



NOTICE OF TELECONFERENCE ENFORCEMENT COMMITTEE MEETING

Committee Members

Laurence Adams, D.C., Chair
David Paris, D.C.
Rafael Sweet

The Board of Chiropractic Examiners' (Board) Enforcement Committee will meet by teleconference on:

**Thursday, March 2, 2023
12:00 p.m. to 2:00 p.m.**
(or until completion of business)

The Committee may take action on any agenda item.

Teleconference Instructions: The Enforcement Committee will hold a public meeting via Webex Events. Pursuant to the statutory provisions of Government Code section 11133, neither a public location nor teleconference locations are provided.

To access and participate in the meeting via teleconference, attendees will need to click on, or copy and paste into a URL field, the link below and enter their name, email address, and the event password, or join by phone using the access information below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=mfb654af7c8f0f6215998beb52a634883>

If joining using the link above

Webinar number: 2488 931 0746
Webinar password: BCE03022023

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Access code: 248 893 10746
Passcode: 22303022

Instructions to connect to the meeting can be found at the end of this agenda.

Members of the public may, but are not obligated to, provide their names or personal information as a condition of observing or participating in the meeting. When signing into the Webex platform, participants may be asked for their name and email address. Participants who choose not to provide their names will be required to provide a unique identifier, such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make a public comment. Participants who choose not to provide their email address may utilize a fictitious email address in the following sample format: XXXXX@mailinator.com.

Note: Members of the public may also submit written comments to the Committee on any agenda item by Monday, February 27, 2023. Written comments should be directed to chiro.info@dca.ca.gov for Committee consideration.

AGENDA

- 1. Call to Order / Roll Call / Establishment of a Quorum**
- 2. Review and Possible Approval of December 9, 2022 Committee Meeting Minutes**
- 3. Update on Board's Enforcement Program**
- 4. Review, Discussion, and Possible Recommendation Regarding Proposed Changes to the Board's *Disciplinary Guidelines and Model Disciplinary Orders* and Implementation of the Uniform Standards for Substance Abusing Licensees (amend California Code of Regulations [CCR], Title 16, section 384)**
- 5. Review, Discussion, and Possible Recommendation Regarding Proposed Changes to the Record Keeping and Retention Requirements for Chiropractic Patient Records (amend CCR, Title 16, section 318)**
- 6. Review, Discussion, and Possible Recommendation Regarding the Authorized Activities Performed by Unlicensed Individuals within a Chiropractic Practice (amend CCR, Title 16, section 312)**
- 7. Public Comment for Items Not on the Agenda**
Note: Members of the public may offer public comment for items not on the agenda. However, the Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a).]
- 8. Future Agenda Items**
Note: Members of the Committee and the public may submit proposed agenda items for a future Committee meeting. However, the Committee may not discuss or take action on any proposed matter except to decide whether to place the matter on the agenda of a future meeting. [Government Code Section 11125.]
- 9. Adjournment**

This agenda can be found on the Board's website at www.chiro.ca.gov. The time and order of agenda items are subject to change at the discretion of the Committee Chair and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

BCE Enforcement Committee Meeting Agenda

March 2, 2023

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The Board plans to webcast this meeting at <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limitations on resources or other technical difficulties that may arise. The meeting will not be canceled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please attend the meeting via Webex Events.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Committee prior to it taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at their discretion, apportion available time among those who wish to speak. Members of the public will not be permitted to yield their allotted time to other members of the public to make comments. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125 and 11125.7(a)).

This meeting is being held via Webex Events. The meeting is accessible to individuals with disabilities. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at:

Telephone: (916) 263-5355

Email: chiro.info@dca.ca.gov

Telecommunications Relay Service: Dial 711

Mailing Address:

Board of Chiropractic Examiners

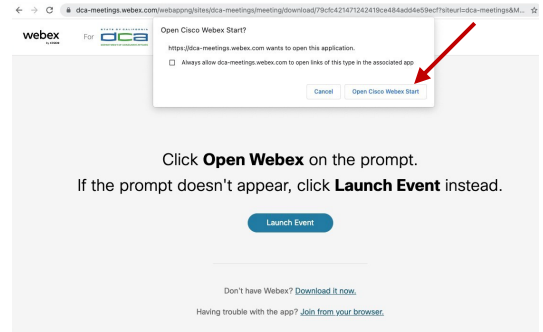
1625 N. Market Blvd., Suite N-327

Sacramento, CA 95834

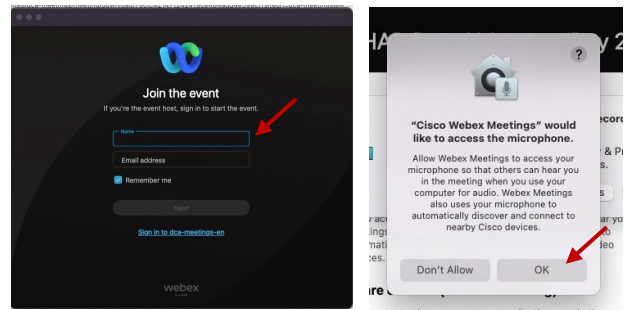
Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

If joining using the meeting link

- 1 Click on the meeting link. This can be found in the meeting notice you received.
- 2 If you have not previously used Webex on your device, your web browser may ask if you want to open Webex. Click "Open Cisco Webex Start" or "Open Webex", whichever option is presented. DO NOT click "Join from your browser", as you will not be able to participate during the meeting.



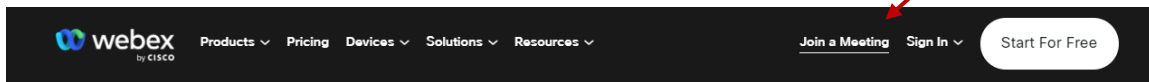
- 3 Enter your name and email address. Click "Join as a guest". Accept any request for permission to use your microphone and/or camera.



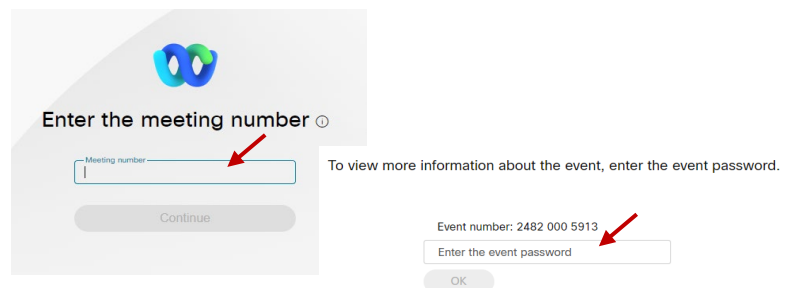
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If joining from Webex.com

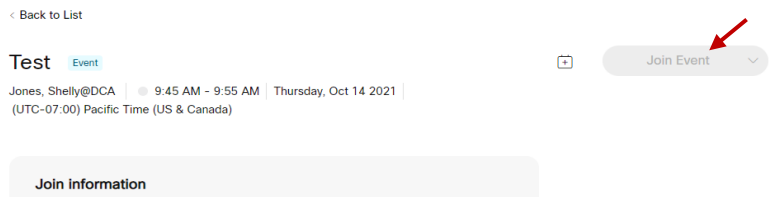
- 1 Click on "Join a Meeting" at the top of the Webex window.



- 2 Enter the meeting/event number and click "Continue". Enter the event password and click "OK". This can be found in the meeting notice you received.



- 3 The meeting information will be displayed. Click "Join Event".



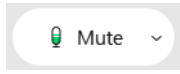
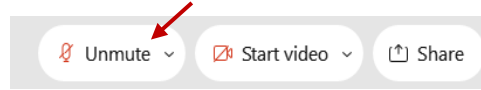
OR

Connect via telephone*:

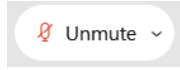
You may also join the meeting by calling in using the phone number, access code, and passcode provided in the meeting notice.

Microphone

Microphone control (mute/unmute button) is located on the command row.

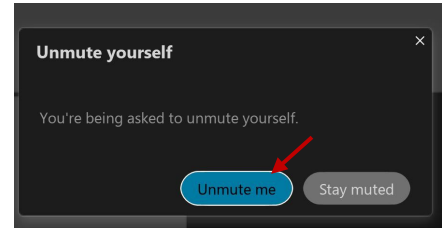


Green microphone = Unmuted: People in the meeting can hear you.



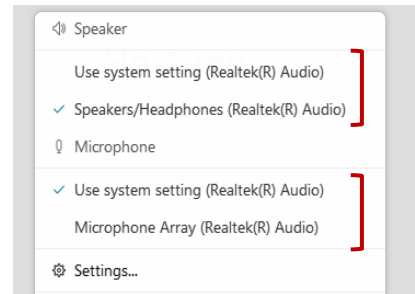
Red microphone = Muted: No one in the meeting can hear you.

Note: Only panelists can mute/unmute their own microphones. Attendees will remain muted unless the moderator enables their microphone at which time the attendee will be provided the ability to unmute their microphone by clicking on "Unmute Me".



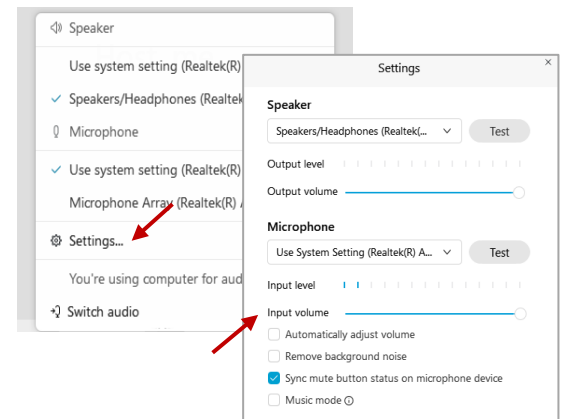
If you cannot hear or be heard

- 1 Click on the bottom facing arrow located on the Mute/Unmute button.
- 2 From the pop-up window, select a different:
 - Microphone option if participants can't hear you.
 - Speaker option if you can't hear participants.



