BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING

March 17, 2011
10:00 a.m.
Hilton LAX
5711 West Century Blvd.
Los Angeles, CA 90045
(310) 410-4000

AGENDA

1. **OPEN SESSION** – Call to Order & Establishment of a Quorum
   Frederick Lerner, D.C. Chair
   Hugh Lubkin, D.C., Vice Chair
   Francesco Columbu, D.C., Secretary
   Jeffrey Steinhardt, D.C.
   Richard Tyler, D.C.

2. **Chair's Report**

3. **Approval of Minutes**
   January 20, 2011 Board Meeting

4. **Public Comment**

5. **Board Member Training on the Bagley-Keene Open Meeting Act and Other Relevant Laws**

6. **Executive Officer's Report**
   A. Administration
   B. Budget
   C. Licensing
   D. Enforcement

7. **Ratification of Approved License Applications**

8. **Ratification of Approved Continuing Education Providers**

9. **Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing**

10. **Recommendation to Waive Two Year Requirement to Restore a Cancelled License**

11. **Affiliated Monitors, Inc.** – Mr. Vincent L. DiCianni, Speaker

12. **Scope of Practice Committee Meeting Update** – Board may take action on any item on the attached Scope of Practice Committee meeting agenda.

13. **Enforcement Committee Meeting Update** – Board may take action on any item on the attached Enforcement Committee meeting agenda.

14. **State Compensation Insurance Fund Rescinded Policy Denying Consumers Chiropractic Treatment for Post-Operative Rehabilitation**

15. **Information Dissemination / Communication with Licensees and the Public**

16. **Department of Industrial Relations, Division of Workers Compensation – Update on Recognition of Chiropractic Specialties**

17. **Legislative Update**
    A. AB 127 (Logue) - Regulations
    B. SB 100 (Price) - Healing Arts
    C. SB 352 (Huff) - Chiropractors

18. **Regulatory Hearing on the Proposed Language for the Omnibus Consumer Protection – California Code of Regulations, Title 16, Division 4, Article 1, Sections 303-390.9**

19. **Proposed Regulations**
    A. Continuing Education
    B. Omnibus Consumer Protection
    C. Informed Consent
    D. Petitions for Reinstatement (Fee)

20. **Chiropractors Performing Student Athletic Physicals and Serving as Team Doctors**

21. **Authority Over Unlicensed/Non-Licensed Individuals Performing Chiropractic**

22. **Attorney General Billing Detail**

23. **Public Comment**

24. **Future Agenda Items**

25. **Hearings Re: Petition for Early Termination of Probation**
    A. Kit Yuen Chau

26. **Hearings Re: Petition for Reinstatement of Revoked License**
    A. Marc Nadreau
    B. Richard Kent Greenland

27. Closed Session

A. Deliberation on Petitioner Hearings and Disciplinary Decisions Pursuant to California Government Code Section 11126(c)(3)

B. Pursuant to California Government Code Section 11126(e)

1) Catherine Hayes v. Board of Chiropractic Examiners
Sacramento County Superior Court, Case No. 34-2008-0000647

2) Board of Chiropractic Examiners v. Carole M. Arbuckle
Sacramento County Superior Court, Case No. 03AS00948

28. OPEN SESSION: Announcements Regarding Closed Session

29. Adjournment

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board 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
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING
SCOPE OF PRACTICE COMMITTEE

February 24, 2011
10:00 am
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

1. **CALL TO ORDER**

2. **Approval of Minutes**
   March 18, 2010

3. **Appropriate Use of Lasers by California Licensed Chiropractors**
   Testimony from:
   - **A. Regulatory Agencies**
   - **B. Device Manufacturers**
   - **C. Experts in the Field**
   - **D. Professional Associations**
   - **E. Public**

4. **Public Comment**

5. **Future Agenda Items**

6. **ADJOURNMENT**

SCOPE OF PRACTICE COMMITTEE
Hugh Lubkin, D.C., Chair
Frederick Lerner, 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 is accessible to persons with physical disabilities. 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.

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

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
January 20, 2011
State Capitol
Fourth Floor, Assembly Room 444
Sacramento, CA 95814

DRAFT

Board Members Present
Frederick Lerner, D.C. Chair
Hugh Lubkin, D.C., Vice Chair
Jeffrey Steinhardt, D.C.
Richard Tyler, D.C.

Staff Present
Robert Puleo, Executive Officer
Spencer Walker, Senior Staff Counsel
Linda Shaw, Staff Services Manager
Sandra Walker, Staff Services Manager
Dixie Van Allen, Associate Governmental Program Analyst
Rebecca Rust, Associate Governmental Program Analyst
Christina Bell, Associate Governmental Program Analyst
Ray Delaney, Management Services Technician
Valerie James, Office Technician

Call to Order
Dr. Lerner called the meeting to order at 10:03 a.m.

Roll Call
Dr. Tyler called the roll. All members, but Dr. Columbu, were present.

Chair's Report
Dr. Lerner discussed a few items and recent information regarding Board matters. Dr. Lerner expressed that he would like to calendar a Scope of Practice Committee Meeting in the near future.

Election of Officers for 2011
Dr. Lerner tabled this agenda item for when Dr. Columbu arrives.

Approval of Minutes
December 2, 2010 Board Meeting

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

Dr. Steinhardt requested that "Interim" be deleted from Executive Officer, Robert Puleo's title on page 2. Dr. Lerner also requested the correction of the word "ammend" to "amend" on page 2.

DR. LUBKIN MOVED TO AMEND THE MOTION BY REMOVING "INTERIM" FROM EXECUTIVE OFFICER, ROBERT PULEO'S TITLE AND CHANGE "AMMEND" TO "AMEND" ON PAGE 2.
DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Public Comment
Bill Howe from the California Chiropractic Association (CCA) reported that State Compensation Insurance Fund has rescinded their policy denying consumers Chiropractic treatment for post-operative rehabilitation. Mr. Howe requested the Board to place this item on the next Board Meeting agenda.

Dr. Gerard Clum, D.C. thanked the Board for their services and announced his retirement as President of Life Chiropractic College West.

Board Member Training on the Bagley-Keene Open Meeting Act and Other Relevant Laws
Mr. Walker addressed what should be documented and recorded during the Board's closed session. Mr. Walker reviewed Government Code Section 11126.1 of the Bagley-Keene Open Meeting Act. Mr. Walker then recommended that the Board keep a record of the discussion topics and the decision made.

2011 Board Meeting Schedule
The Board meeting dates for 2011 are finalized. The locations were changed to reflect Northern and Southern California.

Executive Officer's Report
Mr. Puleo gave the Executive Officer's Report. The topics were Administration, Budget, Licensing, and Enforcement.

Ratification of Approved License Applications

MOTION: DR. TYLER MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS
SECOND: DR. STEINHARDT SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED
The Board ratified the attached list of approved license applications incorporated herein (Attachment A).

Ratification of Approved Continuing Education Providers

MOTION: DR. TYLER MOVED TO RATIFY THE APPROVED CONTINUING EDUCATION PROVIDERS
SECOND: DR. STEINHARDT SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED
The Board ratified the attached list of approved continuing education providers incorporated herein (Attachment B).

Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing
None

Ratification to Waive Two Year Requirement to Restore a Cancelled License

MOTION: DR. STEINHARDT MOVED TO RATIFY THE RECOMMENDATION TO WAIVE THE TWO YEAR REQUIREMENT TO RESTORE A CANCELLED LICENSE
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED
The Board ratified the attached list of approved cancellation restoration applicants incorporated herein (Attachment C).

Information Dissemination/Communication with Licensees and the Public
Dane Wilson from Office of Technology Services discussed the processes and timelines involved to enhance the Board's website. Mr. Wilson informed the Board that it should be updated within 6 weeks.

Department of Industrial Relations, Division of Workers Compensation – Update on Recognition of Chiropractic Specialties
Dr. Lerner reported on the meeting with Destie Overpeck, Chief Counsel from the Division of Workers Compensation (DWC). DWC will be providing revisions to their proposed language in the near future.

Bill Howe came forward and asked the Board a few questions in regards to the matter.

Proposed Regulations
A. Fingerprint Submissions
The fingerprint submission regulations have been approved and became effective on January 14, 2011.

B. Continuing Education
Office of Administrative Law (OAL) disapproved and sent back our regulatory package with the need for a few technical changes to the language. There were some issues with the Initial Statement of Reasons, which OAL wanted the Board to thoroughly address. The Board must vote on the changes to the language so it may be resubmitted to OAL. Once the language is approved, it will go out for another 15 day comment period. The Board will only respond to comments that pertain to the specific language change and will not comment on the past changes. Then the regulatory package will be resubmitted to OAL for its 30 day approval period.

Bill Howe came forward and had questions on how the continuing education approval process will go once approved. The Board was unable to take his comment since it did not pertain to the specific language changes.

MOTION: DR. STEINHARDT MOVED TO APPROVE THE CHANGES TO THE LANGUAGE AND SUBMIT TO OAL.
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

C. Omnibus Consumer Protection
The Omnibus Consumer Protection regulatory package has been submitted for the 45 day comment period which will end February 14, 2011.

D. Informed Consent
The Board is working on the Initial Statement if Reasons for the Informed Consent regulatory package. This should be finalized within the next couple of weeks and then sent to OAL.

E. Petitions for Reinstatement (Fee)
Mr. Puleo updated the Board and requested approval of the proposed language.

MOTION: DR. LUBKIN MOVED TO APPROVE THE LANGUAGE AND SUBMIT TO OAL.
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Dr. Steinhardt asked for the Board to clarify within the proposed language that there is no guarantee that the applicant will have their license reinstated.

Mr. Walker suggested to modify the language in subsection (b) by adding the words "to deny or grant the petition" after the word "determination."

MOTION: DR. LUBKIN MOVED TO AMEND THE MOTION BY CHANGING THE PROPOSED LANGUAGE IN SUBSECTION (b) TO READ "IN REACHING IT'S DETERMINATION TO DENY OR GRANT THE PETITION, THE BOARD MAY CONSIDER VARIOUS FACTORS INCLUDING THE FOLLOWING:" AND SUBMIT TO OAL.
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Approval of New Chiropractic College – D'Youville College
Dr. Steinhardt had a few questions regarding the approval process and requirements. It was determined that D'Youville successful completed the process and met all requirements.

