STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

**Board of Chiropractic Examiners**
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833-2931
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CA Relay Service TT/TDD (800) 735-2929
Consumer Complaint Hotline (866) 543-1311
http://www.chiro.ca.gov

# NOTICE OF PUBLIC MEETING

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

**March 27, 2008**
Upon Conclusion of the Legislative Committee Meeting
**Hearing Room**
**400 R Street, Room 101**
**Sacramento, CA 95814**

## AGENDA

**CALL TO ORDER**

**Approval of Minutes**
January 10, 2008

**Discussion and Possible Action:**

- Expert Witness Manual
- Expert Witness Qualifications

**Discussion and Possible Action:**

- Special Investigator Proposal

**Discussion:**

- Scope of Radiography in the Chiropractic Practice

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
## January 10, 2008
**400 R Street, Room 101**
**Sacramento, CA 95814**

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

**Staff Present**
Brian Stiger, Executive Officer
LaVonne Powell, Senior Legal Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

**Call to Order**

Dr. Lubkin called the meeting to order at 9:03 a.m.

**Roll Call**

Dr. Columbu called the roll. All committee members were present.

**Draft Regulations re Letter of Admonishment**

Dr. Lubkin explained the purpose and need for the Letter of Admonishment and suggested minor edits to the proposed language.

Mr. Stiger stated this is an important enforcement tool for Board Staff and requested that the committee adopt the proposed language.

Bill Howe, CCA, congratulated the Board for taking steps to improve enforcement. He requested that CCA have the opportunity to provide written comments and had several clarifying questions.

Mr. Stiger stated that this proposal would move through the regulatory process, which provides an opportunity for written comments.

Dr. Charles Davis, D.C., ICAC, spoke in support of this proposal.

**DR. COLUMBU MOVED TO ADOPT THE PROPOSED REGULATORY LANGUAGE FOR THE LETTER OF ADMONISHMENT. DR. LUBKIN SECONDED THE MOTION: VOTE 2-0. MOTION CARRIED.**

**Draft Regulations re Cite and Fine**

Dr. Lubkin explained the need and purpose of this proposal. He suggested minor edits to the proposed language.

Dr. Charles Davis, D.C., ICAC, asked what happens when a licensee repeatedly violates the same laws. Mr. Stiger stated the Board uses the philosophy of progressive discipline and multiple citations may lead to the filing of an accusation.

Bill Howe, CCA, wanted to ensure that unlicensed individuals would receive citations.

**DR. COLUMBU MOVED TO ADOPT THE PROPOSED REGULATORY LANGUAGE FOR CITE AND FINE AUTHORITY. DR. LUBKIN SECONDED THE MOTION: VOTE 2-0. MOTION CARRIED.**

**Approval of Minutes**

**DR. COLUMBU MOVED TO ADOPT THE MINUTES AS AMENDED OF THE MAY 24, 2007 MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 2-0. MOTION CARRIED.**

**DR. COLUMBU MOVED TO ADOPT THE MINUTES OF JUNE 21, 2007 MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 2-0. MOTION CARRIED.**

**DR. COLUMBU MOVED TO ADOPT THE MINUTES AS AMENDED OF NOVEMBER 27, 2007. DR. LUBKIN SECONDED THE MOTION. VOTE 2-0. MOTION CARRIED.**

**Draft Expert Consultant Guidelines**

Ms. Powell suggested that those individuals that made comments on the guidelines should meet to work through the guidelines in detail. Ms. Powell stated this would not be a committee meeting or a Board meeting. It would be limited to those individuals that expressed comments on the first draft.

Roger Calton, Attorney, concurred with Ms. Powell's suggestion and provided copies of his suggestions to the committee members and Board staff. Mr. Calton suggested that a conflict of interest be included in the guidelines or in a separate selection document.

Bill Howe, CCA, expressed support for this project and he provided suggestions for selecting expert reviewers. He wanted to make sure that staff could not withhold relevant information to the expert witness. He expressed concern about conflict of interest issues.

Dr. Charles Davis, ICAC, suggested that Mr. Stiger establish guidelines for staff to use in reviewing complaints. Dr. Davis expressed conflict of interest issues pertaining to the expert witnesses.

