



**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES**

October 24, 2019
Radisson Hotel Oakland Airport
8400 Edes Avenue, Embarcadero Ballroom
Oakland, CA 94621

Board Members Present

Sergio Azzolino, D.C., Chair
Dionne McClain, D.C., Vice Chair
Frank Ruffino, Secretary
Heather Dehn, D.C.
Corey Lichtman, D.C.
David Paris, D.C.

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Michael Kanotz, Senior Attorney
Dixie Van Allen, Staff Services Manager I
Kristin Walker, Staff Services Manager I
Valerie James, Staff Services Analyst
Andreia McMillen, Associate Government Program Analyst

Call to Order

Dr. Azzolino called the meeting to order at 9:02 a.m.

Roll Call

Mr. Ruffino called the roll. All members were present. A quorum was established.

Pledge of Allegiance

Mr. Ruffino led the Pledge of Allegiance.

Hearing Re: Petition for Reinstatement of Revoked License

Administrative Law Judge, Regina Brown, presided over and Deputy Attorney General, Tim Froehle appeared on behalf of the people of the State of California on the following hearing:

A. Ku Il Lee Case No. AC 2013-976

Hearing Re: Petition for Early Termination of Probation

Administrative Law Judge, Regina Brown, presided over and Deputy Attorney General, Tim Froehle appeared on behalf of the people of the State of California on the following hearing:

A. Walker Scott Case No. AC 2016-1089

Closed Session

Following oral testimonies, the Board went into Closed Session for deliberation and determinations regarding:

- A. Deliberate on Disciplinary Decisions and the above Petitions Pursuant to California Government Code Section 11126(c)(3)
- B. Receive Advice from Legal Counsel Pursuant to California Government Code Sections 11126(e) and 13963.1 Regarding Hugh Lubkin, D.C. v. Board of Chiropractic Examiners, Workers' Compensation Case No. ADJ7361379

Open Session

The Board returned to Open Session.

Chair's Report

Dr. Azzolino expressed condolences for the recent passing of former Board member Franco Columbu, who served on the Board for eight years.

Additionally, Dr. Azzolino announced the Board continues to work with the Office of Information Services on the Business Modernization Plan (BMP) and licensees are now able to renew their license online on the Board's website.

Mr. McCarther invited Dr. Paris to share his experience being the first user renewing his license online.

Dr. Paris reported the online renewal feature had a friendly interface and it was easy to complete his transaction. He commended staff on their hard work and encouraged licensees to take advantage of this user-friendly service.

Dr. Azzolino reviewed highlights from a meeting with the California Orthopaedic Association and the California Chiropractic Association (CalChiro) to discuss stem cell use in chiropractic offices and misleading advertising. He added the Board, in collaboration with the Orthopaedic Association and CalChiro, may release a statement to remind the profession that doctors of chiropractic are not authorized to administer injections in California.

Approval of July 25, 2019 Board Meeting Minutes

MOTION: DR. LICHTMAN MOVED TO APPROVE THE MINUTES OF THE JULY 25, 2019 BOARD MEETING.

SECOND: MR. RUFFINO SECONDED THE MOTION.

Discussion: Dr. McClain offered a correction on page seven, fourth paragraph, “pursing this in an effort to educate the profession” should be removed and replaced with “pursuing an effort to”.

Dr. Azzolino noted on page two, the statement: “chiropractors are unable to practice injections” should be: “chiropractors are not able to administer injections.”

VOTE: 5-0, 1 ABSTAIN (DR. AZZOLINO-AYE, DR. MCCLAIN-AYE, MR. RUFFINO-AYE, DR. DEHN-ABSTAIN, DR. LICHTMAN-AYE, DR. PARIS-AYE).

MOTION: CARRIED.

Ratification of Approval of License Applications

MOTION: DR. LICHTMAN MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS.

SECOND: DR. DEHN SECONDED THE MOTION.

Discussion: There was none.

VOTE: 6-0 (DR. AZZOLINO-AYE, DR. MCCLAIN-AYE, MR. RUFFINO-AYE, DR. DEHN-AYE, DR. LICHTMAN-AYE, DR. PARIS-AYE).

MOTION: CARRIED.

Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing

There was none.

