BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

CORRECTED COPY
NOTICE OF PUBLIC MEETING

May 19, 2011
9:00 a.m.
State Capitol
First Floor, Senate Committee Room 113
Sacramento, CA 95814

AGENDA

1. **OPEN SESSION** – Call to Order & Establishment of a Quorum
   Frederick Lerner, D.C. Chair
   Hugh Lubkin, D.C., Vice Chair
   Francesco Columbu, D.C., Secretary
   Jeffrey Steinhardt, D.C.
   Richard Tyler, D.C.
2. **Chair's Report**
3. **Approval of Minutes**
   March 17, 2011 Board Meeting
4. **Public Comment**
5. **Board Member Training on the Bagley-Keene Open Meeting Act and Other Relevant Laws**
6. **Executive Officer's Report**
   A. Administration
   B. Budget
   C. Licensing
   D. Enforcement
7. **Ratification of Approved License Applications**
8. **Ratification of Approved Continuing Education Providers**
9. **Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing**

T (916) 263-5355
F (916) 263-5369
TT/TDD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

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

10. **Recommendation to Waive Two Year Requirement to Restore a Cancelled License**

11. **Information Dissemination / Communication with Licensees and the Public** – Dane Wilson, Office of Technology Web Services Section

12. **Report on Federation of Chiropractic Licensing Boards Annual Conference** – Dr. Hugh Lubkin, DC

13. **Cleveland Chiropractic College Request for Exemption to the 35 Hour/Week Coursework Requirement**

14. **Council on Chiropractic Education Presentation** – Dr. Lee Van Dusen, DC - President and Dr. David Wickes, DC - Council Chair

15. **D'Youville College Presentation for Clarification of Approval Date as a Board Approved College**

16. **Attorney General Billing**

17. **Authority Over Unlicensed/Non-Licensed Individuals Performing Chiropractic**

18. **Department of Industrial Relations, Division of Workers Compensation – Update on Recognition of Chiropractic Specialties**

19. **Legislation/Regulation Committee Meeting Update** – Board may take action on any item on the attached Legislation/Regulation Committee meeting agenda.

20. **Regulatory Hearing on the Proposed Language for Informed Consent – California Code of Regulations, Title 16, Division 4, Article 1, Sections 319.1**

21. **Proposed Regulations**
    A. Continuing Education
    B. Omnibus Consumer Protection
    C. Informed Consent
    D. Petitions for Reinstatement (Fee)
    E. Use of Laser

22. **Public Comment**

23. **Future Agenda Items**

24. **Hearings Re: Petition for Reinstatement of Revoked License**
    A. Robert L. Horan

25. **Closed Session**
    A. Deliberation on Petitioner Hearings and Disciplinary Decisions Pursuant to California Government Code Section 11126(c)(3)
    B. Pursuant to California Government Code Section 11126(e)
    1) Catherine Hayes v. Board of Chiropractic Examiners Sacramento County Superior Court, Case No. 34-2008-0000647
    2) Board of Chiropractic Examiners v. Carole M. Arbuckle Sacramento County Superior Court, Case No. 03AS00948

26. OPEN SESSION: Announcements Regarding Closed Session

27. Adjournment

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov**.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or e-mail marlene.valencia@chiro.ca.gov or send a written request to the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING
LEGISLATION/REGULATION COMMITTEE

May 12, 2011
10:00 a.m.
Holiday Inn LAX
9901 La Cienega Blvd.
Los Angeles, CA 90045
(310) 649-5151

AGENDA

1. **CALL TO ORDER**

2. **Approval of Minutes**
   July 8, 2010

3. **Legislative Update**
   A. AB 25 (Hayashi) – Athletics: Concussions and Head Injuries
   B. AB 72 (Eng) – Acupuncture
   C. AB 127 (Logue) – Regulations: Effective Date
   D. AB 584 (Fong) – Workers' Compensation Utilization Review
   E. AB 783 (Hayashi) – Professional Corporations: Licensed Physical Therapists
   F. SB 206 (Kehoe) – Appropriations
   G. SB 352 (Huff) – Chiropractors
   H. SB 366 (Calderon) – Regulations: Agency Review
   I. SB 396 (Huff) – Regulations: Review Process
   J. SB 400 (Dutton) – Regulations: Impact on Businesses
   K. SB 401 (Fuller) – Regulations: Repeal Provisions
   L. SB 541 (Price) – Expert Consultants
   M. SB 544 (Price) – Regulatory Boards
   N. SB 560 (Wright) – Regulations: Small Businesses
   O. SB 591 (Gaines) – Regulations: Reductions
   P. SB 628 (Yee) - Acupuncture
   Q. SB 924 (Wyland) – Physical Therapists: Direct Access to Services

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4. PUBLIC COMMENT

5. FUTURE AGENDA ITEMS

6. ADJOURNMENT

LEGISLATION/REGULATION COMMITTEE
Frederick Lerner, D.C., Chair
Francesco Columbu, D.C.

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

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.**

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BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
March 17, 2011
Hilton LAX
5711 West Century Blvd.
Los Angeles, CA 90045

DRAFT

Board Members Present
Frederick Lerner, D.C. Chair
Hugh Lubkin, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Jeffrey Steinhardt, D.C.

Staff Present
Robert Puleo, Executive Officer
Spencer Walker, Senior Staff Counsel
Linda Shaw, Staff Services Manager
Dixie Van Allen, Associate Governmental Program Analyst
Christina Bell, Associate Governmental Program Analyst
Ray Delaney, Management Services Technician
Valerie James, Office Technician

Call to Order
Dr. Lerner called the meeting to order at 10:03 a.m.

Roll Call
Dr. Columbu called the roll. All members, but Dr. Tyler were present.

Chair's Report
Dr. Lerner discussed a few items and recent information regarding Board matters. Dr. Lerner announced that Cleveland Chiropractic College of Los Angeles will be closing.

Approval of Minutes
January 20, 2011 Board Meeting

MOTION: DR. STEINHARDT MOVED TO APPROVE THE MINUTES
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Public Comment
None.

Board Member Training on the Bagley-Keene Open Meeting Act and Other Relevant Laws
Mr. Walker indicated that there were no items to report.

Executive Officer's Report
Mr. Puleo gave the Executive Officer's Report. The topics were Administration, Budget, Licensing, and Enforcement.

Ratification of Approved License Applications

MOTION: DR. LUBKIN MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS
SECOND: DR. STEINHARDT SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED
The Board ratified the attached list of approved license applications incorporated herein (Attachment A).

Ratification of Approved Continuing Education Providers

MOTION: DR. STEINHARDT MOVED TO RATIFY THE APPROVED CONTINUING EDUCATION PROVIDERS
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED
The Board ratified the attached list of approved continuing education providers incorporated herein (Attachment B).

Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing
None

Ratification to Waive Two Year Requirement to Restore a Cancelled License

MOTION: DR. LUBKIN MOVED TO RATIFY THE RECOMMENDATION TO WAIVE THE TWO YEAR REQUIREMENT TO RESTORE A CANCELLED LICENSE
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED
The Board ratified the attached list of approved cancellation restoration applicants incorporated herein (Attachment C).

Affiliated Monitors, Inc.
Mr. Vincent L. DiCianni gave a presentation on the company and their operation.

Scope of Practice Committee Meeting Update
Dr. Lubkin provided a summary of what was discussed at the Scope of Practice Committee meeting on February 24, 2011. The Board reviewed proposed language for the use of lasers.

MOTION: DR. LUBKIN MOVED TO APPROVE THE PROPOSED LANGUAGE.
SECOND: DR. STEINHARDT SECONDED THE MOTION

DRAFT

Discussion
The Board discussed the amount of hours required for safety training. The types of lasers and categories of lasers were also discussed. Dr. Lubkin suggested a few modifications to the language.

Public Comment
Dr. Sherry McAllister from Palmer Chiropractic College came forward and spoke on the issue of the use of lasers.

Michael H. Cohen representing for Bio Veda Technologies, came forward and spoke on the proposed language and uses of lasers.

Dr. Bradley Frederick came forward and spoke on the proposed language and the number of hours for each class.

Mr. Bill Howe from California Chiropractic Association came forward and requested a change to the proposed language in section (f) to change the word 'advise' to 'inform.'

Mr. Bill Clark from Star Tech Health came forward and commented that they do not have any issues with the proposed language and spoke in regards to the uses of lasers.

MOTION: DR. LUBKIN MOVED TO AMEND HIS MOTION ON THE PROPOSED LANGUAGE. IN SECTION (d) REMOVE THE WORD 'SIGNIFICANTLY,' AND CHANGE THE WORD 'PURPOSE' TO READ 'APPROVED ATTENDED USE.' IN SECTION (e) ADD THE WORDS 'OFF LABEL' IN BETWEEN THE WORDS 'THE' AND 'USE.' IN SECTION (f) REPLACE THE WORD 'ADVISE' TO 'INFORM.'
SECOND: DR. STEINHARDT SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Enforcement Committee Meeting Update
Dr. Lubkin summarized what was discussed in the Enforcement Committee Meeting early that day.

