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
http://www.chiro.ca.gov

NOTICE OF PUBLIC MEETING

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

October 25, 2007
9:00a.m
Department of Consumer Affairs
1625 N. Market Blvd., Suite S102
Sacramento, CA 95834

AGENDA

PUBLIC SESSION

Call to Order

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge James Duvaras (Ret.), Public Member
Hugh Lubkin, D.C.

Approval of Minutes
August 16, 2007, Open Session

Executive Officer's Report

- Administration
  - Budget Update
  - Personnel Update
  - Bureau of State Audits Update
- Enforcement
  - Statistics

Assembly Bill 801 and Any Other Legislation of Interest to the Board

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws

Mission Statement

- Discussion and Possible Action on Mission Statement

Committee Reports

Discussion and Possible Action:

- Administrative Committee
  - Board Member Procedure Manual
- Continuing Education Committee
  - Proposed Procedures for Approval of CE Courses and Providers

Petition for Reinstatement of Revoked Licenses

- Gregory Ball
- Richard Monoson
- James Daris
- Marc H.P. Nadreau

CLOSED SESSION

Deliberation on Disciplinary Matters and Action on Disciplinary Decisions
Pursuant to California Government Code Section 11126(c)(3)

Discussion on Pending Litigation
Pursuant to California Government Code Section 11126(e)

Bryan Meredith, D.C. v. M. Maggie Craw, D.C. et al.
Sacramento County Superior Court, Case No. 07AS03639

David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes
Sacramento County Superior Court, Case No. 07AS03721

PUBLIC SESSION
Call to Order

Announcements

- Next Board Meeting

Public Comment

New Business

- Future Agenda Items
- Other Issues

Adjournment

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

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

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DRAFT

BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
Thursday, August 16, 2007
10:00 a.m.
Department of Transportation
4050 Taylor Street
San Diego, CA 92110
619-220-7363

BOARD MEMBERS PRESENT

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice-Chair
Francesco Columbu, D.C., Secretary
Jim Conran
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Acting Executive Officer
LaVonne Powell, DCA Senior Staff Counsel
Marlene Valencia, Staff Services Analyst

CALL TO ORDER

Dr. Tyler called the meeting to order at 10:05 a.m.

ROLL CALL

Dr. Columbu called the roll. All members were present with the exception of Judge Duvaras.

CLOSED SESSION

The Board went into closed session for interviews and possible selection of Executive Officer and also to deliberate on disciplinary matters.

OPEN SESSION

Dr. Tyler called the Board into open session at 10:45 a.m. All members were present with the exception of Judge Duvaras.

Dr. Tyler stated that the deliberations concerning the Executive Officer position has been postponed and will be concluded at the end of the open session meeting.

APPROVAL OF MINUTES

- June 21, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 1, 2007 open session minutes.

MR. CONRAN MOVED TO ADOPT THE JUNE 21, 2007 OPEN SESSION MINUTES. DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

EXECUTIVE OFFICER'S REPORT

Administration

Budget Update

Mr. Stiger stated that the Budget Conference Committee proposed a cut in the Board's budget by 50%, the budget has not passed yet, however if the state budget passes in its current form, we will have to enact immediate cost-saving measures which would include a staffing reduction and a reduction in our cases that go to the Attorney General's office. Services all around would have to be cut in order to the meet the level.

Dr. Lerner asked if the Board can issue a statement on behalf of the Board. Ms. Powell suggested writing a letter to the author of the budget bill or the committee stating that cutting our budget will compromise consumer protection because we will have to cut back drastically on our enforcement activities.

DR. LERNER MOVED THAT THE BOARD SUBMIT A LETTER TO THE LEGISLATURE OR THE COMMITTEE REQUESTING EMERGENCY LEGISLATION TO THE RESTORE THE BUDGET ON THE BASIS THAT THIS IS GOING TO HARM OUR ABILITY TO PROTECT THE CONSUMER WHICH IS OUR NUMBER ONE PURPOSE. DR. LUBKIN SECONDED THE MOTION. MR. CONRAN ADDED THAT IF A LETTER IS TO BE SENT IT SHOULD ALSO BE SENT TO THE LEGISLATIVE LEADERSHIP AS WELL AS THE BUDGET CHAIR AND COPIES TO THE OVERSIGHT COMMITTEE'S AND A COPY TO THE GOVERNOR'S OFFICE. DR. LERNER ACCEPTED THE AMENDMENT. VOTE: 4-0. MR. CONRAN ABSTAINED.

Personnel Update

Mr. Stiger handed out the newest organizational chart. There is one revision to the chart that was included in the Board packet. There are a couple of changes since the last Board meeting. Lavella Matthews has been moved into an out-of-class Staff Services Manager I position. In her role, she will oversee licensing and administrative functions. The purpose of the change was to be sure that licensing had management oversight. It is currently a three month out-of-class with the ability to extend it. Mr. Stiger stated that these changes have been approved by the Consumer Affairs personnel office. As of Friday, August 10, 2007, the Chiropractic Consultant position is now vacant. At this current time, there is no plan to refill the position for a couple of reasons. One, with the budget uncertainties we should start saving money now. Second, we want to take a look at the Enforcement structure and perhaps reclassify the position in order to improve the enforcement operations. Mr. Stiger also announced the promotion of Marlene Valencia to Staff Services Analyst. She will now serve as the Board member liaison.

Mr. Conran inquired about the oversight of the Enforcement Program with the vacant consultant position and a manager that is currently working half-time. Mr. Stiger stated that he oversees the Enforcement program however; the absence of a consultant is more of an issue. Mr. Stiger has asked the Attorney General's office to provide recommendations of good, solid subject matter experts. Several of them have been contacted so that they're aware of our vacancy and that we may be requesting their assistance relating to scope of practice and quality of care questions. Mr. Stiger further stated that this may be an option to use on a permanent basis. Mr. Stiger also stated that these consultants are chiropractors and not state employees.

Dr. Tyler stated that he is thoroughly against having a chiropractic consultant again. He feels that we should aggressively contemplate going back to the way it was prior to 1995. Ms. Powell clarified how the experts would be utilized.

