



NOTICE OF PUBLIC MEETING
ENFORCEMENT COMMITTEE

AUGUST 30, 2012

10:00 a.m.

**2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833**

AGENDA

- 1. CALL TO ORDER**
- 2. Approval of Minutes**
July 14, 2012
- 3. Minimum Requirements for Patient Examinations**
- 4. Proposed Omnibus Consumer Protection Regulations**
- 5. Disciplinary Guidelines**
- 6. Pain Management**
- 7. Standards for Extracorporeal Shock Wave (ESW) Therapy – Proposed New California Code of Regulations Section 318.2**
 - Presentation by Ed Cremata, D.C.
- 8. Discipline by Another State – California Code of Regulations Section 304**
 - What Constitutes Discipline? (e.g., Voluntary Surrender Pending Disciplinary Action)
- 9. Investigators: Authority to Inspect Premises – California Code of Regulations 306.3**
 - Failure to Comply: Consequences
- 10. Advertisements – California Code of Regulations Section 311**
 - False & Misleading Advertising
 - Clear Identification of Licensee in Advertisement
 - Seminars that Promote Illegal Acts

T (916) 263-5355
F (916) 263-5369
TT/TDD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
www.chiro.ca.gov

11. **Law Violators – California Code of Regulations Section 314**
 - Clarification of Section
 - Abuse Reporting Requirements (e.g., Spousal, Elder, and Child Abuse)
12. **Name of Corporation – California Code of Regulations Section 367.7 & Corporations Code Section**
13. **Policy/Procedure Regarding “Hold for Discussion” on Proposed Decisions and Stipulated Settlements**
14. **Disciplinary Orders – Monitoring of Billing Practices by Certified Public Accountants (CPAs)**
15. **Disciplinary Orders – Timeframe for Taking and Passing Required Examinations (e.g., Ethics & Boundaries)**
16. **PUBLIC COMMENT**
17. **FUTURE AGENDA ITEMS**
18. **ADJOURNMENT**

ENFORCEMENT COMMITTEE

Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.
Sergio Azzolino, D.C.

The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or e-mail marlene.valencia@chiro.ca.gov or send a written request to the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

**Board of Chiropractic Examiners
MEETING MINUTES
Enforcement Committee
July 14, 2012
Department of Consumer Affairs
1625 North Market Blvd., El Dorado Room
Sacramento, CA 95834**

Committee Members Present

Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.
Sergio Azzolino, D.C.

Staff Present

Robert Puleo, Executive Officer
Sandra Walker, Compliance Manager
Linda Shaw, Licensing/CE Manager
Dixie Van Allen, Associate Governmental Program Analyst
Valerie James, Office Technician

Call to Order

Dr. Lubkin called the meeting to order at 11:20 a.m.

Roll Call

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

Approval of February 24, 2011 Scope of Practice Committee Minutes

MOTION: DR. LUBKIN MOVED TO APPROVE THE MINUTES

SECOND: DR. AZZOLINO SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

Approval of March 17, 2011 Committee Minutes

MOTION: DR. LUBKIN MOVED TO APPROVE THE MINUTES

SECOND: DR. AZZOLINO SECONDED THE MOTION

VOTE: 3-0

MOTION CARRIED

Chiropractic Patient Records/Accountable Billings and Informed Consent

Dr. Columbu indicated that section 318 is not being followed. Dr. Azzolino spoke on the issues with section 318(a)(3) and (4) relating to computerized patient records and the inability for signatures/initials of the patient and/or doctor. The Committee had a lengthy discussion.

Cynthia Butler, D.C. came forward and indicated that other states set recommended guidelines and reference them in their regulations.

The Committee discussed revised language for section 318(a)(3) in order to address electronic signatures.

Ms. Penny Cunha representing the California Chiropractic Association (CCA) suggested using the word 'attest' rather than requiring a signature or initials.

Mr. Puleo will research other healthcare professions as to providing suggested language relating to electronic signatures and will seek legal advice.

Dr. Azzolino requested clarification to section 318(a)(4) as to the signature of patient being on the initial intake form or if a signature is needed at every visit. After a lengthy discussion, it was decided that 'on initial intake form' should be added to the end of section 318(a)(4).

