

State of California Board of Chiropractic Examiners



2011 Sunset Review Report

Prepared for
California Legislature
Senate Committee on Business,
Professions and Economic Development

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California State Board of Chiropractic Examiners

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Doctor of Chiropractic

Chair

Hugh Lubkin, D.C.

Doctor of Chiropractic

Vice Chair

Francesco Columbu D.C.

Doctor of Chiropractic

Secretary

Richard Tyler, D.C.

Doctor of Chiropractic

Jeffrey Steinhardt, D.C.

Doctor of Chiropractic

Vacant

Public Member

Vacant

Public Member

Executive Officer of the Board

Robert Puleo

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Board of Chiropractic Examiners

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of November 1, 2011

Section 1 – Background and Description of the Board and Regulated Profession

Provide a short explanation of the history and function of the board. Describe the occupations/profession that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

The Board of Chiropractic Examiners (BCE) was created on December 21, 1922, through an initiative measure approved by the electors of California on November 7, 1922. The BCE regulates the chiropractic profession in California. The BCE is committed to consumer protection and protects Californians from licensed and unlicensed individuals who engage in the fraudulent, negligent, or incompetent practice of chiropractic. The BCE oversees approximately 13,800 licensees and 19 chiropractic schools and colleges located throughout the United States and Canada.

Governed by a seven member board appointed by the Governor, the BCE is comprised of five licensed doctors of chiropractic and two members who represent the public. Board members serve four year terms.

The BCE is comprised of three units. The Administrative/Licensing Unit is responsible for licensee application and renewal processing, continuing education, administrative, and policy functions for the BCE. The two units within the BCE which are primarily responsible for enforcement are the Compliance Unit (CU) and the Field Investigations Unit (FIU). The CU handles complaint intake, conducts administrative investigations, recommends case dispositions to the executive officer and/or the compliance manager including those to be forwarded to the Attorney General for disciplinary action, issues letters of admonishment as well as citation and fines. The CU also serves as probation monitor to chiropractors whose licenses are on probation due to prior disciplinary action. The CU continues to refer approximately a quarter of its complaints received to the FIU. The FIU are non sworn investigators and they conduct a field administrative investigation to complete the case.

1. Describe the make-up and functions of each of the board's committees.

The BCE has eight standing committees. Each of these committees is comprised of at least two Board members and staff, who provide technical and administrative input and support. The Board Chair designates one member of each committee as the committee's chairperson. The chairperson coordinates the committee's work, ensures progress toward the BCE's priorities, and presents reports at each meeting.

Continuing Education Committee

The Committee recommends regulations for mandatory continuing education and overseeing the Continuing Education Program, which includes program administration, continuing education providers' evaluation, waiver requests review, and conducting regular at-random and continuing education audits.

Enforcement Committee

The Committee proposes regulations, policies, and standards to ensure compliance with chiropractic law and regulations. The Committee continuously seeks ways to improve the BCE's enforcement activities.

Government Relations Committee

The Committee continually reviews policies, procedures, budget, personnel, accounting, and departmental issues. The Committee proposes policies to address audit and Sunset review deficiencies.

Legislative/Regulation Committee

The Committee proposes regulations that enhance the BCE's role as a regulatory agency that protects the public. The committee reviews and recommends positions on bills that affect the BCE.

Licensing Committee:

The Committee proposes policies and standards regarding chiropractic colleges, doctors of chiropractic, and satellite offices.

Public Relations:

The Committee develops strategies to communicate with the public through various forms of media.

Scope of Practice:

The Committee reviews and proposes positions on scope of practice issues.

Strategic Planning:

The Committee develops draft strategic plans and monitors the BCE's progress in achieving goal and objectives.

Table 1a. Attendance			
Richard H. Tyler, D.C.			
Date Appointed:	2004		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 1, 2007	Sacramento	Y
Special Board Meeting & Board Meeting	March 23, 2007	Sacramento	Y
Board Meeting	April 19, 2007	Los Angeles	Y
Board Meeting	May 24, 2007	Sacramento	Y
Board Meeting	June 21, 2007	Hayward	Y
Board Meeting	August 16, 2007	San Diego	Y
Board Meeting	October 25, 2007	Sacramento	Y

Continuing Education Committee Meeting	November 1, 2007	Sacramento	Y
Board Meeting	November 27, 2007	Sacramento	Y
Board Meeting	January 10, 2008	Sacramento	Y
Board Meeting	March 27, 2008	Sacramento	Y
Continuing Education Committee Meeting	April 24, 2008	Sacramento	Y
Licensing Committee Meeting	April 24, 2008	Sacramento	Y
Strategic Planning Committee Meeting	May 22, 2008	Sacramento	Y
Board Meeting	May 22, 2008	Sacramento	Y
Licensing Committee Meeting	July 17, 2008	Sacramento	Y
Board Meeting	July 30-31, 2008	Whittier	Y
Licensing Committee Meeting	September 4, 2008	Sacramento	Y
Continuing Education Committee Meeting	September 4, 2008	Sacramento	Y
Continuing Education Committee Meeting	September 24, 2008	Sacramento	Y
Board Meeting	September 24-25, 2008	Sacramento	Y
Continuing Education Committee Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	January 8, 2009	Sacramento	Y
Board Meeting	March 26, 2009	Burbank	Y
Board Meeting	April 16, 2009	Sacramento	Y
Board Meeting	May 21, 2009	So San Francisco	Y
Continuing Education Committee Meeting	July 9, 2009	Sacramento	Y
Licensing Committee Meeting	July 9, 2009	Sacramento	Y
Board Meeting	July 30, 2009	Sacramento	Y
Special Board Meeting	September 10, 2009	Sacramento	Y
Board Meeting	September 24, 2009	Los Angeles	Y
Board Meeting	October 22, 2009	Sacramento	Y
Board Meeting	November 19, 2009	San Diego	Y
Board Meeting	January 21, 2010	Sacramento	Y
Board Meeting	February 18, 2010	Sacramento	Y
Board Meeting	March 18, 2010	Glendale	Y
Special Board Meeting	May 3, 2010	Sacramento	Y
Board Meeting	May 13, 2010	San Francisco	Y
Board Meeting	July 29, 2010	Sacramento	Y
Board Meeting	September 23, 2010	Sacramento	Y
Continuing Education Committee Meeting	October 21, 2010	Sacramento	Y
Special Board Meeting	November 4, 2010	Sacramento	Y
Special Board Meeting	November 18, 2010	Sacramento	Y
Board Meeting	December 2, 2010	Los Angeles	Y
Board Meeting	January 20, 2011	Sacramento	Y
Board Meeting	March 17, 2011	Los Angeles	N
Board Meeting	May 19, 2011	Sacramento	Y
Board Meeting	July 21, 2011	Los Angeles	Y
Board Meeting	September 15, 2011	Sacramento	Y

Judge James Duvaras, Ret.			
Date Appointed:	2005		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 1, 2007	Sacramento	Y
Special Board Meeting & Board Meeting	March 23, 2007	Sacramento	Y
Board Meeting	April 19, 2007	Los Angeles	Y
Board Meeting	May 24, 2007	Sacramento	Y
Board Meeting	June 21, 2007	Hayward	Y
Board Meeting	August 16, 2007	San Diego	N
Board Meeting	October 25, 2007	Sacramento	N
Board Meeting	November 27, 2007	Sacramento	Y
Board Meeting	January 10, 2008	Sacramento	Y
Board Meeting	March 27, 2008	Sacramento	Y
Enforcement Committee Meeting	April 24, 2008	Sacramento	Y
Licensing Committee Meeting	April 24, 2008	Sacramento	Y
Board Meeting	May 22, 2008	Sacramento	Y
Licensing Committee Meeting	July 17, 2008	Sacramento	Y
Board Meeting	July 30-31, 2008	Whittier	N
Board Meeting	September 24-25, 2008	Sacramento	Y
Board Meeting	November 20, 2008	Los Angeles	N
Board Meeting	January 8, 2009	Sacramento	Y

Francesco Columbu, D.C.			
Date Appointed:	2006		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 1, 2007	Sacramento	Y
Special Board Meeting & Board Meeting	March 23, 2007	Sacramento	Y
Board Meeting	April 19, 2007	Los Angeles	Y
Board Meeting	May 24, 2007	Sacramento	Y
Enforcement Committee Meeting	May 24, 2007	Sacramento	Y
Enforcement Committee Meeting	June 21, 2007	Hayward	Y
Board Meeting	June 21, 2007	Hayward	Y
Enforcement Committee Meeting	August 16, 2007	San Diego	Y
Board Meeting	August 16, 2007	San Diego	Y
Board Meeting	October 25, 2007	Sacramento	Y
Enforcement Committee Meeting	November 27, 2007	Sacramento	Y
Board Meeting	November 27, 2007	Sacramento	Y
Enforcement Committee Meeting	January 10, 2008	Sacramento	Y
Board Meeting	January 10, 2008	Sacramento	Y
Enforcement Committee Meeting	March 27, 2008	Sacramento	Y
Board Meeting	March 27, 2008	Sacramento	Y
Board Meeting	May 22, 2008	Sacramento	Y
Board Meeting	July 30-31, 2008	Whittier	Y
Board Meeting	September 24-25, 2008	Sacramento	Y

Board Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	January 8, 2009	Sacramento	Y
Legislation/Regulation Committee Meeting	January 8, 2009	Sacramento	Y
Board Meeting	March 26, 2009	Burbank	Y
Legislation/Regulation Committee Meeting	March 26, 2009	Burbank	Y
Board Meeting	April 16, 2009	Sacramento	Y
Board Meeting	May 21, 2009	So San Francisco	Y
Enforcement Committee Meeting	July 9, 2009	Sacramento	Y
Board Meeting	July 30, 2009	Sacramento	Y
Special Board Meeting	September 10, 2009	Sacramento	Y
Enforcement Committee Meeting	September 10, 2009	Sacramento	Y
Board Meeting	September 24, 2009	Los Angeles	Y
Board Meeting	October 22, 2009	Sacramento	Y
Board Meeting	November 19, 2009	San Diego	Y
Enforcement Committee Meeting	January 14, 2010	Sacramento	Y
Board Meeting	January 21, 2010	Sacramento	Y
Board Meeting	February 18, 2010	Sacramento	Y
Enforcement Committee Meeting	March 11, 2010	Burbank	Y
Board Meeting	March 18, 2010	Glendale	Y
Special Board Meeting	May 3, 2010	Sacramento	Y
Enforcement Committee Meeting	May 6, 2010	El Segundo	Y
Board Meeting	May 13, 2010	San Francisco	Y
Enforcement Committee Meeting	July 8, 2010	Sacramento	Y
Legislation/Regulation Committee Meeting	July 8, 2010	Sacramento	Y
Board Meeting	July 29, 2010	Sacramento	Y
Board Meeting	September 23, 2010	Sacramento	Y
Continuing Education Committee Meeting	October 21, 2010	Sacramento	Y
Special Board Meeting	November 4, 2010	Sacramento	N
Special Board Meeting	November 18, 2010	Sacramento	Y
Board Meeting	December 2, 2010	Los Angeles	Y
Enforcement Committee Meeting	December 2, 2010	Los Angeles	Y
Board Meeting	January 20, 2011	Sacramento	N
Board Meeting	March 17, 2011	Los Angeles	Y
Enforcement Committee Meeting	March 17, 2011	Los Angeles	Y
Legislation/Regulation Committee Meeting	May 12, 2011	Los Angeles	Y
Board Meeting	May 19, 2011	Sacramento	Y
Board Meeting	July 21, 2011	Los Angeles	Y
Board Meeting	September 15, 2011	Sacramento	N

James Conran			
Date Appointed:	2007		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 1, 2007	Sacramento	N
Special Board Meeting & Board Meeting	March 23, 2007	Sacramento	Y
Board Meeting	April 19, 2007	Los Angeles	Y
Board Meeting	May 24, 2007	Sacramento	Y
Legislative/Regulation Committee Meeting	May 24, 2007	Sacramento	Y
Legislative/Regulation Committee Meeting	June 15, 2007	Sacramento	Y
Board Meeting	June 21, 2007	Hayward	Y
Government Relations Committee Meeting	July 17, 2007	Sacramento	Y
Board Meeting	August 16, 2007	San Diego	Y
Government Relations Committee Meeting	September 11, 2007	Sacramento	Y
Board Meeting	October 25, 2007	Sacramento	Y
Board Meeting	November 27, 2007	Sacramento	Y
Board Meeting	January 10, 2008	Sacramento	Y
Board Meeting	March 27, 2008	Sacramento	Y
Government Relations Committee Meeting	March 27, 2008	Sacramento	Y
Government Relations Committee Meeting	May 7, 2008	Sacramento	Y
Public Relations Committee Meeting	May 7, 2008	Sacramento	Y
Board Meeting	May 22, 2008	Sacramento	Y
Government Relations Committee Meeting	July 17, 2008	Sacramento	Y
Public Relations Committee Meetings	July 17, 2005	Sacramento	Y
Board Meeting	July 30, 2008	Whittier	Y
Board Meeting	July 31, 2008	Whittier	N
Board Meeting	September 24, 2008	Sacramento	Y
Board Meeting	September 25, 2008	Sacramento	N
Board Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	January 8, 2009	Sacramento	Y