After discussion, it was decided to discuss the chiropractic consultant position at a future Board meeting.

Bureau of State Audits Update

Mr. Stiger reported the Bureau of State Audits have begun their process. Staff has been very responsive to their requests. It is anticipated that this audit will take approximately seven months.

Dr. Columbu suggested writing a response to the legislatures addressing the accusations against the Board. It was decided to places this topic on the agenda for the next Board meeting.

Department of Consumer Affairs

Mr. Stiger stated we just signed a contract with the Department of Consumer Affairs for administrative, legal and investigative services. The contract goes through December 31, 2007.

Dr. Lerner asked what happens to these contracted services if our budget is cut. Mr. Stiger responded that these are critical areas. He continued to state that he has identified which areas to scale back on in order to continue these services.

Enforcement

Statistics

Mr. Stiger reported that some of the enforcement cases are aged and he expects many of these cases will be completed within the next 60 days.

Board Member training on Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell clarified board member questions regarding when to recuse themselves from a case. Ms. Powell continued to provide ongoing training regarding the Bagley-Keene Open Meetings Act.

MISSION STATEMENT

After discussion on the mission statement for the Board, it was decided to table this item for a future meeting.

PROGRAM REPORTS

Licensing

License Statistics

Mr. Stiger referred to the license statistic chart for the last two years.

California Law and Professional Practices Exam (CLPPE) Statistics

Mr. Stiger referred to the CLPPE statistical chart.

DISCUSSION RE LICENSING OF CHIROPRACTIC ASSISTANTS

This item was tabled until the next Board meeting.

The Board recessed for lunch at 12:00p.m.

Dr. Tyler, D.C. called the Board into open session at 1:00 p.m. All Board members were present.

COMMITTEE REPORTS

Administrative Committee

Board Member Procedure Manual

Mr. Conran reported that the Administrative Committee met and discussed the procedure manual. There was lengthy discussion and revisions were suggested.

MR. CONRAN MOVED TO ACCEPT THE BOARD MEMBER ADMINISTRATIVE MANUAL WITH THE CORRECTIONS MADE TODAY. DR. LERNER SECONDED THE MOTION. VOTE: 2-3. MOTION FAILED.

MR. LERNER MOVED TO MAKE THE CHANGES AND PRESENT A FINAL DRAFT AT THE NEXT BOARD MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 5-0. MOTION CARRIED.

Ex Parte Policy re Board Member Communications

Mr. Conran stated at the Administrative Committee there was a 3-0 vote to approve the adoption of an Ex Parte Policy by the Board. The concept of an Ex Parte rule is to ensure there is transparency in communications to Board members when there is an issue on the agenda. Mr. Conran introduced Julie Fellmeth, Michael Shames and Steve Alexander to share the views on the Ex Parte Policy. All three guests shared the views on why they support adopting an Ex Parte Policy.

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After a lengthy discussion, it was agreed that this item be deferred to the Administrative Committee for design of the Ex Parte and it will be brought back to the Board for further discussion.

Continuing Education Committee

Dr. Lubkin reported that the committee has had a few meetings. The committee is recommending there be due process for denials of a continuing education course. The Board will give the party notice and they will have 10-days to meet with the Executive Officer to address any concerns.

The committee also suggests the concept of having the evaluation of courses be handled by staff rather than the Board members. This will allow the Board members to work towards regulations and administrative changes to improve the process. The committee also discussed going back to a regulatory phase to increase the hours. Dr. Tyler stated that the chiropractic presence is essential in determining the educational requirements because staff is not knowledgeable of all techniques. Dr. Lubkin continued by stating that when there is a denial, the person who is denied will be notified of an exact code section that pertains to the denial.

Dr. Lerner asked the committee to discuss the acceptance of the FCLB policy. Dr. Lubkin stated the committee did discuss this issue and concluded that this needs to be part of the regulation.

MR. CONRAN MOVED TO ACCEPT THE CONTINUING EDUCATION COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Enforcement Committee

Dr. Lubkin reported the committee discussed adding fine authority to the citation program. A letter of admonishment procedure was also discussed. Staff will prepare the language and it will be presented at the next meeting.

DR. LUBKIN MOVED TO ACCEPT THE ENFORCMENT COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Legislative Committee

AB1137

Dr. Lerner reported that AB 1137 did not get out of the Senate, Business and Professions committee and is now dead.

SB801

Dr. Lerner gave a description of bill SB801 and reported that SB801 is moving forward. Dr. Lerner stated the based on the committee's previous recommendation the Board took a position of watch.

DR. COLUMBU MADE A MOTION TO TAKE A NEW POSITION THAT THE BOARD OPPOSES BILL SB801. DR. LERNER SECONDED THE MOTION. Mr. Conran stated that he does not agree that the Board should take opposition to the bill. Dr. Lubkin commented that taking a new position should be done carefully and suggests this go to the committee for thorough discussion. Following public comment from Charles Davis, D.C., Michael Blott, D.C., David Prescott and others, a vote was taken. **VOTE: 4-1. MOTION CARRIED.**

Dr. Lerner asked for clarification of bill SB840. Dr. Lerner recommended that this bill be looked at during the next Legislative Committee meeting.

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Manipulation Under anesthesia (MUA)

Dr. Lerner reported that the committee, Mr. Stiger and Ms. Powell met with representatives from Office of Administrative Law (OAL) on July 17, 2007. Ms. Powell stated that the main fault with the way the regulations were written before was that it created a sub-category of licensure. Instead, the regulations should be focused on if you are a chiropractor, what is the standard of care if you are performing MUA. OAL stated that they would need a legal opinion that MUA is in fact, within the scope of practice for chiropractic. That is describing MUA appropriately so that its very clear that the chiropractor is performing the adjustment and is in no way directing the anesthesiologist or the physician surgeon who is sedating the patient. Ms. Powell will provide a legal opinion to the Board by the end of October.

Dr. Lerner commented that at the next MUA Committee meeting, David Prescott will give a 90-minute presentation on Scope of Practice.