Dr. Columbu spoke on the issues of section 319.1 which is causing confusion. He believes one of the following needs to be done; changes need to be made to the language; repeal the regulation; or, informed consent should be used voluntarily.

The Committee had a lengthy discussion.

Dr. Butler came forward and indicated that informed consent can be interpreted in many different ways.

Dr. Lubkin wants to recommend to the full Board to leave informed consent regulation as is, repeal the regulation, or make changes. Dr. Lubkin requested Dr. Columbu to draft suggested language to be presented at the July 19, 2012 Board meeting.

Dr. Azzolino questioned if a patient was treated a number of years ago and came back with the same aggravated condition how would the informed consent work. He believes modifying the language with a grace period would address this issue.

Proposed Omnibus Consumer Protection Regulations

The Committee discussed the proposed Omnibus Consumer Protection regulations by sections.

Section 303(b) will be reworded related to designating an address of record with a post office box.

The Committee would like to add 'province/territory' after 'a foreign government' in section 304(a). Mr. Puleo will check with legal counsel on the addition.

Section 308 wording of 'in a conspicuous place' should be clarified. After a lengthy discussion it was determined to change that reference to the wording in 308.1(b).

There was a lengthy discussion on Section 308.1 regarding notice to consumers.

MOTION: DR. COLUMBU MOVED TO ELEMIMATE SECTION 308.1 IN ITS ENTIRETY
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 1-2
MOTION FAILED

MOTION: DR. LUBKIN MOVED TO POST THE NOTICE TO CONSUMERS IN A CONSPICUOUS PLACE OR IN A WRITTEN FORMAT, 8 1/2 X 11 PIECE OF PAPER, FOR A PATIENT TO SIGN AND KEPT IN THEIR FILE AND FOR THE PATIENT TO TAKE HOME

Dr. Butler came forward to speak on the inability to post a notice at her place of business.

Dr. Lubkin withdrew his motion.

MOTION: DR. AZZOLINO MOVED TO REMOVE SECTION 308.1 IN ITS ENTIRETY
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 2-0-1
MOTION CARRIED

Section 312, all references to 'duly licensed chiropractor' should be changed to 'duly licensed doctor of chiropractic.' All references to 'physical' therapy should be changed to 'physio' therapy.

Section 312(b) should be rewritten as 'Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations. They may not render a conclusion either verbally or in writing to a patient regarding the patient's physical condition. Such individuals shall be at all times under the direct supervision of a duly licensed doctor of chiropractic.'

Section 312(c)(3) and 312(c)(4) should be removed.

Section 312(e)(4), in the second paragraph, add 'all preceptors are under the direct supervision of a duly licensed doctor of chiropractic.'

Section 317.3(a)(1)(C) add 'province/territory' after 'a foreign government.' Mr. Puleo will check with legal counsel on the addition.

Section 390.7 change the section reference of 729(c) to 729(c)(3). Mr. Puleo will look into this section for clarification on the length between an 'active patient' related to a doctor of chiropractic engaging in a relationship with said patient.

Section 390.8(a) add 'province/territory' after 'a foreign government.' Mr. Puleo will check with legal counsel on the addition.

Minimum Requirement for Patient Examination

Dr. Lubkin would like to establish a minimum requirement for patient examinations. This item will be tabled for the next Enforcement Committee meeting for review.

Disciplinary Guidelines

Category I

Sandra Walker, Board's Compliance Manager, came forward and provided an overview of the existing Disciplinary Guidelines, Category I (categories of violations and recommended penalties), and Standard and Optional Conditions with recommended revisions.

The Committee will continue the overview at its next meeting.

Mandatory Reporters Information on Web Site

Mr. Puleo presented a proposed sample of mandatory reporting information that can be placed on the Board's web site.

Pain Management

Dr. Lubkin spoke on issues of pain management within the practice of chiropractic. Mr. Puleo informed the Committee that Dixie Van Allen has been researching excessive treatment and pain management. Information will be provided at the next Enforcement Committee meeting. Dr. Azzolino provided information on the American Academy of Pain Management to aid with the research

Standards for Extra Corporeal Shock Wave (ECSW) Therapy

Dr. Lubkin would like Board staff to put regulations forward on Extra Corporeal Shock Wave to model the Manipulation Under Anesthesia regulations.