MOTION: DR. TYLER MOVED TO APPROVE D'YOUVILLE COLLEGE.
SECOND: DR. STEINHARDT SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Chiropractors Performing Student Athletic Physicals and Serving as Team Doctors
CCA had requested this item to be placed on the agenda but was unable to provide the Board with requested materials in time for the Board meeting. The Board will table this item for the next Board meeting in March.

Authority Over Unlicensed/Non-Licensed Individuals Performing Chiropractic
The Board discussed concerns regarding unlicensed individuals, such as Physical Therapists, practicing chiropractic. After further discussion, Mr. Walker suggested the Board set up a meeting with the Physical Therapy Board to discuss the matter.

Bill Howe thanked the Board for looking into the matter.

Attorney General Billing Detail
The Board will table this item for the next Board meeting in March.

Public Comment
Carole M. Arbuckle requested that the closed session agenda item concerning her lawsuit be changed from "Board of Chiropractic Examiners v. Carole M. Arbuckle" to "Carole M. Arbuckle v. Board of Chiropractic Examiners." Ms. Arbuckle made additional comments concerning this lawsuit.

Future Agenda Items
None

Hearings Re: Petition for Reinstatement of Revoked License
Administrative Law Judge Dian Vorters presided over and Deputy Attorney General Leslie Burgermyer appeared on behalf of the people of the State of California on the following hearings:

- Charles L. Whitney
- Parviz Kavoossi

Hearings Re: Petition for Early Termination of Probation
Administrative Law Judge Dian Vorters presided over and Deputy Attorney General Leslie Burgermyer appeared on behalf of the people of the State of California on the following hearings:

- Paul J. Bologna

Closed Session
Following oral testimonies, the Board went into closed session for deliberation and determinations of petitioners.

Election of Officers for 2011
A. Chair
MOTION: DR. STEINHARDT MOVED TO NOMINATE DR. LERNER TO CONTINUE AS CHAIR
MOTION: DR. TYLER MOVED TO NOMINATE DR. LUBKIN AS CHAIR

Discussion
After a lengthy discussion amongst the Board members, the motion was amended.

MOTION: DR. LUBKIN MOVED TO AMEND THE MOTION AND NOMINATE DR. LERNER TO CONTINUE AS CHAIR
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

B. Vice Chair
MOTION: DR. LERNER MOVED TO NOMINATE DR. LUBKIN TO CONTINUE AS VICE CHAIR
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Discussion
None

C. Secretary
MOTION: DR. LUBKIN MOVED TO NOMINATE DR. COLUMBU TO CONTINUE AS SECRETARY
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Discussion
None

Adjournment
Dr. Lerner adjourned the public meeting at 3:56p.m.

DRAFT

(ATTACHMENT A)
Approval By Ratification of Formerly Approved License Applications
November 1, 2010 – December 31, 2010

Name (First, Middle, Last)			Date Issued	DC#
Brent	Eugene	Babcock	11/5/2010	31829
Lina		Falkinstein	11/5/2010	31830
Latronda	Yvette	Hill	11/5/2010	31831
John	Joseph	Herrsche	11/5/2010	31832
Michelle	Baau-Yih	Chu	11/5/2010	31833
Craig	Richard	Sanchez	11/5/2010	31834
Nicholas	Scott	Araza	11/10/2010	31835
Jerald	Rodney	Hannah	11/10/2010	31836
Amanda	Elizabeth	Kinee	11/10/2010	31837
JoonKyu		Park	11/10/2010	31838
Kaylin	Audrey	Schack	11/12/2010	31839
Anthony	Juan	Subia III	11/12/2010	31840
Jennifer		Tu	11/12/2010	31841
Ger		Cha	11/19/2010	31842
Huong	Thi Ly	Danh	11/19/2010	31843
Allison	Grace	French	11/19/2010	31844
Peter	James	Janousek	11/19/2010	31845
Michael	Steven	Lee	11/19/2010	31846
David	Kendall	Perry	11/19/2010	31847
Jessica		Collazo-Rosario	12/6/2010	31848
Crystal	Dawn	Martin	12/6/2010	31849
Kristina	Nesreen	Menefee	12/6/2010	31850
Martha		Mulugeta	12/6/2010	31851
Kristen	Lee	Breymeier	12/10/2010	31852
Garbis		Khanjian	12/10/2010	31853
Yoon Ho	Reuben	Lee	12/10/2010	31854
Mary	Elizabeth	Melendez	12/10/2010	31855
Adana	Anna	Moses	12/10/2010	31856
Kevin	Barkley	Linzey	12/10/2010	31857
Hai Kristy	Dong	Tran	12/10/2010	31858
Nathan	Ian	Weller	12/10/2010	31859

DRAFT

(ATTACHMENT B)
Approval By Ratification Of Continuing Education Providers

CONTINUING EDUCATION PROVIDERS	DATE APPROVED
BioResource, Inc...	01/10/2011

DRAFT

(ATTACHMENT C)
Recommendation to Waive Two Year Requirement on Restoration of a Cancelled License

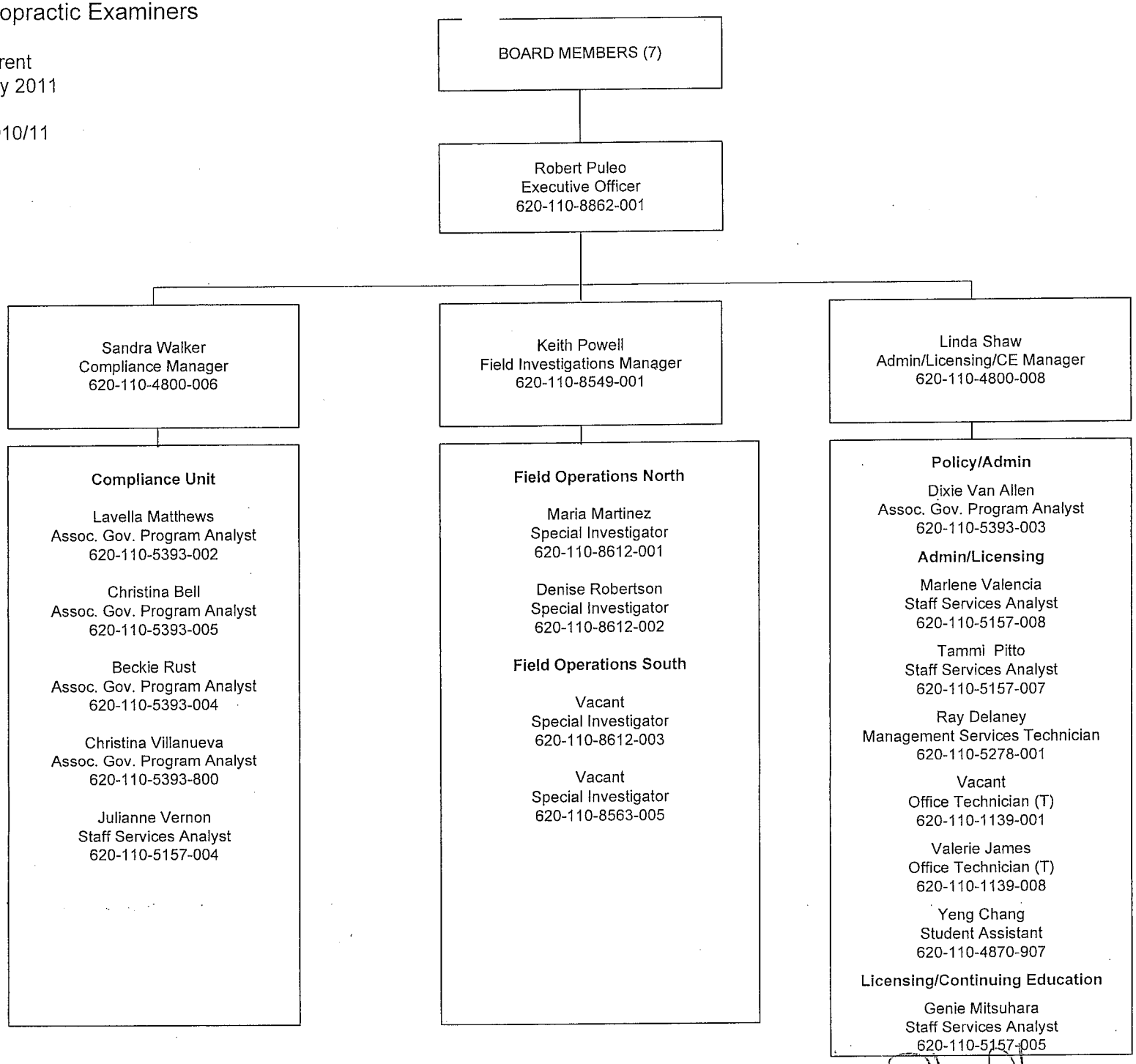
Name (Last, First MI)	License No.	Cancellation Date
Howell, Ralph	17251	03/31/2009

DRAFT

State ! rd of Chiropractic Examiners

Current
January 2011

FY 2010/11



Executive Officer _____

Rev. 1/4/11

0152 - Board of Chiropractic Examiners
Analysis of Fund Condition

Prepared 1/13/11

(Dollars in Thousands)

Proposed FY 2011-12 Governor's Budget

		Actual 2009-10	CY 2010-11	Proposed Gov Budget 2011-12
BEGINNING BALANCE		$ 4,150	$ 3,125	$ 2,002
Prior Year Adjustment		$ 96	$ -	$ -
Adjusted Beginning Balance		$ 4,246	$ 3,125	$ 2,002
REVENUES AND TRANSFERS				
Revenues:				
125600	Other regulatory fees	$ 131	$ 132	$ 132
125700	Other regulatory licenses and permits	$ -	$ -	$ -
125800	Renewal fees	$ 2,056	$ 2,054	$ 3,409
125900	Delinquent fees	$ 43	$ 38	$ 63
141200	Sales of documents	$ -	$ -	$ -
142500	Miscellaneous services to the public	$ -	$ -	$ -
150300	Income from surplus money investments	$ 28	$ 21	$ 8
150500	Interest Income From Interfund Loans	$ -	$ -	$ -
160400	Sale of fixed assets	$ -	$ -	$ -
161000	Escheat of unclaimed checks and warrants	$ -	$ -	$ -
161400	Miscellaneous revenues	$ 6	$ 6	$ 6
161900	Other Revenue - Cost Recoveries	$ 96	$ 96	$ 96
164600	Fines and Forfeitures	$ 17	$ 17	$ 17
Totals, Revenues		$ 2,377	$ 2,364	$ 3,731
Transfers to Other Funds		$ -	$ -	$ -
Totals, Revenues and Transfers		$ 2,377	$ 2,364	$ 3,731
Totals, Resources		$ 6,623	$ 5,489	$ 5,733
EXPENDITURES				
Disbursements:				
0840 State Controller (State Operations)		$ 1	$ 2	$ 3
8880 Financial Information System for CA (State Operations)		$ -	$ 2	$ 15
8500 Program Expenditures (State Operations)		$ 3,497	$ 3,483	$ 3,659
Total Disbursements		$ 3,498	$ 3,487	$ 3,677
FUND BALANCE				
Reserve for economic uncertainties		$ 3,125	$ 2,002	$ 2,056
Months in Reserve		10.8	6.5	6.6

