

**Board of Chiropractic Examiners**

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**BOARD OF CHIROPRACTIC EXAMINERS  
PUBLIC SESSION MINUTES  
July 30-31, 2008  
Southern California University of Health Science  
1600 E. Amber Valley Dr.  
Building M, Room 41  
Whittier, CA 90604**

**Board Members Present**

Frederick Lerner, DC. Chair  
Hugh Lubkin, D.C. Vice Chair  
Francesco Columbu, D.C. Secretary  
Jim Conran, 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 Mathews, Associate Governmental Program Analyst  
Valerie James, Office Technician  
John Melendez, Licensing and Continuing Education Manager  
Sandra Walker, Compliance Manager  
April Alameda, Staff Services Analyst

**Call to Order**

Dr. Lerner called the meeting to order at 11:10 a.m.

**Roll Call**

Dr. Columbu called the roll. All members were present with the exception of Judge James Duvaras (Ret.) Public Member.

**Chairs Report**

Dr. Lerner welcomed the students and faculty of Southern Californian University of Health Sciences (SCUHS) to the Board Meeting. Dr. Lerner expressed being honored to be at SCUHS and voiced his gratitude to Dr. Meadows, Dr. Craft and the University staff for making this possible today. Dr. Lerner introduced the Board members and staff. Dr. Lerner explained how the Board works for educational purposes.

## **Public Comment:**

Dr. Lerner opened for public comment. There were none.

## **Approval of Minutes**

Dr. Lerner tabled the approval of the May 22, 2008 minutes until the September.

Dr. Lerner addressed the approval of the August 16, 2007 minutes.

**DR. COLUMBU MADE A MOTION TO AMEND AUGUST 16, 2007 MINUTES TO ADD MS. DEANGELO FELLMOUTH'S OFFER TO ASSIST THE BOARD IN ADDRESSING THE ENFORCEMENT ISSUES.**

**DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.**

## **Public Comment:**

Dr. Lerner opened for public comment .There were none.

## **Board Member Training on the Bagley-Keene Open Meetings Act and other relevant laws**

Dr. Lerner referred to LaVonne Powell to discuss Bagle-Keene open meetings act training. Ms Powell had nothing prepared for today's meeting and is waiting for the beginning of the year for the laws. She asked Board members if they have any question.

Ms. Powell announced Department of Consumer Affairs is having a consumer affair conference there will more information regarding the Bagley-Keene Open Meetings Act.

Dr. Tyler would like to see a policy in place that some designated Board member would prepare questions to have for Ms. Powell.

Dr. Lerner would like to leave Bagle-Keene on the agenda for future Board members that will come on Board.

Jim Conran would like to leave on the agenda to be a constant reminder to stay in compliance.

## **Executive Officer's Report**

### Budget

Mr. Stiger provided a status of the budget report noting a complete is not as yet available as he is waiting for the final numbers to come back from last fiscal year. He reported that he will be reverting a large sum of excess money back into the fund to be utilized for future services.

He advised that this fiscal year, 2008 and 2009, will be a normal budget year. Mr. Stiger commented that the budget will be very tight this year and noted the need to manage appropriately as the office will be fully staffed. He also stated there are a number of projected expenditures that are going to be quit expensive but assured the Board of effective budget management.

### Personnel

Mr. Stiger informed to the progress with regard to vacant positions. Currently we may or may not have all office vacancies filled, noting a job offer was made yesterday. However, we received a telephone call this morning and the person may have declined. Other than that all of the office positions will be filled.

He informed the Board that of being in the process of filling the Supervising Investigator and Investigator positions. Interviews for the Supervising Investigator have been conducted position resulting in the identification of potential candidates. Background checks on the candidates are in process. Interviews for the Investigator position have been completed with two candidates identified. These candidates are going through the background check.

Mr. Stiger stated that the Boards goal was try and be fully staffed by July 1, 2008. We nearly achieved that goal.

Mr. Stiger opened it up for questions.

### Licensing Report

Mr. Stiger informed the Board since our last Board meeting the licensing report has been revised to make it more readable and referred to the document to show the revisions. He noted that a two fiscal year comparison provided and consolidated into the total number of licensees at the end of June 30 2008. It is compared to that from the year earlier.