Hugh Lubkin, D.C.			
Date Appointed:	2007		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 1, 2007	Sacramento	Y
Special Board Meeting & Board Meeting	March 23, 2007	Sacramento	Y
Board Meeting	April 19, 2007	Los Angeles	Y
Board Meeting	May 24, 2007	Sacramento	Y
Enforcement Committee Meeting	May 24, 2007	Sacramento	Y
Legislation/Regulation Committee Meeting	May 24, 2007	Sacramento	Y
Government Relations Committee Meeting	May 24, 2007	Sacramento	Y
Legislation/Regulation Committee Meeting	June 15, 2007	Sacramento	Y
Enforcement Committee Meeting	June 21, 2007	Hayward	Y
Board Meeting	June 21, 2007	Hayward	Y
Government Relations Committee Meeting	July 17, 2007	Sacramento	Y
Scope of Practice Committee Meeting	July 17, 2007	Sacramento	Y
Enforcement Committee Meeting	August 16, 2007	San Diego	Y
Board Meeting	August 16, 2007	San Diego	Y
Government Relations Committee Meeting	September 11, 2007	Sacramento	Y
Board Meeting	October 25, 2007	Sacramento	Y
Enforcement Committee Meeting	November 27, 2007	Sacramento	Y
Continuing Education Committee Meeting	November 27, 2007	Sacramento	Y
Scope of Practice Committee Meeting	November 27, 2007	Sacramento	Y
Board Meeting	November 27, 2007	Sacramento	Y
Enforcement Committee Meeting	January 10, 2008	Sacramento	Y
Scope of Practice Committee Meeting	January 10, 2008	Sacramento	Y
Board Meeting	January 10, 2008	Sacramento	Y
Enforcement Committee Meeting	March 27, 2008	Sacramento	Y
Government Relations Committee Meeting	March 27, 2008	Sacramento	Y
Scope of Practice Committee Meeting	March 27, 2008	Sacramento	Y
Legislation/Regulation Committee Meeting	March 27, 2008	Sacramento	Y
Board Meeting	March 27, 2008	Sacramento	Y
Continuing Education Committee Meeting	April 24, 2008	Sacramento	Y
Enforcement Committee Meeting	April 24, 2008	Sacramento	Y
Government Relations Committee Meeting	May 7, 2008	Sacramento	Y
Scope of Practice Committee Meeting	May 7, 2008	Sacramento	Y
Board Meeting	May 22, 2008	Sacramento	Y
Scope of Practice Committee Meeting	July 17, 2008	Sacramento	Y
Government Relations Committee Meeting	July 17, 2008	Sacramento	Y
Board Meeting	July 30-31, 2008	Whittier	Y
Continuing Education Committee Meeting	September 4, 2008	Sacramento	Y
Licensing Committee Meeting	September 4, 2008	Sacramento	Y
Scope of Practice Committee Meeting	September 4, 2008	Sacramento	Y
Continuing Education Committee Meeting	September 24, 2008	Sacramento	Y

Board Meeting	September 24-25, 2008	Sacramento	Y
Scope of Practice Committee Meeting	November 18, 2008	Sacramento	Y
Continuing Education Committee Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	January 8, 2009	Sacramento	Y
Board Meeting	March 26, 2009	Burbank	Y
Board Meeting	April 16, 2009	Sacramento	Y
Scope of Practice Committee Meeting	April 30, 2009	Sacramento	Y
Government Relations Committee Meeting	April 30, 2009	Sacramento	Y
Board Meeting	May 21, 2009	So San Francisco	Y
Enforcement Committee Meeting	July 9, 2009	Sacramento	Y
Continuing Education Committee Meeting	July 9, 2009	Sacramento	Y
Board Meeting	July 30, 2009	Sacramento	Y
Special Board Meeting	September 10, 2009	Sacramento	Y
Enforcement Committee Meeting	September 10, 2009	Sacramento	Y
Board Meeting	September 24, 2009	Los Angeles	Y
Board Meeting	October 22, 2009	Sacramento	Y
Board Meeting	November 19, 2009	San Diego	Y
Government Relations Committee Meeting	November 19, 2009	Sacramento	Y
Enforcement Committee Meeting	January 14, 2010	Sacramento	Y
Board Meeting	January 21, 2010	Sacramento	Y
Board Meeting	February 18, 2010	Sacramento	Y
Enforcement Committee Meeting	March 11, 2010	Burbank	Y
Board Meeting	March 18, 2010	Glendale	Y
Scope of Practice Committee Meeting	March 18, 2010	Glendale	Y
Special Board Meeting	May 3, 2010	Sacramento	Y
Enforcement Committee Meeting	May 6, 2010	El Segundo	N
Board Meeting	May 13, 2010	San Francisco	N
Enforcement Committee Meeting	July 8, 2010	Sacramento	Y
Legislation/Regulation Committee Meeting	July 8, 2010	Sacramento	Y
Board Meeting	July 29, 2010	Sacramento	Y
Board Meeting	September 23, 2010	Sacramento	Y
Continuing Education Committee Meeting	October 21, 2010	Sacramento	Y
Special Board Meeting	November 4, 2010	Sacramento	Y
Special Board Meeting	November 18, 2010	Sacramento	Y
Board Meeting	December 2, 2010	Los Angeles	Y
Enforcement Committee Meeting	December 2, 2010	Los Angeles	Y
Board Meeting	January 20, 2011	Sacramento	Y
Scope of Practice Committee Meeting	February 24, 2011	Sacramento	Y
Board Meeting	March 17, 2011	Los Angeles	Y
Enforcement Committee Meeting	March 17, 2011	Los Angeles	Y
Board Meeting	May 19, 2011	Sacramento	Y
Board Meeting	July 21, 2011	Los Angeles	Y
Board Meeting	September 15, 2011	Sacramento	Y

Frederick N. Lerner, D.C.			
Date Appointed:	2007		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 1, 2007	Sacramento	Y
Special Board Meeting & Board Meeting	March 23, 2007	Sacramento	Y
Board Meeting	April 19, 2007	Los Angeles	Y
Board Meeting	May 24, 2007	Sacramento	Y
Legislation/Regulation Committee Meeting	May 24, 2007	Sacramento	Y
Government Relations Committee Meeting	May 24, 2007	Sacramento	Y
Legislation/Regulation Committee Meeting	June 15, 2007	Sacramento	N
Board Meeting	June 21, 2007	Hayward	Y
Government Relations Committee Meeting	July 17, 2007	Sacramento	Y
Scope of Practice Committee Meeting	July 17, 2007	Sacramento	Y
Board Meeting	August 16, 2007	San Diego	Y
Government Relations Committee Meeting	September 11, 2007	Sacramento	Y
Board Meeting	October 25, 2007	Sacramento	Y
Scope of Practice Committee Meeting	November 27, 2007	Sacramento	Y
Board Meeting	November 27, 2007	Sacramento	Y
Scope of Practice Committee Meeting	January 10, 2008	Sacramento	Y
Board Meeting	January 10, 2008	Sacramento	Y
Government Relations Committee Meeting	March 27, 2008	Sacramento	Y
Scope of Practice Committee Meeting	March 27, 2008	Sacramento	Y
Legislation/Regulation Committee Meeting	March 27, 2008	Sacramento	Y
Board Meeting	March 27, 2008	Sacramento	Y
Government Relations Committee Meeting	May 7, 2008	Sacramento	Y
Public Relations Committee Meeting	May 7, 2008	Sacramento	Y
Scope of Practice Committee Meeting	May 7, 2008	Sacramento	Y
Board Meeting	May 22, 2008	Sacramento	Y
Legislation/Regulation Committee Meeting	May 22, 2008	Sacramento	Y
Scope of Practice Committee Meeting	July 17, 2008	Sacramento	Y
Public Relations Committee Meeting	July 17, 2008	Sacramento	Y
Government Relations Committee Meeting	July 17, 2008	Sacramento	Y
Board Meeting	July 30-31, 2008	Whittier	Y
Scope of Practice Committee Meeting	September 4, 2008	Sacramento	Y
Board Meeting	September 24-25, 2008	Sacramento	Y
Scope of Practice Committee Meeting	November 18, 2008	Sacramento	Y
Board Meeting	November 20, 2008	Los Angeles	Y
Board Meeting	January 8, 2009	Sacramento	Y
Legislation/Regulation Committee Meeting	January 8, 2009	Sacramento	Y
Board Meeting	March 26, 2009	Burbank	Y
Legislation/Regulation Committee Meeting	March 26, 2009	Burbank	Y
Board Meeting	April 16, 2009	Sacramento	Y
Scope of Practice Committee Meeting	April 30, 2009	Sacramento	Y

Public Relations Committee Meeting	April 30, 2009	Sacramento	Y
Board Meeting	May 21, 2009	So San Francisco	Y
Board Meeting	July 30, 2009	Sacramento	Y
Special Board Meeting	September 10, 2009	Sacramento	Y
Public Relations Committee Meeting	September 10, 2009	Sacramento	Y
Board Meeting	September 24, 2009	Los Angeles	Y
Board Meeting	October 22, 2009	Sacramento	Y
Board Meeting	November 19, 2009	San Diego	Y
Government Relations Committee Meeting	November 19, 2009	Sacramento	Y
Board Meeting	January 21, 2010	Sacramento	Y
Board Meeting	February 18, 2010	Sacramento	Y
Enforcement Committee Meeting	March 11, 2010	Burbank	Y
Board Meeting	March 18, 2010	Glendale	Y
Public Relations Committee Meeting	March 18, 2010	Glendale	Y
Scope of Practice Committee Meeting	March 18, 2010	Glendale	Y
Special Board Meeting	May 3, 2010	Sacramento	Y
Enforcement Committee Meeting	May 6, 2010	El Segundo	Y
Board Meeting	May 13, 2010	San Francisco	Y
Enforcement Committee Meeting	July 8, 2010	Sacramento	Y
Public Relations Committee Meeting	July 8, 2010	Sacramento	Y
Legislation/Regulation Committee Meeting	July 8, 2010	Sacramento	Y
Board Meeting	July 29, 2010	Sacramento	Y
Board Meeting	September 23, 2010	Sacramento	Y
Special Board Meeting	November 4, 2010	Sacramento	Y
Special Board Meeting	November 18, 2010	Sacramento	Y
Board Meeting	December 2, 2010	Los Angeles	Y
Enforcement Committee Meeting	December 2, 2010	Los Angeles	Y
Board Meeting	January 20, 2011	Sacramento	Y
Scope of Practice Committee Meeting	February 24, 2011	Sacramento	Y
Board Meeting	March 17, 2011	Los Angeles	Y
Enforcement Committee Meeting	March 17, 2011	Los Angeles	Y
Legislation/Regulation Committee Meeting	May 12, 2011	Los Angeles	Y
Board Meeting	May 19, 2011	Sacramento	Y
Board Meeting	July 21, 2011	Los Angeles	Y
Board Meeting	September 15, 2011	Sacramento	Y

Martin Mariscal			
Date Appointed:	2009		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 26, 2009	Burbank	Y
Board Meeting	April 16, 2009	Sacramento	N
Government Relations Committee Meeting	April 30, 2009	Sacramento	Y
Public Relations Committee Meeting	April 30, 2009	Sacramento	Y

Board Meeting	May 21, 2009	So San Francisco	Y
Board Meeting	July 30, 2009	Sacramento	Y
Special Board Meeting	September 10, 2009	Sacramento	Y
Public Relations Committee Meeting	September 10, 2009	Sacramento	Y
Board Meeting	September 24, 2009	Los Angeles	Y
Board Meeting	October 22, 2009	Sacramento	N (Resigned)

Jeffrey Steinhardt, D.C.			
Date Appointed:	2009		
Meeting Type	Meeting Date	Meeting Location	Attended?
Board Meeting	March 26, 2009	Burbank	Y
Board Meeting	April 16, 2009	Sacramento	N
Government Relations Committee Meeting	April 30, 2009	Sacramento	Y
Public Relations Committee Meeting	April 30, 2009	Sacramento	Y
Board Meeting	May 21, 2009	So San Francisco	Y
Enforcement Committee Meeting	July 9, 2009	Sacramento	Y
Licensing Committee Meeting	July 9, 2009	Sacramento	Y
Board Meeting	July 30, 2009	Sacramento	Y
Special Board Meeting	September 10, 2009	Sacramento	Y
Board Meeting	September 24, 2009	Los Angeles	N
Board Meeting	October 22, 2009	Sacramento	Y
Board Meeting	November 19, 2009	San Diego	Y
Board Meeting	January 21, 2010	Sacramento	Y
Board Meeting	February 18, 2010	Sacramento	Y
Board Meeting	March 18, 2010	Glendale	Y
Public Relations Committee Meeting	March 18, 2010	Glendale	Y
Special Board Meeting	May 3, 2010	Sacramento	Y
Board Meeting	May 13, 2010	San Francisco	Y
Public Relations Committee Meeting	July 8, 2010	Sacramento	Y
Board Meeting	July 29, 2010	Sacramento	Y
Board Meeting	September 23, 2010	Sacramento	Y
Special Board Meeting	November 4, 2010	Sacramento	Y
Special Board Meeting	November 18, 2010	Sacramento	Y
Board Meeting	December 2, 2010	Los Angeles	Y
Board Meeting	January 20, 2011	Sacramento	Y
Board Meeting	March 17, 2011	Los Angeles	Y
Board Meeting	May 19, 2011	Sacramento	Y
Board Meeting	July 21, 2011	Los Angeles	Y
Board Meeting	September 15, 2011	Sacramento	Y

Table 1b. Board Member Roster

Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
David F. Yoshida, D.C.	2002		2006	Governor	Professional
Ronald G. Hayes, D.C.	2002		2006	Governor	Professional
Barbara A. Stanfield, D.C.	2003		2007	Governor	Professional
R. Michael Hamby, D.C.	2003		2008	Governor	Professional
Richard H. Tyler, D.C.	2004	2008	2012	Governor	Professional
Judge James Duvaras, Ret.	2005		2008	Governor	Public
Francesco Columbu, D.C.	2006	2010	2014	Governor	Professional
Jim Conran	2007		2009	Governor	Public
Hugh Lubkin, D.C.	2007	2010	2014	Governor	Professional
Frederick N. Lerner, D.C.	2007		2011	Governor	Professional
Martin Mariscal	2009**		2012	Governor	Public
Jeffrey Steinhardt, D.C.	2009		2012	Governor	Professional
Vacancy	2008*			Governor	Public
Vacancy	2009*			Governor	Public

*Vacant since

**Appointed Feb 2009 – Resigned Oct 2009

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?