DISCUSSION OF BOARD MEETING SCHEDULE AND PETITIONER HEARING DATES

Mr. Stiger indicated that the next scheduled Board meeting will be October 25, 2007. Board business will be held in the morning and petitioner hearings will be in the afternoon.

PUBLIC COMMENT

No public comment.

ADJOURNMENT

Dr. Tyler adjourned the public meeting at 3:31 p.m.

CLOSED SESSION

The Board went into closed session for further discussion regarding the selection of Executive Officer.

The Board briefly returned to open session to announce that the position of Executive Officer has been offered to Brian J. Stiger. Mr. Stiger has temporarily accepted the position until personnel issues can be worked out.

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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
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 (malpractice settlements)
810 – Insurance Fraud
2430 – Default on Health Education Assistance Loan

Health and Safety Code (HS):

123110 – Patient Access to Health Records

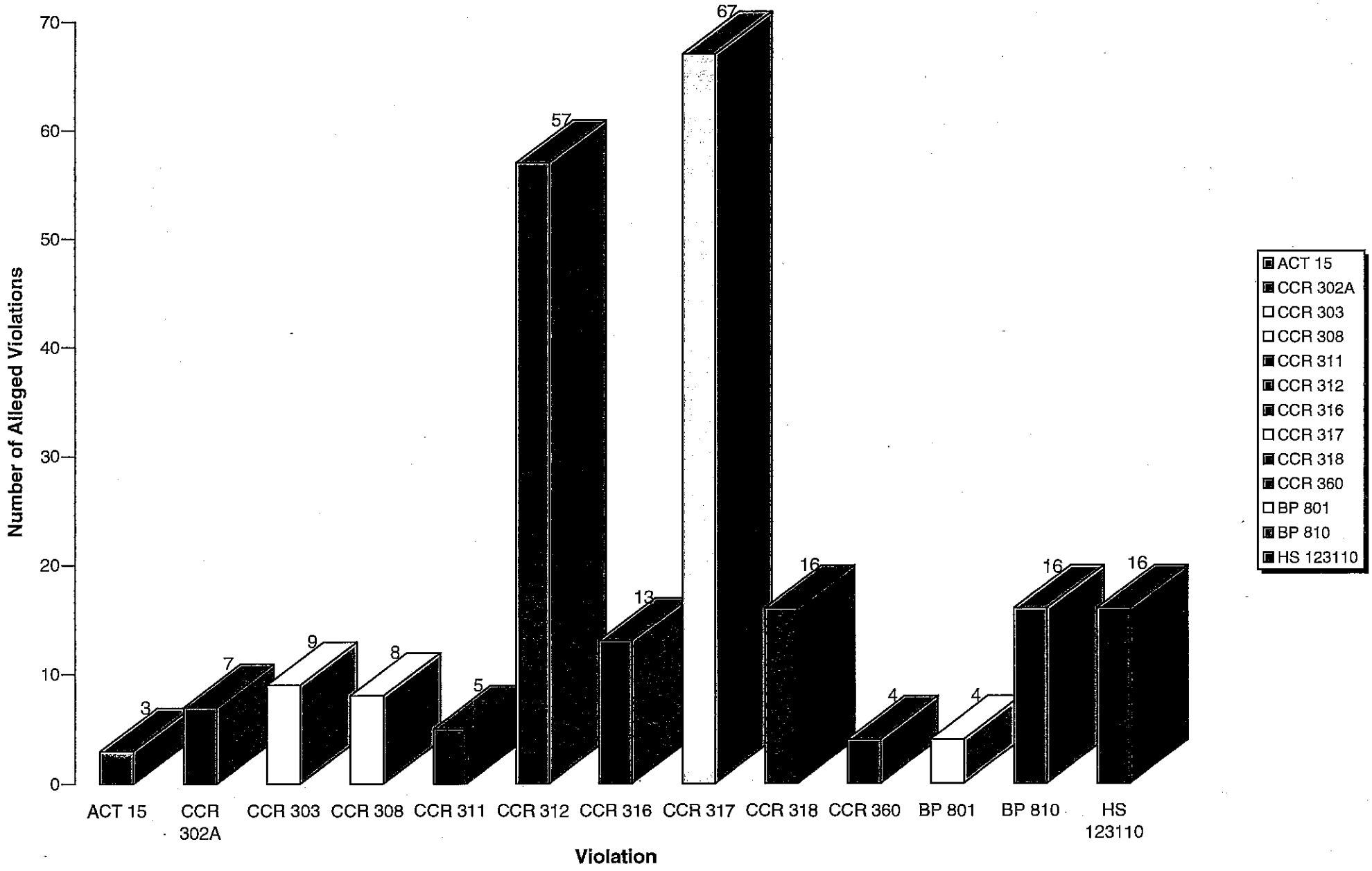
FISCAL YEAR 2008

July 1, 2007 - September 30 , 2007

Total Number of Complaints Opened - 183

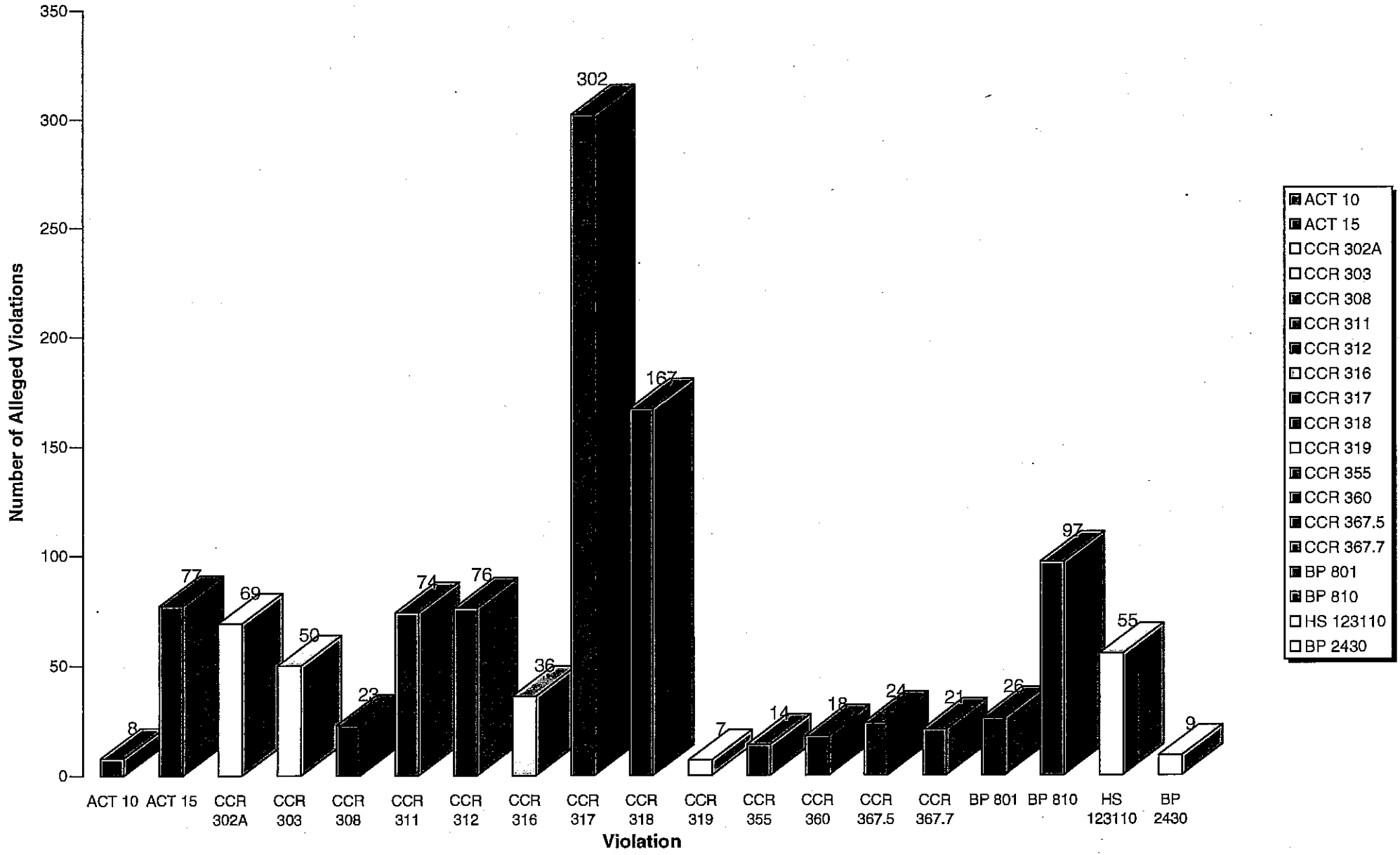
Total Number of Violations - 225

(A complaint may contain multiple violations)



FISCAL YEAR 2007

July 1, 2006 - June 30, 2007
Total Number of Complaints Opened - 183
Total Number of Alleged Violations - 225
(A complaint may contain multiple violations)



BOARD OF CHIROPRACTIC EXAMINERS
BOARD MEMBER
ADMINISTRATIVE MANUAL

October 25, 2007

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Mission Statement

The Board's paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833
(916) 263-5355
www.chiro.ca.gov

Members of the Board
Richard H. Tyler, D.C., Chair
Frederick Lerner, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Hugh Lubkin, D.C.
Judge James Duvaras, Ret., Public Member
Jim Conran, Public Member

Acting Executive Officer
Brian J. Stiger

This procedure manual is a general reference *including a review of some* ~~of~~ important laws, regulations, and *these basic* Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency. The Chiropractic ~~Board~~ Initiative Act *of 1922* (*the* Act) will be referenced and summarized throughout this procedure manual.

