BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

NOTICE OF PUBLIC MEETING

July 21, 2011
10:00 a.m.
Holiday Inn LAX
9901 La Cienega Blvd.
Los Angeles, CA 90045
(310) 649-5151

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**
   May 19, 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**

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

11. **Regulations of Massage Therapy** – Ahmos Netanel, CEO of California Massage Therapy Council

12. Attorney General Billing

13. Legislative Update

A. AB 25 (Hayashi) – Athletics: Concussions and Head Injuries
B. AB 72 (Eng) – Acupuncture
C. AB 584 (Fong) – Workers' Compensation Utilization Review
D. AB 783 (Hayashi) – Professional Corporations: Licensed Physical Therapists
E. SB 206 (Kehoe) – Appropriations
F. SB 541 (Price) – Expert Consultants
G. SB 628 (Yee) - Acupuncture
H. SB 924 (Walters) – Physical Therapists: Direct Access to Services

14. Proposed Regulations

A. Informed Consent
B. Omnibus Consumer Protection
C. Use of Laser
D. Petitions for Reinstatement (Fee)
E. Filing of Addresses – Section 303

15. Authority Over Unlicensed/Non-Licensed Individuals Performing Chiropractic

16. Public Comment

17. Future Agenda Items

18. Hearings Re: Petition for Reinstatement of Revoked License

A. Anthony Wassif

19. Hearings Re: Early Termination of Probation

A. Abraham Grosswasser
B. Donald Shane Whiteley

20. 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
C. Evaluation of Executive Officer
Pursuant to California Government Code Section 11126(a)

21. OPEN SESSION: Announcements Regarding Closed Session

22. 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

BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES
May 19, 2011
State Capitol
First Floor, Senate Committee Room 113
Sacramento, CA 95814

DRAFT

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

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

Call to Order
Dr. Lerner called the meeting to order at 9:00 a.m.

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

Chair's Report
Dr. Lerner reported on recent activities relating to Board matters. The Board acknowledged and read a resolution to honor Lavonne Powell for her excellent service to the Board as Legal Counsel to the Board.

Approval of Minutes
March 17, 2011 Board Meeting

MOTION: DR. STEINHARDT MOVED TO APPROVE THE MINUTES
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

Public Comment
Carlyle Brakensiek representing the California Society of Industrial Medicine and Surgery thanked the Board for supporting AB 584.

Bill Howe representing the California Chiropractic Association came forward and spoke in regards to a disciplinary action taken by the Radiology Health Branch.

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. TYLER MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED
The Board ratified the attached list of approved license applications incorporated herein (Attachment A).

Ratification of Approved Continuing Education Providers

MOTION: DR. TYLER MOVED TO RATIFY THE APPROVED CONTINUING EDUCATION PROVIDERS
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
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. COLUMBU MOVED TO RATIFY THE RECOMMENDATION TO WAIVE THE TWO YEAR REQUIREMENT TO RESTORE A CANCELLED LICENSE
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED
The Board ratified the attached list of approved cancellation restoration applicants incorporated herein (Attachment C).

Information Dissemination/Communication with Licensees and the Public
Dane Wilson from Office of Technology Services provided a status on the progress of enhancing the Board's web site. Mr. Wilson reported that due to staffing and program testing issues, the enhancement

has not started. Mr. Wilson proposed assisting the Board with establishing the social media links onto the Board's current web site without delay. Then proceed with setting up a separate, not accessible to the public, web site specifically for the reorganization. Once the new web site design is ready to launch, all the enhancements can be moved into the new design. Mr. Wilson insured the Board that his staff will work with Board staff to implement. Dr. Lerner is looking forward to this task being completed by the next Board meeting in July.

Report on Federation of Chiropractic Licensing Boards Annual Conference
Dr. Lubkin reported on the various topics discussed at the Federation of Chiropractic Licensing Boards Annual Conference in Florida.

Cleveland Chiropractic College Request for Exemption to the 35 Hour/Week Coursework Requirement
Dr. Cleveland and Dr. Sackett from Cleveland Chiropractic College requested the Board's approval for an exemption from section 331.7. The exemption would be a one time waiver of the 35 hour/week coursework requirement through December 2014, for students attending Cleveland Chiropractic College, Los Angeles that will be transferring to Southern California University of Health Sciences. The hours per week would not exceed 45 hours with 25% classroom time.

MOTION: DR. COLUMBU MOVED TO APPROVE A ONE-TIME WAVIER FOR CLEVELAND CHIROPRACTIC COLLEGE FROM THE 35 HOUR/WEEK COURSEWORK REQUIREMENT AS STATED IN SECTION 331.7 THROUGH DECEMBER 2014, WITH THE CONDITION THAT THE HOURS PER WEEK WOULD NOT EXCEED 45 HOURS
SECONDED: DR. TYLER SECONDED THE MOTION

The Board discussed the necessity of a written plan from Cleveland Chiropractic College which would address any unusual circumstances that may arise.

MOTION: DR. COLUMBU MOVED TO AMEND THE MOTION TO INCLUDE A WRITTEN PLAN FROM CLEVELAND CHIROPRACTIC COLLEGE ADDRESSING UNUSUAL CIRCUMSTANCES
SECONDED: DR. TYLER SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

Mr. Walker suggested that the Board request a written plan from Cleveland Chiropractic College to be sent to the Executive Officer within 90 days with the provision that the Executive Officer would be granted authorization to discuss the content of the plan and request additional information/changes if deemed necessary.

MOTION: DR. LUBKIN MOVED TO AMEND THE MOTION TO INCLUDE REQUIRING CLEVELAND CHIROPRACTIC COLLEGE TO PROVIDE A WRITTEN PLAN WITHIN 90 DAYS TO THE EXECUTIVE OFFICER. THE EXECUTIVE OFFICER WILL BE GRANTED AUTHORITY DISCUSS THE CONTENT OF THE PLAN AND REQUEST FOR ADDITIONAL INFORMATION/CHANGES IF DEEMED NECESSARY
SECONDED: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

Council on Chiropractic Education Presentation
Dr. Lee Van Dusen and Dr. David Wickes gave a presentation regarding the Council of Chiropractic Education's processes for accreditation of Chiropractic colleges.

D'Youville College Presentation for Clarification of Approval Date as a Board Approved College
Linda Joseph, representing D'Youville College, asked the Board for clarification on the approval date of D'Youville College as a Board approved college. Ms. Joseph brought to the Board's attention that D'Youville College was inspected and accredited by the Council on Chiropractic Education in 2007. The Board asked Mr. Walker for his opinion. Mr. Walker found that based on the fact that the Board relied on the Council on Chiropractic Education accreditation, the Board may retroactively approve D'Youville College as a Board approved college the same year as the Council of Chiropractic Educations accreditation.

MOTION: DR. TYLER MOVED TO RETROACTIVELY APPROVE D'YOUVILLE COLLEGE AS A BOARD APPROVED COLLEGE AS OF 2007
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

Attorney General Billing
The Board had a discussion on the costs for Attorney General's services. The Board will provide an update at the next Board meeting.

Authority Over Unlicensed/Non-Licensed Individuals Performing Chiropractic
Dr. Lerner reported that Mr. Puleo has been trying to set up a meeting with the Physical Therapy Board to no avail. Dr. Lerner has reached out to the Physical Therapy Board's Chair in hopes to connect and schedule a meeting.

Department of Industrial Relations, Division of Workers Compensation – Update on Recognition of Chiropractic Specialties
Dr. Lerner reported that the Department of Industrial Relations, Division of Workers Compensation has yet to implement the regulations recognizing Chiropractic Specialties.

Legislation/Regulation Committee Meeting Update
Dr. Lerner provided a summary the bills discussed at the Legislation/Regulation Committee Meeting and presented the recommendations for the Board's vote.

A. AB 25 (Hayashi) – Athletics: Concussions and Head Injuries

MOTION: DR. LUBKIN MOVED TO SUPPORT AB 25
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

B. AB 72 (Eng) – Acupuncture

MOTION: DR. LUBKIN MOVED TO SUPPORT AS AMENDED AB 72
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

C. AB 127 (Logue) – Regulations: Effective Date
Bill failed passage

D. AB 584 (Fong) – Workers' Compensation Utilization Review

MOTION: DR. LUBKIN MOVED TO SUPPORT AB 584
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

E. AB 783 (Hayashi) – Professional Corporations: Licensed Physical Therapists

MOTION: DR. COLUMBU MOVED TO SUPPORT AB 783
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

F. SB 206 (Kehoe) – Appropriations Therapists

MOTION: DR. LUBKIN MOVED TO SUPPORT SB 206
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

G. SB 352 (Huff) – Chiropractors Therapists
Spot Bill; no action required

H. SB 366 (Calderon) – Regulations: Agency Review
Two year Bill; no action required

I. SB 396 (Huff) – Regulations: Review Process
Bill is stalled; no action required

J. SB 400 (Dutton) – Regulations: Impact on Businesses
Bill failed passage

K. SB 401 (Fuller) – Regulations: Repeal Provisions
Bill failed passage

L. SB 541 (Price) – Expert Consultants
Bill is pending at the Senate Floor

MOTION: DR. LUBKIN MOVED TO SUPPORT SB 541
SECOND: DR. COLUMBU SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

M. SB 544 (Price) – Regulatory Boards
Two year Bill; no action required

N. SB 560 (Wright) – Regulations: Small Businesses
Bill failed passage

O. SB 591 (Gaines) – Regulations: Reductions
Bill failed passage

DRAFT

P. SB 628 (Yee) – Acupuncture

MOTION: DR. COLUMBU MOVED TO OPPOSE SB 628
SECOND: DR. LUBKIN SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

Q. SB 924 (Walters) – Physical Therapists: Direct Access to Services

MOTION: DR. LUBKIN MOVED TO OPPOSE SB 924
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 5-0
MOTION CARRIED

Regulatory Hearing on the Proposed Language for Informed Consent – California Code of Regulations, Title 16, Division 4, Article 1, Sections 319.1
A regulatory hearing took place on the proposed language for Informed Consent.

