

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES****Manipulation Under Anesthesia (MUA)****Thursday, November 8, 2007****12:30 p.m.****2525 Natomas Park Drive, Suite 100****Sacramento, CA 95834****COMMITTEE MEMBERS PRESENT**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Executive Officer
LaVonne Powell, DCA Senior Legal Counsel
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 12:38 p.m.

Roll Call

Dr. Lubkin called the roll. Both committee members were present.

Discussion and Possible Action re Issues in "Petition to Define Practice Rights and to Amend, Repeal and/or Adopt of Practice Regulations as Needed," Submitted by David Prescott, Attorney

Mr. Prescott began by introducing the materials that he planned to discuss. Ms. Powell, expressed her concerns about copyrighted material being reproduced. Mr. Prescott committed to providing the Board the written authorization he received to use his information.

Mr. Prescott states that since 1923 the Board has the 20 sections of the Chiropractic Act, 19 original sections plus one amendment. However, he states that not only did the people vote in 1922 for the original 19 sections, but an additional section, which is longer than the 19 original sections. Mr. Prescott says the original ballot measure contains important revisions, deletions, and amendments as identified by black faced type, italics, and asterisks.

Mr. Prescott states that the 1922 Chiropractic Act cannot be fully understood unless one reviews the missing second half of the statute and the 1913 Medical Practices Act. Mr. Prescott says that the 1913 Medical Practice Act and the 1922 Chiropractic Act have an intimate connection.

Mr. Prescott discusses the history of legal decisions including, Crees, Fowler, and Tain, and educational requirements framing the practice of Chiropractic in California. He further reviews the original ballot measures and highlights scope of practice and educational requirements. Mr. Prescott compares and contrasts the practice rights and educational curriculum of drugless practitioners and chiropractors.

Mr. Prescott petitioned the Board to define the practice rights of chiropractors. Mr. Prescott explained that under the statute in which the petition was filed, the Board must schedule a public meeting to hear the petition.

Mr. Prescott's stated his position is that the basic fundamental practice right of chiropractors was intended to be the same as it was for drugless practitioners. Physicians and surgeons under the 1913 Act may treat injuries, diseases, deformities or other physical or mental conditions -- so can drugless practitioners. Mr. Prescott states the intent of the 1922 Chiropractic Act was to grant to chiropractors that same basic practice right as drugless practitioners and then the exceptions need to be considered.

Mr. Prescott explained that section 302 of the Board's regulations prohibit chiropractors from using homeopathic remedies for any purpose. Mr. Prescott discussed a study conducted by the National Board of Chiropractic Examiners in 1993 that concluded that between 36.5% and 49.3% of chiropractors in the state of California use homeopathic remedies. Mr. Prescott asked is section 302 correct?

Mr. Prescott explains that the Act cannot perform surgery and section 302 says chiropractors cannot perform surgery, sever or penetrate tissues. Mr. Prescott references the Chong case in which Chong argues that the law is unconstitutional because when a chiropractor performs a manipulation, tissues are being severed or penetrated. Mr. Prescott explained that, according to the 1913 Medical Practice Act, sever means performed by cutting with a knife.

Mr. Prescott states that the AG's office has written 26 opinions without ever addressing the entire ballot.

Dr. Lerner thanked Mr. Prescott for his presentation and research. Dr. Lubkin asked if the materials would be placed on the web site. Mr. Stiger said the materials would be posted once the board received the copyright information from Mr. Prescott.

Discussion and Possible Action re Promulgation of Regulations re MUA

Dr. Lerner explained the history of a regulatory package submitted to the Office of Administrative Law in 2005, which were rejected. Ms. Powell explained that rejections from the Office of Administrative Law are not unusual and should not be reflective negatively upon the board.

Dr. Lerner stated that the Board has held since 1990 that MUA is within the chiropractic scope of practice. Dr. Lerner asked Ms. Powell about the status of the legal opinion and she explained that after it's completed it still needs to be approved by her supervisor.

Ms. Powell explained that the Board has only one license, which entitles the licensee to perform the full scope of practice. Ms. Powell stated the Board has clear authority to set standards of care. Ms. Powell recommended that the Board review the standard of care from the national organization and identify how the procedure is being performed and in what type of facility.

Mr. Stiger stated that the Board is interested in making sure that consumers are being protected in those instances when the procedure is being performed. It is important to receive input from the profession on these standards.

Ms. Powell recommended that the Board include language that discusses if a chiropractor is performing MUA that a physician surgeon or other authorized health care provider is solely in charge of the sedation and the chiropractor cannot direct them. Ms. Powell recommends that chiropractors clearly understand their limited role during MUA.

Dr. Lerner reiterated that we can define what MUA is and what it is not, we can designate the type facility it is performed in, we cannot require chiropractors to take certain classes. Ms. Powell recommends that the board define sedation and every aspect of the procedure, including emergency procedures, monitoring, and follow up procedures to protect any patient under going the procedure.

Dr. Charles Davis offered suggestions on what not to put into the standard of care to avoid potential litigation.

Dr. Lubkin stated that in his opinion that all duly licensed chiropractors in California are qualified to perform manipulation while the patient is under anesthesia.

A member of the public stated that if a chiropractor could not perform a manipulation without the patient being under anesthesia raises a concern.

New Business:

Dr. Lubkin asked that the committee meet again by the end of the year or early next year. Ms. Powell suggested that we don't meet until we have a working document.

Meeting Adjourned

Dr. Lerner adjourned the meeting at 3:57 p.m.