STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
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Consumer Complaint Hotline (866) 543-1311
http://www.chiro.ca.gov

NOTICE OF PUBLIC MEETING

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

January 10, 2008
9:00 a.m.
Hearing Room
400 R Street, Room 101
Sacramento, CA 95814

AGENDA

CALL TO ORDER

Approval of Minutes
May 24, 2007
June 21, 2007
November 27, 2007

Discussion and Possible Action:

- Draft Expert Consultant Guidelines

Discussion and Possible Action:

- Conflict of Interest re Expert Consultants

Discussion and Possible Action:

- Draft Regulations re Letter of Admonishment

Discussion and Possible Action:

- Draft Regulations Cite and Fine

PUBLIC COMMENT

NEW BUSINESS – Future Agenda Items

ADJOURNMENT

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

A quorum of the Board may be present at the Committee meeting. However, Board members who are not on the committee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov.**

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

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BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Enforcement Committee
Thursday May 24, 2007
400 R Street, Room 101
Sacramento, CA 95814

DRAFT

Committee Members Present
Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

Staff Present
Brian J. Stiger, Executive Officer
LaVonne Powell, DCA Senior Legal Counsel
Sandra Patterson, Staff Services Analyst
Marlene Valencia, Staff Services Analyst

Call to Order
Dr. Lubkin called the meeting to order at approximately 12:10 a.m.

Roll Call
Dr. Columbu called the roll. Both committee members were present.

Purpose of committee
Dr. Lubkin stated the committee's current purpose is to deal with matters pertaining to discipline and other miscellaneous matters. Mr. Stiger added that the committee's purpose needs to be further defined through future meetings and during the strategic planning process.

Discussion re Enforcement Process Overview
Sandra Patterson presented an overview of the enforcement process including complaint intake, investigation, and the formal administrative process. Mr. Stiger provided the staffing levels and their roles within the Enforcement Unit and stated that all disciplinary matters are approved through the Executive Director. Dr. Lubkin suggested that from a public safety perspective, he is concerned that the Board does not have a peace officer on staff to review complaints. Mr. Stiger stated most Boards and Bureaus within the Department of Consumer staff utilize trained internal staff to conduct the initial review of complaints to save costs and if the allegations rose to level that required peace officer involvement the case would proceed in that manner.

Dr. Lubkin asked how the board would implement section 306.1 since it has been approved through the APA process and been in place for 10 years. Dr. Lubkin asked if the Board's disciplinary guidelines are considered an underground regulation since it is inconsistent with CCR 306.1. Ms. Powell stated the disciplinary guidelines are incorporated into regulations by reference. Ms. Powell advised the committee to place 306.1 on an agenda for a future meeting for a full discussion. Ms. Powell added she has serious concerns about 306.1 as it is currently written and the effect it would have on the Board's enforcement program.

Dr. Lubkin moved that the committee place 306.1 on the agenda for the next meeting. Dr. Columbu seconded the motion.

Mr. Stiger stated that Board staff has made several changes to the Board's enforcement process to protect California consumers.

Dr. Columbu suggested that Board staff prioritize workload to deal with the most serious allegations. Also, he recommended that Expert Witnesses be reviewed every two years.

Mr. Stiger highly recommended that the Board provide upfront communication, education, and workshops to educate licensees.

Public Comment
Dr. Charles Davis, International Chiropractors Association of California, stated he would like to see 306.1 implemented since it has been in regulation since 1994.

Kristine Schultz, California Chiropractic Association, shared her concerns with inconsistent enforcement.

Discussion and Possible Action re Mail Ballots
Ms. Powell explained that she would be making changes to the mail ballot to include language that board members do not discuss cases with anyone including board members. Additionally, she recommended that the Board adopt a two member hold on mail ballots rather than the current one member hold.

Ms. Powell advised the committee that board members can call her if they have legal questions on stipulations or proposed decisions. Board members should not contact the Attorney General's officer, Executive Officer or opposing counsel.

Meeting Adjourned
Dr. Lubkin adjourned the meeting at approximately 12:50.

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BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Enforcement Committee
June 21, 2007
Life Chiropractic College West
25001 Industrial Blvd.
Hayward, California 94545

DRAFT

Committee Members Present
Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

Staff Present
Brian J. Stiger, Executive Officer
Marlene Valencia, Staff Services Analyst

Call to Order
Dr. Lubkin called the meeting to order at approximately 9:10 a.m.

Roll Call
Dr. Columbu called the roll. Both committee members were present.

Discussion on CCR 306.1 Task Force
Dr. Lubkin provided a brief overview of section 306.1 and stated that the Board has never implemented the regulation. The Board has received several inquires from the public about the status of section 306.1. The committee has been asked to study and provide recommendations back to the full Board on whether to proceed with Quality Review Panels. The committee will work with Board staff, hold public hearings, and will take written comment on this subject.

Dr. Lubkin informed the public that the Board may establish a public task force to assist with this matter and invited the public to send a letter of interest if one wishes to be considered to participate.

Public Comment:
Dr. Charles Davis, D.C. President of International Chiropractors Association of California submitted and discussed a proposal to implementation on how section 306.1. Dr. Davis states the goals of implementation of section 306.1 are proper enforcement, decrease processing time and decrease costs. Dr. Davis states the implementation of section 306.1 is mandatory as stated in the regulation.

Dr. Lubkin asked Dr. Davis for clarification on his proposal to establish Quality Review Panels by region rather than by county as stated in the regulation.

Dr. Lubkin asked the Acting Executive Director to gather statistics on complaint information by county by the next committee meeting.

Cost Recovery Procedures
Mr. Stiger defined cost recovery and the process the board utilizes to collect costs. He mentioned that the Board has submitted documents to the Franchise Tax Board to initiate the Intercept program to assist with the collection of these funds.

Meeting Adjourned
Dr. Lubkin adjourned the meeting at approximately 9:30.

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BOARD OF CHIROPRACTIC EXAMINERS
MEETING MINUTES
Enforcement Committee
November 27, 2007
400 R Street, Room 101
Sacramento, CA 95814

Committee Members Present
Hugh Lubkin, D.C., Chair
Francesco Columbu, D.C.

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

Call to Order
Dr. Lubkin called the meeting to order at approximately 9:05 a.m.

Roll Call
Dr. Columbu called the roll. Both committee members were present.

Chiropractic Use of X-ray
Dr. Rodney Schell, D.C. informed the committee that he and two other chiropractors were employed by Community Mobile Diagnostics to take x-rays of non-chiropractic patients. The Radiological Health Branch (RHB) cited Community Mobile Diagnostics because the three chiropractors were taking x-rays without the proper license. Dr. Schell stated RHB terminated his employment as well as two other chiropractors that worked for Community Mobile Diagnostics based on the citation from RHB. Dr. Schell says RHB will allow chiropractors to take x-rays outside of the chiropractic office if the State Board of Chiropractic Examiners says it's within the chiropractic scope of practice.

Dr. Schell states that he took x-rays of non-chiropractic patients and that Community Mobile Diagnostics hired them as x-ray techs. Dr. Schell says that when they were hired, Community Mobile Diagnostics assumed that the chiropractic operator supervisor license superseded an x-ray tech license.

Dr. Dietrick, D.C. stated that Community Mobile Diagnostics told her that if she could get the State Board of Chiropractic Examiners to turn this around she would have her job back right away.

Ms. Powell stated this Board does not have jurisdiction over the department of Health Services.

Dr. Schell quotes Health and Safety Codes 107110 and 107111 to support his position and that he has no restrictions on which he can perform x-rays.

Ms. Powell stated that her reading of the law is that chiropractors can only take x-rays within the scope of practice of a chiropractic license, which is providing chiropractic treatment. She added that this Board only has jurisdiction over chiropractic practice.

Dr. Schell states that RBH agreed to allow chiropractors to take x-rays outside of the office if the State Board of Chiropractic Examiners determined that it is within the scope of practice.

Dr. Lubkin explains that this Board has not taken any action against Dr. Schell and why is he uncomfortable taking this issue up with RBH. Dr. Schell says RBH has stated it is up to the State Board of Chiropractic Examiners.

Dr. Schell wants to know if the Board authorized previous statements made to RBH by former Board staff.

Mr. Stiger added that RBH established their policy on this issue back in 1998 and their policy has never changed. He also commented that due to the Board's budget situation and enforcement priorities, staff would not even be able to look at this issue for a couple of months.

Public Comment
Dr. Charles Davis, D.C. states that neither the code nor the regulations restrict chiropractors from taking x-rays for diagnostic purposes for a medical doctor or chiropractor. He recommends that the Board write a statement to that effect.

A public member representing Life West states that chiropractors refer patient to the school for x-rays and the school wants to ensure they are compliant with the law. Dr. Lubkin states the committee is not attempting to restricting chiropractors from taking x-rays of chiropractic patients. The speaker reiterates that the law does not limit chiropractors with respect to taking x-rays.

Discussion and Possible Action: 306.1 Quality Review Panel
Dr. Davis provided 4 written options for the Board to consider in implementing 306.1. Dr. Davis offers option 1 as the easiest to implement. Dr. Davis suggests these options would minimize conflict of interest issues.

Dr. Lubkin asked how Dr. Davis would address the mandatory language requiring Quality Review Panels to be established in each county. Dr. Davis believes the counties can be consolidated.

Dr. Lubkin asked Dr. Davis for clarification between expert reviewers and quality review panels. Dr. Lubkin wanted to ensure the two weren't being blended.

Mr. Stiger added that Board staff has begun working on an expert reviewer manual and training.

Meeting adjourned:
Dr. Lubkin adjourned the meeting at 9:55.