Mr. Stiger informed the Board that the number of licensed chiropractors increased by 36 over last year, as well as an increase of 160 satellite certificates, and 35 new Corporations, with referrals remaining about the same. Over all we have over 230 more licensees over the previous fiscal year.

Dr. Lubkin inquired whether the Board staff was able to present information that would show the number of satellite offices an individual doctor has or the number of licensees having more than five satellite offices registered.

In response, Mr. Stiger informed the Board that it would be a manual process, it would be difficult but if it is a priority tit could be accomplished.

### Enforcement

Mr. Stiger informed based on the last meeting enforcement statistics were further developed with a 3 year comparison on the type of the disciplinary provided. He remarked that fiscal year 07/08 was a difficult time due to staffing challenges.

Mr. Stiger reported having eight hundred pending complaints but noted that this does not mean that all pending complaints are in back log.

Mr. Stiger informed the Board that the staff is working diligently to eliminate back log and consolidating resources to accomplish the task.

Mr. Stiger asked the Board members for their feedback on the format of reports.

Mr. Conran replied the report format was simple and easy to read. He commented that once the Cite and Fine process is functioning, he would like to get a flavor how that's going including the numbers: what kind of fines are being levied, and the type of associated infractions in order to ensure the

Board is not to distant from the day to day disciplinary actions that may not eventually come before the Board. This information may help them do a better job by giving the Board a more comprehensive sense of what is going on in the profession.

Dr. Lubkin requested a color break down chart of the License Reports. He noted it would be beneficial for continuing education providers to be updated as to the source of the majority of complaints in order to improve and develop continuing education programs by specifically addressing complaint issues. He expressed the hope that this may facilitate a reduction in the number of complaints received over the next few years.

## **Committee Reports**

### Public Relations Committee

Dr. Lerner informed the Board the committee was attempting to determine who to contract with for the development of public relation materials.

Dr. Lerner asked that the Board members be aware that the State prefers using its own agencies, and to deter from that preference would cause delays. Conversely, he noted that an outside source may provide a higher level of creativity.

Mr. Stiger informed the Board members of the requirements for initiating a State contract with a private entity noting the process would take approximately 190 days.

Mr. Conran recommended that the Board go with State agency, so that we could address the needs of the public more promptly.

Mr. Stiger informed that DCA would be our source to development public materials.

Mr. Conran indicated another possibility provider would be the Department of General Services.

Dr. Tyler inquired as to the scope of the public relations endeavors, such a broad spectrum.

Dr. Lerner noted having four products, first and most important is a newsletter, as well as a brochure, a Board seal, and press releases.

**MR. CONRAN MOTIONED FOR THE BOARD TO DIRECT THE EXECUTIVE OFFICER TO PROCEED IN FINALIZING A CONTRACT WITH THE STATE AGENCY TO PROVIDE SERVICES. THERE WAS NO SECOND MOTION. MOTION FAILED.**

Mr. Stiger commented that a public relations program is an integral part of the enforcement program and noted that the choice before the Board was whether to contract with an outside vendor or a state agency.

Dr. Tyler asked about the financial impact of outside vender versus a state agency.

Dr. Columbu recommended short term contract duration consideration.

Dr. Lubkin requested public relations presentations be provided in the future; but agreed that the Board should move forward with DCA in the interim.

**DR. LUBKIN MOTIONED FOR THE BOARD TO MOVE FORWARD WITH A ONE YEAR CONTRACT WITH THE DEPARTMENT OF CONSUMER AFFAIRS WITH THE PROVISION THAT THE CONTRACT BE REVIEWED IN THE FUTURE IN ORDER TO DETERMINE WHETHER THE CONTRACT WOULD BE RENEWED. MR. CONRAN SECONDED THE MOTION WITH AN AMENDMENT FOR THE INCLUSION OF OTHER GOVERNMENT AGENCIES IN ADDITION TO THE DEPARTMENT OF CONSUMER AFFAIRS. DR LUBKIN ACCEPTED THE AMENDMENT. VOTE: 5-0.MOTION CARRIED.**

#### Licensing Committee

Dr. Tyler chair of the committee has no report.

Dr. Lerner informed the Board that the items before the licensing committee need to go before the Board.

Mr. Stiger informed the Board of exhibit 7b1 consisting of a list of approved licensees along with approval dates and recommended the Board make a motion and vote on the ratification of the approvals.