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2009-10 AND ON-GOING

B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

C. ASSUMES INTEREST RATE AT 1%

BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA

FY 2009/10 – FY 2010/11 COMPARISON

LICENSE TYPE	TOTAL LICENSES 3/1/2010	TOTAL LICENSES 3/1/2011	NET VARIANCE
CHIROPRACTOR	13,908	13,869	-39
SATELLITES	3,421	3,658	+237
CORPORATIONS	1,318	1,316	-2
REFERRALS	33	31	-2
TOTALS	18,680	18,874	+194

APPLICATIONS RECEIVED AND PROCESSED
JANUARY 1, 2011 – FEBRUARY 28, 2010

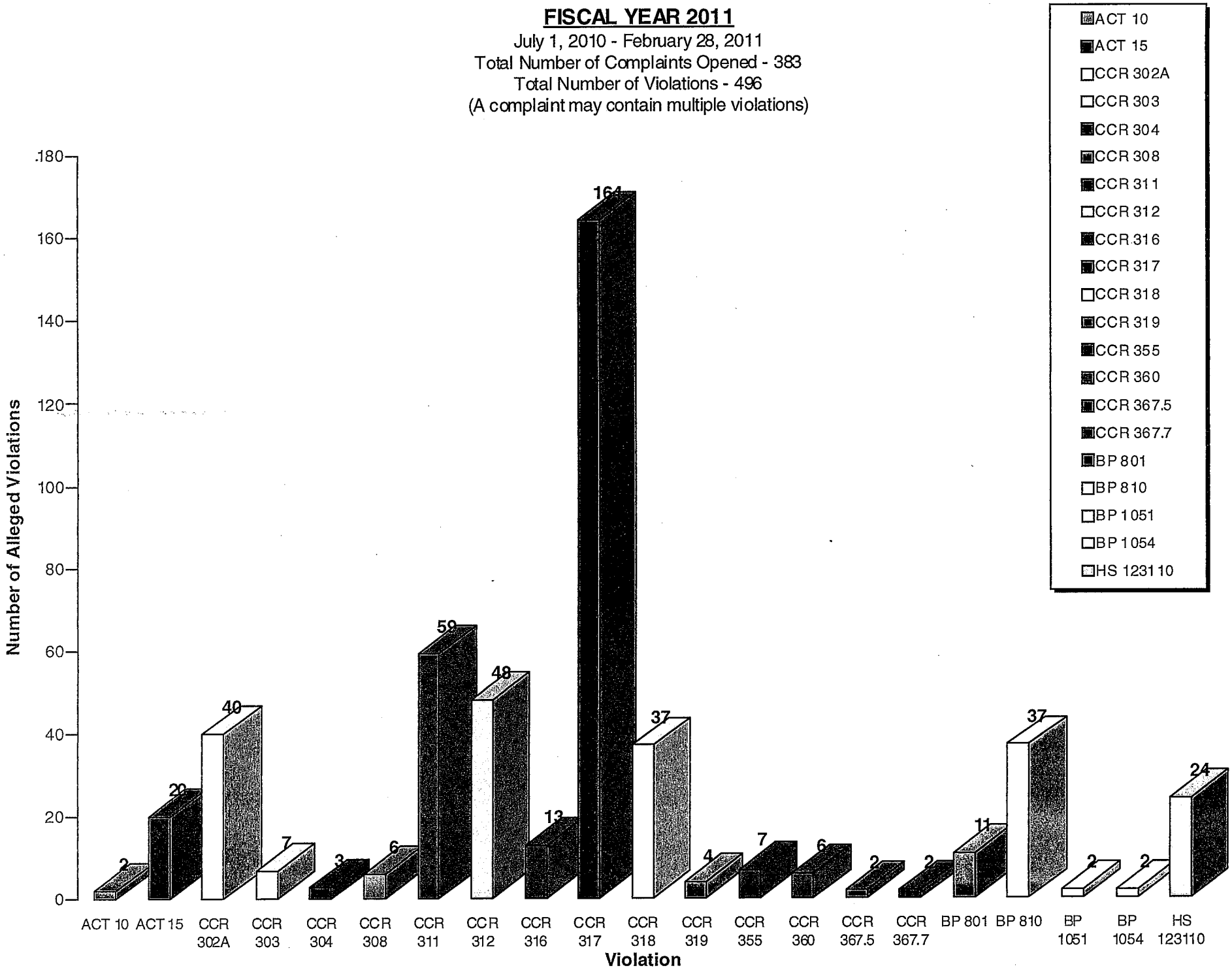
APPLICATION TYPE	RECEIVED	APPROVED	DENIED	WITHDRAWN	PENDING
INITIAL	77	65	0	0	141
RECIPROCAL	5	1	0	0	14
RESTORATION	31	34	1	0	10
CORPORATION	20	14	0	0	19

Compliance Unit Statistics

Fiscal Year	06/07	07/08	08/09	09/10	10/11*
Complaints					
Received	702	644	655	519	353
Pending	863	824	410	203	194
Closed with Insufficient Evidence	132	107	206	136	46
Closed with No Violation	61	78	223	129	76
Closed with Merit	202	321	275	158	101
Letter of Admonishment	n/a	n/a	n/a	5	3
Citations and Fines Issued (Total Fine Amount)	34	28	41($19,200)	78($25,700)	23 ($6,650)
Accusations					
Filed	41	13	64	73	40
Pending	92	73	105	117	128
Revoked	27	8	10	18	8
Revocation Stayed: Probation	23	10	4	20	16
Revocation Stayed: Suspension and Probation	15	10	7	8	6
Suspension	1	0	0	0	0
Suspension Stayed: Probation	0	0	0	1	0
Suspension and Probation	0	0	2	0	0
Voluntary Surrender of License	4	2	2	7	7
Dismissed/Withdrawn	3	3	5	18	6
Statement of Issues					
Filed	11	7	3	3	3
Denied	1	0	1	0	0
Probationary License	9	7	4	7	1
Withdrawn at Applicant's Request	2	1	0	0	0
Granted	3	0	0	0	0
Petition for Reconsideration					
Filed	1	0	1	3	0
Granted	0	0	0	0	0
Denied	1	0	1	2	0
Petition for Reinstatement of License					
Filed	10	15	13	9	4
Granted	5	12	4	4	0
Denied	4	6	11	11	4
Petition for Early Termination of Probation					
Filed	5	6	6	6	18
Granted	4	1	6	1	0
Denied	0	1	2	2	17
Petition for Modification of Probation					
Filed	0	0	0	0	0
Granted	0	0	0	0	0
Denied	0	0	0	0	0
Petition by Board to Revoke Probation					
Filed	2	0	11	32	63
Revoked	0	0	3	7	2
Probation Cases					
Active	174	159	140	134	133

* FY 10/11: July 1, 2010 – February 28, 2011

Revised: March 1, 2011


FISCAL YEAR 2011
July 1, 2010 - February 28, 2011
Total Number of Complaints Opened - 383
Total Number of Violations - 496
(A complaint may contain multiple violations)
Number of Alleged Violations
0
20
40
60
80
100
120
140
160
180
2
20
40
7
3
6
59
48
13
164
37
4
7
6
2
2
11
37
2
2
24
ACT 10
ACT 15
CCR 302A
CCR 303
CCR 304
CCR 308
CCR 311
CCR 312
CCR 316
CCR 317
CCR 318
CCR 319
CCR 355
CCR 360
CCR 367.5
CCR 367.7
BP 801
BP 810
BP 1051
BP 1054
HS 123110
Violation
ACT 10
ACT 15
CCR 302A
CCR 303
CCR 304
CCR 308
CCR 311
CCR 312
CCR 316
CCR 317
CCR 318
CCR 319
CCR 355
CCR 360
CCR 367.5
CCR 367.7
BP 801
BP 810
BP 1051
BP 1054
HS 123110

Violation Codes/Descriptions

The Chiropractic Initiative Act of California (ACT):

10 – Rules of Professional Conduct
15 – Noncompliance With and Violations of Act

California Code of Regulations (CCR):