MOTION: DR. STEINHARDT MOVED APPROVE THE PROPOSED LANGUAGE FOR SECTION 318.
SECOND: DR. COLUMBU SECONDED THE MOTION

Discussion
Mr. Puleo proposed to add a subsection 7 to section a stating 'signed written informed consent as specified in section 319.1.'

MOTION: DR. STEINHARDT MOVED TO AMEND HIS MOTION AND APPROVE THE MODIFICATIONS ON THE PROPOSED LANGUAGE OF SECTION 318.
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

State Compensation Insurance Fund Rescinded Policy Denying Consumer Chiropractic Treatment for Post-Operative Rehabilitation
Mr. Howe and Dr. Brad Sullivan from California Chiropractic Association came forward and provided comments on the matter. Mr. Howe requested the Board to retract previous statements. Mr. Walker recommended that Mr. Puleo post the 2004 letter on the Board's web site stating that the opinion of the letter is deemed an underground regulation and not an opinion of the Board and should not be used.

Information Dissemination / Communication with Licensees and the Public
Dr. Lerner would like to explore other options for the website design services. Dr. Lerner asked Mr. Puleo to get a drop-dead date on the website changes from the Office of Technology.

Department of Industrial Relations, Division of Workers Compensation – Update on Recognition of Chiropractic Specialties
Dr. Lerner stated that there is an issue with Medical specialties versus Chiropractic specialties. The three specialties recognized in the regulations for Chiropractic: Orthopedic, Neurology and Sports.

Legislative Update

A. AB127 (Logue) – Regulations

MOTION: DR. LERNER MOVED TO OPPOSE AB127
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

B. SB 100 (Price) – Healing Arts

MOTION: DR. LUBKIN MOVED TO SUPPORT SB100
SECOND: DR. STEINHARDT SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

C. SB 352 (Huff) – Chiropractors

Mr. Puleo indicated that SB352 is just a spot bill and is just informational.

Dr. Lerner suggested moving the Regulatory Hearing to the end of the agenda and proceeding with the Proposed Regulations agenda item.

Proposed Regulations

A. Continuing Education
The Board reviewed the proposed language.

MOTION: DR. LERNER MOVED TO APPROVE THE PROPOSED LANGUAGE
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

B. Omnibus Consumer Protection
Dr. Lerner indicated that a hearing is on the agenda and will be heard prior to the petition hearings.

C. Informed Consent
Mr. Puleo informed the Board that the proposed language was submitted to the Office of Administrative Law March 16, 2011 and will be noticed on April 1, 2011 for a 45 day comment period.

D. Petitions for Reinstatement (Fee)
Ms. Van Allen provided the Board with a status. We are waiting on the outcome of the Omnibus Consumer Protection hearing since it will affect the proposed language for the petitioners disclosure requirements.

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Chiropractors Performing Student Athletic Physicals and Serving as Team Doctors
This agenda item was tabled to the next Board meeting.

Authority Over Unlicensed/Non-Licensed Individuals Performing Chiropractic
This agenda item was tabled to the next Board meeting.

Attorney General Billing Detail
Dr. Columbu commented on this matter. Dr. Columbu suggested that the Board vote to have work prepared by paralegals to reduce Board costs.

MOTION: DR. COLUMBU MOVED TO HAVE PARALEGALS PREPARE ALL ADMINISTRATIVE DISCIPLINARY WORK THAT IS WITHIN THEIR OFFICIAL CAPACITY.
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 4-0
MOTION CARRIED

Public Comment
None

Future Agenda Items
None

Regulatory Hearing on Proposed Language for the Omnibus Consumer Protection – California Code of Regulations, Title 16, Division 4, Article 1, Section 303-390.9
A regulatory hearing took place on proposed language for the Omnibus Consumer Protection.

Hearings Re: Petition for Reinstatement of Revoked License
Administrative Law Judge Ralph Dash presided over and Deputy Attorney General Thomas Rinaldi appeared on behalf of the people of the State of California on the following hearings:

A. Marc Nadreau
B. Richard Kent Greenland

Hearings Re: Petition for Early Termination of Probation
Administrative Law Judge Ralph Dash presided over and Deputy Attorney General Thomas Rinaldi appeared on behalf of the people of the State of California on the following hearings:

A. Kit Yuen Chau

Closed Session
Following oral testimonies, the Board went into closed session for deliberation and determinations of petitioners.

Adjournment
Dr. Lerner adjourned the public meeting at 4:52p.m.

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(ATTACHMENT A)
Approval By Ratification of Formerly Approved License Applications
November 1, 2010 – December 31, 2010

Name (First, Middle, Last)			Date Issued	DC#
Devin	Stanley	Waterman	1/4/2011	**31860**
Jordan	Hoang	Giang	1/7/2011	**31861**
Sara	Lynn	Hillesheim	1/7/2011	**31862**
Nicholas	T.	LaHood	1/7/2011	**31863**
Leyla		Malakian	1/7/2011	**31864**
Daniel	Jiyong	Kim	1/12/2011	**31865**
Amanda	Danielle	Peterson	1/20/2011	**31866**
Steven	Ryan	Selby	1/20/2011	**31867**
Georgina		Flores Ramirez	1/21/2011	**31868**
Albert	Daehee	Han	1/21/2011	**31869**
Janet	Yuk Kan	Ho	1/21/2011	**31870**
Paul	Joseph	Hodgson	1/21/2011	**31871**
Claudy-Ann		Keasberry	1/21/2011	**31872**
Han Jin		Kim	1/21/2011	**31873**
Vicente		Chavira	1/28/2011	**31874**
Jo	Ann	Eccher	1/28/2011	**31875**
Mohamed	Sayed	El-Shimey	1/28/2011	**31876**
Jeremy	Warren	Green	1/28/2011	**31877**
Sanaz		Moeini	1/28/2011	**31878**
Sarah	Denise	Dirks	1/28/2011	**31879**
Tamara	M.	Ghazi	1/28/2011	**31880**
Hongtruc	Thi	Nguyen	1/28/2011	**31881**
Liliana		Ulloa-Jimenez	1/28/2011	**31882**
Sidney		Yadidi	1/28/2011	**31883**
Lorraine		Sarullo	1/31/2011	**31884**
Vanessa	Marie	Snider	1/31/2011	**31885**
Anna		Yatsenko	1/31/2011	**31886**
Shinnosuke		Ban	2/10/2011	**31887**
Clayton	John	Blanchette	2/10/2011	**31888**
Byong	Il	Chon	2/10/2011	**31889**
Ryan	Patrick	Clark	2/10/2011	**31890**

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Melissa	Ann	Engelson	2/10/2011	**31891**
Justin	Timothy	Goslin	2/10/2011	**31892**
Mark	Alan	Hanses	2/10/2011	**31893**
Yi-Ying		Lin	2/10/2011	**31894**
Derek	Lee	Rice	2/10/2011	**31895**
Harvey	Jing Yin	Wong	2/10/2011	**31896**
Aaron	Anucherebom	Ajoku	2/11/2011	**31897**
Taesung		Byun	2/11/2011	**31898**
Jack	Hagop	Demirchian	2/11/2011	**31899**
Eric	Edmund	Glenn	2/11/2011	**31900**
Daniel	Shane	Griffin	2/11/2011	**31901**
Robin	Christopher	Harkins	2/11/2011	**31902**
Ju	Hyun	Kang	2/11/2011	**31903**
Scott	Andrew	Larsen	2/11/2011	**31904**
Kenneth	Warren	Swinford	2/11/2011	**31905**
Shervin		Tabrizi	2/11/2011	**31906**
Jeanett		Tapia	2/11/2011	**31907**
Mahyar	David	Yadidi	2/11/2011	**31908**
Cheryle	Ann	Pettigrew	2/11/2011	**31909**
Walker	Walter	Scott	2/11/2011	**31910**
David	Mac	Huynh	2/11/2011	**31911**
Jeremy	Christopher	Hughes	2/16/2011	**31912**
Beau	Shannon	Lawyer	2/16/2011	**31913**
Allen		Bonilla	2/17/2011	**31914**
Daniel	Harrison	Bronstein	2/17/2011	**31915**
Rebecca	Suzanne	Claassen	2/17/2011	**31916**
David	Anthony	Ledesma	2/17/2011	**31917**
Robert	Earl	Fife	2/18/2011	**31918**
Matthew	Adam	Ryan	2/23/2011	**31919**
Eric	Rice	Shane	2/23/2011	**31920**
Lisa	Christine	Pappas	2/25/2011	**31921**
Erika	Lynn	Posenaer	2/25/2011	**31922**
Stefanie	Jean	Stepanski	2/25/2011	**31923**
Kathy	Chi Kuan	Wang	2/25/2011	**31924**