Public Comment

No comments were brought forward.

Future Agenda Items

Dr. Azzolino requested an agenda item relating to the inconsistencies of fictitious names and corporate names within the Initiative Act and the Business and Professions Code.

Adjournment

Dr. Lubkin adjourned the meeting at 3:23 p.m.

DRAFT

4. Proposed Omnibus Consumer Protection Regulations

Handout will be available at meeting

OPTIONAL CONDITIONS

Actual Suspension

As part of probation, respondent is suspended from the practice of chiropractic for (**Ex: 30 days**) beginning the effective date of this decision. The suspension notice shall remain posted, at respondent's **primary practice and/or all satellite practice addresses** during the entire period of actual suspension. Respondent shall prominently post a suspension notice provided by the Board **at these locations and** in a place which is conspicuous and readable to the public. (**Ex: practice and/or satellite location entrance**).

Respondent shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, member of the public, or other person as to the nature of and reason for the suspension. During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic.

Subject to the above restrictions, respondent may continue to own or hold an interest in the chiropractic practice in which he or she holds an interest at the time this decision becomes effective.

RATIONALE: This change includes suspension posting at both Satellite and practice addresses. It is assumed that probation conditions are still in effect even during respondent's suspension period.

Drugs - Abstain From Use

Respondent shall abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, unless prescribed by a medical practitioner for a bona fide illness.

Alcohol and Drug Abuse Treatment/Counseling

Within 30 days from the effective date of this Decision, Respondent shall propose to the Board, for prior approval, the name of one or more inpatient or outpatient alcohol and drug abuse recovery programs which at a minimum is **six (6) months** in duration. Within 30 days after notification of the Board's approval of such program, respondent must enroll in the approved program. Non-completion of said program shall constitute a violation of probation by respondent. Subsequent to the completion of the program, respondent shall participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the Board at least **3 times a week** during the first _____ of probation. Respondent shall submit proof satisfactory to the Board of attendance in said programs. The costs for participation in the programs shall be borne by the respondent. Respondent shall sign a Release of Information allowing the programs to release to the Board all information the Board deems relevant.

RATIONALE: This condition addition replaces and combines the current and separate alcohol and drug rehabilitation program requirement. The language addition is more specific to time frames required for treatment and allows the Board the option to specify the length of treatment.

Drug Abuse Counseling/Detoxification NOTE-Replaced by Alcohol and Drug Abuse Treatment/Counseling

~~Within 30 days from the effective date of this Decision, respondent shall propose to the Board, for prior approval, the name of one or more drug abuse rehabilitation programs and shall, within 30 days after notification of the Board's approval of such a program, enroll in that approved substance abuse rehabilitation program, and comply with all requirements of the program, including drug testing. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation. Failure to comply with the program requirements shall be considered a violation of probation. The costs for participation in the program shall be borne by the respondent. Respondent shall sign a Release of Information allowing the program to release to the Board all information the Board deems relevant. Probation shall be extended automatically until respondent successfully completes his/her rehabilitation program.~~

Alcohol - Abstain From Use

Respondent shall abstain from the use of any alcoholic product or beverage.

RATIONALE: Adding this word allows us to detect if testing results on a probationer included consumption alcoholic beverages but also use of Nyquil, mouth wash or hand sanitizer.

Alcohol Abuse Counseling/Detoxification NOTE-Replaced by Alcohol and Drug Abuse Treatment/Counseling

~~Within 30 days from the effective date of this Decision, respondent shall propose to the Board, for prior approval, the name of one or more alcohol abuse rehabilitation programs and shall, within 30 days after notification of the Board's approval of such a program, enroll in that approved alcohol abuse rehabilitation program, and cooperate with all requirements of the program, including drug testing. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation. Failure to comply with the program requirements shall be considered a violation of probation. The costs for participation in the program shall be borne by the respondent. Respondent shall sign a Release of Information allowing the program to release to the Board all information the Board deems relevant. Probation shall be extended automatically until respondent successfully completes his/her rehabilitation program.~~

Blood and/or Urine Testing Drug and Alcohol Testing

Current: Respondent shall immediately submit, with or without prior notice, to blood and/or urine testing at respondent's expense, upon the request of the Board or its designee. The length and frequency of this testing requirement will be determined by the Board. Any confirmed positive finding will be considered a violation of probation.