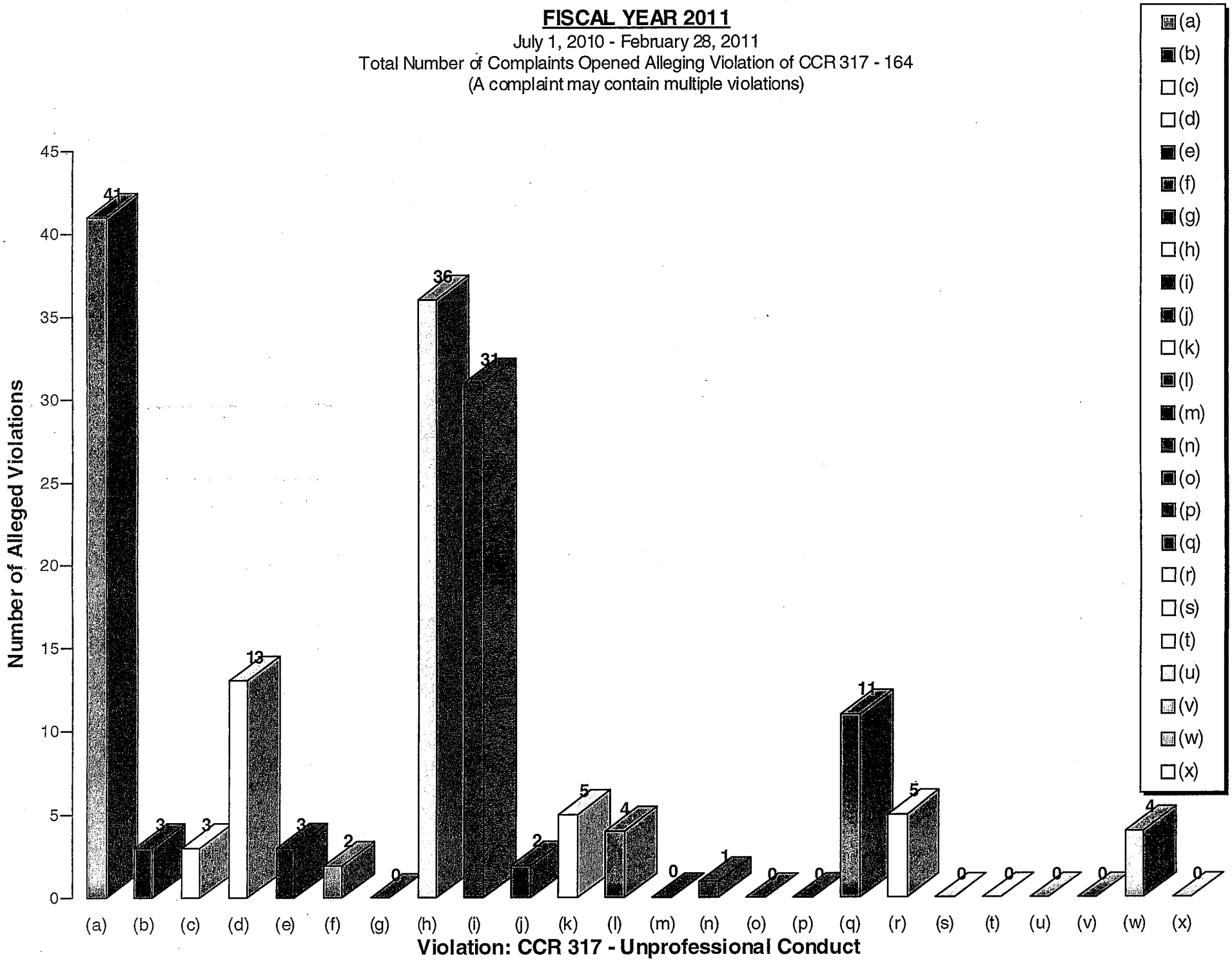
302(a) – Scope of Practice
303 – Filing of Addresses
304 – Discipline by Another State
308 – Display of License
311 – Advertisements
312 – Illegal Practice
316 – Responsibility for Conduct on Premises
317 – Unprofessional Conduct
318 – Chiropractic Patient Records/Accountable Billing
319 – Free or Discount Services
355 – Renewal and Restoration
360 – Continuing Education Audits
367.5 – Application, Review of Refusal to Approve (corporations)
367.7 – Name of Corporation

Business and Professions Code (BP):

801 – Professional Reporting Requirements (malpractice settlements)
810 – Insurance Fraud
1051 – Apply for a Corporation with the Board
1054 – Name of Chiropractic Corporation

Health and Safety Code (HS):

123110 – Patient Access to Health Records


FISCAL YEAR 2011
July 1, 2010 - February 28, 2011
Total Number of Complaints Opened Alleging Violation of CCR 317 - 164
(A complaint may contain multiple violations)
Number of Alleged Violations
0
5
10
15
20
25
30
35
40
45
41
3
3
13
3
2
0
36
31
2
5
4
0
1
0
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11
5
0
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4
0
(a)
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(e)
(f)
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(h)
(i)
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(k)
(l)
(m)
(n)
(o)
(p)
(q)
(r)
(s)
(t)
(u)
(v)
(w)
(x)
Violation: CCR 317 - Unprofessional Conduct

Violation Codes/Descriptions

California Code of Regulations (CCR) Section 317 – Unprofessional Conduct:

(a) Gross Negligence
(b) Repeated Negligent Acts
(c) Incompetence
(d) Excessive Treatment
(e) Conduct Endangering Public
(f) Administering to Oneself Drugs/Alcohol
(g) Conviction of a Crime Related to Chiropractic Duties
(h) Conviction of a Crime Involving Moral Turpitude/Physical Violence/etc.
(i) Conviction of a Crime Involving Drugs or Alcohol
(j) Dispensing Narcotics/Dangerous Drugs/etc.
(k) Moral Turpitude/Corruption/etc
(l) False Representation
(m) Violation of the ACT/Regulations
(n) False Statement Given in Connection with an Application for Licensure
(o) Impersonating an Applicant
(p) Illegal Advertising related to Violations of Section 17500 BP
(q) Fraud/Misrepresentation
(r) Unauthorized Disclosure of Patient Records
(s) Employment/Use of Cappers or Steerers
(t) Offer/Receive Compensation for Referral
(u) Participate in an Illegal Referral Service
(v) Waiving Deductible or Co-Pay
(w) Fail to Refer Patient to Physician/Surgeon/etc.
(x) Offer or Substitution of Spinal Manipulation for Vaccination

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUND G. BROWN JR., GOVERNOR

MEMORANDUM

Date: March 8, 2011

To: **Board Members**

From: Robert Puleo
Executive Officer

Subject: **Ratification of Formerly Approved Doctors of Chiropractic for Licensure**

This is to request that the Board ratify the attached list of individuals as Doctors of Chiropractic at the March 17, 2011, public meeting.

Between January 1, 2011 and February 28, 2011, staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

If you have any questions or concerns, please contact me at your earliest opportunity.

Approval By Ratification of Formerly Approved License Applications
January 1, 2011 – February 28, 2011

Name (First, Middle, Last)			Date Issued	DC#
Devin	Stanley	Waterman	1/4/2011	31860
Jordan	Hoang	Giang	1/7/2011	31861
Sara	Lynn	Hillesheim	1/7/2011	31862
Nicholas	T.	LaHood	1/7/2011	31863
Leyla		Malakian	1/7/2011	31864
Daniel	Jiyong	Kim	1/12/2011	31865
Amanda	Danielle	Peterson	1/20/2011	31866
Steven	Ryan	Selby	1/20/2011	31867
Georgina		Flores Ramirez	1/21/2011	31868
Albert	Daehee	Han	1/21/2011	31869
Janet	Yuk Kan	Ho	1/21/2011	31870
Paul	Joseph	Hodgson	1/21/2011	31871
Claudy-Ann		Keasberry	1/21/2011	31872
Han Jin		Kim	1/21/2011	31873
Vicente		Chavira	1/28/2011	31874
Jo	Ann	Eccher	1/28/2011	31875
Mohamed	Sayed	El-Shimey	1/28/2011	31876
Jeremy	Warren	Green	1/28/2011	31877
Sanaz		Moeini	1/28/2011	31878
Sarah	Denise	Dirks	1/28/2011	31879
Tamara	M.	Ghazi	1/28/2011	31880
Hongtruc	Thi	Nguyen	1/28/2011	31881
Liliana		Ulloa-Jimenez	1/28/2011	31882
Sidney		Yadidi	1/28/2011	31883
Lorraine		Sarullo	1/31/2011	31884
Vanessa	Marie	Snider	1/31/2011	31885
Anna		Yatsenko	1/31/2011	31886
Shinnosuke		Ban	2/10/2011	31887
Clayton	John	Blanchette	2/10/2011	31888
Byong	Il	Chon	2/10/2011	31889
Ryan	Patrick	Clark	2/10/2011	31890
Melissa	Ann	Engelson	2/10/2011	31891
Justin	Timothy	Goslin	2/10/2011	31892
Mark	Alan	Hanses	2/10/2011	31893
Yi-Ying		Lin	2/10/2011	31894

Derek	Lee	Rice	2/10/2011	**31895**
Harvey	Jing Yin	Wong	2/10/2011	**31896**
Aaron	Anucherebom	Ajoku	2/11/2011	**31897**
Taesung		Byun	2/11/2011	**31898**
Jack	Hagop	Demirchian	2/11/2011	**31899**
Eric	Edmund	Glenn	2/11/2011	**31900**
Daniel	Shane	Griffin	2/11/2011	**31901**
Robin	Christopher	Harkins	2/11/2011	**31902**
Ju	Hyun	Kang	2/11/2011	**31903**
Scott	Andrew	Larsen	2/11/2011	**31904**
Kenneth	Warren	Swinford	2/11/2011	**31905**
Shervin		Tabrizi	2/11/2011	**31906**
Jeanett		Tapia	2/11/2011	**31907**
Mahyar	David	Yadidi	2/11/2011	**31908**
Cheryle	Ann	Pettigrew	2/11/2011	**31909**
Walker	Walter	Scott	2/11/2011	**31910**
David	Mac	Huynh	2/11/2011	**31911**
Jeremy	Christopher	Hughes	2/16/2011	**31912**
Beau	Shannon	Lawyer	2/16/2011	**31913**
Allen		Bonilla	2/17/2011	**31914**
Daniel	Harrison	Bronstein	2/17/2011	**31915**
Rebecca	Suzanne	Claassen	2/17/2011	**31916**
David	Anthony	Ledesma	2/17/2011	**31917**
Robert	Earl	Fife	2/18/2011	**31918**
Matthew	Adam	Ryan	2/23/2011	**31919**
Eric	Rice	Shane	2/23/2011	**31920**
Lisa	Christine	Pappas	2/25/2011	**31921**
Erika	Lynn	Posenaer	2/25/2011	**31922**
Stefanie	Jean	Stepanski	2/25/2011	**31923**
Kathy	Chi Kuan	Wang	2/25/2011	**31924**

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUNC G. BROWN JR., GOVERNOR

MEMORANDUM

Date: February 18, 2011

To: BOARD MEMBERS

From: Robert Puleo
Executive Officer

Subject: **Ratification of Formerly Approved Continuing Education Providers**

This is to request that the Board ratify the continuing education provider at the public meeting on March 17, 2011.

Staff reviewed and confirmed that the applicant met all statutory and regulatory requirements.

CONTINUING EDUCATION PROVIDERS	DATE APPROVED
1. Cedars-Sinai Spine Center.	02/18/2011

If you have any questions or concerns, please contact me at your earliest opportunity.

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUND G. BROWN JR., GOVERNOR

MEMORANDUM

Date: March 10, 2011

To: **Board Members**

From: Robert Puleo
Executive Officer

Subject: **Ratification of Denied License Applications of Doctors of Chiropractic**

The Board of Chiropractic Examiners (Board) denies licensure to applicants who do not meet all statutory and regulatory requirements for a chiropractic license in California. An applicant has 60-days after the denial is issued to appeal the decision. If the applicant does not submit an appeal to the Board, the denial is upheld.

