

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
November 20, 2008
The Westin Los Angeles Airport
5400 West Century Blvd., Room 336
Los Angeles, CA 90045**

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

Staff Present

Brian Stiger, Executive Officer
Anita Scurri, Legal Counsel
John Melendez, Staff Services Manager
April Alameda, Associate Governmental Program Analyst
Lavella Matthews, Associate Governmental Program Analyst
Rebecca Rust, Associate Governmental Program Analyst
Valerie James, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 11:01 a.m.

Roll Call

Dr. Columbu called the roll. All members were present except Judge James Duvaras.

Chairs Report

Dr. Lerner thanked the Department of Consumer Affairs for hosting our Board at its Professionals Achieving Consumer Trust Program and had the following comments: "Our Board Members and staff have worked especially hard this year to protect consumer for chiropractic services.

Specifically we have put in place a level of enforcement we believe to be unmatched in the State of California. We put forward regulations on a Letter of Admonishment, chiropractic quality review panels, cite and fine regulations, and others. Today we will be presenting and discussing proposed

regulatory language on continuing education requirements, chiropractic board specialties and manipulation under anesthesia. This represents a tremendous body of work that I think our Board can be very proud of. I believe that this will significantly elevate the confidence and respect that the public has on our licensed doctors of chiropractic in California, as well as increase the pride our licensees have in our professions. I feel very privileged to serve the State of California with our board members and staff. We have all been working together in a very synergistic manner and I am very encouraged with the direction the board is moving. As we head toward the holidays, I am very thankful and grateful to be associated with such a fine group of people. Although my opinion may be a little bias, I think we have the best Executive Officer and a full complement of staff that anyone would be proud to have. As for my fellow board members, I don't think words could properly express the level of dignity and respect that I have for you. Without a doubt, serving with you on this board continues to be one of the greatest accomplishments in my life. Finally, I would also like to thank the continual presence and thoughtful input from our professional associations, colleges, and various public members. Your suggestions and feedback have been immensely valuable in helping us fulfill our primary mission, protecting the California consumers of chiropractic services."

Approval of Minutes

Two sets of minutes to approve. September 24-25, 2008 and re-amendment to August 16, 2007.

MOTION: DR. LUBKIN MOVED TO APPROVE THE SEPTEMBER 24-25, 2008 MINUTES AS AMENDED

SECOND: DR. COLUMBU SECONDED THE MOTION

VOTE: 5-0

MOTION CARRIED

Discussion

Mr. Stiger stated on page six, there is a misspelling of a name. On page seven, there is an error in a reference code, should be 651. Finally on page eight, the word "where" needs to be added.

MOTION: MR. CONRAN MOVED TO NOT APPROVE THE AUGUST 16, 2007, AMENDMENT

SECOND: NONE

MOTION FAILED

MOTION: DR. TYLER MOVED TO APPROVE THE AUGUST 16, 2007, AMENDMENT AS CORRECTED.

SECOND: DR. COLUMBU SECONDED THE MOTION

VOTE: 4-1

MOTION CARRIED

Discussion

Mr. Conran asked who suggested the amendment, and felt the minutes should be consistent and if we are to go back and modify these particular minutes, then we should do that to all past minutes.

Mr. Conran questioned why the Board would go back to these particular minutes and include an individual verbatim comment.

Dr. Columbu stated it was his suggestion and explained that members of the public that provide public comment should be acknowledged in the minutes.

Mr. Conran stated that these minutes then are incomplete because Michael Shames and Steve Alexander spoke at the same time and it seems strange that we pick one person out of three to identify in this manner when we have never done this before. Mr. Conran proposed that if we accept this amendment then we should be consistent in future minutes.

Dr. Tyler stated that Ms. Fellmeth's statement was excellent and that maybe Mr. Conran's suggestion that everyone's comments should be included in the minutes. Dr. Tyler said he had a concern about the cost and asked if there are any other agencies like CPIL (Center for Public Interest Law).

Mr. Conran said he could not speak for Ms. Fellmeth and that he can only give institutional memory that is always subject to debate. Mr. Conran said as the comments relate to the State Bar, Contractor's State Licensing Board, and the Medical Board, it was a requirement by the state Legislature that CPIL serve in a monitoring capacity and that requirement may have been part of budgetary language signed by various previous Governors. Mr. Conran said he does not have a problem if the Board wishes to capture comments but to capture one person out of everybody is very inconsistent and while he understands the intent is honorable it just doesn't sit right to pick one person out of everyone who has ever testified before this particular group.

