

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES**

March 27, 2008
400 R Street, Room 101
Sacramento, CA 95814

Board Members Present

Frederick Lerner, DC., Chair
Hugh Lubkin, D.C. Vice Chair
Francesco Columbu, D.C. Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Richard Tyler, D. C.

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst
Lavella Matthews, Associate Government Program Analyst
Rebecca Rust, Staff Services Analyst
April Alameda, Staff Services Analyst
Julianne Vernon, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 10:08 a.m.

Roll Call

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

Adjourn to Closed Session

Dr. Lerner adjourned to Closed Session at 10:10 a.m.

Public Meeting Call to Order

Dr. Lerner called the public session to order at 11:05 a.m.

Roll Call

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

Announcement of Closed Session Decisions

Dr. Lerner announced that the Board discussed a disciplinary case and that the Board did not entertain any motions.

Chair's Report

Dr. Lerner discussed his positive meetings with key Legislators and Anne Searcy, Department of Industrial Relations.

Dr. Lerner thanked the California Chiropractic Association (CCA), International Chiropractic Association of California (ICAC), and Southern California of University of Health Sciences for supporting AB 450 (Emmerson) and attending the recent legislative committee hearing.

Dr. Lerner made the following committee assignments and requests:

- Continuing Education: Dr. Tyler, Chair, and Dr. Lubkin. Dr. Lerner requested that the committee consider the proposal to increase education hours; recommend regulations for on-line education; potential reciprocity with the Federation of Chiropractic Licensing Board for nationally based providers; consider options to the current 8 hours didactic and 4 hours technique.
- Enforcement Committee: Dr. Lubkin, Chair and Judge Duvaras. Dr. Lerner requested that the committee continue work on developing procedures and regulations to increase vigilance and early detection. Also, continue to develop the expert witness polices and adopt regulations for cite and fine and letter of admonishment.
- Government Relations: Mr. Conran, Chair and Dr. Lubkin. Dr. Lerner asked the committee to address the concerns of the Sunset Review Report and work with staff on developing timely responses to the Bureau of State Audit's report.
- Regulations/Legislation: Dr. Lerner, Chair and Dr. Columbu. Dr. Lerner requested that the committee work closely with the Governor and Legislature on legislation pertaining to chiropractic.
- Licensing Committee: Judge Duvaras, Chair and Dr. Tyler.
- Public Relations Committee: Dr. Lerner, Chair and Mr. Conran. Dr. Lerner envisions the committee will develop a newsletter, press releases, articles, and consumer education brochures. Dr. Lerner also wants the committee to develop a seal.
- Scope of Practice Committee: Dr. Lubkin, Chair and Dr. Lerner. The committee will continue

working on Manipulation Under Anesthesia regulations, the petition to change the scope of practice issues, x-ray issue, the x-ray's, develop a mechanism to address scope of practice opinions and interpretations.

- Strategic Planning Committee: Dr. Tyler, Chair, and Dr. Columbu. Dr. Lerner expressed the importance of the committee in developing a strategic plan.

BCE Staff Recognition

Dr. Lerner publicly recognized all BCE staff members for their work over the past several months with certificates of appreciation. The following staff members were recognized: Julianne Vernon, Genie Mitsuahara, Beckie Rust, April Alameda, Marlene Valencia, and Lavella Matthews.

Approval of Minutes

January 10, 2008, public session.

JUDGE DUVARAS MOVED TO APPROVE THE JANUARY 10, 2008 MINUTES. DR. TYLER SECONDED THE MOTION. VOTE 6-0. MOTION CARRIED.

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

Ms. Powell distributed the 2008 Bagely-Keene Open Meetings Act manual and she summarized the changes. Ms. Powell recommended that board members review the manual before each board meeting and contact her with any questions.

Ms. Powell explained the definition of serial meetings and how to avoid them. Ms. Powell informed the board members that each agenda will include all pending regulations to ensure the board with public participation can address an unexpected issue.

Ms. Powell explained that policy issues and general issues cannot be discussed in closed session. Closed session discussions must be limited to the closed session agenda.

Executive Officer's Report

Mr. Stiger discussed the status of the budget and the need to continue saving funds until the budget is restored. Mr. Conran asked if Mr. Stiger had a plan on hiring staff. Mr. Stiger stated he will begin recruiting for enforcement positions first and then move to licensing and administrative support.

