NOTICE OF TELECONFERENCE
ENFORCEMENT COMMITTEE MEETING

February 8, 2018
2:00 p.m.

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

The Board's address listed above is a location that is accessible to the public. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Board at each teleconference location. One or more Board Members will participate in this meeting at the teleconference sites listed below. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:

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

John Roza, Jr., D.C.
800 Douglas Blvd.
Roseville, CA 95678
(916) 786-2267

AGENDA

1. **Call to Order**

2. **Approval of Minutes**
   January 12, 2016
   July 19, 2017

3. **Review and Discussion regarding Enforcement Committee Action Items from the 2017-2019 BCE Strategic Plan**

4. **Review, Discussion and Possible Action regarding Enforcement Committee Statistical Information**

5. **Discussion and Possible Action regarding the Standardized Training and Evaluation of Expert Consultants to Improve Effectiveness and Consistency**

6. **Discussion and Possible Action regarding False, Misleading or Deceptive Advertising by Licensees**

7. Public Comment

Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 122507(a).] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

8. Future Agenda Items

Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125.]

9. Adjournment

ENFORCEMENT COMMITTEE
Sergio Azzolino, D.C., Chair
John Roza, Jr., D.C.

Meetings of the Board of Chiropractic Examiners' Committee 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's Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at **www.chiro.ca.gov.**

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Valerie James (916) 263-5355 ext. 5362 or e-mail valerie.james@dca.ca.gov or send a written request to the Board of Chiropractic Examiners, 901 P Street, Suite 142A, Sacramento, CA 95814. 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
TELECONFERENCE MEETING MINUTES
Enforcement Committee
July 19, 2017

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901 P Street, Suite 142A
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(Board Staff)

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John Roza, D.C.
800 Douglas Blvd
Roseville, CA 95678
(916) 786-2267

Committee Members Present
Sergio Azzolino, D.C., Chair
John Roza, D.C.

Staff Present
Robert Puleo, Executive Officer
Beckie Rust, Compliance Manager
Nikkia Capizzano, Compliance Analyst
Andreia Mendes, Compliance Analyst
Marcus McCarther, Policy Analyst
Spencer Walker, Legal Counsel

Call to Order
Dr. Azzolino called the meeting to order at 1:01 p.m.

Roll Call
Dr. Roza called the roll. All Committee Members were present at the locations listed on the agenda.

Review and Discussion on the Enforcement Committee Action Items from the 2017- 2019 BCE Strategic Plan

Mr. McCarther reviewed action items the Committee is responsible for and discussed whether those items have been completed or should be carried over for discussion during this meeting.

Mr. McCarther stated that action item 2.1.4, Publish *Expert Witness Guidelines in the "Licensees" and "Publications" tabs of the Board website,* has been completed. Mr. McCarther explained that the guidebook for expert consultants is available to the public on the Board's website.

Mr. McCarther provided an update on the completion of action item 2.3.2, *Track complaints and outcomes related to cross-cutting enforcement issues.*

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Mr. McCarther explained that the compliance unit developed a spreadsheet categorizing the nature of trends in enforcement issues such as social media activity and pastoral medicine practice. This tracking system allows the Board to effectively monitor complaints and outcomes related to these trends and potential violations.

Mr. Puleo shared that the information provided in the spreadsheet is readily available to Board Members should they have any questions related to trends in enforcement issues. Mr. Puleo also explained that

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presents information related to individual cases.

Mr. Puleo referred to the June 2017 Disciplinary Action report as a sample for agenda item 3 and suggested that including disciplinary action reports in the enforcement data provided at Board meetings may be useful. Mr. Puleo explained that disciplinary action reports are published on the Board's website every month.

Additionally, Mr. Puleo referred to the BCE Performance Measures as a sample for agenda item 3 and discussed the purpose of these quarterly reports, which are published on the DCA's website. Mr. Puleo explained that these measures help the Board effectively monitor enforcement goals and inform the public of indicators that may have a positive or negative impact on the Board's performance.

Mr. McCarther suggested providing the BCE Enforcement Performance Measures at Board meetings.

Dr. Azzolino shared that the existing enforcement data provided at Board meetings is satisfactory and recommended an annual update to the Board regarding the BCE performance measures.

Dr. Roza agreed that it would be ideal for the Committee to provide these enforcement measures to the Board yearly as some of the statistical information may be redundant if presented on a regular basis.

The Committee determined that the quarterly enforcement performance measures will be reviewed at Committee meetings. If an issue arises during the review of the enforcement measures, the Committee will bring it forward to the full Board for discussion and possible action. The Committee also agreed to maintain the existing enforcement statistical information as is.

Review, Discussion and Possible Action on creating an Outreach Publication Educating the Public on the Complaint Process (Strategic Plan Action Item 2.1.3)

Mr. Puleo stated that the Committee is in the process of developing a consumer complaint brochure and it will contact the DCA's publication office to select an appropriate format.

Mr. Puleo referred to the current BCE complaint process as a sample for this agenda item and explained that this information is available on the Board's website. Mr. Puleo stated that the public may file a complaint on our website by clicking on the "File a Complaint" red button.

Mr. Puleo referred to the Contractors State License Board, the Medical Board of California, and the Board of Vocational Nursing/Psychiatric Technicians consumer complaint brochures as samples for this agenda item. Mr. Puleo explained that the BCE consumer complaint brochure's content is similar will be similar to the materials provided as samples.

Dr. Azzolino discussed the importance to inform complainants of their right to remain anonymous and suggested adding a statement to the BCE consumer complaint brochure regarding the Board's acceptance of anonymous complaints.

Mr. Puleo agreed with Dr. Azzolino and asked Mr. Walker if he had any reservations regarding Dr. Azzolino's suggestion.

Mr. Walker responded that the Board may include a statement to that effect.

Mr. Puleo recommended working with our legal counsel on the language for anonymous complaints.

Mr. Puleo discussed issues that may arise if a complaint is anonymous. Mr. Puleo also explained that the Board accepts anonymous complaints; however, if the complainant is unwilling to come forward or testify at a hearing, the Board may have difficulty proving the alleged violations.

Ms. Rust stated that if a complaint is related to patient care, the Board requires patient records to proceed with the case. Ms. Rust also explained that if the patient chooses to remain anonymous, the Board will not be able to move forward with the case.

Mr. Puleo stated that the Board may not need to obtain patient records to prove other types of complaints such as advertising.

Mr. Puleo expressed concern regarding the desired efficacy of BCE complaint brochures and discussed possible ways to disseminate this information to the public.

Dr. Azzolino stated that it is important to inform the public of the BCE complaint process in an effective manner. Dr. Azzolino inquired how other Boards are disseminating this type of information.

Mr. Puleo explained that other boards are taking a similar approach to ours as they work with the DCA's publication office to develop and display brochures at the DCA headquarters' lobby.