~~Amendments to~~ This Administrative Procedure Manual, regarding Board Policy, can be amended by *four affirmative votes* ~~a majority vote~~ of *any current or future* ~~the~~ Board.

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CHAPTER 1. Introduction

Overview

The Board of Chiropractic Examiners (Board) was created on December 21, 1922, through an initiative measure approved by the electors of California on November 7, 1922.

The Act states it is... "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith..."

The *powers and authority of the* Board *is specifically defined in Section 4 of the Act. In general, the board* is a policy-making *and administrative review* body comprised *pursuant to the provisions of Section 1 of the Act, comprised* of seven members, five professional and two public, *each* appointed by the Governor. The Board's paramount purpose is to protect California consumers through the enforcement of the Act, *other applicable laws* and the *California Code of Regulations related to the Practice of Chiropractic, identified herein as the* Board's regulations.

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State of California Acronyms

ALJ	Administrative Law Judge
AG	Office of the Attorney General
APA	Administrative Procedure Act
B&P	Business and Professions Code
CATS	Computer Assisted Testing Service
CCCP	California Code of Civil Procedure
CCR	California Code of Regulations
CLEAR	Council on Licensure Enforcement and Regulations
DAG	Deputy Attorney General
DOF	Department of Finance
DOI	Department of Insurance
DPA	Department of Personnel Administration
SAM	State Administrative Manual
SCIF	State Compensation Insurance Fund
SPB	State Personnel Board
VCGCB	Victim Compensation and Government Claims Board

General Rules of Conduct

All Board members shall act in accordance with their oath of office, and shall conduct themselves in a courteous, professional and ethical manner at all times. The Board serves at the pleasure of the governor, and shall conduct their business in an open manner, so that the public that they serve shall be both informed and involved, consistent with the provisions of the Bagley-Keene Open Meeting Act and all other governmental and civil codes applicable to similar boards within the State of California.