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Mr. Stiger expressed his concern to the committee of a perceived move to impose restraints and guidelines on current staff. He stated that these constraints impair the ability of the staff to conduct its business in an efficient and effective manner.

Dr. Lubkin adjourned the meeting at 9:45 a.m.

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# STATE OF CALIFORNIA

**Arnold Schwarzenegger, Governor**

# BOARD OF CHIROPRATIC EXAMINERS

## Expert Witness Guidelines

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Issued By:

**Board of Chiropractic Examiners**
**2525 Natomas Park Drive, Suite 260**
**Sacramento, CA 95833-2931**
**www.chiro.ca.gov**

**Revised March 2008**

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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 Board's mission is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care. The Board is responsible for investigations of and discipline of chiropractors for unprofessional conduct. Your role as an expert reviewer is extremely important, first in identifying whether a deviation from the standard of care 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 reviewer, 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 report prepared by another Board expert reviewer 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 care, 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

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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 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.


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# Section II

## DEFINITIONS

There are a few terms used throughout this guide that have specific legal meaning. These are as follows:

**"Negligence"** is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractors would possess and use in similar circumstances.[1]

If a chiropractor is a specialist, then "negligence" is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractic specialists (in the same specialty) would possess and use in similar circumstances.[2]

Under California law, a "single act of negligence" does not constitute grounds for discipline of a professional license, however, "repeated acts of negligence" does constitute grounds for discipline of a professional license.

**"Standard of Care" and "Standard of Practice"** is a term used in evaluating the negligence of a chiropractor. The term "standard of care" and "standard of practice" are used interchangeably, however, for purpose of this document and your report, please use the term "standard of care." The standard of care requires that the chiropractor exercise that degree of skill, knowledge, and care ordinarily possessed by members of his or her profession under similar circumstances.[3]

**"Gross Negligence"** an extreme departure from the standard of care.[4]

**"Incompetence"** means an absence of qualification, ability or fitness to perform a prescribed duty or function. Incompetence is distinguishable from negligence in that one may be competent or capable of performing a given duty but was negligent in performing that duty. Thus, a single act of negligence may be attributable to remissness in discharging known duties, rather than incompetence respecting the proper performance.[5]

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1 California Civil Jury Instructions CACI 501, 2003.
2 California Civil Jury Instructions CACI 502, 2003.
3 Barris v. County of Los Angeles, 20 Cal.4th 101, 83 Cal.Rptr.2d 145 (1999).
4 Kearl. V. Board of Medical Quality Assurance, 189 Cal.App3d 1040 (1986); City of Santa Barbara v. Superior Court, 41 Cal.4th 747, 62 Cal.Rptr3d 527 (2007).
5 Kearl.

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**"Scope of Practice"** refers to the range of services that can be provided by a chiropractor under the Chiropractic Initiative Act. The scope of practice is found in Sections 7 and 16 of the Initiative Act, Section 302 and 306 of the regulations, and in several California court decisions.

**"Administrative Procedure Act"** is the California law that governs all Board disciplinary cases against a chiropractor.

**"Administrative Law Judge" or "ALJ"** presides at all administrative hearings before the Board.

**"Deputy Attorney General" or "DAG"** is the attorney that represents the Board's Executive Officer who is the "complainant" in all disciplinary cases. DAGs are employed by the California Attorney Generals Office.

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# Section III
# 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 before an ALJ. However, the majority of cases are settled before a hearing is held.

### 2. How much will I be paid?

The expert is paid $____ 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 following receipt of your billing for services rendered. 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 that is required by the IRS and return it with the statement.

### 4. Can I be sued for expressing my opinion and if I am sued who will represent me?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert reviewers. If you are sued, either the Attorney Generals Office our outside counsel in the event of the conflict with the Attorney Generals Office will represent you.

### 5. Should I do research?

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

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**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. In addition, if the case goes to a hearing, your report may be introduced into evidence.

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

Yes, please see Section V.

**9. What is the difference between negligence and gross negligence?**

See Definitions Section for full explanation.

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

For our purposes "community," as used when determining whether there has been a departure from the standard of care, is referring to the standard of care in terms of chiropractors in the same or similar circumstances.

## 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 any subject, witness or patient.

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.