Mr. Puleo suggested that distributing these brochures at licensees' facilities may be an effective approach; however, licensees may not feel comfortable providing instructions on filing a complaint to their patients.

Dr. Azzolino suggested that sharing these outreach materials on the BCE's social media may be an effective way of reaching out to the public. Dr. Azzolino added that the Board should encourage chiropractors to display these brochures at their offices.

Mr. McCarther suggested creating a BCE complaint process web video and posting it on the Board's website. Mr. McCarther also discussed the DCA's effective social media strategy to disseminate various outreach materials through videos.

Dr. Azzolino asked if the Board would be able to create a BCE complaint process video to inform the public.

Mr. McCarther stated that the video can be directed to consumers and licensees informing them of the Board's complaint process and providing guidance on how to file a complaint on the Board's website.

Mr. Puleo agreed with Mr. McCarther's suggestion and stated that, in addition to using the BCE's complaint process paper brochures, it may be beneficial to reach out to consumers on social media.

Dr. Roza believes that distributing these outreach materials to recent graduates of chiropractic schools would also be an effective way to inform them of the BCE complaint process.

Mr. Puleo agreed with Dr. Roza and stated that the Board could contact chiropractic colleges to make these brochures available on campus and at various school events.

Ms. Jillian Hacker, Director of Government Affairs and Operations of the California Chiropractic Association (CCA), suggested that the Board should offer training courses to licensees regarding the complaint process and provide CE credit for their attendance. Additionally, the Board should distribute these outreach materials during CE courses and address the top 10 common enforcement violations in the profession.

Dr. Azzolino explained that the Board has provided information on common violations to licensees and has asked CE providers to share them with licensees attending courses for CE credit.

Dr. Azzolino asked if the top 10 most common violations have been published in our newsletter.

Mr. Puleo stated that they will be included in our newsletter as an article.

Dr. Roza suggested asking CE providers to share these brochures with licensees attending courses for CE credit.

Dr. Azzolino explained that these outreach materials are specifically designed for consumers. Dr. Azzolino added that the Board should make the BCE consumer complaint brochures available at chiropractic offices.

Discussion and Possible Action on Establishing a Code of Ethics (Strategic Plan Action Item 2.2.1)

Dr. Azzolino stated that he read the CCA and ACA's code of ethics and there is an inherent issue with the Board adopting a code of ethics.

Mr. Puleo shared that the Board mandates minimal professional competencies for licensees. Mr. Puleo also stated that a code of ethics are guidelines that licensees should strive for. However, the Board cannot require licensees to adhere to them.

Dr. Azzolino recommended not enforcing a code of ethics and encouraged other institutions, such as the CCA or ACA, to inform licensees of their responsibilities to the public and the profession.
Dr. Azzolino asked legal counsel for advice.

Mr. Walker agreed with Dr. Azzolino's recommendation and asked if he would like to propose a formal recommendation at the upcoming Board meeting or provide an update to the Board regarding the decision to not adopt a code of ethics on the grounds that it is not enforceable.

Mr. Puleo explained that this issue has been addressed at a previous Board meeting and the Board should be notified of the Committee's decision to not move forward with a code of ethics adoption.

Discussion and Possible Action on the Efforts to Educate Licensees' about Enforcement Issues Related to Social Media (Strategic Plan Goal Item 2.4)

Dr. Azzolino encouraged the CCA to take a proactive approach by informing licensees of the issues associated with social media activity. Dr. Azzolino explained that social media violations related to patient confidentiality could possibly taint the public perception of the profession.

Mr. Puleo discussed common violations on social media and how licensees may be unaware of patient confidentiality regulations.

Additionally, Mr. Puleo suggested asking CE providers to address potential social media violations at mandatory CE courses for licensees.

Mr. McCarther suggested using the BCE' s social media to inform licensees of how to avoid possible violations related to social media activity. Mr. McCarther also proposed sharing links to HIPAA compliance articles that offer a strategy to help eliminate exposure to potential violations.

Ms. Mendes suggested creating a BCE newsletter article that will address case studies of licensees interacting with patients on social media and providing examples of common violations.

Dr. Azzolino agreed with Ms. Mendes' suggestion and recommended that staff review National Chiropractic Mutual Insurance Company (NCMIC) case studies for examples to be included in the BCE's newsletter article.

Dr. Azzolino referred to the articles as samples for agenda item 6: Compliance Today, Keeping Social Media HIPAA-Compliant, and Stung by Yelp Reviews Health Providers Spill Patient Secrets. Dr. Azzolino suggested that sharing these articles on the BCE's social media informs licensees of potential risks associated with social media activity.

Mr. Puleo asked Mr. Walker if he had any reservations regarding Dr. Azzolino's suggestion.

Mr. Walker responded that there are no copyrights in the articles provided and the Board may use them.

Mr. Puleo agreed with Dr. Azzolino's suggestion as licensees may have an interest in reading about these issues.

Ms. Dawn Benton, Executive Director of the CCA, announced that CCA publishes a weekly newsletter and stated the Board could use it to share information with its licensees.

Public Comment for Items not on the Agenda

N/A

Future Agenda Items

N/A

Discussion of Dates for Future Committee Meetings
N/A

Adjournment
Dr. Azzolino adjourned the meeting at 1:55 p.m.

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

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(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)

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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.

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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 explained that some licensees may perceive this as an attempt by the Board to enact unnecessary requirements. Mr. Puleo stated that 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 of 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

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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 – LINCESEES 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.

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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.

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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
None.

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.

DRAFT

State of California
Edmund G. Brown Jr., Governor

Agenda Item #3
February 8, 2018

Review and Discussion of the Enforcement Action Items from the 2017-2019 BCE Strategic Plan

Purpose of the item

The Committee will review the 2017-2019 Strategic Plan goals and action items.

Action(s) requested

N/A

Background

Following the completion and approval of the Strategic Plan, the Board developed action items to facilitate the completion of the Board's Goals. These items are used as objective measurements by the Board and staff to ensure the completion of the Strategic Plan.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- BCE 2017-2019 Strategic Plan (Enforcement)

Enforcement

2

Enforce laws and regulations to ensure consumer protection

2.1 Develop and disseminate educational tools and materials that better inform stakeholders of the enforcement process.

Objective Measurement				
Materials created and disseminated.				
Action Item	**Responsible Party**	**Initiation Date**	**Proposed Completion Date**	**Completion Date**
2.1.1 Establish a two-member committee of the Board to review current enforcement data and publications available and determine if content and format is sufficient for Board needs.	Board Chair and EO	Q3 2017		Q3 2017
2.1.2 New two-member committee to work with staff to develop new or revise existing materials if necessary.	Two-member committee	Q3 2017		Ongoing
2.1.3 Create outreach publications and materials educating public on complaint process. * Reference 3.2.2	Enforcement Committee		On hold	
2.1.4 Publish Expert Witness Guidelines in the Licensees and Publications tabs of Board website.	Licensing Manger	Q3 2017	TBD	

2.2 Collaborate with professional associations to establish a code of ethics that promote higher ethical standards for licensees.