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

BOARD OF CHIROPRATIC EXAMINERS

Expert Witness Guidelines

DRAFT

Issued By:

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
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Revised January 2008

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DRAFT

Section I

INTRODUCTION

The California Board of Chiropractic Examiners ("Board") is an administrative agency created by the Chiropractic Initiative Act of 1922. The mission of the Board is to protect California consumers by licensing only those chiropractors that demonstrate competency and to take appropriate action whenever licensees fail to maintain the standard of practice. The Board is responsible for investigations of and discipline of chiropractors for unprofessional conduct. The primary purpose is to protect the public from incompetent, negligent, dishonest or impaired chiropractors. Your role as an expert consultant is extremely important, first in identifying whether a deviation from the standard of practice of chiropractic or unprofessional conduct has occurred and secondly in serving as an expert witness at any hearing that may result from your expert assessment.

The purpose of this booklet is to introduce you to the administrative disciplinary process against chiropractors and to define for you the expectations of the Board with respect to the expert review you have been asked to provide, your responsibilities, your legal protection, and your compensation for your review and, where necessary, your testimony.

As an expert consultant, which is the first stage of this process for yourself and perhaps the only stage, you will be provided with the complaint, patient records and certain other information, including any interviews with patients, subsequent treating chiropractors or other licensed health care providers, other witnesses, and any statements of the chiropractor who is the subject of the investigation. You will NOT be provided a copy of any preliminary expert consultant reviews in order to avoid the appearance of tainting your evaluation. You will be asked on the basis of your review of the documentation provided, to render your professional assessment of the care rendered by the subject chiropractor to the patient or patients involved.

You are not asked, nor should you try, to determine what discipline should be imposed upon the subject chiropractor. Your opinion must be based solely upon the information provided to you by the Board; however, whenever possible you should refer to chiropractic texts and other authoritative reference materials that help define accepted standards. The opinion should be based upon your knowledge of the standard of practice, based upon your education, training and experience and not upon the manner in which you personally practice chiropractic care.

If you have had prior knowledge of the subject chiropractor or if you feel you cannot

be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. Also, if you are in need of any additional documents or the records given to you appear incomplete, please contact the Board representative who will attempt to resolve the issue.

In some cases, you will be required to testify in person as to your opinions in administrative hearings held before an administrative law judge and be subject to cross-examination by respondent in regarding your opinions. In these instances, you will be considered an expert witness and will be required to make time to meet with the Deputy Attorney General (DAG) assigned to prosecute the matter in advance of the hearing in order to prepare for the hearing.

The Board of Chiropractic Examiners very much appreciates your cooperation in lending your expertise and experience to accomplish this important work. The Board recognizes you play a vital role and your objective performance will reflect well on the Board and the profession.

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Section II

GUIDELINES FOR EXPERT REVIEWERS

DRAFT

TEN MOST ASKED QUESTIONS

1. Will I have to testify?

Possibly. If the case is submitted for disciplinary action, and a stipulated agreement is not reached, you will be called upon to provide expert testimony. However, the majority of cases are settled before a hearing is held.

2. How much will I be paid?

The expert is paid $75 per hour for record review and a maximum of $1200 per day for testimony at an administrative hearing. You will also be compensated for other expenses you may incur, (i.e., parking, postage or travel, if applicable) in accordance with state law.

3. How soon will I be paid?

Generally speaking you should receive payment for your services within 4 to 6 weeks. Incomplete forms will delay payment so be sure to provide your taxpayer identification number and signature. It is also important to complete the Payee Data Record form (which is required by the IRS) and return it with the statement.

4. Can I be sued for expressing my opinion?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert consultants.

Civil Code Section 43.8 states, in pertinent part:

> ". . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff,

. . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts . . . ."

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are ever served with a lawsuit related to your participation in this process, you should immediately contact the Board staff.

5. Can I do some research?

Yes, you may consult chiropractic texts and other authoritative reference materials which help define accepted standards. However, it is important that you do not attempt to conduct your own investigation of the facts in the case.

6. How soon do I need to complete the review and provide an opinion?

Generally, you are allowed 30 days. However, this varies depending on the volume and complexity of the case. In a complicated case involving multiple patients, your review could extend beyond our 30-day time frame. Keep in mind that the chiropractor you are reviewing will continue to see patients until a determination is made by the Board. If this chiropractor poses a danger to patients, it is vital that you provide your opinion expeditiously so that the Board can move rapidly to protect the public.

7. Who will see my report?

The Subject chiropractor will be provided with a copy of your report as a part of legal discovery if an accusation is filed.

8. Can you give me a copy of a sample report?

Yes, please see Section V.

9. What is the difference between a departure and an extreme departure?

Generally speaking negligence is defined as a departure from the standard of practice of chiropractic is conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

Gross negligence is defined as an <u>extreme departure</u> from the standard of practice

of chiropractic.

10. Which "community" do I use, when applying standards?

For our purposes "community" refers to the entire State of California.

INSTRUCTIONS

A. Ensure that records/reports and materials provided for your review are kept confidential and secure.

B. Look at the case and determine if there is any reason you cannot provide an opinion because of a professional or personal relationship with the Subject and patients.

C. If for any reason you determine that you cannot complete the review or provide an opinion, please let us know immediately and the case will be reassigned.

D. Keep track of dates and hours spent reviewing.

E. Do not mark on the copy of the records provided to you.

F. Do not contact the Subject or patients.

G. Do not discuss the case with third parties.

H. Do not perform any investigation on your own, i.e., attempting to obtain additional records or interviewing participants in the case. If you feel the file is incomplete, please contact the enforcement staff at the board.

I. Do not offer any recommendation about the appropriate disciplinary action for the Subject.

J. Do not make a copy of the records.

K. Do not destroy any of the materials provided to you.

L. Remember to sign your opinion.

M. Enclose an updated curriculum vitae with your opinion.

N. When your review is completed, please contact the requestor and arrange to return the opinion along with your statement for services, payee data record form, curriculum vitae, and the records reviewed.

O. If you have questions/concerns, contact the Board's Enforcement Manager or Executive Officer.

IMMUNITY FROM LIABILITY

Civil Code Section 43.8 states, in pertinent part:

". . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts . . . . "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are served a lawsuit related to your participation in this process, you should immediately contact Board staff.

CONFIDENTIALITY

Government Code Section 11183 makes confidential the character of information acquired in the course of an investigation conducted by the Board, except of course in a report to the agency or in testimony after legal proceedings are instituted against a licensee of the Board.

As an expert consultant to the Board, you are expected to safeguard the confidentiality of the records delivered to you for review and to safeguard the identity of the patients, complainants and chiropractors involved. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in theses materials to other parties. After your report is

written, all materials received should be returned to the Board. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Board is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of violations of the Chiropractic Initiative Act of California and the California Code of Regulations.

The Board's hearings are conducted in accordance with the Administrative Procedure Act **(Government Code § 11150 et seq.)**. Its investigations are conducted pursuant to **Government Code sections 11180 though 11191**.

The Board, through the executive and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing negligence or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, excessively treating patients, altering or creating false records, sexual misconduct, criminal acts and committing ethical violations. The discipline for practitioners committing such act or omissions serves to protect the public from unsafe and unethical practitioners.

The purpose of the disciplinary process is not to punish as in the criminal justice system, but to ensure that quality chiropractic care is provided to the residents of the State of California and to preserve high standards of the practice.

Standard investigations in quality of care cases include obtaining all relevant patient records, conducting interviews with witnesses, including the affected patient or patients, and obtaining any additional information. In insurance fraud cases, billing records and insurance claims are obtained. At times, information is found that goes far beyond the original complaint. After the documentary and interview evidence is obtained, the case is reviewed by a chiropractic Board consultant. If the Board consultant recommends an evaluation by an expert is necessary, it is then up to the Board's enforcement manager or executive office to obtain an expert consultant to ascertain whether a departure from the standard of practice occurred.

After the investigative process, if it is determined that the subject chiropractor's alleged acts or omissions constitute unprofessional conduct, the completed investigative report is submitted to the California Attorney General's Office to determine whether sufficient evidence exists to file an accusation against the subject chiropractor for unprofessional conduct. If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject chiropractor, and he or she is given the opportunity to request a hearing to contest the charges.

The hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last from one day to several months, depending upon the complexity of the case and the defense. Both sides may call expert witnesses to support their views. This makes it incumbent upon the expert consultant to ensure the utmost care is taken when reviewing cases.

The trier of fact (judge) hears evidence against and for the subject chiropractor and renders in writing a proposed decision, which is submitted to the Board members for adoption as its decision in the matter. If the Board members adopt the proposed decision, it becomes final; if the Board members do not adopt the proposed decision, the administrative record is ordered including the transcript from the hearing, the exhibits, and other documents. The Board members then decide the case themselves based upon the administrative record and the disciplinary guidelines. The Subject chiropractor may petition for reconsideration if dissatisfied with the decision or proceed to take a writ of mandate to the appropriate Superior Court contesting the decision.

STAGES OF EXPERT REVIEW

A. Investigative Review

After the investigator assigned to a case has completed his or her investigation, the case is reviewed by a Board chiropractic consultant who then makes a recommendation as to whether or not an evaluation by an expert is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert consultant at this point, will be contacted by the Board and will be asked to review the case. Information will be provided to you that should be sufficient for you to determine whether you will be able to devote the necessary time to the matter and prepare an expert report in a timely manner. If you agree to review the case, you will be provided with the necessary documents, statements, and other evidence to render your opinion. Your review should include an assessment of all relevant aspects of chiropractic care with strict attention to evidentiary information provided in the investigation report. If you should require any other information or something is not clear, you should contact the Board's representative, and every effort will be made to provide you with the information necessary.

You must remember that at this stage, the review is primarily concerned with whether there is a departure from the standard of practice. You are not asked to be an advocate for the Board, the chiropractor or the patient. Your evaluation should be objective, well reasoned and impartial because it is the primary factor in deciding whether the case is submitted for disciplinary action. The Board is not interested in using your services to advocate a position, make an example of or penalize a licensee. The Board only wants you to provide an objective evaluation so that he can determine if public protection warrants the filing of disciplinary charges. Your evaluation may also result in the issuance of a lessor enforcement action such as a citation.

B. Hearing Testimony

Once the case is submitted for disciplinary action, and an accusation is filed, you may be called upon to provide expert testimony, should the case go to a hearing. The majority of cases are settled before a hearing is held.