Between January 1, 2011 and February 28, 2011, staff reviewed and confirmed that two (2) applicants did not meet all statutory and regulatory requirements for licensure. The applicants have appealed the decision and staff is working with the Attorney General's office on these appeals.

At this time, there is no ratification necessary.

If you have any questions or concerns, please contact me at your earliest opportunity.

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUND G. BROWN JR., GOVERNOR

MEMORANDUM

Date: March 10, 2011

To: **Board Members**

From: Robert Puleo
Executive Officer

Subject: Recommendation to Waive Two Year Requirement on Restoration of a Cancelled License – Chiropractic Initiative Act, Section 10(c)

This is to recommend that the Board waive the two year restoration requirement of a cancelled license for the individuals named on the attached list at the March 17, 2011, public meeting.

Staff reviewed and confirmed that the applicants met all other regulatory requirements for restoration including sufficient continuing education hours.

If you have any questions or concerns, please contact me at your earliest opportunity.

Recommendation to Waive Two Year Requirement on Restoration of a Cancelled License

Name (Last, First MI)	License No.	Cancellation Date
Leite-Ah Yo, Harvelee	22051	7/31/2010

AFFILIATED MONITORS, INC.™
INTEGRITY THROUGH COMPLIANCE

P.O. Box 961791
Boston, Massachusetts 02196
Local 617 275-0620
Toll Free 866 201-0903
Fax 617 345-0102

VINCENT L. DICIANNI
E-MAIL: VDICIANNI@AFFILIATEDMONITORS.COM

BOARD OF CHIROPRACTIC EXAMINERS
11 JAN 28 PM 3:57

January 24, 2011

Robert Puleo, Executive Officer
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

RE: AFFILIATED MONITORS, INC.

Dear Robert:

Congratulation on being named the Executive Director. We look forward to becoming a resource for the Board as we are with about forty other healthcare regulatory boards around the country. I am writing as a follow up to our conversation and to request that Affiliated Monitors be placed on the agenda for an upcoming Board meeting (perhaps March, as you suggested), and to provide some additional information about our services.

Enclosed please find a number of items that I think you will find helpful in understanding the services that Affiliated Monitors provides, including sample Settlement Agreements from various Chiropractic boards, as well as several redacted reports from AMI that illustrate the breadth and depth of the services we provide. I will provide sample materials for the Board members at the meeting and can send them electronically, if that makes things easier. I have also enclosed the statement by Dr. Louis Sportelli from the close of the FCLB's meeting in Baltimore. I highlighted the section where he discussed Affiliated Monitors and he promoted the remedial types of programs that we provide. In addition to the quality of the services we provide, because the monitored licensee pays for all of these services, AMI is able to offer these programs at no cost to your Board.

As I mentioned to you, AMI was created to assist state licensing boards and other regulatory agencies in matters where independent oversight might be helpful in ensuring effective implementation of disciplinary orders and consent agreements. We provide neutral, objective on-site monitoring of licensees who have been the subject of enforcement action by state licensing boards, federal or state oversight agencies, private insurers or credentialing bodies. We also offer comprehensive compliance programs designed to bring practitioners into compliance with federal and state regulatory requirements and applicable professional practice standards. Other services available from AMI include a telephone hotline service for confidential reporting and resolution of compliance, business and practice issues, and clinical competency assessments for healthcare professionals.

Our monitoring programs use highly-qualified professionals, licensed in the appropriate discipline in your state and approved by your Board, as independent monitors to oversee both the clinical and business components of a sanctioned licensee's practice. These professionals are carefully chosen to ensure that they possess the knowledge, experience and peer respect required to merit the confidence of your Board, and their credentials are submitted to you in advance so that your Board will have the opportunity to review and approve them before the monitoring process begins. Our monitors are carefully screened and are required to adhere to a strict code of conduct designed to prevent the possibility of bias or potential conflicts of interest.

The availability of neutral independent monitors protects the integrity of your disciplinary process by ensuring that you receive objective and reliable assessments of the sanctioned licensee's compliance with your Board's directives, based on actual on-site observation and inspections. This protects against charges of bias or conflicts of interest and makes it more efficient and effective to use remedial sanctions such as consent agreements, practice restrictions, or alternatives to formal discipline, and expedite resolution of cases without compromising public protection.

If your Board determines that the use of a monitor is appropriate, AMI will work with you, your staff and counsel for the licensee to develop measurement tools which are specifically tailored to the circumstances of each case, so that the monitor will focus his or her time and attention on the issues which are of greatest concern to your Board. If your Board has already designated individuals to serve as monitors, we can work with them to promote greater standardization in both evaluating the sanctioned licensee's performance and reporting the results of these on-site visits. As you will see from the sample reports, our reports are detailed, thorough, and contain useful and specific recommendations to the licensee on how to improve their performance. We can conduct scheduled appointments, random visits, or both to oversee implementation of the corrective actions you require.

AMI also offers compliance programs designed to help licensees identify and correct existing or potential problems and improve their operations. We focus specifically on educating the practitioner about "best practices" and implementing systems and procedures which will help to prevent future violations and promote ongoing compliance with regulatory obligations. Our programs are designed to ensure adherence to both federal standards (including, but not limited to, the Department of Health and Human Services compliance program guidelines for small health care practices, HIPAA, OSHA and other regulatory requirements) and those of the state. The compliance program includes an on-site assessment, a comprehensive compliance manual customized for the particular practice setting, and assistance with implementation, including staff training and follow-up audits. These programs are also available to licensees who wish to implement them voluntarily.

AMI has now provided monitoring and consulting services for healthcare regulatory boards in Arizona, Colorado, Connecticut, Delaware, Florida, Kansas, Louisiana, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee and Texas. We are about to start work with the Oregon, Georgia and Pennsylvania boards as well. Our work for these regulatory boards has included

matters involving boundary violations, poor clinical documentation, improper billing, and alleged fraud or abuse of third party payment programs. Many of these boards have used both our compliance programs and our monitoring services to ensure comprehensive resolution of their cases. We also provide monitoring services for the Massachusetts Office of the Attorney General in Medicaid fraud matters, and for the Office of the Inspector General for Health and Human Services and the United States Department of Justice in corporate or program integrity cases.

We would welcome an opportunity to make a presentation to the Board to discuss how AMI might best be of service to you. We look forward to earning your trust.

Thank you in advance for your time and consideration.

Sincerely yours,

Vincent L. DiCianni
President

Enclosures

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING
SCOPE OF PRACTICE COMMITTEE

February 24, 2011
10:00 am
2525 Natomas Park Drive, Suite 120
Sacramento, CA 95833

AGENDA

1. **CALL TO ORDER**

2. **Approval of Minutes**
   March 18, 2010

3. **Appropriate Use of Lasers by California Licensed Chiropractors**
   Testimony from:
   - **A. Regulatory Agencies**
   - **B. Device Manufacturers**
   - **C. Experts in the Field**
   - **D. Professional Associations**
   - **E. Public**

4. **Public Comment**

5. **Future Agenda Items**

6. **ADJOURNMENT**

SCOPE OF PRACTICE COMMITTEE
Hugh Lubkin, D.C., Chair
Frederick Lerner, 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 is accessible to persons with physical disabilities. 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.

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

NRG Laser Inc.
636 E. Atlantic Ave.
Suite 211
Delray Beach, FL 33483

March 7, 2011

Mr. Frederick Lerner, D.C., Chair
CA Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Senator Bob Huff
20888 Amar Rd.
Suite 205
Walnut, CA 91789

Dear Mr. Lerner and Senator Huff –

We have just been made aware of the letter written by Senator Huff to the CA Board of Chiropractic Examiners dated January 10, 2011 and the subsequent meeting held by the Board on February 24, 2011 in Sacramento, CA to discuss the matters detailed in the letter.

As a provider of a biofeedback and laser device that is sold to the chiropractic market, we are very interested in working with the CA Board of Chiropractic Examiners in providing any information necessary for the Board to determine any future regulatory or educational programs regarding the use of lasers for the FDA permitted classifications granted for such devices. We understand that a further meeting will be taking place to discuss this matter on March 17, 2011 and we look forward to attending and providing you with any of this information.

NRG Laser Inc. is the distributor of a device named the NRG Nano Standard-of-Care Wellness System. This device is manufactured by Star Tech Health Services in Orem, UT. The device consists of a biofeedback unit that has received 510k clearance for use as a stress and relaxation training device. The device also uses a Class IIIa laser that is listed as an FDA Category I device similar to that of a laser pointer which does not require FDA clearance. The laser, or light, is simply used as carrier to transmit the biofeedback signals from the biofeedback device to the patient.

We market our device as a wellness system that helps to provide stress and relaxation training. By providing relaxation training, resulting in the body's ability to better cope with everyday stressors, our device aims to provide overall general wellness for the patient. Our device is not intended to directly treat or diagnose any specific illness or disease, including allergies. There has however been scientific research linking excessive stress to many illnesses and we believe that by providing this type of relaxation training to the body, the end result may be a reduction of the symptoms and illnesses that have been linked to excessive stress. However, we do not market the device as such and instruct the practitioner also not to market the device for any specific symptom or illness.

NRG Laser Inc.
636 E. Atlantic Ave.
Suite 211
Delray Beach, FL 33483

Just like you, we are very concerned regarding the samples of advertising included along with Senator Huff's letter stating the use of similar devices for the treatment of food and other allergies for which the devices have not been provided clearance. We have instituted mandatory educational programs for our clients that accurately explain the proper clearance for the device and the intended use for which the device should be marketed to patients.

We firmly stand behind the Board's initiative to assess any action toward its members that do not comply with these standards to help protect the public's health concerns as a top priority.

In response to the nine questions presented to the Board in Senator Huff's letter, please find answers below as they pertain to our system. We are unable to respond in respect to the other systems that have been identified in the advertising samples, as we are not familiar with their device specifications or compliance standards.

1. Has your Board received any complaints with regard to food allergy or general allergy treatment?

   A. As reflected in the February 24, 2011 meeting it is clear that this issue, regardless of whether or not complaints have been received, is and should be of utmost concern.