Ratification of Approved Continuing Education Providers

MOTION: DR. LICHTMAN MOVED TO RATIFY THE APPROVED CONTINUING EDUCATION PROVIDERS.

SECOND: DR. DEHN SECONDED THE MOTION.

Discussion: There was none.

VOTE: 6-0 (DR. AZZOLINO-AYE, DR. MCCLAIN-AYE, MR. RUFFINO-AYE, DR. DEHN-AYE DR. LICHTMAN-AYE, DR. PARIS-AYE).

MOTION: CARRIED.

Election of Board Officers for 2020. The Board Conducted Nomination Procedures for Board Officer Positions: Chair, Vice Chair, and Secretary.

Dr. Azzolino asked Mr. Kanotz to call the roll for nominees.

Nominees for Chair:

- Dr. Dehn – No Nomination.
- Dr. Lichtman – Dr. Paris.
- Dr. McClain – Dr. Azzolino.
- Dr. Paris – No Nomination.
- Mr. Ruffino – No Nomination.
- Dr. Azzolino – Dr. Paris.

Dr. Azzolino stated he would accept Dr. McClain's nomination if Dr. Paris is unable to serve as Chair.

Dr. Paris Accepted the Nomination.

Dr. Azzolino Declined the Nomination

Nominees for Vice Chair:

- Dr. Dehn – No Nomination.
- Dr. Lichtman – No Nomination.

- Dr. McClain – No Nomination.
- Dr. Paris – Dr. Azzolino.
- Mr. Ruffino – Dr. McClain.
- Dr. Azzolino – No Nomination.

Mr. Ruffino inquired whether a nomination can be declined at any time prior to the election of Board officers.

Mr. Kanotz confirmed that is a possibility.

Dr. Azzolino and Dr. McClain both Accepted the Nomination.

Nominees for Secretary:

- Dr. Dehn – No Nomination.
- Dr. Lichtman – No Nomination.
- Dr. McClain – Mr. Ruffino.
- Dr. Paris – Mr. Ruffino.
- Mr. Ruffino – No Nomination.
- Dr. Azzolino – Mr. Ruffino.

Mr. Ruffino Accepted the Nomination.

Executive Officer's Report

A. Administration - Board staffing/organizational chart

Mr. Puleo reported two vacant positions in the Board's Licensing Unit: one Management Services Technician and one Associate Governmental Program Analyst.

B. Budget - Fund Condition update

Mr. Puleo reviewed the Fund Condition Report. Due to recent rate increases implemented by the Attorney General's Office and DCA's Division of Investigations, and anticipated expenditures, such as replacement of the Board's outdated information technology system, the Board's projected fund condition is uncertain. Projections based on the Board expending its full appropriation each year, indicate a fund deficit by Fiscal

Year 2021/22. However, the Board historically does not expend its full appropriation. Furthermore, the full impact of the AG and DOI rate increases hasn't yet been determined and we don't yet know the actual cost of a new IT system. Board staff is closely monitoring the budget and cutting all nonessential expenditures. Mr. Puleo advised the Board that a fee increase may be necessary in the future.

Mr. Ruffino inquired whether the loan balance owed to the Bureau of Automotive Repair (BAR) is reflected on the Fund Condition Report.

Mr. McCarther affirmed that future payments to the BAR loan have been postponed to the following fiscal year. At this time, funds are being allocated for an updated IT database, allowing the Board to transition to an effective online licensing and enforcement system.

Mr. Puleo added that as soon as the Board's budget is more stable, payments towards the loan will resume.

Mr. Ruffino asked if the interest rate on the loan is high.

Mr. Puleo responded that the interest on the loan is very reasonable.

C. Licensing - Statistical Trends

Mr. Puleo summarized the Board's licensing statistics. Dr. Azzolino referenced the Healing Arts Licensing Trends spreadsheet in the Board Meeting Materials (Agenda Item 15) and noted the data will facilitate a more thorough discussion on licensing trends.

D. Enforcement - Statistical trends

Ms. Walker presented the Board's Enforcement Statistics and noted data from the first quarter of the current fiscal year has been consistent with the previous fiscal year. She explained the increase in new and pending complaints is primarily due to the Continuing Education (CE) audits initiated by the Licensing Unit.