If your microphone volume is too low or too high

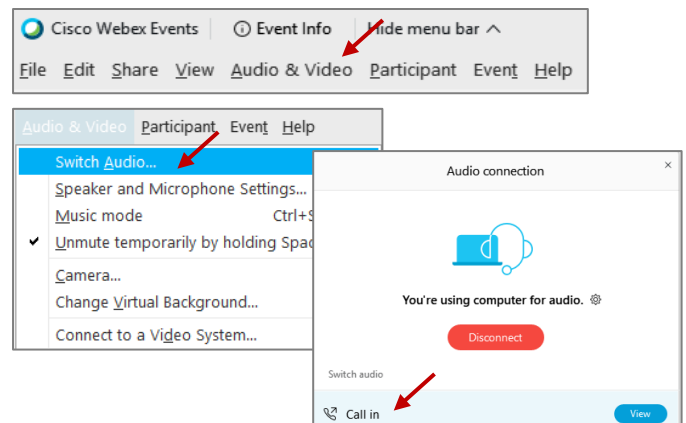
- 1 Locate the command row – click on the bottom facing arrow located on the Mute/Unmute button.
- 2 From the pop-up window:
 - Click on "Settings...":
 - Drag the "Input Volume" located under microphone settings to adjust your volume.



Audio Connectivity Issues

If you are connected by computer or tablet and you have audio issues or no microphone/speakers, you can link your phone through Webex. Your phone will then become your audio source during the meeting.

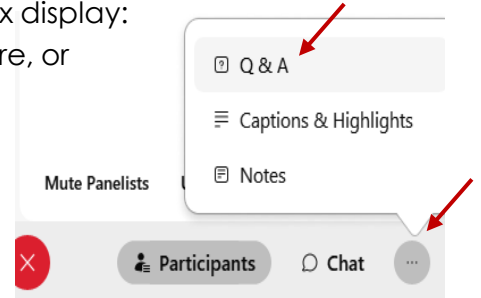
- 1 Click on "Audio & Video" from the menu bar.
- 2 Select "Switch Audio" from the drop-down menu.
- 3 Select the "Call In" option and following the directions.



The question-and-answer feature (Q&A) is utilized for questions or comments. Upon direction of the meeting facilitator, the moderator will open the Q&A panel for meeting participants to submit questions or comments. *NOTE: This feature is not accessible to those joining the meeting via telephone.*

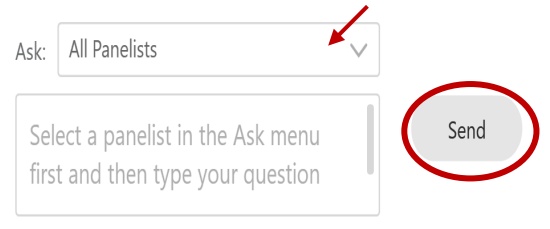
1 Access the Q&A panel at the bottom right of the Webex display:

- Click on the icon that looks like a “?” inside of a square, or
- Click on the 3 dots and select “Q&A”.



2 In the text box:

- Select “All Panelists” in the dropdown menu,
- Type your question/comment into the text box, and
- Click “Send”.



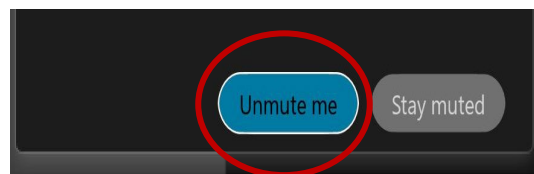
OR

If connected via telephone:

- Utilize the raise hand feature by pressing *6 to raise your hand.
- Repeat this process to lower your hand.

3 The moderator will call you by name and indicate a request has been sent to unmute your microphone. Upon hearing this prompt:

- Click the **Unmute me** button on the pop-up box that appears.

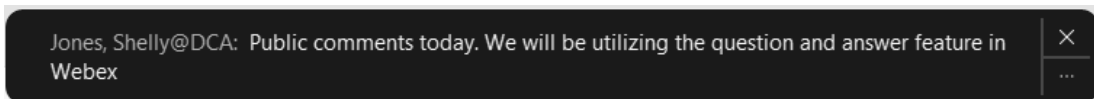


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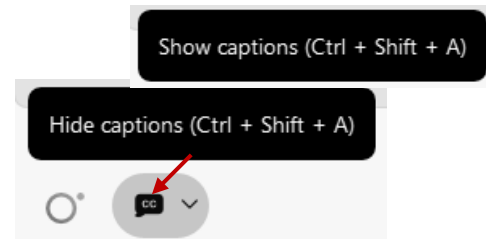
If connected via telephone:

- Press *3 to unmute your microphone.

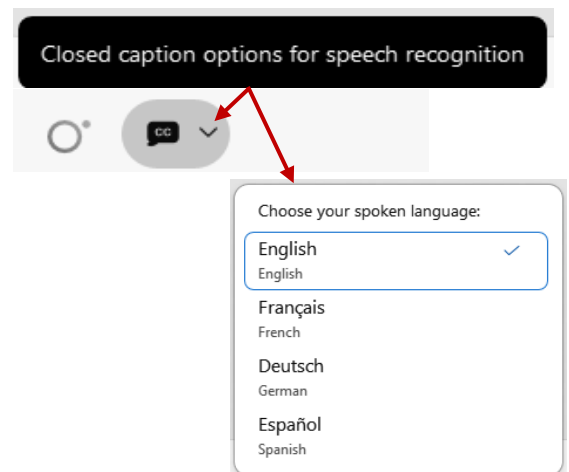
Webex provides real-time closed captioning displayed in a dialog box on your screen. The captioning box can be moved by clicking on the box and dragging it to another location on your screen.



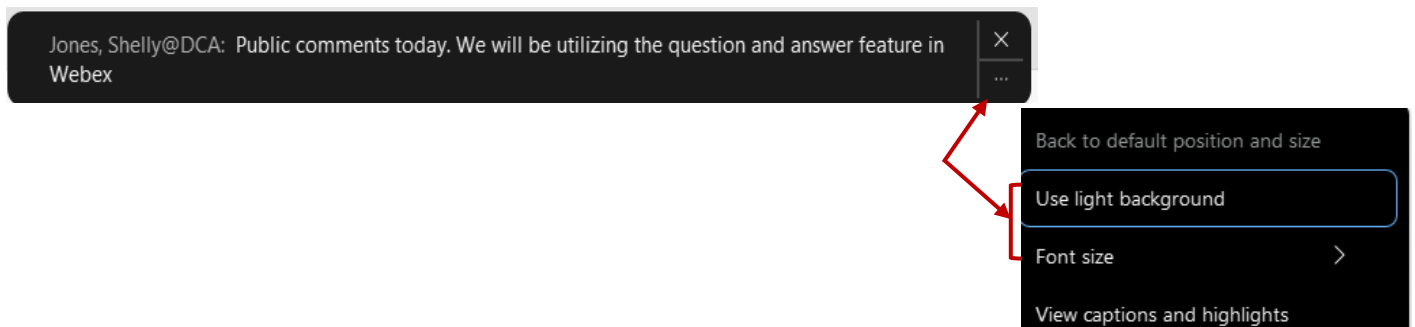
The closed captioning can be hidden from view by clicking on the closed captioning icon. You can repeat this action to unhide the dialog box.



You can select the language to be displayed by clicking the drop-down arrow next to the closed captioning icon.



You can view the closed captioning dialog box with a light or dark background or change the font size by clicking the 3 dots on the right side of the dialog box.





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Agenda Item 1
March 2, 2023

Call to Order, Roll Call, and Establishment of a Quorum

Purpose of the Item

Laurence Adams, D.C., Chair of the Board's Enforcement Committee, will call the meeting to order. Roll will be called by David Paris, D.C.

Committee Members

Laurence Adams, D.C., Chair
David Paris, D.C.
Rafael Sweet



Agenda Item 2
March 2, 2023

Review and Possible Approval of December 9, 2022 Committee Meeting Minutes

Purpose of the Item

The Committee will review and possibly approve the minutes of the previous meeting.

Action Requested

The Committee will be asked to make a motion to approve the December 9, 2022 Committee meeting minutes.

Attachment

- December 9, 2022 Enforcement Committee Meeting Minutes (Draft)



**BOARD OF CHIROPRACTIC EXAMINERS
ENFORCEMENT COMMITTEE
MEETING MINUTES
December 9, 2022**

In accordance with the statutory provisions of Government Code section 11133, the Enforcement Committee of the Board of Chiropractic Examiners (Board) met via teleconference/Webex Events with no physical public locations on December 9, 2022.

Committee Members Present

Laurence Adams, D.C., Chair
David Paris, D.C.
Rafael Sweet

Staff Present

Kristin Walker, Executive Officer
William Walker III, Enforcement Manager
Dixie Van Allen, Licensing & Administration Manager
Amanda (Campbell) Ah Po, Enforcement Analyst
Tammi Pitto, Enforcement Analyst
Sabina Knight, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)
Heather Hoganson, Regulatory Counsel, Attorney III, DCA

1. Call to Order / Roll Call / Establishment of a Quorum

Dr. Adams called the meeting to order at 12:30 p.m. Dr. Paris called the roll. All members were present, and a quorum was established.

2. Review and Possible Approval of October 6, 2022 Committee Meeting Minutes

Motion: Mr. Sweet moved to approve the minutes of the October 6, 2022 Enforcement Committee meeting.

Second: Dr. Paris seconded the motion.