If a case is set for hearing, the Deputy Attorney General assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the attorney in the details of your opinion and to assist in the presentation of that opinion in the clearest and most concise manner possible. You may also be asked to assist in reviewing the opinions of the opposing experts and in preparing cross-examination questions for them.

During the hearing, you will be called as the State's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the attorney general and by the subject chiropractor or his or her attorney if the chiropractor is represented by counsel. The total time taken for your testimony at the hearing varies with the complexity of the case. The subject chiropractor will have been provided with copies of any written opinions you have submitted during the investigative stage of the case. You should always provide truthful testimony even if it is contrary to the interests of the Board. You may also be asked to evaluate the opinion expressed by respondent's expert at hearing because oftentimes respondents experts fail to prepare a written opinion.

REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

Specific laws governing unprofessional conduct:

Section 317 referred to above under "Quality of Care" includes other acts that constitute unprofessional conduct. This section reads:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

(a) Gross negligence;

(b) Repeated negligent acts;

(c) Incompetence;

(d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;

(e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;

(f) The administration to oneself, of any controlled substance, or the use of any dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;

(g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;

(h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendre is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.

(i) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances

(j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substance;

(k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;

(l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;

(m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thererunder;

(n) Making or giving any false statement or information in connection with the application for issuance of a license;

(o) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or certificate;

(p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;

(q) The participation in any act of fraud or misrepresentation;

(r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;

(s) The employment or use of persons known as cappers or steerers to obtain business;

(t) The offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person;

(u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations.

(v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance. ***(Subdivision contains actual waiver language)***

(w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.

(x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

TYPES OF EVALUATION

Because there are many possible violations of the laws governing the practice of chiropractic, evaluations of cases vary with the subject matter of the possible unprofessional conduct. Listed are the major kinds of evaluations you may be asked to prepare.

1. Quality of Care.

These cases involve the quality of care rendered to a patient or patients. The general question asked in this context is whether the subject chiropractor's treatment of the patient constituted an extreme departure from the standard of practice (gross negligence),

repeated departure from the standard of care (repeated acts of negligence), or exhibited a lack of knowledge or ability in carrying out professional obligations (incompetence). Often, it is difficult to distinguish which of these definitions fits the treatment rendered and often, the conduct described exhibits both incompetence and negligence or gross negligence for a given patient's treatment. Note: One "simple" departure from the standard of practice (negligence) is not considered unprofessional conduct. Your evaluation should state whether in your opinion it is simple negligence versus repeated acts of negligence.

Generally speaking, a departure from the standard of practice of chiropractic is conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

A lack of knowledge or ability in carrying out professional obligations is exhibited by evidence that the practitioner either lacked training in the particular area in which he or she exhibited unprofessional conduct or that he or she was unable to understand the standard of practice and perform according to its mandates.

Of course, the distinctions are often difficult to make, but that is why you are called upon as an expert. With your knowledge of the standards of practice within the chiropractic community, especially in your area of expertise, we are asking you to render a professional opinion based upon your education, knowledge, experience, and training.

2. Sexual Misconduct.

In this area, you are asked to assess, based upon the standards of practice, whether a chiropractor's sexual relationship or sexual conduct with a patient constitutes unprofessional conduct.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged misconduct actually occurred. This will be determined at the hearing, if one is held. For purposes of your review, you are to assume that the complainant's account of the sexual conduct is true.

3. Excessive Treatment Violations.

California Code of Regulations Section 317 states that the "administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees..." The "local community" is the State of California. In this type of case, you are asked to state the standard of the community of licensees concerning the number of chiropractic visits necessary to treat a certain condition and the kind and extent of diagnostic procedures necessary to diagnose the condition. For example.....This may also constitute gross negligence or repeated acts of negligence. Note: the insurance industry

does NOT set the standard of care, therefore whether or not an insurance company considered treatment to be excessive is irrelevant.

4. General Unprofessional Conduct.

Section 317 states that a chiropractor may be disciplined for unprofessional conduct, which includes, BUT IS NOT LIMITED TO certain enumerated conduct. Any unprofessional conduct which is not set forth as such in the Chiropractic Initiative Act, governing regulations, or other statutes covering the practice is referred to as "general unprofessional conduct." General unprofessional conduct reflects conduct which demonstrates an unfitness to practice chiropractic that does not fit into other categories.

In a case entailing ethical violations, you are asked to set forth the standard of conduct for a chiropractor in the circumstances described, and perhaps the underlying ethical code, and then you are asked to describe in what manner the subject chiropractor violated that standard.

Section III

THE OPINION ITSELF

There are Sample Expert Opinions appended to this booklet at Section V. Please refer to those when writing your opinion, but remember that they are guidelines only, and that your case and the contents of your opinion will necessarily differ.

A. Contents.

Your expert opinion should contain:

1. An accurate listing of the records and other documents sent to you to be reviewed. Additionally, all of the documents provided for your review will be stamped with a sequential number ("Bates Stamped.) For example, if you receive a five-page investigation report and 50 pages of patient records, each one will contain a page number stamped at the bottom of the page starting from 1 to 55. You should refer to these numbers whenever you reference a document in your evaluation. This will assist the DAG who will later review your report. It will also ensure that your testimony before an administrative law judge will be organized and time-efficient.

2. The substance of the opinion, which should consist of the following for each patient, if there is more than one patient:

a. Do a summary of the patient's case, including relevant patient history and presenting complaint. Describe the subject chiropractor's treatment, and any subsequent treatment. Summarize the facts of the treatment and the findings.

b. State the standard of practice for the treatment of such a patient. Remember to state the standard of practice for the community of chiropractors, not just the way in which you personally would treat such a patient. The standard reflects what a reasonable chiropractor would do under the circumstances.

c. Specifically describe any deviations from the standard of practice and explain why. Each finding of a deviation from the standard should be specifically described. For example, your report should state as follows:

Subject chiropractor deviated from the standard of practice in three areas as follows:

*** (Insert example)**

*** (Insert example)**

*** (Insert example)**

State your opinion as to whether the overall care of this patient constitutes no departure, an ordinary departure, an extreme departure, a lack of knowledge or ability, excessive prescribing, excessive treatment, excessive use of diagnostic or treatment facilities, sexual misconduct, and so on, or any combination. State the basis for your opinion.

B. Violation vs. Mitigation

In writing your opinion, you are asked to summarize the treatment rendered and the findings of the subject chiropractor. In preparing your summary, you may have identified certain factors that could have hampered accurate treatment. Please remember that it is your obligation to state the standard of practice and the departure therefrom.

Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law. Although there are instances where mitigating circumstances are relevant to the imposition of any penalty, those factors will be considered by the trier of fact. Therefore, you are asked to refrain from commenting whether the subject chiropractor should or should not be punished because of certain mitigating or

aggravating factors. The actual discipline to be imposed on the chiropractor is the province of the trier of fact, and you are not expected to prescribe or recommend any discipline in the case.

C. Injury Is Not Essential.

The primary focus in an expert review is whether there has been a departure from the standard of practice of dentistry, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of practice may be relevant to a determination of the degree of departure, actual injury is not required to establish a violation of the Act. Also, just because there is no injury does not mean there was no departure from the standard of practice.

D. Evaluation and Credibility.

In many cases, the significant facts will not be in dispute. However in some cases, (such as sexual misconduct or allegation of assault) significant facts may be disputed. For example, the patient may state that something happened, while the subject may deny that it occurred. In those cases, your opinion may depend on whose statement you rely.

E. Assess the Standard of Practice as of the Time of the Violation.

The standard of practice of chiropractic is constantly evolving, and so it is particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of practice **AT THAT TIME**.

This does **not** mean, however, that if you were not in practice at the time of the violation, you are disqualified as an expert consultant. If you are aware of the standards at the time the violation occurred through your education, training and experience, you may render an opinion on the case.

F. Objectivity.

In performing your review, you should maintain objectivity, and view the assigned case without regard to any other legal activity that may surround it. In specific, you should ignore the existence, non-existence or magnitude of any civil judgements or settlements involving the case. Since you may not be reviewing the same documents that were used to support or refute a civil case, no attention should be paid to any past adjudicatory history. The expert reviewer should focus on the patient records and other case records, not on the reports, depositions or other testimony of other expert witnesses.

Section IV

COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Consultant's Statement of Services" and a form entitled "Payee Data Record" for use in billing for services which you render to the Board as an expert consultant. You will be asked to fill out the Statement of Services form **COMPLETELY** for each case that you review and you may be required to fill out more than one Statement of Services form during the course of a case. Failure to fill out the form completely will delay your compensation. The Payee Data Record is only required to be completed annually.

A. Initial Evaluation.

You will be compensated at the rate of $75 per hour for your evaluation and expert report. Please record the hours worked on the case for each DAY for your eventual billing.

The Board keeps its accounts by Fiscal Year, that is July 1 through June 30. Please do not submit bills for two Fiscal Years on one form. Instead, use a separate form for each Fiscal Year.

B. Consultation with Deputy Attorney General.

This includes any consultation, in person or by telephone, before the case is filed, during the pendency of the action, or in preparation for hearing. You will be compensated at the rate of $100 per hour.

C. Testimony at Hearing.

You will be compensated at the rate of $75 per hour for testimony, with the maximum fee allowable for a full day of testimony being $1200.

D. Miscellaneous Expenses.

Expenses incurred in fulfilling the various requests may be itemized on a separate sheet of paper. Mileage and parking can be charged in connection with testimony at hearings. All expenses incurred in this category must be accompanied by a receipt, excluding mileage. In the event your testimony requires an overnight stay, the Board will make the appropriate arrangements for you.

Section V

SAMPLE EXPERT OPINION

The sample expert opinion appended hereto are examples of the product the Board expects from your expert review. It is provided for purposes of reference as to form and expression only, and in no way reflects the decisions or opinions of the Board with reference to any of the fact situations cited. You may, in fact, agree or disagree with, or have no opinions about the opinion in substance.

