

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
May 12, 2015
901 P Street, Suite 142A
Sacramento, CA 95814**

Committee Members Present

Sergio Azzolino, D.C., Chair
Heather Dehn, D.C.
Frank Ruffino

Staff Present

Robert Puleo, Executive Officer
Sandra Walker, Compliance Manager
Dixie Van Allen, Policy Associate Governmental Program Analyst
Spencer Walker, Attorney III
Rebecca Rust, Associate Governmental Program Analyst
Christina Bell, Associate Governmental Program Analyst

Public Present

Marcus McCarther, DCA Executive Office

Call to Order

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

Roll Call

Dr. Dehn called the roll. Dr. Azzolino, Dr. Dehn and Mr. Ruffino were all present and located at the addresses posted on the Agenda.

Approval of March 13, 2015 Minutes

MOTION: DR. DEHN MOVED TO APPROVE THE MINUTES

SECOND: MR. RUFFINO SECONDED THE MOTION

VOTE: 3-0 (DR. AZZOLINO – AYE, DR DEHN - AYE, MR. RUFFINO – AYE)

MOTION CARRIED

Discussion and Possible Action Regarding Amendments to the Board of Chiropractic Examiners Disciplinary Guidelines

Mr. Puleo stated that the Board originally needed to adopt the SB 1441 Uniform Standards for Substance Abusing Licensees. The Board was incorporating this with the changes to our Disciplinary Guidelines; however, we recently received a legal opinion from the Department of Consumer Affairs' (DCA) Legal Division stating that adoption of regulations incorporating SB 1441 Standards are optional. Mr. Puleo recommended tabling this Agenda item until further clarification is received from DCA's legal counsel.

Dr. Azzolino asked if the Board could move the Disciplinary Guidelines forward without resolving the SB 1441 issue. Mr. Puleo stated that we could move forward since we are only reviewing the provisions right now. If we get to the point where we need to adopt a regulation and still don't have a decision on SB 1441, we could adopt the Disciplinary Guidelines, adopt SB 1441 and incorporate it by reference in our Disciplinary Guidelines as a separate regulation package in the future. Dr. Azzolino stated he is comfortable with the current changes to the Disciplinary Guidelines that were made.

Dr. Dehn asked about whether the "prior Warnings" referred to on page 5, item 3; were from the Board. It was determined item 3 should read: Prior warnings by the Board of record, including final citations issued within the last 5 years.

Mr. Puleo stated he would like the Disciplinary Guidelines to move forward and pointed out that there will be plenty of opportunities to make changes during the rulemaking process.

MOTION: DR. AZZOLINO MOVED TO RECOMMEND THAT THE BOARD ADOPT THE PROPOSED DISCIPLINARY GUIDELINES WITH THE LANGUAGE REVISIONS TO NUMBER 3 ON PAGE 5.

SECOND: DR. DEHN SECONDED THE MOTION

VOTE: 3-0 (DR. AZZOLINO – AYE, DR. DEHN – AYE, MR. FUFFINO – AYE)

MOTION CARRIED

Discussion and Possible Action Regarding the Incorporation of SB 1441 Uniform Standards Related to Substance Abusing Licensees into the Board of Chiropractic Examiners Disciplinary Guidelines

Mr. Walker requested that this agenda item be tabled until the Department of Consumer Affairs' Chief Counsel can obtain clarification from the Attorney General's Office.

Discussion and Possible Action Regarding a Possible Statutory Change to Government Code Section 11522 Which Would Allow the Board to Assign Petitions for Reinstatement or Reduction of Penalty to an Administrative Law Judge

Mr. Walker stated that there is a provision in the Government Code that allows the Boards to assign Petitions for Reinstatement and Petitions for Reduction of Penalty to an Administrative Law Judge (ALJ). Those cases would be handled in the same manner as any other administrative disciplinary case. Mr. Walker asked if the Board is interested in continuing to conduct petitioner hearings at Board meetings or assign such petitions to an ALJ. Dr. Azzolino asked about the advantage and disadvantage for both scenarios.

Mr. Walker stated the advantage is the Board can handle other issues rather than having to hear petitioner cases during Board meetings. However, the disadvantage would be if the Board assigns these cases to an ALJ and the ALJ submits a proposed decision, the Board may decide to non-adopt the ALJ's decision. This would prolong the process.

Mr. Ruffino stated that he believes the petitioner hearings should continue to be conducted at Board meetings. Dr. Azzolino believes there is great value in being able to see the petitioners face to face and ask questions directly. Dr. Azzolino would like to see the process remain the way it is.

MOTION: MR. RUFFINO MOVED TO RECOMMEND THAT THE BOARD NOT TO SEEK A STATUTORY CHANGE TO GOVERNMENT CODE SECTION 111522 WHICH WOULD ALLOW THE BOARD TO ASSIGN PETITIONS FOR REINSTATEMENT OR REDUCTION OF PENALTY TO AN ALJ.

SECOND: DR. AZZOLINO SECONDED THE MOTION

VOTE: 3-0 (DR. AZZOLINO – AYE, DR. DEHN – AYE, MR. RUFFINO – AYE)

MOTION CARRIED

Discussion and Review of the Question on the Petitioner Application(s)

Dr. Azzolino clarified that the concern was regarding question #3, which requires petitioners to disclose all discipline against a license. He stated that petitioners fail to disclose the Board's discipline on their petition application.

Mr. Walker stated that "territory" is not listed in #3 of the petition application(s). U.S. territories and the military do report to the National Practitioner Data Bank. Dr. Azzolino suggested adding "by another licensing agency" because we want to know about discipline from other countries.

Mr. Puleo stated the application still needs revisions but the core issue we are discussing today is clarifying that the petitioner does not have to disclose the discipline the Board imposed on them. However, we also need to make other technical amendments to the petitioner application. We will work on those to make sure they are consistent with the licensing application.

Mr. Walker asked if this item is being tabled or being forwarded to the Board meeting. Mr. Puleo advised that Dr. Azzolino's report to the Board will clarify that question #3 has been revised and will not require petitioners to disclose discipline by the Board.

Public Comment

None

Future Agenda Items

None

Adjournment

Dr. Azzolino adjourned the meeting at 1:54 p.m.