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(ATTACHMENT B)
Approval By Ratification Of Continuing Education Providers

CONTINUING EDUCATION PROVIDERS	DATE APPROVED
Cedars-Sinai Spine Center	02/18/2011

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(ATTACHMENT C)
Recommendation to Waive Two Year Requirement on Restoration of a Cancelled License

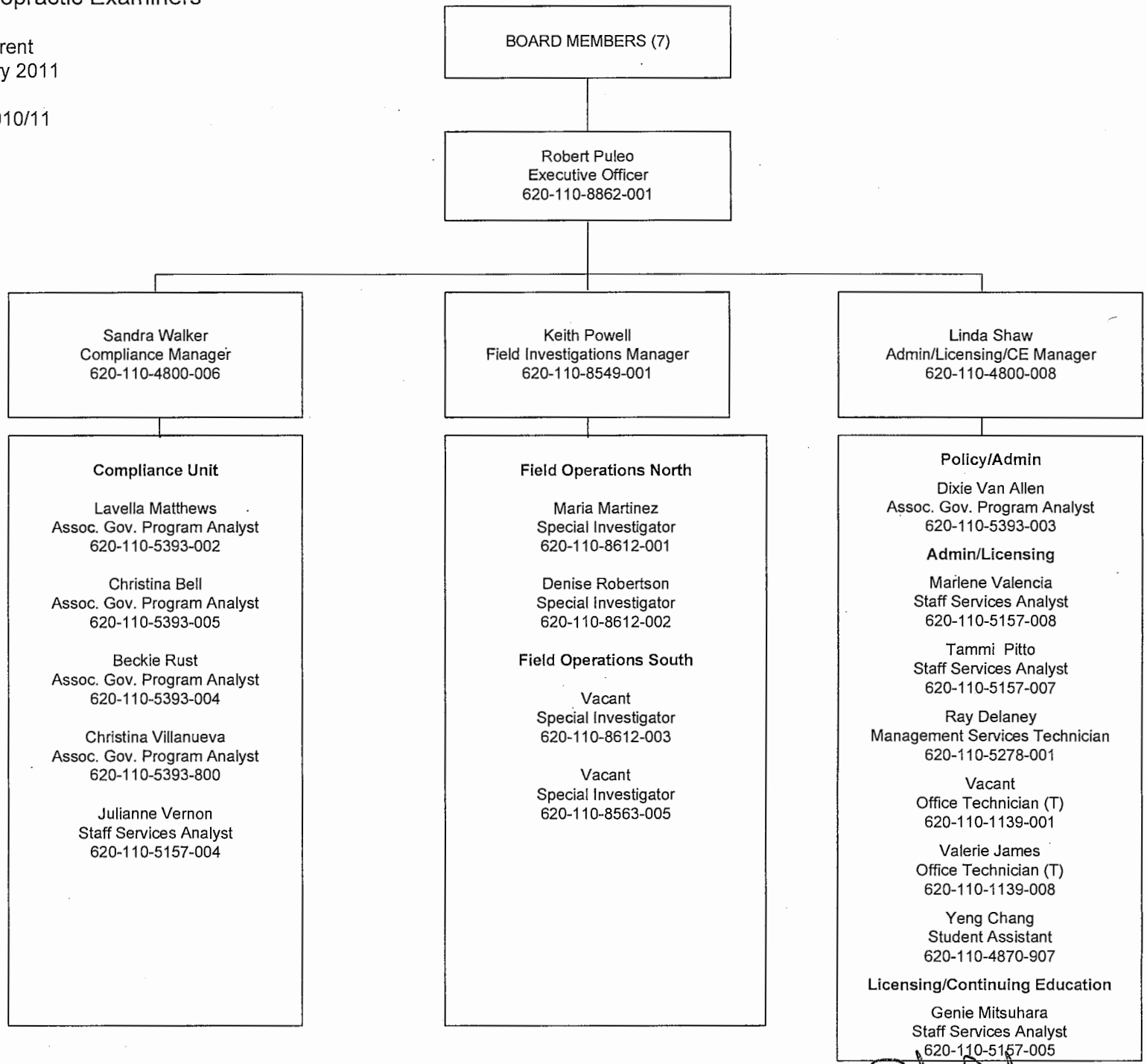
Name (Last, First MI)	License No.	Cancellation Date
Leite-Ah Yo, Harvelee	22051	07/31/2010

DRAFT

State Board of Chiropractic Examiners

Current
January 2011

FY 2010/11



Executive Officer _____

Rev. 1/4/11

0152 - Board of Chiropractic Examiners
Analysis of Fund Condition

Prepared 5/13/11

(Dollars in Thousands)

Proposed FY 2011-12 Governor's Budget
Includes BreEZe FSR Funding Extracted

		Actual 2009-10	CY 2010-11	Proposed Gov Budget 2011-12	BY+1 2012-13	BY+2 2013-14	2014-15
BEGINNING BALANCE		$ 4,150	$ 3,125	$ 2,002	$ 2,056	$ 2,164	$ 2,272
Prior Year Adjustment		$ 96	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance		$ 4,246	$ 3,125	$ 2,002	$ 2,056	$ 2,164	$ 2,272
REVENUES AND TRANSFERS							
Revenues:							
125600	Other regulatory fees	$ 131	$ 132	$ 132	$ 132	$ 132	$ 132
125700	Other regulatory licenses and permits	$ -	$ -	$ -	$ -	$ -	$ -
125800	Renewal fees	$ 2,056	$ 2,054	$ 3,409	$ 3,409	$ 3,409	$ 3,409
125900	Delinquent fees	$ 43	$ 38	$ 63	$ 63	$ 63	$ 63
141200	Sales of documents	$ -	$ -	$ -	$ -	$ -	$ -
142500	Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300	Income from surplus money investments	$ 28	$ 21	$ 8	$ 20	$ 20	$ 18
150500	Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400	Sale of fixed assets	$ -	$ -	$ -	$ -	$ -	$ -
161000	Escheat of unclaimed checks and warrants	$ -	$ -	$ -	$ -	$ -	$ -
161400	Miscellaneous revenues	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6
161900	Other Revenue - Cost Recoveries	$ 96	$ 96	$ 96	$ 96	$ 96	$ 96
164600	Fines and Forfeitures	$ 17	$ 17	$ 17	$ 17	$ 17	$ 17
Totals, Revenues		$ 2,377	$ 2,364	$ 3,731	$ 3,743	$ 3,743	$ 3,741
Transfers to Other Funds		$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues and Transfers		$ 2,377	$ 2,364	$ 3,731	$ 3,743	$ 3,743	$ 3,741
Totals, Resources		$ 6,623	$ 5,489	$ 5,733	$ 5,799	$ 5,907	$ 6,013
EXPENDITURES							
Disbursements:							
0840 State Controller (State Operations)		$ 1	$ 2	$ 3	$ -	$ -	$ -
8880 Financial Information System for CA (State Operations)		$ -	$ 2	$ 15	$ -	$ -	$ -
8500 Program Expenditures (State Operations)		$ 3,497	$ 3,469	$ 3,635	$ 3,635	$ 3,635	$ 3,635
BrEZe funding realignment		$ -	$ 14	$ 24	$ 19	$ 44	$ 35
Total Disbursements		$ 3,498	$ 3,487	$ 3,677	$ 3,635	$ 3,635	$ 3,635
FUND BALANCE							
Reserve for economic uncertainties		$ 3,125	$ 2,002	$ 2,056	$ 2,164	$ 2,272	$ 2,378
Months in Reserve		10.8	6.5	6.8	7.1	7.5	7.7

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2009-10 AND ON-GOING.
B. ASSUMES INTEREST RATE AT 1%.
C. ASSUMES NO APPROPRIATION GROWTH PER YEAR.

BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA

FY 2009/10 – FY 2010/11 COMPARISON

LICENSE TYPE	TOTAL LICENSES 5/1/2010	TOTAL LICENSES 5/1/2011	NET VARIANCE
CHIROPRACTOR	13,887	13,830	-57
SATELLITES	3,522	3,695	+173
CORPORATIONS	1,309	1,317	-8
REFERRALS	33	31	-2
TOTALS	18,751	18,873	+122

APPLICATIONS RECEIVED AND PROCESSED
MARCH 1, 2011 – APRIL 30, 2011

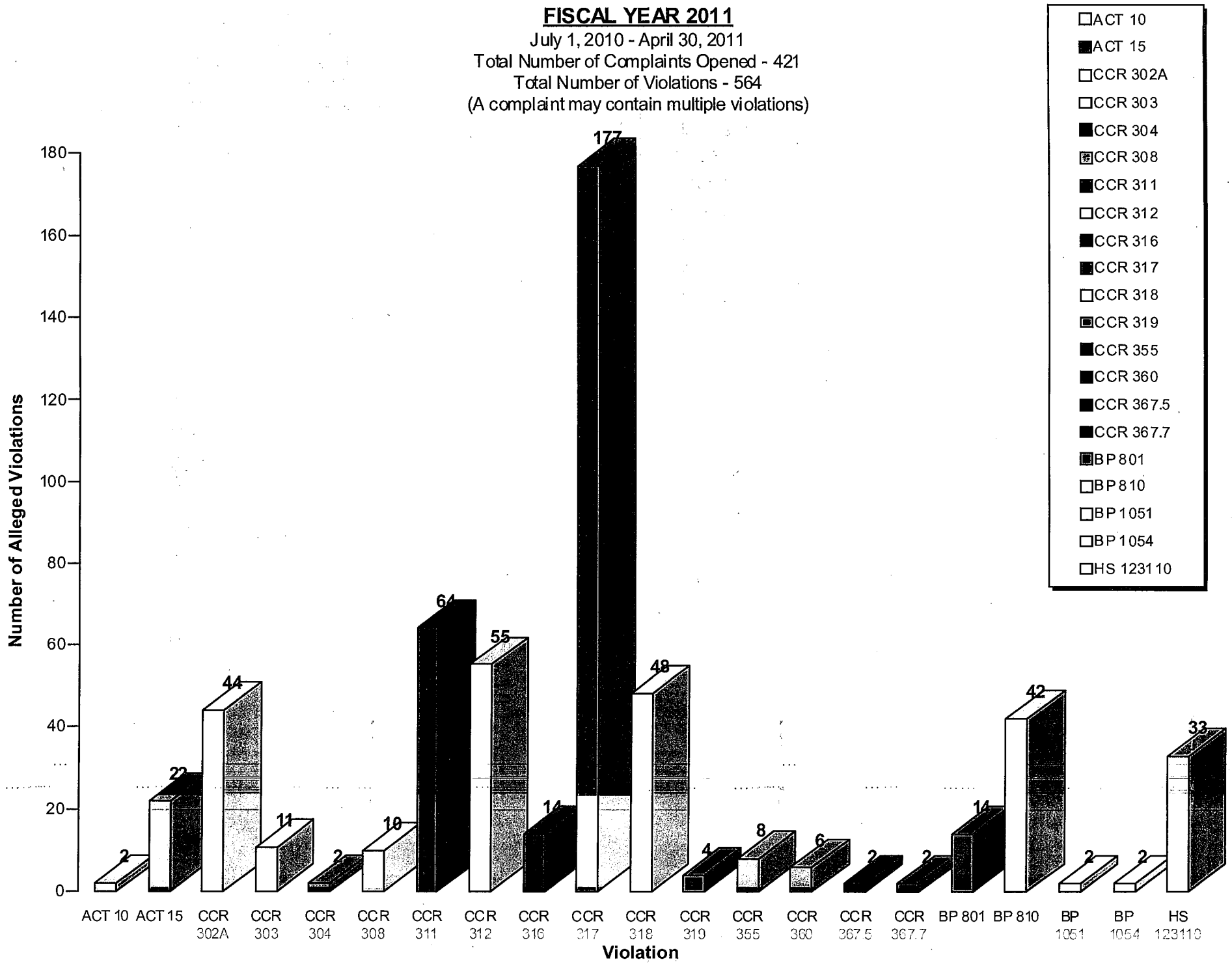
APPLICATION TYPE	RECEIVED	APPROVED	DENIED	WITHDRAWN	PENDING
INITIAL	61	57	1	0	126
RECIPROCAL	4	1	0	0	15
RESTORATION	31	29	2	0	10
CORPORATION	20	22	0	0	19

Compliance Unit Statistics

Fiscal Year	06/07	07/08	08/09	09/10	10/11*
Complaints					
Received	702	644	655	519	421
Pending	863	824	410	203	161
Closed with Insufficient Evidence	132	107	206	136	70
Closed with No Violation	61	78	223	129	97
Closed with Merit	202	321	275	158	116
Letter of Admonishment	n/a	n/a	n/a	5	3
Citations and Fines Issued (Total Fine Amount)	34	28	41($19,200)	78($25,700)	40($10,450)
Accusations					
Filed	41	13	64	73	55
Pending	92	73	105	117	132
Revoked	27	8	10	18	13
Revocation Stayed: Probation	23	10	4	20	20
Revocation Stayed: Suspension and Probation	15	10	7	8	8
Suspension	1	0	0	0	0
Suspension Stayed: Probation	0	0	0	1	0
Suspension and Probation	0	0	2	0	0
Voluntary Surrender of License	4	2	2	7	8
Dismissed/Withdrawn	3	3	5	18	7
Statement of Issues					
Filed	11	7	3	3	3
Denied	1	0	1	0	0
Probationary License	9	7	4	7	1
Withdrawn at Applicant's Request	2	1	0	0	0
Granted	3	0	0	0	0
Petition for Reconsideration					
Filed	1	0	1	3	0
Granted	0	0	0	0	0
Denied	1	0	1	2	0
Petition for Reinstatement of License					
Filed	10	15	13	9	6
Granted	5	12	4	4	2
Denied	4	6	11	11	8
Petition for Early Termination of Probation					
Filed	5	6	6	6	4
Granted	4	1	6	1	2
Denied	0	1	2	2	3
Petition for Modification of Probation					
Filed	0	0	0	0	0
Granted	0	0	0	0	0
Denied	0	0	0	0	0
Petition by Board to Revoke Probation					
Filed	2	0	11	32	13
Revoked	0	0	3	7	2
Probation Cases					
Active	174	159	140	134	136

* FY 10/11: July 1, 2010 – April 30, 2011

Revised: May 3, 2011


FISCAL YEAR 2011
July 1, 2010 - April 30, 2011
Total Number of Complaints Opened - 421
Total Number of Violations - 564
(A complaint may contain multiple violations)
Number of Alleged Violations
0
20
40
60
80
100
120
140
160
180
2
22
44
11
2
10
64
55
14
177
48
4
8
6
2
2
14
42
2
2
33
ACT 10
ACT 15
CCR 302A
CCR 303
CCR 304
CCR 308
CCR 311
CCR 312
CCR 316
CCR 317
CCR 318
CCR 319
CCR 355
CCR 360
CCR 367.5
CCR 367.7
BP 801
BP 810
BP 1051
BP 1054
HS 123110
Violation
ACT 10
ACT 15
CCR 302A
CCR 303
CCR 304
CCR 308
CCR 311
CCR 312
CCR 316
CCR 317
CCR 318
CCR 319
CCR 355
CCR 360
CCR 367.5
CCR 367.7
BP 801
BP 810
BP 1051
BP 1054
HS 123110

Violation Codes/Descriptions

The Chiropractic Initiative Act of California (ACT):

10 – Rules of Professional Conduct
15 – Noncompliance With and Violations of Act

California Code of Regulations (CCR):