TERMS TO BE AVOIDED IN REPORTS

Exacerbation: Certain situations or conditions may exacerbate a chiropractor's actions with respect to a case. For example, being inebriated while seeing a patient may exacerbate an underlying lack of knowledge or ability. It is appropriate to describe such exacerbating conditions.

Guilty or Innocence: The expert reviewer's role is to determine whether, and in what manner, a chiropractor's actions depart from the standard of practice, or demonstrate a lack of knowledge or ability. The trier of fact will determine guilt or innocence.

Judgmental or subjective comments: Avoid terms such as *"this guy is clearly incompetent"* or *"no-one in his right mind would do..."* Your report should objectively establish what behavior was expected and how the chiropractor failed to meet the expectation.

Malpractice: Malpractice is a term which applies to civil law (i.e., suits between individuals). The Board functions under administrative law, and its cases deal with unprofessional conduct. Also, expert reviewers should not let any information regarding malpractice filings, settlements or judgements affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

Mitigation: See Exacerbation, above. While certain facts or conditions may mitigate a situation to some degree, the expert reviewer should document but not draw conclusions from such information.

Penalties: It is not the role of the expert reviewer to propose a penalty. This will be determined at hearing, based on detailed guidelines adopted by the Board and utilized by Administrative Law Judges.

Personalized comments: Avoid characterizing the actions of the chiropractor in personal terms: *"She was rude and unprofessional to the patient."* Instead, describe what the expected standard was, and how the dentist deviated from the standard.

Section VI

SERVING AS AN EXPERT WITNESS

A. EXPERT WITNESS

You have been asked to testify at an *administrative hearing* against a chiropractor. You will be an *expert witness*. What this means is that because of your background, training and experience you can express opinions and make evaluations that a layperson could not make.

Prior to the hearing date, you will be contacted by the *Deputy Attorney General* (DAG) assigned to represent the Board and to present our case at the hearing. The DAG may arrange to meet with you to review the case, your written expert opinion, your qualifications to serve as an expert, and what you can expect at the hearing. The DAG also may ask you to review expert opinions provided by the respondent chiropractor or his or her attorney in the *discovery* phase of the case. (Discovery is when each side provides the other with all documents and other exhibits it will use, as well as the names of any witnesses it intends to call.)

If the case is unusually complex or involves voluminous records, you may have to meet with the DAG more than once prior to the hearing.

B. THE HEARING

The hearing afforded a chiropractor who is charged by the Board, is known as an *Administrative Hearing,* and is conducted under the Administrative Procedure Act (APA). While an APA hearing has some things in common with a criminal trial, it also has numerous differences. In general, APA hearings are less formal than trials. The hearing will be conducted by an Administrative Law Judge (ALJ) who works for an independent state agency, not for the Board. No jury is used in APA hearings. The attorneys (or the subject chiropractor, if he or she represents him or herself) can ask questions of witnesses for both sides (*direct and cross examination).* The ALJ also may choose to ask a witness questions to clarify specific points.

As with a trial, the burden of proving the case rests with the Board, which brings the accusation against the subject chiropractor on behalf of the Board's Executive Officer who is the Complainant in these cases. In an APA hearing, the standard of proof that the Board must meet is *"clear and convincing evidence to a reasonable certainty".*

As with criminal trials, the Board presents its charges against the subject

chiropractor first. The chiropractor or attorney can cross-examine each witness. Then the chiropractor presents his or her defense, and the Board (DAG) has the opportunity to cross-examine. In most cases, each side will give opening and closing statements, describing what they intend to prove, and summarizing what they have attempted to prove.

3. YOUR TESTIMONY

Before you can give evidence, you must establish your expertise at the hearing. This is done by the DAG asking you questions about your qualifications. This process is known as *voir dire*. You may be asked about the following, or about other matters relating to your qualifications:

1. Your license status and history.
2. Your education, dental education and training.
3. Your experience.
4. Any private board certification or board eligibility you have achieved.
5. The extent of your experience as it relates to the types of chiropractic care or treatment at issue in this case.
6. Your professional affiliations, memberships, staff appointments and other associations.
7. Your publications.
8. Any other information that could shed light on your qualifications to be considered an expert.
9. You probably will be asked whether you know or have any kind of business or professional relationship with the subject chiropractor.

During direct and cross examination, you probably will be asked questions about the documents and other "exhibits" you reviewed as you prepared your expert opinion report. You should be prepared to identify any publications or resources you referred to as part of your review. You also may be asked to describe the kinds and extent of experience you have in performing the chiropractic procedures or treatments involved in the case.

It is extremely important that you be able to describe what is the *standard of practice in the chiropractic community* for the type of procedure involved in the case. The term "standard of practice" or standard of care" is set by the community of licensed chiropractors based upon their training, education and experience. This standard may change over time with new advancements in chiropractic. It will be necessary for you, as an expert witness, to articulate what the current acceptable standard is in chiropractic for various diagnosis and treatment procedures. Focus on what the standard is. Also, use lay terms whenever possible, and explain unavoidable technical terms and acronyms.

Focus on how the treatment in a particular case departed from the standard of practice. This can include omissions as well as commissions. You also may need to address a charge of incompetence based on use of outmoded procedures. In some

instances, you may be faced with a lack or paucity of patient records upon which to assess the quality of the case the patient received. Your testimony may consist of pointing out that based on the patient chart, it is not possible to determine what tests, if any were ordered, what instructions were given the patient, what in-office procedures were done, etc. You could be asked to explain the standard of practice as it relates to documenting such information in the patient record.

Be prepared to discuss the degree to which the treatment departed from the standard of practice. Was the treatment a simple departure or an extreme departure? For more information on this, see the Guidelines For Expert Reviewers in Section II.

Very often, the other side will attempt to discredit you, belittle your qualifications, or use other techniques to raise doubts about your testimony. You should make every effort to remain objective and detached. Try not to become defensive or to lose your professional demeanor. Your role is as a teacher, not as an advocate for the Board.

4. AFTER THE HEARING CONCLUDES

When the hearing is completed, the ALJ will take the case under submission. He or she has 30 days to prepare a proposed decision (PD). The PD is sent to the Board, which then has 100 days to decide whether to accept the PD, reject it and substitute its own decision in the case, or modify the decision and adopt that.

DRAFT

ICAC Feedback

State of California **Arnold Schwarzenegger, Governor**

California Board of Chiropractic Examiners

DRAFT

Guidelines for Expert Consultants

Insert Date

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Section I

INTRODUCTION

The California Board of Chiropractic Examiners ("Board") is an administrative agency created by the Chiropractic Initiative Act of 1922. The mission of the Board is to protect California consumers by licensing only those chiropractors that demonstrate competency and to take appropriate action whenever licensees fail to maintain the standard of practice. The Board is responsible for investigations of and discipline of chiropractors for unprofessional conduct. The primary purpose is to protect the public from incompetent, negligent, dishonest or impaired chiropractors. Your role as an expert consultant is extremely important, first in identifying whether a deviation from the standard of practice of chiropractic or unprofessional conduct has occurred and secondly in serving as an expert witness at any hearing that may result from your expert assessment.

The purpose of this booklet is to introduce you to the administrative disciplinary process against chiropractors and to define for you the expectations of the Board with respect to the expert review you have been asked to provide, your responsibilities, your legal protection, and your compensation for your review and, where necessary, your testimony.

As an expert consultant, which is the first stage of this process for yourself and perhaps the only stage, you will be provided with the complaint, patient records and certain other information, including any interviews with patients, subsequent treating chiropractors or other licensed health care providers, other witnesses, and any statements of the chiropractor who is the subject of the investigation. You will NOT be provided a copy of any preliminary expert consultant reviews in order to avoid the appearance of tainting your evaluation. You will be asked on the basis of your review of the documentation provided, to render your professional assessment of the care rendered by the subject chiropractor to the patient or patients involved.

You are not asked, nor should you try, to determine what discipline should be imposed upon the subject chiropractor. Your opinion must be based solely upon the information provided to you by the Board; however, whenever possible you should refer to chiropractic texts and other authoritative reference materials that help define accepted standards. The opinion should be based upon your knowledge of the standard of practice, based upon your education, training and experience and not upon the manner in which you personally practice chiropractic care.

If you have had prior knowledge of the subject chiropractor or if you feel you cannot be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. Also, if you are in need of

any additional documents or the records given to you appear incomplete, please contact the Board representative who will attempt to resolve the issue.

In some cases, you will be required to testify in person as to your opinions in administrative hearings held before an administrative law judge and be subject to cross-examination by respondent in regarding your opinions. In these instances, you will be considered an expert witness and will be required to make time to meet with the Deputy Attorney General (DAG) assigned to prosecute the matter in advance of the hearing in order to prepare for the hearing.

The California Board of Chiropractic Examiners very much appreciates your cooperation in lending your expertise and experience to accomplish this important work. The Board recognizes you play a vital role and your objective performance will reflect well on the Board and the profession.

Office of the California Board of Chiropractic Examiners

INSERT ADDRESS AND TELEPHONE AND FAX NUMBERS

DRAFT

Section II

GUIDELINES FOR EXPERT REVIEWERS

TEN MOST ASKED QUESTIONS

1. Will I have to testify?

Possibly. If the case is submitted for disciplinary action, and a stipulated agreement is not reached, you will be called upon to provide expert testimony. However, the majority of cases are settled before a hearing is held.

2. How much will I be paid?

The expert is paid $75 per hour for record review and a maximum of $1200 per day for testimony at an administrative hearing. You will also be compensated for other expenses you may incur, (i.e., parking, postage or travel, if applicable) in accordance with state law.

3. How soon will I be paid?

Generally speaking you should receive payment for your services within 4 to 6 weeks. Incomplete forms will delay payment so be sure to provide your taxpayer identification number and signature. It is also important to complete the Payee Data Record form (which is required by the IRS) and return it with the statement.