Objective Measurement				
Determination is made regarding next steps.				
Action Item	**Responsible Party**	**Initiation Date**	**Proposed Completion Date**	**Completion Date**
2.2.1 Review CCA's code of ethics at enforcement committee meeting	Enforcement Committee	Q3 2017		Q3 2017
2.2.2 Determine whether additional action is necessary or not.	Board Chair and EO	Q3 2017		Q3 2017

2.3 Collaborate with other regulatory entities to increase their awareness of unlicensed practice (i.e., pastoral) and promote increased enforcement efforts to better safeguard the public.

Objective Measurement				
Other healthcare Boards/Bureaus awareness increased.				
Action Item	**Responsible Party**	**Initiation Date**	**Proposed Completion Date**	**Completion Date**
2.3.1 Communicate with other healthcare Boards/healing arts regarding cross-cutting enforcement issues.	EO	Ongoing		Ongoing
2.3.2 Track complaints and outcomes related to cross-cutting enforcement issues.	Enforcement Manager	Q2 2017		Ongoing

2.4 Educate licensees about enforcement issues related to social media in order to mitigate occurrences of these violations.

Objective Measurement				
Documents posted and licensees informed.				
Action Item	**Responsible Party**	**Initiation Date**	**Proposed Completion Date**	**Completion Date**
2.4.1 Create an outreach document that provides information on potential violations resulting from social media activity.	Enforcement Manager and Committee		Q2 2018	
2.4.2 Post outreach document on BCE newsletter, website and social media.	Licensing Manager		Q1 2019 and ongoing	

State of California
Edmund G. Brown Jr., Governor

Agenda Item #4
February 8, 2018

Review, Discussion and Possible Action regarding Enforcement Committee Statistical Information

Purpose of the item

The Committee will review statistical data and discuss ways to streamline the enforcement process.

Action(s) requested

N/A

Background

At the July 19, 2017 Committee meeting, members expressed interest in regularly reviewing and discussing enforcement statistical information during scheduled meetings. The Committee determined that enforcement data provided at meetings should include quarterly reports of the BCE Enforcement Performance Measures. These quarterly reports will be presented in an effort to ensure stakeholders are informed of the Board's performance towards meeting its enforcement goals.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- BCE Enforcement Performance Measures Q4 Report (April – June 2017)
- BCE Disciplinary Action – December 2017

Department of Consumer Affairs

Board of Chiropractic Examiners

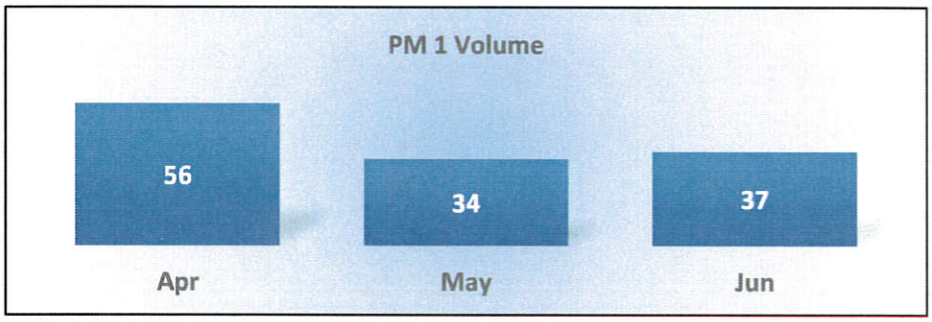
Enforcement Performance Measures

Q4 Report *(April - June 2017)*

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

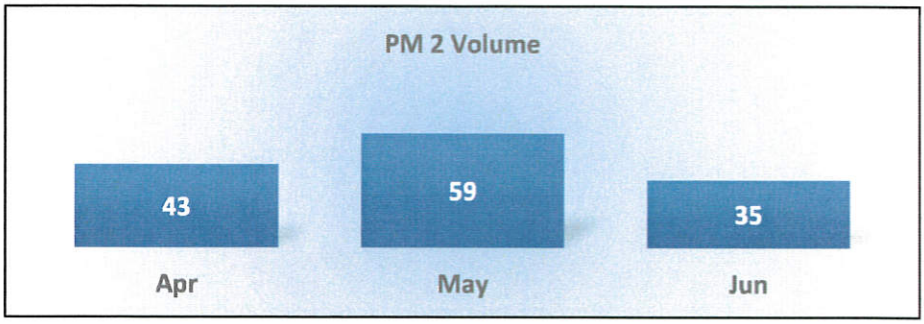


Total Received: 127 | **Monthly Average**: 42

Complaints: 109 | **Convictions**: 18

PM2 | Intake – Volume

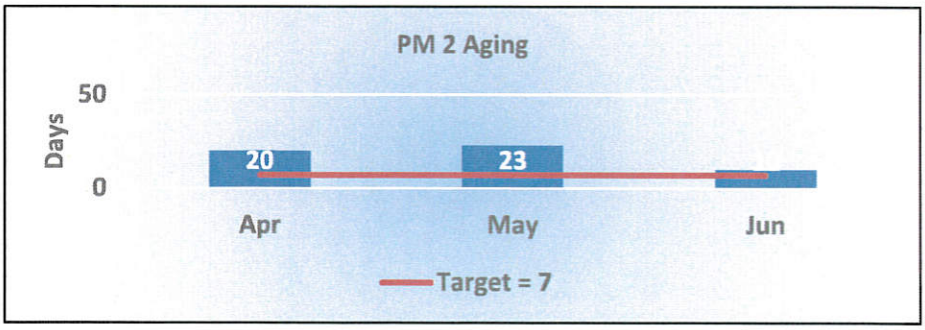
Number of complaints closed or assigned to an investigator.



Total: 137 | **Monthly Average:** 46

PM2 | Intake – Cycle Time

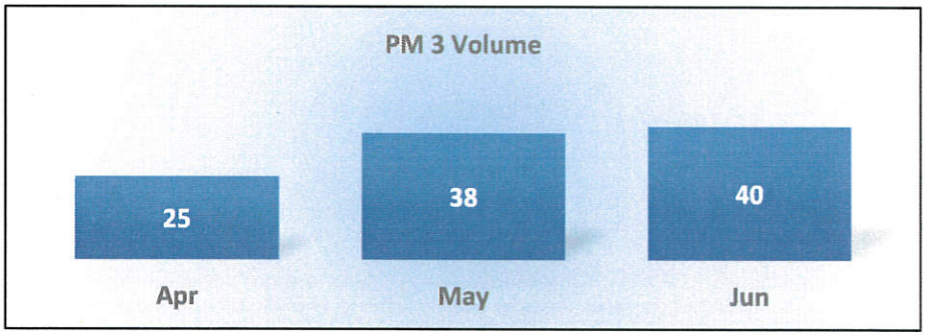
Average number of days from complaint receipt,
to the date the complaint was closed or assigned to an investigator.