- Board members shall comply with all provisions of the Bagley-Keene Open Meeting Act.
- Board members shall not speak or act for the Board without proper authorization.
- *Board members shall not privately or publicly lobby for or publicly endorse, or otherwise engage in any personal efforts that would tend to promote their own personal or political views or goals, when those are in direct opposition to an official position adopted by the Board.*
- Board members shall not discuss personnel or enforcement matters *outside of their official capacity in properly noticed and agendized meetings* or with members of the public or the profession.
- Board members shall never accept gifts from applicants, licensees, or members of the profession while serving on the Board.
- Board members shall maintain the confidentiality of confidential documents and information *related to board business*.
- Board members shall commit the time and prepare for Board responsibilities *including the reviewing of board meeting notes, administrative cases to be reviewed and discussed, and the review of any other materials provided to the board members by staff, which is related to official board business.*
- Board members shall recognize the equal role and responsibilities of all Board members.
- Board members shall act fairly, be nonpartisan, impartial, and unbiased in their role of protecting the public *and enforcing the Chiropractic Initiative Act.*

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- Board members shall treat all *consumers,* applicants and licensees in a fair, *professional, courteous* and impartial manner.

- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.

- Board members shall not use their positions on the Board for personal, familial, or financial gain. *Any employment subsequent to employment as a board member shall be consistent with Executive Order 66-2.*

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CHAPTER 2. Board Members & Meeting Procedures

Membership
(§1 Initiative Act)

The Board consists of seven members appointed by the Governor. Each member must be a citizen of the United States and have been a resident of California for five years. Two members must be public members. Each licensee member must have at least five years of licensure in this state prior to appointment. Each licensee member must have pursued a resident course in an approved chiropractic school or college, and must be a graduate thereof and hold a diploma therefrom.

No more than two persons can serve simultaneously as members of the Board whose first diplomas were issued by the same school or college of chiropractic. Nor can more than two members be residents of any one county of the state. No person is eligible for appointment to the Board who is currently or within one year of holding a position as an administrator, policy Board member, or a paid employee of any chiropractic school or college.

Board Meetings and Offices
(§6 Initiative Act)

The full Board must meet at least twice each calendar year.

The Board's office is located in Sacramento. The Board may establish additional offices in Los Angeles and San Francisco.

Board Meetings
(Government Code Section 11120 et seq. - Bagley-Keene Open Meeting Act)

The Board, as a statement of policy, shall comply with the provisions of the Bagley-Keene Open Meeting Act, and conduct their business in accordance with Robert's Rules of Order, as long as that does not conflict with any superseding laws or regulations.

Due notice of each meeting and the time and place thereof must be given to each member in the manner provided by the Bagley-Keene Open Meeting Act.

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The Board may call a special meeting at any time in the manner provided by the Bagley-Keene Open Meeting Act, Government Code Section 11125.4.

Quorum
(§3 Initiative Act)

A majority of the Board (four members) will constitute a quorum. An affirmative vote of four members of the Board is required to carry any motion or resolution, to adopt any rule, or to authorize the issuance of any license provided for in the Act.

Board Member Attendance at Board Meetings
(Board Policy)

Being a member of the Board is a serious commitment to the governor, and the people of the State of California. Board members ~~should~~ *shall* attend *a minimum of 75% of all scheduled assigned committee meetings and full session* ~~each~~ Board meetings. *In extraordinary circumstances, the Chair may excuse a Board member from this obligation.* If a member is unable to attend, he or she must contact the Board Chair or the Executive Officer, *and provide a written explanation of their absence.* ~~and ask to be excused from the meeting for a specific reason.~~

Public Attendance at Board Meetings
(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This Act governs meetings of the state regulatory Boards and meetings of committees of those Boards where the committee consists of more than two members. It specifies meeting notice, agenda requirements, and prohibits discussing or taking action on matters not included on the agenda. If the agenda contains matters which are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Agenda Items
(Board Policy)

Board members may submit agenda items for a future Board meeting during the "New Business" section of a Board meeting or directly to the Board Secretary 15 days prior to a Board meeting.

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To the extent possible, the Board Secretary will calendar each Board member's request on a future Board meeting.

In the event of a conflict, the Board Secretary will discuss the proposed agenda item with the Board Chair, and the Board Chair shall make the final decision. The Board Secretary will work with the Executive Officer to finalize the agenda.

If a Board member requests an item be placed on the agenda, and that request can not be complied with at the immediate upcoming meeting, then the requested agenda item shall be placed on the next regularly scheduled meeting or into committee and shall never be postponed more than two meetings prior from being placed on the agenda and open for discussion by the Board.

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Notice of Meetings
(Government Code Section 11120 et seq.)

Meeting notices, including agendas, for Board meetings will be sent to persons on the Board's mailing list at least 10 calendar days in advance, *as specified in the Bagley-Keene Open Meeting Act.* The notice shall include a staff person's name, work address, and work telephone number who can provide further information prior to the meeting.

Notice of Meetings Posted on the Internet
(Government Code Section 11125 et seq.)

Meeting notices shall be posted on the Board's web site at least 10 days in advance of the meeting, and include the name, address, and telephone number of staff who can provide further information prior to the meeting.

Mail Ballots
(Government Code Section 11500)

The Board must approve any proposed decision or stipulation before the formal discipline becomes final and the penalty can take effect.

Proposed stipulations and decisions are mailed to each Board member for his or her vote. For stipulations, a background memorandum from the assigned deputy attorney general

accompanies the mail ballot. A two-week deadline generally is given for the mail ballots for stipulations and proposed decisions to be completed and returned to the Board's office.

Holding Disciplinary Cases for Board Meetings
(Board Policy)

When voting on mail ballots for proposed disciplinary decisions or stipulations, a Board member may wish to discuss a particular aspect of the decision or stipulation before voting. If this is the case, the ballot must be marked "hold for discussion," and the reason for the hold must be provided on the mail ballot. This allows staff the opportunity to prepare information being requested.

If two votes are cast to hold a case for discussion, the case is set aside and not processed (even if four votes have been cast on a decision). Instead the case is scheduled for a discussion during a closed session at the next Board meeting.
If the matter is held for discussion, staff counsel will preside over the closed session to assure compliance with the Administrative Procedure Act and Open Meeting Act.

If the Board member is comfortable voting on the matter, but wishes to discuss the policy behind the decision or case, the ballot should be marked "Policy Issue for Discussion. I have voted above. Issue: _____." The Executive Officer will respond directly to the member. If still unresolved or if the matter is to be referred to the Board, the policy issue will be placed on the agenda for discussion at the next Enforcement Committee Meeting.

