BACKGROUND PAPER FOR THE BOARD OF CHIROPRACTIC EXAMINERS

Joint Oversight Hearing, March 11, 2013, Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business, Professions and Consumer Protection

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BOARD OF CHIROPRACTIC EXAMINERS

BRIEF OVERVIEW OF THE BOARD OF CHIROPRACTIC EXAMINERS

The Board of Chiropractic Examiners, (Board), is responsible for regulating the practice of licensed chiropractors in California. The Board was created on December 21, 1922, through an initiative measure approved on November 7, 1922. The Board's mission statement, as stated on the Board's website is as follows:

"The mission of the Board of Chiropractic Examiners is to protect consumers from fraudulent, negligent, or incompetent chiropractic practice."

The Board achieves this mission through its educational requirements, Licensing and Continuing Education Programs, and its Enforcement Program

The Board's educational requirements are designed to gage the demonstrated entry-level competence of a chiropractor prior to licensure, while the continuing education function of the Board ensures licensees maintain up-to-date knowledge of the chiropractic profession.

Through its Enforcement Program, the Board disciplines licensees who violate the laws and regulations governing the practice of chiropractic. Discipline imposed can range from warning letters to citations to formal disciplinary action by way of accusation, with the ultimate discipline being license revocation.

In FY 2010/11, the Board had a license base of 13,810 active and 1,272 inactive licenses. The Board also oversees 19 chiropractic schools and colleges located throughout the United States and Canada.

The Board is a seven member policy-making body, consisting of five professional members and two public members. Each member is appointed by the Governor to serve a four year term. All Board meetings are subject to the Bagley-Keene Open Meetings Act.

The following table lists all members of the Board including background on each member, appointment date, term expiration date and appointing authority.

Board Members	Appointment Date	Term Expiration Date	Member Type	Appointing Authority
Francesco Columbu, D.C., (Chair, professional member) Francesco Columbu, D.C., of Los Angeles has been a practicing chiropractor in West Los Angeles since 1978. In January 2013, Dr. Columbu was elected Chairman of the Board.	02/10/06	02/10/14	Professional	Governor
Sergio Azzolino, D.C., (Vice-Chair, professional member) Sergio F. Azzolino, D.C., of San Francisco, has been the director at Azzolino Chiropractic Inc. since 1995. He served as faculty at Life Chiropractic College West from 1996 to 1999, and currently is an assistant professor of Clinical Neurology at the Carrick Institute for Graduate Studies. Dr. Azzolino earned a Doctor of Chiropractic degree from Life Chiropractic College West. He is a diplomate and Vice President of the American Chiropractic Neurology Board, diplomate in pain management through the American Academy of Pain Management, a Fellow of the American College of Functional Neurology and Fellow of the American Board of Childhood Development Disorders. He serves on the editorial board of journal of Functional Neurology, Rehabilition, and Ergonomics (FNRE). He was voted the Chiropractic Neurologist of the year in 1999 by the American Chiropractic Association	05/24/12	02/10/16	Professional	Governor

Council on Neurology and Clinician of the year in 2010 at the International Conference of Functional Neurology. From 2008 - 2010, Dr. Azzolino served as the Northern California Delegate to the American Chiropractic Association. He is a Qualified Medical Evaluator and serves as an expert witness for disputes in workers' compensation system, personal injury and malpractice cases.				
Julie Elginer, Dr. PH, (Secretary, public member) Julie Elginer, Dr. PH of Calabasas, has been a lecturer at the University of California, Los Angeles School of Public Health and founder of Elginer Advocacy Group since 2011. She was a graduate student researcher at the UCLA Center for Health Policy Research from 2008 to 2010 and senior marketing manager at Amgen from 1999 to 2007. Elginer served as adjunct faculty for the Advisory Board Company at the Johns Hopkins School of Nursing in 2002 and was a financial analyst for Abbott Laboratories from 1995 to 1997. She earned a Doctor of Public Health degree in health services from the University of California, Los Angeles and a Master of Business Administration degree in marketing and strategy from the University of Maryland**.**	05/24/12	11/03/16	Public	Governor
Dr. Hugh Lubkin, D.C., (professional member) Dr. Hugh Lubkin, D.C., of Elk Grove, has owned and works out of Laguna Chiropractic Clinic, located in Elk Grove since 1991. In addition to his clinical practice, Dr. Lubkin is appointed as a Qualified Medical Evaluator (QME) for Workers' Compensation cases. He is a graduate of the Chiropractic Orthopedics Program (WSCC) and he works as a medical legal expert for both injury cases	02/28/07, 02/25/10	02/10/14	Professional	Governor