Ms. Walker noted a gradual decrease in the number of cases resulting in probation, which is possibly related to the slight increase in the number of accusations filed.

Mr. McCarther stated that SB 1448 (Stats. 2018, Ch. 570) requires licensees of the Board to notify patients of their probationary status. It is possible that this could be one of the key drivers for the gradual decline of probationary cases.

Mr. Puleo added that SB 1448 may create a disincentive for licensees to agree to a stipulated settlement that includes probation, thereby resulting in more cases going to Administrative Hearing. These factors could negatively impact the Board's fund due to the significant costs associated with formal hearings.

Dr. McClain inquired about the percentage of fines assessed in relation to fines that have been recovered.

Mr. Puleo explained that our recovery rates are quite good due to our ability to collect delinquent payments through the Franchise Tax Board's intercept program.

Mr. Puleo noted the Board is rarely able to recover enforcement costs when a license is revoked. If, however, the revoked licensee petitions for reinstatement, the Board can and does require payment as a condition of reinstatement.

Dr. Azzolino requested long-term data regarding the number of failed CE audits. Additionally, he inquired if the increase in enforcement cases related to failed audits is related to a higher number of failed CE audits.

Mr. Puleo added that conducting CE audits is a labor-intensive task and the licensing staff have seen a significant increase in workload.

Dr. Azzolino inquired if it is possible to automate this process.

Mr. Puleo responded that the Board is unable to automate the process with its existing IT system. However, once a new system is in place, the Board will have the ability to automate many steps in the Continuing Education process.

E. OIS - Update

Mr. McCarther provided an update on the Business Modernization Project and highlighted the recently implemented online license renewal functionality available on the Board's website. Licensees can also renew their satellite and corporation certificates online. Electronic renewals will ultimately reduce workload associated with processing paper renewals and manually cashiering payments.

Mr. Puleo noted Board staff is proactively informing licensees about the ability to renew online.

Mr. McCarther shared the Board is in stage four of the Project Approval Lifecycle process for procuring a new IT system. Bid solicitation is underway and staff anticipates selection of a vendor by January 2020.

Update, Review, Discussion and Possible Action on Stem Cell and Regenerative Therapy Task Force Meeting by the Medical Board

Mr. Puleo reviewed the highlights from the Stem Cell and Regenerative Therapy task force meeting.

Mr. Puleo addressed Business and Professions Code section 684(b)(1), which requires

any health provider, who has not received FDA approval to administer stem cells but is subject to FDA regulation, to obtain written and verbal consent from the patient.

Mr. McCarther added this law provides the applicable licensing boards the authority to issue a citation or fine up to \$ 1000 for failure to obtain verbal and written informed consent from the patient for using non-FDA-approved stem cell therapy.

Dr. Paris referred to the Chair's report and inquired whether the statement the Board is releasing on stem cells is related to laws surrounding the use of stem cell therapy.

Dr. Azzolino clarified the Board and Orthopaedic Association both share concerns regarding misleading advertising of stem cells in chiropractic offices in California and want to ensure chiropractors are informed of their scope of practice. This would help educate licensees about the laws governing chiropractic.

Dr. Lichtman stated it is typical to see companies or other healthcare professional going to chiropractic offices to rent space and provide stem cells injection treatments.

Mr. Puleo stated a chiropractor in California can practice in an interdisciplinary setting that provides stem cell therapy but the chiropractor cannot administer a stem cell injection.

Dr. Paris asked if this task force may provide guidance to healthcare professionals in the field as to what constitutes being FDA approved. He added this would help increase awareness in the chiropractic community.

Mr. McCarther responded that task force members only provided information on laws surrounding the proper use of stem cells and it did not appear they intend to move in that direction.

Update, Review, Discussion and Possible Action on Long Term Healing Arts Programs Licensing Trends.

Mr. Puleo introduced statistical information regarding other healing arts programs in California over the past six years.

Dr. Azzolino noted chiropractic is the only California healing arts profession whose population had decreased. He encouraged CalChiro along with chiropractic schools to explore the contributing factors that impact licensing statistics in California.

Dr. Azzolino asked about national trends and requested this data be reported to the Board annually. Additionally, he requested information regarding licensees across healthcare specialties within California.