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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 outside third parties. You may use an office assistant or transcriptionist to assist you in the preparation of your report.

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 a current curriculum vitae with your report. And, 14 days before the hearing, if is scheduled, you need to send an updated curriculum vitae to the DAG assigned to the case.

N. When your review is completed, please contact the Board and arrange to deliver the report along with your statement for services, payee data record form, and current curriculum vitae. It is necessary for you to retain the records you reviewed until the case is final in the event you need to review them for either a meeting with the DAG or in preparation for a hearing.

O. If you have questions or concerns, contact the Board's enforcement manager or Executive Officer.

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## IMMUNITY FROM LIABILITY and LEGAL REPRESENTATION

**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 reviewers 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. Failure to do so may result in a default decision being take against you.

Section 306.2 of the regulations provides that the Board through the Attorney Generals Office shall provide legal representation under specified conditions. This section reads:

"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. The Attorney General shall be utilized in those civil actions."

## 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 reviewer 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 Chiropractic Board of Examiners is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of

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violations of the Chiropractic Initiative Act of California, the California Code of Regulations, and other applicable laws and 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's members are not involved in the investigatory process. The Board, through the executive and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing repeated negligence, gross 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, clearly excessive treatment or use of diagnostic procedures, altering or creating false records, sexual misconduct, criminal acts and other conduct that endangers the health, welfare, or safety of the public.

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 the Board to determine if an evaluation by an expert is necessary. If yes, Board staff sends the case to an expert reviewer who is qualified to render an opinion as to whether a departure from the standard of care occurred.

After the expert reviewer submits his or her report, the Board makes a determination if the matter should be 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 contest the charges.

In a majority of cases, the case is settled between the parties. However, if the case is not settled, a hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. The hearing may last from one day to several weeks, 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 reviewer to ensure the utmost care is taken when reviewing cases. The trier of fact (judge) hears evidence

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against and for the subject chiropractor and renders a proposed written decision, that 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 reviewer who then makes a recommendation as to whether or not a full expert evaluation is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert reviewer 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 case file that includes all 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 information provided in the file. 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 the facts as presented constitute unprofessional conduct. 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 a licensee or punish a licensee. The Board only wants you to provide an objective evaluation so that it 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

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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 (DAG) assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the DAG 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 Board's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the DAG 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 opinions expressed by respondent's expert at hearing because oftentimes respondents' experts fail to prepare a written opinion.

## REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

**The following are the primary laws that are used when making an expert reviewer is evaluating a case. However, you should be familiar as an expert in the field with all applicable laws relating to the practice of chiropractic.**

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

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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,

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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 gross negligence, repeated acts of negligence, or 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.

Unlike gross negligence, repeated acts of negligence and incompetence, one "simple" departure from the standard of care is not considered unprofessional conduct. Your evaluation should state whether in your opinion it is one act of simple negligence, repeated acts of negligence, gross negligence or incompetence. You may have situations

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where the subject's conduct constituted both negligence and incompetence. You should explain this in you report.

The determinations are often difficult to make, but that is why you are called upon as an expert. With your knowledge of the standards of care 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.**

Section 316 of the regulations prohibits certain sexual acts both on the premises of a chiropractic business and with patients and other individuals. This section reads:

"(a) Every licensee is responsible for the conduct of employees or other persons subject to his supervision in his place of practice, and shall insure that all such conduct in his place of practice conforms to the law and to the regulations herein.

(b) Where a chiropractic license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.

(c) The commission of any act of sexual abuse, sexual misconduct, or sexual relations by a licensee with a patient, client, customer or employee is unprofessional conduct and cause for disciplinary action. This conduct is substantially related to the qualifications, functions, or duties of a chiropractic license.

This section shall not apply to sexual contact between a licensed chiropractor and his or her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment."

In this area you are asked to assess, based upon the standard of care, whether a chiropractor's sexual relationship or sexual conduct with a patient constitutes unprofessional conduct based on California law and the facts presented in each case.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged statements or actions 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 doctor's conduct is true.

While some actions clearly constitute sexual misconduct, there are cases in which you will need to consider whether the conduct was appropriate because the doctor used an acceptable diagnostic or treatment technique. In these cases, your evaluation should

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address whether the diagnostic or treatment technique is appropriate and whether the doctor used the diagnostic or treatment technique in an appropriate manner with the patient.