**DR. TYLER MOTIONED FOR APPROVAL BY RATIFICATION WHICH CONSISTS OF A LIST OF LICENSEES. MR. CONRAN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.**

Dr. Tyler suggested that the Board observe the qualifications of the individual as well as institution that they come from with regard to license reciprocity with other states.

Mr. Stiger informed the Board that all licensees applying for reciprocity must meet the requirements of the Board.

Dr. Tyler expressed concerns about public safety.

Ms. Powell acknowledged Dr. Tyler's concerns relative to scope of practice as well as concerns about chiropractic college curriculums.

Dr. Lubkin advised that other States require that applicants from other states complete coursework in order to meet their educational requirements.

Mr. Stiger advised that the issue before the Board is whether or not the document provided would be accepted by the Board as meeting the requirements of Section Nine of the Act along with meeting all other requirements. He inquired whether the letter, as submitted, met the requirement.

**DR. LUBKIN MOTIONED THAT THE BOARD BE ALLOWED TO ACCEPT ENDORSEMENTS OF RECIPROCITY FROM OTHER STATES THAT MEET THE CRITERIA SET FORTH IN SECTION NINE OF THE INICIATIVE ACT. VOTE 5-0 MOTION CARRIED.**

Mr. Conran requested clarification on the standards for reciprocity.

#### **Public Comment**

Mr. Keith Henry, Clinic Director of Cleveland Chiropractic College, added to the discussion the issue that other states exams do not have part four.

Dr. Tyler informed the Board the possibility of recognizing Chiropractic Assistant needs to be

addressed by the Board.

Dr. Lerner expressed his concerns regarding public safety and stated that he believes it prudent to have Chiropractic Assistant standards set. The Licensing Committee was directed to research other Boards for standards.

Ms. Powell advised that the issue is whether the Board can issue another license/certify under the Initiative Act. Ms. Powell informed the Board that they could start by changing Section 312 of the regulations in regards to Chiropractic Assistants.

Dr. Lerner directed the licensing committee to amend 312 sections in regulation to reflect training requirements of chiropractic Assistants.

Dr. Tyler informed the Board of the future increase of license fees.

Mr. Stiger informed the Board of the current budget status, but commented that 2011/2012 there will be a need to have the license fees increased.

### Continuing Education Committee

Dr. Tyler would like to reverse the order by having Mr. Stiger provide as update regarding the continuing education work groups.

Mr. Stiger informed of the formation of a work group from within the profession including Dr. William Updyke, Erik Banta, Dr. Kyndra Hallway, Dr. Lou Ringler, Dr. Linda Shanks, Dr. Mitchell Peritz, Dr. J. Ray Weltch and Carlye R. Brakensiek, who are providing valued input in the revision of existing CE regulations. Additionally, Board staff members John Melendez, Licensing and Continuing Education Manager, Licensing Analyst Genie Mitsuvara and Executive Officer, Brian Stiger are participating in the work group. The goal is to present revised language to the Board at the September meeting.

Dr. Tyler expressed concern that the Board Members are not actively involved in the course review process. He would like to make sure that the continuing education committee meets with Board staff relative to the approval continuing education courses; not providers.

Mr. Stiger informed the Board that Approval by ratification will be a standing agenda item.

### Scope of Practice Committee

Dr. Lubkin reported that the Scope of Practice committee meeting had voted in favor of having the document submitted by David Prescott, Attorney sent to the Secretary of State for either the authentication or rejection.

Ms. Powell expressed her concern that someone might read the document submitted by David Prescott and mistake it for current law. She noted that if the Board receives a challenge that the submitted document is the unpublished part of 1922 Initiative Act, the challenge will be strongly opposed.

Dr. Lerner expressed that the Board should submit document to the Secretary of State for there records.

### **Public Comment**

The Board considered public comment.

**DR. LERNER MOTIONED TO AMEND THE COMMITTEES DIRECTIVE TO SEND THE DOCUMENT SUBMITTED BY DAVID PRESCOTT TO THE OFFICE OF THE SECRETARY OF STATE FOR INFORMATION PURPOSES ONLY. DR. TYLER SECONDED THE MOTION. VOTE 4-1 MR CONRAN ABSTAINED.**

Dr. Lubkin advised that the Chiropractic Scope of Practice for X-ray to the Board is waiting for a legal opinion from Department of Consumer Affairs.