Public Comment: None.

Vote: 3-0 (Dr. Adams-AYE, Dr. Paris-AYE, and Mr. Sweet-AYE).

Motion: Carried.

3. Update on Board's Enforcement Program

Ms. Walker informed the Committee that staff participated in action planning sessions with DCA's SOLID Training and Planning Solutions on November 29–30, 2022, and December 5, 2022, to identify the specific tasks and actions that staff will be taking to implement each of the objectives from the Board's 2022–2026 Strategic Plan. She also shared that staff will present the final action plan to the Board for discussion at the January 20, 2023 meeting. Ms. Walker noted that staff is making progress on the expert recruitment and is planning to begin accepting applications soon.

Ms. Walker updated the Committee on the following regulatory proposals:

- **Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees (Amend California Code of Regulations [CCR], Title 16, Section 384):** At the October 6, 2022 meeting, the Committee reviewed and discussed proposed changes to the standard and optional terms and conditions of probation. Staff plans to return this proposal to the Committee to discuss the minimum and maximum penalties for violations of the statutes and regulations within the Board's jurisdiction at the next meeting.
- **Collection of Proposals Related to the Consumer Protection Enforcement Initiative (CPEI):** The proposals regarding the filing of addresses and licensure notice posting requirements will be moved to the Licensing Committee for discussion. The proposals regarding mandatory penalties for sexual misconduct violations and registered sex offenders and activities performed by unlicensed individuals within a chiropractic practice will be discussed under Agenda Items 4 and 5. Staff is developing the remaining proposals and plans to present them to the Committee for discussion at a future meeting.
- **Record Keeping Requirements for Chiropractic Patient Records, Including Retention and Disposition of Records Upon Closure of Practice or Death/Incapacity of Licensee (Amend CCR, Title 16, Section 318):** Staff is developing proposed language for discussion by the Committee at the next meeting.

Mr. Sweet noted the number of complaints received so far during fiscal year 2022–23 was significantly lower than prior years and asked if that was due to a specific reason. Ms. Walker replied that staff will monitor the number of complaints received over the next few months and provide an update to the Committee if that trend continues.

Public Comment: None.

4. Review, Discussion, and Possible Recommendation Regarding Proposed Regulations for Disciplinary Decisions Involving Sexual Contact with a Patient and Required Actions Against Registered Sex Offenders (add California Code of Regulations [CCR], Title 16, sections 384.1 and 384.2)

Ms. Walker asked the Committee to continue their policy discussion regarding the regulatory proposal to add CCR, title 16, sections 384.1 and 384.2, which would: 1) require any proposed decision issued by an administrative law judge that contains a finding of fact that a licensee engaged in an act of sexual contact, as defined, to contain an order of revocation without a stay; 2) allow the Board to issue an order of revocation with a stay and place the licensee on probation following a finding of sexual contact; and 3) require the Board to deny an application for licensure or revoke the license of any individual who is subject to registration as a sex offender pursuant to Penal Code (PC) section 290 or an equivalent law in another jurisdiction and prohibit the Board from reinstating the license or placing the license on probation.

Ms. Walker summarized the updates that were made to California's sex offender registration system through Senate Bill (SB) 384 (Chapter 541, Statutes of 2017) effective January 1, 2021, which transitioned the lifetime registration requirements to a three-tier system that mandates registration for 10 years for a tier-one offense, 20 years for a tier-two offense, and lifetime for a tier-three offense. She explained SB 384 also provided the ability for current registrants to petition the court for removal of their registration requirements after completion of the minimum registration time based on their offense. She also noted staff evaluated similar regulations by other DCA healing arts boards and found that those boards generally prohibit anyone who is subject to registration from practicing within those professions.

Dr. Paris asked if 10 years was the minimum amount of time that an individual would be subject to registration under the new system. Ms. Walker replied the minimum registration period is 10 years for an adult offense and five years for a juvenile offense. Dr. Paris noted that the draft regulatory language would then impose a minimum 10-year waiting period for relicensure for all individuals subject to registration.

Dr. Adams requested additional information regarding tier-one offenses. Ms. Walker explained tier one is generally used for misdemeanor sex offenses and requires registration for a minimum of 10 years. She noted the severity of the offenses increases progressively for tiers two and three. Dr. Adams asked if tier one would be imposed for offenses such as indecent exposure. Ms. Walker responded affirmatively but noted the proposed language for CCR, title 16, section 384.2, subdivision (b), exempts a misdemeanor conviction for violating PC section 314 (Indecent Exposure) from the mandatory penalty of license denial or revocation.

Dr. Paris recalled other examples of potentially less egregious convictions. Dr. Adams agreed and suggested it would be more appropriate for the Board to retain its discretion to address tier-one offenses based on the facts of the case. Ms. Walker informed the

Committee that staff could prepare language similar to CCR, title 16, section 384.1 where the Board would retain its discretion for handling tier-one offenses and impose mandatory denial or revocation for tiers two and three. Dr. Adams asked how that would apply to registrants under tiers two and three. Ms. Walker explained the registrant would need to successfully petition the court for removal from the list before they would be eligible to apply for licensure or reinstatement. Dr. Paris asked if tier-one offenses are all misdemeanor violations. Ms. Walker replied that tier one includes misdemeanors and non-serious or non-violent felonies, as defined.

Mr. Sweet expressed his support for retaining discretion over tier-one offenses as it provides the Board with flexibility and commented that there would be no need for such discretion for tiers two and three. Dr. Paris agreed.

Motion: Dr. Paris moved to recommend that the proposed language to add CCR, title 16, sections 384.1 (Sexual Contact With Patient) and 384.2 (Required Actions Against Registered Sex Offenders) with the suggested edit to section 384.2 for tier-one offenses be moved to the Board for consideration.

Second: Mr. Sweet seconded the motion.

Public Comment: None.

Vote: 3-0 (Dr. Adams-AYE, Dr. Paris-AYE, and Mr. Sweet-AYE).

Motion: Carried.

5. Review, Discussion, and Possible Recommendation Regarding the Authorized Activities Performed by Unlicensed Individuals within a Chiropractic Practice (amend CCR, Title 16, section 312)

Ms. Walker explained CCR, title 16, section 312 outlines and clarifies the role of unlicensed individuals within a chiropractic practice and establishes the supervision requirements for the doctor of chiropractic who will be overseeing those activities. She shared that the proposed regulatory language to amend this section was originally approved by the Board in 2016 and is being presented to the Committee for two reasons: 1) to discuss whether the language adequately addresses the role of an unlicensed individual in a chiropractic practice; and 2) the Board received a public comment at the October 27, 2022 Board meeting expressing concern that this section does not differentiate between an individual who has never been licensed or an individual whose license has been revoked or surrendered for sexual misconduct. She also shared potential ideas to develop a more descriptive term beyond “unlicensed individual” to describe the support staff within a practice and differentiate between staff that are not regulated by any entity and those who are licensed by another DCA healing arts board.

Dr. Adams began the discussion by proposing that the requirement for “indirect supervision” under CCR, title 16, section 312, subdivision (a)(3), be replaced with “under the direct order of the doctor.” He explained there may be circumstances where the doctor of chiropractic may not be physically present at least 50% of the work week, which would not allow the unlicensed staff to follow through with the physiotherapy treatment that had already been ordered by the doctor of chiropractic for the patient following the evaluation. He suggested the Committee consider either reducing or eliminating the time requirement, which can be limiting for the patient, and instead, mandate that any physiotherapy treatment be under the direct order of the licensee.

Dr. Paris asked if the term “work week” had been defined and if the 50% presence is based on the hours the office is open or the actual patient care times, as those are often less. He noted the use of that term within the text is vague.

Dr. Paris also questioned whether other activities such as rehabilitation exercises would be included under the regulation. Mr. Sweet agreed and asked for clarification regarding the proposed change from the term physical therapy to physiotherapy. Dr. Adams explained the term physiotherapy is the appropriate term within the practice of chiropractic.

Dr. Adams redirected the Committee to his suggestion to require that such services be performed “under the direct order of the doctor” following the licensee’s evaluation and preparation of a treatment plan. Dr. Paris expressed his concern with the fact that the language requiring the doctor to perform periodic reevaluations at least every 30 days had been removed through this proposed language. He explained it is important that the licensee reassess the treatment plan and patient’s progress at least once per month and suggested strengthening the language to prevent circumstances where a patient could be visiting the office for physiotherapy or rehabilitative care for months without seeing the licensee. Dr. Adams concurred with Dr. Paris and suggested removing the 50% presence requirement, and instead, keeping the requirement for periodic reevaluations and reassessments. Dr. Paris commented that the term “readily available” should be further defined or replaced with language such as “immediately available by direct verbal contact.” He also suggested including language for circumstances where a patient presents with a new complaint or change of condition and minimum training requirements. Dr. Paris stated it is in the interest of public protection to ensure the licensee is spending some time on site with the unlicensed staff and shared that he could see the potential for abuse and risk by not mandating it. Dr. Adams replied that periodic reevaluations would help strengthen public protection.

Mr. Sweet asked if the periodic evaluation would be defined and occur at specific intervals. Dr. Adams explained that reevaluations are typically conducted every 30 days. Mr. Sweet indicated he would be comfortable with that. Dr. Adams asked his opinion on the percentage of time during the work week. Mr. Sweet replied he does not think it is necessary.

Dr. Adams raised another issue about multidisciplinary offices with staff that may be licensed in other healing arts professions and how the proposed language would apply to them. Dr. Paris replied that those individuals would be practicing within the scope authorized by their license.

