

Agenda Item # 5



Brian Sandoval, Governor



Seung B. Park, O.M.D., *President*
Fely Quitevis., *Member*
Olivia Rhee, O.M.D. *Secretary-Treasurer*
Vince Link., O.M.D., *Member*

STATE OF NEVADA
BOARD OF ORIENTAL MEDICINE

*****PUBLIC NOTICE*****
REGULAR BOARD MEETING
April 9, 2015 @ 6:30 PM

AT THE FOLLOWING LOCATION:

Grant Sawyer Building, Office of the Attorney General, 555 East Washington Ave., Room #4500 - Las Vegas, NV 89101. Phone conference no: (712) 775-7031 Access code: 582-767-536#

*****MINUTES*****

1. *CALL TO ORDER (Discussion/For Possible Action)* Seung B Park, OMD, President

Roll call to determine presence of a quorum, at 6:31 pm

Board Members Present:

Dr. Seung B Park, OMD (via Phone)
Dr. Vince Link, OMD
Dr. Olivia Rhee, OMD

Board Member (absent): Fely Quitevis

Board Staff:

Sophia Long, Board Counsel, DAG

Public:

Lynda Foresta
Merle Lok
Carol Kehl
Samantha Picazo
Larry L. Bertsch

2. *PUBLIC COMMENT*

No Comments.

3. *Adoption of Agenda*

Motion: Dr. Rhee motioned to adopt the agenda

Second: Dr. Link

Action: Motion carried unanimously

4. *Approve or disapprove the previous board meeting Minutes. March 25, 2015.*

Motion: Dr. Link motioned to approve the previous board meeting Minutes of March 25, 2015.

Second: Dr. Park

Action: Motion carried unanimously

5. ***Vote for new Executive Director as Independent Contractor of the State of Nevada Board of Oriental Medicine.***

Motion: Dr. Link motioned to vote for Merle Lok and to hire her as the new Executive Director (as Independent Contractor).

Second: Dr. Rhee

Action: Motion carried unanimously

6. ***Approve the resume of Larry L. Bertsch CPA and discuss and hire him as forensic CPA. Larry will devise a plan and goal of his role and fees to be discussed at a later time with Board.***

After a discussion, Dr. Park approved that the Executive Director speak with Larry further re: his duties as forensic CPA and to propose fees to fit the Board's needs (i.e. give advice to Board; reconcile accounts; provide a report of income/expenses, etc.) He will then present a proposal of fees to the Board for approval.

Motion: Dr. Rhee

Second: Dr. Link

Action: Motion carried unanimously

7. ***Approve or disapprove hiring a Test Consultant and Examiners for management of the exam of Nevada State Board of Oriental Medicine.***

Motion: Dr. Park motioned to approve hiring a Test Consultant and Examiners (from professors at UNLV) for management of the exam of Nevada State Board of Oriental Medicine; and to offer \$25 - \$30/ hour @ 2 hours minimum to Proctor the exam. Also, the Board disapproved hiring PSI Testing Center for the Board's testing procedure, as they are too expensive for the Board.

Second: Dr. Link

Action: Motion carried unanimously

8. ***Approve or disapprove hiring Samantha Picazo as a temporary filing clerk until Board Documents are organized. She will also be hired as an Independent Contractor.***

Motion: Dr. Rhee motioned to approve hiring Samantha Picazo as a filing clerk and also as an independent contractor.

Second: Dr. Link

Action: Motion carried unanimously

9. ***Public Comment***

No comment.

10. ***Adjournment***

Motion: Dr. Park motioned to adjourn

Second: Dr. Link

Action: Motion carried unanimously 7:59 P.M.

Meeting Minutes will be approved at 5.06.15 Board Meeting.

Agenda Item # 8

Brian Sandoval, Governor



Seung B. Park, O.M.D., *President*
Fely Quitevis., Member
Olivia Rhee., O.M.D.
Vince Link., O.M.D.

