Compliance Implementation Services, LLC

inquiring whether naturopathic physicians may receive prescription drug samples. Members agreed to write to the Board of Pharmacy and request an interpretation of HRS section 461-15(a)(2) regarding whether naturopathic physicians may receive drug samples.

Members reviewed the December 15, 2011 informal interpretation from the Board of Pharmacy. The Board of Pharmacy determined that since a naturopathic physician's scope of practice includes prescriptive authority, naturopathic physicians may receive prescription drug samples, within the naturopathic formulary, to dispense to their own patients.

b. Waiver of homeopathy examination for applicants that took the NPLEX prior to February 2007

At the Board's November 14, 2011 meeting, Dr. Traub asked the Executive Officer to follow-up on his request to NABNE to consider offering the add-on examination on homeopathy.

The Board reviewed an e-mail response dated February 8, 2012 from Christa Louise, Executive Director of NABNE/NPLEX. Dr. Louise related that both the NABNE and NPLEX Boards would not produce a stand alone homeopathy examination.

The Executive Office requested an explanation of why the homeopathy examination was integrated into NPLEX II. Dr. Louise cited the following reasons for integrating homeopathy into the NPLEX Part II rather than leaving it as an add-on examination:

- It is taught in all the schools and is considered a key modality for naturopathic physicians;
- As it is considered a key modality for NDs, the absence of homeopathy on the integrated examination would be conspicuous and would not give a true picture of the scope of naturopathic medicine in most jurisdictions;
- Given the holistic nature of the homeopathic case, (i.e., the fact that every aspect of the patient's picture is considered), it fits better with a case-based format; and
- Given the relatively low risk of harm to the patient (administering the incorrect remedy will not do serious harm), it did not warrant an examination of its own.

DAG Tam stated that HRS section 455-7 allows the Board to specify the examination in its rules. Dr. Traub related that since NABNE/NPLEX will not produce a stand alone homeopathy

examination, the options for applicants that took the Part II of the NPLEX prior to February 2007 and did not take the add-on examination on homeopathy would be (1) to take the current NPLEX Part II which includes homeopathy; or (2) not get a license. Given these options, Dr. Traub felt that the administrative rules should be amended to delete the requirement for the homeopathy examination for applicants that took the Part II of the NPLEX prior to February 2007 and did not take the add-on examination on homeopathy.

The Executive Officer noted that homeopathy is in the naturopathic physician's scope of practice and the Board has required the add-on examination in homeopathy from the first administration of the NPLEX Part II. The examination provides an objective means to measure an applicant's ability to use this modality effectively. The Executive Officer asked what assurances do consumers have that naturopathic physicians are competent to perform homeopathy. Dr. Gibson responded that graduates of naturopathic colleges are proficient in homeopathy, are examined in their courses on homeopathy, and there is a low risk of patient injury due to the nature of this modality. The risk of incompetence or patient injury would only be of concern if homeopathy were performed by individuals who did not graduate from a naturopathic college.

The Board came to a consensus to delete the requirement for the add-on examination in homeopathy for applicants that took the NPLEX prior to February 2007.

Legislation:

a. House Bill No. 279

This measure removes the authority for naturopathic physicians to administer parenteral therapy, perform minor office procedures and prescribe legend drugs. This measure was carried over from the 2011 legislative session and is still eligible to be scheduled for a hearing.

The Board opposes this bill. Act 22 required the Board to establish education and training requirements for parenteral therapy and standards to administer parenteral therapy, and establish examination standards and require the passage of an examination on minor office procedures. The Board has implemented this mandate. The Board has held a public hearing on its proposed administrative rules which establish the standards of practice, care, and ethics.

The Board has also worked with the Board of Pharmacy to clarify the naturopathic physician's qualifications to prescribe prescription drugs; the context in which naturopathic physicians prescribe prescription drugs; and allayed concerns pertaining to naturopathic physicians prescribing drugs listed in the Naturopathic Formulary. The Board of Pharmacy supports naturopathic physicians' use of the naturopathic formulary.

The Board came to a consensus that it opposes House Bill No. 279 for the reasons stated above.

b. House Bill No. 1146/Senate Bill No. 659

The purpose of these measures is to authorize naturopathic physicians to prescribe controlled substances. These measures were carried over from the 2011 legislative session and are still eligible to be scheduled for a hearing.

After discussion, the Board determined that it takes no position on these bills and will not submit testimony on either House Bill No. 1146 or Senate Bill No. 659.

- c. House Bill No. 2257
- d. House Bill No. 2258
- e. Senate Bill No. 2392
- f. Senate Bill No. 2395

The Executive Officer related that Licensing Administrator Celia Suzuki is asking all boards to review and comment on new legislation relating to professional and vocational licensing for military service members and military spouses.

Dr. Traub related that these bills do not appear to apply to naturopathic physicians because the military does not employ naturopathic physicians and the licensing requirements are similar in states that license naturopathic physicians.

The Board also noted that it delegates to its Executive Officer the authority to issue a license upon verification that an applicant has met the education and examination requirements of the naturopathy laws and rules. Thus, unless an applicant discloses any disciplinary action or convictions or has any issues that must be addressed by the Board, complete applications are processed within 15-20 business days and the Board ratifies the approval of the application at its next meeting.