and professional malpractice cases. Dr. Lubkin is a former Vice-President of the International Chiropractors Association of California (ICAC). Dr. Lubkin has worked as a Professional Member, Vice-Chair and Chair of the Board.				
Heather Dehn, D.C., (professional member) Heather Dehn, D.C., of Sacramento, has been the owner of Dehn Chiropractic since 1995. She earned a Doctor of Chiropractic degree from Palmer Chiropractic College. Dr. Dehn has previously worked as Vice-Chair of the Board.	05/24/12	02/10/16	Professional	Governor
Frank Ruffino, (public member) Frank Ruffino is the Community Partnership Manager at the Richard J. Donovan Correctional Facility. He was Regional Administrative Officer at the California Department of Fish and Game from 2004 to 2008, and Hospital General Services Administrator at the California Department of Veterans Affairs from 2000 to 2004. Mr. Ruffino has served in multiple positions at the California Department of Corrections and Rehabilitation from 1985 to 2000. Also, Mr. Ruffino serves as the Vice President for Governmental Affairs for the Association of California State Supervisors. Additionally, he served as a member of the City of Chula Vista Civil Service Commission and the Coalinga City Planning Commission. Mr. Ruffino has dedicated all of his life to community service and has been a volunteer with many community organizations.	02/21/12	11/03/16	Public	Governor

The Board is comprised of three units: the Administrative/Licensing Unit (ALU), the Compliance Unit (CU), and the Field Investigations Unit (FIU). The ALU is responsible for processing license applications and renewals, continuing education, and the administrative and

policy functions for the Board. The CU and the FIU are primarily responsible for enforcement. The CU handles complaint intake, conducts administrative investigations, recommends case dispositions to the executive officer and/or the compliance manager, including those to be forwarded to the Attorney General for disciplinary action, issues letters of admonishment as well as citations and fines. The CU also serves as probation monitor to chiropractors whose licenses are on probation due to prior disciplinary action. The CU continues to refer approximately a quarter of its complaints received to the FIU. The FIU consists of non-sworn investigators who conduct field administrative investigations to complete cases.

As of the 2011 report, the Board has eight standing committees including:

1. Continuing Education
2. Enforcement
3. Government Relations
4. Legislative/Regulation
5. Licensing
6. Public Relations
7. Strategic Planning
8. Scope of Practice

Each committee is made up of at least two members appointed by the Board Chair. The committees must meet during open session meetings held three times a year. The committees may also meet on an as needed basis, but they have no authority independent of the Board.

The Board maintains a single office in Sacramento. The Board's Executive Officer presently oversees a staff of 18 permanent full-time employees and one part-time employee.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Committee last reviewed the Board of Chiropractic Examiners in 2005. At that time, the Committee identified issues for the Board and directed the Board to address the issues and implement a number of recommended changes.

On November 1, 2011, the Board of Chiropractic Examiners submitted its required Sunset Report to this Committee. In its 2011 report, the Board described actions it has taken since its last sunset review. Below are the prior issues raised by the JLSRC in its Background Paper of 2005 and in its final recommendations, and the Board's responses to how the issues or recommendations of the JLSRC were addressed. (The prior "Board of Chiropractic Examiners Background Paper of 2005" which details these issues and the JLSRC Recommendations regarding the Board can be obtained from this Committee.)

1. The JLSRC recommended that the Board 1) identify those statutes that were enacted without a vote of the people that could be considered amendments to the Chiropractic Act; 2) determine if additional amendment of the Chiropractic Act is necessary to ensure

that these statutes cannot be challenged; and, 3) determine in conjunction with the Joint Committee staff and stakeholders whether the Chiropractic Act should be amended to permit amendment by the Legislature without a vote of the people and, if so, on what terms. The Board responded in its 2011 Sunset Review Report that it will abide by any statutes which may be amendments to the Chiropractic Act until an appellate court holds that those statutes are unconstitutional. The Board did not state whether it supports amending the Chiropractic Act to allow future Legislative amendments.