Better: Upon the request of the Board or its designee, Respondent shall immediately submit, with or without prior notice, to **observed blood, urine, hair, breath, saliva or any other mode of testing and location as determined by the Board**, at Respondent's expense. Any confirmed positive finding will be considered a violation **of this term. Any attempts by**

Respondent to circumvent the requirements of this term shall also be considered a violation of this term. This includes, but is not limited to, Respondent's failure to submit a testable sample or his or her use of any device designated to fraudulently defeat drug tests. If the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. All terms and conditions remain in effect during the period of suspension.

Rationale: Allows for sound frequently monitored/random substance testing program if we use additional industry specimen screening tests besides blood and urine. This is currently compatible with DCA's contract for same services on probationer substance testing. As well, the probation monitor requesting random tests will be able to get testing feedback immediately if any probationer was caught being dishonest or adulterating the testing sample or its validity for the process.

Take and Pass Law Examination

Respondent shall take and pass the California Law and Professional Practice Examination (CLPPE) within the first _____ years of probation. ~~If respondent is directed to take an examination currently required of new applicants for licensure as a chiropractor, the examination shall be taken on a regularly scheduled date. If respondent fails this examination, respondent must take and pass a re-examination.~~

Option #1: If respondent fails the first examination, respondent shall cease the practice of chiropractic until the examination has been passed, as evidenced by the written notice to respondent from the Board.

Option #2: Respondent shall not practice chiropractic until respondent has passed the required examination and has been so notified by the Board in writing.

The respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee currently in place. ~~Failure to pass the CLPPE a required examination within the first _____ years of probation prior to the termination date of probation shall constitute a violation of probation. and automatically extend the period of probation.~~

RATIONALE NOTE: *Crossed out text makes less wordy, additional words make term easier to follow provision. Option 1 is recommended in cases where the respondent has been found to be incompetent or repeatedly negligent. Option 2 is recommended in cases where respondent has been found to be incompetent or grossly negligent and patient/client injury has resulted. The term does not have to have both or either Option.*

Special Purposes Examination for Chiropractic (SPEC)

Respondent shall take and pass the SPEC examination administered by the National Board of Chiropractic Examiners (NBCE) within the first ~~two~~ _____ years of probation. If respondent fails this examination, respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the SPEC

examination after two attempts constitutes a violation of probation.

Rationale: This update allows for the appropriate deadline to be selected for the case, depending on the nature of it.

Monitoring-Practice Monitor

Within 30 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, a plan of practice in which respondent's practice shall be monitored by another doctor of chiropractic who shall submit written reports to the Board, **on a form designated by the Board**, on a quarterly basis. It shall be respondent's responsibility to assure that the required reports are filed in a timely fashion. The monitor shall be independent, with no prior professional or personal relationship with respondent. The monitoring shall be, as required by the Board, either: Continuous - 75% to 100% of a work week; Substantial - At least 50% of a work week; Partial - At least 25% of a work week; or Daily Review - ~~Supervisor's~~ **Monitor's** review of probationer's daily activities within 24 hours. If the monitor resigns or respondent changes employment respondent shall, within 15 days, submit the name of new monitor, **for pre-approval**. If respondent changes employment, respondent shall have his or her new monitor, within 15 days after employment commences, submit notification to the Board in writing stating they have read the decision in case number _____ and is familiar with the level of **supervision monitoring** as determined by the Board. Any costs for such monitoring shall be paid by respondent.

Option #1: Respondent is prohibited from engaging in solo practice.

~~**Option #2:** Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board. NOTE: Recommended in cases of insurance and worker's compensation insurance fraud.~~

RATIONALE/NOTE: Option 1 preferred to complete this section. Option 2 moved to Billing Monitor section. Additional words were added to enhance concepts related to specific cases worthy of monitoring such as those incompetence, negligence, patient injury or unprofessional conduct.

