

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
September 24-25, 2008
State Capitol
Assembly Room 126
Sacramento, CA 95814**

Board Members Present

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Richard Tyler, D. C., Professional Member
Judge James Duvaras, Public Member

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Lavella Mathews, Associate Governmental Program Analyst
John Melendez, Staff Services Manager
April Alameda, Associate Governmental Program Analyst
Genie Mitsuvara, Staff Services Analyst

Call to Order

Dr. Lerner called the meeting to order at 10:15 a.m.

Roll Call

Dr. Columbu called the roll. All members were present.

Chairs Report

Dr. Lerner reported the Board is making progress on revising the Continuing Education Regulations. Dr. Lerner publicly acknowledged the work of the continuing education work group. He thanked Mr. Eric Banta from International Chiropractic Association of California, Mr. Carlye R. Brakensiek, Melea Fields from Southern California University, Dr. Kendra Holloway, D.C. from Life West, Dr. Sherry McAllister, D.C., Dr. Mitchell Peritz, D.C., Mr. Lou Ringler from Intercom Associates, Dr. Linda

Shanks, D.C., Dr. William Updyke, D.C. from California Chiropractic Association. He additionally thanked Board staff members April Alameda, Genie Mitsuvara, John Melendez, LaVonne Powell, and Executive Officer, Brian Stiger

Dr. Lerner acknowledged Mr. Conran for contributing his wisdom and experience regarding government relations, as well as being extremely helpful in crafting Board policies.

Approval of Minutes

Two sets of minutes to approve. May 22, 2008 and July 30-31, 2008.

**DR. LERNER MOVED TO APPROVE THE MAY 22, 2008 MINUTES
DR. LUBKIN SECONDED THE MOTION.**

Discussion

Dr. Lubkin stated on the bottom of page eight there was a typing error that should be corrected. Reads 6-0-2 and should be corrected to 4-0-2.

**VOTE 6-0
MOTION CARRIED**

**JIM CONRAN MOVED TO APPROVE THE JULY 30-31, 2008 MINUTES
DR. COLUMBU SECONDED THE MOTION**

Discussion

None

**VOTE 6-0
MOTION CARRIED**

Public Comment

Jim Conran introduced Patrick McKenna, a second year law student at the University of San Diego. Mr. McKenna is here on behalf of Center for Public Interest Law (CPIL) and will be monitoring the Board for the course of this year to capture what the meetings encompass.

Board Member Training on the Bagley-Keene Open Meetings Act and other relevant laws

LaVonne Powell discussed the upcoming Department of Consumer Affairs (DCA) conference in November with all of DCA's Boards, as well as the Board of Chiropractic Examiners. This is an excellent opportunity for Board Members to choose training courses available regarding the Open Meeting Act and the Administrative Procedure Act process. There is also opportunity to network with DCA's Board Members, particularly in healing arts. Most all Board Meetings will be held on Thursday, but some will be held on Tuesday. It would be beneficial to observe other Board Meetings to see how they work and get ideas on what you like or dislike. Wednesday would be the most important day to attend due to the trainings being offered and panel discussions. This is the first conference that DCA is putting on and they are looking for feedback on what went well and what didn't.

Executive Officer's Report

Budget

Mr. Stiger provided a status of the Board's budget that current projections indicate a \$100,000 reversion at the end of the fiscal year. He mentioned, however, that does not include expenditures such as legal fees. A tight budget is being predicted again this year, so we will need to manage appropriately.

Mr. Stiger also read report language from the budget bill that was signed yesterday, that requires the Board to report by March 1, 2009, and by every March 1st, through 2013, to the chair persons of committees in each house of the legislature that consider the budget and the legislature analyst office, all of the following; details regarding progress made towards addressing the recommendation of the March 2008 report of the State Auditor, Investigative work load and projected work load data for each fiscal year from 2007-2008 until 2012-2013. Work load data shall include at a minimum, the number of complaints processed, cases investigated, and legal actions filed as well as the time line for the disposition of complaints. The information is already being compiled and should be positive.

A question was raised if the Board was seeking to increase licensing renewal fees to help gain revenue. It's been determined that the fees have not been raised since 1991 however, costs have gone up. The response was yes, the Board is working on increasing the fees. There are no specific details at this time, and is currently on the Licensing Committee's agenda.