2. The JLSRC recommended that the Board continue to seek amendments to the Initiative Act, in conjunction with other proposed amendments, to add two additional public members, with one each appointed by the Senate and the Assembly. The Board is open to the addition of two more public members.

3. The JLSRC recommended that the Board work with the Department of Finance to ensure that full repayment of the loan to the General Fund is reflected in the Budget Act; and, that the Board should develop a plan to reduce the level of the reserve to a more reasonable level. The Board sponsored legislation, AB 1996 (Hill, Chapter 539, Statutes of 2010), to increase its annual renewal fee from $150 to $250. The increased fee enabled the BCE to align revenue and expenditures so as to maintain a prudent reserve in its fund.

4. The JLSRC recommended that the Board continue to study the need for a Bachelor's Degree requirement for licensure and report back to the Legislature on its findings prior to its next review. The Board submitted its research on the issue in its 2011 Sunset Report. Currently, twelve states require a bachelor's degree either before matriculation into a chiropractic college or prior to licensure. At the time of the last Sunset Review, nine states required a bachelor's degree.

   To apply for licensure in California, a potential licensee must complete the 60 pre-chiropractic units in specific courses required by the Chiropractic Initiative Act (Act) and must graduate from a Council on Chiropractic Education (CCE) approved college. Because the CCE mandates the prerequisites for admission into a chiropractic college, it has the power to require a bachelor's degree even if the state board does not. According to the Board, some people feel that the CCE should determine whether a bachelor's degree is required and impose a uniform standard across the nation.

   Requiring a bachelor's degree for licensure in California would place an additional financial burden on the student and create a barrier to entry into the chiropractic profession. Since all chiropractic colleges are private institutions, their tuition is expensive. Additionally, if California requires a bachelor's degree, it will create a barrier to relocation for licensees of other states that do not require a bachelor's degree, who wish to relocate to California. A change requiring a bachelor's degree prior to entry into Chiropractic College or prior to licensure, would require an amendment to the Chiropractic Initiative Act. Lastly, the Board feels that not all bachelor's degrees are equally relevant to preparing a student for the practice of chiropractic, and that it would

be useful to make a distinction between relevant science related degrees and other degrees.

5. The JLSRC recommended that the Board implement its proposed new fee structure through the regulatory process, or if necessary, by changing the Chiropractic Act. The Board changed its annual renewal fee from $150 to $250 through legislation, AB 1996 (Hill, Chapter 539, Statutes of 2010). The Board does not have plans to make an additional fee increase at this time.

6. The JLSRC recommended that the Board work with the Department of Finance to ensure that it has adequate resources to fulfill its state mandate to fully implement the citation and fine program. The Board began assessing fines in 2008. If citation fines are unpaid, the Board has the ability to utilize the Interagency Intercept Collections Program (Intercept). The Board allows for a repayment plan in extenuating circumstances.

7. The JLSRC recommended that the Board identify the statutory basis for its existing disclosure policy, and determine whether that basis would support additional disclosures. If so, the Board should by regulation increase the amount of information it discloses, including malpractice judgments, settlements and arbitration awards. If the Board determines it needs additional statutory authority for additional disclosure, it should seek that authority. The Board determined that BPC § 800 et seq. requires the Board to maintain in the licensee's central file any arbitration decisions or malpractice settlements. The Board is complying with this requirement. However, the Board states that it does not have the capability or the staff to provide such information to the public. The Board would have to identify settlements and maintain a separate database that would have to be constantly updated and up-linked to the Board's website. The Board has not found a need to track these decisions. Currently, if a complaint is opened that involves a malpractice judgment, settlement or arbitration award and administrative charges are brought against the licensee on the underlying matter, the complaint will be made a part of the disciplinary record.

8. The JLSRC recommended that the Board work with the Department of Finance and the Attorney General to ensure that the Board has adequate resources to process complaints in a more timely fashion. Since the last Sunset Report, the Board overhauled its enforcement program. Cases are being worked vigorously and the average time to close has significantly decreased. Although the number of administrative cases has remained steady, the average days to complete have significantly dropped, cases are not becoming exceedingly aged, and complaint case backlogs have significantly decreased.