Target Average: 7 Days | **Actual Average:** 19 Days

PM3 | Investigations – Volume

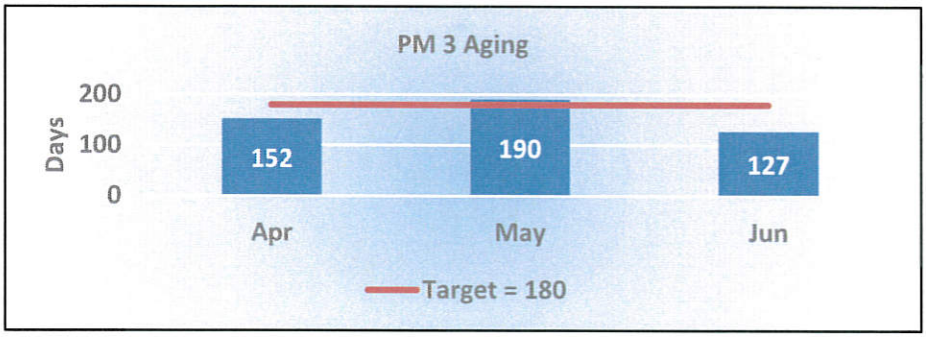
Number of investigations closed (not including cases transmitted to the Attorney General).



Total: 103 | **Monthly Average:** 34

PM3 | Investigations – Cycle Time

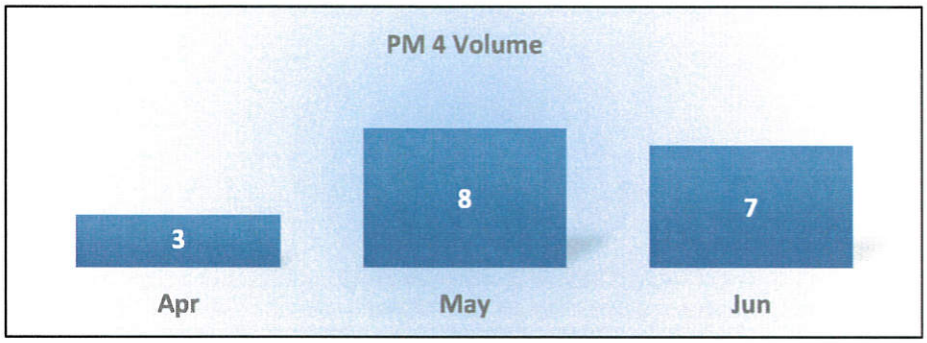
Average number of days to complete the entire enforcement process for cases not transmitted to the Attorney General.
(Includes intake and investigation.)



Target Average: 180 Days | **Actual Average:** 156 Days

PM4 | Formal Discipline – Volume

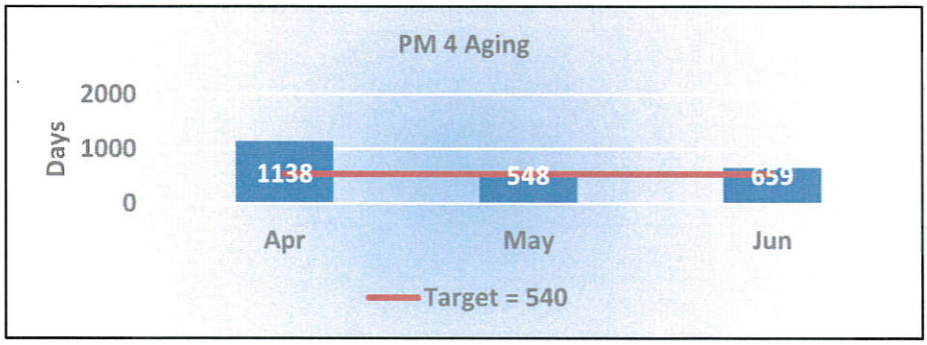
Cases closed after transmission to the Attorney General for formal disciplinary action. This includes formal discipline, and closures without formal discipline (e.g., withdrawals, dismissals, etc.).



Total: 15

PM4 | Formal Discipline – Cycle Time

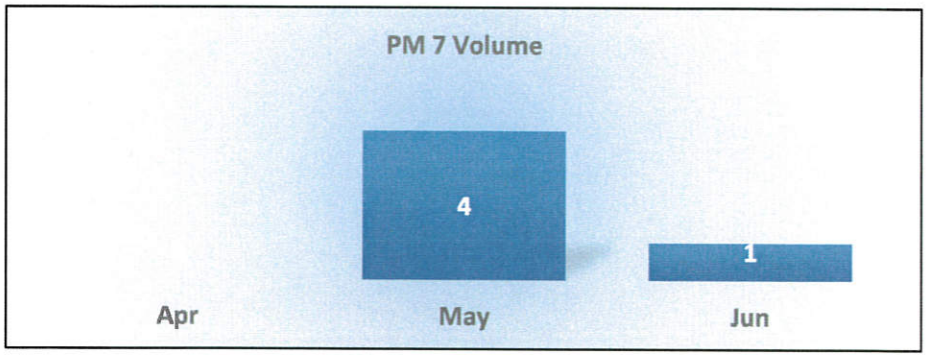
Average number of days to complete the entire enforcement process for cases transmitted to the Attorney General. (Includes intake, investigation, and case outcome.)



Target Average: 540 Days | **Actual Average:** 690 Days

PM7 |Probation Intake – Volume

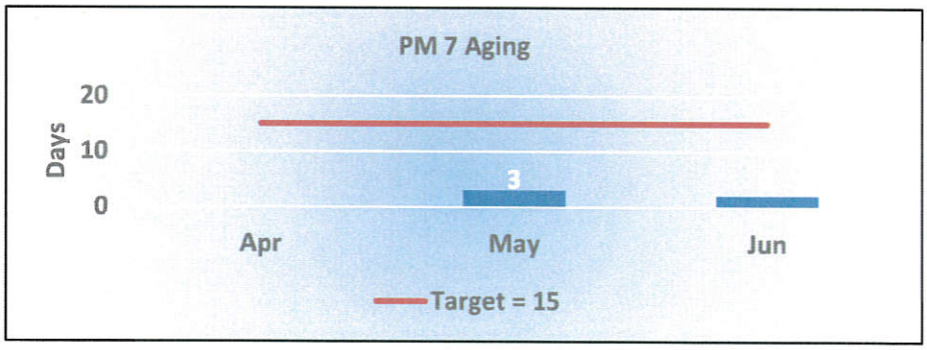
Number of new probation cases.