### 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. Excessive treatment may also constitute gross negligence or repeated acts of negligence. 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.

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# Section IV

## THE OPINION ITSELF

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

**A. Contents.**

Your expert report 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 care for the treatment of such a patient. Remember to state the standard of care 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 departures from the standard of care and explain why. Each finding of a departure from the standard of care should be specifically described.

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

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ability, excessive treatment, excessive use of diagnostic or treatment facilities, sexual misconduct, and so on, or any combination. You must also state the basis for each opinion.

**B. Violation vs. Mitigation.**

In writing your report, 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 care 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 care of chiropractic, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of care may be relevant to a determination of the degree of departure, actual injury is not required to establish unprofessional conduct. Also, just because there is no injury does not mean there was no departure from the standard of care.

**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 should not include an assessment as to the subject and witnesses credibility, but if render an opinion as to whether certain conduct constituted unprofessional conduct you should state in your report whose statement you relied to reach that conclusion.

**E. Assess the Standard of Care as of the Time of the Violation.**

The standard of care of chiropractic is constantly evolving, and so it is

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particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of care **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 reviewer. 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 judgments 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. However, you may review deposition testimony of patients or non-expert witnesses.

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# Section V

## COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Reviewer'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 reviewer. 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 $____ 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 $_____ per hour.

**C. Testimony at Hearing.**

You will be compensated at the rate of $_____ for a half day of testimony and $_____ for a full day of testimony.

**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.

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# Section VI

## SAMPLE EXPERT OPINION

The attached sample expert reviewer reports 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

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

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

**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 judgments affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

**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 chiropractor deviated from the standard.

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# Section VII

# 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 when an accusation is filed against a chiropractor is *"clear and convincing evidence to a reasonable certainty"*. The standard that is used when a statement of issues (filed against an applicant) or citation is appealed is "preponderance of the evidence."

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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. Each side has the opportunity to give an opening statement describing what they intend to prove and a closing statement 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 care 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.

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Focus on how the treatment in a particular case departed from the standard of care. 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 inadequacy 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 care 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 care. 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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**State of California**

# MEMORANDUM

To: ENFORCEMENT COMMITTEE

Date: March 20, 2008

From: Brian J. Stiger
Executive Officer
Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833

Telephone: (916) 263-5359

Subject: **Concept to Establish Special Investigator Positions**

This requests your consideration and approval of this concept to establish Special Investigator (Non-Peace Officer) positions for the Board of Chiropractic Examiners (BCE). This concept will require a permanent budget augmentation.

The BCE needs to take immediate and decisive measures to strengthen its enforcement program by improving complaint investigations, initiating compliance inspections, and actively monitoring chiropractors serving probation. Our goal is to complete complaint investigations within six months after the complaint is received. Achievement of this goal is dependent upon the investigative phase of the enforcement process.

The BCE is the only known healing arts board that out-sources its regulatory investigations to independent contractors. The Board has employed contract investigators for approximately eight years. The inherent limitations of contracting for investigative services, does not provide BCE management the necessary controls to properly oversee the investigators to ensure the quality, quantity, and timeliness of investigations. The BCE does not provide daily oversight to the contract investigators. Investigative methods, skills, and abilities vary significantly between each contractor. These inconsistencies lead to rework and unacceptable delays in complaint investigations. The BCE does not control the formal training or professional development the contract investigators receive, which creates a barrier for improving performance.

The BCE needs to ensure its field investigators are competent and meet minimal qualifications to fulfill the essential duties of an investigator. This concept employs civil servants that have met minimum qualifications as determined by the State Personnel Board and passed a civil service exam to demonstrate knowledge skills and abilities.

This concept envisions investigators housed in Northern and Southern California and a supervisor based at headquarters in Sacramento. The investigators will work out of fully equipped home offices and be assigned state vehicles. The investigators will be required to spend approximately 70% of their time in the field. The supervisor will be responsible for ensuring field staff are meeting performance expectations and complying with all state policies and regulations pertaining to state equipment.

I have provided the classification specifications for your review and consideration. If you have any questions, please contact me.

