STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners
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NOTICE OF PUBLIC MEETING

Notice is hereby given that a meeting of the **Licensing Committee** of the **Board of Chiropractic Examiners** will be held as follows:

Thursday, April 24, 2008
(Upon Conclusion of the CE Committee Meeting)
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

CALL TO ORDER

PUBLIC COMMENT

Discussion and Possible Action
- Proposed Procedure for Approving Licenses

Discussion Only
- Ongoing Review of Chiropractic Colleges

FUTURE AGENDA ITEMS

PUBLIC COMMENT

ADJOURNMENT

LICENSING COMMITTEE
Judge James Duvaras, Retired, Chair
Richard Tyler, D.C.

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 is accessible to the physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

Board Members Inappropriately Delegated Their Responsibility to Approve License Applications to Staff

The Chiropractic Initiative Act of California (initiative act) confers on the chiropractic board the power to issue and revoke licenses and specifies the affirmative vote of four members to authorize the issuance of any license provided for in the act. The initiative act also confers to board members the power to deny, suspend, revoke, and reissue a license, with such action requiring a majority vote. We found that staff reviewed license applications and made decisions to issue licenses without the approval of board members, contrary to the requirements of the initiative act. Additionally, whenever a license applicant did not request a formal hearing to appeal a denial, board members did not review and approve that denial, as the initiative act requires. Board members only made the final decisions in denial cases in which the applicants appealed.

According to our legal counsel, the provisions of the initiative act establish clear voter intent that the power to issue and deny licenses must be exercised by the chiropractic board members.

According to our legal counsel, the provisions of the initiative act establish clear voter intent that the power to issue and deny licenses must be exercised by the members of the chiropractic board. The initiative act does not contain provisions that allow the chiropractic board to delegate to staff the authority to approve or deny licenses. Therefore, although the chiropractic board may be able to delegate to staff any number of licensing duties that are preliminary to its exercise of discretion in approving or denying a license, board members must make the actual decision of approval or denial.

When we asked the chiropractic board's executive officer if he was aware that the current process conflicts with state law, he told us that both he and the chiropractic board's legal counsel believe that the board's current procedures regarding the issuance and denial of license applications is consistent with the initiative act and board regulations. According to the executive officer, subdivision (c) of Section 4 of the initiative act states that the chiropractic board's authority includes the power to "examine applicants and to issue and revoke licenses to practice chiropractic,"; and subdivision (h) of Section 4 states that the board may employ individuals "to carry into effect the provisions of this act, and shall prescribe the duties of such employees." The executive officer also said that determining whether an applicant meets all the qualifications for licensure and issuing the license are ministerial duties. However, we disagree with this position. The initiative act clearly requires an affirmative vote of four members of the chiropractic board to authorize the issuance of any license provided for in the act, and a majority vote of the board members is required to deny, suspend, or revoke a license.

Because staff rather than board members made final decisions on approving licenses and board members did not review staff-determined denials when applicants did not formally appeal

those denials, the chiropractic board did not comply with the initiative act. Our legal counsel has advised us that board members could easily remedy this noncompliance by subsequently ratifying any license approvals and denials granted by staff, thus making those approvals and denials their responsibility.