Mr. Puleo noted the potential impact of a declining licensee population and stated staff will continue to monitor licensing trends. He stated the number of new license

applications received by the Board each year has remained constant but unlike other health professions, it hasn't grown. The number of licensees retiring has outpaced the number of new licensees for several years and the data doesn't indicate a reversal of that trend.

Dr. McClain inquired if CalChiro and the chiropractic colleges have data that might identify factors responsible for negative licensing trends.

Mr. Puleo stated he will research enrollment trends at chiropractic colleges to determine whether enrollment rates appear to be increasing, decreasing, or fluctuating.

Dr. Azzolino suggested focusing on issues that are specific to California.

Mr. Puleo clarified that the student enrollment data would come from Board approved chiropractic schools. He added that the number of students enrolling in chiropractic school will be an indicator of future licensing trends.

Mr. Puleo noted this phenomenon is not unique to California; chiropractic boards across the nation are reporting a downward trend.

Dr. McClain stressed the importance in identifying data related to licensing trends to understand whether licensees are retiring or simply moving out of California.

Mr. Puleo shared the challenges in extracting specific data from our database as our current rules and regulations do not require licensees to notify the Board when they cease practicing or when they decide to retire.

Dr. Azzolino expressed interest in understanding why the number of new applicants is not increasing.

Mr. Puleo stated the only way to obtain accurate data is to propose a regulation, in which licensees would be required to explain why they are exiting the profession. He also added that the new IT database may help the Board obtain that type of information.

Mr. McCarther asked Dr. Paris whether researchers interested in the chiropractic field have studied this issue.

Dr. Paris responded he is unaware of discussions pertaining to national chiropractic licensing trends but offered to research the topic and share his findings with the Board.

Mr. Puleo noted the lack of research on chiropractic licensing trends makes it difficult to identify the cause(s).

Dr. Paris suggested contacting chiropractic boards and associations in other states to inquire about contributing factors that help drive their licensing trend upwards.

Dr. Paris requested the inclusion of physician assistant licensing trends in future reports.

Update, Discussion and Possible Action Licensing & Continuing Education Committee Meeting

Dr. Azzolino reported on the August 22, 2019 and October 10, 2019 Licensing & Continuing Education (CE) Committee Meetings.

At the August 22nd meeting, the Committee considered proposed amendments to California Code of Regulations (CCR) Sections 362.1 – 363.1 and discussed removing criminal background requirements from the CE Provider Application and corresponding regulatory language. The Committee clarified provisions pertaining cause for denial of a provider application and withdrawal of approval, as well as the appeal process. The Committee also reviewed and discussed the sample CE Provider and CE Event Applications.

At the October 10th meeting, the Committee reviewed draft language for CCR Sections 363 – 363.4 and discussed provisions pertaining to course content and the meta-competency framework. The Committee reviewed the sample CE Event Application, Instructor Attestation Form, and Post Course Evaluation Form. The Members suggested edits to the Instructor Attestation and Post Course Evaluation Forms.

Update, Discussion and Possible Action on Government & Public Affairs Committee Meeting Agenda

Ms. McMillen provided an update on the disposition of the following bills monitored by the BCE in 2019.

AB 5 (Gonzalez) – Worker Status: Employees and Independent Contractors – Chapter 296, Statutes of 2019 (*BCE Position*: NONE)

Summary: This bill codified a recent California Supreme Court decision commonly referred to as Dynamex. The Dynamex decision established a presumption that a worker who's hired to perform services is an employee (not an independent contractor) for purposes of the wage and benefit requirements established by the Industrial Welfare Commission (IWC), unless the hiring entity can demonstrate that certain specified conditions are satisfied. AB 5 exempts certain professions from the conditions established in the Dynamex decision. The exempted professions include: medical doctors, dentists, podiatrists, and psychologists, as well as various non-healing-arts professions.

Discussion: Dr. Azzolino expressed concern that chiropractors weren't an exempted profession and asked if the California Chiropractic Association (CalChiro) lobbied to exempt chiropractors from the Dynamex ruling.

Ms. McMillen stated the Association advised her they were part of a coalition of healthcare organizations who lobbied to be exempted from the Dynamex ruling.