Dr. Charles Davis of International Chiropractic Association of California came forward and commented that the proposed language looks good, however; some parts are in contradiction with a Supreme Court decision. Dr. Davis suggested that the Board look into the decision prior to adopting and moving forward.

The regulatory hearing was adjourned.

Proposed Regulations

A. Continuing Education
Dr. Lerner reported that the Continuing Education regulations were approved effective June 8, 2011.

B. Omnibus Consumer Protection
The Board discussed the Omnibus Consumer Protection regulation package and some sections may cause fiscal impact. New language was proposed and presented to the Board.

MOTION: DR. COLUMBU MOVED TO WITHDRAW THE CURRENT REGULATION PACKAGE, ADOPT THE PROPOSED LANGUAGE AND MAKE THE NECESSARY TECHNICAL CHANGES
SECOND: DR. TYLER SECONDED THE MOTION

The Board discussed the controversial issues surrounding section 317.4 of the proposed language.

DRAFT

MOTION: DR. COLUMBU MOVED TO AMEND THE MOTION TO WITHDRAW THE CURRENT REGULATION PACKAGE, ADOPT THE PROPOSED LANGUAGE WITH TECHNICAL CHANGES AND REMOVE SECTION 317.4
SECOND: DR. TYLER SECONDED THE MOTION
VOTE: 5-0

C. Informed Consent
Dr. Lerner stated a regulatory hearing took place prior to this section.

D. Petitions for Reinstatement (Fee)
The regulatory package has been prepared. Board staff is waiting for the outcome of the Omnibus Consumer Protection regulatory package. Once the language is approved, Board staff will then move forward with this package.

E. Use of Laser
The language is still being prepared. There are a few technical questions that need to be addressed in order to complete the Initial Statement of Reasons. Once the technical questions are addressed, the Fiscal Impact Statement can be completed.

Hearings Re: Petition for Reinstatement of Revoked License
Administrative Law Judge Linda A. Cabatic presided over and Deputy Attorney General Anahita Crawford appeared on behalf of the people of the State of California on the following hearing:

A. Robert L. Horan

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

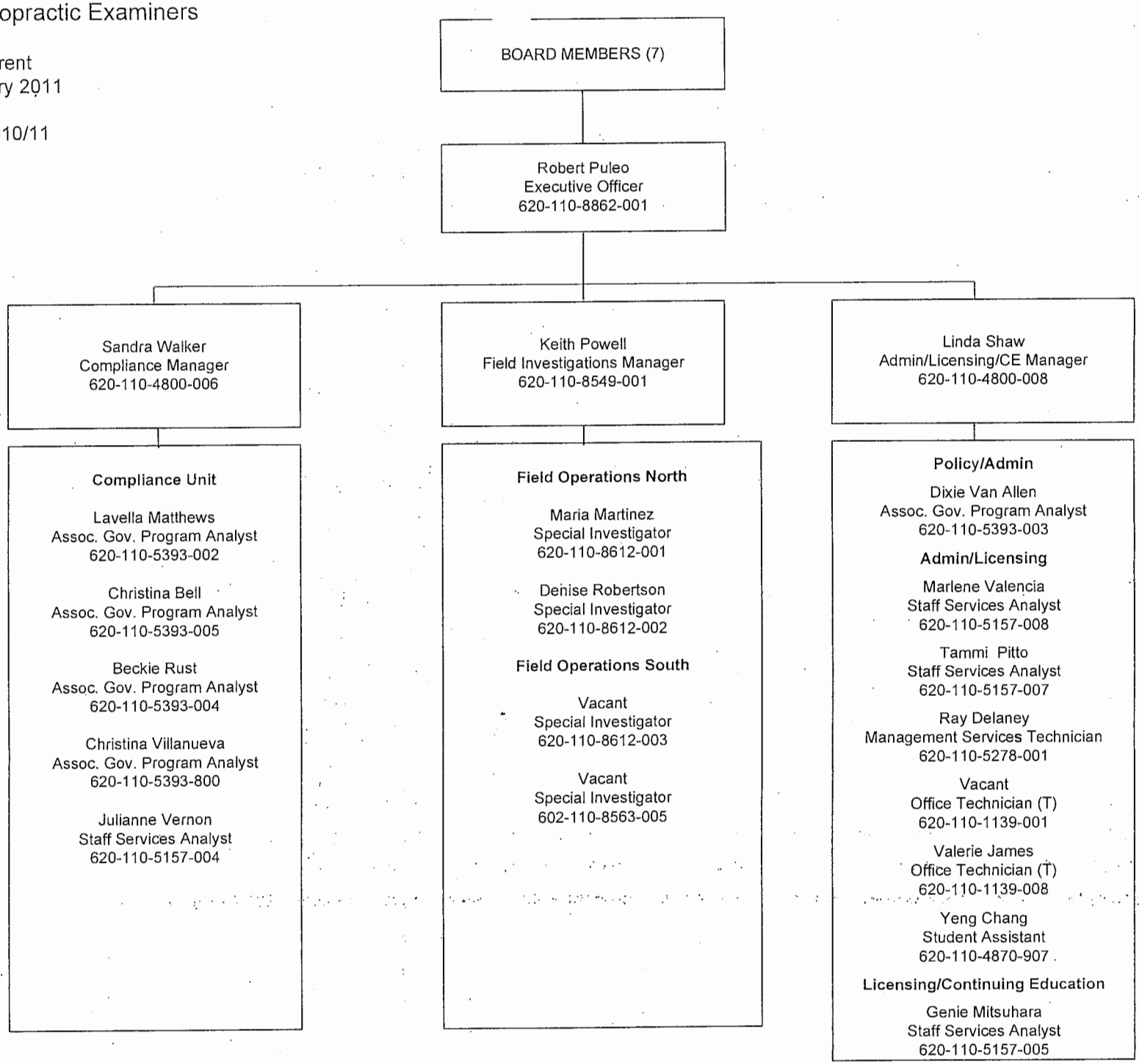
Adjournment
Dr. Lerner adjourned the public meeting at 2:51p.m.

DRAFT

State Bo of Chiropractic Examiners

Current
February 2011

FY 2010/11



Executive Officer Rob Puleo

Rev. 2/1/11

0152 - Board of Chiropractic Examiners
Analysis of Fund Condition

Prepared 7/13/11

(Dollars in Thousands)

FY 2011-12 Governor's Budget

		Actual 2009-10	CY 2010-11	Proposed Gov Budget 2011-12	BY+1 2012-13
BEGINNING BALANCE		$ 4,150	$ 3,125	$ 2,002	$ 2,056
Prior Year Adjustment		$ 96	$ -	$ -	$ -
Adjusted Beginning Balance		$ 4,246	$ 3,125	$ 2,002	$ 2,056
REVENUES AND TRANSFERS					
Revenues:					
125600	Other regulatory fees	$ 131	$ 132	$ 132	$ 132
125700	Other regulatory licenses and permits	$ -	$ -	$ -	$ -
125800	Renewal fees	$ 2,056	$ 2,054	$ 3,409	$ 3,409
125900	Delinquent fees	$ 43	$ 38	$ 63	$ 63
141200	Sales of documents	$ -	$ -	$ -	$ -
142500	Miscellaneous services to the public	$ -	$ -	$ -	$ -
150300	Income from surplus money investments	$ 28	$ 21	$ 8	$ 20
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
161900	Other Revenue - Cost Recoveries	$ 96	$ 96	$ 96	$ 96
164600	Fines and Forfeitures	$ 17	$ 17	$ 17	$ 17
Totals, Revenues		$ 2,377	$ 2,364	$ 3,731	$ 3,743
Transfers to Other Funds		$ -	$ -	$ -	$ -
Totals, Revenues and Transfers		$ 2,377	$ 2,364	$ 3,731	$ 3,743
Totals, Resources		$ 6,623	$ 5,489	$ 5,733	$ 5,799
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	$ 3,483	$ 3,659	$ 3,732
Total Disbursements		$ 3,498	$ 3,487	$ 3,677	$ 3,732
FUND BALANCE					
Reserve for economic uncertainties		$ 3,125	$ 2,002	$ 2,056	$ 2,067
Months in Reserve		10.8	6.5	6.6	6.5

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2009-10 AND ON-GOING
B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.
C. ASSUMES INTEREST RATE AT 1%

BOARD OF CHIROPRACTIC EXAMINERS
LICENSE STATISTICAL DATA

FY 2009/10 – FY 2010/11 COMPARISON

LICENSE TYPE	TOTAL LICENSES 7/1/2010	TOTAL LICENSES 7/1/2011	NET VARIANCE
CHIROPRACTOR	13,901	13,810	-91
SATELLITES	3,521	3,765	+244
CORPORATIONS	1,305	1,314	-9
REFERRALS	33	31	-2
TOTALS	18,760	18,920	+160

APPLICATIONS RECEIVED AND PROCESSED
MAY 1, 2011 – JUNE 30, 2011

APPLICATION TYPE	RECEIVED	APPROVED	DENIED	WITHDRAWN	PENDING
INITIAL	63	58	1	0	128
RECIPROCAL	4	2	0	0	15
RESTORATION	41	35	0	0	7
CORPORATION	17	11	0	0	18