Since the Committee's last review in 2005, the Board has implemented or is considering the following additional changes:

Internal Changes to the Board

Prioritizing Complaints / Response to Complaints

The Compliance Unit, (CU), assigns a priority designation of urgent, high, or routine, to each complaint at intake. The CU closely monitors urgent priority complaints. In certain cases, the CU refers complaint evidence to expert reviewers for further analysis. The Board must use evidence to prove the truth of the allegations against a licensee to a "clear and convincing" standard to take action against a chiropractor's license.

The recommendations the CU makes to management in response to complaints range from taking no action due to insufficient evidence to filing an accusation to revoke or suspend the subject chiropractor's license. In some cases, the CU recommends issuing citations and fines where formal administrative discipline isn't warranted.

The Compliance Unit Monitors Probationers

The CU serves as a probation monitor to chiropractors whose licenses are on probation due to prior disciplinary action. The CU is monitoring approximately 133 probationers. The probation monitor ensures the probationer is compliant with their probation. The CU will file a petition to revoke probation if a probationer is not compliant with their probation terms.

New Field Investigations Unit

Effective July 1, 2008, the Board received budget authority to establish investigator positions. The Board created the Field Investigations Unit, (FIU), which is comprised of four non-sworn investigators. The FIU has one supervising special investigator position, which is currently open, and three special investigator positions. The FIU investigates alleged law violations, serves investigative subpoenas and other administrative orders, and assists with probation monitoring. Additionally, the FIU conducts field inspections of chiropractor probationers to determine if they are non-compliant with their probation.

Enforcement Strategy Evaluation and Reform

The Board has been holding a series of Enforcement Committee Meetings to continue the ongoing top to bottom look at comprehensive enforcement strategies and/or reform. The Board wants to ensure cases are processed efficiently and with quality.

Recently Enacted Regulations:

Cite & Fine:

The citation and fine program was fully implemented with amendments to Business and Professions Code (BPC) § 390, 390.1, 390.3, 390.4, 390.5 and the repeal of BPC § 390.2, which authorized the Board to issue citations with fines for minor violations that would not warrant formal disciplinary action. BPC § 390.2 was repealed to allow the Board to issue citations to licensees for all applicable laws and regulations governing the practice of chiropractic. These amendments became effective on August 1, 2008.

Quality Review Panel – Repealed:
BPC § 306.1 required the Board to establish a Chiropractic Quality Review Panel (CQRP) and was repealed on April 2, 2009, due to the Board's inability to comply with this requirement based on cost prohibitions and a limited scope of action. The Board is able to perform enforcement functions in a more efficient and effective manner through the use of Board staff, subject matter experts, in-house investigators, Department of Justice and the Office of the Attorney General.

Letter of Admonishment:
The Board received authority to send letters of admonishment through the addition of California Code of Regulations (CCR) § 389. This regulation provides the Board with an informal method of enforcement for minor violations that do not rise to the level of citation or accusation in order to educate licensees and increase compliance with the laws and regulations. Section CCR § 389 became effective on April 3, 2009.

Manipulation Under Anesthesia:
The Standard of Care Regarding Manipulation Under Anesthesia was added to CCR § 318.1, which specifically defines the setting in which this procedure can be performed and the roles and duties of the chiropractor versus the anesthesiologist during this treatment. This regulation became effective on March 18, 2010.

Chiropractic Specialties:
Board recognition of Chiropractic Specialties was added to the CCR § 311.11 in response to the Department of Industrial Relations Division of Workers Compensation regulations which required Board recognition of specialties for purposes of the Qualified Medical Evaluator designation. This regulation became effective on April 15, 2010.

Law Violators – Technical Amendment:
CCR § 314 was amended due to a conflict between the regulation and the Administrative Procedures Act concerning ex-parte communications. This amendment became effective on June 26, 2010.

Fingerprint Submission Required:
CCR § 321.1 was added to require electronic fingerprint submission from all licensees and applicants who have not previously submitted electronic fingerprints for licensure with the Board or who no longer have records of electronic fingerprint submission on file and specifies a timeframe for compliance. This regulation became effective on January 14, 2011.