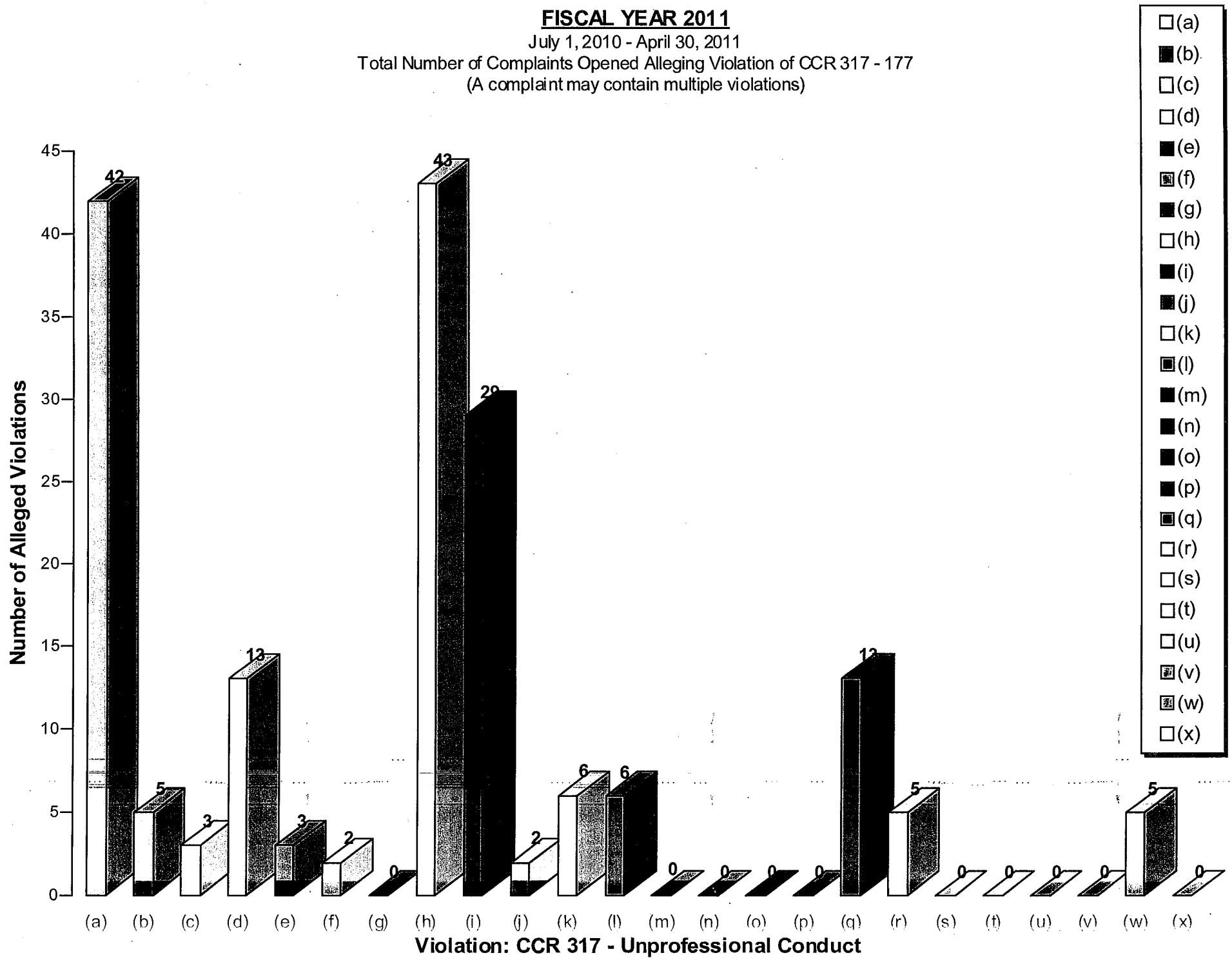
302(a) – Scope of Practice
303 – Filing of Addresses
304 – Discipline by Another State
308 – Display of License
311 – Advertisements
312 – Illegal Practice
316 – Responsibility for Conduct on Premises
317 – Unprofessional Conduct
318 – Chiropractic Patient Records/Accountable Billing
319 – Free or Discount Services
355 – Renewal and Restoration
360 – Continuing Education Audits
367.5 – Application, Review of Refusal to Approve (corporations)
367.7 – Name of Corporation

Business and Professions Code (BP):

801 – Professional Reporting Requirements (malpractice settlements)
810 – Insurance Fraud
1051 – Apply for a Corporation with the Board
1054 – Name of Chiropractic Corporation

Health and Safety Code (HS):

123110 – Patient Access to Health Records


FISCAL YEAR 2011
July 1, 2010 - April 30, 2011
Total Number of Complaints Opened Alleging Violation of CCR 317 - 177
(A complaint may contain multiple violations)
Number of Alleged Violations
0
5
10
15
20
25
30
35
40
45
42
5
3
13
3
2
0
43
29
2
6
6
0
0
0
0
13
5
0
0
0
0
5
0
(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x)
Violation: CCR 317 - Unprofessional Conduct
(a)
(b)
(c)
(d)
(e)
(f)
(g)
(h)
(i)
(j)
(k)
(l)
(m)
(n)
(o)
(p)
(q)
(r)
(s)
(t)
(u)
(v)
(w)
(x)

Violation Codes/Descriptions

California Code of Regulations (CCR) Section 317 – Unprofessional Conduct:

(a) Gross Negligence
(b) Repeated Negligent Acts
(c) Incompetence
(d) Excessive Treatment
(e) Conduct Endangering Public
(f) Administering to Oneself Drugs/Alcohol
(g) Conviction of a Crime Related to Chiropractic Duties
(h) Conviction of a Crime Involving Moral Turpitude/Physical Violence/etc.
(i) Conviction of a Crime Involving Drugs or Alcohol
(j) Dispensing Narcotics/Dangerous Drugs/etc.
(k) Moral Turpitude/Corruption/etc
(l) False Representation
(m) Violation of the ACT/Regulations
(n) False Statement Given in Connection with an Application for Licensure
(o) Impersonating an Applicant
(p) Illegal Advertising related to Violations of Section 17500 BP
(q) Fraud/Misrepresentation
(r) Unauthorized Disclosure of Patient Records
(s) Employment/Use of Cappers or Steerers
(t) Offer/Receive Compensation for Referral
(u) Participate in an Illegal Referral Service
(v) Waiving Deductible or Co-Pay
(w) Fail to Refer Patient to Physician/Surgeon/etc.
(x) Offer or Substitution of Spinal Manipulation for Vaccination

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUND G. BROWN JR., GOVERNOR

MEMORANDUM

Date: May 3, 2011

To: **Board Members**

From: Robert Puleo
Executive Officer

Subject: **Ratification of Formerly Approved Doctors of Chiropractic for Licensure**

This is to request that the Board ratify the attached list of individuals as Doctors of Chiropractic at the May 19, 2011, public meeting.

Between March 1, 2011 and April 30, 2011, staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

If you have any questions or concerns, please contact me at your earliest opportunity.

Approval By Ratification of Formerly Approved License Applications
March 1, 2011 – April 30, 2011

Name (First, Middle, Last)			Date Issued	DC#
Christine		Abgaryan	3/3/2011	**31925**
Danielle	Michelle	BeVier	3/3/2011	**31926**
Christopher	Lee	Bosler	3/3/2011	**31927**
Esther	Susanna	Burns	3/3/2011	**31928**
Matthew	Daniel	DeLeva	3/3/2011	**31929**
Julie	Christine	Foster	3/3/2011	**31930**
Julie	Marie	Gray	3/3/2011	**31931**
Sarah	Genevieve	Hyre	3/3/2011	**31932**
Suzanne	Lynne	Ivie	3/3/2011	**31933**
Brenda	Audrey	Lindstrom-Brown	3/3/2011	**31934**
Jeffrey	Wayne	Martin	3/3/2011	**31935**
Tanya	Veronica	Martinez	3/3/2011	**31936**
James	Michael	Weber	3/8/2011	**31937**
Alexander	James	Wiant	3/8/2011	**31938**
Kendelyn	Marie	Michaels	3/8/2011	**31939**
Daniel	Albert	Clements	3/10/2011	**31940**
David	Jonathan	Clements	3/10/2011	**31941**
Jacob	Hyde	Hansen	3/10/2011	**31942**
Jiyoun		Hoh	3/10/2011	**31943**
Theresa	Ann	Martin	3/10/2011	**31944**
Nick		Selimis	3/11/2011	**31945**
H. Garrett	Rush	Thompson	3/11/2011	**31946**
Catherine	Sy	Luib	3/16/2011	**31947**
Danielle	Ingrid	McLane	3/16/2011	**31948**
Kiet	Van	Tran	3/17/2011	**31949**
Joni	Laraine	Stier	3/18/2011	**31950**
Laura	Jean	Calcott	3/18/2011	**31951**
Meghan	Anne	Cragg	3/18/2011	**31952**
Gina	Rosalinda	Hamilton	3/18/2011	**31953**
Christina	Irena	Jones	3/18/2011	**31954**
Douglass	Bing Kwen	Cheng	3/18/2011	**31955**
Elsbeth	Anne	Schey	3/23/2011	**31956**
Mahir	Hanna	Awwad	3/23/2011	**31957**
Robert	Francis	Basilio	3/23/2011	**31958**
Rebecca	J	Basilio	3/23/2011	**31959**

Zachary	James	Brantner	3/23/2011	**31960**
Robert	Andrew	Del Torto	3/23/2011	**31961**
Jon	Yueh	King	3/25/2011	**31962**
Charles	Francis	Plante	3/25/2011	**31963**
Hoan	Duc	Nguyen	3/30/2011	**31964**
Jack	Abner	Cruz-Silvestre	4/12/2011	**31965**
Carole	Sue	Keisteadt	4/12/2011	**31966**
Keri	Ann	Linane	4/13/2011	**31967**
Kevin	Joseph	Rose	4/13/2011	**31968**
Emanuel	H.	Botelho	4/14/2011	**31969**
David	Raymond	Marshall	4/14/2011	**31970**
Julian		Ovtcharov	4/22/2011	**31971**
Jessie	Silva	Painter	4/22/2011	**31972**
Lacey	Ann	Raposo	4/22/2011	**31973**
Chien-Kai		Yen	4/22/2011	**31974**
Jon	Zachary	Stockton	4/25/2011	**31975**
Russell	Joseph	Thompson	4/28/2011	**31976**
Joessa	Irene	Austin	4/29/2011	**31977**
Marissa	Nicole	Bass	4/29/2011	**31978**
Kimberly	Ann	Huddleston	4/29/2011	**31979**
Noah	Joseph	Kaplan	4/29/2011	**31980**
Jeremy	David	Lerner	4/29/2011	**31981**
Jose	Manuel	Limon	4/29/2011	**31982**

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUNC G. BROWN JR., GOVERNOR

MEMORANDUM

Date: April 27, 2011

To: BOARD MEMBERS

From: Robert Puleo
Executive Officer

Subject: **Ratification of Formerly Approved Continuing Education Providers**

This is to request that the Board ratify the continuing education provider at the public meeting on May 19, 2011.