Mr. Conran stated he recalled the conversation was after the Board had a series of public incidences that were reported by the media and Ms. Fellmeth came and spoke it through in San Diego and offered, if everyone desired, the ability for Mr. Stiger or the Board to consult with CPIL based on their experience of following licensing boards in California for almost 30 thirty years. They are the only consumer group in the state that monitors and follows licensing boards. Mr. Conran said he thinks this is somewhat capricious and arbitrary when it has not been consistent with the minutes the Board kept in the past. If the Board determines that they wish to do this, fine, but to make these minutes correct we should go back and get everyone who was there and do it prospectively going forward.

Dr. Tyler stated his only concern was money at this particular point and asked if CPIL was the only one that does that. Mr. Conran stated, as far as he knows, CPIL was the only one chartered by the Legislature to monitor boards that were having either fiduciary or other problems and asked Ms. Scurri to comment.

Ms. Scurri said the CPIL was not actually chartered by the Legislature but they ended up being the group selected for these three enforcement monitor positions that were caused by the various statutes for each of the different agencies, and they are unique in what they do but they were not actually selected by the Legislature but through the contract process.

Dr. Lubkin clarified the typographical error was that is should read "if", not I, and should be corrected.

Public Comment

Anthony Donatelli, asked for a status of his license application.

Mr. Stiger informed Mr. Donatelli that the Licensing Manager, John Melendez was present and would discuss this with him privately.

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

Dr. Lerner introduced Anita Scurri from Department of Consumer Affairs. Ms. Scurri is the Board's legal counsel today, in the absence of LaVonne Powell. This board has had no new members since March 2007, and there has been Bagley-Keene training at all the meetings. Ms. Powell has requested that if there are questions to direct them to Ms. Scurri.

Ms. Scurri provided a brief overview of the rule making process.

Executive Officer's Report

Budget

Mr. Stiger discussed the Board's budget and provided an Expenditure Projection for the remaining of the fiscal year. This information is current through October 31, 2008. Projections indicate \$34,000 will be left at the end of the fiscal year. We are running a tight budget and cannot determine how many enforcement actions will be taken. We are keeping a close eye on the budget and doing projections each month to ensure we do not over expend the budget.

Personnel

Mr. Stiger informed the Board we are still recruiting for a Special Investigator in Southern California, whose salary is already included in the projection. The first interviews have been completed, and he will be conducting second interviews tomorrow. If a candidate is selected, we hope to have them on board by the beginning of the year. We also have 2 additional positions we are authorized to fill next fiscal year.

Licensing

Mr. Stiger informed the Board that there are no significant back log problems. There has been a slight increase in licensed chiropractors in the last year. We continue to show a larger increase in satellite certificates. Our Licensing Unit has a project to identify those individuals that have more than five satellite offices due to this becoming a growing concern.

Enforcement

Mr. Stiger informed the Board we have been very busy this year and there were certain numbers he wanted to recognize. There are 667 pending complaints, and we are very concerned and consider it to be backlog. However, it's a lower number than it has been in the past several years. We are working the backlog down. We have changed our structure and training and have implemented recommendations and they are working. Our citation authority to issue fines began August 1st and we have 8 citations. Our probation cases are going down, we currently have 146.

Mr. Conran asked where the money goes when citations are paid.

Mr. Stiger replied that they go into our fund, not our operating budget. If we want to use it, we need to get authority through a budget change proposal process.

Dr. Lubkin asked for clarification on the number of complaints received for 08/09, if it was a projection.

Mr. Stiger clarified that it is the actual number of complaints received for the first four months of this fiscal year.

Ratification of Approved Continuing Education Providers

MOTION: DR. TYLER MOVED TO RATIFY THE APPROVED CONTINUING EDUCATION PROVIDERS

SECOND: DR. LUBKIN SECONDED THE MOTION.

VOTE 5-0

MOTION CARRIED

Discussion

None

Ratification of Approved License Applications

MOTION: DR. LUBKIN MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS

SECOND: DR. TYLER SECONDED THE MOTION

VOTE: 5-0

MOTION CARRIED

Discussion

None

Committee Reports

Continuing Education Committee

Dr. Tyler mentioned that back in 2006 he proposed a 24 hour continuing education. At that time it was being discussed, but nothing was done. The year 2007 was very busy, and now, in 2008 the committee has ruled ahead. He acknowledged Mr. Stiger and the staff for how well they are running the Board. He mentioned that a committee meeting was held today and there was more feedback from members of the profession regarding the recommendations that are being made. They were all valid and interesting points. We want to get ahead and give something to the profession and become a benchmark for other boards to look at what California has done. The committee has held many workshops and meetings, and will still need to hold more. He proposed that the board members review what is being presented so it can be discussed at the next full board meeting. He commended Dr. Lubkin on his efforts to articulate in writing some of the ideas the committee had.