4. Can I be sued for expressing my opinion?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert consultants.

Civil Code Section 43.8 states, in pertinent part:

> ". . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts . . . . "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are ever

served with a lawsuit related to your participation in this process, you should immediately contact the Board staff.

5. Can I do some research?

Yes, you may consult chiropractic texts and other authoritative reference materials which help define accepted standards. (also see Section VII Established Chiropractic Guidelines)

However, it is important that you do not attempt to conduct your own investigation of the facts in the case.

6. How soon do I need to complete the review and provide an opinion?

Generally, you are allowed 30 days. However, this varies depending on the volume and complexity of the case. In a complicated case involving multiple patients, your review could extend beyond our 30-day time frame. Keep in mind that the chiropractor you are reviewing will continue to see patients until a determination is made by the Board. If this chiropractor poses a danger to patients, it is vital that you provide your opinion expeditiously so that the Board can move rapidly to protect the public.

7. Who will see my report?

The Subject chiropractor will be provided with a copy of your report as a part of legal discovery if an accusation is filed.

8. Can you give me a copy of a sample report?

Yes, please see Section V.

9. What is the difference between a departure and an extreme departure?

Generally speaking negligence is defined as a departure from the standard of practice of chiropractic is conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

Gross negligence is defined as an <u>extreme departure</u> from the standard of practice of chiropractic.

10. Which "community" do I use, when applying standards?

For our purposes "community" refers to the entire State of California.

INSTRUCTIONS

A. Ensure that records/reports and materials provided for your review are kept confidential and secure.

B. Look at the case and determine if there is any reason you cannot provide an opinion because of a professional or personal relationship with the Subject and patients.

C. If for any reason you determine that you cannot complete the review or provide an opinion, please let us know immediately and the case will be reassigned.

D. Keep track of dates and hours spent reviewing.

E. Do not mark on the copy of the records provided to you.

F. Do not contact the Subject or patients.

G. Do not discuss the case with third parties.

H. Do not perform any investigation on your own, i.e., attempting to obtain additional records or interviewing participants in the case. If you feel the file is incomplete, please contact the enforcement staff at the board.

I. Do not offer any recommendation about the appropriate disciplinary action for the Subject.

J. Do not make a copy of the records.

K. Do not destroy any of the materials provided to you.

L. Remember to sign your opinion.

M. Enclose an updated curriculum vitae with your opinion.

N. When your review is completed, please contact the requestor and arrange to return the opinion along with your statement for services, payee data record form, curriculum vitae, and the records reviewed.

O. If you have questions/concerns, contact the Board's Enforcement Manager or Executive Officer.

IMMUNITY FROM LIABILITY

Civil Code Section 43.8 states, in pertinent part:

". . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts . . . . "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are served a lawsuit related to your participation in this process, you should immediately contact Board staff.

CONFIDENTIALITY

Government Code Section 11183 makes confidential the character of information acquired in the course of an investigation conducted by the Board, except of course in a report to the agency or in testimony after legal proceedings are instituted against a licensee of the Board.

As an expert consultant to the Board, you are expected to safeguard the confidentiality of the records delivered to you for review and to safeguard the identity of the patients, complainants and chiropractors involved. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in these materials to other parties. After your report is written, all materials received should be returned to the Board. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Board is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of violations of the Chiropractic Initiative Act of California and the California Code of Regulations.

The Board's hearings are conducted in accordance with the Administrative Procedure Act **(Government Code § 11150 et seq.)**. Its investigations are conducted pursuant to **Government Code sections 11180 though 11191**.

The Board, through the executive and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing negligence or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, excessively treating patients, altering or creating false records, sexual misconduct, criminal acts and committing ethical violations. The discipline for practitioners committing such act or omissions serves to protect the public from unsafe and unethical practitioners.

The purpose of the disciplinary process is not to punish as in the criminal justice system, but to ensure that quality chiropractic care is provided to the residents of the State of California and to preserve high standards of the practice.

Standard investigations in quality of care cases include obtaining all relevant patient records, conducting interviews with witnesses, including the affected patient or patients, and obtaining any additional information. In insurance fraud cases, billing records and insurance claims are obtained. At times, information is found that goes far beyond the original complaint. After the documentary and interview evidence is obtained, the case is reviewed by a chiropractic Board consultant. If the Board consultant recommends an evaluation by an expert is necessary, it is then up to the Board's enforcement manager or executive office to obtain an expert consultant to ascertain whether a departure from the standard of practice occurred.

After the investigative process, if it is determined that the subject chiropractor's alleged acts or omissions constitute unprofessional conduct, the completed investigative report is submitted to the California Attorney General's Office to determine whether sufficient evidence exists to file an accusation against the subject chiropractor for unprofessional conduct. If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject chiropractor, and he or she is given the opportunity to request a hearing to contest the charges.

The hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last from one day to several months, depending upon the complexity of the case and the defense. Both sides may call expert

witnesses to support their views. This makes it incumbent upon the expert consultant to ensure the utmost care is taken when reviewing cases. The trier of fact (judge) hears evidence against and for the subject chiropractor and renders in writing a proposed decision, which is submitted to the Board members for adoption as its decision in the matter. If the Board members adopt the proposed decision, it becomes final; if the Board members do not adopt the proposed decision, the administrative record is ordered including the transcript from the hearing, the exhibits, and other documents. The Board members then decide the case themselves based upon the administrative record and the disciplinary guidelines. The Subject chiropractor may petition for reconsideration if dissatisfied with the decision or proceed to take a writ of mandate to the appropriate Superior Court contesting the decision.

STAGES OF EXPERT REVIEW

A. Investigative Review

After the investigator assigned to a case has completed his or her investigation, the case is reviewed by a Board chiropractic consultant who then makes a recommendation as to whether or not an evaluation by an expert is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert consultant at this point, will be contacted by the Board and will be asked to review the case. Information will be provided to you that should be sufficient for you to determine whether you will be able to devote the necessary time to the matter and prepare an expert report in a timely manner. If you agree to review the case, you will be provided with the necessary documents, statements, and other evidence to render your opinion. Your review should include an assessment of all relevant aspects of chiropractic care with strict attention to evidentiary information provided in the investigation report. If you should require any other information or something is not clear, you should contact the Board's representative, and every effort will be made to provide you with the information necessary.

You must remember that at this stage, the review is primarily concerned with whether there is a (clearly excessive) departure from the standard of practice. You are not asked to be an advocate for the Board, the chiropractor or the patient. Your evaluation should be objective, well reasoned and impartial because it is the primary factor in deciding whether the case is submitted for disciplinary action. The Board is not interested in using your services to advocate a position, make an example of or penalize a licensee. The Board only wants you to provide an objective evaluation so that he can determine if public protection warrants the filing of disciplinary charges. Your evaluation may also result in the issuance of a lessor enforcement action such as a citation.

B. Hearing Testimony

Once the case is submitted for disciplinary action, and an accusation is filed, you may be called upon to provide expert testimony, should the case go to a hearing. The majority of cases are settled before a hearing is held.

If a case is set for hearing, the Deputy Attorney General assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the attorney in the details of your opinion and to assist in the presentation of that opinion in the clearest and most concise manner possible. You may also be asked to assist in reviewing the opinions of the opposing experts and in preparing cross-examination questions for them.

During the hearing, you will be called as the State's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the attorney general and by the subject chiropractor or his or her attorney if the chiropractor is represented by counsel. The total time taken for your testimony at the hearing varies with the complexity of the case. The subject chiropractor will have been provided with copies of any written opinions you have submitted during the investigative stage of the case. You should always provide truthful testimony even if it is contrary to the interests of the Board. You may also be asked to evaluate the opinion expressed by respondent's expert at hearing because oftentimes respondents experts fail to prepare a written opinion.

REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

Specific laws governing unprofessional conduct:

Section 317 referred to above under "Quality of Care" includes other acts that constitute unprofessional conduct. This section reads:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

(a) Gross negligence;
(b) Repeated negligent acts;
(c) Incompetence;
(d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
(e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;

(f) The administration to oneself, of any controlled substance, or the use of any dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;

(g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;

(h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendre is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.

(i) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances

(j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substance;

(k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;

(l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;

(m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thererunder;

(n) Making or giving any false statement or information in connection with the application for issuance of a license;

(o) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or certificate;

(p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;

(q) The participation in any act of fraud or misrepresentation;

(r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;

(s) The employment or use of persons known as cappers or steerers to obtain business;

(t) The offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as

compensation or inducement for referring patients to any person;

(u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations.

(v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance. ***(Subdivision contains actual waiver language)***

(w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.

(x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

TYPES OF EVALUATION

Because there are many possible violations of the laws governing the practice of chiropractic, evaluations of cases vary with the subject matter of the possible unprofessional conduct. Listed are the major kinds of evaluations you may be asked to prepare.

1. Quality of Care.

These cases involve the quality of care rendered to a patient or patients. The general question asked in this context is whether the subject chiropractor's treatment of the patient constituted an extreme departure from the standard of practice (gross negligence), repeated departure from the standard of care (repeated acts of negligence), or exhibited a lack of knowledge or ability in carrying out professional obligations (incompetence). Often, it is difficult to distinguish which of these definitions fits the treatment rendered and often, the conduct described exhibits both incompetence and negligence or gross negligence for a given patient's treatment. Note: One "simple" departure from the standard of practice (negligence) is not considered unprofessional conduct. Your evaluation should state whether in your opinion it is simple negligence versus repeated acts of negligence.

Generally speaking, a departure from the standard of practice of chiropractic is

conduct which falls below that which a reasonable chiropractor (in the specialty for which the subject chiropractor holds himself or herself out as able to perform) would practice under the circumstances.

A lack of knowledge or ability in carrying out professional obligations is exhibited by evidence that the practitioner either lacked training in the particular area in which he or she exhibited unprofessional conduct or that he or she was unable to understand the standard of practice and perform according to its mandates.

Of course, the distinctions are often difficult to make, but that is why you are called upon as an expert. With your knowledge of the standards of practice within the chiropractic community, especially in your area of expertise, we are asking you to render a professional opinion based upon your education, knowledge, experience, and training.