Dr. Adams returned the discussion to the physical presence requirement. Dr. Paris provided an example of a licensee conducting a telehealth or in-person visit with patients, including evaluation and development of a treatment plan, and then sending them to various satellite clinics where the licensee never actually works for physiotherapy and rehabilitation to be provided by unlicensed staff. He expressed the concern for public safety and potential for fraud if licensees were able to operate facilities where there is never a licensee physically present. Dr. Adams reiterated his concern with how the language could prevent patients from accessing ultrasound or rehabilitation services while a licensee is away from the office for vacation. Dr. Paris acknowledged the importance of continuity of care but noted it is a business decision by the licensee to make arrangements for coverage during their absence or close the office. Dr. Adams proposed reducing the time requirement to 25%. Dr. Paris indicated his concern was with completely eliminating the physical presence requirement. He also reiterated the need to strengthen the definition of "readily available," how to address a patient's change in condition, keep the requirement for periodic reevaluations, and replace "individual's performance in relation to the patient" with the patient's progress towards treatment goals. Mr. Sweet thanked Drs. Adams and Paris for sharing their perspectives on the issue.

Ms. Walker asked if the use of the term physiotherapy within the draft language was appropriate or if it potentially limits the type of activities that could be performed by unlicensed staff. She also noted the language contains an exemption for preceptor programs but they are not defined or addressed anywhere in the Board's regulations. Dr. Adams asked if Ms. Walker was referring to a preceptorship or postceptorship. Ms. Walker replied that both types of programs are not addressed in the regulations. Dr. Adams explained that physiotherapy is inclusive of any adjunctive activity in support of the adjustment, including through exercise or the use of modalities.

Dr. Paris commented that the discussion of regulations regarding postceptorships should include defining a timeframe for participation after completing the degree program. Dr. Adams recalled that he participated in a preceptorship for six months and a postceptorship for another six months and then obtained his license. He asked staff to contact a few of the chiropractic colleges to gather additional information regarding their postceptor programs. Ms. Walker confirmed that staff would report back to the Committee with that information.

Ms. Walker asked the Committee to discuss the potential need to exclude individuals whose licenses were revoked or surrendered from serving as support staff and whether to attempt that exclusion through the regulatory process or by seeking legislation. She

noted the Board's jurisdiction extends only to chiropractic practices and the issue also affects other healing arts boards. Dr. Adams replied that individuals whose licenses were revoked or surrendered due to sexual misconduct should be prohibited from being involved in unsupervised direct patient care. He recalled previous petitioners who worked in billing or other assistant roles in chiropractic offices to keep themselves involved in the profession and prepare for their reinstatement hearings. Dr. Paris agreed and commented that the Board's expectation would be to see the petitioners make an effort to integrate themselves back into the profession.

Dr. Paris asked for clarification regarding the situation specified in the public comment. Ms. Walker replied a former licensee was revoked by the Board for sexual misconduct but the individual is still employed by the same office, a medical corporation, performing front office tasks and acting in a chiropractic support role because there is no law that currently prohibits them from doing so. Dr. Paris acknowledged the difficulty in balancing the ability for the former licensee to integrate back into a chiropractic office and address the complainant's valid concern of having to face that individual in the same office. He also suggested broadening the language to potentially exclude other circumstances such as preventing a former licensee who was convicted and revoked for fraud from billing and coding.

Ms. Walker thanked the Committee and indicated staff would incorporate their feedback into updated language for discussion at the next meeting.

Public Comment: None.

6. Review, Discussion, and Possible Recommendation Regarding Proposal to Amend or Repeal CCR, Title 16, section 354 (Successful Examination)

Ms. Walker informed the Committee that CCR, title 16, section 354 became effective in 1979 and states: "...applicants who are notified in writing by the Board of the successful completion of the Board examination, may immediately commence the practice of chiropractic in California pending the receipt of their certificate." She shared that staff has significant concerns with this regulation as it conflicts with CCR, title 16, section 310.2 and Sections 5 and 15 of the Chiropractic Initiative Act, which prohibit an unlicensed individual from practicing chiropractic.

Ms. Walker added that the regulation causes confusion for applicants because the testing vendor immediately notifies them of the results of the California Chiropractic Law Examination (CCLE) after they complete the examination but the licensure process is not complete until the applicant submits a copy of their CCLE results to the Board with the initial license fee and staff performs a final review of their application package, confirms all requirements have been met, and issues a doctor of chiropractic license. She noted in rare circumstances, staff may find grounds for denial of a license and instead of issuing a license, staff would notify the applicant that their application has been denied and their right to appeal that determination.

Ms. Walker asked the Committee to consider recommending to the Board that CCR, title 16, section 354 be repealed for these reasons.

Dr. Adams asked if the matter is within the purview of the Licensing Committee. Ms. Walker replied that it is appropriate for the Enforcement Committee as it is an issue of unlicensed practice.

Motion: Dr. Paris moved to recommend to the Board that CCR, title 16, section 354 (Successful Examination) be repealed.

Second: Dr. Adams seconded the motion.

Public Comment: None.

Vote: 3-0 (Dr. Adams-AYE, Dr. Paris-AYE, and Mr. Sweet-AYE).

Motion: Carried.

7. Public Comment for Items Not on the Agenda

Public Comment: None.

8. Future Agenda Items

Public Comment: None.

9. Schedule 2023 Committee Meetings

The Committee scheduled their next meeting for Thursday, March 2, 2023, from 12:00 p.m. to 2:00 p.m. via teleconference/Webex.

The Committee concurred that Thursdays work well for future meetings and requested that staff send a poll to the members to schedule the rest of the meetings for 2023.

Public Comment: None.

10. Adjournment

Dr. Adams adjourned the meeting at 2:30 p.m.



Agenda Item 3
March 2, 2023

Update on Board's Enforcement Program

Purpose of the Item

The Executive Officer and Board staff will provide the Committee with an update on the Board's Enforcement Program activities and statistics.

Action Requested

This agenda item is informational only and provided as a status update to the Committee. No action is required or requested at this time.

A memo containing the Enforcement Program update will be provided to the Committee as a supplemental handout to these meeting materials.



**Agenda Item 4
March 2, 2023**

Review, Discussion, and Possible Recommendation Regarding Proposed Changes to the Board's *Disciplinary Guidelines and Model Disciplinary Orders* and Implementation of the Uniform Standards for Substance Abusing Licensees (CCR, Title 16, section 384)

Purpose of the Item

The Committee will review and discuss recommended penalties within the Board's *Disciplinary Guidelines and Model Disciplinary Orders*.

Action Requested

The Committee will be asked to consider staff's recommendation to replace the categories of violations within the *Disciplinary Guidelines* with recommended penalties for violations of the specific statutes and regulations within the Board's jurisdiction.

Background

For the past several years, the Board has been working on updates to its *Disciplinary Guidelines and Model Disciplinary Orders* and the implementation of the Uniform Standards for Substance Abusing Licensees.

At the July 17, 2014 meeting, the Board reviewed and discussed the three options to "trigger" the application of the Uniform Standards: 1) a presumption unless rebutted by the licensee; 2) conducting a clinical diagnostic evaluation of the licensee; or 3) finding evidence establishing the licensee is a substance-abusing licensee after providing notice and conducting a hearing. The Board voted to approve the third option for applying the Uniform Standards.

During the October 6, 2022 meeting, the Committee discussed proposed updates to the standard and optional terms and conditions of probation to protect the public and strengthen the effectiveness of the Board's probation monitoring program. In addition to clarifying the language within the existing terms and conditions of probation and removing redundant requirements, the proposed changes include:

- Adding new standard conditions of probation requiring probationers to maintain a current and active license, reimburse the Board for its probation monitoring costs, practice a minimum of 24 hours per week while on probation, not serve as a continuing education instructor while on probation, file their current contact information and employment status, and notify their patients of their probation status, as required by Business and Professions Code section 1007.

Disciplinary Guidelines and Uniform Standards

March 2, 2023

Page 2

- Adding new optional conditions of probation for the Part IV national examination, an ethics and boundaries assessment/examination, and limitations on practice locations.
- Bolstering the optional conditions of probation for practice monitoring and third-party chaperone requirements.

The remaining portion of the regulatory proposal that must be discussed is the recommended penalties for violations of the statutes and regulations within the Board's jurisdiction. The Board's current Disciplinary Guidelines contain four categories of violations as follows:

- Category I: Violations which are relatively minor, but are potentially harmful, or for repeated violations of a relatively minor nature
 - Minimum penalty: Revocation stayed, one to two years' probation
- Category II: Violations with a more serious potential for harm, for violations which involve greater disregard for chiropractic law and public safety, or for violations which reflect on ethics, care exercised, or competence
 - Minimum penalty: Revocation stayed, three years' probation
- Category III: Less egregious criminal convictions involving moral turpitude, sexual misconduct, or fraudulent acts committed in connection with the licensee's practice, or cases involving gross negligence/incompetence, capping, steering, accepting fees for patient referrals, excessive treatment, or failure to refer a patient to another licensed care provider
 - Minimum penalty: Revocation stayed, 30 days' suspension, five years' probation
- Category IV: More egregious cases including, but not limited to, fraudulent activity, physical violence, sexual misconduct, excessive treatment, or improper use of license in connection with sexual acts
 - Penalty: revocation

With the exception of Category IV, which specifies revocation as the penalty for more egregious violations of the identified statutes and regulations, the categories allow for "Optional terms and conditions, as applicable" and list all of the optional terms of probation under that statement. The challenge with this general categorization of violations is that it does not provide detailed guidance to the Executive Officer and deputy attorney general when negotiating stipulated settlements or to the administrative law judge when preparing a proposed decision.

At this meeting, the Committee will be asked to discuss the existing categorization of violations within the Disciplinary Guidelines (Attachment) and consider a proposal by

staff to replace these general categories with specific recommended penalties for each of the statutes and regulations within the Board's jurisdiction.