Total: 5

PM7 |Probation Intake – Cycle Time

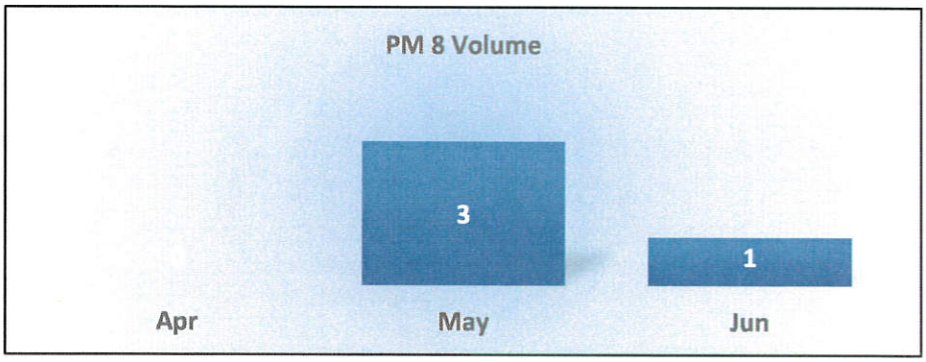
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 15 Days | **Actual Average:** 3 Days

PM8 | Probation Violation Response – Volume

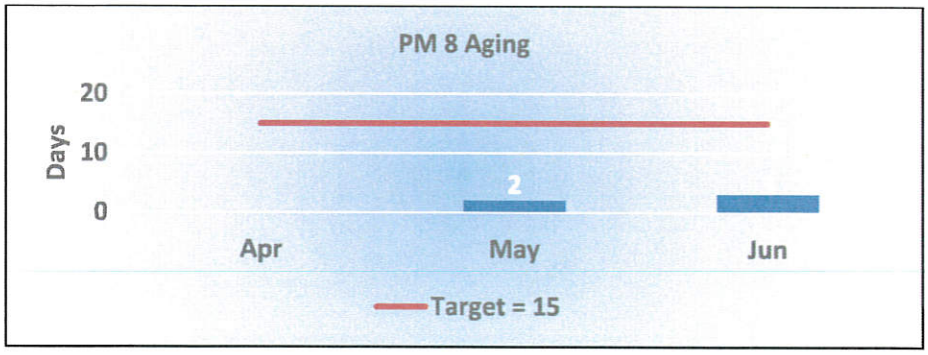
Number of probation violation cases.



Total: 4

PM8 | Probation Violation Response – Cycle Time

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.



Target Average: 15 Days | **Actual Average:** 2 Days

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

December 2017

ACCUSATIONS FILED

Name and City	License No.	Date Filed	Alleged Violations
Scruggs, William Keith Toluca Lake, CA	DC 29843	12/01/2017	Conviction of a crime, which is substantially related to the duties of a chiropractor.

STATEMENT OF ISSUES

Name and City	License No.	Date Filed	Action	Effective Date	Violations
No Data to Report					

DISCIPLINARY ACTIONS

Name and City	License No.	Action	Effective Date	Violations
Thayer, Ace Sokuey Costa Mesa, CA	DC 24008	Revoked, stayed, 3 yrs. probation	12/1/2017	False or misleading advertising that violates Business & Professional Code Section 17500; unprofessional conduct/gross negligence; unprofessional conduct/ endangering the health, welfare or safety of the public; unprofessional conduct/ repeated negligent acts; unprofessional conduct/commission of acts involving moral turpitude, dishonesty or corruption; participation in the act of fraud/misrepresentation; knowingly making or signing a document related to the practice of chiropractic which falsely represents the facts; unprofessional conduct/ excessive treatment; unprofessional conduct/ incompetence.
Serrano, Jose L. Huntington Beach, CA	DC 25506	Revoked, stayed, 3 yrs. probation	12/07/2017	Conviction of a crime which is substantially related to the duties of a chiropractor; unprofessional conduct/ endangering the health, welfare or safety of the public; dangerous use of alcohol in a manner dangerous to the safety of oneself or the public; conviction of more than one misdemeanor involving the dangerous use of alcohol.

Ngo, Anthony LC **San Francisco, CA**	DC 27497	Revoked, stayed, 3 yrs. probation	12/14/2017	Unprofessional conduct; unprofessional conduct/endangering the health, welfare or safety of the public; dangerous use of alcohol in a manner dangerous to the safety of oneself or the public; conviction of a crime, which is substantially related to the duties of a chiropractor; conviction of more than one misdemeanor involving the dangerous use of alcohol.

REINSTATMENT OF LICENSE

Name and City	License No.	Date Filed	Action	Effective Date	Violations
No Data to Report					

FINAL CITATIONS ISSUED

Name and City	License Number	Fine Amount	Date Issued	Violations
No Data to Report				

PETITION FOR REINSTATEMENT

Name and City	License No.	Revocation Date	Action
No Data to Report			

PETITION FOR EARLY TERMINATION OF PROBATION

Name and City	License Number	Probation End Date	Action
No Data to Report			

PETITION FOR MODIFICATION OF PROBATION

Name and City	License Number	Probation End Date	Action
No Data to Report			

State of California
Edmund G. Brown Jr., Governor

Agenda Item #5
February 8, 2018

Discussion and Possible Action regarding the Standardized Training and Evaluation of Expert Consultants to Improve Effectiveness and Consistency

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Purpose of the item

The Committee will discuss the standardized training and evaluation of expert consultants.

Action(s) requested

N/A

Background

Following the completion and approval of the 2014 - 2017 BCE Strategic Plan, the Board developed standards to evaluate expert consultants and defined their responsibilities to establish consistency among expert consultant reports. The Committee will review and discuss any deficiencies in the existing training materials to ensure effectiveness and consistency in reporting.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

Expert training materials:

- Power Point – BCE Expert Reviewer / Witness Training
- Expert Guidebook
- Sample – Expert Report
- Confidentiality / Conflict of Interest Agreement
- Statement of Services and Payee Data Record
- Top Enforcement Violations

TRAINING MATERIALS

→ Power Point

→ Expert Guidebook

→ Sample –Expert Report

→ Rules & Regulations

→ Initiative Act

→ Confidentiality /Conflict of Interest Agreement

→ Statement of Services *(only 1 month per statement; cannot have any corrections/line outs)*

→ Payee Data Record *(completed and turned in with each case review)*

→ Top Enforcement Violations

→ About the Board pamphlets

State of California

Board of Chiropractic Examiners
Office of the Attorney General
Expert Reviewer / Witness Training

Diamond Bar, California
June 24, 2008

Training Outline

- Purpose and Mission
- Organizational Structure
- Enforcement Program Overview
- The Role of the Expert
- Attorney General's Office
- Administrative Hearing
- Questions, Comments, and Feedback

Our Purpose and Mission:

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

The BCE at a Glance

- Established 1922
- 7 Board Members (Gov. Appointed)
- 18.5 Authorized Positions
- 3.7 Operating Budget
- 13,300 Total Licensees
- 12 Chiropractic Schools and Colleges

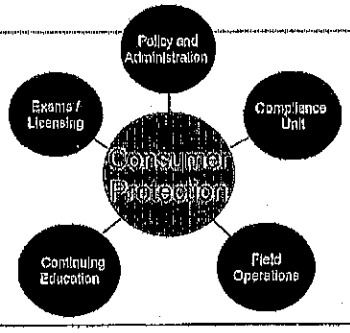
How We Protect Consumers:

Ensuring those entering the profession are trained and meet minimum competency standards.