Auditing of Billing Practices CPA

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed certified public accountant (CPA) in this state, and a plan by which such CPA would monitor respondent's billing practices. The CPA shall be independent, with no present or prior business, professional, or personal financial relationship with respondent. The CPA approved by the Board shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be respondent's responsibility to ensure that the required reports are filed in a timely fashion. Respondent shall give the CPA access to respondent's fiscal records. Monitoring shall consist of at least 4 hours per quarter of review of respondent's fiscal records. After two quarters, if the CPA determines that less time is sufficient for compliance, the respondent may request Board approval of a reduction of the number of hours of review. If ever the CPA prepares a quarterly report to the Board which finds substantial errors or omissions in, or questionable billing practices, monitoring may be increased at the discretion of the Board and respondent shall comply therewith. All costs of

monitoring shall be borne by respondent. If at any time during the period of probation, the CPA quits or is otherwise unavailable to perform his/her monitoring duties, within 30 days of the same, respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed CPA in this state and a plan by which such CPA would monitor respondent's billing practices.

Option #1: Within 45 days of the effective date of this decision and on a quarterly basis thereafter and at respondent's expense, respondent shall obtain a review of the books and records of respondent's chiropractic practice by a certified public accountant licensed in good standing in this state approved by the Board. Said certified public accountant shall review the books and records of respondent's chiropractic practice to determine whether respondent has delivered, received or accepted any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referral of patients, clients or customers to him/her or his/her practice or by him/her. Within 10 days of the completion of each review, said certified public accountant shall complete and submit a written report of his/her review to the Board. Respondent shall be responsible for the completion and submission of each said report. Failure to comply with this condition shall be considered a violation of probation.

NOTE: Recommended in cases involving insurance fraud, capping, steering, or fees for patient referrals. RATIONALE: Insurance fraud was added since many probationers during their term are generally required to have patient billings reviewed by a licensed CPA hence CPA has been commonly used already in header of this paragraph term.

Restitution for Consumers

Within _____ from the effective date of this decision, respondent shall pay to _____ the amount of \$ _____. **If respondent fails to pay the restitution as directed by the Board and on the date(s) determined by the Board it shall be a violation of probation. Failure to pay the costs within the first year of probation is a violation of probation. Respondent shall provide proof to the Board of restitution.**

RATIONALE- Fraud or negligent action usually deems this term. Careful review is made to ensure that proper restitution is made to timely either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

Psychiatric or Psychological Evaluation

Within 30 days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, respondent shall undergo, at his/her own expense, psychiatric evaluation by a Board-appointed or Board-approved psychiatrist or psychotherapist. Respondent shall sign a release which authorizes the evaluator to furnish the Board a current diagnosis and written report regarding the respondent's judgment and ability to function independently as a chiropractor with safety to public and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board.

If the psychiatrist or psychotherapist recommends and the Board or its designee directs

respondent to undergo psychotherapy, respondent shall, within 30 days of written notice of the need for psychotherapy, submit to the Board or its designee for its prior approval, the recommended program for ongoing psychotherapeutic care. Respondent shall undergo and continue psychotherapy, at respondent's own expense, until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly reports to the Board, or its designee. If recommended by the psychiatrist or psychotherapist and approved by the Board or its designee, respondent shall be barred from practicing chiropractic until the treating psychotherapist recommends, in writing and stating the basis thereof, that respondent can safely practice chiropractic, and the Board approves said recommendation. During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension. **(Optional)** Commencing on the effective date of this decision, respondent shall not engage in the practice of chiropractic until notified in writing by the Board or its designee that respondent is psychologically fit to practice chiropractic.

NOTE: Strongly recommended for those cases where evidence demonstrates that mental illness or disability was a contributing cause of the violation.

Psychotherapy

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, the name and qualifications of a psychotherapist or licensed mental health practitioner of respondent's choice. Should respondent, for any reason, cease treatment with the approved psychotherapist or licensed mental health practitioner, respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of respondent's choice to the Board for its prior approval.

Upon approval of the psychotherapist or licensed mental health practitioner, respondent shall undergo and continue treatment, with that therapist and at respondent's expense, until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluations by a Board-appointed or Board-approved psychiatrist or psychotherapist.