2. Sexual Misconduct.

In this area, you are asked to assess, based upon the standards of practice, whether a chiropractor's sexual relationship or sexual conduct with a patient constitutes unprofessional conduct.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged misconduct actually occurred. This will be determined at the hearing, if one is held. For purposes of your review, you are to assume that the complainant's account of the sexual conduct is true.

3. Excessive Treatment Violations.

California Code of Regulations Section 317 states that the "administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees..." The "local community" is the State of California. In this type of case, you are asked to state the standard of the community of licensees concerning the number of chiropractic visits necessary to treat a certain condition and the kind and extent of diagnostic procedures necessary to diagnose the condition. For example.....This may also constitute gross negligence or repeated acts of negligence. Note: the insurance industry does NOT set the standard of care, therefore whether or not an insurance company considered treatment to be excessive is irrelevant.

(There are no written <u>Standards of Care</u> anywhere for chiropractic care)
(There would be a need for Utilization of Established Guidelines)
(What are some Established Chiropractic Guidelines?)
(The treatment/diagnosis must be "clearly excessive")

4. General Unprofessional Conduct.

Section 317 states that a chiropractor may be disciplined for unprofessional

conduct, which includes, BUT IS NOT LIMITED TO certain enumerated conduct. Any unprofessional conduct which is not set forth as such in the Chiropractic Initiative Act, governing regulations, or other statutes covering the practice is referred to as "general unprofessional conduct." General unprofessional conduct reflects conduct which demonstrates an unfitness to practice chiropractic that does not fit into other categories.

In a case entailing ethical violations, you are asked to set forth the standard of conduct for a chiropractor in the circumstances described, and perhaps the underlying ethical code, and then you are asked to describe in what manner the subject chiropractor violated that standard.

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Section III

THE OPINION ITSELF

There are Sample Expert Opinions appended to this booklet at Section V. Please refer to those when writing your opinion, but remember that they are guidelines only, and that your case and the contents of your opinion will necessarily differ.

A. Contents.

Your expert opinion should contain:

1. An accurate listing of the records and other documents sent to you to be reviewed. Additionally, all of the documents provided for your review will be stamped with a sequential number ("Bates Stamped.) For example, if you receive a five-page investigation report and 50 pages of patient records, each one will contain a page number stamped at the bottom of the page starting from 1 to 55. You should refer to these numbers whenever you reference a document in your evaluation. This will assist the DAG who will later review your report. It will also ensure that your testimony before an administrative law judge will be organized and time-efficient.

2. The substance of the opinion, which should consist of the following for each patient, if there is more than one patient:

   a. Do a summary of the patient's case, including relevant patient history and presenting complaint. Describe the subject chiropractor's treatment, and any subsequent treatment. Summarize the facts of the treatment and the findings.

   b. State the standard of practice for the treatment of such a patient. Remember to state the standard of practice for the community of chiropractors, not just the way in which you personally would treat such a patient. The standard reflects what a reasonable chiropractor would do under the circumstances.

   c. Specifically describe any deviations from the standard of practice and explain why. Each finding of a deviation from the standard should be specifically described. For example, your report should state as follows:

      Subject chiropractor deviated from the standard of practice in three areas as follows:

      *** (Insert example)**

*** (Insert example)**

*** (Insert example)**

State your opinion as to whether the overall care of this patient constitutes no departure, an ordinary departure, an extreme departure, a lack of knowledge or ability, excessive prescribing, excessive treatment, excessive use of diagnostic or treatment facilities, sexual misconduct, and so on, or any combination. State the basis for your opinion.

Need to utilize established guidelines. There are no Standards of Care written anywhere for chiropractic care.

B. Violation vs. Mitigation.

In writing your opinion, you are asked to summarize the treatment rendered and the findings of the subject chiropractor. In preparing your summary, you may have identified certain factors that could have hampered accurate treatment. Please remember that it is your obligation to state the standard of practice and the departure therefrom.

Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law. Although there are instances where mitigating circumstances are relevant to the imposition of any penalty, those factors will be considered by the trier of fact. Therefore, you are asked to refrain from commenting whether the subject chiropractor should or should not be punished because of certain mitigating or aggravating factors. The actual discipline to be imposed on the chiropractor is the province of the trier of fact, and you are not expected to prescribe or recommend any discipline in the case.

C. Injury Is Not Essential.

The primary focus in an expert review is whether there has been a departure from the standard of practice of dentistry, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of practice may be relevant to a determination of the degree of departure, actual injury is not required to establish a violation of the Act. Also, just because there is no injury does not mean there was no departure from the standard of practice.

D. Evaluation and Credibility.

In many cases, the significant facts will not be in dispute. However in some cases, (such as sexual misconduct or allegation of assault) significant facts may be disputed. For example, the patient may state that something happened,

while the subject may deny that it occurred. In those cases, your opinion may depend on whose statement you rely.

E. Assess the Standard of Practice as of the Time of the Violation.

The standard of practice of chiropractic is constantly evolving, and so it is particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of practice **AT THAT TIME.**

This does **not** mean, however, that if you were not in practice at the time of the violation, you are disqualified as an expert consultant. If you are aware of the standards at the time the violation occurred through your education, training and experience, you may render an opinion on the case.

F. Objectivity.

In performing your review, you should maintain objectivity, and view the assigned case without regard to any other legal activity that may surround it. In specific, you should ignore the existence, non-existence or magnitude of any civil judgements or settlements involving the case. Since you may not be reviewing the same documents that were used to support or refute a civil case, no attention should be paid to any past adjudicatory history. The expert reviewer should focus on the patient records and other case records, not on the reports, depositions or other testimony of other expert witnesses.

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Section IV

COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Consultant's Statement of Services" and a form entitled "Payee Data Record" for use in billing for services which you render to the Board as an expert consultant. You will be asked to fill out the Statement of Services form **COMPLETELY** for each case that you review and you may be required to fill out more than one Statement of Services form during the course of a case. Failure to fill out the form completely will delay your compensation. The Payee Data Record is only required to be completed annually.

A. Initial Evaluation.

You will be compensated at the rate of $75 per hour for your evaluation and expert report. Please record the hours worked on the case for each DAY for your eventual billing.

The Board keeps its accounts by Fiscal Year, that is July 1 through June 30. Please do not submit bills for two Fiscal Years on one form. Instead, use a separate form for each Fiscal Year.

B. Consultation with Deputy Attorney General.

This includes any consultation, in person or by telephone, before the case is filed, during the pendency of the action, or in preparation for hearing. You will be compensated at the rate of $100 per hour.

C. Testimony at Hearing.

You will be compensated at the rate of $75 per hour for testimony, with the maximum fee allowable for a full day of testimony being $1200.

D. Miscellaneous Expenses.

Expenses incurred in fulfilling the various requests may be itemized on a separate sheet of paper. Mileage and parking can be charged in connection with testimony at hearings. All expenses incurred in this category must be accompanied by a receipt, excluding mileage. In the event your testimony requires an overnight stay, the Board will make the appropriate arrangements for you.

Section V

SAMPLE EXPERT OPINION

The sample expert opinion appended hereto are examples of the product the Board expects from your expert review. It is provided for purposes of reference as to form and expression only, and in no way reflects the decisions or opinions of the Board with reference to any of the fact situations cited. You may, in fact, agree or disagree with, or have no opinions about the opinion in substance.

TERMS TO BE AVOIDED IN REPORTS

Exacerbation: Certain situations or conditions may exacerbate a chiropractor's actions with respect to a case. For example, being inebriated while seeing a patient may exacerbate an underlying lack of knowledge or ability. It is appropriate to describe such exacerbating conditions.

Guilty or Innocence: The expert reviewer's role is to determine whether, and in what manner, a chiropractor's actions depart from the standard of practice, or demonstrate a lack of knowledge or ability. The trier of fact will determine guilt or innocence.

Judgmental or subjective comments: Avoid terms such as *"this guy is clearly incompetent"* or *"no-one in his right mind would do..."* Your report should objectively establish what behavior was expected and how the chiropractor failed to meet the expectation.

Malpractice: Malpractice is a term which applies to civil law (i.e., suits between individuals). The Board functions under administrative law, and its cases deal with unprofessional conduct. Also, expert reviewers should not let any information regarding malpractice filings, settlements or judgements affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

Mitigation: See Exacerbation, above. While certain facts or conditions may mitigate a situation to some degree, the expert reviewer should document but not draw conclusions from such information.

Penalties: It is not the role of the expert reviewer to propose a penalty. This will be determined at hearing, based on detailed guidelines adopted by the Board and utilized by Administrative Law Judges.

Personalized comments: Avoid characterizing the actions of the chiropractor in personal terms: *"She was rude and unprofessional to the patient."* Instead, describe what the expected standard was, and how the dentist deviated from the standard.

Section VI

SERVING AS AN EXPERT WITNESS

A. EXPERT WITNESS

You have been asked to testify at an *administrative hearing* against a chiropractor. You will be an *expert witness*. What this means is that because of your background, training and experience you can express opinions and make evaluations that a layperson could not make.

Prior to the hearing date, you will be contacted by the *Deputy Attorney General* (DAG) assigned to represent the Board and to present our case at the hearing. The DAG may arrange to meet with you to review the case, your written expert opinion, your qualifications to serve as an expert, and what you can expect at the hearing. The DAG also may ask you to review expert opinions provided by the respondent chiropractor or his or her attorney in the *discovery* phase of the case. (Discovery is when each side provides the other with all documents and other exhibits it will use, as well as the names of any witnesses it intends to call.)

If the case is unusually complex or involves voluminous records, you may have to meet with the DAG more than once prior to the hearing.

B. THE HEARING

The hearing afforded a chiropractor who is charged by the Board, is known as an *Administrative Hearing,* and is conducted under the Administrative Procedure Act (APA). While an APA hearing has some things in common with a criminal trial, it also has numerous differences. In general, APA hearings are less formal than trials. The hearing will be conducted by an Administrative Law Judge (ALJ) who works for an independent state agency, not for the Board. No jury is used in APA hearings. The attorneys (or the subject chiropractor, if he or she represents him or herself) can ask questions of witnesses for both sides (*direct and cross examination).* The ALJ also may choose to ask a witness questions to clarify specific points.