STATE OF NEVADA
BOARD OF ORIENTAL MEDICINE

7231 S. Eastern Ave., Ste. B-107
Las Vegas, Nevada 89119
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February 24, 2015

Attn: Allison Tresca
STATE OF NEVADA PHYSICAL THERAPY
EXAMINERS' BOARD
7570 Norman Rockwell Lane, Suite 230
Las Vegas, NV 89143

Sent Via Certified Mail and E-Mail (atresca@govmail.state.nv.us)

RE: PHYSICAL THERAPISTS PRACTICING DRY NEEDLING IN VIOLATION OF NRS 634A.230

Dear State Board of Physical Therapy:

Pursuant to Nevada Revised Statute (NRS) 634A.010, the practice of Oriental medicine is subject to the protection and regulation by the State. Further, the State has entrusted the power to regulate and enforce the practice of Oriental medicine to the Nevada State Board of Oriental Medicine (NSBOM). This includes protecting the public from insufficiently trained and unlicensed practitioners of acupuncture. NSBOM is aware that in June 2012, the Physical Therapy Board (PTB) adopted a Dry Needling Opinion that authorizes physical therapists to practice "dry needling." It is NSBOM's position that "dry needling" is within the scope of practice of acupuncture in the state of Nevada and dry needling therefore, falls under the jurisdiction of NSBOM.

NSBOM came to this conclusion under the following analysis. First, regardless of the specific term used, the procedures for performing dry needling and acupuncture are the same; specifically inserting needles into the skin to deactivate trigger points. NRS 634A.020(1) defines acupuncture as "the insertion of needles into the human body by piercing the skin of the body to control and regulate the flow and balance of energy in the body and to cure, relieve or palliate: (a) Any ailment or disease of the mind or body; or (b) Any wound, bodily injury or deformity." Acupuncture is performed by inserting acupuncture needles into specific points located in muscles and connective tissues (called "ashi" points) along the meridians (energetic pathways) of the body to provide relief and/or improve body functions. Similarly, dry needling

is performed inserting an acupuncture needle into a tender or painful point ("trigger point") and then appropriately manipulating it for therapeutic purposes. Dry needling offers that the trigger points correspond with nerves, motor points and trigger points in muscles, and treating these areas with needling can have a positive, therapeutic effect on injured muscles and nerves and improve body functions. In reality, many of these "trigger points" are found along the same meridians as in acupuncture and the needles are inserted into similar spots. Likewise, both procedures are performed to activate the healing process, aid in pain relief and improve body functions.

Second, dry needling is performed by using solid filiform needles or hollow-core hypodermic needles; the same needles used to perform acupuncture. In fact, the Food and Drug Administration (FDA) labels these types of needles as acupuncture needles. 21 C.F.R. §880.5580; 61 Fed. Reg. 64616-64617 (Dec. 6, 1996). The FDA classifies acupuncture needles as Class II medical devices subject to strict regulations under the federal Food, Drug, and Cosmetic Act (FDCA) and FDA's regulations. Its prescription labeling requirement specifically prohibits the sale of acupuncture needles to anyone who is not a qualified practitioner of acupuncture. 21 C.F.R. §801.109(b)(1); 21 U.S.C. § 331(a)-(c), (g). As such, equipment specifically labeled, marketed and designed for acupuncture is required in order to perform dry needling.

Third, "dry needling" is outside physical therapists' scope of practice and scope of education and training. In Nevada, to practice acupuncture, an applicant must successfully complete a 4-year program of study, or its equivalent, in Oriental medicine at a school or college of Oriental medicine. See NRS 634A.140. Further, the program must include a minimum of 3,000 hours of instruction, including not less than 2,500 didactic hours. See NAC 634A.080. Yet physical therapists who are not licensed by NSBOM are inserting hypodermic needles into patients with as little as a weekend workshop. To add, it does not appear that PTB has any minimum education or experience requirements for a physician to practice dry needling even though there is real risk to an unsuspecting patient. These risks include, but are not limited to, blood vessel, nerve and organ injury (usually lungs) from inappropriate needling angle and depth of insertion or from inappropriate needle manipulation; and infection and cross infection from nonsterile acupuncture needles, poor hygiene in acupuncture needle handling, and inadequate skin preparation. It is NSBOM's position that anyone not licensed with NSBOM shall fall under NRS 200.830(1)(a) in that anyone performing a health care procedure without a license who causes substantial bodily harm on another person is guilty of a felony.