2. Are the "laser" machines FDA approved for treatment of allergies, specifically food allergies?

   A. Medical devices are not approved by the FDA, rather they are provided clearance for use as indicated under their 510k clearance. Our biofeedback device has been cleared for use as a stress and relaxation training device only. The laser that is used with our device is a Class IIIa laser with an FDA Category I classification (low risk) that does not require a 510k clearance for use. Our laser is simply used as a carrier to transmit the biofeedback signals from the device to the patient. We are unaware of any lasers that have been provided 510 k clearances for the indicated use as a treatment for allergies.

3. Is there any peer reviewed scientific data available on the use of these machines for food allergies? Or any other medical conditions?

   A. We are unaware of any scientific data in regard to the application of these machines directly for the treatment of allergies. We do have scientific data supporting the use of our machine for the purposes of stress and relaxation training for which our device is intended. Scientific data also exists to support the direct link between excessive stress and many symptoms and illnesses in general.

NRG Laser Inc.
636 E. Atlantic Ave.
Suite 211
Delray Beach, FL 33483

4. What is the training and who provides the training for the laser machines?

   A. We have a designated person that is responsible for training our customers on the use of our device. As per FDA protocol, our designated individual has received certified training from the manufacturer of the device. Our training includes, but is not limited to, the education regarding the device components, the device protocols, the indications for which the device has been cleared for use by the FDA, and proper marketing and advertising for the device and its intended use.

5. Are there any standards or regulations chiropractors follow regarding food allergy treatment (ie. does the CA Board of Chiropractic Examiners have any regulations on the issue of allergy testing).

   A. We are unaware of any standards or regulations regarding the treatment of food allergies by chiropractors in CA. These questions would be best addresses by the Board.

6. Once someone is "treated" what is the standard advice of a chiropractor to give to a patient? Are they advising consumption of the food upon completion of the treatment? If so, where? Under supervision in the office?

   A. In regard to our device, we instruct our customers to provide a complete consultation with their patients prior to using the device. This consultation includes gathering a patient history, accurately explaining the use of device, explaining what is performed during the therapy, why it is performed, and what results they hope to achieve. Prior to using the device, we recommend that the patients sign a waiver form that indicates that these items have been explained and that they agree to have the practitioner use the device as part of their therapy.

   These instructions in no way advise the patient to consume any, or expose themselves to any items where an anaphylactic or potentially life-threatening allergic reaction has previously been diagnosed.

7. Is the laser treatment for food allergies covered by any commercial insurance as graded allergy tests are usually covered by most insurance?

   A. This would not be applicable toward our device as our device is not intended for the treatment of food allergies.

8. Does a patient have to sign a formal waiver of any sort for the treatment they are receiving either stating the unknown efficiency of the treatment or that they should check with a physician prior to food consumption upon the completion of the treatment

NRG Laser Inc.
636 E. Atlantic Ave.
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Delray Beach, FL 33483

A. We do instruct our customers to have patients sign a formal waiver that states any risks associated with the therapy and acknowledging that the therapy will not in any way guarantee that the patient will experience better health as a result of the therapy.

9. Is the medical background of a patient checked prior to receiving treatment? Are the patients' blood tests or scratch tests reviewed prior to laser treatment?

   A. We do instruct our customers, and we would also hope that prior to treatment of a patient in any matter, that they discuss with the patient their medical background. If the background contains such items such as blood tests and scratch test results, then this would be included in the items discussed with the patient as it would be pertinent to the overall health condition of the patient.

Our Director of Operations, Jon Segal, DC and Bill Clark, the owner Star Tech health Services, the manufacturer of our device, will be attending the meeting on March 17th. We look forward to developing a relationship with the CA Board of Chiropractic Examiners to help chiropractors provide beneficial services to their patients that are in the patients' best interests and presented in a way that is both legal and ethical.

Please feel free to contact us with any questions you may have.

In Good Health,

David Tucker
NRG Laser Inc.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING
ENFORCEMENT COMMITTEE

March 17, 2011
9:00 a.m.
Hilton LAX
5711 West Century Blvd.
Los Angeles, CA 90045
(310) 410-4000

AGENDA

1. **CALL TO ORDER**

2. **Approval of Minutes**
   December 2, 2010

3. **Scope of Chiropractic Care, Limitations, and Exclusive Treatment**
   California Code of Regulations 302

4. **Chiropractic Patient Records**
   California Code of Regulations 318

5. **Enforcement Oversight – Auditing of Enforcement Program**

6. **PUBLIC COMMENT**

7. **FUTURE AGENDA ITEMS**

8. **ADJOURNMENT**

ENFORCEMENT COMMITTEE
Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.
Frederick Lerner, D.C.

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STATE OF
CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
Telephone (916) 263-5355 FAX (916) 263-5369
CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
www.chiro.ca.gov

April 8, 2004

Elisa Moffitt
Medical Community Liaison
Fresno District Office, SCIF

Dear Ms. Moffitt:

The following is in response to your request for clarification on the Board's interpretation of **Section 302 (a)(2)** of the California Code of Regulations:

"As part of a course of chiropractic treatment, a duly licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including, but not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water; and physical therapy in the course of chiropractic manipulations and/or adjustments."

The Board interprets this regulation as meaning that licensed D.C.s may employ a wide variety of physical modalities in the course of treatment but that during most, if not all, chiropractic office visits manual manipulation should be provided to the patient. There are, of course, conditions that contraindicate manual manipulation. With some conditions (i.e. early phase of acceleration/deceleration injury) manipulation may not be incorporated into the treatment program initially, but will be in relatively short order. This is understood by the Board as reasonable and well within the scope of practice. For other conditions (i.e. post-surgical rehabilitation of knee), manual manipulation will not be incorporated into the treatment program at any point. This is perceived by the Board as being a violation of the scope of chiropractic practice.

I hope you find the above helpful. Should you have further questions, please do not hesitate to contact my office.

Yours truly,

M. Maggie Craw, D.C., D.A.C.B.R., M.A.
CBCE Consultant

[redacted]

Dear colleagues:

During the most recent DODC teleconference I was asked (as I understood it) to provide you with the text of Article 1 Section 302 (a)(2): Practice of Chiropractic – Scope of practice. It is as follows (with punctuation intact):

"As part of a course of chiropractic treatment, a duly licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including, but not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water; and physical therapy in the course of chiropractic manipulations and/or adjustments."

The Board interprets this as meaning that during most, if not all, chiropractic office visits, manual manipulation should be provided to the patient. There are, of course, conditions that contraindicate manual manipulation. With some conditions (i.e. early phase of acceleration/deceleration injury) manipulation may not be incorporated into the treatment program initially, but will be in relatively short order. This is understood by the Board as reasonable and well within the scope of practice. For other conditions (i.e. post-surgical rehabilitation of knee), manual manipulation will not be incorporated into the treatment program at any point. This is perceived by the Board as being a violation of the scope of practice.

It was mentioned during the teleconference that attorney Michael Schroeder, one of the framers of this regulation, claims that the colon separating the term "water" from the phrase "and physical therapy in the course of chiropractic manipulations and/or adjustments" was placed there intentionally so that the rules applying to physical therapy would somehow be different than those applying to air, cold, diet, etc. The Board is well aware of Mr. Schroeder's 'punctuation defense' for the practice of physical therapy by chiropractors. The Board staff, our deputy attorney general and many others have discussed the issue at length. Nonetheless, I can tell you from my own experience that when complaints alleging violation of 302, such as that illustrated above, are submitted to the Board and are shown to have foundation – we do go forth with some level of the disciplinary process.

I hope you find the above helpful. Should you have need to refer to any portion of the statutes and regulations pertinent to the practice of chiropractic in California, you my find them at www.chiro.ca.gov.

M. Maggie Craw, D.C., DACBR, M.A.
CBCE Consultant

ASSEMBLY BILL No. 127

Introduced by Assembly Member Logue

January 11, 2011

An act to amend Section 11343.4 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 127, as introduced, Logue. Regulations: effective date.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or an order of repeal of a regulation become effective, instead, on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except as provided.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11343.4 of the Government Code is
2 amended to read:
3 11343.4. A regulation or an order of repeal required to be filed
4 with the Secretary of State shall become effective on ~~the 30th day~~

1 *January 1 next following a 90-day period* after the date of filing
2 unless:
3 (a) Otherwise specifically provided by the statute pursuant to
4 which the regulation or order of repeal was adopted, in which event
5 it becomes effective on the day prescribed by the statute.
6 (b) A later date is prescribed by the state agency in a written
7 instrument filed with, or as part of, the regulation or order of repeal.
8 (c) The agency makes a written request to the office
9 demonstrating good cause for an earlier effective date, in which
10 case the office may prescribe an earlier date.

O

SENATE BILL No. 100

Introduced by Senator Price

January 11, 2011

An act to amend Sections 651 and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1204, 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.55, and 1279 of, and to add Sections 1204.6, 1204.7, and 1204.8 to, the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 100, as introduced, Price. Healing arts.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners and requires certain of those practitioners to use particular designations following their names in specified instances. Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which they are licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would require certain healing arts licensees to include in advertisements, as defined, certain words or designations following their names indicating the particular educational degree they hold or healing art they practice, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field,

to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by January 1, 2013, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(3) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(4) Under existing law, the State Department of Public Health licenses and regulates clinics, including surgical clinics, as defined.

This bill would expand the definition of surgical clinics to include a surgical clinic owned in whole or in part by a physician and would require, until the department promulgates regulations for the licensing of surgical clinics, the department to use specified federal conditions of coverage.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations. Existing law makes a willful violation of these and other provisions relating to outpatient settings a crime.

This bill would include, among those specified aspects, the submission for approval by an accreditation agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is

accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The bill would also require the board to give the department notice of all accredited, certified, and licensed outpatient settings and to notify the department of accreditation standards, changes in the accreditation of an outpatient setting, or any disciplinary actions and corrective actions.

Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accreditation agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would also apply the denial of accreditation, or the revocation or suspension of accreditation by one accrediting agency to all other accrediting agencies.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified, and would specify that it may also be inspected by the board and the department, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

Existing law authorizes the Medical Board of California to terminate approval of an accreditation agency if the agency is not meeting the criteria set by the board.

This bill would also authorize the board to issue a citation to the agency, including an administrative fine, in accordance with a specified system established by the board.

Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(5) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would state the intent of the Legislature that the department, as part of its periodic inspections of acute care hospitals, inspect the peer review process utilized by those hospitals.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to clarify
2 Capen v. Shewry (2007) 147 Cal.App.4th 680 and give surgical
3 clinics that are owned in whole or in part by physicians the option
4 to be licensed by the State Department of Public Health. It is further
5 the intent of the Legislature that this clarification shall not be
6 construed to permit the practice of medicine in prohibition of the
7 corporate practice of medicine pursuant to Section 2400 of the
8 Business and Professions Code.
9 (b) It is the further intent of the Legislature to continue to give
10 physicians and surgeons the option to obtain licensure from the
11 State Department of Public Health if they are operating surgical
12 clinics, or an accreditation through an accrediting agency approved
13 by the Medical Board of California pursuant to Chapter 1.3

(commencing with Section 1248) of Division 2 of the Health and Safety Code.

(c) It is the further intent of the Legislature, in order to ensure patient protection, to provide appropriate oversight by the State Department of Public Health, and to allow corrective action to be taken against an outpatient setting if there is reason to believe that there may be risk to patient safety, health, or welfare, that an outpatient setting shall be deemed licensed by the State Department of Public Health.

SEC. 2. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure

being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional

services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a

diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he

or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or

1 association applying for recognition pursuant to this subparagraph.
2 The fee shall not exceed the cost of administering this
3 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
4 Statutes of 1990, this subparagraph shall become operative July
5 1, 1993. However, an administrative agency or accrediting
6 organization may take any action contemplated by this
7 subparagraph relating to the establishment or approval of specialist
8 requirements on and after January 1, 1991.
9 (C) A doctor of podiatric medicine licensed under Chapter 5
10 (commencing with Section 2000) by the Medical Board of
11 California may include a statement that he or she is certified or
12 eligible or qualified for certification by a private or public board
13 or parent association, including, but not limited to, a
14 multidisciplinary board or association, if that board or association
15 meets one of the following requirements: (i) is approved by the
16 Council on Podiatric Medical Education, (ii) is a board or
17 association with equivalent requirements approved by the
18 California Board of Podiatric Medicine, or (iii) is a board or
19 association with the Council on Podiatric Medical Education
20 approved postgraduate training programs that provide training in
21 podiatric medicine and podiatric surgery. A doctor of podiatric
22 medicine licensed under Chapter 5 (commencing with Section
23 2000) by the Medical Board of California who is certified by a
24 board or association referred to in clause (i), (ii), or (iii) shall not
25 use the term "board certified" unless the full name of the certifying
26 board is also used and given comparable prominence with the term
27 "board certified" in the statement. A doctor of podiatric medicine
28 licensed under Chapter 5 (commencing with Section 2000) by the
29 Medical Board of California who is certified by an organization
30 other than a board or association referred to in clause (i), (ii), or
31 (iii) shall not use the term "board certified" in reference to that
32 certification.
33 For purposes of this subparagraph, a "multidisciplinary board
34 or association" means an educational certifying body that has a
35 psychometrically valid testing process, as determined by the
36 California Board of Podiatric Medicine, for certifying doctors of
37 podiatric medicine that is based on the applicant's education,
38 training, and experience. For purposes of the term "board certified,"
39 as used in this subparagraph, the terms "board" and "association"
40 mean an organization that is a Council on Podiatric Medical

Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) (1) Advertising by the following licensees shall include the designations as follows:

(A) Advertising by a chiropractor licensed under Chapter 2 (commencing with Section 1000) shall include the designation "DC" or the word "chiropractor" immediately following the chiropractor's name.

(B) Advertising by a dentist licensed under Chapter 4 (commencing with Section 1600) shall include the designation "DDS" or "DMD" immediately following the dentist's name.

(C) Advertising by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) shall include the designation "MD" immediately following the physician and surgeon's name.

(D) Advertising by an osteopathic physician and surgeon certified under Article 21 (commencing with Section 2450) shall include the designation "DO" immediately following the osteopathic physician and surgeon's name.

(E) Advertising by a podiatrist certified under Article 22 (commencing with Section 2460) of Chapter 5 shall include the designation "DPM" immediately following the podiatrist's name.

(F) Advertising by a registered nurse licensed under Chapter 6 (commencing with Section 2700) shall include the designation "RN" immediately following the registered nurse's name.

(G) Advertising by a licensed vocational nurse under Chapter 6.5 (commencing with Section 2840) shall include the designation "LVN" immediately following the licensed vocational nurse's name.

(H) Advertising by a psychologist licensed under Chapter 6.6 (commencing with Section 2900) shall include the designation "Ph.D." immediately following the psychologist's name.

(I) Advertising by an optometrist licensed under Chapter 7 (commencing with Section 3000) shall include the applicable designation or word described in Section 3098 immediately following the optometrist's name.

(J) Advertising by a physician assistant licensed under Chapter 7.7 (commencing with Section 3500) shall include the designation "PA" immediately following the physician assistant's name.

(K) Advertising by a naturopathic doctor licensed under Chapter 8.2 (commencing with Section 3610) shall include the designation "ND" immediately following the naturopathic doctor's name. However, if the naturopathic doctor uses the term or designation

"Dr." in an advertisement, he or she shall further identify himself by any of the terms listed in Section 3661.

(2) For purposes of this subdivision, "advertisement" includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.

(3) Advertisements do not include any of the following:

(A) A medical directory released by a health care service plan or a health insurer.

(B) A billing statement from a health care practitioner to a patient.

(C) An appointment reminder from a health care practitioner to a patient.

(4) This subdivision shall not apply until January 1, 2013, to any advertisement that is published annually and prior to July 1, 2012.

(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.

~~(i)~~

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not,

by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

~~(j)~~

(k) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

~~(k)~~

(l) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

SEC. 3. Section 2023.5 of the Business and Professions Code is amended to read:

2023.5. (a) The board, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, shall review issues and problems surrounding the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants. The review shall include, but need not be limited to, all of the following:

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

(3) Guidelines for standardized procedures and protocols that address, at a minimum, all of the following:

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

(b) On or before January 1, 2009, the board and the Board of Registered Nursing shall promulgate regulations to implement changes determined to be necessary with regard to the use of laser or intense pulse light devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

(c) On or before January 1, 2013, the board shall adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by the federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.

(d) Nothing in this section shall be construed to modify the prohibition against the unlicensed practice of medicine.

SEC. 4. Section 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, including their risks. Included with the factsheet shall be a comprehensive list of questions for patients to ask their physician and surgeon regarding cosmetic surgery.

SEC. 5. Section 1204 of the Health and Safety Code is amended to read:

1204. Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) (1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods,

1 or services. In a community clinic, any charges to the patient shall
2 be based on the patient's ability to pay, utilizing a sliding fee scale.
3 No corporation other than a nonprofit corporation, exempt from
4 federal income taxation under paragraph (3) of subsection (c) of
5 Section 501 of the Internal Revenue Code of 1954 as amended, or
6 a statutory successor thereof, shall operate a community clinic;
7 provided, that the licensee of any community clinic so licensed on
8 the effective date of this section shall not be required to obtain
9 tax-exempt status under either federal or state law in order to be
10 eligible for, or as a condition of, renewal of its license. No natural
11 person or persons shall operate a community clinic.
12 (B) A "free clinic" means a clinic operated by a tax-exempt,
13 nonprofit corporation supported in whole or in part by voluntary
14 donations, bequests, gifts, grants, government funds or
15 contributions, that may be in the form of money, goods, or services.
16 In a free clinic there shall be no charges directly to the patient for
17 services rendered or for drugs, medicines, appliances, or
18 apparatuses furnished. No corporation other than a nonprofit
19 corporation exempt from federal income taxation under paragraph
20 (3) of subsection (c) of Section 501 of the Internal Revenue Code
21 of 1954 as amended, or a statutory successor thereof, shall operate
22 a free clinic; provided, that the licensee of any free clinic so
23 licensed on the effective date of this section shall not be required
24 to obtain tax-exempt status under either federal or state law in
25 order to be eligible for, or as a condition of, renewal of its license.
26 No natural person or persons shall operate a free clinic.
27 (2) Nothing in this subdivision shall prohibit a community clinic
28 or a free clinic from providing services to patients whose services
29 are reimbursed by third-party payers, or from entering into
30 managed care contracts for services provided to private or public
31 health plan subscribers, as long as the clinic meets the requirements
32 identified in subparagraphs (A) and (B). For purposes of this
33 subdivision, any payments made to a community clinic by a
34 third-party payer, including, but not limited to, a health care service
35 plan, shall not constitute a charge to the patient. This paragraph is
36 a clarification of existing law.
37 (b) The following types of specialty clinics shall be eligible for
38 licensure as specialty clinics pursuant to this chapter:
39 (1) A "surgical clinic" means a clinic that is not part of a hospital
40 and that provides ambulatory surgical care for patients who remain

less than 24 hours, *including a surgical clinic that is owned in whole or in part by a physician.* A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

SEC. 6. Section 1204.6 is added to the Health and Safety Code, to read:

1204.6. Until the department promulgates regulations for the licensing of surgical clinics, the department shall use the federal conditions of coverage, as set forth in Subpart C of Part 416 of Title 42 of the Code of Federal Regulations, as those conditions existed on May 18, 2009, as the basis for licensure for facilities licensed pursuant to paragraph (1) of subdivision (b) of Section 1204.

SEC. 7. Section 1204.7 is added to the Health and Safety Code, to read:

1204.7. (a) An outpatient setting, as defined in subdivision (a) of Section 1248, that is accredited by an accrediting agency approved by the Medical Board of California, shall be deemed licensed by the department and shall be required to pay an annual licensing fee as established pursuant to Section 1266.

(b) The department shall have only that authority over outpatient settings specified in Chapter 3.1 (commencing with Section 1248).

(c) The department shall notify the Medical Board of California of any action taken against an outpatient setting and, if licensure of an outpatient setting is revoked or suspended by the department for any reason, then accreditation shall be void by operation of law. Notwithstanding Sections 1241 and 131071, proceedings shall not be required to void the accreditation of an outpatient setting under these circumstances.

SEC. 8. Section 1204.8 is added to the Health and Safety Code, to read:

1204.8. A clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 or an outpatient setting, as defined in Section 1248, shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4.

SEC. 9. Section 1248 of the Health and Safety Code is amended to read:

1248. For purposes of this chapter, the following definitions shall apply:

(a) "Division" means the *Medical Board of California. All references in this chapter to the division, the* Division of Licensing of the Medical Board of ~~California.~~ *California, or the Division of Medical Quality shall be deemed to refer to the Medical Board of California pursuant to Section 2002 of the Business and Professions Code.*

~~(b) "Division of Medical Quality" means the Division of Medical Quality of the Medical Board of California.~~

~~(c)~~

(b) (1) "Outpatient setting" means any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, as defined in Section 1250, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

(2) "Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55.