If recommended by the psychotherapist or licensed mental health practitioner and approved by the Board or its designee, respondent shall be barred from practicing chiropractic until the treating psychotherapist or licensed mental health practitioner recommends, in writing and stating the basis thereof, that respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

NOTE: Appropriate for those cases where evidence demonstrates sexual misconduct or commission of an act punishable as a sexual crime. Also appropriate in cases where evidence demonstrates impairment (Ex: mental illness, alcohol and/or drug abuse)

RATIONALE: This additional comment could be helpful to assign this term, if appropriate or emphasis in certain cases.

Medical Evaluation

Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation, at respondent's expense, by a Board-appointed or Board-approved physician who shall furnish a medical report to the Board or its designee.

If respondent is required by the Board or its designee to undergo medical treatment, respondent shall, within 30 days of written notice from the Board, submit to the Board for its prior approval, the name and qualifications of a physician of respondent's choice. Upon Board approval of the treating physician, respondent shall undergo and continue medical treatment, with that physician and at respondent's expense, until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Should respondent, for any reason, cease treatment with the approved physician, respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement physician of respondent's choice to the Board for its prior approval.

If recommended by the physician and approved by the Board or its designee, respondent shall be barred from practicing chiropractic until the treating physician recommends, in writing and stating the basis thereof, that respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

(Optional) Upon the effective date of this decision, respondent shall not engage in the practice of chiropractic until notified in writing by the Board of its determination that respondent is medically fit to practice safely.

NOTE: Appropriate for those cases where the evidence demonstrates that the respondent has had a physical problem/disability which was a contributing cause of the violation(s) and which may affect the respondent's ability to practice.

Ethics Course Ethics and Boundaries Examination (NBCE)

~~Within 60 days of the effective date of this decision, respondent shall enroll in a course in Ethics approved in advance by the Board, and shall successfully complete the course during the first year of probation. Class room attendance is specifically required. Probation shall be automatically extended for failure to complete the education as set out hereinabove.~~

Ethics and Boundaries Examination

Respondent shall take and pass the Ethics and Boundaries examination administered by the National Board of Chiropractic Examiners (NBCE) within the first two years of probation. If respondent fails this examination, respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the Ethics and Boundaries examination after two attempts constitutes a violation of probation.

RATIONALE: Ethics course is now referred to as Ethics and Boundaries (NBCE). The miscellaneous Ethics or Ethics and Boundaries courses were limited to quantity and quality of content. This course is specific and used as a tool to assess the understanding of ethics issues as they relate to chiropractic clinical practice and patients.

Education Course

Within ____ days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board for its prior approval, a **program in _____ (e.g. specify course subject matter)** an educational program or course to be designated by the Board, which shall be aimed at correcting any areas of deficient practice or knowledge which shall not be less than _____ hours per year, for each year of probation. **____ hours of the education may be obtained through distance learning.** This program shall be in addition to the chiropractic continuing education requirements for re-licensure, and shall be obtained with all costs being paid by respondent. Respondent shall provide written proof of attendance in such course or courses as are approved by the Board. ~~Probation shall be automatically extended for failure to complete the education as set out hereinabove.~~ **Failure to complete the annual ____ hours of education constitutes a violation of probation.**

Community Service

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, a community service program in which respondent shall provide volunteer services on a regular basis with a **non-profit** community or charitable facility or agency for at least ____ hours per month for the first ____ months/**years** of probation. Such community service does not necessarily include chiropractic service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a **monthly/quarterly** basis.

Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of this decision shall not be accepted in fulfillment of this condition.

Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation.

RATIONALE: Adding these comments is appropriate in those cases where the Respondent will need to rehabilitate from wrongdoing after actually or potentially harming the public, consumer or a patient. Also time frames to complete service can be set. Paragraph flows better with use additional words for emphasis.

Restricted Practice

Respondent's practice of chiropractic shall be restricted to [specify patient population and/or setting] for the first _____ years of probation. Within 30 days from the effective date of the decision, respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

NOTE: The restrictions shall be appropriate to the violation.