Continuing Education and Annual License Renewals:
CCR §§ 355 – 360 were overhauled through changes to the enumeration as well as the content of each section (now CCR §§ 360 – 366, and 370 – 372). These changes increase the amount of hours required on an annual basis from 12 to 24 hours, expand the selection of courses and providers allowed for continuing education credit, and provide more specific detail on the Board's annual license renewal process as it relates to continuing education and various license statuses. This regulation change also creates a separate Article designated specifically for Annual License Renewals. These regulations became effective on June 8, 2011.

Informed Consent:
CCR § 319.1 requires doctors of chiropractic to inform their patients of proposed procedures which present a material risk to the patient and obtain their verbal and written informed consent prior to providing the treatment. This section further requires the signed informed consent to become a part of the patient's record and defines a violation of this regulation as unprofessional conduct. This regulation became effective on October 7, 2011.

Patient Records:
The Board amended CCR § 318, Patient Records, to establish the Board's current five-year record retention requirement as the minimum requirement if other state or federal laws do not require a longer period of retention. The amendments to this section incorporated the Board's newly adopted informed consent requirements into the patient record requirements. This regulation became effective on April 7, 2012.

Use of Lasers:
CCR § 302.5 set requirements and restrictions on the use of lasers by a chiropractor or anyone working under the chiropractor's supervision. Chiropractors and people they supervise may only administer laser treatments that are consistent with the scope of chiropractic practice, within the laser's FDA approved uses, within the manufacturer's specified guidelines for the safe use of the laser device, and in compliance with all other laws governing the use of lasers in clinical settings. Section 302.5 also establishes that laser treatment of allergies is beyond the scope of chiropractic practice. This regulation became effective on July 14, 2012

<u>Proposed Regulations:</u>

Omnibus Consumer Protection Regulations – Pending:
Would add or amend twelve sections within the CCR (§ 303, 304, 306.3, 308, 312, 314, 317.2, 317.3, 321.1, 348.1, 390.7, and 390.8) to provide the Board with greater enforcement authority to monitor licensees and applicants in order to protect chiropractic consumers. A similar package of proposed regulations was originally noticed on December 31, 2010 and withdrawn by the Board. Subsequently, the Board struck some of the provisions and noticed the revised language for a 45-day comment period on June 10, 2011. The Board also withdrew that package of proposed regulations. In January 2013, the Board submitted the current proposed regulations. The 45-day comment period ends March 4, 2013.

Fee for Petitions – Pending:
This regulation would establish a fee to petition the Board for reinstatement of a revoked license or early termination of probation.

Name of Corporation – Repeal Pending:
The proposed regulation would repeal CCR Title 16, § 367.7, Name of Corporation, because the language of the regulation duplicates BPC § 1054, and contains an additional limitation that the Board finds unnecessary to protect the public. The restriction imposed by BPC § 367.7 places stronger limitations on names for chiropractic corporations than for non-corporate chiropractic businesses. The Board believes that BPC § 1054 sufficiently prescribes the requirements for

creating a chiropractic corporate name and can stand alone without further clarification in regulation. The 45-day notice period on this proposed regulation ends March 4, 2013.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to this Board, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

ISSUE # 1: What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?

Background: In its November 2011 Sunset Report, the Board stated that it was in the process of developing a contract with a drug/alcohol testing facility that would test probationers in accordance with the Uniform Standards for Substance Abusing Licensees standards. The Board stated it was also reviewing and revising its Disciplinary Guidelines to add the remaining Uniform Standards. According to the Board, once the revisions are complete it will promulgate regulations and begin the process to adopt those regulations.

The Committee is concerned that the Board has not yet revised its disciplinary guidelines and is not currently testing probationers in compliance with the Uniform Standards.

Staff Recommendation: ***The Board should update the Committee on its progress on this issue since the submission of the 2011 Sunset Review Report. The Board should update its guidelines and implement testing procedures congruent with the Uniform Standards.***

ISSUE # 2: What is the status of the board's implementation of the Consumer Protection Enforcement Initiative, (CPEI), regulations? What is the status of the proposed Omnibus Consumer Protection Regulations? Will both sets of regulations apply to chiropractic licensees? Are the regulations in conflict with each other?

