



**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
January 12, 2016**

Teleconference Meeting Locations

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355
(Board Staff)

Sergio Azzolino, D.C.

1545 Broadway St., Suite 1A
San Francisco, CA 94109
(415) 563-3800

Heather Dehn, D.C.

4616 El Camino Ave., Suite B
Sacramento, CA 95821
(916) 448-0202

Frank Ruffino

Veterans Home of California
700 E. Naples Court
Chula Vista, CA 91911
(619) 482-6010

Committee Members Present

Sergio Azzolino, D.C., Chair
Heather Dehn, D.C.
Frank Ruffino

Staff Present

Robert Puleo, Executive Officer
Linda Shaw, Assistant Executive Officer
Marcus McCarther, Associate Governmental Program Analyst
Rebecca Rust, Associate Governmental Program Analyst
Brianna Lauziere, Staff Services Analyst

Call to Order

Dr. Azzolino called the meeting to order at 1:30 p.m.

Roll Call

Dr. Dehn called the roll. All Committee members were present at the locations listed on the agenda.

Approval of Minutes

MOTION: DR. DEHN MOVED TO APPROVE THE MINUTES OF THE MAY 12, 2015 MEETING.

SECOND: MR. RUFFINO SECONDED THE MOTION

VOTE: 3-0 (DR. AZZOLINO – AYE, DR DEHN - AYE, MR. RUFFINO – AYE)

MOTION CARRIED (3-0)

Discussion and Possible Action Regarding Development of Consumer Complaint Brochure; Recommendation to Full Board

Dr. Azzolino inquired if this agenda item was assigned to the Licensing, Continuing Education & Public Relations Committee.

Mr. Puleo explained that the Licensing, Continuing Education & Public Relations Committee briefly discussed the development of a consumer complaint brochure at their last meeting; however, the Board assigned this item to the Enforcement Committee. He shared that once the Committee reviews and approves this agenda item, it will move forward with a recommendation to the full Board.

Additionally, Mr. Puleo referred to the Board's complaint process flowchart as a sample for this agenda item. He explained that the consumer complaint form, authorization for release of patient records form, and additional information on how to file a complaint are available on the Board's website. Mr. Puleo suggested the Committee should add this information to a user-friendly brochure for the public and licensees.

Mr. Puleo inquired if the Enforcement Committee has any suggestions regarding specific content that could be included in the complaint brochure.

Dr. Azzolino stated the Board's complaint process materials provided to the Committee for review are very informative; however, it is not necessary to add the complaint process flowchart to the brochure.

Dr. Dehn suggested that a statement regarding anonymous complaints should be included in the complaint brochure. This will inform the public of potential issues associated with complaints of that nature.

Mr. Puleo recommended working with the Board's legal counsel on the language for anonymous complaints. He proposed adding the following language: "While the Board accepts anonymous complaints, they may limit its ability to investigate cases and achieve discipline."

Dr. Azzolino emphasized the importance of informing consumers about their right to remain anonymous and explained that the Board should avoid a statement that would deter consumers from making anonymous complaints.

Mr. Puleo acknowledged Dr. Azzolino's concern and shared the statement will inform consumers that the Board accepts anonymous complaints. He discussed issues that may arise if a complainant is unwilling to come forward or testify at a hearing. The Board may have difficulty proving the alleged violations.

Dr. Azzolino reiterated his concern regarding deterring consumers from filing anonymous complaints.

Mr. Puleo referred to the "File a complaint" sample provided for this action agenda item. He then referred to the existing anonymous complaint language used by the Board: "While anonymous complaints will be reviewed, they may be impossible to pursue without support from the complainant. The information contained in your complaint will determine what action the Board will take." Mr. Puleo inquired if the Committee is satisfied with this statement.

Dr. Azzolino expressed satisfaction with this statement. He explained that he would like to ensure the Board is complying with its consumer protection mandate.

Mr. Puleo agreed that one of the Board's goals is to inform consumers of their rights and provide guidance to filing chiropractic complaints. Mr. Puleo highlighted that consumers need to be aware of the Board's limitation in pursuing anonymous complaints without their cooperation.

Dr. Azzolino agreed that the proposed statement addressed his concern. He directed staff to gather information for the complaint process brochure, include language regarding the anonymous statement, and make a recommendation to the Committee.

Dr. Dehn and Mr. Ruffino concurred with Dr. Azzolino's recommendation.

Mr. Puleo shared that staff will most likely make a recommendation of the proposed complaint process outreach materials and language at the next Enforcement Committee meeting.