Last, regarding the PTB's Opinion, although "NRS 640.024 set forth a series of treatment modalities which are specifically excluded from the practice of physical therapy," it also sets forth a series of treatment modalities which are specifically included in the practice of physical therapy. Opinion Regarding the Performance of Dry Needling and the Practice of Physical Therapy, dated June 25, 2012. Unless dry needling can be included in a treatment modality under NRS 640.024(1), it does not fit within the scope of practice of physical therapy.

Therefore as stated above, it is NSBOM's position that physical therapists who are utilizing dry needling techniques are practicing acupuncture and are unlicensed and untrained, and thus pose a danger to the public. As such, please be aware that it is NSBOM's position that any physical therapist advertising or practicing dry needling without a license issued by NSBOM is in violation of NRS 634A.230 and will be treated as such. Thank you for your time and attention

to this matter.

Sincerely,

NEVADA STATE BOARD OF ORIENTAL MEDICINE

A handwritten signature in black ink, reading "Seung Park, OMD". The signature is written in a cursive style and is positioned above a horizontal line.

Seung Park, OMD
President

CC: Richard I. Dreitzer, Board Counsel

Agenda Item # 9

Brian Sandoval, Governor



Vince Link., OMD
Fely Quitevis., Member
Olivia Rhee, O.M.D, *Secretary-Treasurer*
Seung Park, O.M.D, *President*
Merle Lok, Executive Director

**STATE OF NEVADA
BOARD OF ORIENTAL MEDICINE**

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**ADDENDUM TO CONTRACT FOR SERVICES OF INDEPENDENT
CONTRACTOR FOR \$49,999 AND UNDER**

WHEREAS, on April 9, 2015, at a duly noticed meeting of the State of Nevada Board of Oriental Medicine (hereinafter "Board"), Merle Lok was selected to perform the duties of its Executive Director as an independent contractor.

Pursuant to NRS 622.230, Merle Lok (hereinafter "ED") is an immediate relative of a licensee of the contracting agency, namely: _____ (hereinafter "Relative"). Therefore, the Board adopts the following policies and procedures:

- ED will not participate in any activities that are directly related to Relative, including, but not limited to:
 - o if a written complaint is filed with the Board against Relative or includes Relative, ED will immediately forward the complaint to the Deputy Attorney General, and to the best of her ability, will not read nor review the complaint. See NRS 634A.085.
 - o if a report is received concerning Relative regarding the Industrial Insurance Act, ED will immediately forward the report together with all information to the Deputy Attorney General, and to the best of her ability, will not read nor review the complaint. See NRS 634A.180.
 - o if the Board receives a court order, request for information or any other request whether written or oral in connection with payment of child support regarding Relative, ED will immediately forward the information to the Secretary/Treasurer. See NRS 634A.115.
 - o ED will not be involved in the process of issuing any licenses to Relative; Secretary/Treasurer will issue all licenses, whether renewal, temporary, reinstatement, ect., to Relative, including ensuring that all the information for licensing is complete and accepting payment on behalf of the Board.
 - o Secretary/Treasurer will review whether Relative has fulfilled the continuing education requirements. See NAC 634A.135.

o Secretary/Treasurer will collect all fees from Relative on behalf of the Board. See NAC 634A.165.

• ED will not share with Relative the Board's proprietary information or information deemed confidential under NRS 634A.185.

* NRS 622.020 defines "immediate relative" as: (1) A spouse. (2) A parent, by blood, marriage or adoption. (3) A child, by blood, marriage or adoption.