Compliance Unit Statistics

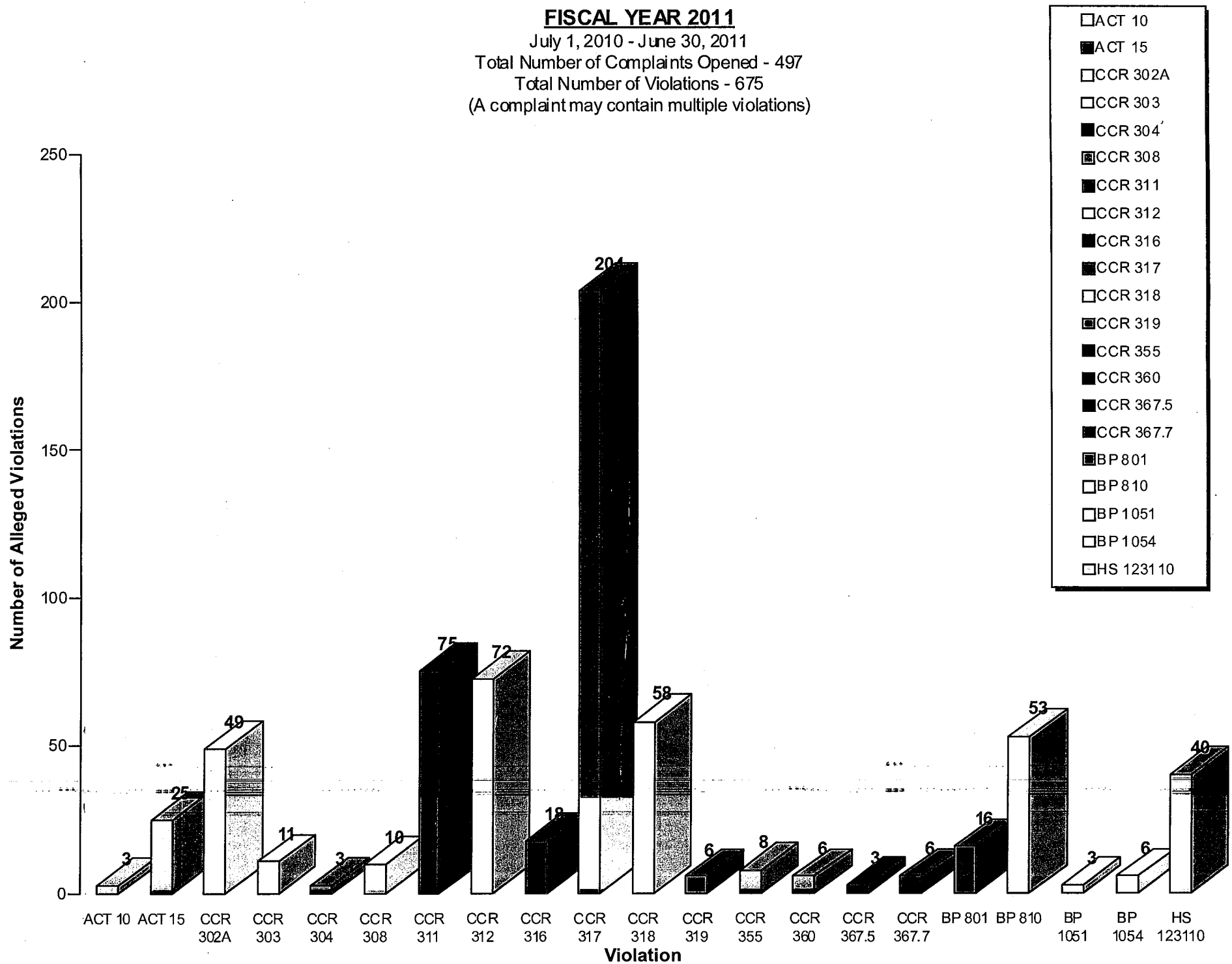
Fiscal Year	06/07	07/08	08/09	09/10	10/11*
Complaints					
Received	702	644	655	519	497
Pending	863	824	410	203	137
Closed with Insufficient Evidence	132	107	206	136	96
Closed with No Violation	61	78	223	129	135
Closed with Merit	202	321	275	158	140
Letter of Admonishment	n/a	n/a	n/a	5	4
Citations and Fines Issued (Total Fine Amount)	34	28	41($19,200)	78($25,700)	47($12,700)
Accusations					
Filed	41	13	64	73	68
Pending	92	73	105	117	130
Revoked	27	8	10	18	17
Revocation Stayed: Probation	23	10	4	20	26
Revocation Stayed: Suspension and Probation	15	10	7	8	9
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	9
Dismissed/Withdrawn	3	3	5	18	10
Statement of Issues					
Filed	11	7	3	3	4
Denied	1	0	1	0	0
Probationary License	9	7	4	7	3
Withdrawn at Applicant's Request	2	1	0	0	0
Granted	3	0	0	0	1
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	7
Granted	5	12	4	4	2
Denied	4	6	11	11	10
Petition for Early Termination of Probation					
Filed	5	6	6	6	4
Granted	4	1	6	1	2
Denied	0	1	2	2	4
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	138

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

Revised: July 13, 2011

FISCAL YEAR 2011

July 1, 2010 - June 30, 2011
Total Number of Complaints Opened - 497
Total Number of Violations - 675
(A complaint may contain multiple violations)



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):

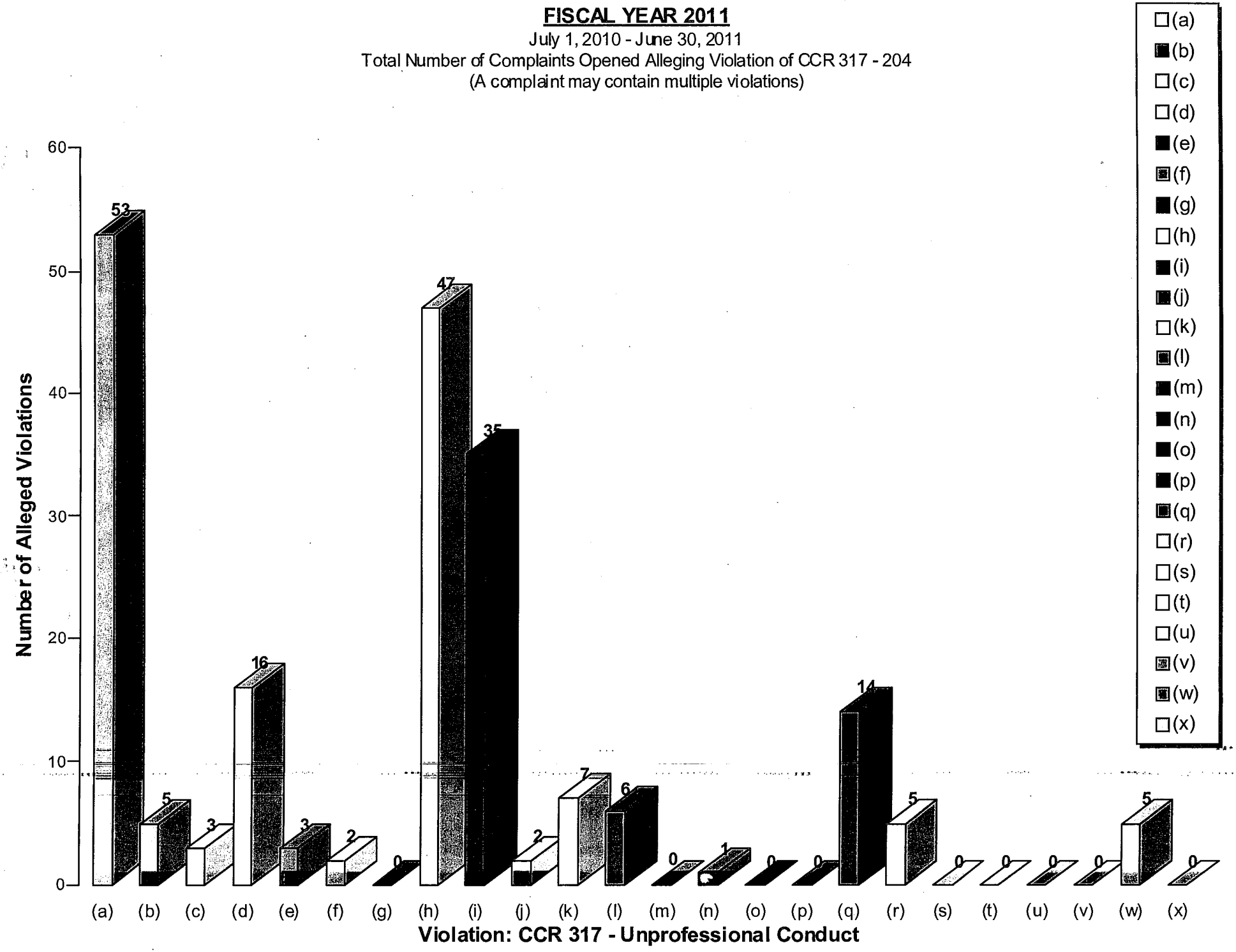
302(a) – Scope of Practice
303 – Filing of Addresses
304 – Discipline by Another State
308 – Display of License
311 – Advertisements
312 – Illegal Practice
316 – Responsibility for Conduct on Premises
317 – Unprofessional Conduct
318 – Chiropractic Patient Records/Accountable Billing
319 – Free or Discount 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 - June 30, 2011
Total Number of Complaints Opened Alleging Violation of CCR 317 - 204
(A complaint may contain multiple violations)
Number of Alleged Violations
0
10
20
30
40
50
60
53
5
3
16
3
2
0
47
35
2
7
6
0
1
0
0
14
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)
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(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: July 12, 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 July 21, 2011, public meeting.