Third Party Presence - Sexual Transgressors Chaperone

During probation, respondent shall have a third party **chaperone** present in the examination or treatment room while consulting, examining and/or treating (female/male/minor) patients. Respondent shall, within 30 days of the effective date of the decision, submit to the Board or its designee for its prior approval the name(s), photo identification and contact information of persons who will be the third party chaperone. ~~present and a plan describing the third party's duties.~~

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain: 1.) patient name, address and telephone number; 2.) date of service; 3.) chaperone signature; 4.) patient gender; and 5.) patient signature. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection, is a violation of probation.

The respondent shall execute a release authorizing the third party(ies) ~~chaperone present~~ to divulge any information that the Board or its designee may request on a periodic basis during the probation ~~period monitoring.~~

NOTE: Sexual transgressors should be placed in a supervised environment.

RATIONALE: This condition continues to allow the Board to monitor Respondent by use of a third party chaperone in those cases involving sexual misconduct. Chaperone must be in the room during the patient treatment/examination.

Notification to Patients

Respondent shall notify all current and potential patients of the his/her probation by providing a copy of, or posting a copy of the final decision and Order in this matter., especially any term or condition of probation which will affect their treatment or the confidentiality of their records. Such notification shall be signed by each patient prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board, satisfactory evidence of compliance with this term of probation. ~~Terms of probation which require such notification include, but are not limited to, suspension of practice, supervised practice, and restricted practice.~~

RATIONALE: Similar to what is required by employee notice, we require posting or circulating copy or order to alert patients and we require signed patient copies of this notification upon request. .

Criminal Probation/Parole Reports

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his or her probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after respondent receives a copy of such a report.

BILLING MONITOR

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to act as a billing monitor. The proposed billing monitor(s) shall have been a licensed chiropractor for at least five (5) years and not have ever been subject to any disciplinary action by the Board. Once the Board has approved a billing monitor, Respondent shall submit a plan by which the billing monitor will provide monitoring of Respondents billing practices. All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the billing monitor. The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner. Respondent shall give the monitor access to all of Respondent's chiropractic practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent. Each billing monitor shall have read this Decision and the related Accusation.

Option #1: Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board.

RATIONALE: Recommended in cases involving billing incompetence, irregularities or fraud. This billing monitor can be an appropriate or less costly alternative in lieu of CPA to review flow of billing systems after review of those systems, statements, redacted treatment records which substantiate billing charges for services.

NOTE: *Recommended in cases of insurance and worker's compensation insurance fraud.*

§318.2. Standard of Care Regarding Extracorporeal Shock Wave (ECSW) Therapy.

(a) Extracorporeal Shock Wave (ECSW) therapy may only be performed in either:

(1) A hospital that is licensed by the California Department of Public Health Licensing and Certification Program; or

(2) An ambulatory surgery center that is licensed by the California Department of Public Health Licensing and Certification Program and that is either:

(A) Operating pursuant to section 1248.1 of the Health and Safety Code or

(B) Accredited by an agency approved by the Medical Board of California pursuant to Chapter 1.3 of Division 2 of the Health and Safety Code (commencing with section 1248).

(b) Notwithstanding subsection (a), above, ECSW therapy shall not be performed in a mobile van as defined in subdivision (h) of section 1248.1 of the Health and Safety Code.

(c) ECSW therapy may only be performed if the patient is administered anesthesia by a California licensed physician and surgeon or other health care provider authorized under California law to administer anesthesia.

(d) ECSW therapy may only be performed following an appropriate prior examination of the patient by a California licensed physician and surgeon.

(e) The chiropractor may not direct, instruct, interfere, or make any orders to the physician and surgeon or other health care provider who is administering and maintaining the anesthesia.

(f) ECSW therapy shall be performed by two licensed and competent chiropractors. The "primary chiropractor" shall formulate the chiropractic portion of the ECSW therapy treatment plan and shall be responsible for performing the ECSW therapy for that procedure. The "second chiropractor" shall insure that all movements are accomplished with patient care and safety as his or her primary focus and shall assist the "primary chiropractor" when necessary. The chiropractic portion of ECSW therapy is limited to techniques within the scope of practice of a chiropractor.

(g) For the purpose of this section, the primary chiropractor and the second chiropractor may not be involved in nor interfere with the physician and surgeon or other health care provider in the discharge of the patient following the ECSW therapy procedure.

(h) Failure by a chiropractor to follow the standard of care contained in this section when performing ECSW therapy shall constitute unprofessional conduct.

