



**BOARD OF CHIROPRACTIC EXAMINERS
LICENSING & CONTINUING EDUCATION COMMITTEE
MEETING MINUTES
June 17, 2021**

In accordance with [Executive Order N-29-20](#), issued by Governor Gavin Newsom on March 17, 2020, the Licensing & Continuing Education Committee of the Board of Chiropractic Examiners (Board) met via teleconference/Webex Events with no physical public locations on June 17, 2021.

Committee Members Present

Dionne McClain, D.C., Chair
Laurence Adams, D.C.
David Paris, D.C.

Staff Present

Robert Puleo, Executive Officer
Dixie Van Allen, Licensing & Administration Manager
Amanda Campbell, Enforcement Analyst
Michael Kanotz, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)

1. Call to Order & Establishment of a Quorum

Dr. McClain called the meeting to order at 10:00 a.m. Dr. Paris called the roll. All members were present and a quorum was established.

2. Approval of May 7, 2021, Meeting Minutes

Motion: Dr. Paris moved to approve the minutes of the May 7, 2021 Licensing & Continuing Education Committee Meeting.

Second: Dr. Adams seconded the motion.

Discussion: Dr. McClain requested clarification regarding the sentence on page three of the draft minutes that reads: "Dr. McClain was concerned about creating a list as it would hem in the creativity of providers." Dr. McClain questioned whether the sentence accurately reflects the statement she articulated or if a typographical error was made when preparing the minutes. Mr. Puleo indicated staff is generally very accurate when drafting the meeting minutes, but he is unable to verify what was actually said during the meeting without going back and checking the recording. Dr. McClain suggested deferring this item to a future committee meeting to ensure the accuracy of the minutes.

Dr. Paris withdrew his motion.

Public Comment: There were no public comments.

3. Public Comment for Items Not on the Agenda

There were no public comments.

4. Review, Discussion and Possible Action to Article 6. Continuing Education Sections 363.1 – 366

Dr. McClain explained the Committee will review and discuss proposed changes to California Code of Regulations (CCR), title 16, sections 363.1-366, and opened the discussion by asking if there were any comments or questions on CCR, title 16, section 363.1 (Distance Learning).

Dr. McClain asked if periodic testing should also be included with the timekeeping mechanisms identified in CCR, title 16, section 363.1, subdivision (d), to ensure the validity and integrity of attendee participation. Mr. Puleo replied that periodic testing was specific to synchronous training to provide confirmation that the attendee was continuously logged into the course.

Dr. McClain moved to CCR, title 16, section 363.2 (Continuing Education Course Cause for Withdrawal). Dr. Paris commented that the proposed language for subdivision (a)(1) and (2) of this section should allow the Board to withdraw approval of a course based on a conviction or disciplinary action against the “instructor or continuing education provider” because those are often separate roles. Dr. McClain concurred with Dr. Paris. Mr. Puleo noted this provision was not included in the causes for denial as a continuing education (CE) provider and explained it may be problematic to include the provider as: they are often corporations, larger entities, or schools, not licensees; and the Board cannot get criminal background information on them, and instead, must rely on self-reporting. Dr. McClain acknowledged Mr. Puleo’s concerns but questioned why it would not be beneficial to include the provision to cover the situations where the Board would have recourse. Mr. Puleo indicated he would have to defer to legal counsel but equated the situation to the Board’s approval of chiropractic colleges and advised it may be difficult to try to regulate law violations by individuals that are not within the Board’s jurisdiction.

Dr. Adams pointed out the Board currently places the burden on the providers to ensure they get appropriate instructors, as does the Federation of Chiropractic Licensing Boards (FCLB) PACE program, but suggested including a provision that provides grounds for denial or withdrawal if the information comes to the attention of the Board. Ms. Van Allen explained the regulatory language may not pass through the Office of Administrative Law (OAL), as the Board would be holding licensees who are providers or instructors to a higher standard in the CE regulations than the rest of the providers and instructors who are not regulated by the Board. Mr. Puleo agreed with Ms. Van Allen.