Record of Meetings
(Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting.
Board minutes must be approved or disapproved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting. *The recordings of each board meeting shall be maintained and not destroyed.*

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Tape Recording
(Government Code Section 11124.1(b))

The meeting may be audio *and/or video* tape recorded *by the public or any other entity* in accordance with the ~~Audio tape recordings may be disposed of 30 days after Board approval of the minutes.~~ *Bagley-Keene Open Meeting Act, the* members of the public may tape record, videotape or otherwise record a meeting unless they are disruptive to the meeting *and the Chair has specifically warned them of their being disruptive, then the* Chair *may order* ~~the recording is too disruptive~~ *that their activities be ceased*.

Meeting Rules
(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act *or other state laws or regulations*), as a guide when conducting the meetings. Questions of order are clarified by the Board's *legal counsel* ~~attorneys~~.

Public Comment
(Board Policy)

Public comment is always encouraged and allowed, however, if time constraints mandate, the comments may be limited to three minutes per person. Due to the need for the Board to maintain fairness and neutrality when performing its adjudicative function, the Board shall not receive any information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending or criminal administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with any information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person must be instructed to refrain from making such comments.

2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or

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subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:

a. Where the allegation involves errors of procedure or protocol, the Board may designate either its Executive Officer or a Board employee to review whether the proper procedure or protocol was followed and to report back to the Board.
b. Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.

3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting. *The Board accepts the conditions established in the Bagley-Keene Open Meeting Act and appreciates that at times the public may disapprove, reprimand, or otherwise present an emotional presentation to the Board, and it is the Board's duty and obligation to allow that public comment, as provided by law.*

~~4. The Board may limit public comment to specific time duration, *not to be less than the three minutes established in the Bagley-Keene Open Meeting Act*, to ensure all members of the public are heard.~~

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CHAPTER 3. Travel & Salary Policies & Procedures

Travel Approval
(Board Policy)

Board members shall receive ~~Board Chair~~ *Executive Officer* approval for all travel and salary or per diem reimbursement, except for regularly scheduled Board, committee, and conference meetings to which a Board member is assigned.

Travel Arrangements
(Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Board liaison on lodging accommodations.

Out-of-State Travel
(SAM Section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims
(SAM Section 700 et seq.)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Board Liaison maintains these forms and completes them as needed.

The Executive Officer's travel and per diem reimbursement claims shall be submitted to the Board Chair for approval.

It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than ~~two weeks~~ *thirty days* following the trip.

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Salary Per Diem
(§1 Initiative Act and B&P Code Section 103)

Each member of the Board shall receive a per diem in the amount provided in Section 103 of the Business and Professions (B&P) Code. Board members fill non-salaried positions, but are paid $100 per day for each meeting day and are reimbursed travel expenses.

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by the B&P Code Section 103. Board members are paid out of the funds of the Board ~~and not from the state's taxes,~~ *as provided for within the Chiropractic Initiative Act.*

In relevant part, B&P Code Section 103 provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

Salary Per Diem
(Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member.

   Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed the Executive Officer shall be notified and approval shall be obtained from the Board Chair prior to Board member's attendance.

2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board or committee meeting until that meeting is adjourned.

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If a member is absent for a portion of a meeting, hours are then reimbursed for time actually spent. Travel time is not included in this component.

3. For Board-specified work, Board members will be compensated for actual time spent performing work authorized by the Board Chair. This may also include, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, such as the Federation of Chiropractic Licensing Boards (FCLB). Work also includes preparation time for Board or committee meetings and reading and deliberating mail ballots for disciplinary actions.

4. Reimbursable work does not include miscellaneous reading and information gathering *unrelated board business and* ~~committee work~~ not related to *any* meeting, preparation time for a presentation and participation at meetings not related to official participation of the *members duties with the* Board.

5. Board members may participate on their own (i.e., as a citizen or professional) at an event or meeting but not as an official Board representative unless approved by *four affirmative votes* the ~~full~~ Board. However, Board members should recognize that even when representing themselves as "individuals," their positions might be misconstrued as that of the Board.

~~6. Quarterly there shall be a report of all reimbursement and travel expenses claimed by each member of the Board, for the fiscal year at a full Board meeting.~~

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CHAPTER 4. Selection of Officers & Committees

Officers of the Board
(§3 Initiative Act)

The Board shall elect *at the first meeting of each new year* a Chair, Vice Chair and Secretary from the members of the Board.

Election of Officers
(§3 Initiative Act)

Elections of the officers shall occur annually at the January meeting of the Board.

Officer Vacancies
(Board Policy)

If an office becomes vacant during the year, the Chair may appoint a member to fill the vacancy for the remainder of the term until the next annual election.

If the office of the Chair becomes vacant, the Vice Chair shall assume the office of the Chair. Elected officers shall then serve the remainder of the term.

Board Member Addresses
(Board Policy)

Board member addresses and telephone numbers are confidential and shall not be released to the public without expressed authority of the individual Board member. A roster of Board members is maintained for public distribution on the Board's web site using the Board's address and telephone number.

Board Member Written Correspondence and Mailings
(Board Policy)

All correspondence, press releases, articles, memoranda or any other communication written by any Board member in his or her official capacity must be provided to the Executive Officer for reproduction and distribution. *The Executive Officer will* ~~maintain~~ *retain a* ~~the required chron~~ *copy in a chronological file and* ~~mail and~~ *distribute the written material.*

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Request to Access Licensee or Applicant Records
(Board Policy)

No Board member may access a licensee's, or applicant's file without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the Board's office *at any time.*

Communications: Other Organizations/Individuals/Media
(Board Policy)

All communications relating to any Board action or policy to any individual or organization, or a representative of the media shall be made only by the Board Chair, his or her designee, or the Executive Officer. Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact.

Committee Appointments
(Board Policy)

The Chair shall establish committees, whether standing or special, as he or she deems necessary.
The composition of the committees and the appointment of the members shall be determined by the Board Chair in consultation with the Vice Chair, Secretary, and the Executive Officer.