Discussion

Dr. Lerner asked if the proposal was not ready to promulgate.

Dr. Tyler responded each time it's believed to be fine tuned, someone puts in a new idea that is a good one. He believes they should not rush this process and miss something important. Everyone should read it carefully and present their ideas.

Dr. Lubkin stated that they also wanted to give legal an opportunity to make comments or suggestions so that we have a format that is likely to pass through OAL on the first attempt.

Dr. Lerner asked if they felt it was ready for legal review.

Dr. Tyler responded he felt it was very close to being ready for legal review.

Ms. Scurri suggested that the committee meet with Ms. Powell to go over the policy issues so that she could assist the committee in preparing a draft that will meet OAL criteria.

Dr. Lerner commented that this has moved miles, we are offering licensees a great freedom of choice with some mandatory aspects to help keep a minimum standard of competency that elevates the whole profession. It's been an incredibly body of work with tremendous public input. He is very grateful to the participants on the continuing education work group, the people who continue to come to the board meetings for this, and the board members and staff. He is looking forward to this moving along.

Jim Conran commented that he has raised this point before, but wants to make sure the classes we have focus on the needs of protecting the public rather. As we look at classes, they need to be designed for public health, safety and welfare. Also, Staff need to be diligent that people who are promoting various continuing education programs are mindful of that and are truly there for education.

Public Comment

None

Scope of Practice Committee

Dr. Lubkin stated they have spent quite a bit of time going over the proposed regulations, and even had a proposal that came to them today. He would like Dr. Lerner to go over it.

Dr. Lerner stated there was a handout document that has a series of proposed regulations. In terms of sculpting, this is the mud they started with. As they turn this into a beautiful sculpture such as the continuing education regulations are right now, there is a process. He is really grateful to the California Chiropractic Association. This is not a complete aspect, but this makes it a lot simpler. He feels simplicity is a key to understanding and it makes it easier to meet the criteria that Ms. Scurri brought fourth. The further we can advance this, the happier everyone will be.

Public Comment

Kristine Shultz representing the California Chiropractic Association stated when they looked at the proposed regulations they were concerned because they thought this would create a whole new process where the Board has to review and approve Specialty Boards. They were hoping to find something that would be easier. One change that needs to be made is regarding the CCE colleges, they don't actually confer the specialty, they are the program that someone has to complete and then take a specialty board exam, so that language needs to be removed. There are some other issues and she is happy to work with the Board on whatever language will work to meet the standards.

Dr. Lerner stated there is also a problem that Ms. Scurri brought up regarding the term equivalent. He would like everyone to know that there are several state and federal laws that we need to be compliant with in order for this to work. That is partly the job of OAL, to make sure this is compliant with everything.

Ms. Scurri asked if this regulation references the regulations of another agency, and are we then

proposing that the other agency be the one that determines the equivalency.

Ms. Schultz responded this does reference another agency's regulations. However, the intent was not for the other agency to determine equivalency. The intent was to set a standard so that when anything met the standard it would automatically be included so the board would not have to individually approve other courses.

Dr. Charles Davis said he would prefer a simpler, one page regulation.

Manipulation Under Anesthesia Revised Proposed Regulatory Language

Dr. Lubkin stated the document is finalized and ready to have a vote by the board to move forward. This is basically the identical document, except paragraph 1a has an addition of one other accrediting agency.

Dr. Lerner stated this has also been a good body of work and is probably ready.

Jim Conran has never heard of the added agency and asked to be educated on who they are.

Dr. Lubkin responded they are an accrediting agency that was brought to the attention of the committee and staff.

After researching them, they are an entity that accredits facilities that perform manipulation under anesthesia.

MOTION: DR. LERNER MOVED TO SET THIS LANGUAGE FOR REGULATORY HEARING

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 4-0-1

MOTION CARRIED

Regulations

Update of Proposed Regulations re Letter of Admonishment filed with OAL

Mr. Stiger explained this is an enforcement tool that will be used to inform licensees of minor violations of the law. It would not be an action against their license. We have filed this information for rulemaking and are waiting for the Department of Finance to approve our Fiscal Impact Statement. They are behind right now due to working on the budget.