Dr. Paris asked whether the coalition CalChiro collaborated with had opposed AB 5 outright or taken an oppose unless amended position.

Mr. Puleo noted he doesn't recall seeing CalChiro referenced under Support or Opposition in any of the committee analyses.

Mr. McCarther affirmed that CalChiro did not have a registered position on the bill.

Mr. Ruffino shared that Uber, one of many gig economy companies in California, opposed the bill and announced their intent to repeal this bill through a ballot initiative.

Mr. Puleo stated the intent of the bill is to prevent hiring entities from misclassifying employees as independent contractors to avoid employer obligations, while maintaining the ability to direct work and impose discipline and control upon workers.

AB 1076 (Ting) - Criminal Records: Automatic Relief
Chapter 578, Statutes of 2019 (*BCE Position*: NONE)

SB 425 (Hill) Health Care Practitioners: Licensee's file: Probationary Physician's & Surgeon's Certificate: Unprofessional Conduct.
Chapter 849, Statutes of 2019 (*BCE Position*: SUPPORT)

SB 53 (Wilk) Open Meetings.
Failed passage in Assembly Committee on Governmental Organization. (*BCE Position*: OPPOSE)

Update, Discussion and Possible Action on Pending Rulemaking

Ms. McMillen reported the following rulemaking files have been reviewed by the Board's Legal Counsel and submitted to DCA to commence the Initial Phase of DCA's Regulatory Review Process:

- Consumer Protection Enforcement Initiative
- Delegation of Authority to the Assistant Executive Officer

Mr. Puleo provided the Board with a brief overview of DCA's Regulatory Review Process, which occurs in two phases – Initial and Final. Each phase consists of multiple

levels of review, including, DCA' Legal, Policy, Fiscal, and Executive Offices, and the Business, Consumer Services, and Housing Agency.

The Initial Phase occurs prior to BCE submitting the file to the Office of Administrative Law to commence the formal Rulemaking Process and 45-day public comment period

The Final Phase occurs following completion of the formal rulemaking process and approval by OAL.

The steps for each phase are detailed in spreadsheets included in the Board Meeting Materials

Review, Discussion and Possible Action Regarding the Proposed 2020 Board Meeting Schedule

The Board selected the following dates for its 2020 Board Meetings (*Dates and Locations are subject to change. Updates will be posted on the Board's Webpage*):

- January 7th – Sacramento
- April 16th – Southern California
- July 16th – Northern California
- October 29th – Southern California

Public Comment for Items Not on the Agenda

Public Comment: A member of the public asked a question related to scope of practice.

Mr. Puleo told the individual he answer his question after the meeting adjourned.

Future Agenda Items

Dr. McClain requested the Executive Officer's evaluation be included on the Agenda for the January 7, 2020 Board Meeting.

Adjournment

Mr. Ruffino adjourned the meeting at 3:26 p.m. in memory of former Board member, Franco Columbu, D.C., who passed away on August 30, 2019.

(ATTACHMENT A)

Approval by Ratification of Formerly Approved License Applications
between July 1, 2019 and September 30, 2019.

Name (First, Middle, Last)			Date Issued	DC#
Daniel	Matthew	Bartko	7/3/2019	34587
Alireza		Gogerdchian	7/3/2019	34588
Colton	Daniel	Korne	7/3/2019	34589
Babak	Agharokh	Mirabadi	7/11/2019	34590
Armand	Taylor	Contreras	7/11/2019	34591
Heather	Pearl Jin Ju	Yoon	7/11/2019	34592
Stanley	Minh	Vo	7/11/2019	34593
Amandeep	Singh	Walia	7/11/2019	34594
Nevin	Ramona	Cokdegerli	7/11/2019	34595
David	Joshua	Barton	7/26/2019	34596
Chijioke	Rowland	Anyanwu	7/26/2019	34597
Anthony	Wayne	Carpenter	7/31/2019	34598
Charles	Patrick	Small	7/31/2019	34599
Lily		Chan	7/31/2019	34600
Nicholas	Louis	Hagan	7/31/2019	34601
Pamela	Victoria	Ford	8/1/2019	34602
Ashley	Nicole	Franklin	8/1/2019	34603
Pierce	Austin	Sweeney	8/1/2019	34604
Charlotte	Denise	Burgess	8/1/2019	34605
Abigail	Colleen	Boorman	8/1/2019	34606
Christopher	Jordan	Motley	8/1/2019	34607
Diana		Wang	8/2/2019	34608
Johnathan		Shay	8/2/2019	34609
Nathan	David	Moursalian	8/2/2019	34610
Kent	Harold	Schwartz	8/2/2019	34611
Joshua	Eric	Silver	8/2/2019	34612
Tyanna	Chantel	Sutton	8/7/2019	34613
Catherine	Piama	Zabelin	8/8/2019	34614
Amit	Lalji	Khimji	8/8/2019	34615
Man Hin	Albert	Yeung	8/20/2019	34616
Cedric	Renardo	Stewart	8/20/2019	34617
Desiree	Lorraine	Yllan	8/20/2019	34618
Timothy	Joseph	Moynihan	8/20/2019	34619