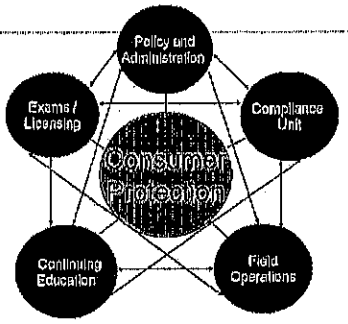
Enforcing the Chiropractic Initiative Act, Regulations, and other applicable laws.

Educating consumers on how to protect themselves and make good choices.

Mission Centered Focus



Mission Centered Focus



We Regulate Chiropractic:

- Doctors of Chiropractic
- Chiropractic Schools and Colleges
- Chiropractic Corporations
- Chiropractic Referral Services

Our Enforcement Strategy

- Proactive Enforcement
  - Educate
  - Inform
  - Promote
- Reactive Enforcement
  - Compel
  - Discipline
  - Prosecute

Our Enforcement Process
Complaint Sources

- Patients
- Government Agencies
- Insurance Companies
- Profession
- Internal
- Anonymous

Our Enforcement Process
Complaint Review and Assessment

- Jurisdictional
- Sufficient Information to Proceed
- Priority
- Preliminary Plan
- Expert Review (Complaint Assessment)

Our Enforcement Process
Complaint Investigations

- Information Gathering
- Field Investigation
- Expert Review (Case Review)

Our Enforcement Process
Disposition of Investigated Complaints

- No Violation
- Insufficient Evidence
- Close With Merit
- Citation
- Proceed with Formal Discipline

Enforcement Tools

Letter of Admonishment (10/08)
- Citation and Fine (9/08)
- Probation
- Suspension
- Revocation
- Criminal Filings

Our Enforcement Process
Hearings

Stipulated Agreements
(informal hearing)

Administrative Law Judge Proposed Decision
(formal hearing)

It's the Board Burden:

- Preponderance of the Evidence
- Clear and convincing proof to a reasonable certainty
- Beyond a reasonable doubt

Our Enforcement Process
Final Order

The BCE Governing Board determines the final order.

Our Enforcement Process
Compliance Monitoring

Probation Monitoring
Self-Reporting
Random Inspections
Office Conferences
Complaint Patterns

As the Expert Reviewer

You assist the Board in evaluating enforcement cases relevant to your area of expertise.

You truthfully and objectively express your opinion without influence from other parties.

In Your Expert Opinion:

Based on the facts as presented, did the subject chiropractor deviate from the chiropractic standard of care in California?

Expert Reviewer / Witness Immunity / Representation

As an expert reviewer / witness you have immunity from liability.

The Board will provide you with legal representation.

The Expert Does Not

The expert never advocates on behalf of the Board, the subject chiropractor, or the patient.

The expert never contacts a board member about an enforcement case.

Selection of the Expert

Geographic Location
Specific Expertise
Free of Conflicts
Timely Completion

We will contact you

- Discuss any potential conflicts
- Provide complaint / case information
- Proposed due date for completion
- Provide complete complaint / case information
- Board will follow up to ensure timely completion

Expert Reviewer's Role In Complaint Review

During the initial stages of the enforcement process, you may review written complaints and medical records to help determine if an investigation is warranted.

Expert Reviewer's Role in Case Review

You will review the case file, which includes the written complaint, medical records, investigation report, and other relevant information collected by the Board and prepares a written report.

In Your Expert Opinion:

Based on the facts as presented, did the subject chiropractor deviate from the chiropractic standard of care in California?

The Expert Reviewer's Written Report

List the records that were reviewed
- Summarize the patient's case
- State the standard of care provided
- Describe departures and explain
- State your overall opinion

Expert Witness

If the Board files an accusation, you may be called upon to provide expert testimony in an administrative hearing.

Expert Reviewer / Witness Evaluation

The Board will conduct internal evaluations of its experts to measure quality and adherence to the published guidelines.

Expert Reviewer / Witness Fees

Record Review:
$100 per hour

Testimony at hearing:
$600 half day
$1200 full day

Administrative Discipline Overview

Types of Cases

Statement Of Issues (SOI)
- a. Lack of Qualifications
- b. Criminal History
- c. Petition for Reinstatement

Citations: Minor or Technical Violations

Accusations: Serious Violations

Draft Pleading

- Deputy Attorney General Review
- Discuss with Expert
- Draft
- Expert Review
- Send to Executive Officer
- Serve

Notice of Defense

- 15 Days (Govt. Code Sec. 11505)
- Default
- Reconsideration

Discovery

Administrative Procedure Act Controls
(Govt. Code sec. 11507.6)

Expert Reports

Hearing Preparation

- Meet with the Expert
- Decide on Exhibits
- Review Respondent's Documents

Hearing

- Administrative Law Judge (ALJ)
- Burdens of Proof
- Expert's Role
- Testifying
- Evaluating Respondent's Case

Post Hearing

- Proposed Decision
- Reconsideration
- Stay of Decision
- Writ of Mandate (CCP sec. 1094.5)
- Appeal

Any Questions
Comments
Or Feedback?

Contact Information

Brian J. Stiger, Executive Officer

Brian.Stiger@chiro.ca.gov

916.263.5359

State of California
Board of Chiropractic Examiners

Guidebook for Expert Consultants

September 2014

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Section I

INTRODUCTION

The State Board of Chiropractic Examiners (Board) is an administrative agency created by the Chiropractic Initiative Act of 1922. The Board's paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care. Among its many duties, the Board investigates and disciplines chiropractors for unprofessional conduct to protect the public from incompetent, negligent, dishonest or impaired chiropractors. Your role as an expert consultant is extremely important in identifying whether a deviation from the chiropractic standard of care or unprofessional conduct has occurred and in serving as an expert consultant at any hearing that may result from your expert assessment.

