



Oregon

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Medical Board

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Date: December 4, 2015

To: Hearing Attendees
Acupuncture Advisory Committee
Oregon Medical Board

From: Nicole Krishnaswami, JD, Operations & Policy Analyst, Hearing Officer

Subject: Hearing Officer's Report on Rulemaking Hearing for OAR 847-070-0021

Hearing Officer's Report

Hearing Date: December 4, 2015
Hearing Location: Oregon Medical Board, 1500 SW 1st Ave., Suite 620
Proposed Rule Title: Acupuncture Needles

The rulemaking hearing on the proposed rule was convened at 11:00 a.m. Attendees were asked to sign up to comment on the proposed rules and were informed of the procedures for taking comments. They also were told that the hearing was being recorded. The purpose of the hearing was to provide opportunity for public comment on the rules proposed for amendment by the Oregon Medical Board regarding acupuncture needles. This rule would require Oregon licensees practicing acupuncture to follow clean needle technique and require the use of only disposable, single-use acupuncture needles.

Public Present:

Thomas J. Etges, MD, *American Academy of Medical Acupuncture (AAMA)* (via phone)
Beth Howlett, LAc, *Oregon Association of Acupuncture and Oriental Medicine (OAAOM)*

Acupuncture Advisory Committee Members Present:

Brynn Graham, LAc, Chair
Siamak Shirazi, LAc

Staff Present:

Kathleen Haley, JD, Executive Director
Joe Thaler, MD, Medical Director
Netia N. Miles, Licensing Manager
Shayne J. Nylund, Acupuncture Licensing Specialist

SUMMARY OF ORAL COMMENTS:

The following persons testified at the hearing. Their testimony is summarized below.

Thomas J. Etges, MD, Member, *American Academy of Medical Acupuncture (AAMA)*:

Dr. Etges asks the Board to exclude licensed physicians who practice acupuncture from the rule. He states that physicians are trained in sterilization and re-use of medical instruments, and it is unnecessary, restrictive and burdensome to distinguish acupuncture needles. Dr. Etges reports that physician acupuncture training programs have their own evidence-based guidelines, which differ substantially from the Council of Colleges of Acupuncture and Oriental Medicine Clean Needle Technique Manual. The AAMA asks that physicians continue to be allowed to adhere to physician training standards rather than the acupuncturists' clean needle technique manual.

Agency Response: The OMB thanks Dr. Etges for his oral and written comments on behalf of AAMA. The OMB does not wish to establish different standards for licensees who perform the same procedure and will not amend the rule with an exception for physicians practicing acupuncture. However, Dr. Etges's comments that acupuncture is safely performed using alternative guidelines causes the OMB to question the appropriateness of this rule. The OMB will not proceed with adopting the rule.

Beth Howlett, LAc, President, *Oregon Association of Acupuncture and Oriental Medicine (OAAOM)*:

Ms. Howlett requests additional notice for future rulemaking and feels the notice given was inadequate. She states OAAOM's main concern is that the rule could be broadly applied to practices not related to needling, and she asks that the rule be clearly proscribed to apply only to acupuncture needles. Ms. Howlett questions whether this rulemaking process was initiated in response to an investigation or if it is a prophylactic effort. Ms. Howlett states that OAAOM recognizes clean needle technique as the standard in the acupuncture profession and is in favor of adopting it as the standard for the use of needles.

Agency Response: The OMB thanks Ms. Howlett for her comments on behalf of OAAOM. Beginning in December 2013, the OMB provided public meeting notices indicating that the Committee would discuss the possibility of requiring clean needle technique. The Acupuncture Advisory Committee has discussed the topic at its December 2013 meeting, its June and December 2014 meetings, and its June 2015 meeting. The OMB engaged in outreach with the acupuncture community generally, the OAAOM, and the Oregon College of Oriental Medicine before initiating the rulemaking process in June 2015. In July 2015, notice was provided through the state listserv of interested parties and legislators as well as the OMB's website. In August 2015, official notice was provided through the Secretary of State's *Bulletin* and was published in the OMB's online and print newsletter. When interested parties requested more time to provide comment, the OMB scheduled this public hearing and extended the comment period to December 4, 2015. The OMB asks the OAAOM to partner in providing even more robust communication to their membership.

The OMB does not wish to inappropriately restrict the safe practice of acupuncture with this rule, which was not prompted by an investigation. The OMB prefers to use educational outreach rather than rulemaking to establish clean needle technique as the

standard in the acupuncture profession and will partner with the OAAOM in this effort. The OMB will not proceed with adopting the rule.

The public hearing adjourned at 11:07 a.m.