Personnel

Mr. Stiger informed the Board that the Governor placed a hiring freeze on July 31st, however, there is an exemption for health and safety positions. We have exempted our investigators and are moving forward with hiring a Supervisor, who is starting on October 1st and we are still recruiting for a Special Investigator in southern California. Our current staff level is 18 positions with 2 to fill. We will gain 2 more positions next fiscal year and be up to 20 positions.

Licensing

Mr. Stiger informed the Board that there are 31 fewer licenses that went into forfeiture than last year.

Dr. Lerner commented on the 206 increase of satellite certificates and asked if it had anything to do with the need for more work.

Mr. Stiger responded that there are 200 more than a year ago, and that Dr. Lubkin has requested that we identify those individuals that have more than five satellite offices. We are working towards having that completed by the end of the year. It does seem to be a growing trend. He also stated that we do not have a back log of Licensing Applications.

Enforcement

Mr. Stiger informed the Board of the new format displaying three full fiscal years and that we have started to include the citations issued. The information provided is through August 31st. He also informed the Board, that we now have the authority to issue fines effective August 1st. We have issued one citation in the amount of one hundred dollars during that time period. Since that time, approximately four more have been issued which will be reflected at the next Board Meeting.

Mr. Conran asked if there was a time line that the licensees would have to pay the citation.

Mr. Stiger replied that they have thirty days to either pay the citation or file an appeal.

Dr. Lerner applauded the staff for being able to catch up on so much work in such a short time. He acknowledged that it couldn't have been easy.

Bureau of State Audits

Mr. Stiger informed the Board that our six month report is due tomorrow. We are approximately eighty five percent through addressing all the deficiencies. We have a year to implement all of them except for the ones that we are opposing. The year ends March 1st. We are ahead of schedule and will meet our deadline.

Committee Reports

Continuing Education Committee

Dr. Tyler informed the Board this was one of the most productive meetings due to the task force (work group) that Mr. Stiger formed. They addressed many of the areas of concern. Other areas will be covered in the future. They are planning to have another meeting before the next open meeting to refine areas that need to be addressed. He expressed to the board that he is very pleased with the progress and is looking forward to the next meeting.

Dr. Lerner expressed that he would like to see the work group get some direction from the Board today, then go back to the committee and finish this up. Discussion needs to include where the Board stands and not just the work group and committee. He did some on-line research and compiled two charts. One has information on what is done among other health boards in California, and the second has what other State Chiropractor Associations have done to help get an idea of how other Boards deal with Continuing Education.

Dr. Tyler is worried that California's parameters will be set based on what everyone else does.

Dr. Lerner has a concern with section 356 number 3 C; licensees may earn continuing education credits for courses offered by providers that are approved by the Department of Industrial Relations. He is an provider approved and doesn't know how to address this.

Ms. Powell stated he shouldn't address it.

Dr. Lerner gave suggestions to open it up and that he liked the idea of being put in rooms with other medical professionals. He feels it raises the bar and creates inter professional communication.

Mr. Stiger stated the work group put forward two hours of inter-disciplinary courses and asked what Dr. Lerner meant by opening it up.

Dr. Lerner clarified that the specific hours required in specific categories is getting into micro managing. He agrees on the amount of hours but that the types of courses don't need to be handled so specifically.

Ms. Powell explained when looking at the mandatory courses, the reasoning for the specific courses is based on the type of complaints that were received. Wherever the bulk of the complaints were is what the mandatory courses reflect.

Dr. Tyler believes the meeting was to short and there's still so much more to cover. The four hours

of adjustive technique has been controversial and he believes adjustive technique is the key stone of the profession. We need to continue research because the profession is based on structure effecting function. He also expressed the importance of pharmacology courses to be aware of current medications patients may be taking and possible effects of mixing medications.

Jim Conran agrees that there is value to having adjustive technique, but it shouldn't be made a prescriptive course to a licensee, if the licensee is really not interested, it's a waste everyone's time. Most everyone wants to be the best professional they could be.

Dr. Columbu would like to see the adjustive technique increased to ten hours and incorporate some kind of kinesiology within the course.

It was suggested that one of the things the committee could look at, working with staff, is what problems come to the Board in terms of complaints. We should determine trending data to use so we can reduce the problems with the practitioners.

Mr. Stiger asked the Board if the work group has captured the main concerns of the Board and if they are moving in the right direction.

Dr. Lerner and Dr. Tyler agreed that they believe this is moving in the right direction.