Dr. Lubkin reported that the Scope of Practice Committee is waiting for staff to provide a list of various chiropractic Specialties approved programs.

Mr. Stiger clarified that the Board agreed to move forward with the regulatory language to recognize Chiropractic Specialties.

### Government Relations Committee

Mr. Conran reported that the committee met with three issues addressed. The first issue was Board member use for state issued to email accounts. The Board has agreed to this with the caveat that training on how to use and retrieve email be provided.

Mr. Stiger provided a draft instruction to the Dr. Lerner, to access his email.

Mr. Conran advised the Board members that in the event they receive a questionable email from the public, they should discontinue reading the email and forward it to Mr. Stiger for review.

Mr. Conran stated that the Board meeting minutes were meeting the needs of the public in current format.

Mr. Conran requested that the staff come back with a recommendation in regards to revision of the Chiropractic Consultant Classification within six months.

Mr. Conran would like to have a procedure in place in how to discard documents. This would be a future agenda at next Government Relations Committee meeting.

### **Public Comment**

A member of the public opined that there were not enough of public comments included in the minutes.

### Legislative Committee

Dr. Lerner informed to the Board legislative committee recommended that the Board take an opposed position in regards to Senate B Bill 963 and 1402.

**DR. COLUMBU MOTIONED TO OPPOSE THE BILLS. DR. TYLER SECONDED.**

Discussion requested.

Mr. Conran commented that if the Department of Consumer Affairs is opposed to the bill it would be

very unlikely that the Governor would sign the bill.

Dr. Lerner stated the Board should vote on the merits of the bill and not the potential for political fall out.

**DR. LERNER CALLED FOR A VOTE. VOTE 4-0 MR. CONRAN ABSTAINED. MOTION CARRIED.**

Dr. Lerner recommended that the Board retain the position to support the bill (1402) if amended.

### **Public Comment'**

Public requested clarification on Bill 1402 with regard to requirements of Licensee's reporting convictions to the Board.

Ms. Powell stated that the Board does not want Licensees deciding that their conviction wasn't substantially related to the practice of Chiropractic.

### **LUNCH**

Dr. Lerner called for a 30 min Lunch break the time is 12:05.

Dr. Lerner called the Public meeting to order at 1:35. All Board members were present with the exception of Judge James Duvaras (Ret.) Public Member.

### **Public Comment**

None

### **Future Agenda Items**

Approval of May 22, 2007 minutes.

### **Hearings re: Petition for Early Termination of Probation**

Administrative Law Judge Samuel De Reyes presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Anthony Loc Boa Nguyen
- Thomas Nutting
- Kwang E. Kim declined his hearing.

Following oral testimonies, the Board went into closed session to consider M. Nguyen and Mr. Nutting petition for early termination probation.

### **Public Session**

### **Announcements**

It was announcement that the Board would reconvene at 8:00 AM, Thursday, July 31, 2008, at the same location and room number.



**Thursday, July 31, 2008**

**Public session**

Public Session call to order 8:22 am

**Roll**

Dr. Columbu called roll all Board members present, with the exception of Jim Conran and Judge James Duvaras.

Dr. Lerner announced that the Board will now go into closed session.

Administrative Law Mr. Sawyer presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Aster Kifle-Thompson

Following oral testimonies, the Board went into closed session to consider the Aster Kifle-Thompson disciplinary matter.

**Public Session**

Dr. Lerner called to order 9:05am and turned the meeting over to Judge Sawyer.

**Hearings re: Petition for Early Termination of Probation**

Administrative Law Mr. Sawyer presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Adam Kleinberg
- Asghar Ebadat
- James Slusher
- James Dresser
- Paul Kobulnicky
- Olatungie Fergusson
- Joseph Scannell

**Closed Session**

Following oral testimonies, the Board went into closed session to consider Mr. Kleinberg, Mr. Ebadat and James Slusher's petitions for early termination of probation as well as consider the petitions of Mr. Dresser, Mr. Kobulnicky, Mr. Fergusson and Mr. Scannell for reinstatement of Revoked Licenses.

**Public Session**

Dr. Lerner called the Board to open session at 4:10pm.

**New Business**

None

## **Adjournment**

Dr. Lerner adjourned the public meeting at 4:30pm