No.

3. Describe any major changes to the board since the last Sunset Review, including:
- Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)
 - All legislation sponsored by the board and affecting the board
 - All proposed regulations initiated since the board’s last sunset review.

Internal Changes

At intake, the CU assigns a priority designation to a complaint such as Urgent, High and Routine. The urgent priority complaints are closely monitored. The CU also refers complaint evidence to expert reviewers for further analysis in certain cases. In order for the BCE to take action against a chiropractor’s license, the BCE must provide the allegations to a “clear and convincing” standard with the evidence. The recommendations from the CU to management range from taking no action due to insufficient evidence to filing an accusation to revoke or suspend the subject chiropractor’s license. In some cases, the CU recommends the issuance of citations and fines where formal administrative discipline isn’t warranted in a complaint’s disposition.

The CU also serves as probation monitor to chiropractors whose licenses are on probation due to prior discipline action. The CU has approximately 133 probationers being monitored. The probation monitor ensures the probationer is compliant with their probation. The CU will file a petition to revoke probation case if a probationer is not compliant with their probation terms.

Effective July 1, 2008, the BCE received budget authority to establish investigator positions. The Field Investigations Unit (FIU) is comprised of non sworn investigators; one supervising special investigator and three special investigators. The FIU investigates alleged law violations, serves investigative subpoenas and other administrative orders, and assist with probation monitoring. Additionally, the FIU will conduct field inspections of chiropractor probationers to determine if they are non compliant with their probation.

The BCE has been holding a series of Enforcement Committee Meetings to continue the ongoing top to bottom look at comprehensive enforcement strategies and/or reform. BCE wants to ensure cases are processed efficiently and with quality.

Recently Enacted Regulations:

Cite & Fine:

The citation and fine program was fully implemented with amendments to Sections 390, 390.1, 390.3, 390.4, 390.5 and the repeal of Section 390.2 which authorized the BCE to issue citations with fines for minor violations that would not warrant formal disciplinary action. Section 390.2 was repealed to allow the BCE to issue citations to licensees for all applicable laws and regulations governing the practice of chiropractic. These amendments became effective on August 1, 2008.

Quality Review Panel – Repeal:

Section 306.1 required the BCE to establish a Chiropractic Quality Review Panel (CQRP) and was repealed on April 2, 2009 due to the BCE's inability to comply with this requirement based on cost prohibitions and a limited scope of action. The BCE is able to perform enforcement functions in a more efficient and effective manner through the use of BCE staff, subject matter experts, in-house investigators, Department of Justice and the Office of the Attorney General.

Letter of Admonishment:

The BCE received authority to send letters of admonishment through the addition of Section 389 to the California Code of Regulations (CCR). This regulation provides the BCE with an informal method of enforcement for minor violations that do not rise to the level of citation or accusation in order to educate licensees and increase compliance with the BCE's laws and regulations. Section 389 became effective on April 3, 2009.

Manipulation Under Anesthesia:

The Standard of Care Regarding Manipulation Under Anesthesia (Section 318.1) was added to the CCR, which specifically defines the setting in which this procedure can be performed and the roles and duties of chiropractors vs. the anesthesiologist during this treatment. This regulation became effective on March 18, 2010.

Chiropractic Specialties:

BCE recognition of Chiropractic Specialties (Section 311.1) was added to the CCR in response to the Department of Industrial Relations Division of Workers Compensation regulations which required BCE recognition of specialties for purposes of the Qualified Medical Evaluator designation. This regulation became effective on April 15, 2010.

Law Violators – Technical Amendment:

Section 314 was amended due to a conflict between the regulation and the Administrative Procedures Act concerning ex-parte communications. This amendment became effective on June 26, 2010.

Fingerprint Submission:

Section 321.1 was added to the CCR to require electronic fingerprint submission from all licensees and applicants who have not previously submitted electronic fingerprints for licensure with the BCE or who no longer have records of electronic fingerprint submission on file and specifies a timeframe for compliance. This regulation became effective on January 14, 2011.

Continuing Education and Annual License Renewals:

Sections 355 – 360 were overhauled through changes to the enumeration as well as the content of each section (now Sections 360 – 366, and Sections 370 – 372). These changes increase the amount of hours required on an annual basis from 12 to 24 hours, expand the selection of courses and providers allowed for continuing education credit, and provide more specific detail on the BCE's annual license renewal process as it relates to continuing education and various license statuses. This regulation change also creates a separate Article designated specifically for Annual License Renewals. These regulations became effective on June 8, 2011.

Informed Consent:

Section 319.1 requires doctors of chiropractic to inform their patients of proposed procedures which present a material risk to the patient and obtain their verbal and written informed consent prior to providing the treatment. This section further requires the signed informed consent to become a part of the patient's record and defines a violation of this regulation as unprofessional conduct. This regulation became effective on October 7, 2011.

Proposed Regulations:

Omnibus Consumer Protection Regulations:

Would add or amend eight sections within the CCR (Sections 303, 304, 308, 317.2, 317.3, 321.1, 390.7, and 390.8) to provide the BCE with greater enforcement authority to monitor licensees and applicants in order to protect chiropractic consumers. This package was originally noticed on December 31, 2010 and withdrawn by the BCE. Subsequently, some of the provisions were stricken and the language was again noticed for a 45-day comment period on June 10, 2011. The BCE anticipates there will be changes to the language resulting in a 15-day comment period.

Patient Records:

Amendments have been proposed for CCR Section 318, Patient Records, to establish the BCE's current 5-year record retention requirement as a minimum requirement if other state or federal laws require a longer period of retention. The amendments to this section would also incorporate the BCE's newly adopted informed consent requirements into the patient record requirements.

Use of Lasers – Pending:

Would enact certain requirements and restrictions pertaining to the use of lasers by a chiropractor or under his/her supervision.

Petitioners – Pending:

Would establish a fee to petition the BCE for reinstatement of a revoked license or early termination of probation.

4. Describe any major studies conducted by the board.

- The BCE enacted regulations requiring a signed informed consent to become part of the patient's record. A power poll study was conducted by polling each state within the US in regards to specific questions concerning informed consent. This power poll assisted the BCE with enacting informed consent regulations.
- The BCE researched various states to determine if any state has laws or entertained the need for laws regarding the use of lasers in chiropractic medicine. The study has assisted the BCE in developing requirements and restrictions pertaining to the use of lasers. The BCE is in the process of promulgating regulations in this specific area.

5. List the status of all national associations to which the board belongs.

Federation of Chiropractic Licensing Boards
National Board of Chiropractic Examiners
Association of Chiropractic Board Administrators

- Does the board's membership include voting privileges?

Yes

- List committees, workshops, working groups, task forces, etc., on which board participates.

The BCE is the largest chiropractic regulatory board in the nation and is looked to as a leader by other chiropractic boards throughout the country. We have twice been recognized (most recently, in 2010) by the Federation of Chiropractic Licensing Boards for excellence in chiropractic regulation. We are proud of our achievements and make every effort to participate at the national level so that we can share our successes with, as well as learn from best practices of, other state chiropractic boards.

In prior years, our Board Vice-Chair had participated as the Chair of the Informed Consent Committee and a member of the Model Practices Committee. However, budgetary and travel restrictions have precluded the BCE from participating in all but a few major conferences in recent years.

Unfortunately, while the BCE is a member of the Federation of Chiropractic Licensing Boards, the National Board of Chiropractic Examiners, and the Association of Chiropractic Board Administrators, we are not currently able to actively participate on committees, focus groups, workshops, etc, coordinated by these entities. Maintaining a presence at the national level requires an allocation of staff and fiscal resources as well as the ability to travel to other states where events and meetings are being held.

- How many meetings did board representative(s) attend? When and where?

The three national associations hold a combined annual conference once a year in various locations throughout the US. The Executive Officer and one or two Board Members have attended past conferences in Juneau, Alaska (2007), Atlanta, Georgia (2008), Los Angeles, California (2009), and Baltimore, Maryland (2010). The BCE did not participate in 2011 or 2012 conferences due to travel restrictions.

- If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

BCE board members are actively involved in the development of various phases of the national examination testing process. Board members also participate in the administration of the test, as testers, to assure that the test offered meets the goals and desires of the BCE to promote public safety and quality education.

The BCE's vice chair served on the Part IV test committee in February 2011 and was invited to be part of the Part III test committee. He was an integral part of the Ethics and Boundaries testing development and is one of ten chiropractors in the US certified to grade the Ethics and Boundaries essay exam.

The national exam is psychometrically developed to assure quality testing, uniform testing, elimination of tester bias, and provide a structured, standardized fair and proven testing process to help assure the promotion of public safety. Board members also take part in the annual National Board of Chiropractic Examiners (NBCE) convention, which provides the BCE with oversight and input in the process and goals of the national exam, and board members can participate as officers in the NBCE structure, participate in a wide variety of subjects that collectively make up the NBCE as one of the top standardized and structured testing entities in the US.

Section 2 – Performance Measures and Customer Satisfaction Surveys

6. Provide each quarterly and annual performance measure report as published on the DCA website

The BCE serves directly under the Governor's Office and does not report to DCA. We do not participate in the contribution of the quarterly and annual performance measure reports.

7. Provide results for each question in the customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

Since the last Sunset Report, the BCE has not kept adequate statistic on the consumer satisfaction surveys. The BCE will begin conducting these surveys and keep updated statistics on the results.

**Section 3 –
Fiscal and Staff**

Fiscal Issues

8. Describe the board’s current reserve level, spending, and if a statutory reserve level exists.

Currently, the BCE has a total of \$3 million program expenditures with \$2 million reserve and no statutory reserve level exists.

9. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

FY 2012/2013, 2011/2012 and 2010/2011

- No BCPs

FY 2009/10

- Full-year cost adjustment of 2008/09 Enforcement Spring Finance Letter \$32K
- One-Time cost adjustment of 2008/09 Enforcement Spring Finance Letter -\$102K

FY 2008/09

- Enforcement Spring Finance Letter \$503K, 6.0 PYs

FY 2007/08

- No BCPs

10. Describe if/when deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes anticipated by the board.

The BCE has a healthy reserve and does not anticipate a deficit in the foreseeable future.