SPEC: SPECIALIST INVESTIGATOR I SERIES
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

SPECIAL INVESTIGATOR I
Series Specification
(Established November 30, 2007)

SCOPE

This is a series specification that describes two classes that perform investigative work at the learner, worker, and journeyperson level.

| Schem Code | Class Code | Class |
|---|---|---|
| VJ11 | 8553 | Special Investigator I |
| VJ13 | 8563 | Special Investigator I (Non-Peace Officer) |

DEFINITION

BOTH CLASSES:

Under direction as a learner, worker, and journeyperson to make independe investigations to detect or verify suspected violations of laws, rules, or regulations; to locate and interview witnesses and persons suspected of violations; to obtain and present facts and evidence to support administrative action or prosecution; and to do other related work.

TYPICAL TASKS

BOTH CLASSES:

Makes/assists in making investigations to detect or verify suspected viol of provisions of laws, rules, or regulations; locates and interviews accused persons and witnesses and analyzes and evaluates their testimony; examines a variety of records to secure or verify information concerning suspected violations and violators; contacts and interviews individuals and representatives of business or governmental organizations; gathers, assembles, preserves, and reports facts, statements or affidavits, and other evidence for use in legal action; makes arrests; investigates complaints; investigates the character of applicants for specialized licenses or permits; investigates suspected misuse of license or permit privileges; arranges for the appearance of witnesses to present testimony in legal or administrative actions; swears to complaints; serves legal papers; appears as a witness at legal or administrative proceedings; interprets and explains the provisions of laws, rules, or regulations; cooperates with and secures the cooperation of Federal, State, and local law enforcement agencies; and prepares correspondence and reports of investigations and recommends action to be taken.

SPECIAL INVESTIGATOR I

Incumbents in this class perform peace officer duties and responsibilities in the accomplishment of their assignments in accordance with the California Penal Code, Section 830 et. seq., and Government Code, Sections 20391 and 20393.

MINIMUM QUALIFICATIONS

BOTH CLASSES:

Either I

Equivalent to graduation from college with:

1. A major in criminal justice, law enforcement, or criminology.
   or

2. A minor (21 semester units or 31.5 quarter units) in criminal justice, law enforcement, or criminology with evidence that the following courses have been completed: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, philosophy of law, and an internship.

(Students in their senior year in college will be admitted to the examination, but they must produce evidence of graduation or its equivalent before they can be considered eligible for appointment.)

Or II

Equivalent to completion of two years of college with a major in police science, law enforcement, or criminology and two years' experience as a police officer/deputy sheriff performing preliminary investigative work as part of the regular enforcement activity.

Or III

One year of experience in the California state service in an investigation assignment in the classes of Management Services Technician, Range B, or Occupational Technician, Range B. Applicants who are being considered for Special Investigator I positions assigned "Peace Officer" status (as determined by California state law) must possess the educational equivalent to completion of the twelfth grade. (Applicants who have completed six months of service in Range B of the classes of Management Services Technician or Occupational Technician will be admitted to the examination, but they must satisfactorily complete one year of experience in the class before they can be considered eligible for appointment.)

Or IV

One year of experience in the California state service performing duties comparable to those of an Investigator Assistant or an Investigator Assistant (Non-Peace Officer). (Applicants who have completed six months of service in the class of Investigator Assistant or an Investigator Assistant (Non-Peace Officer) will be admitted to the examination, but they must satisfactorily complete one year of experience in the class before they can be considered eligible for appointment.)

Or V

Two years of experience in the California state service as a police officer performing investigation work as part of the regular enforcement activity.

Or VI

Experience: One year of experience as a police detective or as an investigator performing comparable investigative work in a public or private agency or in the armed services. and

Education: Equivalent to completion of the twelfth grade. (Additional qualifying experience may be substituted for the required education on a year-for-year basis.) Applicants who are being considered for Special Investigator I positions assigned "Peace Officer" status (as defined by California state law) must possess the educational equivalent to completion of the twelfth grade.

## KNOWLEDGE AND ABILITIES

BOTH CLASSES:

Knowledge of: Investigation techniques and procedures; rules of evidence and court procedure; and laws of arrest, search and seizure, legal rights of citizens, and service of legal process.