Standing Committees
(Board Policy)

The Board has five standing committees:

1. **Administrative Committee**
   The Administrative Committee continually reviews policies, procedures, budget, personnel, accounting, and departmental issues. The Administrative Committee works directly with the Executive Officer and staff to monitor budget expenditures, trends, and the Contingent Fund levels.

   The Committee shall monitor individual line item expenditure and look for anomalies with a three year pattern for purposes of preparing a budget change proposal to correct either an under or over expenditure.

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2. **Continuing Education Committee**
   The Continuing Education Committee recommends regulations for mandatory continuing education and overseeing the Continuing Education Program, which includes program administration, continuing education providers' evaluation, waiver requests review, and conducting regular at-random and continuing education audits.

3. **Enforcement Committee**
   The purpose of the Enforcement Committee is to continually seek ways to improve the Board's enforcement activities. The committee shall consist of two Board members. Meetings will be held as necessary.

4. **Regulation Committee**
   Proposes regulations that enhance the Board's role as a regulatory agency that protects the public.

5. **Legislative Committee**
   ~~In the event time constraints preclude Board action, the Board delegates the Legislative Committee the authority to comment on legislation consistent with previous Board positions. The Board shall be notified of such action as soon as possible.~~

~~**Legislative Committee Bill Positions**~~

The Legislative Committee shall consist of two ~~voting~~ *Board* members. The ~~Legislative Committee~~ *committee* will review and recommend positions on bills that affect the Board.

The *following* classification system ~~to~~ *will* be used by the ~~Legislative Committee~~ committee in recommending Board positions:

1. **Support:** The Board supports the current version of the bill.

2. **Support if Amended:** The Board generally supports the concept or intent of the bill.

3. **Oppose:** The Board is opposed to the current version of the bill.

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4. **Oppose Unless Amended:** The Board is opposed to the bill but is willing to work with the author and sponsor of the bill to resolve the Board's concerns.

5. **Watch:** The Board has some interest in the bill because it potentially may affect the work of the Board.

Committee Meetings
(Board Policy)

Each of these committees is comprised of at least two Board members and staff, who provide technical and administrative input and support. The committees are an important venue for ensuring that staff and Board members share information and perspectives in crafting and implementing strategic objectives.

The Board's committees allow Board members, stakeholders and staff to discuss and conduct problem solving on issues related to the Board's strategic goals. They also allow the Board to consider options for implementing components for the strategic plan.

The committees are charged with coordinating Board efforts to reach Board goals and achieving positive results on its performance measures.

The Board Chair designates one member of each committee as the committee's chairperson.

The chairperson coordinates the committee's work, ensures progress toward the Board's priorities, and presents reports at each meeting.

During any public committee meeting, comments from the public are encouraged, and the meetings themselves are frequently public forums on specific issues before a committee. *These meetings shall also be run in accordance with the Bagley-Keene Open Meeting Act.*

Attendance at Committee Meetings
(Board Policy and Government Code Section 11122.5 et seq.)

If a Board member wishes to attend a meeting of a committee of which he or she is not a member, the Board member must obtain permission from the Board Chair to attend and must notify the committee chair and staff.

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Board members who are not members of the committee that is meeting cannot vote during the committee meeting.

If there is a quorum of the Board at a committee meeting, Board members who are not members of the committee must sit in the audience and cannot participate in committee deliberations.

It is also important to note that any time more than two Board members attend a Board committee meeting, that committee must have been publicly noticed.

The Board's legal counsel works with the Executive Officer to assure any meeting that fits the requirements for a public meeting is appropriately noticed.

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CHAPTER 5. Board Administration & Staff

Executive Officer
(§3 Initiative Act)

The Board employs an Executive Officer and establishes *his/her* salary ~~with the approval of the Director of Finance,~~ *in accordance with the State law.*

The Executive Officer is responsible for the financial operations and integrity of the Board, and is the official custodian of records. *The Executive Officer is an at will employee, who serves at the pleasure of the Board, and may be terminated, with or without cause, in accordance with the provisions of the Bagley-Keene Open Meeting Act.*

Board Administration
(Board Policy)

Strategies for the day-to-day management of programs and staff shall be the responsibility of the Executive Officer as an instrument of the Board.

Executive Officer Evaluation
(Board Policy)

At the first Board meeting of each fiscal year *or at any time thereafter as determined by the Board*, the Executive Officer is evaluated by the Board Chair during a closed session. Board members provide information to the Chair on the Executive Officer's performance in advance of this meeting.

Board Staff
(§4 Initiative Act)

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements.

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Because of this complexity, the Board delegates this authority and responsibility for management of the civil service staff to the Executive Officer as an instrument of the Board.

Board members may express any staff concerns to the Executive Officer but shall refrain from involvement in any civil service matters. Board members shall not become involved in the personnel issues of any state employee.

Board Budget
(Board Policy)

The Executive Officer or the Executive Officer's designee will attend and testify at legislative budget hearings and shall communicate all budget issues to the Administration and Legislature.

Strategic Planning
(Board Policy)

The Administrative Committee shall have overall responsibility for the Board's Strategic Planning Process and shall assist staff in the monitoring and reporting of the strategic plan to the Board.

Communications with Other Organizations & Individuals
(Board Policy)

All communications relating to any Board action or policy to any individual or organization shall be made only by the Chair of the Board, his or her designee, or the Executive Officer.

Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact immediately.

All correspondence shall be issued on the Board's standard letterhead and will be disseminated by the Executive Officer's office.

Business Cards
(Board Policy)

Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website address.