After discussion, the Board came to a consensus that these bills are not necessary because the current laws do not limit the ability for military service members or their spouses to obtain a license. The Board did not have a problem with House Bill No. 2257, H.D. 1, and House Bill No. 2258, H.D. 1, which the Board interpreted to mean that adopting rules are optional.

g. Senate Bill No. 122, S.D. 2 Relating to Naturopathic Physicians

The purpose of this measure is to require health insurers, mutual benefit societies, fraternal benefit societies, and health maintenance organizations to provide coverage for health care services provided by a naturopathic physician. This measure was carried over from the 2011 legislative session and is still eligible to be scheduled for a hearing.

Members reviewed the Board's March 7, 2011 meeting minutes in which the Board supported Senate Bill No. 122, S.D. 2 and was willing to collaborate with insurers to establish standards and criteria for certifying participating providers as identified in section 10 of Senate Bill No. 122, S.D. 2. Dr. Traub related that Senator Baker is not going to schedule a hearing for this bill.

House Bill No. 2570 Relating to Licensing of Dieticians

Dr. Gibson expressed concerns that this bill may limit a naturopathic physician's ability to provide nutritional therapy. Dr. Traub related that he understands that naturopathic physicians are exempt and would not be affected by this bill.

After discussion, the Board came to a consensus to monitor this bill to ensure that it does not impact naturopathic physicians' scope of practice.

Hawaii  
Administrative  
Rules:

Under agenda item, "Unfinished Business", the Board agreed that the requirement for the add-on examination in homeopathy for applicants that took the NPLEX prior to February 2007 should be deleted. To accomplish this, it was moved by Dr. Johnson, seconded by Dr. Kern, and unanimously carried to delete HAR section 16-88-12.1(3).

Naturopathic  
Formulary:

None.

Correspondence: a. Insurance reimbursement for naturopathic services

The Board reviewed and discussed e-mails from Myron Berney, N.D. dated December 8, 2011 through December 24, 2011 pertaining to health care insurance. The Board believes that it has previously responded to Dr. Berney regarding this matter. The Board unanimously agreed to stand on their prior position that the subject of health insurance coverage does not fall within the jurisdiction of the Board or Hawaii Revised Statutes chapter 455.

b. OpenLine – December 2011, Vol. 23, No. 4

The December 2011 issue of "OpenLine" was distributed to the members for their information.

Applications: a. Licensure/Authorization to administer parenteral therapy authorization to perform minor office procedures

Phuong D. Nguyen

The applicant answered "yes" to questions 4 and 5 on the application for licensure; and answered "yes" to the question "Has any license ever been revoked, suspended or otherwise subject to disciplinary action in any jurisdiction?" on the application for authorization to administer parenteral therapy.

Executive Session:

It was moved by Dr. Gibson, seconded by Dr. Kern, and unanimously carried to enter into executive session at 3:23 p.m. pursuant to HRS sections 92-4 and 92-5(a)(1) and (4), to consider and evaluate personal information relating to individuals applying for professional license and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

EXECUTIVE SESSION

At 3:30 p.m., it was moved by Ms. Ng, seconded by Dr. Gibson, and unanimously carried to return to open session. The room was reopened to the public.

It was moved by Dr. Kern, seconded by Dr. Gibson, and unanimously carried to approve the application for licensure of Phuong D. Nguyen.

It was moved by Dr. Kern, seconded by Dr. Johnson, and unanimously carried to approve Phuong D. Nguyen's application for authorization to administer parenteral therapy subject to receipt of documentation of successful completion of a qualifying course on parenteral therapy as required by HAR section 16-88-57(b).

b. Ratifications

It was moved by Dr. Kern, seconded by Dr. Johnson, and unanimously carried to ratify the following applications for licensure:

- Roberts, Hana
- Dodge, Peter

It was moved by Dr. Kern, seconded by Ms. Ng, and unanimously carried to ratify the following applications for authorization to administer parenteral therapy:

- Burke Jr., John L.
- Greenberg, Miles J.
- Manley, Heather M.
- Portuondo, Emelia M.
- Elliot, Elizabeth A.
- Taketa, Kathryn M
- Hogan, Allison G.
- Levy, Sierra Lori-Anne

It was moved by Dr. Kern, seconded by Ms. Ng, and unanimously carried to ratify the following applications for authorization to perform minor office procedures:

- Greenberg, Miles J.
- Levy, Sierra Lori-Anne

Dr. Gibson left the meeting at 3:33 p.m.

Announcements: None.

Next Meeting Friday, May 11, 2012  
Date: 2:30 p.m.  
King Kalakaua Conference Room  
335 Merchant Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96813

Adjournment:        There being no further business to discuss, the meeting was adjourned at 3:35 p.m.

Taken and recorded by:

/s/ Faith Nishimura  
Faith Nishimura  
Secretary

Reviewed and approved by:

/s/ Candace Ito  
Candace Ito  
Executive Officer

Cl:fn

3/9/12

[ ] Minutes approved as is.

[X] Minutes approved with changes. See Minutes of 5/11/12.