Alina	Frances	Moloney	8/28/2019	34620
Ramsey	Andrew	Naber	8/28/2019	34621
Gordon	L	Chen	8/28/2019	34622
Kevin	Sin	Moc	8/28/2019	34623
Johnnie	Christopher	Morgan	8/28/2019	34624
Shaylee	Riyeko	Yano	8/28/2019	34625
Kelly	Anita	Couchman	8/28/2019	34626
Ali		Akhavan-Rajabi	8/28/2019	34627
David	Charles	Johnson	8/28/2019	34628
Zachary	Allen	Peters	8/28/2019	34629
Patricia	Guzman	Williams	8/28/2019	34630
Emma	Elizabeth	Eskilson	8/28/2019	34631
Kelsi	Lee	Kriewald	8/28/2019	34632
Jordan	David	Durrance	8/28/2019	34633
Gianna	Marie	Mautone	8/28/2019	34634
Kevin	Blake	Slocum	8/28/2019	34635
Emily	Joann	Holbrook	8/28/2019	34636
Kate	Kie	Russell	9/11/2019	34637
Cameron	Scott	Penta	9/11/2019	34638
Lewis	Laguardia	Lisel	9/11/2019	34639
Thomas	George	Le Lievre	9/11/2019	34640
Arnold	Zhao	Koo	9/11/2019	34641
Charles	Michael	Brennan	9/11/2019	34642
Navid		Niktabe	9/12/2019	34643
Cherene	Kathryn	Toscano	9/12/2019	34644
Jerry	Christopher	Morris	9/12/2019	34645
Hailey	Claire	Hirata	9/12/2019	34646
Broc	Walker	Sheets	9/12/2019	34647
Christopher	John	Meanley	9/26/2019	34648
Malia	Koalaulii	Sing	9/26/2019	34649
Maura	Rose	Mayer	9/26/2019	34650
Charles	Fullarton	Sabourin	9/26/2019	34651
Joshua	Bravo	Beltran	9/27/2019	34652
Junseok		Park	9/27/2019	34653
Nicole	Marie	Strasko	9/27/2019	34654
Lianna	Patricia	Hunt	9/27/2019	34655
Kristan	Elisabeth	Cassady	9/27/2019	34656
Kevin	Valdemoro	Camacho	9/30/2019	34657
Emily	Anne	Pillari	9/30/2019	34658

(ATTACHMENT B)

Pending Ratification to Approve New Continuing Education Providers

<p>Provider Name: National Provider Compliance Corporation</p> <p>CE Oversight Contact Person: Dr. Christine Barry</p> <p>Provider Status: Corporation</p>	<p>Provider Name: American First Responder</p> <p>CE Oversight Contact Person: Dr. Alejandro Platon</p> <p>Provider Status: Individual</p>
<p>Provider Name: American Chiropractic Association</p> <p>CE Oversight Contact Person: Jim Flanagan</p> <p>Provider Status: Professional Association</p>	<p>Provider Name: Dr. James Huang</p> <p>CE Oversight Contact Person: Dr. James Huang</p> <p>Provider Status: Individual</p>
<p>Provider Name: Kim B. Khauv, DC, MPH</p> <p>CE Oversight Contact Person: Dr. Kim B. Khauv</p> <p>Provider Status: Individual</p>	