Table 2. Budget Change Proposals (BCPs) N/A

BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved
N/A								

Table 3. Fee Schedule and Revenue

Fee	Current Fee Amount	Statutory Limit	FY 2007/08 Revenue	FY 2008/09 Revenue	FY 2009/10 Revenue	FY 2010/11 Revenue	% of Total Revenue
Renewal Chiro License Fee	\$250.00	\$250.00	\$2,046,900.00	\$2,004,750.00	\$2,025,750.00	\$2,775,150.00	87%
Forfeiture Fee	\$250.00	\$250.00	\$34,200.00	\$39,750.00	\$44,400.00	\$49,500.00	1.6%
Renewal Satellite Certificate	\$5.00		\$7,655.00	\$7,505.00	\$10,335.00	\$13,280.00	0.3%
Renewal Corp Registration	\$10.00		\$11,650.00	\$12,250.00	\$12,390.00	\$12,590.00	0.4%
Application Fee	\$100.00	\$100.00	\$41,500.00	\$39,400.00	\$40,200.00	\$37,200.00	1.5%
Licensure Fee	\$100.00	\$100.00	\$29,400.00	\$33,600.00	\$42,000.00	\$30,700.00	1.3%
Corporation Application	\$100.00	\$100.00	\$17,600.00	\$14,180.00	\$9,800.00	\$10,200.00	0.5%
Reciprocity Application	\$25.00	\$25.00	\$450.00	\$600.00	\$350.00	\$550.00	0.01%
Referral Service Registration	\$25.00	\$25.00	\$50.00	\$25.00	\$100.00	\$0	0.001%
Continuing Education Provider Application	\$75.00	\$75.00	\$0	\$0	\$0	\$375.00	0.003%
Continuing Education Application	\$50.00	\$50.00	\$21,350.00	\$26,150.00	\$25,900.00	\$30,300.00	1%
Dup/Replacement License Fee	\$25.00		\$9,375.00	\$9,325.00	\$8,475.00	\$10,400.00	0.3%
Satellite Application Fee	\$5.00		\$4,890.00	\$7,180.00	\$9,450.00	\$8,045.00	0.2%
Fingerprint Reimbursements	\$51.00	\$51.00	\$4,368.00	\$5,514.00	\$3,993.00	\$4,335.00	0.1%
Miscellaneous	Various	Various	\$8,778.13	\$4,712.00	\$4,702.80	\$18,221.00	0.3%
Cost Recovery	Various	Various	\$81,767.55	\$72,569.93	\$95,863.52	\$126,834.66	3.7%
DGS Dishonored Check Fee	\$25.00	\$25.00	\$900.00	\$1,100.00	\$725.00	\$1,150.00	0.03%
DGS NSF Fee	\$10.00	\$10.00	\$360.00	\$440.00	\$290.00	\$460.00	0.01%
Cite and Fine	Various	Various	\$34,260.90	\$7,250.00	\$19,959.00	\$24,470.00	0.8%

Table 4. Fund Condition

(Dollars in Thousands)	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Beginning Balance	4,799	4,936	4,246	3,125	2,002	2,056
Revenues and Transfers	2,542	2,402	2,377	2,364	3,731	3,743
Total Revenue	\$2,542	\$ 2,402	\$ 2,377	\$ 2,364	\$ 3,731	\$ 3,743
Budget Authority	7,341	7,338	6,623	5,489	5,733	5,799
Expenditures	2,406	3,188	3,498	3,487	3,677	3,732
Fund Balance	\$ 4,935	\$ 4,150	\$ 3,125	\$ 2,002	\$ 2,056	\$ 2,067

11. Describe license renewal cycles and history of fee changes in the last 10 years.

Renewal cycles are annual. Although the BCE had not levied a license fee increase since 1991, Assembly Bill 1996 (Hill) increased the annual license renewal fee from \$150 to \$250.

12. Describe history of general fund loans. When were the loans made? When were payments made? What is the remaining balance?

In FY 2003/2004, a general fund loan was made for \$4 million and repaid in 2006/2007.

13. Describe the amounts and percentages of expenditures by program components. Use the attached Table 5a: Expenditures by Program Component Worksheet as the basis for calculating expenditures by program component. Expenditures by each component should be broken out by personnel expenditures and other expenditures.

Table 5. Expenditures by Program Component								
	FY 2007/08		FY 2008/09		FY 2009/10		FY 2010/11	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	484,814	875,799	822,002	1,306,184	860,511	1,423,856	978,811	1,371,759
Examination	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Licensing	484,814	875,798	411,001	653,092	430,255	711,928	489,405	685,880
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	\$969,628	\$1,751,597	\$ 1,233,003	\$1,959,276	\$ 1,290,766	\$2,135,784	\$1,468,216	\$2,057,639

Staffing Issues

14. Describe any staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.

Effective August 30, 2010, statewide hiring freeze was implemented which prohibited the BCE from filling any vacancies. At the time the freeze order was issued, the BCE was actively recruiting for one vacant Office Technician position and one vacant Special Investigator position. These vacancies were a result of employees transferring to other state agencies. Subsequently, a second Special Investigator accepted a position with another state agency, resulting in the BCE only having two Special Investigators (both in Northern California) and no investigators in Southern California. The hiring freeze is still in effect. However, in July 2011, the BCE received freeze exemption for the Office Technician position and one of the Special Investigator positions. The other Special Investigator position was lost due to Budget Letter 11-18, which required departments to align budgeted positions with reductions in dollars beginning July 1, 2011 and ongoing.

15. Describe the board's staff development efforts and how much is spent annually on staff development. Provide year-end organizational charts for the last four fiscal years.

The BCE spends approximately \$3,000 annually on staff training. The BCE provides its employees the resources/tools for upward mobility. The BCE's management provides coaching and mentoring for our employees in hope that the employee will demonstrate a desire to gain new knowledge, skills, and abilities in work to seek out the opportunities for upward mobility. The BCE encourages each employee to utilize the Department of Consumer Affairs' Training and Development Upward Mobility Program.

**Section 4 –
Licensing Program**

16. What are the board’s performance targets/expectations for its licensing program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

The BCE has no regulations stipulating the application processing time frames. The BCE has internal policies establishing time frames of 3 - 5 months to process new applications. The BCE is meeting the internal expectations with a 3½ months average processing time frame of new applications.

17. Describe any increase or decrease in average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

At the request of the Joint Legislative Audit Committee, the Bureau of State Audits (BSA) conducted an audit of the BCE in 2007/2008. It was found that the BCE had not established policies and procedures within its Licensing unit. Once those policies and procedures were in place and followed, processing time frames decreased. In FY 2007/2008, it took an average of 5 months to process applications. Presently, it takes on an average of 3½ months to process applications.

Table 6. Licensee Population					
		FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11
Doctor of Chiropractic	Active	13,816	13,812	13,901	13,810
	Out-of-State	1,260	1,211	1,201	1,155
	Out-of-Country	106	109	116	117
	Delinquent	1,145	1,029	1,024	1,123
Corporation	Active	1,320	1,337	1,305	1,314
	Out-of-State	3	4	2	2
	Out-of-Country	0	0	0	0
	Delinquent	386	490	597	671
Satellite Office	Active	2,360	2,772	3,521	3,765
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	957	1,415	1,762	2,250
Referral Service	Active	17	19	33	31
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	15	14	0	0

Table 7a. Licensing Data by Type											
Application Type		Received	Approved	Closed	Issued	Pending Applications			Cycle Times		
						Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2008/09	(Exam)	418	334	334	N/A	188	NDA	NDA	33 days	390 days	N/A
	(License)	336	336	336	336		NDA	NDA			N/A
FY 2009/10	(Exam)	416	432	432	N/A	140	NDA	NDA	24 days	311 days	N/A
	(License)	420	424	424	424		NDA	NDA			N/A
FY 2010/11	(Exam)	394	332	332	N/A	143	NDA	NDA	23 days	350 days	N/A
	(License)	307	322	322	322		NDA	NDA			N/A

* Optional. List if tracked by the board.

Table 7b. Total Licensing Data				
		FY 2008/09	FY 2009/10	FY 2010/11
Initial Licensing Data:				
Initial License/Initial Exam Applications Received		754	836	701
Initial License/Initial Exam Applications Approved		336	424	322
Initial License/Initial Exam Applications Closed		336	424	322
License Issued		336	424	322
Initial License/Initial Exam Pending Application Data:				
Pending Applications (total at close of FY)		188	140	143
Pending Applications (outside of board control)*		NDA	NDA	NDA
Pending Applications (within the board control)*		NDA	NDA	NDA
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE)				
Average Days to Application Approval (All - Complete/Incomplete)		161	94	96
Average Days to Application Approval (incomplete applications)*		390	311	350
Average Days to Application Approval (complete applications)*		33	24	23

* Optional. List if tracked by the board.

18. How does the board verify information provided by the applicant?

The BCE carefully reviews the official pre-chiropractic hours form from all BCE approved chiropractic colleges, attended by licensing applicants to ensure that all pre-chiropractic coursework has been completed prior to enrollment in their chiropractic college. In addition, we send our Chiropractic College Certificate to the chiropractic college attended by the applicant and require the college to fill in the number of hours completed in each required educational subject.

- a. What process is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?

The BCE requires all applicants to submit criminal background checks at the State and Federal levels.

b. Does the board fingerprint all applicants?

Yes

c. Have all current licensees been fingerprinted? If not, explain.

The BCE adopted regulations effective January 14, 2011 requiring electronic criminal background checks for all licensees. If licensees were initially licensed prior to January 1, 1997 or if the BCE does not already have a record of an electronic submission, they must submit their fingerprints via LiveScan.

d. Does the board check a national databank?

As originally drafted, the BCE's Omnibus Consumer Protection Regulations contained provisions requiring the BCE to annually check the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank prior to the issuance of a license or a renewal. However, the Department of Finance informed the BCE staff that it would not approve the proposed regulations because the cost of conducting the data bank checks would be \$46,391, initially, and \$90,350, ongoing, which cannot be absorbed within the BCE's existing budget appropriation. Therefore, the BCE withdrew this provision from the Omnibus Consumer Protection Regulations package and will pursue this authority in a separate regulation if we are able to get sufficient additional appropriation authority.

e. Does the board require primary source documentation?

Yes

19. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

Through the BCE's Act and Regulations, the BCE provides for reciprocal licensure for candidates licensed in other states. The candidate must have graduated from a BCE approved chiropractic college with the completion of the minimum number of hours and subjects as required by California law at the time the candidate's license was issued. Equivalent successful examination in each of the subjects examined in California in the same year as the candidate was issued a license in the state from which they are applying. They must hold a valid and up-to-date license from the state from which they are reciprocating. The state from which they are licensed must offer reciprocal licensure to California chiropractors. The candidate must have five (5) years of chiropractic practice.

The BCE does not have the authority to grant reciprocal licensure to applicants who are licensed in another country.

Continuing Education/Competency Requirements

20. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.

Recently, BCE has enacted regulations changing the continuing education requirements. These changes increase the amount of hours required on an annual basis from 12 to 24 hours, expand the selection of courses and providers allowed for continuing education credit, and provide more specific detail on the BCE's annual license renewal process as it relates to continuing education and various license statuses. This regulation change also gives licensee more flexibility options by allowing credit for distance learning and continuing education credits approved by other healing arts boards.

a. How does the board verify CE or other competency requirements?

The BCE relies on yearly renewal slip self certification and has regulatory authority to conduct random audits to verify compliance.

b. Does the board conduct CE audits on its licensees? Describe the board's policy on CE audits.

The BCE has regulatory authority to conduct random audits to verify compliance. Regulations provide that a licensee shall retain documents of completion of continuing education courses for a period of four years and shall provide proof upon the BCE's request. The BCE conducts approximately 900 – 1,000 random audits per year.

c. What are consequences for failing a CE audit?

If a licensee furnishes false/misleading information or fails to complete the required continuing education requirements, they will be subject to disciplinary action which would range from an educational letter, citation and fine, and/or the most severe, administrative discipline.

d. How many CE audits were conducted in the past four fiscal years? How many fails?

Approximately 900 – 1,000 continuing education random audits were conducted each year in the past four fiscal years with a total of 68 fails.

e. What is the board's course approval policy?

The BCE regulations require each course application to include four documentations to be submitted: an hourly breakdown of the continuing education course; a final copy of the syllabus/course schedule with specifics included; a copy of the course brochure and all other promotional material to be used; and, curriculum vitae of each instructor. Staff will review, verify and analyze all documentation. Once complete, course applications will be submitted to the manager for review, approval/denial. Once approved, a notification letter is sent to the provider.

- f. Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?

Continuing Education provider applications are reviewed then approved by BCE staff for completeness. The full Board will ratify any provider application approvals granted by staff at a subsequent Board meeting.

- g. How many applications for CE providers and CE courses were received? How many were approved?

CE Providers:	<u>2007/2008</u>	<u>2008/2009</u>	<u>2009/2010</u>	<u>2010/2011</u>
Received:	6	11	14	7
Approved:	6	4	6	7

CE Courses:	<u>2007/2008</u>	<u>2008/2009</u>	<u>2009/2010</u>	<u>2010/2011</u>
Received:	425	485	581	605
Approved:	421	474	491	538

- h. Does the board audit CE providers? If so, describe the board's policy and process.

Continuing education courses and providers are selected for an audit on a random basis or as a result of a compliance complaint. An expert reviewer or a designee appointed by the BCE shall have the right to inspect or audit any approved continuing education course or provider. The continuing education audit guidelines and requirements are followed during the audit. A report is generated detailing the findings of the audit. If violations are alleged, a complaint is opened and investigated.

- i. Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensees' continuing competence.

Recently, the BCE has enacted regulations changing the continuing education requirements. These changes increase the amount of hours required on an annual basis from 12 to 24 hours, expand the selection of courses and providers allowed for continuing education credit, and provide more specific detail on the BCE's annual license renewal process as it relates to continuing education. The BCE based the increases and expansions of continuing education requirements/courses on the areas where violations were most egregious.