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CHAPTER 6. Other Policies & Procedures

Board Member Disciplinary Actions
(Board Policy)

~~A member may be censured by the Board. If, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner.~~

~~The Chair of the Board shall sit as chair of the hearing unless the censure involves the Chair's own actions, in which case the Vice-Chair of the Board shall sit as hearing chair.~~

~~In accordance with the Open Meetings Act, the censure hearing shall be conducted in open session.~~

If a board member violates any provision of the Administrative Procedure Manual, the Chair will provide in writing, notice to the member of the violation. If the member disagrees with the notice, the board member must provide a reply in writing. After giving the board member an opportunity to respond to the notice, the Chair, at his/her discretion may meet in person or discuss by telephone with the board member to discuss the violation. The Chair may ask a third person to be present during the meeting. If the matter is not resolved at the end of the meeting or it is resolved but the board member continues to violate the procedures in the manual, the Chair may agendize at the next board meeting an item asking for censure of the board member.

If the violation concerns the Chair's conduct, the Vice-Chair will handle the matter.

Terms and Removal of Board Members
(§2 Initiative Act)

The Governor shall appoint the members of the Board. Each appointment shall be for the term of four years, except that an appointment to fill a vacancy shall be for the unexpired term only. Each member shall serve until his successor has been appointed and qualified or until one year has elapsed since the expiration of his term whichever first occurs.

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No person shall serve more than two consecutive terms on the Board nor be eligible for appointment thereafter until the expiration of four years from the expiration of such second consecutive term, effective January 2, 1974. The Governor may remove a member from the Board after receiving sufficient proof of the inability or misconduct of said member.

Resignation of Board Members
(Government Code Section 1750 (b))

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the Governor's Office with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the Board Chair and the Executive Officer.

Conflict of Interest
(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.

Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision.

Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Licensees and Applicants
(Board Policy)

Board members shall not intervene on behalf of a licensee or applicant for licensure for any reason. They should forward all contacts or inquiries to the Executive Officer.

Contact with Respondents
(Board Policy)

Board members should not directly participate in complaint handling and resolution or investigations.

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To do so would subject the Board member to disqualification in any future disciplinary action against the licensee. If a Board member is contacted by a respondent or his/her attorney, the Board member should refer the individual to the Executive Officer.

Service of Legal Documents
(Board Policy)

If a Board member is personally served as a party in any legal proceeding related to his or her capacity as Board member, he or she must contact the Executive Officer immediately.

Serving as an Expert Witness
(~~Board Policy~~ Executive Order 66.2)

~~Acting as an expert witness for compensation may constitute a violation of the Standards of Ethical Conduct for gubernatorial appointees.~~

~~The first ethical standard precludes such an appointee from engaging in activity, which has the appearance of using the prestige of the state for the appointee's private gain or advantage.~~

~~A professional member of the Board would be in high demand as an expert witness in litigation relating to chiropractic, simply because of his or her status as a Board member.~~

~~Consequently, the member would likely receive more engagements as an expert witness than if he or she were not a member of the Board. As such, serving as an expert witness would have the appearance of using the prestige of Board membership for private gain.~~

~~More importantly, acting as an expert witness would jeopardize a Board member's ability to participate in the deliberation and resolution of disciplinary actions before the Board. As an expert witness in a civil or criminal action against a chiropractor, a Board member would be required to learn all the facts of the case at issue. If the chiropractor who is a party to the civil or criminal comes before the Board in a disciplinary action, the Board member who served as expert witness would be required to recuse himself or herself because of considerable ex parte knowledge of the case.~~

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Pursuant to Executive Order 66-2, no employment, activity, or enterprise shall be engaged in by any gubernatorial appointee which might result in, or create the appearance of resulting in any of the following:

1. *Using the prestige or influence of a State office for the appointee's private gain or advantage.*

2. *Using state time, facilities, equipment, or supplies for the appointee's private gain or advantage, or the private gain or advantage of another.*

3. *Using confidential information acquired by virtue of State involvement for the appointees private gain or advantage, or the private gain or advantage of another.*

4. *Receiving or accepting money or any other consideration from anyone other than the State for the performance of an act which the appointee would be required or expected to render in the regular course of hours of his or her State employment or as a part of the appointee's duties as a State officer.*

Request for Grants

All requests for funding/contributions to Board projects shall be approved by the Board Chair.

Requests for such grants must be made by the Executive Officer at the Chair's direction. If a Board member makes an individual request, a copy of the request shall be forwarded to the Executive Officer as soon as possible.

The mechanism for receipt, management, and dispersal of funds shall be pre-arranged and approved by the Board.

Gifts from Licensees and Applicants
(Board Policy)

A gift of any kind to Board members from licensees, applicants for licensure, continuing education providers or approved schools is not permitted. Gifts must be returned immediately.

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Ex Parte Communications
(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting ex parte communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

> "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an ex parte communication with Board enforcement staff while a proceeding is pending.

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members. If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call from an applicant under any circumstances or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter and inform the Executive Officer and the Board's legal counsel.

If the person insists on discussing the case, he or she should be told that the Board member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the Executive Officer and the Board's legal counsel.

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The Honoraria Prohibition
(Government Code Section 89503)
(FPPC Regulations, Title 2, Division 6)

As a general rule, members of the Board should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state Board is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Board members are required to report income from, among other entities, professional associations and continuing education providers. Therefore, a Board member should decline all offers for honoraria for speaking or appearing before such entities.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances:
(1) when a honorarium is returned to the donor (unused) within 30 days; (2) when an honorarium is delivered to the State Controller within thirty days for donation to the General Fund (for which a tax deduction is not claimed); and (3) when an honorarium is not delivered to the Board member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the Board Chair so that he or she, in consultation with the Executive Officer and staff counsel, may determine whether the potential for conflict of interest exists.

Board Member Orientation
(B&P Code Section 453)

~~The Department of Consumer Affairs provides an orientation session for new Board members.~~

The California Business and Professions Code requires that a Board member orientation session be given to new Board members within one year of assuming office.

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Ethics Training

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat this ethics orientation every two years throughout their term.

Sexual Harassment Training
(Government Code Section 12950.1)

Board members are required to undergo sexual harassment training and education once every two years. Staff will coordinate the training.

~~**Addendums**~~ ***Attachments***: ~~Fair Political Practices Commission (FPPC) Regulations~~
~~Executive Order 66.2~~

Applicable provisions of the following:

Business and Professions Code
Government Code
Executive Order 66-2
State Administrative Manual

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