Update of Proposed Regulations Chiropractic Quality Review Panels filed with OAL

Mr. Stiger stated this in the same pending mode, we are waiting on the Department of Finance to approve our Fiscal Impact Statement.

Dr. Lerner asked if there is a deadline for the Department of Finance to approve the Fiscal Impact Statement, and what happens if they don't approve it in the timeframe.

Ms. Scurri responded unfortunately there is not a timeframe for the Department of Finance. There is however a deadline for the Board. The regulations have to be to OAL within a year of the notice. If the year passes, the processed has to start all over.

Mr. Stiger stated we are no where near the deadline. The notices were filed in the summer. He is not concerned at this point. April Alameda follows-up with the Department of Finance on a routine

basis. If the time comes that we get to close, staff will inform the Board.

Proposed Regulations Regarding Time Frame to Petition for Reinstatement of a License and Modification of Probation or Early Termination of Probation

Mr. Stiger stated this is proposed regulation that is a result of some of the petition hearings that have been held in the past. Ms. Powell and staff worked on this proposed language to change the requirements for petitioners. This proposed language is placed before the Board for discussion and direction.

Dr. Lerner read the proposed language for the members of the public.

**MOTION: MR. CONRAN MOVED TO SET THIS LANGUAGE FOR REGULATORY HEARING
SECOND: DR. TYLER SECONDED THE MOTION**

VOTE: 5-0

MOTION CARRIED

Legislation Update – Discussion and Possible Action

DCA Proposal regarding Retroactive Fingerprinting of Licensees

Mr. Stiger discussed that DCA is proposing regulatory language to allow retroactive fingerprinting when licensees were not fingerprinted when they initially applied. He is asking if this board would like to tag on and have its name in the legislation to allow us to go back in the event that some of our licensees were not initially fingerprinted. We have been fingerprinting since 1941, however, if someone has fell through the cracks this legislation will allow us to go back and get that individual fingerprinted. So, does the board what to tag on to DCA, write our own legislation, or not do anything at all?

Mr. Conran asked if fingerprinting was an administrative procedure or is it required by legislation.

Mr. Stiger responded we do require fingerprinting; however the language is a little vague in the law. He recommends that we move forward to make it very clear that we have that authority to collect fingerprints.

Ms. Scurri commented that the approach of the FBI and the Department of Justice is changing on when they are willing to give fingerprint reports. They are tightening up their position of providing information if authority is not specifically in the law. It's a good idea to make sure that the legislation in clear, even if retro-fingerprinting is not addressed.

Dr. Lerner asked if this regulation would be in conflict with anything currently in the Initiative Act.

Ms. Scurri said that question should be directed to Ms. Powell since she is familiar with the Act. She would be happy to discuss this with her, but she feels that something is in order soon so that we don't lose the ability to get fingerprints processed.

Mr. Conran suggested since it isn't on a bill yet, that we wait until the bill is introduced. At that time the legislative committee can make a decision if we should join with the DCA bill or have our own bill. It would probably be easier to join with the DCA. He agrees with Ms. Scurri that we should proactively get a piece of legislation that gives us the authority so that we are not challenged.

MOTION: MR. CONRAN MOVED FOR STAFF TO EXPLORE OPTIONS

**SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED**

Web Casting Cost Proposal – Discussion and Possible Action

Dr. Lerner explained we've had difficulty in the past with details in our minutes. There have been several times we've had to go back and re-amend minutes. We are looking at technology that will allow us to audio-visually record minutes so that anyone could access not only written minutes, but could also see audio-visual material of the meeting. We are also looking at web casting the meetings so that anyone with internet access could effectively be at the board meeting, this would be the ultimate transparency. It would resolve issues of who said what. He introduced John Melendez, Licensing Manager to report on this information.

Mr. Melendez reported that we have a proposal from one company that includes the set up software, training required, and allows us to store and access the board meeting information for up to twelve months.

After twelve months, we would need to make a copy of it for record which could be done by dvd. We could also make copies of them available upon request. We are very early in the process of looking at this option. We wanted to give the Board an opportunity to get an idea of the cost. We will most likely be required to submit a budget change proposal. There is a less expensive option of audio only, however the cost difference is so minimal that it doesn't make sense to do audio only. The web casting also allows us to time stamp so people can go directly to a specific agenda item they are interested in.