Public Comment

Dr. Charles Davis acknowledges that the adjustive technique is important and should be more than four hours. He also agreed with Dr. Lerner in regards to it being a mandated course, he also feels that it should be the license to choose weather or not to take an adjustive technique.

Kristine Shultz representing the California Chiropractic Association wanted to thank the staff and the Committee for their hard work of the proposed regulations and she is looking forward to working with the Board in the process. She went over a list of provisions with the Board.

DR. TYLER MOVED TO APPROVE LIST OF PROVIDERS FOR RATIFCATION DR. LUBKIN SECONDED THE MOTION

Discussion

Dr. Tyler expressed concern regarding Mueller College of Holistic Studies, he questioned if the college meets the requirements.

Mr. Stiger assured that the Board staff made sure both colleges meet all the legal requirements for the Board to approve.

Ms. Powell clarified the requirements are making sure they are a legitimate business and that they know what the Laws and Regulations are.

A question was asked, how many providers are approved.

The response was approximately 74.

VOTE 6-0 MOTION CARRIED

Licensing Committee

Dr. Lubkin informed the Board that the Licensing Committee discussed the increase of licensing fees and Approval of Ratification of formally approved ratifications and is brought to the Board to be reviewed and to approve licenses to ratify.

JIM CONRAN MOVED TO APPROVE FORMALLY APPROVED RATIFICATIONS.

DR. LERNER SECONDED THE MOTION

VOTE 6-0

MOTION CARRIED

Dr. Lubkin updated the Board that the California Law and Profession Practice Examination is basically that it needs to be updated annually.

Mr. Stiger invited Dr. Norman Hertz to come and speak in regards to our law exam.

Dr. Hertz developed the exam in 2003-2004, explained the process of developing the examination by means of work shops to insure subject matter were addressed. It is necessary to revise the law examination to reflect the changes of Rules and Regulations and the content of the test is current.

Mr. Stiger stated he would like an indication from the Board to move forward on working with staff, getting a contract together with a vendor to evaluate the current Law Exam, then moving forward with updating it.

Dr. Lubkin would like to know the time line to update the Law Examination. He also requested the cost of the process.

Dr. Hertz gave an approximate time line of 6 to 9 months, but was not able to give a cost.

DR. LUBKIN MOVED TO ALLOW THE STAFF TO MOVE FORWARD IN UPDATING THE LAW EXAM AND GETTING SOME BIDS, WITH THE STAFF COMING BACK TO THE BOARD WITH THAT INFORMATION.

JIM CONRAN SECONDED THE MOTION

Discussion

Jim Conran commented to ask people for a test that may not be relevant is a disservice. So it is important to update these types of examinations to make sure they meet the minimum standards and that they are being tested on what they really need to know.

VOTE 6-0

MOTION CARRIED

Scope of Practice Committee

Dr. Lubkin discussed three major topics. The first one is the recognition of different chiropractic specialties. Counsel advised it be reviewed through business and professional code 651. The second topic is with Chiropractic Scope of practice of Chiropractor use of X-rays. The committee made the decision not to move forward with this topic. The last topic is Manipulation under Anesthesia revised proposal for Regulatory Language. This has been on-going and is moving towards office of Administrative Law. We are planning to have this open for public comment by the end of the year and the Committee is feeling comfortable with it.

Dr. Lerner commented that the Committee is working diligently with the Office of Administrative Law. And it is part of the revision is some of the language change in the Manipulation under Anesthesia law. He also expressed that the process is going very well.

Dr. Tyler needed clarification as to why the Committee didn't want to move forward with the Scope of Practice with regards to the use of X-rays.

Dr. Lubkin informed the Board that the Committee's position on this matter was it be referred back to the Radiological Health Branch and that the letter the licensee received a letter from the Radiological Health Branch.

Ms. Powell clarified that the statement made of not moving forward meant that the Committee would not write a letter.

Public Comment

Dr. Davis commented on there was an issue with section 8, it was incorrect and unclear.

Ms. Powell reiterated what section 8 should read; MUA may only be performed in a hospital or Ambulatory Center licensed by California Department of Public Health, Bureau of Hospital Licensing Certification, or approved by either the joint commission on accreditation. She expressed that it needs to be clear to the Licensees where they can perform MUA.

Dr. Lerner explained that there are two entities that MUA can be performed in. One being a surgery center and the other is a hospital, which have separate accreditation bodies that govern them. He also reiterated that the language needs to be researched and made clear.