Between May 1, 2011 and June 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
May 1, 2011 – June 30, 2011

Name (First, Middle, Last)			Date Issued	DC#
Bjorn	Isaac	Bostrom	5/4/2011	**31983**
Kenneth	Clayton	Oliver	5/5/2011	**31984**
Matthew	Aaron	Nightingale	5/9/2011	**31985**
Joseph Charles	Gonzales	Ordona	5/9/2011	**31986**
Leanne	Marla	Sim	5/9/2011	**31987**
Benjamin	Allen	Spencer	5/9/2011	**31988**
Lindsay	Allison	Stephens	5/9/2011	**31989**
Laura	Michelle	Dabby	5/10/2011	**31990**
Joanna	Renee	Fassl	5/10/2011	**31991**
Jonathan	Rory	Hoops	5/10/2011	**31992**
Bryan	Habif	Abrams	5/12/2011	**31993**
Benjamin	Roy	Cowell	5/12/2011	**31994**
Joshua	Daniel	Higley	5/12/2011	**31995**
Angel		Lee	5/12/2011	**31996**
Kenji		Nampo	5/23/2011	**31997**
Aaron	Michael	Newman	5/23/2011	**31998**
Spencer	Hung Wo Yim	Shimabukuro	5/23/2011	**31999**
Jesse	Dalton	Smith	5/23/2011	**32000**
Megan	Elizabeth	Sweithelm	5/23/2011	**32001**
Samuel	C	Zoranovich	5/23/2011	**32002**
Kenneth	Quoc	Hoang	5/23/2011	**32003**
Laura	Lee	Ross	5/31/2011	**32004**
Senkosal	Heap	Uy	5/31/2011	**32005**
Nora	Jane	Zoma	5/31/2011	**32006**
Setareh		Derakhshan	5/31/2011	**32007**
Melissa	Ann	Diller	5/31/2011	**32008**
Farand		Kusnadi	5/31/2011	**32009**
Daniel	Duwayne	Hamilton	5/31/2011	**32010**
Shawna	Stuart	Handschug	5/31/2011	**32011**
Prakash	Ramesh	Mulchandani	5/31/2011	**32012**
Austin	Patrick	Jones	6/3/2011	**32013**
Ryan	Matthew	Kiser	6/3/2011	**32014**
Lucas	Jeromy	Phifer	6/7/2011	**32015**
Joseph	Anthony	Viggianelli	6/7/2011	**32016**
Nicholas	Donald	Reiff	6/13/2011	**32017**

Sarah	Beth	Witt	6/13/2011	**32018**
Zachary	Nolan	Zugschwerdt	6/13/2011	**32019**
Ian	Philipe	Ahearn	6/13/2011	**32020**
Tan	Nhat	Bui	6/13/2011	**32021**
Mario		Cervino	6/13/2011	**32022**
Joshua	David	Chrystal	6/13/2011	**32023**
Sana		Eang	6/13/2011	**32024**
Jasmine	Therese	Esguerra	6/13/2011	**32025**
Norquitta	Yvette	Johnson	6/13/2011	**32026**
Scott	Matthew	Karges	6/13/2011	**32027**
Mahsa		Khodabakhsh	6/13/2011	**32028**
Hyunhee		Lee	6/13/2011	**32029**
Houri	Annette	Manoukian	6/13/2011	**32030**
Nancy	Joan	Ritschel	6/16/2011	**32031**
John		Park	6/22/2011	**32032**
Peter	Soo-Chul	Park	6/22/2011	**32033**
Nahdir	Nosratolah	Pourteymoor	6/22/2011	**32034**
Candice	Tin-Oi	So	6/22/2011	**32035**
Eric	Fridthjov	Nilsen	6/29/2011	**32036**
Sarah	Lynn Szymkowiak	Stiff	6/29/2011	**32037**
Pavan	Jay	Dwarnal	6/29/2011	**32038**
Nathan	Arnold	Moore	6/29/2011	**32039**
Sean	Patrick	Gregg	6/30/2011	**32040**
Peter	Phuc Hung	Le	6/30/2011	**32041**
Ping-Long		Wang	6/30/2011	**32042**

STATE OF CALIFORNIA

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

MEMORANDUM

Date: July 6, 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 July 21, 2011.

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

CONTINUING EDUCATION PROVIDERS	DATE APPROVED
1. ChiroCredit.com	06/13/11
2. CEvantive University	06/13/11
3. Steven C. Eggleston	06/20/11
4. BodyZone LLC	06/22/11
5. Daniel S. Buch	06/30/11

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: July 13, 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 May 1, 2011 and June 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: July 13, 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 July 21, 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
Lionberger, William	14129	02/28/2011

Board of Chiropractic Examiners
Proposed Regulations
Title 16, Division 4, California Code of Regulations

Order of Adoption

§ 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).

Review of Written Comments Received During the 45 Day Comment Period
Informed Consent Proposed Regulations

Written Comments Received During the 45-Day Comment Period

Comment 1.1:
Dr. Kenneth Martin, D.C. asserts that the proposed regulation will not protect the public.

Response 1.1:
The Board disagrees and rejects this comment. The proposed regulation would require doctors of chiropractic to discuss the material risks of chiropractic treatment as well as obtain their written consent prior to providing the treatment. This process will ensure that patients are aware of the risks of the proposed treatment so that they can make an educated decision regarding their health care. Further, informed consent is considered a standard of care that should be utilized in the chiropractic profession.

Comment 1.2:
Dr. Martin, D.C., believes that the wording on this proposal is so vague as to 'choke" all conversations between doctors of chiropractic and their patients into a fear of the care that can be provided.

Response 1.2:
The board disagrees and rejects this comment. The purpose of the proposed regulation is not to instill fear of chiropractic services in patients; rather, this proposal will require chiropractors to inform patients of the material risks of procedures involving a known risk of serious bodily harm. The board agrees that chiropractic is a safe modality of treatment; however, there are some chiropractic procedures and/or medical conditions which may put the patient at risk of serious bodily harm. The board believes that, under these circumstances, it should be a requirement to inform the patient of the serious risk(s) of the proposed treatment so that the patient can decide whether the benefits outweigh the risks that may result from the treatment.

Comment 1.3:
Dr. Martin, D.C., states, "Given the number of iatrogenic illnesses caused by medical physicians, I could not imagine them having to discuss with patients each and every side effect of every medication or procedure." Dr. Martin wants to know why the chiropractic profession would be required to do more than any other health profession.

Response 1.3:
The board rejects this comment. This proposal does not require chiropractors to disclose each and every side effect of the proposed treatment. This proposal requires chiropractors to use their professional expertise to determine the risks of a treatment and to disclose only those risks which may cause serious bodily harm to the patient. Informed consent is considered a standard of care in the health care profession and is taught in chiropractic colleges. Further, our judicial system requires health care professionals to use informed consent, pursuant to the Book of Approved Jury Instructions 6.11(BAJI), subdivisions (a) and (e). Subdivision (a) states, in part, "It is the duty of the physician to disclose to the patient all material information to enable the patient to make an informed decision regarding the proposed treatment." Subdivision (e) states, in part, "However, when a procedure inherently involves a known risk of death or serious bodily harm it is the physician's duty to disclose to the patient the possibility of such outcome and to explain in lay terms the complications that might possibly occur." As such, jurors would expect to see the use of informed consent in such cases.

Comment 1.4:
Dr. Martin, D.C., believes that the proposed language opens up too many areas where DC's could be persecuted for not providing "something" that a legal person would otherwise consider as "serious bodily harm". He also stated that he would support this proposal if specific language were presented for adoption such as the copy of the informed consent form provided with his comments.

Response 1.4:
The board rejects this comment. The board is unable to adopt specific informed consent language as the risks of a treatment vary from one patient to another based on age, physical health, medications, surgeries, etc. The board believes that chiropractors, as diagnosticians, should be able to use their expertise to determine whether a recommended treatment may pose a risk of serious bodily harm to their patient, and under such circumstances, disclose the risk(s) to the patient so that the patient has adequate knowledge to make decisions regarding their health care. Conversely, if a patient were harmed by a chiropractic treatment without having been warned of the risks, nor provided informed consent for the treatment, an expert witness for the profession would likely determine this as a deviation from the chiropractic standard of care which could result in administrative or disciplinary action against the chiropractic license as well as result in a malpractice suit. Further, the type of disclosure would depend on the proposed treatment and factors described above; therefore, licensees may want to seek legal guidance regarding the language to use on different informed consent forms.

Comment 2.1:
Joseph Homesley, D.C., questions the frequency of which chiropractic patients incur "serious bodily harm" and would like the board to provide statistics confirming the frequency and type of "procedure" involved.

Response 2.1:
The board rejects this comment. The frequency with which chiropractic patients incur "serious bodily harm" is irrelevant. Informed consent is a tool to ensure that chiropractic patients are provided with relevant information regarding the risks of a proposed treatment so that they can make an informed decision on whether or not to proceed with the treatment. This proposal will not prevent all cases of serious bodily harm to chiropractic patients, but rather ensure that the patient is aware of the risks prior to consenting to proceed with the treatment. Further, there are too many variables affecting chiropractic treatments and their corresponding risks based on a patient's age, physical health, medications, etc., for the board to provide statistics. As a consumer protection board, we believe that the patient is entitled to know the benefits as well as the risks of a proposed treatment. As mentioned in Comment 1.2, chiropractic is a relatively safe modality; however, numerous factors such as age, surgeries, medications, health, etc. may increase the risks associated with an otherwise safe or routine procedure. The board believes that chiropractors, as diagnosticians, should be able to use their professional expertise to determine whether a recommended treatment, combined with the variables mentioned above, may pose a risk of serious bodily harm to their patient, and under such circumstances, disclose the risk(s) to the patient so that the patient has adequate knowledge to make decisions regarding their health care.