Dr. Paris disagreed and indicated by including that provision in the regulations, the Board would be holding licensees to a standard while acknowledging it cannot control or

affect unlicensed individuals. Dr. Adams concurred with Dr. Paris. Mr. Puleo explained if the Board received an arrest or conviction notification involving a licensee, the Board would open an investigation, and if the matter is substantially related to the practice of chiropractic, the Board would discipline their chiropractic license. He added if the Board also took away the licensee's provider or instructor approval, it would create a separate standard that would not apply to non-licensees, and OAL may have concerns about the legality of it. Dr. Paris reiterated his suggestion that both instructors and CE providers be identified in the language to fully capture those who submit CE courses for approval. Drs. McClain and Adams agreed.

Dr. McClain suggested distinguishing instructors and providers who are licensees. Dr. Adams agreed and explained there are some CE providers who are also the instructors for the courses they submit and there are others who are solely providers or instructors. Dr. Adams cautioned that if providers are not included in the language, there could be a situation where a provider who has been convicted or disciplined is still able to submit courses for approval and stated he does not think that would be consistent with the spirit of the regulation. Mr. Puleo indicated staff can make the change but will also have to go back and amend CCR, title 16, sections 362, 362.2, 362.3, and 362.4 relating to the CE provider application and approval process and amend those sections for consistency. Mr. Puleo also explained the current limitations of tracking and cross-referencing providers and instructors due to the Board's manual review process, as well as limitations on collecting the instructors' personal information. He suggested including a provision in the provider responsibilities section to ensure the instructor has appropriate training and has not been convicted of a crime. Dr. McClain indicated that provision should be included if it is not already. Dr. Adams agreed.

Dr. McClain identified a need to gather more information and revisit this discussion. Mr. Puleo replied the Committee did not decide to include this provision while discussing CE providers, and to go back now will require more research and create an additional workload to be able to track and enforce this level of scrutiny for providers and instructors. Dr. McClain asked if the ability to track this information could be integrated into the Board's new IT system. Mr. Puleo pointed out there is an instructor attestation form and reiterated his concerns regarding workload and the questions of legality and equity that could get the regulations denied by OAL. Dr. Adams restated the potential for providers who have been disciplined to still be able to offer CE courses under the existing language. Mr. Puleo suggested placing the requirements and responsibilities on the CE providers. Dr. Paris explained his intent was to strengthen the language through the addition of "instructor or provider."

Dr. Adams pointed out that CCR, title 16, section 363.2, subdivision (a)(4) includes "instructor or provider" and questioned whether staff meant to include the same language in the other portions of the regulations. Dr. Paris suggested making the language consistent. Mr. Puleo restated his concerns regarding the conviction information. Dr. McClain asked if the attestation form includes a question regarding convictions, as that would address the Committee's concerns. Mr. Puleo replied he is

unsure what the Board can legally ask and explained the Board can no longer inquire about applicants' criminal history, and instead, reviews their Live Scan fingerprint results.

Dr. Paris stated he thinks the proposed language is adequate as written and was just trying to strengthen it and make it more consistent through his suggested addition. Mr. Puleo recommended the Committee request a legal opinion before pursuing that change. Dr. Paris clarified his intent to frame the language to reflect the Board is referring to instructors and providers who are licensees. Mr. Puleo provided an example of a California licensee who was disciplined by the Board compared with a Nevada licensee who was disciplined in that state, and the separate standard he believes would be created for that situation. Dr. McClain inquired about adding discipline in any jurisdiction to the proposed language to cover the scenario Mr. Puleo described. Mr. Puleo reiterated the difficulties in obtaining criminal history information from individuals based in other states. Dr. Adams pointed out the proposed language in CCR, title 16, section 363.3, subdivision (a)(2), addresses Mr. Puleo's example because it addresses discipline in the individual's state of licensure. Mr. Puleo restated the need to rely on self-disclosure and include the provision in the provider requirements. Dr. Adams stated the language as drafted meets his concerns and he believes provides sufficient means for the Board to act. Dr. McClain clarified the language is sufficient as stated and recommended moving on to the next section of the proposed regulations.