Staff reviewed and confirmed that the applicant met all statutory and regulatory requirements.

CONTINUING EDUCATION PROVIDERS	DATE APPROVED
1. Cliff Tao, D.C. DACBR	04/27/2011

If you have any questions or concerns, please contact me at your earliest opportunity.

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUND G. BROWN JR., GOVERNOR

MEMORANDUM

Date: May 11, 2011

To: **Board Members**

From: Robert Puleo
Executive Officer

Subject: **Ratification of Denied License Applications of Doctors of Chiropractic**

The Board of Chiropractic Examiners (Board) denies licensure to applicants who do not meet all statutory and regulatory requirements for a chiropractic license in California. An applicant has 60-days after the denial is issued to appeal the decision. If the applicant does not submit an appeal to the Board, the denial is upheld.

Between March 1, 2011 and April 30, 2011, staff reviewed and confirmed that one (1) applicant did not meet all statutory and regulatory requirements for licensure. The applicant has appealed the decision and staff is working with the Attorney General's office on the appeal.

At this time, ratification is not necessary.

If you have any questions or concerns, please contact me at your earliest opportunity.

STATE OF CALIFORNIA

BOARD OF CHIROPRACTIC EXAMINERS | EDMUND G. BROWN JR., GOVERNOR

MEMORANDUM

Date: May 11, 2011

To: **Board Members**

From: Robert Puleo
Executive Officer

Subject: Recommendation to Waive Two Year Requirement on Restoration of a Cancelled License – Chiropractic Initiative Act, Section 10(c)

This is to recommend that the Board waive the two year restoration requirement of a cancelled license for the individuals named on the attached list at the May 19, 2011, public meeting.

Staff reviewed and confirmed that the applicants met all other regulatory requirements for restoration including sufficient continuing education hours.

If you have any questions or concerns, please contact me at your earliest opportunity.

Recommendation to Waive Two Year Requirement on Restoration of a Cancelled License

Name (Last, First MI)	License No.	Cancellation Date
Ennila, Kelsey	29643	08/31/2010
Rink, Scot Christopher	28730	05/31/2010

CLEVELAND CHIROPRACTIC COLLEGE

Kansas City | Los Angeles

To Robert Puleo, Executive Officer

Good morning Mr. Puleo,

On Wednesday, March 30th, we discussed the request to allow students to exceed the 35 hour/week coursework maximum as determined by the California Board of Chiropractic Examiners to accommodate Cleveland Los Angeles students in completing the summer trimester coursework. This accommodation will result in the best positioning of students transitioning into the Southern California University of Health Sciences (SCU) curriculum for the Teach-Out scheduled to begin in Fall 2011. As per your request, a written follow-up is provided.

As the Cleveland Los Angeles and SCU leadership work together in the planning for facilitating this transition, it is now evident that the opportunity to assign coursework beyond 35 hours/week will benefit the transitioning student once transferred into SCU. Having this flexibility is important for the student to achieve his or her scheduled date of graduation.

It is common in health care education for students to be assigned to residencies, various in-field laboratory activities, patient care, clinical rounds, and/or related coursework that exceed the hours of a typical class week.

Please request the California Board of Chiropractic Examiners to now consider waiver of the 35 hour/week course limitation for the students within the Teach-Out and Transfer group beginning with summer 2011, and continuing through the time of this cohort's graduation. It is projected that this group of students will complete their Transfer and/or Teach-Out by December 2014.

Both SCU and Cleveland Los Angeles are working to meet deadlines with the respective accrediting agencies for approval for this transition. Having an answer from the California Board on this issue so we may inform these students with certainty regarding their scheduled dates of graduation is most important.

Please contact me with questions. Cell 816-665-8789. We thank you, and the members of the board, for this consideration and await your response.

Sincerely,

Carl Cleveland III, D.C.
Cleveland Chiropractic College
Kansas City and Los Angeles

California Board statement related to the 35 hours per week of instruction:

§331.7. Calendar.
Each school may elect to use the semester, trimester or four-quarter term system.
A school calendar shall designate the beginning and ending dates of terms or semesters, the vacation periods and legal holidays observed, and the dates for semester and final examinations. The recitation or lecture period shall be not less than 50 minutes in length. The school may operate on a five or six-day week or any combination thereof, but the total number of hours of instruction shall be not less than 30 hours nor more than 35 hours per week.

SCHRÖDER, JOSEPH & ASSOCIATES, LLP
A BOUTIQUE LITIGATION BASED PRACTICE

Linda H. Joseph, Esq.
(716) 881-4902
ljoseph@sjalegal.com

April 8, 2011

VIA FEDERAL EXPRESS and EMAIL

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento California 95833-2931

Att: Linda Shaw, Licensing Manager
Tel (916) 263-5355

Re: REQUEST TO BE PLACED ON AGENDA FOR BOARD MEETING OF MAY 19, 2011

Ladies and Gentlemen of the Board:

I am writing in response to Linda Shaw's letter to me dated March 11, 2011. In that letter she stated that my firm's client, D'Youville College, may address the concerns expressed in our February 17, 2011 letter to the Board of Chiropractic Examiners (the "Board") as an agenized item at a meeting of the Board, provided that we give at least two weeks notice in advance of the Board meeting date. After consulting with my client, we have decided to request to be placed on the Agenda for the Board meeting to be held on May 19, 2011. We also understand that the Council on Chiropractic Education ("CCE") will also be on the Board's agenda on that same date. Since there is some overlap as to CCE procedures, I would like to request that D'Youville's presentation be placed on the Agenda after the CCE since this will ensure that the Board has an accurate description of any applicable CCE procedures from the CCE itself before hearing D'Youville's presentation. This also will probably be most time efficient as well.

I also would appreciate the location of the May 19, 2011 Board meeting if it is available as yet. Thank you again for your assistance.

Sincerely,

SCHRÖDER, JOSEPH & ASSOCIATES, LLP

Linda H. Joseph

Linda H. Joseph

c: Dr. Kathleen L. Linaker,
Executive Director Doctor of Chiropractic Program
D'Youville College

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

March 11, 2011

Linda H. Joseph, Esq.
Schroder, Joseph & Associates, LLP
766 Ellicott Street
Buffalo, NY 14203

Dear Ms. Joseph:

Thank you for your letter dated February 17, 2011 regarding the request on behalf of D'Youville College for clarification of the Board of Chiropractic Examiner's (Board) letter of January 24, 2011.

D'Youville College submitted an application for a new chiropractic college on December 2009. After the Board's review of the documentation provided with D'Youville College's application, deficiencies and/or discrepancies were identified. D'Youville College addressed the Board's areas of concern and met the requirements set forth in our regulations. Therefore, D'Youville College's application for a new chiropractic college was provisionally approved June 2010. The final step was for the Board to inspect D'Youville College. Due to budget constraints, the Board voted to approve D'Youville College based on the Council on Chiropractic Education inspection findings. The Board's official approval of D'Youville College was granted at its January 21, 2011 Board meeting. Presently, the Board is deeming individuals graduating prior to January 2011 not eligible for licensure.

You may address your concerns to our full Board as an agenized item at one of the Board's public meetings. Our upcoming meetings are as follows:

May 19, 2011 – Northern California
July 21, 2011 – Southern California
September 15, 2011 – Northern California
November 17, 2011 – Southern California

T (916) 263-5355
F (916) 263-5369
TT/TDD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

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

Detailed locations of the meetings have yet to be determined. If you wish to request to be placed on the agenda of one of our upcoming Board meetings, you must submit your request in writing at least 14 days prior to the Board meeting date.

If you need clarification or have additional questions, please feel free to contact me directly at (916) 263-5360 or Linda.Shaw@chiro.ca.gov.

Sincerely,

Linda Shaw
Licensing Manager

SCHRÖDER, JOSEPH & ASSOCIATES, LLP
A BOUTIQUE LITIGATION BASED PRACTICE

Linda H. Joseph, Esq.
(716) 881-4902
ljoseph@sjalegal.com

February 17, 2011

VIA FEDERAL EXPRESS

BOARD OF CHIROPRACTIC EXAMINERS
11 FEB 18 PM 4:04

Board of Chiropractic Examiners
2525 Natomas Park Drive, Suite 260
Sacramento California 95833-2931

Tel (916) 263-5355

Re: REQUEST ON BEHALF OF D'YOUVILLE COLLEGE FOR CLARIFICATION OF LETTER OF JANUARY 24, 2011

Ladies and Gentlemen of the Board:

This law firm represents D'Youville College in a lawsuit brought by three doctoral graduates of its chiropractic program (the "Chiropractic Program"), including Amy L. Borynski, who has applied for licensure in California and been rejected on grounds of "non-accreditation" or "non-approval" of D'Youville's Chiropractic Program by the California Board of Chiropractic Examiners (the "Board"). We are writing this letter to seek clarification of the Board's letter dated January 24, 2011 to D'Youville College informing D'Youville that its Chiropractic Program application for approval has been granted. Because the Judge in the pending lawsuit, entitled *Nicole Enzinna, Amy L. Borynski-Kurtz and Heather L. Mahley v. D'Youville College,* Index No. 2010-001668 (the "Lawsuit"), granted a stay of the lawsuit at the trial court level on February 15, 2011 for two months so that this issue could be clarified by inquiry by D'Youville to the Board, we are asking that we have the opportunity to meet with the Board or its representative(s) to discuss the issues raised by this letter as soon as possible and that we obtain a response from the Board on the requested clarification by April 15, 2011—the deadline set by the Court.