Comment 2.2:
Joseph Homesley, D.C., argues that the statement included in the board's Initial Statement of Reasons which states, "Nine states mention informed consent" does not constitute support for "a standard of care that should be utilized in the chiropractic profession".

Response 2.2:
The board disagrees and rejects this comment. The board chose to include a poll conducted by the Federation of Chiropractic Licensing Boards, as **one part** of its underlying data, to show that other states have laws or regulations regarding informed consent for the practice of chiropractic. This poll, which is included as Underlying Data, provides information on how other states address informed consent for the practice of chiropractic. Specifically, this poll asks the following questions: 1) Do your regulations, rules, or statutes mention informed consent? 2) If not, is your board planning on addressing informed consent in the near future? 3) Is informed consent suggested or required? 4) If your regulations do require informed consent, do they dictate whether the consent is to be verbal or written? 5) If informed consent is required, does it apply to all aspects of chiropractic care or is it limited to select areas such as the use of unproven treatment procedures? 6) If limited, please specify. This data was provided to show trends regarding adoption of informed consent laws or regulations by other chiropractic state licensing boards. Further, informed consent is considered a standard of care in the chiropractic profession in this state, which is further evidenced by the curriculum and policies adopted by chiropractic colleges, and are included as Underlying Data in this rulemaking package. Therefore, the board's proposal is not unprecedented.

Comment 2.3:
Joseph Homesley, D.C. asserts that "disciplinary action" is not outlined. He also believes this proposal would only serve to increase the board's revenue with no increased "protection of patients of chiropractic services" and no change in authority to oversee and discipline care outside of the accepted arena of treatment.

Response 2.3:
The board rejects this comment. Disciplinary action is outlined in the board's Disciplinary Guidelines which are incorporated by reference in California Code of Regulations Section 384. One of the purposes of this proposal is to define a violation of this proposed section as unprofessional conduct, which provides the board with authority to take disciplinary action for violations of this section in accordance with the Disciplinary Guidelines.

Comment 2.4:
Joseph Homesley, D.C. claims that the board estimates that the proposed regulation may result in a decrease of malpractice suits with no statistics to support such a claim.

Response: 2.4:
The board rejects this comment. The board believes that it is logical to predict that if a patient knows about the potential risks associated with a proposed treatment, and agrees to have the procedure nonetheless, the patient will be less likely to sue if there is an adverse outcome. Further, even if the consumer decides to sue the chiropractor, they will be less likely to prevail in court if the proposed informed consent procedures were followed.

Comment 2.5:
Joseph Homesley, D.C. states that he does not engage in procedures which could "inherently involve known risks of serious bodily harm" and wants to know if he would be violating this proposed regulation if he chose not to provide informed consent.

Response 2.5:
The board has considered this question. The board cannot provide legal advice on this matter. The proposed language clearly states that if there is a known material risk, disclosure of the risk(s) must be given verbally and in writing to the patient prior to performing the proposed treatment. If a procedure does not pose a material risk to the patient, the chiropractor is not required to provide disclosure to the patient. The board believes that chiropractors, as diagnosticians, should be able to use their professional expertise to determine whether a recommended treatment may pose a risk of serious bodily harm to their patient, and under such circumstances, disclose the risk(s) to the patient so that the patient has adequate knowledge to make decisions regarding their health care. Violations will be considered on a case by case basis by the board based on consumer complaints.

Comment 2.6:
Joseph Homesley, D.C. is concerned that the emphasis is the violation from not signing a form rather than the emphasis being to not cause "serious bodily harm".

Response 2.6:
The board rejects this comment. The cause of "serious bodily harm" and informed consent are two separate issues. The board's highest priority is protection of chiropractic consumers. As such, the board has authority to take disciplinary action against licensees who cause serious bodily harm to their patients through gross negligence or incompetence. This proposal, however, is a proactive approach to ensure that the patient of chiropractic services is made aware of the serious risks that may result from a chiropractic treatment prior to consenting and receiving the treatment and there is documentation of informed consent in the patient's file. A patient who is educated on the serious risks of a proposed treatment is provided pertinent information which allows them to make informed decisions on whether or not to proceed with the treatment.

Comment 2.7:
Joseph Homesley, D.C. wants the board to define "serious bodily harm".

Response 2.7:

The board rejects this comment. It is not necessary to define "serious bodily harm". Doctors of chiropractic are educated and trained to know when a patient may be placed at risk by undergoing specific chiropractic procedures. It is implied in the proposed language that a chiropractor must reflect on his or her education and training in order to identify the risks associated with chiropractic procedures. If, based on that education and training, it is determined that the procedure involves a known risk of serious bodily injury to a patient, informed consent is required. If a determination is made that a procedure does not involve such risk, the proposed regulation would not apply.

Comment 2.8
Joseph Homesley, D.C. would like the board to explain why informed consent should be a standard of care in the chiropractic profession without the offense outlined in far more specificity.

Response 2.8:
The board has considered this comment and is unclear what Dr. Homesley, D.C is referring to regarding the term "offense". This proposal is not designed to address an "offense", but rather protect consumers by ensuring they are aware of material risks associated with a proposed treatment before consenting, thereby allowing a fully informed decision regarding their health care. Informed consent is considered a standard of care in the chiropractic profession in this state as evidenced by the inclusion of this topic in chiropractic college curriculum as well as inclusion in BAJI 6.11.

Comment 2.9:
Joseph Homesley, D.C. wants to know why it makes a difference to a patient or a physician whether an informed consent is signed or not if "serious bodily harm" occurs doing (sic) treatment. He further states that signing a form does not release liability if there is misconduct.

Response 2.9:
The board has considered this comment. Informed consent is not considered a means to prevent misconduct; rather, informed consent is a tool to ensure that chiropractic patients are provided with relevant information regarding the risks of a proposed treatment so that they can make an informed decision on whether or not to proceed with the proposed treatment. The board believes that it is logical to predict that if a patient knows about the potential risks associated with a proposed treatment, and agrees to have the procedure nonetheless, the patient will be less likely to sue if there is an adverse outcome. Further, even if the consumer decides to sue the chiropractor, they will be less likely to prevail in court if the proposed informed consent procedures were followed.

Oral Comments Received at the Public Hearing

Comment 1:
Dr. Charles C. Davis, D.C., International Chiropractic Association of California supports the use of informed consent; however, he argues that the procedure (relating to a known risk of serious bodily harm) outlined in the proposed regulation conflicts with a ruling of the California State Supreme Court and recommends that the procedure be redefined.

Response 1:

The board disagrees and rejects this comment. As a consumer protection agency, the board has an obligation to protect consumers from chiropractors who are aware that certain procedures carry with them risks of serious bodily harm to patients and, nevertheless, fail to disclose such risks. A patient's right of self-decision can only be effectively exercised when patients are informed of dangers associated with certain chiropractic procedures. The proposed language does not require the disclosure of information that is not known to a chiropractor, nor does it require a chiropractor to obtain a patient's consent prior to performing all chiropractic procedures; it merely prohibits a chiropractor from intentionally keeping specific information (material risks) from a patient that, if revealed, could have an impact on a patient's decision regarding proposed care. The board believes that the proposed language is the best approach to address a patient's right to specific information that is needed to make an informed decision when a procedure has the potential to expose the patient to serious harm.

Board of Chiropractic Examiners
Proposed Regulatory Language for the Use of Lasers
California Code of Regulations, Title 16, Division 4, Article 1

§ 302.5. Use of Laser

(a) A duly licensed chiropractor and any person under their direct supervision shall:

(1) Not use any laser in the practice of chiropractic which has not been properly approved by and has a valid 510(k) filed with the United States Food and Drug Administration (FDA).

(2) Prior to using any laser on a patient, take a board-approved continuing education course as follows:

(A) For a Class 1, Class II or Class IIIA laser, the course shall consist of at least four (4) hours of instruction.

(B) For a Class IIIB or Class IV laser, the course shall consist of at least eight (8) hours.

(C) The required hours shall consist of either classroom or on-line training.

(D) The required course work shall, at a minimum, cover the most currently published version of the U.S. Department of Labor's Occupational Safety and Health Administration Technical Manual (OTM), Section III, Chapter 6, Laser Hazards (Directive No. TED-01-00-015, Eff. 1/20/99), with an emphasis on the safe use of a laser for the patient and operator, in addition to the ANSI Laser Standards, (ANSI Z 136.1 – 2007).

(3) Not market or advertise the use of a laser for purposes other than the intended use specified in the product's FDA 510(k) filing.

(4) Inform the prospective patient of the contraindications to laser exposure both verbally and in writing prior to the use of any laser on a patient.

(5) Comply with the safety procedure publications specified in subparagraph (a)(2)(D) of this section, as well as the following:

(A) Lasers may only be operated in an enclosed area, by the licensee or under the licensee's direct supervision, provided that all persons using the laser have completed the required course work specified in subparagraph (a)(2). Nonessential personnel may not be in the treatment area while the laser is in use.

(B) All persons present during the operation of the laser will wear protective eyewear containing specified protection for the wavelengths emitted by the laser.

(C) Post "Laser In Use" signs in a conspicuous place at the entrance to the laser treatment area.

(D) Lasers with a classification of IIIB or higher shall be stored in a locked cabinet when not in use.