The BCE has regulatory authority to conduct random audits to verify compliance and consequences for failing would range from an educational letter, citation and fine, and/or the most severe, administrative discipline.

BCE has not implemented continuing education competence assessments since the profession is specialized.

Table 8. Examination Data			
California Examination (include multiple language) if any:			
		License Type	Doctor of Chiropractic
		Exam Title	California Law & Professional Practice Examination
FY 2007/08	# of 1 st Time Candidates		228
	Pass %		59%
FY 2008/09	# of 1 st Time Candidates		239
	Pass %		62%
FY 2009/10	# of 1 st Time Candidates		293
	Pass %		65%
FY 2010/11	# of 1 st time Candidates		237
	Pass %		68%
		Date of Last OA	2004
		Name of OA Developer	HZ Assessments
		Target OA Date	2012
National Examination (include multiple language) if any:			
		License Type	Doctor of Chiropractic
		Exam Title	National Board of Chiropractic Examiners Parts I, II, III, IV and Physiotherapy (Nation- Wide) National Board of Chiropractic Examiners Parts I, II, III, IV and Physiotherapy (California Only)
FY 2007/08	# of 1 st Time Candidates		12,380 1,718
	Pass %		74.5% 67.7%
FY 2008/09	# of 1 st Time Candidates		13,264 1,671
	Pass %		75.6% 70.2%
FY 2009/10	# of 1 st Time Candidates		12,900 1,573
	Pass %		75.9% 73.6%
FY 2010/11	# of 1 st time Candidates		12,557 1,577
	Pass %		74.3% 72.8%
		Date of Last OA	2010
		Name of OA Developer	National Board of Chiropractic Examiners
		Target OA Date	2015

Examinations

21. Describe the examinations required for licensure. Is a national exam used? Is there a California specific exam required?

Both National and California specific examinations are required.

22. What are pass rates for first time vs. retakes in the past 4 fiscal years? (Refer to Table 8: Exam Data)

The California specific examination does not capture retake statistics, only provides first time candidates pass and fails.

23. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?

BCE utilizes computer based testing for its California specific examination, which is available throughout the year in various locations throughout the US. The National exam is not computer based and is administered in Spring and Fall each year at various locations throughout the US. It is offered at three sites in California: Whittier, San Jose and Hayward.

24. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

No.

School approvals

25. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?

The BCE regulations define the requirements needed to approve schools. Schools need to demonstrate that they meet the following requirements: supervision, financial management, records, catalog, calendar, faculty, student faculty ratio, faculty organization, scholastic regulations, curriculum, physical facilities, and quality of instruction. BPPE does not play a role in approving the BCE schools. BCE's regulation states that no school shall be approved until it has been inspected by the Council of Chiropractic Education (CCE). The CCE is the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the doctor of chiropractic degree.

26. How many schools are approved by the board? How often are schools reviewed?

The BCE has 19 BCE approved schools. The BCE regulation provides for reviews and inspections to be conducted by the CCE. CCE has established requirements to inspect/review schools on an eight year cycle for established schools and four year cycle for schools gaining initial accreditations. Typically, established schools site visits occur at the four year mark, halfway through the cycle.

27. What are the board's legal requirements regarding approval of international schools?

No school shall be approved, within the United State or internationally, until it has been in operation for at least two years, meets all regulatory requirements and is inspected by the CCE.

Section 5 – Enforcement Program

28. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

Since the last Sunset Report, the BCE overhauled its enforcement program. Cases are being work vigorously and the average time to close has significantly decreased. Although the number of administrative cases has remained steady, the average days to complete have significantly dropped.

29. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

Since the last Sunset Review, the BCE has streamlined enforcement efforts to clear minor complaints more efficiently and expeditiously. The BCE's establishment of a Field Operations Unit and a Cite and Fine Program has cut the number of pending complaints in half, and reduced the average age of pending cases from approximately 14 months in FY 2008/09 to less than 6 months in FY 2010/11.

The BCE established its Field Operations Unit in 2008, to investigate alleged law violations, conduct compliance inspections, assist with probation monitoring, and collaborate with other state and local law enforcement agencies on enforcement-related matters. The unit's three full-time investigators are dedicated exclusively to the needs of the BCE, and receive extensive training and education in all aspects of administrative investigations, the disciplinary process, and the equipment used in a typical chiropractic office.

Minor and technical violations are addressed through the BCE's Cite and Fine Program which enables the BE to issue monetary fines of up to \$5,000 per violation. With the implementation of this program, the BCE has the option of issuing a citation with or without a fine to quickly address less serious law violations without taking formal disciplinary against the licensee. The BCE does not consider a citation with or without a fine as disciplinary action. However, the BCE posts citations on its Web site. Citations are subject to public disclosure under the California Public Records Act.

In 2009, the BCE adopted regulations authorizing the BCE to issue a Letter of Admonishment (LOA) to a licensee for minor violations of California chiropractic laws and regulations. The LOA explains and addresses minor violations of the law, without adversely affecting the status of chiropractor's license. This enforcement tool enables licensees to correct minor violations.

Table 9a. Enforcement Statistics			
	FY 2008-09	FY 2009-10	FY 2010-11
COMPLAINT			
Intake (Use CAS Report EM 10)			
Received	655	519	497
Closed	1053	734	601
Referred to INV	329	459	426
Average Time to Close	418	270	144
Pending (close of FY)	410	203	137
Source of Complaint (Use CAS Report 091)			
Public	336	263	260
Licensee/Professional Groups	56	26	26
Governmental Agencies	110	79	72
Other	26	25	6
Conviction / Arrest (Use CAS Report EM 10)			
CONV Received	107	88	82
CONV Closed	117	88	84
Average Time to Close	86	21	29
CONV Pending (close of FY)	44	46	41
LICENSE DENIAL (Use CAS Reports EM 10 and 095)			
License Applications Denied	1	0	0
SOIs Filed	1	3	4
SOIs Withdrawn	0	2	1
SOIs Dismissed	2	0	0
SOIs Declined	0	0	0
Average Days SOI	338	747	740
ACCUSATION (Use CAS Report EM 10)			
Accusations Filed	74	82	68
Accusations Withdrawn	3	14	7
Accusations Dismissed	1	2	2
Accusations Declined	8	6	5
Average Days Accusations	1648	1070	885
Pending (close of FY)	103	117	130

Table 9b. Enforcement Statistics (continued)			
	FY 2008-09	FY 2009-10	FY 2010-11
DISCIPLINE			
Disciplinary Actions (Use CAS Report EM 10)			
Proposed/Default Decisions	16	25	17
Stipulations	11	27	27
Average Days to Complete	1141	1298	1240
AG Cases Initiated	94	84	80
AG Cases Pending (close of FY)	103	146	135
Disciplinary Outcomes (Use CAS Report 096)			
Revocation	10	18	17
Voluntary Surrender	2	7	9
Suspension	0	0	0
Probation with Suspension	7	8	9
Probation	4	20	26
Probationary License Issued	0	7	3
Other	0	0	0
PROBATION			
New Probationers	47	42	33
Probations Successfully Completed	28	17	22
Probationers (close of FY)	140	134	138
Petitions to Revoke Probation	15	15	13
Probations Revoked	4	4	2
Probations Modified	6	1	0
Probations Extended	6	1	0
Probationers Subject to Drug Testing	44	42	26
Drug Tests Ordered	3	0	16
Positive Drug Tests	0	0	0
Petition for Reinstatement Granted	4	1	2
*DIVERSION			
New Participants	n/a	n/a	n/a
Successful Completions	n/a	n/a	n/a
Participants (close of FY)	n/a	n/a	n/a
Terminations	n/a	n/a	n/a
Terminations for Public Threat	n/a	n/a	n/a
Drug Tests Ordered	n/a	n/a	n/a
Positive Drug Tests	n/a	n/a	n/a

*The BCE does not have governing laws for a diversion program.

Table 9c. Enforcement Statistics (continued)			
	FY 2008-09	FY 2009-10	FY 2010-11
INVESTIGATION			
All Investigations (Use CAS Report EM 10)			
First Assigned	679	523	509
Closed	1053	726	597
Average days to close	409	270	205
Pending (close of FY)	428	225	137
Desk Investigations (Use CAS Report EM 10)			
Closed	976	602	467
Average days to close	420	224	119
Pending (close of FY)	293	126	100
Non-Sworn Investigation (Use CAS Report EM 10)			
Closed	77	124	130
Average days to close	264	495	515
Pending (close of FY)	135	99	37
*Sworn Investigation			
Closed (Use CAS Report EM 10)	n/a	n/a	n/a
Average days to close	n/a	n/a	n/a
Pending (close of FY)	n/a	n/a	n/a
COMPLIANCE ACTION (Use CAS Report 096)			
ISO & TRO Issued	0	1	1
PC 23 Orders Requested	3	4	0
Other Suspension Orders	0	0	0
Public Letter of Reprimand	0	0	2
**Cease & Desist/Warning * LOA	n/a	5	4
***Referred for Diversion	n/a	n/a	n/a
Compel Examination	0	0	1
CITATION AND FINE (Use CAS Report EM 10 and 095)			
Citations Issued	41	78	47
Average Days to Complete	348	208	156
Amount of Fines Assessed	\$20,300.00	\$29,700.00	\$14,250.00
Reduced, Withdrawn, Dismissed	3	8	5
Amount Collected	\$12,250.00	\$20,900.00	\$8,800.00
CRIMINAL ACTION			
Referred for Criminal Prosecution	0	0	1

*The BCE does not employ sworn investigators.

**The BCE issues "Letters of Admonishment".

For failure to comply with laws and regulations governing the practice of chiropractic in California, the Executive Officer at the BCE or his or her designee is authorized to issue Letters of Admonishment pursuant to Sections 1000-4(b), 1000-10, 125.9 of the Business and Professions Code and the Chiropractic Initiative Act of California.

***The BCE does not have governing laws for a diversion program.

Table 10. Enforcement Aging

	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year	14	22	33	20	89	35.6
2 Years	17	3	25	43	88	35.2
3 Years	2	11	5	7	25	10
4 Years	0	6	10	0	16	6.4
Over 4 Years	7	26	22	22	77	30.8
Total Cases Closed	40	68	95	92	295	118
Investigations (Average %)						
Closed Within:						
90 Days	150	290	316	310	1066	426.4
180 Days	82	129	120	113	444	177.6
1 Year	135	149	110	79	473	189.2
2 Years	221	296	127	59	703	281.2
3 Years	71	133	34	17	255	102
Over 3 Years	25	76	27	23	151	60.4
Total Cases Closed	684	1073	734	601	3092	1236.8

30. What do overall statistics show as to increases or decreases in disciplinary action since last review.

In the last 2 fiscal years, the enforcement statistics reveal a vigorous program in that administrative actions nearly doubled over prior fiscal years. While cases are actively being worked, they are not becoming exceedingly aged therefore complaint case backlogs have significantly decreased.

The BCE has the ability to issue both non disciplinary and disciplinary actions based upon complaint information received, the outcome of an investigation, and/or the severity of the violation. Letters of admonishment and citation and fines are non disciplinary outcomes. However, the BCE issues these at times as a progressive discipline approach for violations of the Act and/or regulations and these actions do become a matter of public record. More citation and fines have been issued during the fiscal years of 2009/2010 than in prior fiscal years.

Of the 2,300 complaints with enforcement determinations over the prior fiscal years, our administrative actions taken in those cases grew from 10% to over 23% whether or not a non disciplinary or disciplinary outcome was reached. License revocations including those with stays-suspensions or probation continue to be common determinations as often as citation outcomes. Roughly 71 reached the disciplinary adjudication stage for fiscal year 2008/2009; 144 in 2009/2010 and 115 in 2010-2011. As for Statement of Issues, 21 cases (applicants) received a probationary license and one denied licensure within the last four fiscal years.

Fiscal Year	07/08	08/09	09/10	10/11
Complaints				
Letter of Admonishment	n/a	n/a	5	4
Citations and Fines Issued (Total Fine Amount)	28	41(\$19,200)	78(\$25,700)	47(\$12,700)
Accusations				
Revoked	8	10	18	17
Revocation Stayed: Probation	10	4	20	26
Revocation Stayed: Suspension and Probation	10	7	8	9
Suspension	0	0	0	0
Suspension Stayed: Probation	0	0	1	0
Suspension and Probation	0	2	0	0
Voluntary Surrender of License	2	2	7	9
Dismissed/Withdrawn	3	5	18	10
Statement of Issues				
Denied	0	1	0	0
Probationary License	7	4	7	3
Withdrawn at Applicant's Request	1	0	0	0

31. How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's model? If so, explain why.

Urgent cases are reviewed by a Compliance Unit (CU) analyst within two (2) business days. High priority cases are reviewed by a CU analyst within ten (10) business days and Routine cases are reviewed by a CU analyst within ten (10) business days. See Guidelines for Prioritizing Complaints.

32. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report any actions taken against the licensee. Are there problems with receiving the required reports? If so, what could be done to correct the problems?