Ability to: Interpret and apply laws and regulations to specific situations; gather and analyze facts; reason logically, draw valid conclusions, and make appropriate recommendations; good reading comprehension; participate effectively in investigations and interviews; communicate effectively; and establish and maintain effective working relationships.

## SPECIAL PERSONAL CHARACTERISTICS

BOTH CLASSES:

Aptitude for investigation work; willingness as a learner to do routine o detailed work in order to learn the practical application of investigative principles; willingness to travel throughout assigned areas and to work long and unusual hours as required; demonstrated capacity for development as evidenced by work history, academic attainment, participation in school or other activities, or by well-defined occupational or vocational interests; tact; neat personal appearance; and ability to qualify for a fiduciary bond.

Minimum age for appointment: 18 years, except where employees are required to investigate cases involving alcoholic beverages.

## PEACE OFFICER STANDARDS

SPECIAL INVESTIGATOR I

Citizenship Requirement: Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must either be a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U. S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

Felony Disqualification: Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for

by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes.

Firearm Conviction Disqualification: Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications.

Firearms Requirement: Persons convicted of a misdemeanor crime of domestic violence as defined in the amended Federal Gun Control Act of 1968 are disqualified from appointment to these classes.

Background Investigation: Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment.

Medical Requirement: Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.

Psychological Requirement: Pursuant to POST Regulations 1002(a)(7) requires psychological screening of applicants for peace officer classifications.

Training Requirements: Under provisions of Penal Code Section 832, successful completion of training is required for peace officer status in this classification.

CLASS HISTORY

| Class | Date Established | Date Revised | Title Changed |
|---|---|---|---|
| Special Investigator I | 10/21/81 | 11/30/07 | -- |
| Special Investigator I (Non-Peace Officer) | 11/30/07 | -- | -- |

SPEC: SUPERVISING SPECIAL INVESTIGATOR I SERIES
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

SUPERVISING SPECIAL INVESTIGATOR I
Series Specification
(Established November 30, 2007)

SCOPE

This is a series specification that describes two classes at the first supervisory level that supervise a staff of Special Investigators performing investigative work.

| Schem Code | Class Code | Class |
|---|---|---|
| VI80 | 8548 | Supervising Special Investigator I |
| VI81 | 8549 | Supervising Special Investigator I (Non-Peace Officer) |

DEFINITION

BOTH CLASSES:

Under direction, either (1) in an assigned area, to direct a staff of Spe Investigators I or Special Investigators I (Non-Peace Officer) in the performance of field investigations to detect or verify suspected violations of laws, rules, or regulations; or (2) in a headquarters office, to assist a superior in planning and directing a major investigation program, and to act for him/her in his/her absence; to make difficult investigations; and to do other related work.

DISTINGUISHING CHARACTERISTICS

BOTH CLASSES:

Employees in this class are typically first-line supervisors in charge of assigned area with a crew of Special Investigators. In addition to direct supervision, they may personally participate in difficult or complex investigations.

TYPICAL TASKS

BOTH CLASSES:

Trains, plans, organizes, and directs the work of a staff of Special Investigators I or Special Investigators I (Non-Peace Officer) in the investigation of suspected violations of provisions of laws, rules, or regulations; makes or directs the more difficult criminal investigations; makes inspections of the physical security of local offices and equipment and recommends any necessary actions; advises departmental personnel in methods of fraud detection; files complaints, prepares cases, and appears in court or in administrative

hearings; works with and secures the cooperation of Federal, State, and local law enforcement agencies; evaluates the performance of staff members, and takes appropriate action; assists a superior in planning and directing a major investigation program and acts for him/her in his/her absence; reviews and evaluates reports; makes or participates in more difficult or confidential field investigations; and prepares reports and correspondence.

SUPERVISING SPECIAL INVESTIGATOR I

Incumbents in this class performs peace officer duties and responsibilities in the accomplishment of their assignments in accordance with the California Penal Code, Section 830 et. seq., and Government Code, Sections 20391 and 20393.

## MINIMUM QUALIFICATIONS

BOTH CLASSES:

Either I

One year of experience performing the duties of a Senior Special Investigator or a Senior Special Investigator (Non-Peace Officer) in the California state service.