(b) Nothing in this section shall be construed to authorize the use of a laser by a chiropractor outside of the chiropractic scope of practice. This includes, but is not limited to, laser ablation or surgical procedures, and laser treatment of allergies resulting in anaphylaxis.

(c) Any violation of this section shall constitute unprofessional conduct and the licensee shall be subject to discipline by the Board.

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

BOARD OF CHIROPRACTIC EXAMINERS
CALIFORNIA CODE OF REGULATIONS

§303. Filing of Addresses.

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.

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

July 11, 2011

Dr. Sara Takii, DPT, President
Physical Therapy Board of California
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815

Dear Dr. Takii

I am in receipt of correspondence dated July 5, 2011, from Physical Therapy Board of California Executive Officer, Steve Hartzell concerning physical therapists performing mobilization. In his letter, Mr. Hartzell references the Attorney General's Legal Opinion published on January 21, 1976 (CV 75/282) as well as Department of Consumer Affairs Legal Opinion 80-18, issued on July 22, 1980, and states his opinion that the DCA Legal Opinion "must be included in any discussion regarding physical therapists performing mobilization."

Although Mr. Hartzell, believes that the 1976 Attorney General's Legal Opinion is nothing more than informative, the formal legal opinions of the Attorney General are accorded great respect and weight by the courts. (See *Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1604.) Government Code section 12519 provides that:

> 'The Attorney General shall give his or her opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices.'

Since the Attorney General, as the chief law enforcement officer of California, issued a formal legal opinion in 1976 pursuant to Section 12519 of the Government Code and case law indicates that courts consider the formal legal opinions of the Attorney General, it would not be sensible to rely upon a Department of Consumer Affairs legal opinion to assist our boards in resolving the issue of mobilization performed by a physical therapist. For this reason, the BCE will not post the Department's legal opinion to its website, nor will it be considered.

Please keep in mind that, although this issue may erroneously be viewed as a turf battle, we – as regulatory agencies - have a duty to enforce the laws prohibiting the practice of a profession that requires a specific license. Therefore, if you are able to identify relevant case law or additional legal opinions by the Attorney General, I would be more than willing to review the information and consider it prior to seeking to enforce the unlicensed practice provisions within California law.

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

I would welcome a meeting with you to discuss this issue more fully. Such a meeting would be beneficial to both physical therapists and doctors of chiropractic. If you are willing to meet with me, please send me your availability during the month of August.

Best regards,

Dr. Frederick Lerner, D.C.
Chair

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

Physical Therapy Board of California

2005 Evergreen St. Suite 1350, Sacramento, California 95815

Phone: (916) 561-8200 Fax: (916)263-2560

Internet: www.ptbc.ca.gov

Physical Therapy Board of California

BOARD OF CHIROPRACTIC EXAMINERS

11 JUL -7 AM 10: 40

July 5, 2011

Fred N. Lerner, D.C., Ph.D.
Chair, California Board of Chiropractic Examiners
2525 Natomas Parkway, #260
Sacramento, CA 95833

Dear Dr. Lemer,

Sara Takii, president of the Physical Therapy Board of California (PTBC) has asked me to respond to your email of June 16, 2011, regarding physical therapists performing mobilization. PTBC appreciates the opportunity to provide information to the California Board of Chiropractic Examiners (BCE) regarding the practice of physical therapy.

While the Attorney General's Legal Opinion that you referenced (published on January 21, 1976 (CV 75/282)) is informative, the Legal Opinion 80-18, issued on July 22, 1980, (copy enclosed) must be included in any discussion regarding physical therapists performing mobilization. When considering the care provided to patients by both chiropractors and physical therapists, the focus must be on the overall plan of care and not just the specific techniques that are utilized in achieving the treatment goals.

While I believe that both BCE and PTBC have the AG opinion on their websites, the placing of the opinion in a more prominent location is an excellent suggestion. PTBC will also be including the DCA Legal Opinion on our website to ensure that licensees have easy access to complete information. PTBC would appreciate BCE doing the same. Hopefully by providing the information to our licensees both boards will be able to focus our resources on consumer concerns where patient harm has occurred.

Best regards,

Steven K. Hartzell
Executive Officer

cc Robert Puleo, Executive Officer, BCE

enclosure

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY EDMUND G. BROWN JR., Governor

DEPARTMENT OF Consumer Affairs

1020 N STREET, SACRAMENTO, CALIFORNIA 95814
(916) 445-4216

July 22, 1980

Garrett F. Cuneo
Executive Secretary
Board of Chiropractic Examiners
921 11th Street, Suite 601
Sacramento, CA 95814

Legal Op. No. 80-18

Dear Mr. Cuneo:

Your letter of June 16, 1980, to Richard Spohn, Director of Consumer Affairs, was referred to the departmental Legal Office for reply.

Therein you contend that advice rendered by this office may be interpreted to hold that physical therapists may engage in spinal manipulation which is the practice of chiropractic.

At issue is a procedure known as spinal mobilization utilized by some physical therapists for physical rehabilitative purposes. This technique is used for the purpose of mobilizing joints to increase the availability of joint motion. This technique is used in the therapeutic treatment of joints other than the spine as well. Mobilization of the spine and other joints through the use of rotation and other physical pressure constitutes in our opinion the use of physical properties including passive exercise for the treatment of physical conditions and is specifically authorized in the physical therapist's scope of practice which is set forth in Section 2620 of the Business and Professions Code. Therefore, we do not believe that a physical therapist is practicing beyond his or her legal scope of practice by utilizing such technique.

We are and have been mindful of the opinions issued by the Attorney General regarding the practice of chiropractic by a physical therapist (59 Ops.Cal.Atty.Gen. 7, 39 Ops.Cal.Atty.Gen. 169). In our opinion the performance of joint mobilization by a physical therapist is not the adjustment and manipulation of hard tissues as a chiropractic technique. Joint mobilization performed by physical therapists is not done for the purpose of treating or preventing diseases or for maintaining the structural and functional integrity of the nervous system and is thus not the practice of chiropractic. (Cf. Title 16 Cal.Adm.Code Section 302)

In fact, the Attorney General recognized in 59 Ops.Cal.Atty.Gen. 7 at page 12 that:

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> "[a] comparison of the statutory definition of physical therapy and the accepted definition of chiropractic, and specifically the definition adopted by the Board of Chiropractic Examiners in section 302, Title 16, California Administrative Code, reveals that physical therapy and chiropractic each involve the use of physical agents used by the other. We do not believe that this common use of agents presents a major problem because a chiropractor is prohibited by Section 2630 from practicing physical therapy as such and a physical therapist is prohibited by section 15 of the Chiropractic Act from practicing chiropractic." (Emphasis added.)

We primarily view this controversy not as a matter of legal interpretation, but an interprofessional squabble, often referred to as a "turf battle." Therefore, any future meetings on this matter would not produce any appreciable benefits to the parties involved. We believe this letter to be dispositive of the issues at hand.

Gus E. Skarakis

GUS E. SKARAKIS
Chief Counsel

GES:slc

cc: Richard Spohn
Donald j. Wheeler
Physical Therapy Examining Committee

Puleo, Robert@CHIRO

From: Fred Lerner
Sent: Thursday, June 16, 2011 11:29 AM
To: Sara Takii
Cc: Puleo, Robert@CHIRO
Subject: Hard Tissue Manipulations/Adjustments Performed by Physical Therapists

Sara Takii, P.T., D.P.T., M.P.A.
President, Physical Therapy Board of California
2005 Evergreen Street, Suite 1350
Sacramento, CA 95815

Dear Dr. Takii,

Thank you very much for taking my call last month regarding the issue of California licensed physical therapists performing manipulations/adjustments of hard tissues (i.e., the spine). I am very much in favor of healing arts boards working together on matters that protect the public, and I believe that you feel the same way.

It has been brought to the Board of Chiropractic Examiners' (BCE) attention that some physical therapists may be performing these procedures and billing and/or describing them as "Grade 4 mobilizations" and other similar terms. The BCE has public safety concerns regarding this matter, and since we have no jurisdiction over physical therapy licensees, I have been asked to contact you so that the Physical Therapy Board can consider taking appropriate action, such as communicating an advisory to its licensees on the front of your website.

As you may recall, at the conclusion of the call you had asked that I forward you information regarding this issue. After an extensive search, by myself as well as our Legal Counsel, the only relevant document is the Attorney General's Legal Opinion published on January 21, 1976 (CV 75/282). I have attached it to this e-mail for you to review. On page 2, #2 of the Conclusions, it states "A physical therapist may not directly manipulate or adjust the spine or any other bony structure."

This opinion is also published on your Board's website at the following link: http://www.ptbc.ca.gov/forms_pubs/ag_opinion_cv75_282.pdf, however, some physical therapists may not be aware of its existence or familiar with its conclusions.

To our knowledge, there have been no other AG opinions issued on this matter since 1976, nor have there been any decisions by the higher courts affecting either of our Boards that would address this issue.

I would appreciate your feedback once you review this information.

Sincerely,

Fred N. Lerner, D.C., Ph.D.
Chair, California Board of Chiropractic Examiners
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OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION	
of	No. CV 75/282
EVELLE J. YOUNGER Attorney General WILLIAM M. GOODE Deputy Attorney General	JANUARY 21, 1976

THE HONORABLE NICHOLAS C. PETRIS, SENATOR ELEVENTH DISTRICT, has requested the opinion of this office on the following questions concerning the Chiropractic Act:

1. Can a chiropractor under any circumstances use physical therapy in his practice of the chiropractic? If so, what are those circumstances?

2. Are there any circumstances under which a physical therapist can manipulate or adjust the hard tissue (i.e., the spine)? If so, what are those circumstances?