Yes. Business and Professions Code Sections 801, 802 and 803 require specific parties to report malpractice settlements awarded if over \$3,000. The BCE receives on an average of 14 notifications each year pursuant to 801, 802 and 803 reporting requirements. We are not aware of any problems receiving these reports.

33. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases were lost due to statute of limitations? If not, what is the board's policy on statute of limitations?

No. BCE does not have a statute of limitations; however California Code of Regulations Section 318(a) only requires chiropractors to maintain patient records for five (5) years from the last treatment date.

Cite and Fine

34. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and last time regulations were updated. Has the board increased its maximum fines to the \$5,000 statutory limit?

The BCE's citation and fine program went into effect in 2008. The BCE regulations allow the ability to attach fines to issued citations with the maximum fine of \$5,000. An order of abatement is attached with the issued citation to educate, require and monitor compliance.

If citation fines are unpaid, the BCE has the ability to utilize the Interagency Intercept Collections Program (Intercept). This program is administered by the Franchise Tax Board (FTB) and works directly with the State Controllers Office (SCO) to deliver the funds to the participating agencies. The monies are intercepted from the debtors, via lottery winnings and tax refunds. The BCE will allow for a repayment plan in extenuating circumstances.

35. How is cite and fine used? What types of violations are the basis for citation and fine?

The BCE is authorized to impose citations and fines upon any individuals found to be in violation of any law or regulation governing the practice of chiropractic in California. A citation or citation with fine is used to address less serious violations which are technical or minor in nature.

36. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals in the last 4 fiscal years?

There have been 24 conferences and/or reviews in the last 4 fiscal years.

37. What are the 5 most common violations for which citations are issued?

The 5 most common violations are; failure to maintain records, failure to provide records, failure to comply with a continuing education audit, failure to file current practice address with the BCE, and unlicensed practice.

38. What is average fine pre and post appeal?

The average fine pre appeal is \$596 and the average fine post appeal is \$400.

39. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

Monies which are due to the BCE are sometimes left unpaid and become delinquent. To assist with the collection process of these funds, the BCE utilizes the Intercept program. This program is administered by the FTB and works directly with the SCO to deliver the funds to the participating agencies. The monies are intercepted from the debtors, via lottery winnings and tax refunds.

Cost Recovery and Restitution

40. Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.

Many accusation cases that conclude in revocation/probation require cost recovery funds as part of the order, in addition there are often citations issued that have fines attached to them. These monies which are due to the BCE are sometimes left unpaid and become delinquent.

Since the last review, to assist with the collection process of these funds the BCE utilizes the Intercept program. This program is administered by the FTB and works directly with the SCO to deliver the funds to the participating agencies. The monies are intercepted from the debtors, via lottery winnings and tax refunds.

41. How many and how much is ordered for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.

The chart below demonstrates the number and amounts order for cost recovery. In some circumstances, the BCE will allow for a repayment plan to pay cost recovery. The chart reveals an average of 43% currently uncollectable. However, in some cases the respondent is fulfilling their cost recovery through a repayment plan so the 43% is not an accurate percentage.

	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12**
Cases Recovery Ordered	17	31	34	11
Amount of Cost Recovery Ordered	\$40,904.30	\$228,600.82	\$160,157	\$38,011.50
Amount Collected	\$56,164.28	\$83,669.92	\$104,213.89	\$26,975.26

** As of October 1, 2011

42. Are there cases for which the board does not seek cost recovery? Why?

The BCE always seeks cost recovery when pursuing formal discipline against a licensee. However, if a case goes to an administrative hearing, the Administrative Law Judge may reduce or eliminate the cost recovery as part of his/her order. Also, when settling a case prior to hearing, the BCE may agree to reduce the amount of cost recovery upon a showing of financial hardship or if the licensee agrees to pay restitution to the patient/complainant.

43. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.

Many accusation cases that conclude in revocation result in cost recovery funds associated with them, in addition there are often citations issued that have fines attached to them. These monies which are due to the BCE are sometimes left unpaid and become delinquent. To assist with the collection process of these funds, the BCE utilizes the Interagency Intercept Collections Program (Intercept). This program is administered by the Franchise Tax Board (FTB) and works directly with the State Controllers Office (SCO) to deliver the funds to the participating agencies. The monies are intercepted from the debtors, via lottery winnings and tax refunds.

44. Does the board have legal authority to order restitution? If so, describe the board's efforts to obtain restitution for individual complainants, the board's formal restitution program, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Discuss any changes since last review.

The BCE's Disciplinary Guidelines include a term and condition of probation for consumer restitution. Since the majority of cases where restitution would be a factor are a result of a criminal conviction for insurance fraud or sexual misconduct, the licensee is typically required to provide consumer restitution through the criminal justice system.

Table 11. Cost Recovery				
	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12**
Total Enforcement Expenditures	\$2,128,186	\$3,284,367	\$2,350,570	\$194,670
Potential Cases for Recovery *	23	60	64	15
Cases Recovery Ordered	17	31	34	11
Amount of Cost Recovery Ordered	\$40,904.30	\$228,600.82	\$160,157	\$38,011.50
Amount Collected	\$56,164.28	\$83,669.92	\$104,213.89	\$26,975.26
* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation(s) of the license practice act.				
** As of October 1, 2011				

Table 12. Restitution				
	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11
Amount Ordered	NDA	NDA	NDA	NDA
Amount Collected	NDA	NDA	NDA	NDA

Section 6 – Public Information Policies

45. How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?

The BCE continues to utilize its website to provide pertinent information, forms/applications, laws and regulations, proposed regulations, board meeting materials and minutes and other important notices for the public. As of 2009, all board meetings are webcast. The BCE does not post draft meeting minutes but will post final minutes following the approval of the minutes after a board meeting. This information will stay on the website indefinitely.

46. Does the board webcast its meetings? How far in advance does the board post future meeting dates?

Yes, the BCE webcast all its board and committee meetings. All meeting dates are posted in January of each year.

47. Are the board's complaint disclosure policy consistent with DCAs complaint disclosure and public disclosure policies?

Yes.

48. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?

The BCE's web site is continually being updated. The consumer can verify license status and check disciplinary actions or citations on-line, as well as access consumer complaint processing information. All of the BCE's forms are available on the web site. The BCE releases licensee information to the public pursuant to the Public Records Act; i.e., date of licensure, primary place of practice, license status and disciplinary action, if any. This same information can be obtained via the BCE's web site. The BCE has no requirements that licensees provide information pertaining to awards, certificates, certifications or specialty areas.

49. What methods are used by the board to provide consumer outreach and education?

The BCE continues to utilize its website to provide pertinent information, forms/applications, laws and regulations, proposed regulations, board meeting materials and minutes, board and committee meeting webcasts, newsletters, and other important notices for the public.

The BCE has an Ambassador Program that allows individuals to request speakers to discuss consumer and professional topics at meetings and events throughout the state. The Ambassador Program Request form is located on our website.

Additionally, the BCE utilizes Twitter, Facebook and email subscription to the BCE group email notification to relay important updates.

Section 7 – Online Practice Issues

50. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate Internet business practices or believe there is a need to do so?

Online practice is not an issue within the chiropractic field.

Section 8 – Workforce Development and Job Creation

51. What actions has the board taken in terms of workforce development?

The BCE is not mandated in terms of workforce development. However, the BCE has assessed no impact of licensing delays for job creations in the chiropractic field. Completed applications take an average of 23 days to process with incomplete applications averaging 300 days. Typically, applications are processed within 3 ½ months.

52. Describe any assessment the board has conducted on the impact of licensing delays on job creation.

The BCE has assessed no impact of licensing delays for job creations in the chiropractic field. Completed applications take an average of 23 days to process with incomplete applications averaging 300 days. Typically, applications are processed within 3 ½ months.

53. Describe any efforts that the board takes to alleviate negative impact of its regulatory mission on California business, including small and micro business.

The BCE takes strides on determining that any regulatory proposals will not have a significant adverse economic impact on business. Basically, the majority of regulatory proposals had little to no costs required to comply with the proposed regulations.

54. Describe any partnering or information sharing the board has with other government agencies, such as Workforce Investment Boards or Office of Statewide Health Planning and Development.

The BCE provides disciplinary decisions to various government agencies such as the Division of Workers' Compensation/Medical Unit, Department of Health & Human Services, Radiological Health Branch, and the Education Development Department/State Disability Insurance.

55. Describe the board's outreach to schools.

BCE board members are involved in speaking engagements at various chiropractic schools. The audiences they address are students and graduates. They convey issues surrounding the chiropractic field and relay pertinent information regarding the BCE that will assist the graduates when pursuing licensure with the BCE.

56. Provide any workforce development data collected by the board, such as:

- a. Workforce shortages and staffing needs
- b. Successful training programs
- c. Number of jobs created by its licensure program

The BCE has noticed a slight drop in the number of licensed chiropractors. This may be due to retirement or the economy. However, the BCE is unaware of any workforce shortages in the field of chiropractic medicine.

Section 9 – Current Issues

57. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?

The BCE is in the process of developing a contract with a drug/alcohol testing facility that will test probationers in accordance with the Uniform Standards for Substance Abusing Licensees standards. In addition, we are reviewing and revising our Disciplinary Guideline to add the remaining standards. The BCE will then promulgate regulations and begin the regulatory process to adopt those regulations.

58. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?

BCE serves directly under the Governor's Office and does not report to DCA. BCE did not participate with DCA on the CPEI regulatory process. However, the BCE is independently implementing many of the provisions of SB 1111 through regulation in our Omnibus Consumer Protection regulatory package.

59. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.

The BCE is fully participating in DCA's BreEZe development project. BCE's anticipated release date is Spring 2013.

60. Describe the board's efforts to comply with OSHPD data collection efforts.

Although the BCE partners or information shares with other government agencies, it has not been contacted by OSHPD for any data collection efforts.

61. Describe the board's efforts to address unlicensed activity and the underground economy.

The BCE receives few complaints regarding unlicensed activity and rarely encounters individuals holding themselves out as chiropractors without having been licensed. Typically, an unlicensed activity complaint will consist of a chiropractor practicing on an expired license and the BCE will educate the licensee or issue a citation and fine. On occasion, the BCE will receive a complaint concerning a massage therapist who exceeded their scope and provided what may be a chiropractic manipulation. The BCE investigates these complaints and, if necessary, forwards the evidence to a chiropractic expert who determines whether or not the procedure constitutes the practice of chiropractic. If a violation is substantiated, the BCE will issue a citation and fine. If the violator refuses to desist, the BCE may refer the matter to the District Attorney for possible criminal action.

62. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

Yes, the BCE sends No Longer Interested notifications to DOJ on a regular and ongoing basis on the prescribed form via file transfer protocol.

Section 10 – Board Action and Response to Prior Sunset Issues

ISSUE #1: Should the Board of Chiropractic Examiners be continued?

Issue #1 question for the Board: *Is an appointed board the most appropriate regulatory entity for the profession? Why or why not? Why is an independent board more appropriate than a bureau with more direct accountability to the Governor? Does the profession continue to necessitate regulation in the first place?*

BCE's 2011 Response: Since its establishment, the BCE has functioned well with an appointed BCE. Regulation of chiropractic was sought originally by chiropractors themselves and was clearly considered necessary by the public, since the BCE was created by an initiative act in 1922. At that time, the public demanded the licensing and regulation of chiropractic through creation of the Chiropractic Initiative Act.

In 1922, the BCE had five professional members appointed by the Governor. In 1976, Proposition 15 passed with an 81.1 percent vote to change the composition of the BCE by adding two additional public members. The chiropractic profession was one of the first to recognize the need for public input and the only profession to voluntarily request legislation to accomplish this.

Failure to regulate this profession would cause a risk of significant harm to consumers from activities of health care providers. This BCE exists to protect the health, safety and welfare of California consumers. The licensing mechanism is the strictest form of regulation that is designed to ensure that each individual practitioner admitted to chiropractic licensure in California has demonstrated the minimum competency necessary for safe practice. This is measured by a variety of factors including education, examinations measuring didactic and clinical knowledge, and a review of criminal history information.

Chiropractic practices that are below the standard of care can result in patient pain, suffering, loss of mobility, and in some circumstances could threaten loss of life. Additionally, chiropractors are frequently the first doctor visited by some patients and thus may be the first line of defense and care in identifying potentially debilitating and serious conditions, such as malignancies, which demand timely recognition and referral to appropriate specialists as provided in section 317(v) of the California Code of Regulations.

Three dominant themes characterize revocations and other disciplinary actions: fraud and dishonesty, sexual misconduct, and substance abuse. Problems in even one of these are often manifested in negligent or incompetent care. In many cases, related criminal convictions become the basis for BCE disciplinary action.

In addition to licensing chiropractors, the BCE also registers satellite offices, referral services, and chiropractic corporations. This registration, which merely requires providing a state agency with information such as name, address and phone number, and a list of corporate officers, is the least restrictive form of regulation and is appropriate in these areas because in order to have a chiropractic corporation or satellite office, the individual must already be licensed as a chiropractor. The same held true for referral services until the 1992 enactment of section 650.3 of the Business and Professions Code. This law provides that not only chiropractors, but also other individuals may operate a chiropractic referral service. This law requires registration with the BCE and includes many provisions designed to protect consumers from unscrupulous or inappropriate referrals.