Dr. McClain asked if CCR, title 16, section 363.3 (Continuing Education Course Cause for Denial) should identify a timeframe to reapply after a course is denied by the Board. Ms. Van Allen suggested such a provision should be included under the provider section, as the provider should not be able to reapply immediately after they are denied by the Board. Ms. Van Allen explained the providers pay a fee each time they submit a course so it would not be an issue if they chose to resubmit a course that was previously denied by the Board; it would just be a waste of the provider's time and resources to do so. Dr. McClain noted the need to ensure that provision is added to the provider section of the proposed regulations. Mr. Puleo pointed out the proposed regulations regarding CE providers do not contain a provision with a specified timeframe when they can reapply, but the Board can continue to use the same factors to deny the application. He also agreed it would be a good idea to put a timeframe in the regulation.

Dr. Paris asked for clarification on the rationale for identifying a timeframe versus correcting a deficiency. Mr. Puleo explained a deficiency could be immediately corrected and resubmitted whereas a denial based on a material misrepresentation of fact is similar to discipline and it would be appropriate to include a waiting period before reapplying. Dr. Paris expressed his concern that a timeframe may become punitive in nature in cases where an individual made an administrative or clerical error and fixed the deficiency. Dr. McClain noted the need to distinguish between a clerical error and a misrepresentation of facts on an application. Ms. Van Allen explained in her time with the Board, there have only been two instances where the Board has withdrawn a provider status, and neither occurred based on a clerical mishap or oversight. She

stated the withdrawals were based on false or misleading information or repeated offenses involving the same issue, and assured the Committee that such actions would not be based on a simple administrative error or mistake. Mr. Puleo added the proposed notice of violation process for providers allows the Board to notify providers of a violation and provide a mechanism for them to fix it. He stated the concern when denying an application or withdrawing approval is regarding their fitness to be a provider.

Dr. McClain indicated it appeared the Committee is in agreement about adding a timeframe for reapplying after denial or withdrawal of provider approval, and she suggested that staff make a recommendation of that timeframe. Dr. Paris suggested placing the discussion on a future committee meeting agenda. Mr. Puleo recommended bringing the discussion back to the Committee after staff have reviewed CCR, title 16, sections 362.1-362.5. He also proposed adding a provision to give the Board discretion to specify the timeframe based on the circumstances of the application. Drs. Paris and McClain indicated they agreed with Mr. Puleo's plan.

Dr. McClain moved to CCR, title 16, section 364 (Exemptions and Reduction of Requirement) and questioned whether subdivision (e) should be clarified to state "temporary physical disability." Mr. Puleo replied it was not necessary because licensees must reapply for the exemption for each renewal period.

Dr. McClain asked if there was any discussion on CCR, title 16, section 365 (Revoked Licenses). Dr. Paris wondered if the Board should add a provision for testing or examination to that section. Mr. Puleo explained the Board has the discretion to impose testing when deciding to reinstate a petitioner's license and that provision could be included in a separate regulation on the petition for reinstatement process.

Dr. McClain moved to CCR, title 16, section 366 (Continuing Education Audits) and questioned whether the sentence that reads, "Providers who provide false or inaccurate verification of a licensee's participation may lose their provider status for up to ten (10) years, at the discretion of the Executive Officer," should also include the Board or the Review Committee. Ms. Van Allen explained it follows the discipline process where the Executive Officer has the discretion to pursue discipline and they have the right to appeal it through the Review Committee who would have the final say on the matter. Mr. Puleo agreed with Ms. Van Allen and explained the denial process would begin with an informal conference with the Executive Officer followed by an appeal to the Board, and the Board would make the final determination.

Dr. McClain asked if the Board would be able to receive the completed Post Continuing Education (CE) Evaluation Form online through the new IT system or another method. Mr. Puleo described a few methods for receiving the forms, including a provider portal or other method to directly submit the forms to the provider and the Board, or requiring the submission of evaluation forms from all licensees as a condition of approval for the course. Dr. McClain indicated she likes the idea of submitting the forms directly to the

provider and the Board while allowing the licensees to speak anonymously and without fear of repercussions. Mr. Puleo explained he is unsure if it is technically possible or if it will be problematic to know that an evaluation form has been received from each attendee. Dr. McClain expressed the importance of providing a way for licensees to report and evaluate the courses to get their perspectives.