3. Section 302, Title 16, California Administrative Code, defines the practice of chiropractic and provides that a chiropractor may make "use of light, air, water, rest, heat, diet, exercise, massage, and physical culture ...." What is "physical culture" and what is its relationship to and/or difference from physical therapy?

The conclusions are:

1. A chiropractor may use physical therapy techniques in his practice of chiropractic to the extent that such techniques are used as an

adjunct to chiropractic manipulation. Only a chiropractor who is registered as a physical therapist may hold himself out as a physical therapist.

2. A physical therapist may not directly manipulate or adjust the spine or any other bony structure.

3. Physical culture is a term of art dealing with the systematic care and development of the body. Physical therapy is a system of treatment to rehabilitate or correct bodily or mental conditions. Physical culture may in some instances be involved in a course of physical therapy, but not always.

ANALYSIS

Background

A brief sketch of the background and history of chiropractic is necessary to understand the question presented. Chiropractic as a healing art was first formally recognized by the State of California in the Medical Practice Act of 1907 (Stats. 1907, ch. 212, p. 252), which provided for the issuance of three different forms of certificates by the Board of Medical Examiners to practitioners: (1) a certificate authorizing the holder to practice medicine and surgery, (2) a certificate authorizing the holder to practice osteopathy, and (3) a certificate authorizing the holder to practice any other system o mode of treating the sick and afflicted, not otherwise referred to. In order to qualify for a certificate in the third category the applicant had to file a diploma from a legally chartered college of the system or mode.

In 1909, the Legislature amended the Medical Practice Act of 1907 (by Stats. 1909, ch. 276, p. 418) to provide that any person who then held an unrevoked certificate of naturopathy issued by the Board of Examiners of the Association of Naturopathy of California, a private organization incorporated on August 8, 1904, could continue to practice naturopathy. Naturopathy was not defined in either the 1907 or 1909 statutes above cited. In Millsap v. Alderson, 63 Cal.App. 518 (1923), the court was called upon to distinguish between the rights of a physician and surgeon on one hand and a naturopath on the other. At page 525 the court found that the Legislature, in its 1909 amendment to the Medical Practice Act, gave official recognition to the Association of Naturopaths of California, and at pages 526-527 looked to the articles of incorporation of that organization to find that naturopathy involved treatment of the sick and afflicted by "light, air, water, clay, heat, besides rest, diet, herbs, electricity, massage, Swedish movements, suggestive therapeutics, chiropractic, magnetism, physical and mental culture."

In 1922 in an initiative measure to provide for separate licensing and regulation of chiropractors was submitted to the electors. It was approved on November 7, 1922,

and became effective December 21st of that year as the Chiropractic Act. Section 7 of that Act provides:

> "One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated 'License to practice chiropractic,' which license shall authorize the holder thereof to practice chiropractic in the state of California as taught in the chiropractic schools or colleges; and, also, to use all necessary mechanical and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

Except for the language in section 7 of the Chiropractic Act does not otherwise define the meaning chiropractic. In Evans v. McGranaghan, 4 Cal.App.2d 202 (1935) at page 205, the court held that section 7 of the Chiropractic Act was impossible of precise construction and placed the burden of showing what was taught in chiropractic schools upon the party claiming his conduct was authorized thereby. Shortly thereafter, in the landmark case of People v. Fowler, 32 Cal.App.2d Supp. 737 (1938), the court made a comprehensive analysis of section 7 and concluded at page 746, that the "...general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act."1/ The principal enunciated in Fowler:

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1. People v. Fowler, supra, at pages 745-747:

"The practice authorized must be 'chiropractic', and it must also be 'as taught in chiropractic schools or colleges'. Neither of these expressions can rule the meaning of the statute, to the exclusion of the other. Considering the first of them, the word 'chiropractic' had, when this law was passed in 1922, a well-established and quite definite meaning. In the Standard Dictionary, 1913 edition, it was defined as 'a drugless method of treating disease chiefly by manipulation of the spinal column'. Other equivalent definitions taken from dictionaries and encyclopedias appear in the decisions quoted below. In volume II of Corpus Juris, which was published in 1917, the following definition is given for 'chiropractors': 'A system of healing that treats disease by manipulation of the spinal column; the specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae. There are no instruments used, the treatment being by hand only'; in support of which Webster's Dictionary is cited, also several court decisions. In State v. Barnes (1922) 119 S.C. 213 [112 S.E. 62, 63], the court said: 'Chiropractic has been defined, and is commonly understood, as a system of treatment by manipulation of anatomical displacements, especially the articulation of the spinal column, including its vertebrae and cord.' In State v. Hopkins, (1917) 54 Mont. 52 [166 Pac. 304, 306, Ann. Cas. 1918D, 956], the court quoted from Webster's New Standard Dictionary this definition of 'Chiropractic': 'A system of [or] the practice of adjusting the joints,

especially the spine, by hand for the curing of disease. In Commonwealth v. Zimmerman, (1915) 221 Mass. 184 [108 N.E. 893, 894, Ann. Cas. 1916A, 858], the court quoted from Webster's International Dictionary a definition of 'chiropractic' as follows: 'A system of healing that treats disease by manipulation of the spinal column.' The same definition was cited in State v. Gallagher, (1911) 101 Ark. 593 [143 S.W. 98, 38, L.R.A. (N.S.) 328, 330], and State v. Johnson, (1911) 84 Kan. 411 [114 Pac. 390, 41 L.R.A. (N.S.) 539, 541]. In Board of Medical Examiners v. Freenor, (1916) 47 Utah, 430 [154 Pac. 941, 942, Ann.Cas. 1917E, 1156], the court quoted definitions of 'chiropractic' as follows: 'A system of therapeutic treatment for various diseases, through the adjustment of articulations of the human body, particularly those of the spine, with the object of relieving pressure or tension upon nerve filaments. The operation are performed with the hands, no drugs being administered.' (Taken from Nelson's Encyclopedia), and 'A system of manipulations which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebrae, to their normal relation'. (from International Encyclopedia).

"This general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act. 'The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.' (25 R.C.L. 959 ; Werner v. Hillman etc. Co., (1930) 300 Pa. 256 [150 Atl. 471, 70 A.L.R. 967, 970]; Dunn v. Commissioner, (1933) 281 Mass. 376 [183 N.E. 889, 87 A.L.R. 998, 1002]; see, also, Lowder v. Union Tr. Co., (1926) 79 Cal. App. 598 [250 Pac. 703].) Nor has the accepted meaning of 'chiropractic' since changed, for in the latest (1938) edition of Webster's New International Dictionary we find the same definition quoted in State v. Hopkins, supra, (1917) 54 Mont. 52 [116 Pac. 304, 306, Ann. Cas. 1918D, 956]. Words of common use, when found in a statute, are to be taken in their ordinary and general sense. (Corbett v. State Board of Control, (1922) 188 Cal. 289, 291 [204 Pac. 823] ; In re Alpine, (1928) 203 Cal. 731, 737 [265 Pac. 947, 58 A.L.R. 1500]; Bagg v. Wickizer, (1935) 9 Cal.App. (2d) 753, 758 [50 Pac. (2d) 1047.)

"The effect of the words 'as taught in chiropractic schools or colleges' is not to set at large the signification of 'chiropractic', leaving the schools and colleges to fix upon it any meaning they choose. Were the word 'chiropractic' of unknown, ambiguous or doubtful meaning, this clause, 'as taught' etc., might serve to provide a means of defining or fixing its signification, but there is here no such lack o clarity. The scope of chiropractic being well knows, the schools and colleges, so far as the authorization of the chiropractor's license is concerned, must stay within its boundaries; they cannot exceed or enlarge them. The matter left to them is merely the ascertainment and selection of such among the possible modes of doing what is comprehended within that term as may seem to them best and most desirable, and so the fixing of the standards of action in that respect to be followed by chiropractic licensees. Such we understand to be the effect of the holding in In re Hartman, (1935) 10 Cal.App. (2d) 213, 217 [51 Pac. (2d) 1104]. Evans v. McGranaghan, supra, 4 Cal.App. (2d) 202, is not clearly to the contrary, but if it can be so regarded

we prefer to follow the later Hartman case. If our opinion in People v. Schuster, (1932) 122 Cal.App. (Supp.) 790, 795 [10 Pac. (2d) 204], is thought to go farther than this, we now qualify it in that respect, deeming the rule just stated to be the proper one. The court's instruction defining 'chiropractic' in the words already quoted from Webster's New Standard Dictionary was correct."

Has been followed by the courts of this state. Crees v. California State Board of Medical Examiners, 213 Cal.App. 2d 195, 205 (1963); People v. Augusto, 193 Cal.App. 2d 253, 257-258 (1961); Jacobsen v. Bd. Of Chiropractic Examiners, 169 Cal.App. 2d 389, 392 (1959); People v. Mangiagli, 97 Cal.App. 2d Supp. 935, 939 (1950); People v. Nunn, 65 Cal.App. 2d 188, 194-195 (1944).

In People v. Mangiagli, supra, 97 Cal.App. 2d Supp. At 943 (1950), the court invalidated a regulation adopted by the Board of Chiropractic Examiners which defined chiropractic as follows:

> "'The basic principle of chiropractic is the maintenance of the structural and functional integrity of the nervous system. The practice of chiropractic consists of all necessary means to carry out these principles.' (Cal.Admin.Code, title 16, subchap. 4, art. I, § 302(a).) ..."

The rejection was based on the finding that a chiropractor might under that regulation engage in almost any sort of treatment of the sick or afflicted.