Mr. Stiger clarified that this would be brought back to the next meeting in November for approval.

Dr. Charles Davis informed the Board that there was an error in section F within the MUA regulation language.

Kristie Schultz was concerned with defining the manipulation in section F.

Roger Galton attorney expressed the same concerns in the first paragraph in section 8. It is his understanding that they can either be licensed with the State or accredited, and he believes there are two accrediting agencies, or they can be certified by Medicare.

Kathleene Creason of Osteopathic of Physicians Surgeons of California are opposed to Chiropractic Manipulation under Anesthesia. She can go into detail or they can be submitted in writing. She was asked to submit them in writing to the Executive Officer.

DR. LUBKIN MOVED TO ACCEPT THE ACTIONS ITEMS DISCUSSED

DR. COLUMBU SECONDED THE MOTION

VOTE 6-0

MOTION CARRIED

Public Relations Committee

Dr. Lerner stated there's been no meeting since the last Board meeting, so he will just update the Board on what they are trying to do. They are crafting a newsletter that will initially be handled by the DCA until they can bid out a private contractor. He also stated they are looking at potentially

casting the board meetings on the web, which could also have a capability of video record the minutes. They are currently getting cost estimates of the equipment.

Mr. Stiger informed the Board that the staff may be coming back to the board for approval of a budget change proposal to allow funding for the equipment.

Jim Conran agreed that broadcasting the meeting would be very positive, it furthers the Board's desire to be transparent and would educate those who are interested to see how the Board operates and may also encourage people to participate.

Mr. Stiger updated the Board that the current regulation, the Letter of Admonishment, is in process and moving along. We have recently completed a public hearing where only one comment was made, which was a positive comment. There is some information at the Department of Finance we will need back on a Form 399, it's a Statement of Economic Interest. Once we receive this document back, we can file the regulation with OAL and hopefully it will get through in a short period of time.

Judge Duvaras said that the Order of Abatement with the prior Administration used the words "Cease and Desist" which he thought was objectable. He believes cease and desist should be from a judge's order.

Ms. Powell clarified that the Board has some authority to order licensees to do certain things and there is do process in that. The language is modeled from the current citation and fine language which speaks to an order of abatement that is used in the general B and P, and is understood language in the regulatory field. The Board no longer uses the words "Cease and Desist".

Public Comment

Clarification was needed for the next Board Meeting on November 20th, regarding the location and time. Dr. Lerner responded that the next meeting is at 10:00 a.m. and will be held at the Westin Hotel in Los Angeles, California.

Future Agenda Items

Dr. Lubkin hopes there will be an update on Continuing Education Materials.

The Board recessed for a one hour lunch at 12:00 noon.

Hearings re: Petition for Reinstatement of Revoked License

Administrative Law Ms. Brawdtski presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Craig Maurer
- Robert Strohbach

Following oral testimonies, the Board went into closed session to consider Craig Maurer and Robert Strohbach for reinstatement of Revoked License.

Adjournment

Dr. Lerner adjourned the meeting at 4:35 p.m.

Thursday, September 25, 2008

Public session

Dr. Lerner called the meeting to order at 8:05 a.m.

Roll

Dr. Columbu called roll all Board members present, with the exception of Jim Conran and Judge James Duvaras.

Judge James Duvaras came at 8:50 a.m.

Dr. Lerner announced that the Board will now go into closed session for an hour.

Dr. Lerner opened public session at 9:03 a.m. and turned over to Ms. Karen Brawdt, Administrative Law Judge.

Hearings re: Petition for Reinstatement of Revoked license

Administrative Law Ms. Brawdt presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- **Stanford Sher**
- **Parviz Kovoossi**
- **Paul Bolonga**
- **Carlos Seals**

Public Session

Dr. Lerner called to order 11:48 a.m. and turned the meeting over to Karen J. Brawdt, ALJ

Hearings re: Petition for Early Termination of Probation

- **Lee Tan Nguyen**
- **Steve Ram Nadkeswhar**
- **Donald Ringer**

Administrative Law Ms. Brawdt presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

Dr. Lerner announced that the Board will now go into closed session the time is 1:42 p.m.

Closed Session

Following oral testimonies, the Board went into closed session for deliberation and determinations of Petitioners.

Public Session

Dr. Lerner called the Board to open session at 2:33 p.m.

Future Agenda Items

Adjournment

Dr. Lerner adjourned the public meeting at 4:30 p.m.