As with a trial, the burden of proving the case rests with the Board, which brings the accusation against the subject chiropractor on behalf of the Board's Executive Officer who is the Complainant in these cases. In an APA hearing, the standard of proof that the Board must meet is *"clear and convincing evidence to a reasonable certainty".* (This is more than just a preponderance of evidence)

As with criminal trials, the Board presents its charges against the subject chiropractor first. The chiropractor or attorney can cross-examine each witness. Then

the chiropractor presents his or her defense, and the Board (DAG) has the opportunity to cross-examine. In most cases, each side will give opening and closing statements, describing what they intend to prove, and summarizing what they have attempted to prove.

3. YOUR TESTIMONY

Before you can give evidence, you must establish your expertise at the hearing. This is done by the DAG asking you questions about your qualifications. This process is known as *voir dire.* You may be asked about the following, or about other matters relating to your qualifications:

1. Your license status and history.
2. Your education, ~~dental~~ (Chiropractic) education and training.
3. Your experience.
4. Any private board certification or board eligibility you have achieved.
5. The extent of your experience as it relates to the types of chiropractic care or treatment at issue in this case.
6. Your professional affiliations, memberships, staff appointments and other associations.
7. Your publications.
8. Any other information that could shed light on your qualifications to be considered an expert.
9. You probably will be asked whether you know or have any kind of business or professional relationship with the subject chiropractor.

During direct and cross examination, you probably will be asked questions about the documents and other "exhibits" you reviewed as you prepared your expert opinion report. You should be prepared to identify any publications or resources you referred to as part of your review. You also may be asked to describe the kinds and extent of experience you have in performing the chiropractic procedures or treatments involved in the case.

It is extremely important that you be able to describe what is the standard of practice in the chiropractic community for the type of procedure involved in the case. The term "standard of practice" or standard of care" is set by the community of licensed chiropractors based upon their training, education and experience. This standard may change over time with new advancements in chiropractic. It will be necessary for you, as an expert witness, to articulate what the current acceptable standard is in chiropractic for various diagnosis and treatment procedures. Focus on what the standard is. Also, use lay terms whenever possible, and explain unavoidable technical terms and acronyms.

Focus on how the treatment in a particular case departed from the standard of practice. This can include omissions as well as commissions. You also may need to

address a charge of incompetence based on use of outmoded procedures. In some instances, you may be faced with a lack or paucity of patient records upon which to assess the quality of the case the patient received. Your testimony may consist of pointing out that based on the patient chart, it is not possible to determine what tests, if any were ordered, what instructions were given the patient, what in-office procedures were done, etc. You could be asked to explain the standard of practice as it relates to documenting such information in the patient record.

Be prepared to discuss the degree to which the treatment departed from the standard of practice. Was the treatment a simple departure or an extreme departure? For more information on this, see the Guidelines For Expert Reviewers in Section II.

Very often, the other side will attempt to discredit you, belittle your qualifications, or use other techniques to raise doubts about your testimony. You should make every effort to remain objective and detached. Try not to become defensive or to lose your professional demeanor. Your role is as a teacher, not as an advocate for the Board.

4. AFTER THE HEARING CONCLUDES

When the hearing is completed, the ALJ will take the case under submission. He or she has 30 days to prepare a proposed decision (PD). The PD is sent to the Board, which then has 100 days to decide whether to accept the PD, reject it and substitute its own decision in the case, or modify the decision and adopt that.

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Section VII

REFERENCE: Chiropractic Guidelines

Current Established Guidelines

The Guidelines for Chiropractic Quality Assurance and Practice Parameters (Mercy Conference) (1993)
www.jbpub.com/catalog/0763729213/

International Chiropractors Association (2000, currently being revised, 2008)
www.chiropractic.org/index.php?p=guidelines/main

Council on Chiropractic Practice (CCP) (2003)
www.ccp-guidelines.org/guideline-2003.pdf

Oregon
www.oregon.gov/OBCE/prac_guidelines.shtml

North Carolina
www.ncchiroboard.com/pdfs/Guidelines.pdf

Whiplash Guidelines - adopted by Alaska, Arkansas, Colorado, Kentucky, Minnesota, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Washington and The International Chiropractic Association
nmchiroassoc.com/croft%20guidelines.pdf

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Section VIII

Qualifications & Tasks for Expert Reviewers

DEFINITION
Expert Reviewers serve as consultants to the State Board of Chiropractic Examiners and work co-operatively with the BCE Executive Director and BCE staff reviewing, investigating, and determining issues related to the professional competence of California chiropractors; to provide their chiropractic expertise in the review of chiropractic investigations and evaluations of the professional conduct of licensees in relation to the requirements of the law. This may require and involve review of treatment and examination chart notes, treatment and other related records or other materials, whenever reasonable cause exists to initiate a action against a licensed chiropractor. They may also be asked to testify on behalf the Board of Chiropractic Examiners.

TYPICAL TASKS
(1) To review cases that will be primarily focused on Standard of Care issues as in the appropriateness of care, duration and/or frequency of care, appropriateness of referrals, record keeping, advertising, scope of practice issues and any other issues or concerns related to the evaluation and/or treatment of patient's provided by persons licensed as doctor's of chiropractic by the State of California or other recommendations up to and including referral to the Executive Director for review and potentially the filing of a complaint against that licensee.

MINIMUM QUALIFICATIONS
Possession of a valid license for the practice of chiropractic in California as determined by the California Board of Chiropractic Examiners.
And Experience: Five years of clinical experience treating patients, within the last seven years of being a licensee in California in good standing with the BCE.

KNOWLEDGE AND ABILITIES
Knowledge of: Chiropractic Act and regulations, including recent developments and practices; record-keeping practices; related provisions of the Business and Professions Code concerning the practice of chiropractic and the laws, rules and regulations of the practice of Chiropractic as published by the Board of Chiropractic Examiners. This includes relevant laws and regulations related to the practice of chiropractic and different chiropractic treatment procedures.

Ability to: Review files and other reports or records; exercise sound chiropractic clinical judgment in reviewing conflicting chiropractic reports and preparing opinions; dictate correspondence; prepare reports; communicate effectively.

SPECIAL PERSONAL CHARACTERISTICS
Demonstrated ability to work cooperatively with others; emotional stability; integrity; initiative; good judgment; dependability; tact; courtesy; high professional ethics; willingness to travel

throughout the State.

Conflict of Interest

(1) No Expert Reviewer may have been employed with any insurance company or chiropractic review service within two years prior to their appointment as an Expert Reviewer.
(2) No Expert Reviewer may participate, consult with or render a decision regarding any case which involves a past or present patient or treatment provided by the Expert Reviewer.
(3) No Expert Reviewer may participate, consult with or render a decision regarding any case or complaint where the Expert Reviewers member has a direct or indirect business or personal relationship/involvement with the Expert Reviewer.
(4) An Expert Reviewer shall not receive compensation as an agent or employee of or a contractor for an insurance company. This does not prevent an Expert Reviewer who is a licensed chiropractor from receiving compensation from an insurance company for patient care as provided for in a patient's insurance policy.

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Definitions:

☐ **Gross negligence** (*an extreme departure from the standard of practice*):
Chiropractors failing to do basic diagnostic tests, not recognizing or acting on common symptoms, not using accepted effective treatments or diagnostic procedures, using outdated procedures, not referring a patient to a specialist when appropriate.

☐ **Negligence** (*a simple departure from the standard of practice*): negligent acts that are not an extreme departure.
One act of simple negligence usually is not enough to take formal action against a doctor's license. However, patterns of repeated negligent acts may be sufficient grounds in some cases.

☐ **Incompetence** (*a lack of knowledge or ability in discharging professional chiropractic obligations*): a chiropractor who is unable to recognize and act appropriately on symptoms would be considered incompetent.

☐ **Defining the Standard of Care**
The term "standard of care" does not represent guidelines; nor does it represent a "paint by numbers" or "cookbook" methodology.
Similarly, the standard of care does not represent scope-of-care laws. Scope-of-care laws, which vary from state to state, represent the legal dictates defining what therapeutic procedures a chiropractor may or may not utilize and on what bodily regions.

The legal definition of the chiropractic standard of care may vary slightly from state to state, but the essential concept is: "What a (licensed) prudent, competent doctor of chiropractic in the same region would do in the same or similar circumstances." The chiropractic standard of care represents conduct that has been established with scientific, empirical, and/or clinical evidence.

Consensus opinions including such factors as how widely used the form of treatment is, where it is taught, and how appropriate it is for the condition(s) upon which it is utilized are considered. Case law can be applied to help legally define specific aspects of the standard of care.

If the review determines that the actions of the doctor were not below the acceptable standard of chiropractic care, the Board has no authority to proceed, and the complaint will be closed.
If the Board finds that the treatment fell below the standard of care but does not represent gross negligence, the complaint will be closed but will be maintained on file for the Board's future reference.
If a complaint is referred to an investigative office and a violation is confirmed, the case may be submitted to the Office of the Attorney General for a formal charge that may lead to disciplinary action against the doctor's license.

CCA Feedback

CALIFORNIA CHIROPRACTIC ASSOCIATION

January 3, 2008

VIA E-MAIL

Mr. Brian Stiger
Executive Officer
California Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Re: Proposed BCE *Guidelines for Expert Consultants* Manual

Dear Brian:

On behalf of the California Chiropractic Association, I thank you for the opportunity to review and comment on the proposed state Board of Chiropractic Examiners' (BCE) *Guidelines for Expert Consultants* manual. CCA is very pleased that the BCE is acting quickly and aggressively in bolstering its consumer protection resources.