This letter requests a clarification of the January 24, 2011 letter, a copy of which is enclosed as Exhibit A, because confusion has arisen due to an email from Tammi Pitto, a licensing analyst, to Amy Borynski, one of the plaintiffs in the Lawsuit. Ms. Pitto's email took the position on January 31, 2011 that Ms. Borynski continued to be disqualified to apply for licensure in California on grounds of "non-accreditation" or "non-approval" by California of the D'Youville Chiropractic Program, stating that the January 24, 2011 letter was only "effective" as of the date of the letter. The email stated, however, that D'Youville should contact the Board "for clarification" of the January 24, 2011 letter. Accordingly, this letter is intended to seek such clarification. A copy of Ms. Pitto's email of January 31, 2011 is enclosed as Exhibit B. We do

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Linda H. Joseph, Esq.
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ljoseph@sjalegal.com

not have a copy of the inquiry to Ms. Pitto which Ms. Borynski apparently transmitted to Ms. Pitto.

As you can see from the enclosed letter dated January 24, 2011, it does not contain an "effective date" as Ms. Pitto seems to suggest. Instead, it states that "we are pleased to inform your college that the California Board of Chiropractic Examiners has approved your college application at the January 20, 2011 Board meeting." We assume that, like the January 24, 2011 letter to D'Youville, the Board's resolution did not have any limiting language or designation of a specific effective date.

We also note that the Board expressly states in its letter that the decision was based upon the decision of the Board "to accept the Council on Chiropractic Education's site inspection findings." Thus, it seems evident that, in making this decision, the Board adopted the findings of the Council on Chiropractic Education ("CCE") reached as a result of the 2007 inspection which occurred while all three plaintiffs in the Lawsuit were students who were not scheduled to graduate until two years later in 2009.

It is respectfully submitted that the Board should clarify its decision to make it absolutely clear that, in adopting the CCE's 2007 inspection findings, the Board also intended to provide for retroactivity, just as the CCE does in situations involving the establishment of a new program such as D'Youville's Chiropractic Program. Any other result simply is not logical in that it renders it impossible for any new program to obtain accreditation or approval for students who begin to attend the program during the accreditation/approval process. This is not to say, of course, that California is required to license students from any program that it has accredited or approved. As is the usual approach across the United States, licensing will be subject to local differences and may require additional course studies or training. This is a separate matter, though, from accreditation/approval of the school or its program. It also is worthwhile to note that accreditation/approval—as distinguished from licensing which addresses differences in the scope of practice from state to state—must be addressed in a uniform and rational manner to avoid the possibility that California's accreditation/approval requirements be found unconstitutional under the Commerce Clause of the United States Constitution.

The clarification we seek also is consistent with the Board's own Rules and Regulations. Section 331.1 of the Rules and Regulations calls for designation of accreditation/approval as "provisional" and the Board did not designate its approval/accreditation in its January 24, 2011 letter as "provisional" Moreover, the express statement in the January 24, 2011 letter that the decision is based on the 2007 inspection findings of the CCE makes it clear that the accreditation/approval would be converted from "provisional" to "final approval" in 2009 under Section 331.1(a)—two years after the 2007 inspection findings. Thus, the January 24, 2011 letter should be effective no later than 2009 when the first students graduated. This also is consistent with the CCE which—like the Board—does not conduct inspection until after the program has

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been underway for some period of time but implements its accreditation by applying it to the first graduates of a program that it is being initiated. In this case, the CCE provided accreditation for the D'Youville Chiropractic Program for students who graduated two years after the inspection—just as the Board would require that the program be "in operation for at least two years" after a showing of "competent evidence" of meeting the requirements. (Sections 331.1 (a) and (b) of the Board's Rules and Regulations). A copy of the Board's Rules and Regulations is attached as Exhibit C for your convenience. Notably, we are not aware of any states that do not follow this approach since virtually all states simply look to the CCE for accreditation evaluation, as did California in this particular instance.

We believe—especially given the Board's stated grounds for approval as being the 2007 CCE inspection findings and also given the express provisions of Section 331.1 (a) and (b) discussed above—that the Board must have, consistent with the unrestricted language of its January 24, 2011 letter, intended to grant final approval/accreditation which was effective two years after the 2007 inspection findings on which it relies in granting the approval. This would mean that the first graduates of the D'Youville Program—including Ms. Borynski—are qualified to apply for licensure having graduated from the Chiropractic Program in 2009, two years after the CCE's 2007 inspection found the Program to be compliant.

Again, this does not mean that Ms. Borynski receives licensing automatically in that she must show that she meets all the state licensure requirements of California which may or may not include requirements that differ from the licensing requirements of other states due to scope of practice under state law.

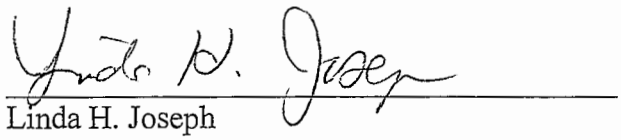
We look forward to discussing these matters with the Board or its representative(s) at your earliest convenience. It is exceedingly important to the potential outcome of the Lawsuit to obtain this requested clarification. As discussed above, we believe our interpretation of the January 24, 2011 letter is correct inasmuch as this interpretation is consistent with the letter itself, the Board's adoption of the CCE's 2007 inspection findings and the Board's own Rules and Regulations. It also is consistent with the public interest in that it is the approach taken nationwide by the CCE and other state licensing programs and makes it possible for new programs to be adopted when needed. As you may be aware, the D'Youville Chiropractic Program fills a needed role in that it offers the option of education and training to students in a liberal arts setting, something not otherwise available. This factor of meeting such "a reasonable need" is recognized in the Board's own Rules and Regulations in Section 331.1(c). See Exhibit C, Section 331.1(c) at page 21.

Linda H. Joseph, Esq.
(716) 881-4902
ljoseph@sjalegal.com

Again, we look forward to discussing these important matters with you and greatly appreciate your assistance in providing a clarification by the Court's April 15, 2011 deadline.

Sincerely,

SCHRÖDER, JOSEPH & ASSOCIATES, LLP



Linda H. Joseph

c: Dr. Kathleen L. Linaker,
Executive Director Doctor of Chiropractic Program
D'Youville College

S. Ray Bennett
Director of Accreditation Services
Council on Chiropractic Education (CCE)

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

January 24, 2011

Kathleen L. Linaker, DC, DACBR
Executive Director Doctor of Chiropractic Program
D'Youville College
One D'Youville Square
320 Porter Avenue
Buffalo, NY 14201

Dear Dr. Linaker:

We are pleased to inform you that the California Board of Chiropractic Examiners (Board) has approved your college application at the January 20, 2011 Board meeting. Based on the Board's budget constraints, it was decided to accept the Council on Chiropractic Education's site inspection findings.

Please be aware of the requirements pursuant to Title 16, California Code of Regulations sections 331.3(b), 331.3(c), 331.4 and 331.6. All approved colleges are required to provide the Board with the following documents:

- Within one month following the end of the academic year, an annual report covering topics such as student enrollment, number and changes in faculty and administration, changes in the curriculum, courses given, and the projections for future policy.

  California Code of Regulation Section 331.3(b)

- Within three (3) weeks after the beginning of the semester/quarterly term, an outline and time schedule for each subject of the course.

  California Code of Regulation Section 331.3(c)

- Within three (3) months following the end of the school's fiscal year, an annual financial report including a profit and loss statement as well as an asset and liability statement.

  California Code of Regulation Section 331.4

- On a biennial basis, a school catalog.

  California Code of Regulation Section 331.6

T (916) 263-5355
F (916) 263-5369
TT/TOD (800) 735-2929
Consumer Complaint Hotline
(866) 543-1311

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

Please provide documents to my attention at the Board's address. You may submit these documents via CD.

Please visit the Board's web site at www.chiro.ca.gov on a regular basis to track the enactment of any regulations that could affect your graduating students or your college. If you should have any questions, please feel free to contact me at (916) 263-5360 or Linda.Shaw@chiro.ca.gov.