In 1954, the Board of Chiropractic Examiners adopted a new section 302, Title 16, California Administrative Code providing:

> "(a) Practice of Chiropractic: The basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. The practice of chiropractic consists of the use of any and all subjects enumerated in Section 5 and referred to in any and all other sections of the act."

The regulation was held invalid in Crees v. California State Board of Medical Examiners, supra, 213 Cal.App. 2d 195, 209, on the basis that it purported to alter or enlarge the scope of chiropractic under the Chiropractic Act.

In 1965, as a result of the Crees decision, the Board of Chiropractic Examiners amended section 302, Title 16, California Administrative Code, to its present language as follows:

> "(a) Practice of Chiropractic: The basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. A duly license chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the

joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, and he may use all necessary mechanical, hygienic and sanitary measures incident to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine include in materia medica."

"A duly licensed chiropractor may make use of light, air, water, rest, heat, diet, exercise, massage and physical culture, but only in connection with an incident to the practice of chiropractic are hereinabove set forth." (Emphasis added.)

With that background sketch we can proceed to the specific questions presented.

1. USE OF PHYSICAL THERAPY BY CHIROPRACTORS

We are first asked whether a chiropractor may use physical therapy in his practice of chiropractic. It is our opinion that many of the techniques and agents used in physical therapy are properly within the range of techniques available to a chiropractor in his practice of chiropractic. At the same time, a chiropractor may not practice or hold himself out as a practitioner of physical therapy, unless licensed to do so, except as such physical therapy techniques are a part of the practice of chiropractic in a particular instance.

The practice of physical therapy is limited by Business and Professions Code section 26302/ which provides:

> "It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected or to hold himself out as a physical therapist, unless at the time of so doing such person holds a valid unexpired and unrevoked license issued under this chapter.

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2. All section references are to the Business and Professions Code unless otherwise specified.

> "Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to the provisions of Article 4.5 (commencing

with Section 2655) of this chapter or Article 18 (commencing with Section 2510) of Chapter 5 of this division.

"A person licensed pursuant to this chapter may utilize the services of an aide to assist the licentiate in his practice of physical therapy. Such aide shall at all times be under the orders, direction, and immediate supervision of the licentiate. Nothing in this section shall authorize such an aide to independently perform physical therapy or any physical therapy procedure.

The administration of massage, external baths or normal exercise not a part of a physical therapy treatment shall not be prohibited by this section."

Physical therapy is defined in section 2620 as follows:

"Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term 'physical therapy' as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease."

A comparison of the statutory definition of physical therapy and the accepted definition of chiropractic, and specifically the definition adopted by the Board of Chiropractic Examiners in section 302, Title 16, California Administrative Code, reveals that physical therapy and chiropractic each involve the use of physical agent used by the other. We do not believe that this common use of agent presents a major problem because a chiropractor is prohibited by section 2630 from practicing physical therapy as such and physical therapist is prohibited by section 15 of the Chiropractic Act from practicing chiropractic.

In 1953, chapter 5.6 pertaining to registered physical therapists was added to the Business and Professions Code by chapter 1823, Statutes of 1953, and chapter 5.7 pertaining to licensed physical therapists was added to the Business and Profession Code 1826, Statutes of 1953. The major difference in the two categories then established was that registered physical therapists were required to work under the direction or supervision of a physician and surgeon. See 43 Ops.Cal.Atty.Gen. 157 (1964). The two categories were merged in the Physical Therapy Practice Act in 1968 (Stats. 1968, ch. 1284, p. 2415) which does not require that physical therapist work under the direction or supervision of a physician or surgeon. We are informed,

however, that most do. In 23 Ops.Cal.Atty.Gen. 179 (1954), we held that the enactment of the two physical therapy statutes in 1953 neither increased nor decreased the scope of practice of chiropractic, and that a chiropractor could continue to practice physical therapy to the same extent that he could prior to the enactments. The basis for the conclusion was that an initiative measure cannot be amended except by vote of the electors, unless there is a provision in the initiative act authorizing legislative amendments. There is no such authorization in the Chiropractic Act. For the same reason, when the 1968 Physical Therapy Practice Act was enacted, it did not, and could not, alter the permissive range of activity for chiropractors.

We therefore conclude, that just as a physical therapist could not use light, heat, water, exercise and other physical agents for chiropractic purposes, a chiropractor cannot use such agent for physical therapy purposes. A chiropractor may, however, use these and any other agent which are mechanical, hygienic or sanitary measures within the meaning of section 15 of the Chiropractic Act and which do not involve the practice of medicine or surgery, or the use of drugs or medicine, provided such techniques are directly involved in chiropractic procedures.

2. MANIPULATION AND ADJUSTMENT OF HARD TISSUES BY PHYSICAL THERAPISTS

Having determined the extent to which a chiropractor may use physical therapy techniques, we proceed to the question of determining whether a physical therapist may manipulate or adjust the hard tissues (i.e., the spine). It is our opinion that a physical therapist may not directly manipulate or adjust the spine or other bone.

"Adjustment" is not a term used in physical therapy. It is a chiropractic word defined in Schmidt's Attorney's Dictionary of Medicine (1974), at page A-64, as follows: "In chiropractic practice, a manipulation intended to replace a displaced vertebrae, or one assumed to be displaced and the cause of symptoms." It is defined in Dorland's Medical Dictionary (23rd Ed. 1957) at page 37 as "...a chiropractic word for replacement of an alleged subluxed vertebrae for the purpose of relieving pressure on a spinal nerve." Blakiston's New Gould Medical Dictionary (1st Ed. 1951), at page 26, defines adjustment as a chiropractic treatment aimed at reduction of subluxed vertebrae. We do not believe that adjustment as thus defined, is within the scope of activity permitted a physical therapist under section 2620.

Another term which requires scrutiny is "manipulation of hard tissue." We have been unable to glean from any medical literature a definition of the term "hard tissues." The reference to spine suggests that hard tissue as used in the questions presented refers to bones or bony structures of the body. Bone is an osseous tissue, in effect a support, rigid, connective tissue. Blakiston's New Gould Medical Dictionary (1st Ed. 1951), page 147. In responding, we have therefore assumed that hard tissue has reference to bones. "Manipulation" has an accepted medical meaning, being defined in Blakiston's New Gould Dictionary (1st Ed. 1951) at page 592, as "[t]he use of hands in a

skillful manner as reducing a dislocation, returning a hernia to its cavity, or changing the position of a fetus."

"Chiropractic" is defined in Blakiston's New Gould Medical Dictionary (1st Ed. 1951), at page 207, as "[a] method which aims at restoring health by palpitating the spinal column for subluxations or misplaced vertebrae and adjusting them by hand without other aids or adjuncts."

In 39 Ops.Cal.Atty.Gen. 169 (1962) at page 170, we noted that there was substantial difference between massaging the muscles surrounding the spine and actually manipulating and adjusting the various bones that make up the spine. Based on that observation, we concluded that adjusting the spine by hand for the curing of disease constitutes the practice of chiropractic and under section 15 or the Chiropractic Act is beyond the permissive activity of a physical therapist. We know of nothing that changes that conclusion.

Therefore, we believe that the adjustment and manipulation of "hard tissues," that is bones and bone structures, is peculiarly a chiropractic technique beyond the scope of authorized activity for a physical therapist.

3. MEANING OF PHYSICAL CULTURE AND ITS RELATIONSHIP TO PHYSICAL THERAPY

The final question asks the meaning of physical culture as that term is used in section 302, Title 16, California Administrative Code, and its relationship to physical therapy. We believe that the term physical culture is generally synonymous to physical education and deals with the systematic care and development of the physical body, whereas physical therapy is a system of treatment to rehabilitate or correct bodily or mental conditions.

We have been unable to find the term physical culture defined in any medical literature or in any literature dealing with either physical therapy or chiropractic. Webster's Third International Unabridged Dictionary (1961), at page 1706, defines physical culture as "the systematic care and development of the physique." World Book Dictionary (1975 Ed.) at page 1556 defines it as "the development of the body by appropriate exercise." Encyclopedia Americana (International Ed. 1973) Volume 22, at page 22, refers the reader to the topic "Physical Education."

As previously noted, the term first appeared in the field of chiropractic in the Articles of Incorporation file in 1904 by the Association of Naturopaths of California, where reference was made to chiropractic and mental and physical culture as permitted materia medica for naturopaths. We find no reference to physical culture in the several Medical Practice Acts since 1904, in the Chiropractic Act, nor in any regulations adopted there under until the 1965 amendments to section 302 appear in any effective statute, and appears only once, as noted above, Title 16.

Whatever meaning physical culture as used in section 302, Title 16, California Administrative Code, has, it must be a meaning which is fairly within the scope of the Chiropractic Act. It is a settled principle that an administrative regulation cannot exceed the scope of the statute under which it was adopted, or alter or enlarge the scope. First Industrial Loan Co. v. Daughtery, 26 Cal.2d 545, 550 (1945); Witcomb Hotel, Inc. v. Cal. Emp. Com., 24 Cal.2d 753, 757 (1944); Cal. Drive-in Restaurant Assn. v. Clark, 22 Cal.2d 287, 294 (1943).

In People v. Fowler, supra, 32 Cal.App.2d Supp. at 747, the court held that the authorization in section 7 of the Chiropractic Act for the use of mechanical, hygienic and sanitary measures incident to the care of the body is not a definition but rather permits chiropractors to use measures in the practice of chiropractic which would not otherwise be within the scope of their licenses. Because section 302, Title 16, California Administrative Code, is not itself clear, it is manifest that whatever meaning was intended it must be consistent with an embraced in section 7 of the Chiropractic Act.

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