SUMMARY OF WRITTEN COMMENTS:

The following persons submitted written comments, which are summarized below.

Mark Crislip, MD, President, *Society for Science-Based Medicine and Oregonians for Science-Based Medicine (SFSBM)*: Dr. Crislip states that disposable, single-use acupuncture needles should be required for infection prevention. Dr. Crislip supports implementing clean needle technique guidelines to improve acupuncture practice but questions whether the risk of infection outweighs the benefits of acupuncture.

Agency Response: The OMB thanks Dr. Crislip for his comments on behalf of SFSBM. The OMB agrees that infection prevention is of primary importance. Following the public hearing, the OMB determined it would be most appropriate to partner with the OAAOM to establish clean needle technique as the standard of care in the acupuncture profession through educational outreach rather than rulemaking. The OMB will not proceed with adopting the rule.

Paula Diamond, BA, CCAOM CNT Program Manager, and David M. Sale, JD, LLM, Executive Director, *Council of Colleges of Acupuncture and Oriental Medicine (CCAOM)*: CCAOM, as the publisher of the Clean Needle Technique Manual, supports the proposed rule. CCAOM states that the manual reflects evidence-based best practice and requires single-use sterile needles to prevent infection.

Agency Response: The OMB thanks Ms. Diamond and Mr. Sale for their comments on behalf of CCAOM. The OMB agrees with CCAOM that infection prevention is of primary importance. Following the public hearing, the OMB determined it would be most appropriate to partner with the OAAOM to establish clean needle technique as the standard of care in the acupuncture profession through educational outreach rather than rulemaking. The OMB will not proceed with adopting the rule.

Lori C. Farley, LAc, *Sunshine Acupuncture*: Ms. Farley supports the rule and the requirement to follow clean needle technique to protect both the patient and the acupuncturist.

Agency Response: The OMB thanks Ms. Farley for her comments. The OMB agrees that patient safety is of primary importance. Following the public hearing, the OMB determined it would be most appropriate to partner with the OAAOM to establish clean needle technique as the standard of care in the acupuncture profession through educational outreach rather than rulemaking. The OMB will not proceed with adopting the rule.

PK Melethil, MS, LAc, *Melethil Acupuncture & Chinese Medicine*: Mr. Melethil states that the manual is a valuable tool for students and practitioners but asks the Board to use caution and allow for flexibility so that practitioners may demonstrate equivalent techniques that achieve the same outcomes for infection prevention.

Agency Response: The OMB thanks Mr. Melethil for his comments. The OMB appreciates that acupuncture may be safely performed using alternative guidelines and would like to permit such flexibility. The OMB will not proceed with adopting the rule.

Ruth A. Rabinovitch, MD: Dr. Rabinovitch asks that the proposed rule be amended to require topical application of an alcohol-based skin disinfectant prior to needling of any kind.

Agency Response: The OMB thanks Dr. Rabinovitch for her comments. The OMB agrees that infection prevention is of primary importance. Following the public hearing, the OMB determined it would be most appropriate to partner with the OAAOM to establish clean needle technique as the standard of care in the acupuncture profession through educational outreach. The OMB will not proceed with adopting the rule.

Barbara Solomon, RN, LAc: Ms. Solomon expresses concern that the rule could inadvertently impact acupuncture treatments with Plum Blossom or seven star needles. She asks whether the rule applies to all professionals practicing acupuncture or only licensed acupuncturists.

Agency Response: The OMB thanks Ms. Solomon for her comments. The OMB neither wishes to inappropriately restrict the safe practice of acupuncture nor establish different standards for licensees who perform the same procedure. Following the public hearing, the OMB determined it would be most appropriate to partner with the OAAOM to establish clean needle technique as the standard of care in the acupuncture profession through educational outreach. The OMB will not proceed with adopting the rule.

Brodie Welch, LAc, MSOM, *Life in Balance Acupuncture*: Mr. Welch expresses concern that the rule could inadvertently impact acupuncture treatments that are performed with non-filiform needles such as seven star needles or lancets. Mr. Welch asks the Board to specify which portions of the manual must be followed because it covers a very broad range of topics, some of which are “recommended” while others are “essential.”

Agency Response: The OMB thanks Mr. Welch for his comments. The OMB neither wishes to inappropriately restrict the safe practice of acupuncture nor to confuse licensees with overly general rule language. Following the public hearing, the OMB determined it would be most appropriate to partner with the OAAOM to establish clean needle technique as the standard of care in the acupuncture profession through educational outreach. The OMB will not proceed with adopting the rule.

The public comment period ended at 12 p.m. on December 4, 2015.