Sincerely,

Linda Shaw
Licensing Manager

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING
LEGISLATION/REGULATION COMMITTEE

May 12, 2011
10:00 a.m.
Holiday Inn LAX
9901 La Cienega Blvd.
Los Angeles, CA 90045
(310) 649-5151

AGENDA

1. **CALL TO ORDER**

2. **Approval of Minutes**
   July 8, 2010

3. **Legislative Update**
   A. AB 25 (Hayashi) – Athletics: Concussions and Head Injuries
   B. AB 72 (Eng) – Acupuncture
   C. AB 127 (Logue) – Regulations: Effective Date
   D. AB 584 (Fong) – Workers' Compensation Utilization Review
   E. AB 783 (Hayashi) – Professional Corporations: Licensed Physical Therapists
   F. SB 206 (Kehoe) – Appropriations
   G. SB 352 (Huff) – Chiropractors
   H. SB 366 (Calderon) – Regulations: Agency Review
   I. SB 396 (Huff) – Regulations: Review Process
   J. SB 400 (Dutton) – Regulations: Impact on Businesses
   K. SB 401 (Fuller) – Regulations: Repeal Provisions
   L. SB 541 (Price) – Expert Consultants
   M. SB 544 (Price) – Regulatory Boards
   N. SB 560 (Wright) – Regulations: Small Businesses
   O. SB 591 (Gaines) – Regulations: Reductions
   P. SB 628 (Yee) - Acupuncture
   Q. SB 924 (Wyland) – Physical Therapists: Direct Access to Services

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4. PUBLIC COMMENT

5. FUTURE AGENDA ITEMS

6. ADJOURNMENT

LEGISLATION/REGULATION COMMITTEE
Frederick Lerner, D.C., Chair
Francesco Columbu, D.C.

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

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 facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or e-mail marlene.valencia@chiro.ca.gov or send a written request to the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

Board of Chiropractic Examiners
Proposed Regulatory Language for
Informed Consent
California Code of Regulations, Title 16, Division 4, Article 2

§ 319.1. Informed Consent.

(a) A licensed doctor of chiropractic shall verbally and in writing inform each patient of the material risks of proposed care. "Material" shall be defined as a procedure inherently involving known risk of serious bodily harm. The chiropractor shall obtain the patient's written informed consent prior to initiating clinical care. The signed written consent shall become part of the patient's record.

(b) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

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

COMMENTS RELATING TO THE PROPOSED OMNIBUS CONSUMER PROTECTION REGULATIONS

Section 317.4 – Suspension or Termination of Licensed Chiropractor by Another Chiropractor.

- This regulation will be ineffective as California employers who consider firing an employee may utilize a termination not-for-cause to expose the employer to less liability risk and would exclude them from reporting in this case.
- Commenter has grave concerns with placing the responsibility to report specified employment-related disciplinary and termination actions on a licensee employer relative to his or her licensee employee at the risk of disciplinary action against the licensee employer up to, and including, license revocation. The responsibility to report to the Board should fall on the licensee who was subject to the employment-related transgressions leading to their suspension or termination for cause, or resignation in lieu of suspension or termination for cause.
- This regulation does not address independent contractors and reporting would not be required under this circumstance.
- This regulation could place the employer in a difficult predicament. An employer who is sued by a patient that is harmed by a doctor of chiropractic who was under their employ would be required to file a written report with the Board, which may admit to the acts that occurred, and is considered a public record.
- The required reporting of employment-related actions could put the licensee employer at risk of employment-related liability by an alleged victim of unprofessional conduct by the licensee employee.
- This section is unclear as it does not specify information that the Board desires relative to licensee employee suspensions, terminations or resignations in lieu of suspension or termination (e.g. the formal suspension or termination documentation, written warnings, investigation documentation, etc.). This regulation does not provide a waiver of confidentiality for patient health care records provided, if necessary.
- Requiring the employer to report theft from another employee or the employer will not only expose the employer to liability, the act itself is not related to patient safety.
- The definition of "incompetence" is wrong. Incompetence is typically described as the absence of qualification, ability, or fitness to perform a prescribed duty or function.

§303. Filing of Addresses.

(a) Each person holding a license to practice chiropractic in the State of California under any and all laws administered by the board shall file his proper and current place of practice address of his principal office and, where appropriate, each and every sub-office, with the board at its office in Sacramento and shall ~~immediately~~ notify the board at its said office of any and all changes of place of practice address, giving both his old and his new address within 30 days of change.

(b) Each licensee shall file a current and accurate e-mail address with the board at its office in Sacramento and shall notify the board at its said office of any and all changes of the e-mail address, giving both the old and new e-mail address within 30 days of change.

NOTE: Authority cited: Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii).
Reference: Section 1000-10(a), Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii) and Section 136 of the Business and Professions Code.

§304. Discipline by Another ~~State~~ Jurisdiction.

~~The revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, shall constitute grounds for disciplinary action against a chiropractic licensee or grounds for the denial of chiropractic licensure of an applicant in this state.~~
(a) Any disciplinary action taken against a licensee by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States Military or a foreign government constitutes unprofessional conduct.

(b) Disciplinary action is defined as any revocation, suspension, probation, or reprimand of a professional license.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10(a), ~~of the~~ Business and Professions Code (Chiropractic Initiative Act of California (Stats. 1923, p. ~~1~~1xxxviii).
Reference: Sections 1000-4(b) and 1000-10(a) ~~of the~~ (Chiropractic Initiative Act of California (Stats. 1923, p. ~~1~~1xxxviii) and Sections 141 and 480 of the Business and Professions Code.

§308. Display of License.

(a) Each person holding a license shall display a current active license in a conspicuous place in the licensee's principal office or primary place of practice.

(b) Any licensed Doctor of Chiropractic with more than one place of practice shall obtain from the Board a Satellite Office Certificate for each additional place of practice. Said certificate must be renewed annually.

(c) A licensed Doctor of Chiropractic must display in a conspicuous place a current active Satellite Office Certificate at the office for which it was issued.

(d) Notwithstanding subdivisions (b) and (c), any licensed doctor of chiropractic who is practicing in a mobile setting, such as at a health fair, a sporting event, or a patient's home, shall not be required to obtain and display a satellite certificate. However, any licensee practicing in such a mobile setting must at all times carry a current and active pocket license and shall make their pocket license available for inspection to a representative of the Board or any member of the public upon request.

(e) No licensed Doctor of Chiropractic shall display any chiropractic license, certificate or registration, which is not currently active and valid.

NOTE: Authority cited: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii) and Section 104 of the Business and Professions Code.
Reference: Sections 1000-5, 1000-7 and 1000-12, Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii) and Section 104 of the Business and Professions Code.

§317.2. Gag Clauses in Civil Agreements Prohibited.

(a) A licensee shall not include or permit to be included any of the following provisions in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to attempt to withdraw a complaint he or she has filed with the board.

(b) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

NOTE: Authority cited: Sections 1000-4(b), and 1000-10 (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii) and Section 475 of the Business and Professions Code.

Reference: Section 1000-10, Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii) and Section 475 of the Business and Professions Code.

§317.3. Licensee Reporting Requirements.

(a) (1) A licensee shall report any of the following to the board:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action, as defined in section 304, taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the arrest, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute unprofessional conduct.

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

§317.4. Suspension or Termination of Licensed Chiropractor by Another Chiropractor.

(a) Notwithstanding any other provision of law, any licensee who is an employer of a licensed chiropractor shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensed chiropractor in its employ within 15 business days.

(b) For purposes of the section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(c) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by a responsible licensee.

(d) Failure of a licensee to make a report required by this section constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license. The board may use its authority to cite and fine a licensee for any violation of this section.
NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii).
Reference: Section 1000-10, Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii).

§321.1. Physical or Mental Examination of Applicants.

(a) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to perform as a chiropractor safely because the applicant's ability to perform may be impaired due to mental illness or physical illness affecting competency, the board may order the applicant to be examined by one or more physicians and surgeons, chiropractors, or psychologists designated by the board. The board shall pay the full cost of such examination.

(b) An applicant's failure to comply with an order issued under subdivision (a) shall render his or her application incomplete.

(c) The report of the evaluation shall be made available to the applicant.

(d) If after receiving the evaluation report the Board determines that the applicant is unable to safely practice, the Board may deny the application.

NOTE: Authority cited: Sections 1000-4(b) and 1000-4(e), Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii).
Reference: Section 1000-4(b), Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923, p. 1xxxviii).

§390.8. Sexual Contact With Patient.

Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Business and Professions Code, shall contain an order of revocation. A proposed decision shall not contain a stay of the revocation.

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

§390.9. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, under federal law, or by a foreign government, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under Chiropractic Initiative Act, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation nor place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender, provided, however, that nothing in this paragraph shall prohibit the Board from exercising its discretion to deny or discipline a license under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the healing arts board from exercising its discretion to deny or discipline a license under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to [insert effective date]. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

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