These guidelines introduce you to the administrative disciplinary process and define the Board's expectations of the expert review you have been asked to provide, your responsibilities, your legal protection, your compensation, and your testimony if necessary.

As an expert consultant, which is the first stage of this process for yourself and perhaps the only stage (besides attendance at mandatory Expert training), you will be provided with the complaint, patient records, and certain other information, including any interviews with patients, subsequent treating chiropractors or other licensed health care providers, other witnesses, and any statements of the chiropractor who is the subject of the investigation. You will NOT be provided a copy of any report prepared by another Board expert consultant to avoid the appearance of tainting your evaluation. You will be asked on the basis of your review of the documentation provided to render your professional assessment of the care rendered by the subject chiropractor to the patient or patients involved and other conduct relating to the practice of chiropractic.

You are neither asked, nor should you try, to determine what discipline should be imposed upon the subject chiropractor. Your opinion must be based solely upon the information provided to you by the Board; however, whenever possible you should refer to chiropractic texts and other authoritative reference materials that help define accepted standards. Your opinion should be based upon your knowledge of the standard of care or compliance with professional conduct standards, based upon your education, training, and experience and not upon the manner in which you personally practice chiropractic care.

If you have prior knowledge of the subject chiropractor or if you feel you cannot be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. Also, if you are in need of any additional documents or the records provided to you appear incomplete, please contact the Board representative who will attempt to resolve the issue.

In some cases, you will be required to testify in person as to your opinions in administrative hearings held before an administrative law judge and be subject to

cross-examination by the respondent regarding your opinions. In these instances, you will be considered an expert witness and will be required to make time to meet with the Deputy Attorney General (DAG) assigned to prosecute the matter in advance of the hearing to prepare for the hearing.

The Board appreciates your cooperation in lending your expertise and experience to accomplish this important work. The Board recognizes that you play a vital role and your objective performance will reflect well on the Board and the profession.

Section II

CRITERIA/COMPETENCY REQUIREMENTS FOR EXPERT CONSULTANTS

Effective September 2014, Board Expert Consultants must certify or declare under penalty of perjury on the Expert Consultant application for appointment that he or she:

A. Has not been employed by any insurance company or chiropractic review service within two (2) years prior to their appointment or use as a Board expert.

B. Has experience providing written review and evaluation of the professional competence, standard of patient care, or conduct of licensees in relationship to the requirements of law and regulations.

C. Has an active California license in good standing with no statement of issues or prior or pending disciplinary actions, which may deem or impact that license status as revoked, restricted, interim suspended, suspended, or probationary in nature from the state licensing board.

D. Has possessed an active California license for a minimum of five (5) years.

E. Has not sustained a misdemeanor or felony conviction related to the practice of chiropractic, including crimes of fraud or moral turpitude.

F. Has experience providing Expert witness testimony in court.

G. Will not use their status as an Expert to promote themselves in advertisements.

H. Will not use the Board as a reference, or in any way indicate that they are endorsed by the Board.

I. Will not state nor imply that they are an employee or representative of the Board other than when they are testifying as a witness on a case for which they are acting in the capacity of an expert.

Section III
DEFINITIONS

The following terms are used throughout this guide and have specific legal meaning:

"Negligence" is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractors would possess and use in similar circumstances.[1]

If a chiropractor is a specialist, then "negligence" is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractic specialists (in the same specialty) would possess and use in similar circumstances.[2]

Under California law, a "single act of negligence" does not constitute grounds for discipline of a professional license, however, "repeated acts of negligence" does constitute grounds for discipline of a professional license.

"Standard of Care" and "Standard of Practice" are terms used in evaluating the negligence of a chiropractor. The term "standard of care" and "standard of practice" are used interchangeably, however, for purpose of this document and your report, please use the term "standard of care." The standard of care requires that the chiropractor exercise that degree of skill, knowledge, and care ordinarily possessed by members of his or her profession under similar circumstances.[3]

"Gross Negligence" an extreme departure from the ordinary standard of care.[4]

"Incompetence" means an absence of qualification, ability or fitness to perform a prescribed duty or function. Incompetence is distinguishable from negligence in that one may be competent or capable of performing a given duty but was negligent in performing that duty.

Thus, a single act of negligence may be attributable to remissness in discharging known duties, rather than incompetence respecting the proper performance.[5]

"Scope of Practice" refers to the range of services that can be provided by a chiropractor under the Chiropractic Initiative Act. The scope of practice is found in Sections 7 and 16 of the Initiative Act, Section 302 and 306 of the regulations, and in several California court decisions.

"Administrative Procedure Act" is the California law that governs all Board disciplinary cases against a chiropractor.

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1 California Civil Jury Instructions CACI 501, 2003.
2 California Civil Jury Instructions CACI 502, 2003.
3 Barris v. County of Los Angeles, 20 Cal.4th 101, 83 Cal.Rptr.2d 145 (1999).
4 Kearl. v. Board of Medical Quality Assurance, 189 Cal.App3d 1040 (1986); City of Santa Barbara v. Superior Court, 41 Cal.4th 747, 62 Cal.Rptr3d 527 (2007).
5 Kearl.

"Administrative Law Judge" or "ALJ" presides at all administrative hearings before the Board.

"Deputy Attorney General" or "DAG" is the attorney that represents the Board's Executive Officer who is the "complainant" in all disciplinary cases. DAGs are employed by the California Attorney Generals Office.

Section IV

GUIDELINES FOR EXPERT CONSULTANTS

FREQUENTLY ASKED QUESTIONS

1. Will I have to testify?

Possibly. If the case is submitted for disciplinary action and a stipulated agreement is not reached, you will be called upon to provide expert testimony before an ALJ. However, the majority of cases are settled before a hearing is held.

2. How much will I be paid?

The expert is paid $100 per hour for record review and a maximum of $600 per half day and $1200 per full day of testimony at an administrative hearing. You will also be compensated for other expenses you may incur, (i.e., parking, postage or travel, if applicable) in accordance with state law (effective July 1, 2008).

3. How soon will I be paid?

Generally speaking you should receive payment for your services within 4 to 6 weeks following receipt of your billing for services rendered. Incomplete forms will delay payment so be sure to provide your taxpayer identification number and signature. It is also important to complete the Payee Data Record form that is required by the IRS and return it with the statement.

4. Can I be sued for expressing my opinion and if I am sued who will represent me?

Yes. However, **Civil Code section 43.8** provides immunity from civil liability for expert consultants. If you are sued, either the Attorney Generals Office or outside counsel in the event of the conflict with the Attorney Generals Office will represent you.

5. Should I do research?

Yes, you should consult chiropractic texts and other authoritative reference materials that help define accepted standards and are encouraged to do so. However, it is important that you do not attempt to conduct your own investigation of the facts in the case.