Or II

Two years of experience performing the duties of a Special Investigator I, Range B, or a Special Investigator I (Non-Peace Officer), Range B, in the California state service.

Or III

Experience: Three years of experience in investigation work, at least two years of which involved complete responsibility for difficult and unusual cases. and

Education: Equivalent to completion of the twelfth grade. (Additional qualifying experience may be substituted for the required education on a year-for-year basis.)

## KNOWLEDGE, SKILLS, AND ABILITIES

BOTH CLASSES:

Knowledge of: Investigation techniques and procedures, and directing others in the performance of investigatory work; rules of investigatory work; rules of evidence and court procedure; principles of identification, preservation, and presentation of evidence; sources of information used in locating persons; laws of arrest, search and seizure, service of legal process, and the legal rights of citizens; interviewing techniques; duties of Federal, State, and local law enforcement agencies; interpreting and applying to specific cases the provisions of the laws, rules, or regulations enforced or administered; principles and techniques of personnel management and supervision and supervising a staff of investigators; and a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Skill in: Planning, organizing, and directing investigations.

Ability to: Direct others in the performance of investigatory work; interpret and apply to specific cases the provisions of the laws, rules, or regulations enforced or administered; supervise a staff of investigators; gather, analyze, and prepare effective evidence; dictate correspondence and prepare reports; communicate effectively; establish and maintain cooperative relations with Federal, State, and local law enforcement agencies; analyze situations accurately; think and act quickly in emergencies and adopt an effective course of action; and effectively promote equal opportunity in employment and maintain a work environment that is free of discrimination and harassment.

## SPECIAL PERSONAL CHARACTERISTICS

BOTH CLASSES:

Willingness to work irregular hours and overtime in various locations thr the State; tact; keenness of observation; good memory for names, faces, and incidents; and ability to qualify for a fiduciary bond.

## PEACE OFFICER STANDARDS

SUPERVISING SPECIAL INVESTIGATOR I

Citizenship Requirement: Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must either be a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U. S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

Felony Disqualification: Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5,
Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes.

Firearm Conviction Disqualification: Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications.

Firearms Requirement: Persons convicted of a misdemeanor crime of domestic violence as defined in the amended Federal Gun Control Act of 1968 are disqualified from appointment to these classes.

Background Investigation: Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment.

Medical Requirement: Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.

Psychological Requirement: Pursuant to POST Regulations 1002(a)(7)requires psychological screening of applicants for peace officer classifications.

Training Requirements: Under provisions of Penal Code Section 832, successful completion of training is required for peace officer status in this classification.

CLASS HISTORY

| Class | Date Established | Date Revised | Title Changed |
|---|---|---|---|
| Supervising Special Investigator I | 1/18/47 | 11/30/07 | 12/3/54 |
| Supervising Special Investigator I (Non-Peace Officer) | 11/30/07 | -- | -- |

International Chiropractors Association of California

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**Proposal**

**Scope of Radiography in the Chiropractic Practice**

As per Health and Safety Code Section 107111; A licentiate of the healing arts who is certified by an examining board in radiology recognized by the department shall be granted a certificate to supervise the operation of X-ray machines and to operate X-ray machines without restrictions.

The Board of Chiropractic Examiners authorizes properly trained and permitted chiropractors to utilize radiographic diagnostic procedures as follows:

(1) The radiographic diagnostic aspect of Chiropractic practice shall include radiographic procedures of the Skull, Torso, Extremities and Spine.

(2) Any licensed primary care provider who needs any x-ray of any of those regions of the body should be able to make a referral to a D.C.

(3) All radiographs shall be of diagnostic quality.

(4) X-ray is not to be used for therapeutic purposes. (§302)(a)(6)

(5) Fluoroscopy examinations require a proper permit issued by the State Board of Radiologic Technology. To use fluoroscopic X-ray equipment, the operator must obtain additional education and training and pass an additional examination.

(6)Staff employees of a Doctor of Chiropractic may be directed to take x-rays of a patient if they are in possession of a permit issued by the State Board of Radiologic Technology, but this permit is limited only to the taking of x-rays.

(7) Radiographs shall be kept and available for review for a minimum of seven years or until a minor becomes 18 years of age, whichever is longer.