

**Board of Chiropractic Examiners  
MEETING MINUTES  
Enforcement Committee  
October 28, 2014  
State of California  
San Diego State Building  
1350 Front Street, Room B-109  
San Diego, CA 92101**

**Committee Members Present**

Sergio Azzolino, D.C., Chair  
Heather Dehn, D.C.  
Frank Ruffino

**Staff Present**

Robert Puleo, Executive Officer  
Linda Shaw, Licensing Manager  
Sandra Walker, Compliance Manager  
Maria Martinez, Supervising Special Investigator  
Dixie Van Allen, Associate Governmental Program Analyst  
Kristy Schieldge, Attorney III

**Call to Order**

Dr. Azzolino called the meeting to order at 8:00 a.m.

**Roll Call**

Dr. Dehn called the roll. All committee members were present.

**Approval of June 26, 2014 Minutes**

Ms. Schieldge stated her last name was spelled incorrectly in the June 26, 2014 Minutes. The correct spelling is Schieldge.

**MOTION: MR. RUFFINO MOVED TO APPROVE THE MINUTES**

**SECOND: DR. DEHN SECONDED THE MOTION**

**VOTE: 3-0**

**MOTION CARRIED**

## **Discussion and Possible Action on Advertising a Chiropractic Specialty**

Dr. Azzolino expressed concern that the Chiropractic Act and Regulations do not specify requirements for licensees who advertise as a specialist.

Ms. Schieldge stated there is current authority under Business and Professions Code section 650 to restrict false and misleading advertising. However, there is an issue when it needs to be determined who is calling themselves a specialist. There have been legal problems when trying to enforce this. It is a difficult area to regulate in.

Mr. Puleo asked if we can put something in our regulations that specifies the accrediting bodies and the specialty boards that we will accept.

Ms. Schieldge stated she thinks it may be a challenge to only specify certain bodies because the courts are not typically open to allowing deferential treatment and ceding authority to particular accrediting bodies.

Mr. Puleo asked; what if we specify the requirements that in order to be an approved specialty Board you have to meet these requirements such as so many hours of training or whatever requirements the Board feels appropriate.

Ms. Schieldge stated the problem is in terms of evidence and proving that that's the only way to truthfully advertise a specialty.

Dr. Azzolino stated that he has experience with the NCCA accreditation. Currently with the Chiropractic Board of Neurology we have NCCA accreditation. Many other boards are striving for accreditation. Dr. Azzolino stated he believes we should allow any other specialty board that wants to be certified and strive to that level. Dr. Azzolino believes it is in the public's best interest that we pass a regulation. It's an oversight on who and what can be deemed a specialist.

Ms. Schieldge reported that past cases from other boards have shown possible liability in this area.

Mr. Puleo stated that he believes the Medical Board may specify Accrediting Bodies in their regulations regarding specialties.

Dr. Azzolino requested Ms. Schieldge get the BCE the information regarding accreditation and specialties from the Medical Board and past specialty regulation cases including a Dental Board case.

## **Discussion and Possible Action on Proposed Language Regarding Maintenance of Patient Records/Amendment to Title 16, California Code of Regulation Section 318**

Ms. Schieldge stated that the proposed language was intended to address the Board's concerns regarding the death or incapacity of a licensee as well as if a licensee wants to sell

their practice, retire or go inactive. The proposal also addressed what to do in terms of notifying the patients of their relocation; currently there is no requirement.

Dr. Azzolino stated that he has several concerns regarding the proposed language. The proposed language stated active and inactive patients are to be notified. This could be 10,000 to 20,000 patients. Dr. Azzolino would like e-mail notification to be an option.

Ms. Schieldge stated that the problem with electronic mail is that there are no legal presumptions in law for service. There are legal presumptions for first class mail.

Dr. Azzolino stated that the language should be clarified to notify active patients (patients that have been treated within the last 12 months) and all inactive patients (that have been treated within the last 5 years).

Mr. Puleo agreed and stated that otherwise, the proposed language would contradict CCR section 318 whereas patient records must only be maintained for 5 years.

Ms. Schieldge suggested that the notification be provided to the Board and the Board publish it on their website.

Mr. Puleo inquired if there was any liability for the Board if we published such information on the web site.

Ms. Schieldge stated we would need to add a disclaimer.

Dr. Azzolino questioned who would be responsible under subdivision (d), the associate or chiropractor, the practice where the services were rendered, or both?

Ms. Schieldge stated that this section is designed for the person who is leaving to notify the patients where their records are going to be. She questioned whether the records are going to stay with that practice or move with that chiropractor.

Mr. Puleo stated we may need to address the issue in CCR 318 regarding group practices and who exactly should maintain the records if one or more of the chiropractors treated the patient. We may need to add language such as; if the patient was treated by more than one chiropractor, the patient is a patient of the practice.

Dr. Azzolino suggested amending CCR 318 entirely to avoid redundancy.

Dr. Dehn has concerns regarding subsection (d) specifically wanting to address why the departing chiropractor would have to follow the procedures listed in subsections (a), (b) and (c). She stated if she was moving away and another chiropractor was taking over her practice, it should be as simple as sending a letter to all of the patients advising them their records are with the new chiropractor. She questioned notifying them again in 5 years when they already are aware.