Background: Currently, the Board serves directly under the Governor's Office and does not report to the DCA. Thus, the Board did not participate with DCA on the CPEI regulatory process. The Board is currently attempting to independently implement many of the consumer protection provisions of SB 1111 (Negrete McLeod 2010) through the Board's Omnibus Consumer Protection (OCP) regulatory package. The Board made two prior attempts to adopt the OCP package, but withdrew the proposed regulations on both occasions. The current proposed language for the Omnibus Consumer Protection package has been set for a 45 day notice period ending March 4, 2013.

According to the Board, the proposed OCP regulations will enhance the Board's enforcement and administrative processes by defining terms in regulation, establishing reporting and disclosure requirements, and amending regulations specific to the Board's disciplinary guidelines and applicant requirements. The Board believes these changes will increase its enforcement authority and access to critical information for use in investigations and will improve the Board's efficiency in enforcement processes and procedures for enhanced consumer protection.

The Committee is concerned that the Board should have clear and consistent consumer protection regulations, and that the Board should determine how and whether the CPEI and OCP regulations work together.

Staff Recommendation: ***The Board will serve under the Department of Consumer Affairs beginning July 1, 2013. The Board should update the Committee on its plans regarding any future implementation of the Consumer Protection Enforcement Initiative regulations and how CPEI regulations compare to the Omnibus Consumer Protection Regulations the Board is currently guiding through the rulemaking process.***

ISSUE #3: What is the Board's response to the impending reorganization that will place the Board under the authority of the Department of Consumer Affairs, (DCA)? How will the Board work with the DCA to handle the reorganization?

Background: The Governor's Reorganization Plan No. 2, (GRP-2), amends Business and Professions Code Section 101 to bring the Board under the oversight of the Department of Consumer Affairs. The GRP-2 becomes operative on July 1, 2013. Pursuant to the GRP-2, a state agency, department, or entity is authorized to take actions prior to July 1, 2013, necessary to ensure that the provisions of the plan become operative on July 1, 2013.

At its January 31, 2013 meeting, the Board addressed the amendment to BPC § 101, which will bring the Board under the oversight of the Department of Consumer Affairs. During the public comment portion of the meeting, a few members of the public, including practicing chiropractors and representatives from two Chiropractic Associations expressed concern that DCA oversight of the Board would not be in the best interest of consumers and is possibly a violation of the Chiropractic Initiative Act. The public commenters asked the Board whether it had obtained a legal opinion about potential conflict between the Chiropractic Initiative Act and the GRP-2. The Board stated that it had not obtained a legal opinion and did not think that it was the Board's responsibility to do so, but that it may ask the Attorney General's Office for an opinion.

The Board did not take a position on whether the reorganization was outside the Governor's authority or whether it would result in inferior protection for consumers or negatively impact the Board's ability to perform its mission. The Board asked a DCA representative present at the meeting to provide more information on the ramifications of DCA oversight on the Board's operation. The DCA representative was unable to provide an immediate answer but promised to follow up.

The Committee is concerned that the Board and the DCA should work together to ensure a smooth transition to DCA oversight of the Board.

Recommendation: ***The Board should prepare and submit to the Committee a written plan stating how the Board will work with the DCA to handle the upcoming reorganization.***

ISSUE # 4: How will the Board address the BPC § 114.3(a) requirement that it waive the renewal fees, continuing education requirements, and other renewal requirements for any qualified licensee called to active duty as a member of the United States Armed Forces or the California National Guard, once the Board is under the DCA?

Background: BPC § 114.3(a) states that every board within the Department of Consumer Affairs must waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, for any qualified licensee called to active duty as a member of the United States Armed Forces or the California National Guard. Currently, the Board's rules and regulations state that the Board may waive the fingerprint submission requirement for licensees who are actively serving in the United States Military. (CCR § 321.1) The Board's regulations also provide that a licensee on active duty shall be permitted to take all twenty-four hours of required continuing education through board-approved distance learning courses as defined in CCR § 363.1. (CCR § 364) The rules and regulations do not currently address waiving the license renewal fee for licensees on active military duty.

The Committee is concerned that the Board should be prepared to comply with BPC § 114.3 as soon as the Board moves under the DCA.