Ms. Valencia presented licensing statistics to the Board and explained the licensing report.

Ms. Matthews presented enforcement statistics and explained both charts to the Board. Judge Duvaras asked how successful is the Board in recovering cost recovery. Mr. Stiger stated the Board is moderately successful and looking for ways to improve. Dr. Lubkin asked about the increase in section 312 violations. Mr. Stiger stated this speaks to licensees who are delinquent in renewing their licenses on time.

NBCE Delegate Selection – Information only

Dr. Lerner selected Dr. Lubkin as the delegate and Dr. Lerner as the alternate.

Citation and Fine language

Mr. Stiger stated that on January 10, 2008, the Enforcement Committee voted to recommend that the full Board approve the proposed regulatory language for cite and fine.

Mr. Conran expressed concerns that citations not be used unfairly to punish licensees and suggests that the Enforcement Committee review the program in six months to determine its value. Dr. Lubkin as the Enforcement Committee Chair agreed to this review

Mr. Bill Howe, CCA, spoke in support.

MR. CONRAN MOVED TO ADOPT THE CITE AND FINE LANGUAGE. DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: Mr. Conran asked how the fines will be determined. Ms. Powell answered that the fine limits are held in statute.

Mr. Conran asked if the Enforcement Committee will be reviewing the program to include guidance to the Executive Officer to determine the fine amounts. Dr. Lubkin stated the purpose of the regulation is to provide the Executive Officer with enforcement tool to use at his discretion to enforce the law.

Dr. Charles Davis, ICAC, spoke in support of the regulation and revisiting the program in six months to assess the effectiveness.

Bill Howe, CCA, spoke in support of the proposal.

VOTE: 6-0. MOTION CARRIED.

DR. LUBKIN MOVED TO DIRECT STAFF TO RESEARCH BUSINESS AND PROFESSIONS CODE 125.9 AND UNLESS THE STATUTE PROHIBITS THE BOARD FROM RENEWING A LICENSE IF THE FINE IS STILL OWING – IF THAT IS NOT IN 125.9, THAT LANGUAGE WILL BE PLACED IN THESE PROPOSED REGULATIONS BEFORE BEING NOTICED TO THE PUBLIC. MR. CONRAN SECONDED.

DISCUSSION: None

VOTE 6-0.

MOTION CARRIED.

Letter of Admonishment

MR. CONRAN MOVED TO APPROVE THE LANGUAGE.

DR. TYLER SECONDED THE MOTION.

DISCUSSION: Dr. Davis asked how citations and the letter of admonishment would be

disclosed. Ms. Powell stated citations and the letter of admonishment are not considered discipline of the license but would be disclosed to the public on a public records request.

VOTE 6-0. MOTION CARRIED.

Bureau of State Audits Report

Dr. Lerner thanked the BSA on the completion of the audit and stated the Board began working and correcting the deficiencies before the audit was released. Dr. Lerner stated this is a new day for the BCE and we will use the audit's findings as a road map to correct the past problems.

COMMITTEE REPORTS

Legislative Committee:

Dr. Lubkin announced that the committee voted to recommend a support position on AB 450 and AB 1861. The committee voted to recommend a watch position on AB 1402 pending the outcome of anticipated amendments.

JUDGE DUVARAS MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATIONS. DR. TYLER SECONDED THE MOTION.

DISCUSSION: None.

VOTE 6-0. MOTION CARRIED.

Enforcement Committee:

Dr. Lubkin announced that the committee reviewed the revised Expert Witness guidelines developed by the working group.

Dr. Lubkin stated that the committee referred the issue of chiropractic use of radiology to staff and legal counsel for review and research.

Dr. Lubkin announced that the committee voted to recommend approval of establishing permanent special investigators who are civil servants.

DR. LUBKIN MOVED TO ADOPT THE COMMITTEE'S RECOMMENDATION TO ESTABLISH SPECIAL INVESTIGATORS AND AUTHORIZE THE EXECUTIVE OFFICER TO MOVE FORWARD.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Mr. Conran emphasized the one purpose for moving forward with this proposal transition from private investigators to civil servants.

Judge Duvaras asked if this classification required a civil service employee. Mr. Stiger answered in the affirmative.

Dr. Davis, ICAC, asked how long it would take to remove permanent employees. Ms. Powell explained the progressive discipline process including the probationary process.

Bill Howe, CCA, spoke in support of the proposal.