(3) "Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of

practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

~~(d)~~

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the ~~division~~ *board* pursuant to Sections 1248.15 and 1248.4.

SEC. 10. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ *board* shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~(iii) Submit~~

(D) The outpatient setting shall submit for approval by an accrediting agency a detailed procedural plan for handling medical

emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(E) The outpatient setting shall submit for approval by an accreditation agency at the time accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations.

~~(D)~~

(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of ~~Health Services,~~ *Public Health,* and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of* the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of* the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of* the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and

appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division.~~ *board.* The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ *board* to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division,~~ *board,* and no standard included in any certification

program of any accreditation agency approved by the ~~division,~~ *board,* shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.

SEC. 11. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the ~~division~~ *board* under this chapter.

(b) The board shall submit to the State Department of Public Health the information required pursuant to paragraph (3) of subdivision (d) within 10 days of the accreditation of an outpatient setting.

~~(b)~~

(c) The ~~division~~ *board* shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies approved by the ~~division,~~ *board,* and shall notify the ~~public, upon inquiry,~~ *public* whether a setting is accredited, certified, or licensed, or ~~whether~~ the setting's accreditation, certification, or license has been ~~revoked.~~ *revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The board shall provide notice to the department within 10 days when an outpatient setting's accreditation has been revoked, suspended, or placed on probation. The department shall notify the board within 10 days if the license of a surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204, has been revoked.*

(d) (1) The board shall, on or before February 1, 2012, provide the department with a list of all outpatient settings that are accredited as of January 1, 2012.

(2) Beginning April 1, 2012, the board shall provide the department with an updated list of outpatient settings every three months.

(3) The list of outpatient settings shall include all of the following:

(A) Name, address, and telephone number of the owner.

(B) Name and address of the facility.

(C) The name and telephone number of the accreditation agency.

(D) The effective and expiration dates of the accreditation.

(e) The board shall provide the department with all accreditation standards approved by the board, free of charge. Accreditation standards provided to the department by the board shall not be subject to public disclosure provisions of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 12. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the ~~division,~~ *board,* accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. *The accreditation agency shall immediately report to the board if the outpatient setting's certificate for accreditation has been denied.*

SEC. 13. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. *(a) Every outpatient setting which is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.*

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided.

~~(a)~~

(3) The ~~Division of~~ Medical ~~Quality~~ *Board of California* or ~~an~~ *the* accreditation agency ~~may, upon reasonable prior notice and presentation of proper identification,~~ *may* enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

~~(b)~~

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the ~~division~~ *board* or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

~~(c)~~

(d) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and *the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting* reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. *During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view. Within 10 days after the adoption of the plan of correction, the accrediting agency shall send a list of deficiencies and the corrective action to be taken to both the board and the department.* The accreditation agency may

immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

~~(d) If the division determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the division, the division may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.~~

(e) The department may enter and inspect an outpatient setting upon receipt of a notice of corrective action or if it has reason to believe that there may be risk to patient safety, health, or welfare.

(f) An outpatient setting that does not comply with a corrective action may be required by the department to pay similar penalties assessed against a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204, and may have its license suspended or revoked pursuant to Article 5 (commencing with Section 1240) of Chapter 1.

(g) If the licensee disputes a determination by the department regarding the alleged deficiency, the alleged failure to correct a deficiency, the reasonableness of the proposed deadline for correction, or the amount of the penalty, the licensee may, within 10 days, request a hearing pursuant to Section 130171. Penalties shall be paid when appeals have been exhausted and the department's position has been upheld.

(h) Moneys collected by the department as a result of administrative penalties imposed under this section shall be deposited into the Internal Departmental Quality Improvement Account established pursuant to Section 1280.15. These moneys shall be tracked and available for expenditure, upon appropriation by the Legislature, to support internal departmental quality improvement activities.

(i) If, after an inspection authorized pursuant to this section, the department finds a violation of a standard of the facility's accrediting agency or any provision of this chapter or the regulations promulgated thereunder, or if the facility fails to pay a licensing fee or an administrative penalty assessed under this chapter, the department may take any action pursuant to Article

5 (commencing with Section 1240) of Chapter 1 and shall report the violation to the board and may recommend that accreditation be revoked, canceled, or not renewed.

(j) Reports on the results of any inspection conducted pursuant to subdivision (a) shall be kept on file with the board or the accreditation agency along with the plan of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

(k) The accreditation agency shall, within 24 hours, report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

(l) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies.

SEC. 14. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. The ~~division may~~ *board shall* evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the ~~division.~~ *board.*

SEC. 15. Section 1248.55 of the Health and Safety Code is amended to read:

1248.55. (a) If the accreditation agency is not meeting the criteria set by the ~~division,~~ *board,* the ~~division~~ *board* may terminate approval of the ~~agency.~~ *agency or may issue a citation to the agency in accordance with the system established under subdivision (b).*

(b) The board may establish, by regulation, a system for the issuance of a citation to an accreditation agency that is not meeting the criteria set by the board. This system shall meet the requirements of Section 125.9 of the Business and Professions Code, as applicable, except that both of the following shall apply:

(1) Failure of an agency to pay an administrative fine assessed pursuant to a citation within 30 days of the date of the assessment,

unless the citation is being appealed, may result in the board's termination of approval of the agency. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal fee established under Section 1248.6. Approval of an agency shall not be renewed without payment of the renewal fee and fine.

(2) Administrative fines collected pursuant to the system shall be deposited in the Outpatient Setting Fund of the Medical Board of California established under Section 1248.6.

~~(b)~~

(c) Before terminating approval of an accreditation agency, the ~~division~~ *board* shall provide the accreditation agency with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the requirements of this chapter, as well as the opportunity for a hearing on the matter in compliance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(c)~~

(d) (1) If approval of the accreditation agency is terminated by the ~~division,~~ *board,* outpatient settings accredited by that agency shall be notified by the ~~division~~ *board* and, except as provided in paragraph (2), shall be authorized to continue to operate for a period of 12 months in order to seek accreditation through an approved accreditation agency, unless the time is extended by the ~~division~~ *board* for good cause.

(2) The ~~division~~ *board* may require that an outpatient setting, that has been accredited by an accreditation agency whose approval has been terminated by the ~~division,~~ *board,* cease operations immediately ~~in~~ *if* the ~~event that the division~~ *board* is in possession of information indicating that continued operation poses an imminent risk of harm to the health of an individual. In such cases, the ~~division~~ *board* shall provide the outpatient setting with notice of its action, the reason underlying it, and a subsequent opportunity for a hearing on the matter. An outpatient setting that is ordered to cease operations under this paragraph may reapply for a certificate of accreditation after six months and shall notify the ~~division~~ *board* promptly of its reapplication. *The board shall notify the department of any action taken pursuant to this section for an outpatient setting. Upon cancellation, revocation, nonrenewal, or any other loss of accreditation, an outpatient setting's license shall*

be void by operation of law. Notwithstanding Sections 1241 and 131071, no proceedings shall be required to void the license of an outpatient setting.

SEC. 16. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.

(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.

(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

(g) Notwithstanding any other ~~provision~~ of law, the department shall inspect for compliance with provisions of state law and regulations during a state periodic inspection or at the same time as a federal periodic inspection, including, but not limited to, an inspection required under this section. If the department inspects for compliance with state law and regulations at the same time as a federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.

(h) The department shall emphasize consistency across the state and *in* its district offices when conducting licensing and certification surveys and complaint investigations, including the selection of state or federal enforcement remedies in accordance with Section 1423. The department may issue federal deficiencies and recommend federal enforcement actions in those circumstances where they provide more rigorous enforcement action.

(i) It is the intent of the Legislature that the department, pursuant to its existing regulations, inspect the peer review process utilized by acute care hospitals as part of its periodic inspection of those hospitals pursuant to this section.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

SENATE BILL No. 352

Introduced by Senator Huff

February 15, 2011

An act to amend Section 650.3 of the Business and Professions Code, relating to chiropractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 352, as introduced, Huff. Chiropractors.

Existing law provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law authorizes a person to participate in or operate a group advertising and referral service for chiropractors under specified circumstances.

This bill would make nonsubstantive, technical changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 650.3 of the Business and Professions
2 Code is amended to read:
3 650.3. (a) Notwithstanding ~~the provisions of~~ Section 650 or
4 any other provision of law, it shall not be unlawful for a person
5 licensed pursuant to the Chiropractic Act, or any other person, to
6 participate in or operate a group advertising and referral service
7 for chiropractors if all of the following conditions are met:
8 (1) Patient referrals by the service are the result of patient
9 initiated responses to service advertising.
10 (2) The service advertises, if at all, in conformity with Section
11 651.

(3) The service does not employ a solicitor.

(4) The service does not impose a fee on the member chiropractors that is dependent upon the number of referrals or amount of professional fees paid by the patient to the chiropractor.

(5) Participating chiropractors charge no more than their usual and customary fees to any patient referred.

(6) The service registers with the State Board of Chiropractic Examiners, providing its name and address.

(7) The service files with the State Board of Chiropractic Examiners a copy of the standard form contract that regulates its relationship with member chiropractors, which contract shall be confidential and not open to public inspection.

(8) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more chiropractors, the service discloses that fact in all public communications, including, but not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) The State Board of Chiropractic Examiners may adopt regulations necessary to enforce and administer this section.

(c) The State Board of Chiropractic Examiners or 10 individual licensed chiropractors may petition the superior court of any county for the issuance of an injunction restraining any conduct ~~which~~ *that* constitutes a violation of this section.

(d) It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for chiropractors without providing its name and address to the State Board of Chiropractic Examiners.

(e) It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions provided in Section 650. The Legislature intends to allow the pooling of resources by chiropractors for the purpose of advertising.

(f) This section shall not be construed in any manner ~~which~~ *that* would authorize a service to engage in the practice of chiropractic.

O

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

19A. Proposed Regulations

Continuing Education

Insert will be given at Board Meeting

T (916) 263-5355
F (916) 263-5369
TT/TOD (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

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Hearings Re: Petition for Early Termination of Probation

A. Kit Yuen Chau

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BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

Hearings Re: Petition for Reinstatement of Revoked License

A. Marc Nadreau

B. Richard Kent Greenland

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F (916) 263-5369
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