Recommendation: ***The Board should create a plan for how it will implement a program for granting waivers of the renewal fees, continuing education requirements, and other renewal requirements for any qualified licensee called to active duty. The Board should begin the regulatory process related to this plan immediately so that the Board is compliant with BPC § 114.3 as soon as the Board is under DCA oversight.***

ISSUE # 5: How will the Board address the BPC § 115.5 requirement that the Board expedite reciprocal licensure for qualified military spouses once the Board is under the DCA in July 2013?

Background: BPC § 115.5 states that every board under the Department of Consumer Affairs must expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders, where the spouse applicant holds a current license in another state, district, or territory of the United States. Currently, the Board's regulations regarding licensing reciprocity (CCR § 323) do not provide for expedited licensing for military spouses and partners. Pursuant to BPC § 115.5, the Board is statutorily authorized to adopt regulations necessary to administer this section.

The Committee is concerned that the Board be prepared to comply with BPC § 115.5 as soon as the Board moves under the DCA.

Recommendation: ***The Board should create a plan for how it will implement an expedited licensure process for qualified military spouses. The Board should begin the regulatory process related to this plan immediately so that the Board is compliant with BPC § 115.5 as soon as the Board is under DCA oversight.***

ISSUE # 6: Why did the Board state at its January 31, 2013, board meeting that the Administrative Procedure Manual is outdated and not followed? What steps will the Board take to update the manual and comply with it?

Background: At the January 31, 2013, Board meeting, the Board stated that the Administrative Procedure Manual was last updated in 2009, was no longer followed, and needed to be improved. After the meeting, the Board's website briefly reflected a January 2013 revision to the Administrative Procedure Manual. As of February 25, 2013, the Administrative Procedure Manual available on the Board's Website states that it was revised on April 23, 2009.

The Committee is concerned that the Board needs to revise and consistently follow the policies contained in its Administrative Procedure Manual.

Recommendation: ***If the Administrative Procedure Manual is not meeting the contemporary needs of the Board, the Board should immediately agree upon a revision process, create an up-to-date manual, make the revised manual available on the Board's Website, and consistently comply with the policies therein.***

ISSUE # 7: Has the Board been consistently tracking consumer satisfaction surveys since its 2011 Sunset Report? If so, what are the results? If not, why not, and what steps will the Board take to implement the program?

Background: The Board's 2011 Sunset Review Report states that the Board had not been tracking its consumer satisfaction surveys, but that the Board intended to begin conducting surveys and keeping updated statistics on the results. The Board said that it would provide the statistics to the Committee at a future date.

The Committee is concerned that the Board should have accurate records of consumer satisfaction feedback and be able to use that data to improve the Board's performance and better fulfill the Board's mission of consumer protection.

Recommendation: ***To enable the Committee to evaluate current consumer satisfaction, the Board should provide any available data to the Committee. If the Board has not been tracking the data, the Board should develop and implement a plan to do so immediately.***

ISSUE #8: Should the current composition of the Board, with five professional and two public members, be changed to add two additional public members, with one member appointed by the Assembly Business and Professions Committee and one member to be appointed by the Senate Business and Professions Committee?

Background: The Board states that it has no objection to adding two additional public members to be appointed by the Senate and Assembly. According to the Board, restructuring the Board's composition would not affect its mission. However, the Board also states that it is not clear whether adding two public members would make any significant improvements to the policy or decision-making functions of the Board. The Board questions whether the potential benefits would outweigh the cost to the General Fund to subsidize an initiative measure to change the Board's composition. Adding two public members to the Board was previously included in SB 1954 (Figueroa, Chapter 681, Statutes of 2002), but due to the estimated $200,000 cost to the General Fund to print amendments to the Chiropractic Initiative Act for a statewide election, the Assembly Appropriations Committee raised concerns, and the provision adding two new Board members was subsequently deleted from the bill.

The Committee is concerned that the Board should benefit from the addition of two public members appointed by the Legislature.

Recommendation: ***The Initiative Act could be amended to increase the number of Board members from seven to nine. The two new member positions could then be appointed by the Legislature, with one member to be appointed by the Assembly Business and Professions Committee, and one member to be appointed by the Senate Business and Professions Committee.***