Attachment

- Excerpt of Board's Current [Disciplinary Guidelines and Model Disciplinary Orders](#) (pages 1-9)

Introduction

The Board of Chiropractic Examiners (hereinafter “the Board”) is a consumer protection agency with the primary mission of protecting consumers of chiropractic services from potentially harmful licensees. In keeping with its mandate to protect the affected population of consumers, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Chiropractic Act and/or California Code of Regulations.

The Board recognizes that these conditions are merely guidelines and the mitigating or aggravating circumstances in a particular case may necessitate variations. In such cases, the mitigating circumstances shall be detailed in any proposed decision or any transmittal memorandum accompanying a stipulation.

The Board has found that accusations are rarely filed except in serious cases. In general, the position of the Board is that revocation should always be an option whenever grounds for discipline are found to exist. Board policy is that revocation is always an appropriate order where a respondent is in default, such as when he or she fails to file a notice of defense or fails to appear at a disciplinary hearing.

The Board seeks recovery of all investigative and prosecution costs up to the hearing in all disciplinary cases, including all charges of the Office of the Attorney General including, but not limited to legal services and opinions of expert consultants, because the burden for paying for disciplinary cases should fall on those whose conduct requires investigation and enforcement, not upon the profession as a whole.

BOARD INFORMATION

Board of Chiropractic Examiners
901 P Street, Suite 142A
Sacramento, CA 95814
Phone: (916) 263-5355
Fax: (916) 327-0039

Disciplinary Guidelines

Factors to Be Considered in Determining Penalties

Section 10(b) of the Chiropractic Initiative Act provides that the Board may discipline the holder of, or suspend or revoke, any license issued by the Board.

In determining whether the minimum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. Actual or potential harm to the public.
2. Actual or potential harm to any consumer.
3. Prior disciplinary record, including level of compliance with disciplinary orders.
4. Prior warnings of record.
5. Number and/or variety of current violations.
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
7. Mitigating evidence.
8. Rehabilitation evidence.
9. Compliance with terms of any criminal sentence.
10. Overall criminal record.
11. Time passed since the act(s) or offense(s).
12. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
13. The financial benefit to the respondent from the misconduct.

No one of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

Terms of Probation

Probation conditions are divided into two categories: 1) standard conditions that shall appear in **all** probation cases, and 2) optional conditions that depend on the nature and circumstances of a particular case. The Board prefers that the optional conditions be placed before the standard conditions in sequence in the proposed disciplinary order.

The Board may also impose other conditions appropriate to the case as long as the condition is not contrary to public policy.

Standard Conditions - To be included in all probation decisions/orders.

1. Obey all laws
2. Quarterly reports
3. Probation monitoring
4. Interview with Board
5. Continuing education
6. Reimbursement of Board costs
7. Tolling of probation
8. No Preceptorships or Supervision of Interns
9. Violation of probation
10. Notification of employment
11. Notice to employers
12. Notice to employees
13. License surrender
14. Completion of probation

Optional Conditions

1. Actual suspension
2. Drugs - Abstain from use
3. Drug abuse counseling/detoxification
4. Alcohol - Abstain from use
5. Alcohol abuse counseling/detoxification
6. Blood and/or urine testing
7. Law Examination
8. SPEC Examination
9. Monitoring
10. Auditing of billing practices
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. Ethics Course
16. Education Course
17. Community service
18. Restricted practice
19. Third party presence - sexual transgressors
20. Notification to patients
21. Criminal Probation/Parole Reports

Categories of Violations and Recommended Penalties

The Chiropractic Initiative Act and the California Code of Regulations specify the offenses for which the Board may take disciplinary action. The following are categories of violations used by the Board in determining appropriate disciplinary penalties.

The Board also has the authority, pursuant to California Code of Regulations section 304, to impose discipline based on disciplinary action taken by another jurisdiction. The discipline imposed by the Board will typically correspond with the discipline imposed by the other jurisdiction for similar offenses.

CATEGORY I

Minimum: Revocation stayed; 1-2 years probation
Maximum: Revocation

All standard terms and conditions.
Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. Drug abuse counseling/detoxification
4. Alcohol - Abstain from use
5. Alcohol abuse counseling/detoxification
6. Blood and/or urine testing
7. Law Examination
8. SPEC Examination
9. Monitoring
10. Auditing of billing practices
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. Ethics Course
16. Education Course
17. Community service
18. Restricted practice
19. Third party presence - sexual transgressors
20. Notification to patients
21. Criminal Probation/Parole Reports

Recommended for the following violations which are relatively minor, but are potentially harmful, or for repeated violations of a relatively minor nature:

Chiropractic Initiative Act

- 5 Practicing without a valid license
- 10(b) Improper use of fictitious names

California Code of Regulations

- 303 Practicing without notifying Board of business address
- 308 Practicing without properly posting license; failure to obtain and post satellite office certificate
- 310 Change of name
- 310.2 Use of the title “Chiropractor” by unlicensed persons
- 312 Unlicensed practice (*for use in less egregious cases or for applicants*)
- 317(v) Waiving co-payments or deductibles
- 317(x) Substitution of a spinal manipulation for vaccination
- 367.5 Application for chiropractic corporation
- 367.7 Name of corporation
- 367.9 Shares: ownership and transfer

Business and Professions Code

- 1051 Application for registration as a chiropractic corporation

Health and Safety Code

- 123110 Failure to provide treatment records

CATEGORY II

Minimum: Revocation stayed, 3 years probation

Maximum: Revocation

All standard terms and conditions of probation

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. Drug abuse counseling/detoxification
4. Alcohol - Abstain from use
5. Alcohol abuse counseling/detoxification
6. Blood and/or urine testing
7. Law Examination
8. SPEC Examination
9. Monitoring
10. Auditing of billing practices
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. Ethics Course
16. Education Course
17. Community service
18. Restricted practice
19. Third party presence - sexual transgressors
20. Notification to patients
21. Criminal Probation/Parole Reports

Recommended for violations with a more serious potential for harm, for violations which involve greater disregard for chiropractic law and public safety, or for violations which reflect on ethics, care exercised or competence.

Chiropractic Initiative Act

10(b) Advertising treatment of sexual disorders

15 Misleading use of title

California Code of Regulations

306.1(c) Failure to appear for hearing

311 Advertising

312 Unlicensed practice (*for use in **more** egregious cases*)

317(l) Making or signing false documents

317(n)	Making false statement on the license application
317(p)	False, misleading, or deceptive advertising
317(r)	Unauthorized disclosure of patient information; failure to maintain confidentiality
317.1	Failure to register referral service
318(a)	Chiropractic patient records
318(b)	Accountable billings
319	Inappropriate billing for services advertised as free or discounted
355	Renewal and Restoration

Business and Professions Code

650.3	Group advertising and referral services
651	False, misleading, or deceptive advertising

CATEGORY III

Minimum: Revocation stayed, minimum 30 days suspension, 5 years probation
Maximum: Revocation

All standard terms and conditions of probation
Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. Drug abuse counseling/detoxification
4. Alcohol - Abstain from use
5. Alcohol abuse counseling/detoxification
6. Blood and/or urine testing
7. Law Examination
8. SPEC Examination
9. Monitoring
10. Auditing of billing practices
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. Ethics Course
16. Education Course
17. Community service
18. Restricted practice
19. Third party presence - sexual transgressors
20. Notification to patients
21. Criminal Probation/Parole Reports

Recommended for less egregious criminal convictions involving moral turpitude, sexual misconduct or fraudulent acts committed in connection with the licensee's practice. Also to be used in cases involving gross negligence/incompetence, capping, steering, accepting fees for patient referrals, excessive treatment or for failure to refer a patient to another licensed care provider.

Chiropractic Initiative Act

7 Unauthorized practice of medicine

California Code of Regulations

- 302(a) Practice exceeding the scope of practice
- 302(a)(5) Use of drug or medicine in materia medica
- 312(c) Failure to properly supervise
- 313 Inducing student to practice chiropractic
- 316(a) Responsibility for conduct on premises (*for use in less egregious cases*)
- 316(b) License used in connection with sexual acts (*for use in less egregious cases*)
- 316(c) Sexual relations with a patient (*for use in less egregious cases*)
- 317(a) Gross negligence (*for use in less egregious cases*)
- 317(b) Repeated negligent acts (*for use in less egregious cases*)
- 317(d) Excessive treatment (*for use in less egregious cases*)
- 317(e) Intentionally or recklessly causing harm to the public
- 317(f) Administering or use of drugs or alcohol
- 317(g) Conviction of a crime (*for use in less egregious cases, including fraud*)
- 317(h) Conviction involving moral turpitude, dishonesty, or corruption (*for use in less egregious cases, excluding fraud*)
- 317(i) Conviction involving dangerous drugs or alcohol
- 317(j) Dispensing or administration of drugs
- 317(k) Commission of dishonest or fraudulent act related to duties or functions of license
- 317(m) Aiding and abetting unlicensed activity
- 317(q) Obtaining fee by fraud or deceit
- 317(s) Use of cappers or steerers
- 317(t) Fee for referrals
- 317(w) Failure to refer a patient to other licensed health care provider

Business and Professions Code

- 1054 Name of a chiropractic corporation
- 1055 Officers of chiropractic corporation not licensed as required in Professional Corporation Act
- 725 Excessive prescribing or treatment (*for use in less egregious cases*)
- 726 Sexual relations with patients (*for use in less egregious cases*)
- 810 False or fraudulent claims (*for use in less egregious cases*)

CATEGORY IV

Penalty: Revocation

Recommended for **more egregious** cases including, but not limited to, fraudulent activity, physical violence, sexual misconduct, excessive treatment, or improper use of license in connection with sexual acts. Revocation is also recommended when: 1) respondent fails to file a notice of defense or to appear at a disciplinary hearing where the Board has requested revocation in the accusation; 2) respondent violates the terms and conditions of probation from a previous disciplinary order; and 3) where prior discipline has been imposed, as progressive discipline unless respondent can demonstrate satisfactory evidence of rehabilitation.