Many experts believe that private sector managed care may someday evolve to the point where governmental licensure of most doctors becomes arguably obsolete. Chiropractors, however, are still generally functioning outside the managed care system. It is clear from our contacts with managed care facilities and companies that do work with chiropractors that they continue to rely upon state licensing as a key credential, value the licensing boards as a source for important data, and see a continued need for state regulation. Neither integrated health care delivery companies nor the professional associations seem prepared to assume regulation of chiropractors at this time.

Issue # 2: Are statutes enacted by the Legislature since 1923 related to the regulation of chiropractic constitutional?

Issue #2 question for the Board: *Are statutes enacted by the Legislature since 1923 related to the practice of chiropractic vulnerable to a legal challenge and, if so, what steps can be taken to protect them?*

BCE's 2011 Response: Since 1993, the Chiropractic Initiative Act was included in 163 various bills. Currently, the Chiropractic Initiative Act is found in multiple statutes, such as: the Civil Code, Insurance Code, Business and Professions Code, Corporations Code, Penal Code, Labor Code, Health and Safety Code, Family Code, Welfare and Institutions Code, and Code of Civil Procedure.

Article III, section 3.5 of the California Constitution states that:

“An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.”

Accordingly, until an appellate court rules that a statute is unconstitutional as it relates to the Chiropractic Initiative Act, the statute is enforceable.

ISSUE #3: Should the current composition and make-up of the Board, with five professional and two public members, be changed?

Issue #3 question for the Board: *Should two new public members be added to the composition of the Board, with one being appointed by the Senate Rules Committee and the other being appointed by the Assembly Speaker?*

BCE's 2011 Response: The BCE has no objection to adding two additional public members to be appointed by the Senate and Assembly. However, Restructuring the BCE's composition would not affect its mission and it is unknown whether an addition of two public members would make any significant improvements to the policy or decision-making functions of the BCE. The BCE also questions whether the potential benefits would outweigh the cost to the General Fund to subsidize such an initiative. This recommendation was included in SB 1954 (Figueroa, Chapter 681, Statutes of 2002), but due to the estimated \$200,000 cost to the General Fund to print amendments to the Chiropractic Initiative Act for a statewide election, the Assembly Appropriations Committee raised concerns regarding the provision adding two new Board members and the provision was subsequently deleted from the bill.

ISSUE #4: What is the status of the fund reserve and the General Fund loan, and what efforts, if any, should be taken to reduce the overall reserve?

Issue #4 question for the Board: *What is the status of the fund reserve including the General Fund loan, and what efforts are being made to reduce the overall reserve to a more reasonable level?*

BCE's 2011 Response: Due to necessary enhancements in the BCE's Enforcement Program and the increase in costs of doing business, the BCE's reserve began to decrease in Fiscal Year 2007/08. The BCE's renewal fee had not been increased since 1991 and expenditures were outpacing revenue by approximately one million dollars annually. Without a fee increase, the BCE's fund was expected to be insolvent by FY 2010-11. To avoid the impending insolvency and the BCE sponsored legislation AB 1996 (Hill, Chapter 539, Statutes of 2010) to increase its annual renewal fee from \$150 to \$250. The increased fee enabled the BCE to align revenue and expenditures so as to maintain a prudent reserve in its fund. (Please see attached Fund Condition Statement).

ISSUE #5: Should the Board continue its efforts to improve on licensing reciprocity for applicants from other states and countries?

Issue #5 question for the Board: *What changes does the Board now recommend to improve on licensing reciprocity and how will these changes be accomplished?*

BCE's 2011 Response: Section 9 of the Chiropractic Initiative Act requires the BCE to issue a license to any person licensed in another state that had the same general requirements as California at the time the license was issued, provided that the other state also grants reciprocal registration to California licensees. Because, this is a provision of the Initiative Act, a change to this requirement would require a measure to be placed on the ballot in a statewide election, at a significant cost to the General Fund.

In most cases, applicants who cannot meet the requirements for reciprocity licensure can apply for a California license as a new applicant. Although this alternative sometimes entails re-enrolling in classes and taking national exams not previously taken at the time of original licensure, reciprocity

applicants are not completely barred from practice in California. Since the majority of the states now require a national examination from the National Board of Chiropractic Examiners, the reciprocity application process is less daunting than when each state administered its own licensing examination based upon their own practice standards.

Since California licensees consist of approximately 20 percent of the nation's active chiropractors, the BCE has not seen an immediate need to provide interjurisdictional mobility to out-of-state licensees.

ISSUE #6: Should the Board establish that a Bachelors Degree be a requirement for licensure?

Issue #6 question for the Board: *What is the Board's recommendation as to whether California should require a Bachelor's Degree for licensure as a chiropractor?*

BCE's 2011 Response: A survey conducted by the Federation of Chiropractic Licensing Boards in March of 2011, shows that 12 states currently require a bachelor's degree either before matriculation into a chiropractic college or prior to licensure (at the time of the last Sunset Review, nine states required a bachelor's degree).

Since the Council on Chiropractic Education (CCE) mandates what the prerequisite for admission into a chiropractic college and the minimum GPA required, some feel that the states should be forcing the issue on the CCE to require a bachelor's degree.

Although the Chiropractic Initiative Act (Act) requires 60-prechiropractic units in specific courses, students must graduate from a CCE-approved college to apply for licensure in California. Therefore, if the CCE raises its prerequisite requirement to a bachelor's degree then students must meet that requirement prior to matriculation. A similar situation occurred a few years ago where CCE required prerequisite admissions increased from 60 to 90 credit hours of undergraduate education. Hence, students attending a CCE-approved college have to obtain 90 credit hours prior to entry, even though the Act only mandates 60 credit hours.

Since all chiropractic colleges are private institutions, their tuition is expensive. Requiring a bachelor's degree would place an additional financial burden on the student as well as create a barrier to the profession. Additionally, if California requires a bachelor's degree, our requirements would be out of sync with the vast majority of other states, thereby creating a barrier for licensees of other states who wish to relocate to California.

Finally, if it were decided that the BCE wanted to enforce a bachelor's degree prior to entry into Chiropractic College or prior to licensure, it would require an amendment to the Initiative Act. Furthermore, a distinction would have to be made identifying the type of bachelor's degree that would be acceptable. For instance, a bachelor's degree in Music or Geography has little to do with the sciences, which is the basis for chiropractic.

ISSUE #7: Should the Board be authorized to implement its proposed new fee structure, and if so, is a statute necessary to authorize these changes?

Issue #7 question for the Board: *What are the specific fee changes being proposed and the justifications for these changes, and are there any potential consequences that may arise due to the fact that the Board has been collecting unauthorized fees?*

BCE's 2011 Response: Not applicable. The BCE does not have plans to implement a new fee structure. The BCE's annual renewal fee was recently increased from \$150 to \$250 through legislation, AB 1996 (Hill, Chapter 539, Statutes of 2010). The increased fee enabled the BCE to align revenue and expenditures so as to maintain a prudent reserve in its fund. The BCE does not have plans to adjust any other fees at this time, but will regularly assess the appropriateness of fees charged. If adjustments are necessary, the BCE will attempt to implement the change in fees through regulation.

ISSUE #8: What is the status of the implementation of the citation and fine program?

Issue #8 question for the Board: *What were the reasons for the delay in implementation of the cite and fine program that was authorized in 2002, and what is the current future status of this program?*

BCE's 2011 Response: The BCE's citation program was launched on March 1, 2001, and the BCE began assessing fines in 2008. The BCE regulations allow the ability to attach fines to issued citations with the maximum fine of \$5,000. An order of abatement is attached with the issued citation to educate, require and monitor compliance.

If citation fines are unpaid, the BCE has the ability to utilize the Interagency Intercept Collections Program (Intercept). This program is administered by the Franchise Tax Board (FTB) and works directly with the State Controllers Office (SCO) to deliver the funds to the participating agencies. The monies are intercepted from the debtors, via lottery winnings and tax refunds. The BCE will allow for a repayment plan in extenuating circumstances.

ISSUE #9: Are the number of responses and results of the Board's Consumer Satisfaction Survey similar to those of other licensed health professional boards?

Issue #9 question for the Board: *How do the number of responses and the results of the Board's Consumer Satisfaction Survey compare with those for the boards of similar licensed health professionals, and does the Board have a plan for increasing the number of responses?*

BCE's 2011 Response: Since the last Sunset Review, the BCE has not kept adequate statistics for the Consumer Satisfaction Survey. The BCE has begun establishing a process to record and maintain this data and will provide statistics to the committee at a future date.

ISSUE #10: Is there a need to expand the Board's use of the internet to include services such as on-line license renewal or the Consumer Satisfaction Survey?

Issue #10 question for the Board: *What has the Board done since the last review to expand the use of the Internet, and what is the status of implementing an on-line license renewal capability or filling out the Consumer Satisfaction Survey on-line?*

BCE's 2011 Response: The BCE continues to utilize its website to provide pertinent information, forms/applications, laws and regulations, proposed regulations, board meeting materials and minutes, board and committee meeting webcasts, newsletters, and other important notices for the public.

The BCE has an Ambassador Program that allows individuals to request speakers to discuss consumer and professional topics at meetings and events throughout the state. The Ambassador Program Request form is located on our website.

Additionally, the BCE utilizes Twitter, Facebook and email subscription to the BCE group email notification to relay important updates.

ISSUE #11: Should the Board be required to disclose arbitration decisions, civil judgments and/or settlements to the public?

Issue #11 question for the Board: *Why doesn't the Board currently provide information relating to arbitration decisions, malpractice judgments or settlements to the public, and does the Board believe that making this type of information available would be helpful to consumers?*

BCE's 2011 Response: Presently the BCE does not have the capability or the staff to provide such information to the public. This would require identifying these types of settlements and maintaining a separate database that would have to be constantly updated and up-linked to our website. All of these documents are currently available through public disclosure at the respective court where the matter occurred. The BCE has not found a need to track these decisions. However, if a complaint is opened that involves one of these matters and administrative charges are brought against the licensee, it will be made a part of the record.

Business and Professions (B&P) Code section 800 et seq. requires the BCE maintain in the licensee's central file any arbitration decisions or malpractice settlements. The BCE is complying with this requirement.

ISSUE # 12: Whether the Board understands and respects the electorate's role in setting policy.

Issue #12 question for the Board: *The Office of Administrative Law (OAL) recently rejected Board draft regulations. Do the Board's arguments in defense of the regulations show that the Board fails to respect the electorate's exclusive policy-making prerogatives where the regulation of chiropractic is concerned?*

BCE's 2011 Response: Not Applicable – This question refers to a regulation promulgated more than six years ago under a completely different BCE and staff. The many other regulations that the BCE has adopted successfully in recent years demonstrate that the rejected regulation was an aberration.

ISSUE # 13: The number of days it takes to process complaints has more than doubled over the past four years, and the average number of days spent in the “pre-accusation” phase almost doubled as well in the most recent fiscal year.

Issue #13 question for the Board: *Have the reasons behind the increase in complaint processing been addressed? What is the Board’s goal for average number of days to process complaints? Why did the average number of days spent in the pre-accusation phase almost double from 2003/04 to 2004/05? What is the Board doing to address this problem?*

BCE’s 2011 Response: Since the last Sunset Report, the BCE overhauled its enforcement program. Cases are being worked vigorously and the average time to close has significantly decreased. Although the number of administrative cases has remained steady, the average days to complete have significantly dropped.

In the last two fiscal years, the enforcement statistics reveal a vigorous program in that administrative actions nearly doubled over prior fiscal years. While cases are actively being worked, they are not becoming exceedingly aged therefore complaint case backlogs have significantly decreased.

Section 11 – New Issues

List new issues raised in this report. Give a short discussion of the issues, recommendations, or actions which could be taken by the board, Department of Consumer Affairs, or Legislature to deal with issues discussed in this report, i.e., legislative changes, policy direction, budget changes.

1. New issues raised by the Committee to be addressed by the board in this report.
2. New issues identified by the board that are previously addressed in this report or by prior Sunset Review. Include new proposals for legislation, policy direction or budget changes.

Provisions of SB 1111

After thorough review of SB 1111 (Negrete McLeod, 2010) and consultation with staff at the Department of Consumer Affairs and the Senate Business and Professions Committee, the BCE determined that it should be included in a majority of the provisions of SB 1111 that were not in conflict with the Chiropractic Initiative Act. The BCE had already begun the process of systematically reviewing its Enforcement Program and applicable laws and the provisions of SB 1111 were consistent with the BCE's goal of enhancing consumer protection through stronger regulatory authority. When SB 1111 failed passage in the Senate, the BCE voluntarily incorporated many of its provisions into our Omnibus Consumer Protection Regulations, which are currently moving through the rulemaking process.