(i) "Extracorporeal Shock Wave Therapy" or "ECSW Therapy" means the [redacted] of a patient who is sedated by the administration of anesthesia by a physician and surgeon or other health care provider who is legally authorized to administer anesthesia.

**Board of Chiropractic Examiners
California Code of Regulations**

Section 304

Discipline by Another State.

The revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, shall constitute grounds for disciplinary action against a chiropractic licensee or grounds for the denial of chiropractic licensure of an applicant in this state.

**Board of Chiropractic Examiners
California Code of Regulations**

Section 306.3

Investigators; Authority to Inspect Premises.

The board or its designee may inspect the physical premises of any chiropractic office during regular business hours.

**Board of Chiropractic Examiners
California Code of Regulations**

Section 311

Advertisements.

Constructive educational publicity is encouraged, but the use by any licensee of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, constitutes grounds for the imposition of any of the following disciplinary penalties:

- (a) Suspension of said licensee's right to practice in this State for a period not exceeding one (1) year.
- (b) Placing said licensee upon probation.
- (c) Taking such other action, excepting the revocation of said licensee's license, in relation to disciplining said licensee as the board in its discretion may deem proper.

**Board of Chiropractic Examiners
California Code of Regulations**

Section 314

Law Violators.

It shall be the duty of every licensee to notify the Executive Officer or his or her designee of any violation of the act, or of these rules and regulations, in order that the board may take appropriate disciplinary action.

Business and Profession Code

Section 1054

Notwithstanding any other provision of law, the name of a chiropractic corporation and any name or names under which it may be rendering professional services, shall contain the name or the last name of one or more of the present, prospective, or former shareholders, and shall include the word "chiropractic" and the word "corporation" or wording or abbreviations denoting corporate existence.

Board of Chiropractic Examiners California Code of Regulations

Section 367.7

Name of Corporation.

(a) The name of the corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of its present, prospective, or former shareholders, and include the word "Chiropractic," and the word "Corporation" or wording or abbreviations denoting corporate existence, limited to one of the following: "Corp"; "Incorporated"; "Inc."; "Professional Corporation"; "Prof. Corp."

CORPORATIONS CODE

Section 1309

13409. (a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation

complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

Board of Chiropractic Examiners Board Member Administrative Manual

Holding Disciplinary Cases for Board Meetings (Board Policy)

When voting on mail ballots for proposed disciplinary decisions or stipulations, a Board member may wish to discuss a particular aspect of the decision or stipulation before voting. If this is the case, the ballot must be marked "hold for discussion," and the reason for the hold must be provided on the mail ballot. This allows staff the opportunity to prepare information being requested.

If two votes are cast to hold a case for discussion, the case is set aside and not processed (even if four votes have been cast on a decision). Instead the case is scheduled for a discussion during a closed session at the next Board meeting. If the matter is held for discussion, staff counsel will preside over the closed session to assure compliance with the Administrative Procedure Act and Open Meeting Act.

If the Board member is comfortable voting on the matter, but wishes to discuss the policy behind the decision or case, the ballot should be marked "Policy Issue for Discussion. I have voted above. Issue: _____." The Executive Officer will respond directly to the member. If still unresolved or if the matter is to be referred to the Board, the policy issue will be placed on the agenda for discussion at the next Enforcement Committee Meeting.

National Board of Chiropractic Examiners Post-Licensure Examinations Overview

Schedule

The SPEC and E&B Examination are administered six times each year at computerized testing centers nationwide.

Applications **must be received** by the NBCE by the application deadlines listed below. Requests to withdraw from an examination **must be received** by the NBCE by the cancellation deadlines listed below.

2012 Examination Dates

Examination Date	Application Receipt Deadline	Cancellation Receipt Deadline
February 2, 2012	01/05/12	01/12/12
April 5, 2012	03/08/12	03/15/12
June 7, 2012	05/10/12	05/17/12
August 2, 2012	07/05/12	07/12/12
October 4, 2012	09/06/12	09/13/12
December 6, 2012	11/08/12	11/15/12

Fees

Exam	Exam Fee
SPEC	\$935
E&B	\$1500
E&B retake fee	\$300 per essay required