California Code of Regulations

- 316(a) Responsibility for conduct on premises
- 316(b) License used in connection with sexual acts
- 316(c) Sexual relations with a patient
- 317(a) Gross negligence
- 317(b) Repeated negligent acts
- 317(d) Excessive treatment
- 317(g) Conviction of a crime
- 317(h) Conviction involving moral turpitude, dishonesty, or corruption

Business and Professions Code

- 725 Excessive prescribing or treatment
- 726 Sexual relations with patients
- 810 False or fraudulent claims



**Agenda Item 5
March 2, 2023**

**Review, Discussion, and Possible Recommendation Regarding Proposed
Changes to the Record Keeping and Retention Requirements for Chiropractic
Patient Records (amend CCR, Title 16, section 318)**

Purpose of the Item

The Committee will discuss potential changes to the Board's current record keeping and retention requirements for chiropractic patient records.

Action Requested

The Committee will be asked to review and discuss the proposed language to amend California Code of Regulations (CCR), title 16, section 318, as well as the text that had previously been approved by the Board on April 16, 2015, and provide feedback and direction to staff as they continue the development of this regulation.

Background

At the April 16, 2015 Board meeting, the Board approved proposed text to amend CCR, title 16, sections 318 and 312.2 to implement consumer notice requirements after the death or incapacity of a licensee or the termination or relocation of practice, including guidelines for when a chiropractic practice closes and a Notice of Termination of Practice and Transfer of Records form (see Attachment 1). However, at that time, the Board did not commence the regulatory process and the pending regulatory proposal was placed on hold.

Over the past year, the Committee has discussed how the Board's current record keeping regulation – CCR, title 16, section 318 – does not: 1) delineate the necessary documentation for the patient history, complaint, diagnosis/analysis; and treatment; 2) differentiate between an initial patient encounter and established patient visit; or 3) address the handling of records upon the closure or sale of a practice or following the death or incapacitation of a licensee.

Staff prepared an initial draft of proposed language to amend CCR, title 16, section 318 to address the three issues identified by the Committee (see Attachment 2). Staff also incorporated a portion of the notice requirements that were contemplated by the Board in 2015.

At this meeting, the Committee is asked to review the text that was previously approved by the Board in 2015, as well as the updated draft proposed language to amend CCR, title 16, section 318, and engage in a policy discussion of the necessary notification

requirements to the Board and/or patients in the event of the death, incapacity, or retirement of a licensee or upon the closure or sale of a chiropractic practice.

Attachments

1. Proposed Text to Amend California Code of Regulations, Title 16, Sections 318 and 312.2, as Approved by the Board on April 16, 2015
2. Proposed Language to Amend California Code of Regulations, Title 16, Section 318 (Draft for Committee Discussion)

Proposed Text

§ 318. Chiropractic Patient Records/Consumer Notice Requirements After Death or Incapacity of Chiropractor or the Termination or Re-location of Practice/Accountable Billings.

(a) Chiropractic Patient Records. Each licensed chiropractor or the unlicensed heir, trustee, executor, administrator, conservator or personal representative acting pursuant to Section 312.2 is required to maintain all active and inactive chiropractic patient records for five years from the date of the doctor's last treatment of the patient unless state or federal laws require a longer period of retention. Active chiropractic records are all chiropractic records of patients treated within the last 12 months. Chiropractic patient records shall be classified as inactive when there has elapsed a period of more than 12 months since the date of the last patient treatment.

All chiropractic patient records shall be available to any representative of the Board upon presentation of patient's written consent or a valid legal order. Active chiropractic patient records shall be immediately available to any representative of the Board at the chiropractic office where the patient has been or is being treated. Inactive chiropractic patient records shall be available upon ten days notice to any representative of the Board. The location of said inactive records shall be reported immediately upon request.

Active and inactive chiropractic patient records must include all of the following:

- (1) Patient's full name, date of birth, and social security number (if available);
- (2) Patient gender, height and weight. An estimated height and weight is acceptable where the physical condition of the patient prevents actual measurement;
- (3) Patient history, complaint, diagnosis/analysis, and treatment must be signed by the primary treating doctor. Thereafter, any treatment rendered by any other doctor must be signed or initialed by said doctor;
- (4) Signature of patient;
- (5) Date of each and every patient visit;
- (6) All chiropractic X-rays, or evidence of the transfer of said X-rays;
- (7) Signed written informed consent as specified in Section 319.1.

(b) Within one (1) month from the date of termination of practice or the chiropractor's death or declared incompetency, the chiropractor who has terminated his or her practice, or the unlicensed heir, trustee, executor, administrator, conservator or personal representative of a deceased or incapacitated chiropractor, or the succeeding licensed chiropractor shall notify all active patients and the Board in writing of the termination of the licensed chiropractor's practice. This written notice to the Board shall also contain the location where the active chiropractic patient records can be found. Notice to the Board shall be provided on the form entitled "Notice of Termination of Practice and Transfer of Patient Records," (Form No. 318 (rev

04/15)), which is hereby incorporated by reference. Notice to active patients shall be provided via first class mail to the last known address. This notice shall be posted on the Board's website. Records shall be disposed of or destroyed in such a manner as to preserve the confidentiality of the information contained therein by shredding, erasing or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

(c) A licensed chiropractor who relocates his or her practice and will no longer be available to his or her former patients shall follow the procedures listed in subsection (b). A licensed chiropractor who relocates to a practice site no more than 20 miles away from any previous practice site shall notify the Board of his or her change of address to the Board in accordance with Section and, either provide written notice of such relocation one month prior to relocating to all active patients by first-class mail, or shall follow the procedures listed in subsection (b). If the patient was treated by more than one chiropractor, each treating chiropractor shall maintain a copy of the records unless otherwise agreed to, and notice shall be provided to the patient within 30 days.

(d) If a patient was younger than 18 years of age when last treated by a licensee, the chiropractic records of the patient shall be maintained until the patient reaches age 21 or for 5 years from the date of last treatment, whichever is longer.

(e) A licensed chiropractor who terminates his practice, places his or her license in an inactive status or their unlicensed heir, trustee, executor, administrator, conservator or personal representative acting pursuant to Section 312.2 or succeeding licensed chiropractor of a deceased or legally incompetent chiropractor shall refund any part of fees paid in advance that have not been earned within one month of the termination of practice or the transfer of the practice to a succeeding licensed chiropractor.

(f) Accountable Billings. Each licensed chiropractor is required to ensure accurate billing of his or her chiropractic services whether or not such chiropractor is an employee of any business entity, whether corporate or individual, and whether or not billing for such services is accomplished by an individual or business entity other than the licensee. In the event an error occurs which results in an overbilling, the licensee must promptly make reimbursement of the overbilling whether or not the licensee is in any way compensated for such reimbursement by his employer, agent or any other individual or business entity responsible for such error. Failure by the licensee, within 30 days after discovery or notification of an error which resulted in an overbilling, to make full reimbursement constitutes unprofessional conduct.

Note: Authority cited: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. 1xxxviii)), and section 1798.81 of the Civil Code. Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. 1xxxviii)), and section 1798.81 of the Civil Code.

§ 312.2. Ownership of Practice upon the Death or Incapacity of a Licensee.

In the event of the death of a chiropractic licensee, or the legal declaration of the mental incompetency of the licensee to practice, the unlicensed heirs, or trustees, executor, administrator, conservator or personal representative of the chiropractor must dispose of the practice within six (6) months. At all times during that period the practice must be supervised by a licensed chiropractor. The board will consider a petition to extend this period if it is submitted within four (4) months after the death or the declaration of incompetence of the licensee, including identification of any extenuating circumstances that will prevent compliance.

Note: Authority cited: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. 1xxxviii)). Reference: Sections 1000-7, 1000-10 and 1000-15, Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. 1xxxviii)).

DRAFT



GUIDELINES FOR WHEN A CHIROPRACTIC PRACTICE CLOSES

The following provides guidance to chiropractors regarding the closure of or departure from a chiropractic practice. For rules and regulations regarding the closing of a practice, please visit our website under "Rules and Regulations"; specifically sections 312.2 and 318 for details and further information.

It is the Board's position that due care should be exercised when closing or departing from a chiropractic practice, whether it is temporary or permanent. Not only does this ensure a smooth transition from the current chiropractor to the new chiropractor, but it also reduces the liability of "patient abandonment." Therefore, to ensure this occurs with a minimum of disruption in continuity of care, the chiropractor terminating the chiropractor-patient relationship should notify patients sufficiently in advance.

It is the patient's decision from whom to receive chiropractic care. Therefore, it is the responsibility of all chiropractors and other parties who may be involved to ensure that:

- Board Notification- Official notification to the Board of Chiropractic Examiners pursuant to CCR section 318.
- Website Notification- The D.C.'s website may reflect status of the practice, where patient records can be located and who to contact for information and/or chiropractic care. It is suggested the website stay active for at least 6 months.
- Voicemail- The D.C.'s main phone number should stay active for at least 6 months advising callers of the status of the practice, where patient records can be located and who to contact for information and/or chiropractic care.
- Electronic Mail (E-mail)- An e-mail notification may be sent out to any patients the practice holds an email address for. The e-mail should reflect status of the practice, where patient records can be located and who to contact for information and/or chiropractic care.
- Local Newspaper- An announcement in the local newspaper may be taken out to inform patients of the status of the practice, where patient records can be located and who to contact for information and/or chiropractic care.