Dr. Lerner stated he also attended the presentation and feels this would be a tremendous relief on the board staff. Anybody could access the information for up to twelve months, it's a tremendous access to the public. He is very much in favor of providing transparency.

Mr. Conran stated he agrees this is a great idea and feels this would send a valuable message that this is a board that wants to be viewed in public light. It would make us more accessible to licensees and the public. He is very much in favor of this.

Dr. Lerner stated if anyone wanted to see a sample, they could go onto granicus.com. There are many other cities they are working with. City of San Jose may be a good example. They are very eager to work with us but we can't just hire a private firm and go with it. In terms of the cost, it's not a concern to him because he feels there will be a huge savings in reduced labor time, and also the value in removing past problems with details in the transcription of the minutes.

Mr. Conran stated that we would not relieve us from having minutes, but this would improve the documentation.

Mr. Stiger explained that we would have to absorb these costs in our operating budget, which is currently very tight. The other option is a budget change proposal, and that process would take approximately eighteen months. If the board decides to do this, then we will have to not do other things to balance this cost. He can come back to the board members with a proposal on how to absorb the cost this fiscal year.

Mr. Conran stated the governor is concerned about environmental issues and this would allow some people still follow meetings without having to commute to them.

Public Comment

Kristine Shultz asked if we could introduce legislation to take the money out, and if so, wouldn't that take less time than a budget change proposal.

Mr. Stiger responded yes, it would take less time than eighteen months and it's a great idea.

Dr. Lerner stated he would hate to go back to the legislature at this time to ask for money. The legislature is dealing with the budget crisis. Who knows what the legislature would do. If we could do this internally, it would be best to leave the responsibility of managing the money with Mr. Stiger. If that fails, then maybe the legislature is the right way to go.

MOTION: MR. CONRAN MOVED TO PROCEED ON THE AUDIO/VIDEO WEB CASTING

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE 5-0

MOTION CARRIED

Proposed Board Meeting Schedule for 2009

Mr. Stiger stated these are the proposed dates he came up with and they are similar to this past year.

Dr. Tyler said he is concerned about budget constraints since only two of the six meetings are in Sacramento. With four being away he is unsure of the cost difference.

Mr. Stiger responded it will cost more but we wanted to ensure we move around the state to allow the public to participate.

Dr. Lerner said he felt Dr. Tyler's point was valid and asked if it was necessary to go all these different places.

Mr. Conran stated that many committee meetings are held in Sacramento and he feels it's important that we give the public an opportunity to come in and talk about issues that are important to them. He would hope that when we do go outside of Sacramento, we would go to a place to partner up, such as one of the colleges. It says that the Board is willing to go out and make itself accessible to people rather than making them come to us.

Dr. Lerner asked in terms of dates if any board members had any conflicts. They are all on Thursdays.

MOTION: MR. CONRAN MOVED TO APPROVE ONLY THE DATES

SECOND: DR. COLUMBU SECONDED THE MOTION

VOTE: 5-0

MOTION CARRIED

MOTION: MR. CONRAN MOVED TO APPROVE THE LOCATIONS

SECOND: DR. COLUMBU SECONDED THE MOTION

VOTE 5-0

MOTION CARRIED

Public Comment

None

Future Agenda Items

Mr. Conran feels we need to have a defined way of disposing of confidential documents and not leave it up to the discretion of board members. He had an experience yesterday where he walked into a room to do a presentation and a previous board had left confidential documents on the table. Although this board has not done that, he feels there is a need for security within our administrative procedure manual so board members have clear direction to ensure this doesn't happen.

Mr. Stiger said we could look into making an amendment our administrative manual on how we handle confidential documents.

Dr. Lubkin stated he wanted to move forward on the seal.

Dr. Lerner responded that it has not been moving forward because the committee has been placed on hold due to the unclear status of Mr. Conran. He also added a proposed agenda item for January of raising licensing fees legislatively.

The Board recessed until 2:25 p.m.

Hearings re: Petition for Reinstatement of Revoked License

Administrative Law Judge Daniel Juarez presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearing.

- Charles L. Whitney

Following oral testimony, the Board went into closed session to consider Charles Whitney for reinstatement of Revoked License.

Closed Session

Following oral testimony, the Board went into closed session for deliberation and determination of Petitioner.

Adjournment

Dr. Lerner adjourned the public meeting at 4:14 p.m.