Discussion and Possible Action Regarding Proposal That Requires Licensees to Post a Notice in Their Place of Practice Advising Consumers That They are Licensed by the Board of Chiropractic Examiners (Board) and How to Contact the Board; Recommendation to Full Board

Mr. Puleo explained that this item would require licensees to post a consumer notice stating they are licensed by the Board. He also explained the notice would provide the Board's contact information in the event consumers have any questions or want to file a complaint.

Mr. Puleo referred to the notice to consumers and the proposed language as samples for this agenda item. He shared that the Medical and Dental Boards require their licensees to comply with this regulation. Mr. Puleo inquired if the Committee is interested in pursuing a similar proposal.

Dr. Dehn explained that she understands the benefits involving this proposal – the Board's contact information is more visible as the font appears to be bigger – and is not opposed to it. However, she stated that this proposal appears to be a duplicate requirement given that California Code of Regulations (CCR), sections 308 (a) and (b) require doctors of chiropractic to post their licenses in a conspicuous place in their primary place of practice and satellite offices.

Mr. Puleo discussed the disadvantages of only enforcing CCR 308 (a) and (b) as many licensees do not post their licenses in a conspicuous place at their offices. He explained further that their wall certificate resembles a school diploma, which may not necessarily attract the consumers' attention. He noted that the purpose of this agenda item is not to encourage the public to file more complaints. This proposal would ensure consumers are aware of the Board's existence as a regulatory consumer protection agency. This proposal also encourages consumers to contact the Board for questions, concerns or to visit its website.

Dr. Dehn agreed with Mr. Puleo's recommendation.

Dr. Azzolino inquired about the method the Board would use to distribute this notice to licensees.

Mr. Puleo suggested that, if the Board moves forward with regulatory action, it should send a one-time mailer to licensees. He explained this notice would ensure licensees are aware of the new requirement.

Dr. Azzolino suggested that it would be cost effective if the Board includes this notice in the renewal notification mailed out to licensees.

Mr. Puleo explained that method would take a year to notify licensees as their license renewal period expiration is based on their birthday month.

Mr. Puleo shared the Board anticipates negative feedback from some licensees because this proposal may be perceived as a “gotcha” regulation. He provided a brief explanation of the term “gotcha” regulations and stated that some licensees may perceive this as an attempt by the Board to enact unnecessary requirements. Mr. Puleo explained this notion is not accurate because the Board’s objective is to simply inform consumers of its existence and functions.

Mr. Puleo stated that the Committee will make a recommendation regarding this proposal to the full Board and possibly add it to the Board’s list of regulations.

Discussion and Possible Action Regarding Proposal to Require Licensees who are on Probation with the Board to Provide Notice of License Status to Their Patients and Prospective Patients; Recommendation to Full Board

Dr. Azzolino stated that there has been discussion in the media regarding the Medical Board not requiring their licensees to notify patients about their probationary status and added that this is a safety issue. He also stated the Board should lead the way regarding this consumer protection issue. Dr. Azzolino explained he anticipates a backlash from licensees; however, it is important to ensure patients are aware of licensees’ probationary status.

Dr. Azzolino shared that he contacted the Governor’s Office and requested advice regarding the Board’s efforts on this issue. He shared he has yet to hear back from the Governor’s Office and would prefer to table this agenda item until a response is received.

Dr. Azzolino inquired if the Committee has any comments or suggestions.

Dr. Dehn referred to the patient notification form as a sample for this agenda item and inquired if it would be provided to licensees.

Mr. Puleo responded that the regulation specifies the patient notification form should be designated by the Board. He stated the form would be identical to the one used as a sample for this agenda item.

Dr. Azzolino emphasized the importance of bringing this proposal forward in the media if the Board pursues this item.

Mr. Puleo discussed the importance for the Board to be transparent with consumers regarding the licensees’ probation term, even if it does not involve physical harm (i.e. insurance and billing fraud as well as other violations). He explained it is the Board’s role to make consumers aware of licensees’ probationary status and ensure they can make informed decisions regarding their choices concerning doctors of chiropractic placed on probation.

Mr. McCarther inquired if the Board already has the ability to require licensees to inform the public about their probationary status. He also asked whether this is optional, or would the proposed notification make this a standard requirement for all licensees.