The proposed regulations will enhance the BCE's enforcement and administrative processes by defining terms in regulation, establishing reporting and disclosure requirements, and amending regulations specific to its disciplinary guidelines and applicant requirements. These changes will increase the BCE's enforcement authority and access to critical information for use in investigations and improve efficiency in enforcement processes and procedures for enhanced consumer protection.

Specifically, the proposed regulations would do the following:

Section 303: This section requires licensees to file a current and accurate e-mail address with the BCE and notify the BCE of any and all changes of the e-mail address within 30 days of the change.

This provision is necessary to facilitate communications by the BCE with its licensees in a cost-effective manner.

Section 304: This section expands the grounds for disciplinary action of a license to include any disciplinary action taken against a licensee by another licensing entity or authority of this state, or of another state, or of an agency of the federal government, or the United States Military, or a foreign government and establish disciplinary action based on these grounds as unprofessional conduct.

This provision is necessary to allow the BCE to take action against a licensee or applicant on the grounds of prior discipline rather than the underlying violation which resulted in prior discipline by another jurisdiction, thereby circumventing the lengthy process of building a case based on circumstances surrounding the violation which have already been investigated and supported by evidence.

Section 308: This section

- **Requires chiropractors who practice in a mobile setting (i.e. health fairs, sporting events, patient's homes) to carry a current and active pocket license and have the pocket license available for inspection upon request of a representative of the BCE or a member of the public.**
- **Prohibits a licensed Doctor of Chiropractic from displaying an inactive or invalid chiropractic license, certificate or registration.**

These changes are necessary to ensure that the public can easily discern the chiropractor's authority to practice chiropractic.

Section 317.2: This section prohibits a licensee from including provisions in any agreement to settle a civil dispute arising from the licensee's practice, which would prohibit another party to the agreement from filing a complaint with the BCE or require them to attempt to withdraw a complaint filed with the BCE.

Business and Professions Code (BPC) Section 2220.7 provides a similar prohibition for physicians. The use of "gag clauses" can delay or thwart the BCE's effort to investigate alleged cases of misconduct, thereby preventing the BCE from fulfilling its consumer protection mandate. The increasing use of gag clauses to prevent regulatory agencies from investigating licensees is contrary to good public policy and allows unscrupulous or negligent professional licensees to continue to harm the public. This regulation would put consumers first and is necessary to prevent those licensees from escaping the professional repercussions of their actions.

Section 317.3: This section requires licensees to report to the BCE the bringing of an indictment or information charging a felony against the licensee; convictions, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor; and disciplinary action taken by another licensing entity or authority of this state, or another state, or an agency of the federal government. The section further requires the report to be made in writing within 30 days of the date of the bringing of the indictment or charging of a felony, the conviction or disciplinary action and establishes the licensee's failure to report, pursuant to this section, as unprofessional conduct.

BPC Section 802.1 sets forth similar reporting requirements for physicians and surgeons, osteopathic physicians and surgeons, and podiatrists. Currently, the BCE requests this information on the licensee's annual license renewal form and receives subsequent arrest reports from the Department of Justice. This reporting requirement is necessary to ensure the BCE receives full disclosure of a licensee's criminal activity immediately following indictments or charges of criminal activity to allow the BCE to investigate the matter in a more expedient manner in order to protect the public.

Section 321.1: This section allows the BCE to order an applicant for licensure, who may be unable to safely practice chiropractic due to a mental illness or physical illness, to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the BCE. The full cost of such examination shall be paid by the BCE. Additionally, this section establishes the BCE's authority to render an application incomplete for an applicant's failure to comply with such order or to deny an application if the report of evaluation determines that the applicant is unable to practice chiropractic safely and requires the BCE to furnish the applicant with a copy of the evaluation report.

Existing law (BPC Section 480) allows the BCE to deny a license on various grounds, including conviction of a crime, commission of any crime involving dishonesty, fraud or deceit or commission of any act which constitutes grounds for suspension or revocation of the license. Currently, the BCE can compel a licensee to submit to a psychological or physical examination when the licensee's fitness to practice is compromised based on suspected mental illness; however, this authority does

not apply to applicants for licensure. Although the BCE has the authority to deny an applicant a license for acts defined in BPC Section 480, the BCE lacks authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the person's fitness to practice is compromised based on suspected mental or physical illness.

The proposed language is needed to institute the BCE's authority to require assessment of applicants who may be mentally or physically impaired and deny their application if results of the assessment render them incompetent. The proposed regulation is necessary to protect the public from incompetent chiropractors.

Section 390.7: This section requires any proposed decision or decision that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in Section 729(c) of the BPC, issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, to contain an order of revocation. A proposed decision shall not contain a stay of the revocation.

This language is similar to language which currently exists for physicians (BPC Section 2246), for psychologists (BPC Section 2960.1), for respiratory care therapists (BPC Section 3752.7), for marriage and family therapists (BPC Section 4982.26), and for clinical social workers (BPC Section 4992.33). Additionally, California Code of Regulations Section 316(c) establishes the BCE's authority to take disciplinary action against a licensee for commission of any act of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer or employee. Under existing law, the BCE can file an accusation to discipline the licensee. However, if the case goes to hearing, the Administrative Law Judge may issue a proposed decision which may or may not include the same discipline sought by the BCE. Due to the seriousness of sex offenses and the potential threat to consumers that sex offenders pose, the BCE believes that a mandatory penalty of revocation for any act of sexual contact as defined in BPC Section 729(c) is necessary to protect the public from acts of sexual misconduct by a licensee and may serve as an effective deterrent to licensees for commission of these acts.

Section 390.8: This section requires (with certain limited exceptions) the BCE to deny an application for licensure or revoke a license for an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, under federal law, or under a foreign jurisdiction. This section would prohibit the BCE from reinstating or reissuing the individual's license, issuing a stay of license or placing the license on probation.

Current law gives the BCE authority to take action against a licensee for the commission of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer or employee. This section broadens the BCE's authority for discipline against applicants and licensees for any act of sexual misconduct with anyone which resulted in a requirement for the individual to register as a sex offender. The proposed language is necessary to establish the BCE's authority to protect the public from registered sex offenders.

Because of the seriousness of sex offenses and the potential threat to consumers that sex offenders pose to consumers, the BCE believes it is necessary to establish a mandatory penalty of revocation in any disciplinary matter for chiropractic applicants or licensees who are registered sex offenders.

Use of Lasers by Chiropractors

The scope of chiropractic, as described in BPC section 1000-7 of the Initiative Act, authorizes licensed chiropractors to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but does not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica.

CCR section 302 clarifies that the measures that duly licensed chiropractors are authorized to use in their practice include, but are not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water and physical therapy techniques in the course of chiropractic manipulations and/or adjustments. Lastly, CCR section 302(a)(3) specifies, in part, that a duly licensed chiropractor may treat any condition, disease, or injury in any patient so long as the methods and treatment do not constitute the practice of medicine by exceeding the scope of chiropractic practice.

The use of lasers in the practice of chiropractic is an emerging technology which is rapidly becoming more commonplace, and the purpose for which they are used within the chiropractic profession is diverse.

In January of 2011, the BCE received correspondence from California State Senator Bob Huff, 29th Senate District, relating to a public safety issue regarding advertisements by chiropractors claiming they can cure food allergies through laser therapy. Specifically, Senator Huff expressed concern regarding whether this treatment was within the scope of chiropractic and patient safety. His correspondence included a letter from a parent whose children suffer from severe food allergies resulting in anaphylactic reactions and were forced to seek emergency medical treatment following a laser treatment and exposure for food allergies, numerous advertisements from chiropractors marketing treatment of allergies through laser therapy, as well as a letter from Physicians from the Capital Allergy & Respiratory Disease Center who assert, "There is no known cure for allergies at this time other than avoidance, and any claims to the contrary are deeply troubling to us."

As a result of this correspondence, the BCE held public meetings to discuss these concerns and heard testimony from laser manufacturers, other regulatory agencies charged with the regulation of laser manufacturers, lasers, and/or their use, experts in the field, and professional associations. Consequently, it was determined that the lasers specified in the advertisements have not been approved by, nor their intended purpose registered with, the United States Food and Drug Administration (FDA) through the 510(k) process, which ensures the safety and efficacy of such devices.

Accordingly, the BCE drafted proposed regulations regarding the use of laser devices in chiropractic treatment to ensure that chiropractors use lasers within their scope of practice, only use lasers and advertise laser services which have been demonstrated to be safe and effective through the FDA's 510(k) filing, provide informed consent to patients prior to administering laser treatments, and comply with the manufacturer guidelines and all state and federal laws regarding the safe use of lasers.

Specifically, the proposed regulations would:

- **Prohibit chiropractors and any person under their direct or indirect supervision from using lasers in their practice which have not been approved and registered with a valid 510(k) from FDA.**

Currently, the BCE does not have any regulations specifically regarding the use of lasers by chiropractors. Furthermore, the chiropractic scope of practice indicates that the use of heat and light (as used in laser therapy) are accepted modalities of treatment within chiropractic. As technology in new modalities emerge, the chiropractor is forced to interpret their scope of practice as it relates to new technology, which can result in the improper, unsafe or fraudulent uses of new modalities in treatment of chiropractic patients. Approval and registration with the FDA ensures that clinical studies have been conducted to validate the safety and efficacy of the use of the laser under specific conditions and for prescribed purposes.

This provision is necessary to protect chiropractic patients from fraud or physical harm caused by treatments using lasers which have not been proven to be safe and/or effective by the FDA for the specific purpose in which it is used.

- **Prohibit a licensed chiropractor and any person under their direct or indirect supervision from marketing or advertising the use of a laser or using a laser for purposes other than neuromuskuloskeletal treatments consistent with the laser's FDA 510(k) filing.**

In addition to the laser treatment of allergies, the BCE has seen advertisements by chiropractors for laser treatments and the use of laser devices which are either not registered with a valid 510(k) from the FDA and/or are used for purposes outside of neuromuskuloskeletal treatments, as well as outside the FDA's 510(k) intended purpose for that device. The FDA's 510(k) process ensures that the safety and efficacy of a laser device has been proven through clinical trials for which the results are reviewed and undisputed by the FDA.

This provision is necessary to protect chiropractic patients from the false or misleading advertising of laser treatments or use of lasers that have not been proven safe and effective for the purpose in which it is advertised.

- **Require licensed chiropractors and any person under their direct or indirect supervision to inform the prospective patient of the contraindications to laser exposure both verbally and in writing prior to the initial use of any laser or course of treatments with any laser on a patient.**

The Center for Devices and Radiological Health, within the U.S. FDA, classifies lasers into four broad hazard categories by their potential to cause biological damage to the eye or skin during use. Lasers used by chiropractors typically fall into Category II or III. Similarly, the American National Standards Institute (ANSI) classifies lasers into classes (1, 2, 3a, 3b, and 4) depending on the potential for causing biological damage. The use of Informed Consent prior to providing laser treatment is consistent with state and federal guidelines regarding the safe use of lasers, as well as the BCE's recently adopted informed consent requirements (CCR Section 319.1).

This provision is necessary to protect chiropractic patients by ensuring that their rights to self-determination regarding their health care are paramount.

- **Require licensed chiropractors and any person under their direct or indirect supervision to follow the manufacturer's specified guidelines for the safe use of the laser device.**

A laser device's potential to cause harm varies from one laser device to another; therefore, the manufacturer's guidelines specify the specific type of safety goggles and other precautionary measures relevant to the specific laser device to prevent harm to the patient and the person administering the laser treatment.

This provision is necessary to protect chiropractic patients and the chiropractor or person administering the laser treatment from physical harm to the eyes or skin caused by the failure to adhere to the manufacturer's specified guidelines for use of laser device.

- **Require chiropractors and any person under their direct or indirect supervision to comply with all state and federal laws governing the use of lasers in clinical settings.**

As laser technology advances, state and federal laws may change to ensure the safe use of laser devices.

This regulation is necessary to ensure protection of the patient and the person administering the laser treatments.

- **Specify that the proposed regulations do not authorize a chiropractor to exceed his or her scope of practice. Laser treatments that exceed the scope of chiropractic would include, but not be limited to, laser ablation or surgical procedures and laser treatment of allergies in cases where there is a known risk of anaphylactic reaction to the individual being treated.**

There is currently no state or federal laws restricting the sale of lasers to only those licensees whose scope of practice allows them to provide treatments for that particular laser device. This has led to the use of lasers in chiropractic outside the scope of practice.

This provision is necessary to protect chiropractic patients from physical harm caused by laser treatments provided by chiropractors who fall outside their scope and expertise.

- **Specify that a violation of the proposed regulation would constitute unprofessional conduct which could subject the licensee to discipline by the Board.**

This section is necessary to provide the Board with authority to discipline licensees who fail to comply with the proposed laser requirements.

Section 12 – Attachments

Please provide the following attachments:

- A. Board's administrative manual
- B. Current organizational chart showing relationship of committees to the board and membership of each committee
- C. Major studies, if appropriate
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.)
- E. Board's records retention schedule.