Unlicensed individuals are not allowed to perform the services of a chiropractor; including owning and operating a chiropractic practice (CCR 312.1 & 312)



**NOTICE OF TERMINATION OF PRACTICE AND TRANSFER OF PATIENT
RECORDS**

California Code of Regulations - Section 318(b)

Chiropractic Practice Details

Licensee Name:		License Number: DC	
Practice Address of Record:			
City:	State:	Zip Code:c	
Phone:	Fax:	E-mail:c	

Termination Details

Date of Chiropractic Practice Closure:	
Address Where Patient Records Will be Maintained: c	
Contact Person For Patient Records:	Type of Designee:
Name: c	<input type="checkbox"/> Unlicensed Heirc
Address: c	<input type="checkbox"/> Trustee
Phone: c	<input type="checkbox"/> Executor
E-mail: c	<input type="checkbox"/> Administrator
	<input type="checkbox"/> Conservator
	<input type="checkbox"/> Personal Representative
	<input type="checkbox"/> Licensed Chiropractor (Successor)c License Number _____

Termination Reason

Date: c	
<input type="checkbox"/> Deathc	<input type="checkbox"/> Revocation/Disciplinary Action
<input type="checkbox"/> Declared Incompetent	<input type="checkbox"/> Retirement
Contact Name/Address/Phone of Declarant:	<input type="checkbox"/> Relocationc
_____	Address of New Chiropractic Office Location
_____	_____
<input type="checkbox"/> Other _____	

I confirm that all active patients have been notified via standard mail, to the last known address, of the practice closure.

I declare, under penalty of perjury, under the laws of the State of California that the foregoing is true, correct and complete to the best of my knowledge.

Signature of Terminating Chiropractor or Representative

Name of Terminating Chiropractor or Representative (Please Print)

Date: _____

**Proposed Language to Amend California Code of Regulations, Title 16,
Section 318**

§ 318. Chiropractic Patient Records/ and Accountable Billings.

(a) Creation of Chiropractic Patient Records and Required Content. Chiropractic patient records shall be contemporaneously and legibly documented during each patient encounter in the patient file. Each licensed doctor of chiropractic shall ensure the content of their records is accurate and supports all diagnoses, recommendations, treatments/services rendered, and billings.

At a minimum, the chiropractic patient file shall contain the following records:

- (1) The patient's full name, date of birth, and signature;
- (2) Signed written informed consent as specified in Section 319.1;
- (3) A key to any abbreviations used within the patient records;
- (4) Documentation of the initial patient visit, including the:
 - (A) Date and purpose of the visit;
 - (B) Patient history;
 - (C) Description of the patient's symptom(s) and/or complaint(s) in terms of onset, provocation/palliation, quality, region/radiation, severity, and time.
 - (D) Patient's gender, height, and weight;
 - (E) Patient's vital signs as clinically indicated;
 - (F) Diagnostic imaging and/or laboratory tests as clinically indicated;
 - (G) Examination and findings;
 - (H) Assessment and diagnosis with the applicable diagnosis code(s);
 - (I) Prognosis;
 - (J) Treatment plan, including any recommendations and/or orders;
 - (K) Any treatment(s) and/or service(s) provided with the applicable procedure code(s) and the patient's response; and

(L) The full name and signature of the doctor of chiropractic who examined the patient and developed the treatment plan.

(5) Documentation of any subsequent patient visit(s), including the:

(A) Date and purpose of the visit;

(B) Any changes in history and/or complaint(s) since the last visit;

(C) Assessment of any change(s) in the patient's condition since the last visit;

(D) Periodic reexamination as clinically indicated;

(E) Any modification to the treatment plan;

(F) The full name and either the signature or initials of the treating doctor of chiropractic.

(6) Any records and/or reports obtained from other health care providers, imaging facilities, or laboratories.

(7) Documentation of any correspondence and/or communications with the patient or with any other party regarding the patient, such as a legal representative, an insurance company, or another health care provider.

(ab) Retention of Chiropractic Patient Records. Each licensed chiropractor doctor of chiropractic is required to maintain all active and inactive chiropractic patient records for five (5) years from the date of the doctor's patient's last treatment of the patient visit, or at least three (3) years after the patient reaches the age of twenty-one (21), whichever occurs later, unless state or federal laws require a longer period of retention. Active chiropractic records are all chiropractic records of patients treated within the last twelve (12) months. Chiropractic patient records shall be classified as inactive when there has elapsed a period of more than twelve (12) months since the date of the last patient treatment.

All chiropractic patient records shall be available to any representative of the Board upon presentation of patient's written consent or a valid legal order. Active chiropractic patient records shall be immediately available to any representative of the Board at the chiropractic office where the patient has been or is being treated. Inactive chiropractic patient records shall be available upon ten (10) days' notice to any representative of the Board. The location of said inactive records shall be reported immediately upon request.

~~Active and inactive chiropractic patient records must include all of the following:~~

~~(1) Patient's full name, date of birth, and social security number (if available);~~

~~(2) Patient gender, height and weight. An estimated height and weight is acceptable where the physical condition of the patient prevents actual measurement;~~

~~(3) Patient history, complaint, diagnosis/analysis, and treatment must be signed by the primary treating doctor. Thereafter, any treatment rendered by any other doctor must be signed or initialed by said doctor;~~

~~(4) Signature of patient;~~

~~(5) Date of each and every patient visit;~~

~~(6) All chiropractic X-rays, or evidence of the transfer of said X-rays;~~

~~(7) Signed written informed consent as specified in Section 319.1.~~

(c) Disposal of Chiropractic Patient Records. A licensed doctor of chiropractic may dispose of chiropractic patient records through confidential destruction or permanent deletion after the minimum retention period specified in subdivision (b) has passed.

(d)(1) Transfer of Chiropractic Patient Records Due to Incapacity or Death of a Licensee. Each licensed doctor of chiropractic shall establish a plan for the transfer and maintenance of their chiropractic patient records for the minimum retention period specified in subdivision (b) in the event they become incapacitated, deceased, or otherwise unable to practice chiropractic.

(2) In the event a doctor of chiropractic becomes incapacitated, dies, or is or will be otherwise unable to practice, within thirty (30) days, the doctor of chiropractic's personal representative, succeeding doctor of chiropractic, heir, trustee, executor, administrator, or conservator shall provide written notice to the Board and to each patient by first class mail to the patient's last known address or by secure electronic message to the patient's last known email address. The notice shall contain the following information:

(A) A statement that the doctor of chiropractic is or will no longer practicing chiropractic and the date that the doctor ceased or will cease practicing;

(B) The name, mailing address, and contact information of the custodian of the patients' chiropractic patient records;

(C) Instructions for how the patient may access, inspect, or obtain a copy of their chiropractic patient records, including any fee for providing the records in accordance with Health and Safety Code section 123110, subdivision (j); and

(D) Instructions for how the patient may submit a claim for a refund for any prepaid treatment(s) and/or service(s) not rendered by the doctor of chiropractic prior to the termination of practice.

(e) Retirement or Sale or Closure of a Practice. In the event that a doctor of chiropractic plans to retire or sell or close their practice, the doctor of chiropractic shall establish a plan for the maintenance of their chiropractic patient records for the minimum retention period specified in subdivision (b) and provide written notice to the Board and to each

patient by first class mail to the patient's last known address or by secure electronic message to the patient's last known email address at least thirty (30) days prior to the date of retirement or sale or closure of the practice. The written notice shall contain the information specified in subdivision (d)(2)(A)–(D).

(b) Accountable Billings. Each licensed ~~chiropractor~~ doctor of chiropractic is required to ensure accurate billing of ~~his or her~~ their chiropractic services whether or not such chiropractor is an employee of any business entity, whether corporate or individual, and whether or not billing for such services is accomplished by an individual or business entity other than the licensee. In the event an error occurs which results in an overbilling, the licensee must promptly make reimbursement of the overbilling whether or not the licensee is in any way compensated for such reimbursement by ~~his~~ their employer, agent or any other individual or business entity responsible for such error. Failure by the licensee, within 30 days after discovery or notification of an error which resulted in an overbilling, to make full reimbursement constitutes unprofessional conduct.

Note: Authority cited: Section 4000-4(b), ~~Business and Professions Code (of the Chiropractic Initiative Act of California, (Stats. 1923, p. 4xxxviii)).~~ Reference: Section 4000-4(b), ~~Business and Professions Code (of the Chiropractic Initiative Act of California, (Stats. 1923, p. 4xxxviii))~~ and Section 123110 of the Health and Safety Code.



**Agenda Item 6
March 2, 2023**

**Review, Discussion, and Possible Recommendation Regarding the Authorized
Activities Performed by Unlicensed Individuals within a Chiropractic Practice
(amend CCR, Title 16, section 312)**

Purpose of the Item

The Committee will continue its policy discussion regarding the regulatory proposal concerning the activities that unlicensed individuals are permitted to perform within a chiropractic practice.

Action Requested

The Committee will be asked to discuss the proposal and requirements for chiropractic assistants in other states and provide feedback to staff.

Background

At the August 29, 2016 Board meeting, as part of a planned comprehensive Consumer Protection Enforcement Initiative (CPEI) regulatory package, the Board approved proposed language to amend California Code of Regulations (CCR), title 16, section 312 (Supervision of Unlicensed Individuals).

During the December 16, 2021 Board meeting, the Board voted to divide the CPEI regulation package into six proposals grouped by topic. Section 312 was separated and placed in a single topic proposal.

Amend CCR, Title 16, Section 312 (Supervision of Unlicensed Individuals)

The purpose of the proposal to amend CCR, title 16, section 312 is to clarify the role of and delineate the activities that can be performed by unlicensed individuals within a chiropractic practice, define and establish the supervision requirements by a licensed doctor of chiropractic, and require that unlicensed individuals follow and provide only the treatment defined in the supervising doctor of chiropractic's treatment plan.