In conducting its initial review of the draft manual, CCA focused on its completeness, fairness to the consumer and licensee in investigating claims and clarity for the expert doctor of chiropractic and enforcement staff. It is in these contexts that our below preliminary comments on the manual are offered. We look forward to expanding on these at the January 10, 2008, hearing of the BCE Enforcement Committee and throughout the manual adoption process.

Comments

- What is the process for identifying and recruiting expert consultants? Are there specific qualifications that must be met and if so, how are those qualifications substantiated for individual doctors of chiropractic? Are their names made public at any time?
- CCA believes that it is in the interest of the consumer or law enforcement agency levying a complaint and the doctor of chiropractic being investigated that the expert consultant be provided with all evidence in the case so he or she can render an opinion knowledgeable in all the known facts.
- The expert consultant should be permitted to consult with other doctors of chiropractic or others relevant experts provided all case specific information is kept confidential by the expert consultant, e.g., name of doctor being investigated, name of complainant, etc.
- Does the expert reviewer get relevant statutory and regulatory code resources at the time of review? If so, the manual should make specific reference to that fact for the sake of clarity.
- CCA is concerned that the way the manual is written, the BCE could engage in "shopping" for an opinion it seeks. See for example page 2 that states the expert reviewer would not be provided "a copy of any preliminary expert consultant reviews...."

For fairness reasons, the manual should make clear that only one expert opinion on the specific matter in question is sought and accepted.

- What is considered "authoritative reference materials" to be used to determine "accepted standards"? (See page 2, last paragraph.)
- Under the "Ten Most Asked Questions," beginning on page 4, again for clarity reasons, CCA suggests adding to the end of the first sentence in response to question 3, "How soon will I be paid?" the following: "Generally speaking, you should receive payment for your services within four to six weeks *upon receipt of your billing for services rendered.*" [Added language in italics.]
- Under the "Ten Most Asked Questions," does the answer to question 4 about the expert reviewer's exposure to civil liability, as well as the section titled "Immunity from Liability" on page 7, contradict BCE regulatory Section 306.2 that states: "If a person, not a regular employee of the board, is hired or is under contract to provide expertise or to perform investigations for the Board of Chiropractic Examiners in the evaluation of the conduct of a licensee or administration of a board examination, and such person is named as a defendant in a civil action directly resulting from opinions rendered, statements made, investigations conducted or testimony given, the board shall provide for representation required to defend the defendant in that civil action. ***The board shall not be liable for any judgment rendered against that person.***"? [Emphasis added.]
- Under the "Ten Most Asked Questions," the answer to question 7 relative to who will see the expert reviewer's report should be expanded to include the possibility the report could become public record if a disciplinary action is filed and ends up at an administrative hearing or in superior court. Again, this recommendation is made in the interest of completeness of the manual and clarity.
- Under the "Ten Most Asked Questions," question 10 and elsewhere in the manual, what is the legal reference that defines "community" as the State of California?
- Under item G of "Instructions" on page 6, it states the expert review shall not discuss the case at hand with third parties. However, this instruction seem to contradict the last sentence in the first paragraph of page 8 that states: "The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report." Further, who is considered an allowable "assistant"?
- "Character of information" referred to under "Confidentiality" on page 7 should be defined for the sake of clarity.
- There should be examples or guidance as to what are considered "ethical violations" referred to in the third paragraph under "Investigations and the Disciplinary Process" on page 8 and elsewhere as otherwise it might be based on only one person's opinion.
- For completeness and clarity reasons, the second full paragraph on page 9 should state specifically who determines whether the actions of the chiropractor constitute "alleged" unprofessional conduct and who prepares the formal accusation.
- On page 13, under the section "Sexual Misconduct," the second paragraph appears potentially confusing. If the expert reviewer is to assume the complainant's account is true, then has it already been determined that the chiropractor engaged in sexual misconduct? CCA suspects there will be complaints about perceived inappropriate touching which may or may not involve sexual misconduct and a judgment therefore

needs to be made, but the reading of this paragraph does not make that clear. In addition, on page 16, paragraph "D. Evaluation and Credibility" appears to contradict the second paragraph under "Sexual Misconduct" on page 13 by asking the reviewer to determine upon whose statement he or she relies.

- On page 15, paragraph numbered 2, identify whose findings the expert reviewer is summarizing for the sake of clarity.
- On page 16, there are a few references to "dentistry" and "dentist" that need to be replaced with the appropriate chiropractic references.
- On page 18 in the subsection "Terms to be Avoided in Reports" under Section V, it states that the term "exacerbation" be avoided but it then goes on to seemingly calls on the reviewer to do the opposite, i.e., "It is appropriate to describe such exasperating conditions." The same potentially contradictory situation appears to exist in the same section under the term "mitigation."
- On page 20, question number 4 under "Your Testimony," the phrase "board eligibility" is unclear, i.e., "...board eligibility you have achieved"?

Brian, thank you in advance for your consideration of our comments and questions. Should you desire further input, please contact me at bhowe@calchiro.org or 916-648-2727, ext. 133.

Cordially,

/signed/

WILLIAM A. HOWE III
Executive Director

cc: LaVonne Powell, BCE Counsel
Dr. Bill Updyke, CCA President
Kristine Shultz, CCA Governmental Affairs Director

PROPOSED REGULATION RE LETTER OF ADMONISHMENT
January 10, 2008

(a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:

(1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(D) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the Executive Officer documenting compliance.

(3) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is

served by certified mail, service shall be effective upon deposit in the United States mail.

(d) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(e) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 390 California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Section 10 of the Act.

DRAFT

PROPOSED REGULATIONS RE CITE AND FINE
January 10, 2008

§390. Issuance of Citations and Fines.

(a) The Executive Officer of the board or his/ or her designee may issue a citation containing an order to pay a fine between $100 and $5,000 and ~~with~~ an order of abatement against a licensee for any violation of the Act or the California Code of Regulations ~~which would be grounds for discipline~~. A citation may be issued without the assessment of a fine.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law ~~and/~~or regulation alleged to have been violated.

(c) The citation shall be served upon the cited person either ~~individual~~ personally or by certified mail.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.1. Criteria to Be Considered.

In the issuance of any citation, the following factors shall be considered:
(a) Nature and severity of the violation.
(b) Length of time that has passed since the date of the violation.
(c) Consequences of the violation, including potential or actual patient harm.
(d) History of previous violations of the same or similar nature.
(e) Evidence that the violation was willful.
(f) Gravity of the violation.
(g) The extent to which the cited person has remediated any knowledge and/or skill deficiencies which could have injured a patient.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

~~**§390.2. Violation Codes and Penalty.**~~

~~(a) The issuance of a citation can be for any of the following violations:~~

~~Title 16 California Code of Regulations Section 302(a)(7)~~
~~Title 16 California Code of Regulations Section 303~~
~~Title 16 California Code of Regulations Section 308~~
~~Title 16 California Code of Regulations Section 310~~
~~Title 16 California Code of Regulations Section 310.2~~
~~Title 16 California Code of Regulations Section 311~~
~~Title 16 California Code of Regulations Section 312~~
~~Title 16 California Code of Regulations Section 312.1~~
~~Title 16 California Code of Regulations Section 313~~
~~Title 16 California Code of Regulations Section 317(d)~~
~~Title 16 California Code of Regulations Section 317(f)~~
~~Title 16 California Code of Regulations Section 317(p)~~
~~Title 16 California Code of Regulations Section 317(r)~~
~~Title 16 California Code of Regulations Section 317(u)~~
~~Title 16 California Code of Regulations Section 317.1~~
~~Title 16 California Code of Regulations Section 318~~
~~Title 16 California Code of Regulations Section 319~~
~~Title 16 California Code of Regulations Section 355(b)~~
~~Title 16 California Code of Regulations Section 367.5(c)~~
~~Title 16 California Code of Regulations Section 367.7~~
~~Chiropractic Initiative Act Section 15~~
~~Business and Professions Code Section 725~~
~~Business and Professions Code Section 1054~~
~~Business and Professions Code Section 1055~~
~~Business and Professions Code Section 17500~~
~~Health and Safety Code Section 123110~~

~~(b) In his/her discretion, the Executive Officer or designee may issue an order of abatement for the first violation of any provision set forth in subsection (a).~~

~~(c) If a licensee has previously been issued two citations for violation of any of the code sections in subsection (a), the third violation will result in filing an accusation.~~

~~NOTE: Authority cited: Sections 1000.4(b) and 1000.10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000.4(b) and 1000.10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.~~
~~HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39). 2. Amendment of subsection (a) filed 10-16-2003; operative 11-15-2003 (Register 2003, No. 42).~~

§390.3. Citations for Unlicensed Practice.

The Executive Officer or his/her designee may issue a citation against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the board and who is not otherwise exempt from licensure. Each citation may contain an order of abatement fixing a reasonable period of time for an abatement and an order to pay a fine not to exceed $5,000 for each violation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000 operative 10-25-2000 (Register 2000, No. 39).

§390.4. Contested Citations.

(a) The citation shall inform the licensee that if he/she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 calendar days of the date of issuance of the citation. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing provided for in subdivision (a) of this section, the cited person may, within 14 calendar days after service of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the person cited and/or his/her legal counsel or authorized representative.

(d) The Executive Officer or his/her designee may affirm, modify or dismiss the citation, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued.

(e) If the citation is dismissed, the request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, in his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.5. Compliance with Citation/Order of Abatement.

(a) Orders of abatement may be extended for good cause. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/her control after the exercise of reasonable diligence, the person cited may request an extension of time from the Executive Officer or his/her designee in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When a citation or order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation within the time allowed <u>or pay the fine that is imposed</u> shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement <u>or pay a fine that is imposed</u> is unprofessional conduct and may result in disciplinary action being taken by the board.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.
HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

§390.6. Notification to Other Boards and Agencies.

The issuance and disposition of a citation shall be reported to other chiropractic boards and other regulatory agencies. <u>A licensee's compliance with an order of abatement or payment of a fine based on the finding of a violation may only be disclosed to the public as satisfactory resolution of the matter.</u>

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p.

1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY:

1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).

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