Ms. Schieldge stated that subsection (c) is going to be replaced with notifying the Board as opposed to a 5 year re-notification. However, she suggested adding a requirement regarding

notifying the Board to subsection (b) and eliminating subsection (c). She suggested keeping the last sentence in subsection (c).

Dr. Dehn asked; what are the consequences for not complying with this section?

Mr. Puleo stated we could issue a citation. If there is something egregious, where patient confidentiality was violated, we could refer the case to the Attorney General's Office or the local District Attorney's Office.

Dr. Dehn asked, why is the age records must be maintained, age 21 as opposed to age 18, as stated in subsection (e).

Ms. Schieldge stated she would need to research this.

Dr. Azzolino referenced numbers 3 and 4 in CCR 318 and stated that with electronic records, he doesn't believe that a true signature is necessary; an electronic signature should be sufficient.

Dr. Azzolino suggested we strike number 3 completely.

Dr. Azzolino's concerns led to a lengthy conversation regarding CCR 318 subsection 3 and 4. Following discussion of pros and cons of numbers 3 and 4, it was decided further investigation was necessary on how to improve/update the signature process.

Ms. Martinez stated that during her investigative site visits, she is seeing more and more chiropractors are utilizing electronic record keeping on devices such as an I-Pads or Tablets.

Ms. Schieldge provided a sample form, from Board of Pharmacy, regarding notifying the Board of discontinuance of business. The BCE will need to develop a form with the regulatory package.

### **Discussion of Developing Qualifications and Proficiency Standards for Expert Consultants with the Enforcement & Scope of Practice Committee to Define Criteria and Standards for Expert Consultant Selection. [2014-2017 Strategic Plan]**

Dr. Azzolino stated he was going to schedule a meeting and attend an Expert training to see what a true Expert training looks like.

Mr. Puleo stated staff will schedule an Expert training in early 2015. We typically conduct one in the North and one in the South. Mr. Puleo recommended that 2 Board members attend/observe each session to identify any deficiencies in the existing training and materials. This may be a better approach than making changes blindly.

Dr. Dehn asked if there was anywhere on the Expert Application that asks if they are actively treating patients.

Ms. Walker stated that specific question is not on the application and it may be a good question to add.

Mr. Puleo stated we may want to also ask what percentage of their time they are treating. Mr. Puleo also asked whether we could require experts to treat patients a certain percentage of time in order to qualify to be an expert.

Ms. Walker asked if Board members attending the Expert training would be an issue in regards to separation of function.

Ms. Schieldge stated she does not see it as a problem if there is less than a quorum of Board members attending the Expert training. As a rule, experts should not be interacting with the Board members as it may become a conflict.

Ms. Walker asked if the Board legally needed to promulgate a regulation for the Expert process.

Ms. Schieldge stated she is unsure at this point. Further research was needed.

Dr. Azzolino asked how many Experts do we currently have, how many are applying?

Ms. Walker stated staff are currently recruiting and have recruitment information on the Board's web site. She reported that the Board has just over 60 Experts in our current pool. This does not include new applicants.

Dr. Dehn asked if current Experts will be required to complete the new application.

Mr. Puleo stated that every time the Board conducts Expert training, all Experts must re-apply.

Dr. Azzolino stated that on section 6 of the new Expert application the applicant must state why they feel they have extensive knowledge or experience.

Dr. Azzolino asked if we are conducting personal interviews with the applicants.

Mr. Puleo stated that we have not conducted personal interviews with the applicants in the past.

Dr. Azzolino stated it is important to conduct the interview since we are using them as Experts and they may possibly testify on the stand.

### **Discussion and Possible Action Regarding the Consumer Protection Enforcement Initiative (CPEI) Regulations**

**MOTION: DR. AZZOLINO MADE A MOTION TO DIRECT STAFF AND RECOMMEND TO THE BOARD THAT THE BOARD TAKE ALL NECESSARY STEPS TO INITIATE THE FORMAL RULE MAKING PROCESS WITH THIS TEXT, AUTHORIZE THE EXECUTIVE OFFICER TO MAKE ANY NON-SUBSTANTIVE CHANGES TO THE RULE MAKING PACKAGE AND SET THE REGULATION FOR A HEARING.**

**SECOND: MR. RUFFINO SECONDED THE MOTION**

**VOTE: 3-0**

**MOTION CARRIED**

### **Discussion and Possible Action on the Selection of “Trigger 3” in Regards to Substance Abusing Licensees [SB 1441]**

Ms. Schieldge stated this Trigger was selected as the option for the Trigger language at the last Board meeting. The next step will be to meet with Enforcement staff to discuss making sure that the Substance Abuse Coordination Committee recommendations or standards are incorporated into standards for disciplining licensees who have a substance abuse problem. Ms. Schieldge recommended that staff separate the Uniform Standards from the Disciplinary Guidelines because the Guidelines are a recommendation and you can not deviate from Uniform Standards. The Uniform Standards will need to be re-written and incorporated into standard or model orders, so that when an Administrative Law Judge thinks there is a substance abuse problem, the terms and conditions can be dropped into the probationary orders without any extra work.

### **Public Comment**

None

### **Future Agenda Items**

None

### **Comment**

Mr. Ruffino recommended that we have future Enforcement Committee Meetings on a day other than a Board meeting day, as it causes a hardship and runs the risk of rushing through the agenda.

### **Adjournment**

Dr. Azzolino adjourned the meeting at 9:21 a.m.