At the December 9, 2022 meeting, the Committee discussed the proposed language that had been approved by the Board in 2016, the role of the supervising doctor of chiropractic in the preparation of the orders and treatment plan, and requirements for that licensee's physical presence at the facility. The Committee also discussed prohibiting former licensees whose licenses were revoked or surrendered from performing any unsupervised patient treatments and noted how the terms "work week" and "readily available" are too vague.

Supervision of Unlicensed Individuals

March 2, 2023

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Following the meeting, staff continued researching requirements for chiropractic assistants in other states. Staff notes that Rule 78.3 by the Texas Board of Chiropractic Examiners (Attachment 1) concisely summarizes the roles and responsibilities of the doctor of chiropractic and unlicensed individuals.

Staff also updated the proposed language to amend CCR, title 16, section 312 (Attachment 2) based on the Committee's discussion. The new changes are highlighted in yellow.

At this meeting, the Committee will be asked to review the summary of chiropractic assistant regulations in other states and continue the discussion regarding the proposal to amend CCR, title 16, section 312.

Attachments

1. Texas Administrative Code, Title 22, Part 3, Chapter 78, Rule 78.3 (General Delegation of Responsibility)
2. Proposed Language to Amend California Code of Regulations, Title 16, Section 312 (Draft for Committee Discussion)

External Research on Chiropractic Assistants

- [Chiropractic Assistant Regulations/Statutes/Policies Research](#) by Sarah Spardy, American University Washington College of Law (Posted on FCLB Website)

Texas Administrative Code

[TITLE 22](#)

EXAMINING BOARDS

[PART 3](#)

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

[CHAPTER 78](#)

SCOPE OF PRACTICE AND DELEGATION

RULE §78.3

General Delegation of Responsibility

-
- (a) "Qualified individual" means an unlicensed individual with adequate education, training, and skill to perform an act.
- (b) A licensee may not delegate responsibility to render a diagnosis, prescribe a treatment plan, or perform adjustments or manipulations under this section.
- (c) A licensee may delegate responsibility to a qualified individual to perform acts within the scope of practice, including:
- (1) taking a medical history;
 - (2) taking or recording vital signs;
 - (3) taking or recording range of motion measurements;
 - (4) performing physical treatments or modalities;
 - (5) demonstrating exercises or stretches;
 - (6) demonstrating the use of supports and devices; or
 - (7) performing radiological procedures.
- (d) A licensee shall document that an individual is qualified to perform an act.
- (e) A licensee may not allow an individual whose chiropractic license has expired or been suspended or revoked in any jurisdiction to treat a patient in any manner, including acts in subsection (c) of this section.
- (f) A licensee shall determine a reasonable number of qualified individuals a licensee can safely supervise.
- (g) A licensee shall be physically present or on-call when any qualified individual performs an act in subsection (c) of this section unless another licensee is physically present at the place of business or on-call.
- (h) "On-call" means a licensee must be available for voice consultation within 15 minutes.
- (i) A licensee shall differentiate on a patient's records between acts performed by the licensee and acts performed by a qualified individual.

Source Note: The provisions of this §78.3 adopted to be effective March 20, 2022, 47 TexReg 1455

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Proposed Language to Amend California Code of Regulations, Title 16,
Section 312

§ 312. Illegal Practice Supervision of Unlicensed Individuals.

(a) ~~Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. An “unlicensed individual” is defined as any person, including a student or graduate of a chiropractic institution, who does not hold a valid California chiropractic license.~~ This section shall not apply to the following:

(1) An individual licensed by another healing arts board under Division 2 of the Business and Professions Code and acting within the scope of their license; or

(2) An exemption is hereby created for A chiropractic student doctors participating in a board-approved preceptorship or postceptorship programs through a chiropractic college approved by the Board pursuant to Article 4, Section 330 et seq.

(b) The licensed doctor of chiropractic shall initially examine and prepare a written treatment plan for a patient prior to the provision of physiotherapy treatment. The unlicensed individual shall follow and provide only the treatment defined in the written plan.

(c) The permitted activities of unlicensed individuals are as follows:

~~(a1) Unlicensed individuals may take the history of a patient. However, this activity is separate from the consultation which at all times must be conducted by the licensed doctor. The licensed doctor of chiropractic must confirm the history with the patient and determine all appropriate evaluations, imaging, examinations and referrals.~~

~~(b2) Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations, except they may not perform such examinations which require diagnostic or analytic interpretations nor may they at the direction of the licensed doctor of chiropractic. Unlicensed individuals may not render a conclusion either verbally or in writing to a patient regarding the patient's physical condition. As an example, unlicensed individuals may not perform evaluations of heart or lung soundings. Such individuals shall be at all times under the immediate and direct supervision of a licensed Ddoctor of Cchiropractic.~~

~~“Immediate and dDirect supervision” means the licensed Ddoctor of Cchiropractic shall be at all times on the premises present in the same chiropractic facility where the examinations are being conducted. The licensed Ddoctor of Cchiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings.~~

(e3) Unlicensed individuals may administer physical physiotherapy treatments as an adjunct to chiropractic adjustment, provided the physical physiotherapy treatment is conducted as directed by the licensed doctor of chiropractic's written treatment plan and, at a minimum, under the adequate indirect supervision of a licensed Doctor of Chiropractic.

Adequate "Indirect supervision" means shall include all of the following:

(1) ~~The~~ licensed doctor of chiropractic shall be physically present in the same chiropractic facility with the unlicensed individual during at least ~~fifty~~ twenty-five percent (25%) of the facility's patient care hours each week any work week or portion thereof the said individual is on duty unless this requirement has been waived by the board. The licensed doctor of chiropractic shall be on-call and readily available to the said individual within fifteen (15) minutes by direct verbal communication at all other times for advice, assistance and instruction, unless another licensee is physically present at the facility or on-call.

(2) The doctor shall initially examine and prepare a written treatment program for a patient prior to the providing of physical therapy treatment by the unlicensed individual.

(34) The doctor shall provide perform periodic reevaluation of the patient and reassessment of the treatment plan and the patient's progress toward meeting treatment goals program and of the individual's performance in relation to the patient. "Periodic reevaluation" shall mean at least once every thirty (30) days the patient is under active care.

(4) The doctor shall perform and record an evaluation of the patient and his or her response to treatment at the termination thereof.

(d5) The licensed doctor of chiropractic is responsible for evaluating a radiographic image before any markings are added that obstruct portions of a body part. The licensed doctor of chiropractic may refer the evaluation of radiographic images to a radiologist. Following the licensed doctor of chiropractic's review of the radiograph, the Unlicensed individuals may mark X-ray films administered generated by a licensed Doctor of Chiropractic. "Marking X-rays" is defined as drawing and measuring between reference points and making angular and linear measurements. Unlicensed individuals are not permitted to make any diagnostic conclusions or chiropractic analytical listings, and ~~the~~ the licensed doctor of chiropractic is responsible for any pathological entities covered or obstructed by the markings.

(eb) Unlicensed individuals may not: administer

(1) Generate X-rays unless they hold a valid X-ray technician certificate from issued by the Department of Public Health Services, Radiologic Health Branch, or participate under the direct supervision of a licensed Doctor of Chiropractic in as part of a training program approved by that department and set forth in Section 25668.1 of the California Health and Safety Code. This prohibition, set forth in

Section 30403 of Title 17 of the California Administrative Code includes the following activities:

(4A) Positioning of patient;

(2B) Setting up of X-ray machines;

(3C) Pushing a button to generate a radiographic beam;

(4D) Developing of films. However, the Department of Public Health Services has determined that unlicensed individuals may develop X-ray film if that is their sole radiologic responsibility.

(2) Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. All preceptors student interns must be under the direct supervision of a licensed doctor of chiropractic.

(c) Unlicensed individuals who exceed the permitted scope of practice set forth in this regulation shall be in violation of Section 15 of the Chiropractic Act and shall be prohibited from applying for a California chiropractic license for such time as may be determined by the board. Student doctors participating in board approved preceptorship programs are not to be considered "unlicensed individuals" when working in said program.

(d) A former licensee of the Board, or of any healing arts board under Division 2 of the Business and Professions Code, whose license was revoked or surrendered through disciplinary action shall be prohibited from independently participating in any form of patient treatment or billing and must perform all activities within the facility under the direct supervision of a licensed doctor of chiropractic.

(e) A violation of this section shall constitute unprofessional conduct and may subject the licensee to disciplinary action.

NOTE: Authority cited: Section 4(b) of the Chiropractic Initiative Act of California (Stats. 1923, p. lxxxviii). Reference: Section 15 of the Chiropractic Initiative Act of California (Stats. 1923, p. lxxxviii) and Section 25668.1, California Health and Safety Code; Section 30403 of Title 17, California Administrative Code.



Agenda Item 7
March 2, 2023

Public Comment for Items Not on the Agenda

Purpose of the Item

At this time, members of the public may offer public comment for items not on the meeting agenda.

The Committee may not discuss or take action on any matter raised during this public comment section that is not included on the agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7, subd. (a).]



**Agenda Item 8
March 2, 2023**

Future Agenda Items

Purpose of the Item

At this time, members of the Committee and the public may submit proposed agenda items for a future Committee meeting.

The Committee may not discuss or take action on any proposed matter except to decide whether to place the matter on the agenda of a future meeting. [Government Code Section 11125.]



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • CALIFORNIA BOARD OF CHIROPRACTIC EXAMINERS
1625 N. Market Blvd., Suite N-327, Sacramento, CA 95834
P (916) 263-5355 | Toll-Free (866) 543-1311 | F (916) 327-0039 | www.chiro.ca.gov



Agenda Item 9
March 2, 2023

Adjournment

Time: _____