Mr. Puleo stated the Board could impose this requirement as part of a disciplinary order when it pursues a stipulation or a proposed decision. Mr. Puleo shared that the Board’s disciplinary guidelines offer this requirement as an optional condition; however, it is not mandatory that all licensees on probation comply with optional conditions. He explained the Board would have to remember to choose this option on every probationary case. This process would be streamlined if the Board made it a mandatory requirement on all probationary cases. He also stated that an Administrative Law Judge (ALJ) has the ability to include this requirement on licensees’ probationary

terms. Mr. Puleo shared he has been the Executive Officer for 5 years and has yet to see the Board or an ALJ impose this requirement.

Dr. Azzolino inquired if this is an administrative issue.

Mr. Puleo stated that it is a policy issue. He inquired if the Committee and the full Board would like to make this proposal mandatory for every probationer or impose this requirement on a case-by-case basis through existing law.

Mr. Puleo explained the Board could add this proposed requirement to the disciplinary orders, but it has not been done historically. He discussed the issues involving the Board's process if an ALJ was not in favor of its decision. In that case, the Board would have to non-adopt the ALJ's decision and send it back to revise the provisions. Mr. Puleo recommended the Board make this a mandatory requirement on all probationary cases, rather than an optional disciplinary condition to avoid any issues.

Dr. Dehn agreed with Mr. Puleo's recommendation.

Dr. Azzolino inquired if this agenda item would be included in the Board's report for the upcoming meeting.

Mr. Puleo recommended the Board move forward with a regulation regarding the two consumer notification proposals. He pointed out that there is a possibility that they can be combined into the same regulatory package given that they are similar in nature.

MOTION: DR. DEHN MOVED TO RECOMMEND THAT THE BOARD SEEKS REGULATORY ACTION REGARDING THE CONSUMER NOTIFICATION PROPOSALS DISCUSSED:

- 1. NOTICE TO CONSUMERS – LINCENSEES ARE REQUIRED TO POST A NOTICE STATING THEY ARE CHIROPRACTIC DOCTORS LICENSED AND REGULATED BY THE BOARD OF CHIROPRACTIC EXAMINERS;**
- 2. PATIENT NOTIFICATION FORM – LICENSEES ON PROBATION ARE REQUIRED TO NOTIFY PATIENTS OF THEIR PROBATIONARY STATUS.**

SECOND: MR. RUFFINO SECONDED THE MOTION

VOTE: 3-0 (DR. AZZOLINO – AYE, DR DEHN - AYE, MR. RUFFINO – AYE)

MOTION CARRIED (3-0)

Discussion and Possible Action Regarding Proposal to Issue a Citation and Fine Specifically for Failure to Comply with Mandatory Continuing Education Requirements; Recommendation to Full Board

Dr. Dehn shared that this topic was discussed at the Board's last meeting and it was assigned to this Committee for review and discussion. She explained the compliance unit has detected a pattern around a number of licensees who have not been fulfilling their Continuing Education (CE) requirements.

Mr. Puleo explained that licensees are legally required to comply with the CE requirements. However, there are a significant number of licensees who do not complete their CE requirement in its entirety, whereas others do not complete the CE requirement at all. He explained this agenda item reinforces that licensees are subject to disciplinary action if they do not comply.

Dr. Dehn explained the discussion during the Board meeting was in reference to the need of imposing a citation and fine in those cases.

Dr. Azzolino inquired if there is a standard citation and fine in place at this time.

Mr. Puleo responded that there is not. He shared that the Board could require a standard citation and fine, as a policy that constitutes unprofessional conduct. Mr. Puleo explained when the Board conducts a random audit and it becomes aware that a licensee did not complete his/her CE requirement, the Board could automatically issue a citation and fine. Mr. Puleo suggested the Committee determine what would be an appropriate fine amount, as it should be higher than the costs incurred had licensees complied with their CE requirements initially.

Dr. Azzolino stated that he would like to ensure the citation and fine are not in lieu of taking CE courses.

Mr. Puleo explained that licensees would still be required to complete their remaining CE courses regardless. He addressed examples the Board has encountered regarding licensees' non-compliance with CE requirements.

Dr. Dehn inquired if the Board currently sends out notifications to licensees informing them of their CE non-compliance.

Mr. Puleo responded that for first violations, licensees receive a letter from the Board informing them of their failure to comply with the 24-hour CE requirement.

Dr. Dehn stated that licensees should automatically receive a letter along with a citation and fine, even if it is a first-time violation.

Dr. Azzolino stated that licensees should be issued at least a \$1000 fine.

Mr. Puleo explained that he will consult the Board's legal counsel. He suggested that if the Committee, and ultimately the full Board, decide to move forward with this recommendation, language would have to be drafted to specify that "it shall be punishable by a citation and a minimum fine of \$____." He explained that the language would have to specify the amount of the fine in the regulation to inform licensees of CE non-compliance penalties.