Dr. Adams questioned how providers will be able to require all attendees to submit an evaluation form. Dr. McClain stated how to require it is a matter from the provider's perspective and the Board's position is on getting the information necessary to protect the public. Dr. Adams indicated constructive feedback is always helpful but one of his concerns is what constitutes appropriate suggestions or feedback and how will the Board determine when an issue needs to be addressed based on a negative review. He also noted he believes it is appropriate for individuals to identify themselves and be accountable for their comments and reviews.

Dr. McClain explained the Board is asking questions about the competencies on the evaluation form and that is where the Board will be able to separate the frivolous and substantive responses. Dr. McClain also expressed the need to be cognizant and discuss the repeating of CE courses, as the intent is to utilize CE to learn, not just to check a box.

Mr. Puleo advised the Committee that it may be difficult to create a system that will allow the Board to review and analyze each evaluation form submitted and provide the Board with feedback that can be used in an aggregate form. Dr. McClain responded the system should at least indicate when there is a negative reflection of the courses, or the Board could review evaluation forms when courses are audited. Mr. Puleo stated he is unsure of the system's capability and this requirement could create a large volume of information that the system may not have the ability to process.

Dr. Adams commented on the potential impact on staff if the Committee does not clarify and streamline some items related to the competencies and suggested gathering feedback that could be easily converted to positives or negatives, or a numerical scale, as opposed to the proposed form, which must be reviewed individually. Dr. McClain replied that checking a box will not provide the Board with the necessary feedback to evaluate a course and stated there needs to be an explanation to go with the rating. Dr. McClain encouraged evaluating what can be put into place in the new system because there is technology that can delineate this information and provide definitive reports. Dr. McClain also cautioned against requiring people to put their name on the evaluation form when it is going back to the provider because people may be afraid of repercussions and may not want their name associated with that provider. She suggested maybe their name should only be provided to the Board. Dr. McClain also recommended clarifying the wording of question two and at the bottom of the form.

Dr. Paris noted the limitations on being able to audit all of the written evaluation forms and wondered if some of the questions regarding quality assurance might be better for

the providers to be doing on their own. Dr. Paris explained based on his impression of the evaluation form, it serves to confirm the course was as advertised – the instructor followed the syllabus, taught the advertised topic, and the course lasted for the approved number of hours – and provide an email link for any comments, concerns, or more details. He suggested shortening the form to make it easier on everyone, including the attendees, instructors, and staff. Dr. Adams concurred.

Dr. McClain reiterated the attendees' concerns are the highest priority and it is important to provide a link to enable attendees to elaborate on their concerns rather than just checking a box. Dr. McClain also confirmed staff understood the Committee's discussion and asked if there were any questions or comments. There were none.

Public Comment: Laurie Isenberg, Director of Postgraduate & Continuing Education at Life Chiropractic College West, explained it is common for other state boards to require CE providers to gather evaluations from seminar participants and submit those evaluations to the board if their courses are audited, and this process might be a more comfortable workload for everyone. Ms. Isenberg also suggested that it would be difficult to make the evaluations mandatory, especially in large conferences or online courses, and she requested that individual providers be allowed to integrate the Board's questions into their own survey because otherwise providers would need to request that participants fill out two different evaluations for the Board and the provider.

5. Public Comment for Items Not on the Agenda

There were no public comments.

6. Future Agenda Items

Dr. Adams requested two future agenda items for the Committee to further discuss: 1) clarifying the competencies based on feedback that was received from CE providers and including specific examples of each competency to give direction to providers, licensees, and Board staff; and 2) the feedback on adjustive technique courses being conducted virtually through live, interactive formats.

Marcus Strutz, D.C., a licensee and CE provider with Back to Chiropractic CE Seminars, requested the Committee revisit the discussion of allowing technique courses to be taught via Zoom. Dr. Strutz indicated he put together a survey of over 1,400 doctors of chiropractic and 16-17 CE providers and the information from the survey was clear that it should be allowed.

7. Adjournment

Dr. McClain adjourned the meeting at 11:49 a.m.