VOTE 6-0.

MOTION CARRIED.

Manipulation Under Anesthesia (MUA)

Dr. Lerner announced that the committee voted to recommend adoption of the proposed regulatory language for MUA.

DR. LUBKIN MOVED TO ADOPT THE RECOMMENDATION OF THE COMMITTEE.

DR. COLUMBU SECONDED THE MOTION.

DISCUSSION: Judge Duvaras recommended that the patient complete and submit an informed consent prior to the procedure taking place. Ms. Powell agreed that it is important to distinguish the responsibilities of the chiropractor from the physician and surgeon.

DR. LUBKIN MOVED TO AMEND HIS ORIGINAL MOTION TO ADOPT THE LANGUAGE WITH THE ADDITION OF A REQUIREMENT OF THE CHIROPRACTIC DOCTOR TO RECEIVE A SIGNED WRITTEN INFORMED CONSENT FROM THE PATIENT OUTLINING THE RISK FACTORS OF THE PROCEDURE.

DISCUSSION: Judge Duvaras asked why the procedure requires two chiropractors. Dr. Lerner explained that the procedure requires two chiropractors to ensure safety. The second chiropractor assists with moving the patient and some manipulation procedures require both chiropractors.

Dr. Davis, ITC, reiterated that his suggested language be included in the proposed regulatory language.

Kristine Schultz, California Chiropractic Association, recommended a technical correction to use the term doctor of chiropractic for all chiropractic regulations.

Kathleen Creason, on behalf of the Osteopathic Physicians & Surgeons of California, opposes the proposed MUA regulations.

Dr. Tyler objected and disagreed with Ms. Creason's comments.

Mr. Conran voiced his concern for the brevity of the proposed language. Mr. Conran would have preferred more details since he is not a chiropractor.

DR. LUBKIN WITHDREW HIS AMENDED MOTION.

DR. LUBKIN MOVED THAT THE BOARD MOVE FORWARD WITH THE PROPOSED REGULATOR LANGUAGE FOR MUA IN THE BOARD PACKET AND INCLUDE THE LANGUAGE PROVIDED BY DR. CHARLES DAVIS ON THE TYPE OF FACILITY AND LEGAL COUNSEL WILL INSERT THE PROPER REFERENCES OF THE HEALTH AND SAFETY CODE AND A PROVISION REQUIRING A WRITTEN CONSENT FROM THE PATIENT OUTLINING THE RISKS OF THE PROCEDURE PRIOR TO THE PROCEDURE BEING PERFORMED.

DR. LERNER SECONDED THE MOTION.

DISCUSSION: None

VOTE 5-0-1

MOTION CARRIED

Administrative Committee

Mr. Conran announced that the committee adopted the following recommendations:

- The Executive Officer pursue a multi-year contract with the Department of Consumer Affairs for administrative, legal, and personnel and other support services.
- Board Members receive state-issued e-mail addresses to conduct Board business.
- Revise the Board Member Administrative Manual to reflect the new officers, the standing committees, update citation of B&P Code section 453.

Mr. Conran announced that the Executive Officer terminated the contracts for two investigators after learning they were not licensed by the State of California.

MR. CONRAN MOVED THAT THE BOARD ACCEPT THE ADMINISTRATIVE COMMITTEE RECOMMENDATIONS.

DR. LUBKIN SECONDED THE MOTION.

DISCUSSION: None

VOTE 6-0

MOTION CARRIED.

Announcements

Next Board meeting is scheduled for May 22, 2008 in Sacramento.

Public Comment

Dr. Clum, Life Chiropractic College West, recommended that the enforcement information be further broken down to be more meaningful to the public and to students entering the profession.

Debra Snow expressed her positive feedback on the Board's progress and hopes the Board embraces reform efforts and improvement in accountability to the public.

Bill Howe, California Chiropractic Association, praised the Board and staff for the recent efforts over the past year given the resource shortage.

Future Agenda Items

Judge Duvaras requests the resetting of the time and location of the July and September Board meetings. He expressed concern about the expense of overnight travel and the movement of documents.

Dr. Lerner requests the Scope of Practice Committee take up the issue of chiropractic specialties.

Dr. Charles Davis, International Chiropractic Association of California, requested progress updates on the audit recommendations, chiropractic x-ray, and chiropractic specialties.

Adjournment:

Dr. Lerner adjourned the meeting at 12:27 p.m.