Mr. Puleo inquired if the Committee agrees with the \$1000 fine proposed by Dr. Azzolino.

Dr. Dehn recommended lowering the fine amount to \$500.

Dr. Azzolino stated that fine amount would be substantially higher than the costs incurred had licensees completed all of their CE courses initially.

Dr. Dehn added that providing a letter to licensees regarding their failure to comply with CE requirements is not adequate.

Mr. Puleo agreed that it is not a sufficient deterrent. He explained that even if the fine amount is set at \$500, as an order of abatement, the Board would still require licensees to complete CE courses from the prior year in addition to the CE courses they would need to take for the current year.

Dr. Dehn inquired if there is a timeline as to when licensees must complete the order of abatement.

Ms. Shaw stated that it can take up to 30 days.

Mr. Puleo stated the Board provides a time limit to complete CE courses and it would continue to enforce that requirement. He suggested that the Committee should decide on what the appropriate fine should be at this meeting.

Dr. Azzolino suggested a minimum of \$300 for the completion 12 CE hours.

Mr. Puleo noted that some licensees may be only a few units shy from completing the 24-hour CE requirement. He inquired if the Board would penalize those licensees in the same manner as the licensees who do not complete their 24-hour CE requirement at all.

Dr. Azzolino inquired how often the Board interacts with licensees who claim they are a few hours shy from completing their requirements.

Ms. Shaw responded that Board receives calls of this nature on a regular basis. She explained that some licensees count the number of classes they take as opposed to the number of hours required and do not realize that there is still a gap.

Dr. Azzolino asked how often the Board interacts with licensees who fail to complete the CE requirement in its entirety.

Ms. Shaw explained that approximately 70% of the licensees who fail to comply lack the number of CE hours. For example, they may complete their mandatory courses and overlook some general courses such as adjustive technique classes. The remaining 30% do not complete CE courses at all.

Mr. Puleo inquired about the number of licensees 30% translate into.

Ms. Shaw shared that it is equivalent to approximately 10 licensees. She explained that it is rare for the Board to encounter a significant number of licensees who do not complete their CE requirement at all.

Dr. Azzolino recommended imposing a fine per hour on licensees who do not complete a few hours of their CE requirement.

Dr. Dehn and Dr. Azzolino suggested imposing a fine of \$100 per hour.

Mr. Puleo expressed concern regarding Dr. Azzolino's and Dr. Dehn' s suggestion. He shared he would consult legal counsel and conduct research to determine what options are available to the Board. He suggested addressing this item at the next Enforcement Committee meeting.

Dr. Azzolino inquired about the auditing process.

Ms. Shaw stated that when the Board reviews license renewals, for example 200 a day, every 10th request for renewal is selected for a random audit.

Dr. Azzolino inquired if the Board sends a letter to the licensees being audited.

Ms. Shaw explained the Board sends out a letter informing them of its authority to conduct audits and requests that they submit proof of CE completion within a certain time frame. (CE courses' certificates).

Dr. Azzolino inquired about the number of audits conducted on an annual basis.

Ms. Shaw responded that the Board conducts approximately 1,300 audits yearly.

Dr. Azzolino explained that sending a letter of admonishment to licensees will not solve the failure to comply with the 24-hour CE requirement. He requested to be notified of the legal counsel's response regarding this issue.

Mr. Puleo stated the Committee is aware of the option to make this failure to comply with CE requirements an unprofessional conduct violation. However, it appears that the Committee would like to impose a specific penalty. He added that he will consult legal counsel to determine the best course of action.

Dr. Dehn inquired if this issue will be presented at the next committee meeting. She stated that it would take some time for this regulation to be promulgated.

Mr. Puleo explained the Board is currently working on other regulations that take priority over this proposal. This item would be added to the Board's list of regulations and it would most likely be reviewed a year from now.

Dr. Dehn asked if the Board could incorporate this proposed regulation into an existing CE regulation on the Board's list of regulations.

Mr. Puleo explained the Board could add some of these enforcement provisions to the Consumer Protection Enforcement Initiative regulation (CPEI), which is a high-priority regulation on the Board's list. He recommended that the Committee address this agenda item at the next Committee meeting.

Public Comment

N/A

Future Agenda Items

Discussion and possible action regarding a proposal to issue a citation and fine specifically for failure to comply with mandatory continuing education requirements.

The next Enforcement Committee meeting is scheduled for March 16, 2016 at 1:00 p.m.

Adjournment

Dr. Azzolino adjourned the meeting at 2:18 p.m.