

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
February 12, 2014
901 P Street, Suite 142-A
Sacramento, CA 95814**

Teleconference Locations with Public Access

Sergio Azzolino, D.C.
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Hugh Lubkin, D.C.
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Committee Members Present

Sergio Azzolino, D.C., Chair
Julie A. Elginer, Dr. P.H., MBA
Hugh Lubkin, D.C.,

Staff Present

Robert Puleo, Executive Officer
Sandra Walker, Compliance Manager
Christina Bell, Associate Governmental Program Analyst
Dixie Van Allen, Associate Governmental Program Analyst

Call to Order

Dr. Azzolino called the meeting to order at 1:07 p.m.

Roll Call

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

Approval of October 24, 2013 Minutes

**MOTION: DR. LUBKIN MOVED TO APPROVE THE MINUTES
SECOND: DR. AZZOLINO SECONDED THE MOTION**

**VOTE: 2-1-0
MOTION CARRIED**

Review and Discuss Possible Changes to the Proposed Regulations for Extracorporeal Shock Wave (ECSW) Therapy (Proposed Regulation Section 318.2)

Dr. Azzolino read the attached proposed regulation language brought forward by Dr. Lubkin (author) each section at a time.

Kerry Web, Sr. Staff Counsel with the Medical Board was asked if she had an opinion on the language but stated that she would work in consult with Kristy Shellans, Attorney III, as she is BCE's legal counsel.

Each section involved a lengthy discussion and the language was amended as follows:

§318.2. Standard of Care Regarding Extracorporeal Shock Wave (ECSW) Therapy/Orthotripsy Under Anesthetic or Anesthesia.

1) Extracorporeal Shock Wave (ECSW)/Orthotripsy,

- a) ECSW/Orthotripsy, is a technology that uses mechanically generated sound waves to assist the healing of musculoskeletal and myoligamentous soft tissues.
- b) ECSW/Orthotripsy is not the practice of lithotripsy and does not use a lithotripter.
- c) Low energy ECSW/Orthotripsy does not require anesthesia and is not subject to this regulation.
- d) High energy ECSW/Orthotripsy does require anesthesia. When ECSW/Orthotripsy is performed with anesthesia, such procedure shall be performed in a medical facility defined herein, under the direct supervision of a medical physician or other qualified medical provider who is authorized by law to provide anesthetic or anesthesia.
- e) When ECSW therapy/Orthotripsy involves the use of anesthesia or anesthetic, the anesthetic or anesthesia may only be administered by a California licensed physician and surgeon or other health care provider authorized under California law to administer anesthesia.
- f) When any anesthetic or anesthesia is being utilized, the patients shall be under the direct supervision of a California licensed physician and surgeon or other health care provider authorized under California law to administer anesthesia. ECSW therapy/Orthotripsy involving the use of anesthesia or anesthetic may only be administered following an appropriate prior examination of the patient, by a California licensed physician and surgeon. The licensed Chiropractic Doctor Doctor of Chiropractic shall 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 or anesthetic
- g) The patient who has received anesthesia may only be ~~released~~ discharged by that supervising physician or authorized qualified medical provider, a California licensed physician and surgeon or other health care provider authorized under California law to administer anesthesia.

2) Anesthesia may be provided only in:

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

- b) An ambulatory surgery center that is licensed by the California Department of Public Health Licensing and Certification Program and that is either:
 - 1) Operating pursuant to section 1248.1 of the Health and Safety Code or
 - 2) 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)
- 3) Notwithstanding subsection 2(a), above, ECSW therapy/Orthotripsy involving the use of Anesthesia shall not be performed in any mobile van, as defined in subdivision (h) of section 1248.1 of the Health and Safety Code.
- 4) ~~ECSW therapy/Orthotripsy involving the use of anesthesia or anesthetic may only be administered following an appropriate prior examination of the patient, by a California licensed physician and surgeon. (moved to 1f)~~
- 5) 4 Whenever the ECSW/Orthotripsy involves anesthetic or anesthesia, the patient receiving anesthetic or anesthesia shall require that patient to be co-treated with the medical physician and surgeon who provided the anesthesia or anesthetic. That physician and surgeon shall be exclusively responsible for supervising all aspects of the pre-care, care while the anesthetic or anesthesia is administered, and the appropriate recovery period as determined by that physician and surgeon.
- 6) 5 ~~The Chiropractic Doctor~~ Doctor of Chiropractic co-treating with the medical physician and surgeon shall only provide the ECSW/Orthotripsy portion of that care.
- 7) ~~The licensed Chiropractic Doctor~~ Doctor of Chiropractic shall 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 or anesthetic. (Moved to 1f)
- 8) ~~For the purpose of this section The licensed physician or and surgeon or other authorized health care provider supervising the anesthesia or anesthetic shall be the only professional who may discharge the patient. The doctor of chiropractic may not be involved in nor interfere with the physician and surgeon or other health care provider in the discharge of the patients following the ECSW therapy procedure. (Redundant to 1g)~~
- 9) 6 Failure by a Doctor of Chiropractic to follow the standard of care contained in this section when performing high energy ECSW therapy involving the use of anesthesia or anesthetic, shall constitute unprofessional conduct.

Mr. Puleo advised the committee on the rulemaking timeline which expires in the middle of May 2014.

Mr. Puleo advised the committee to hold another Enforcement Committee Meeting prior to the next Board meeting.

Public Comment

Kerry Web Senior Staff Counsel from the Medical Board stated this new language proposed today will not change the opinion of the Medical Board's position on this regulation. Ms. Webb stated that It's not consistent with the statutory provisions or case law and it is not in the best interest of consumers for chiropractors to do this high energy ECSW therapy. The Medical Board takes the position that it violates section 7 of the Chiropractic Initiative Act. Ms. Web argued that ECSW is not a chiropractic method, it wasn't taught in chiropractic schools in 1922, and it invades the field of medicine and is inconsistent with the Tain and Cree's decisions. She believes that it does not comply with the standards specified in Government Code section 11349.1a and that the Board lacks the authority to adopt this regulation and the regulation lacks consistency since it's contradictory to existing statutes and case decisions. Ms. Webb also raised concerns with subsection 2 of the proposed language.

Debra Mattos, representing Southern California University of Health Sciences (SCUHS) stated that she was told SCUHS doesn't teach ECSW right now, and is unaware if other schools are teaching it or not.

The committee briefly discussed some of the 45-day comments.

Dr. Elginer recommended that the Board's legal counsel provide an opinion prior to moving forward.

Dr. Lubkin recommended that the committee meet again in two weeks to go over the revised proposed regulation as well as address the 45-day comments.

Future Agenda Items

NONE

Adjournment

Dr. Azzolino adjourned the meeting at 2:47