6. How soon do I need to complete the review and provide an opinion?

The Board expects reports to be completed within 30 days of assignment; however, this may vary depending on the volume and complexity of the case. In a complicated case involving multiple patients, your review could extend beyond our 30-day time frame in which you are expected to notify the Board representative. Keep in mind that the chiropractor you are reviewing will continue to see patients until a determination is made by the Board. If this chiropractor poses a danger to patients, it is vital that you provide your opinion expeditiously so that the Board can move rapidly to protect the public.

7. Who will see my report?

The Subject chiropractor will be provided with a copy of your report as a part of legal discovery if an accusation is filed. In addition, if the case goes to a hearing, your report may be introduced into evidence.

8. Can you give me a copy of a sample report?

Yes, please see Section VII.

9. What is the difference between negligence and gross negligence?

See Definitions Section for full explanation.

INSTRUCTIONS

A. Ensure that records, reports and materials provided for your review are kept confidential and secure.

B. Review the case and determine if there is any reason you cannot provide an opinion because of a professional or personal relationship with any subject, witness, or patient.

C. If for any reason you determine that you cannot complete the review or provide an opinion, please let us know immediately and the case will be reassigned.

D. Keep track of dates and hours spent reviewing.

E. Do not mark on the copy of the records provided to you.

F. Do not contact the Subject or patients.

G. Do not discuss the case with outside third parties. You may use an office assistant or transcriptionist to assist you in the preparation of your report.

H. Do not perform any investigation on your own, i.e., attempting to obtain additional records or interviewing participants in the case. If you feel the file is incomplete, please contact the enforcement staff at the Board.

I. Do not offer any recommendation about the appropriate disciplinary action for the Subject.

J. Do not make a copy of the records.

K. Do not destroy any of the materials provided to you.

L. Remember to date and sign your opinion.

M. Enclose a current curriculum vitae with your report. Fourteen (14) days before the hearing, if a hearing is scheduled, you need to send an updated curriculum vitae to the DAG assigned to the case.

N. When your review is completed, please return your report along with the documents unmarked and in bate-stamped order, confidentiality and conflict of interest agreement, statement for services, and current curriculum vitae. It is necessary for you to retain the report until the case is final in the event you need to review it for either a meeting with the DAG or in preparation for a hearing.

O. If you have questions or concerns, contact the Board's enforcement manager or Executive Officer.

IMMUNITY FROM LIABILITY and LEGAL REPRESENTATION

Civil Code Section 43.8 states, in pertinent part:

> ". . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts . . . . "

This statutory provision provides for immunity from civil liability for expert consultants and expert witnesses acting within the scope of their duties in evaluating and testifying in cases before the Board. Should any problems arise in this area or if you are served a lawsuit related to your participation in this process, you should immediately contact Board staff. Failure to do so may result in a default decision being taken against you.

Section 306.2 of the regulations provides that the Board through the Attorney Generals

Office shall provide legal representation under specified conditions. This section reads:

"If a person, not a regular employee of the board, is hired or is under contract to provide expertise or to perform investigations for the Board of Chiropractic Examiners in the evaluation of the conduct of a licensee or administration of a board examination, and such person is named as a defendant in a civil action directly resulting from opinions rendered, statements made, investigations conducted or testimony given, the board shall provide for representation required to defend the defendant in that civil action. The board shall not be liable for any judgment rendered against that person. The Attorney General shall be utilized in those civil actions."

CONFIDENTIALITY AND CONFLICT OF INTEREST

As an expert consultant to the Board, you must safeguard the confidentiality of the records delivered to you for review and protect the identity of the patients, complainants and chiropractors involved. If you have prior knowledge of the subject chiropractor or if you feel you cannot be objective in your assessment for any other reason, please immediately contact the Board representative who sent you the materials. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in these materials to other parties. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report. You will be required to sign a confidentiality and conflict of interest agreement form on each case you review.

INVESTIGATIONS AND THE DISCIPLINARY PROCESS

The Board is responsible for investigating and bringing disciplinary action against the professional licenses of chiropractors suspected of violations of the Chiropractic Initiative Act of California, the California Code of Regulations, and other applicable laws and regulations.

The Board's hearings are conducted in accordance with the Administrative Procedure Act **(Government Code § 11150 et seq.)**. Its investigations are conducted pursuant to **Government Code sections 11180 though 11191**.

The Board, through the Executive Officer and investigative staff, identifies and takes appropriate action against chiropractors who commit unprofessional conduct, including acts or omissions evidencing repeated negligence, gross negligence, or incompetence, practicing under the influence of drugs or alcohol, practicing while mentally or physically impaired affecting competence, fraudulently billing patients or health insurance companies, clearly excessive treatment or use of diagnostic procedures, altering or creating false records, sexual misconduct, criminal acts and other conduct that endangers the health, welfare, or safety of the public.

The Board Members are not involved in the investigatory, expert review, or decision as to whether an accusation should be filed.

Consequently, you should NEVER contact any Board Member regarding any aspect of any case even after you have completed your opinion.

The purpose of the disciplinary process is not to punish as in the criminal justice system but to protect California consumers by ensuring that quality chiropractic care is provided by licensed chiropractors.

Standard investigations in quality of care cases include obtaining all relevant patient records, conducting interviews with witnesses, including the affected patient or patients, and obtaining any additional information. In insurance fraud cases, billing records and insurance claims are obtained. At times, information is found that goes far beyond the original complaint. After the documentary and interview evidence is obtained, the case is reviewed by the Board to determine if an evaluation by an expert consultant is necessary. If so, Board staff sends the case to an expert consultant who is qualified to render an opinion as to whether a departure from the standard of care occurred.

After the expert consultant submits his or her report, the Board makes a determination if the matter should be submitted to the Attorney General's Office to determine whether sufficient evidence exists to file an accusation against the subject chiropractor for unprofessional conduct.

If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject chiropractor, and he or she is given the opportunity to contest the charges.

In a majority of cases, the case is settled between the parties. However, if the case is not settled, a hearing is held before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings. The hearing may last from one day to several weeks, depending upon the complexity of the case and the defense. Both sides may call expert witnesses to support their views. This makes it incumbent upon the expert consultant to ensure the utmost care is taken when reviewing cases. The ALJ hears evidence against and for the subject chiropractor and renders a proposed written decision that is submitted to the Board Members for adoption as its decision in the matter. If the Board members adopt the proposed decision, it becomes final; if the Board members do not adopt the proposed decision, the administrative record is ordered including the transcript from the hearing, the exhibits, and other documents. The Board members then decide the case themselves based upon the administrative record and the disciplinary guidelines. The Subject chiropractor may petition for reconsideration if dissatisfied with the decision or proceed to take a writ of mandate to the appropriate Superior Court contesting the decision.

STAGES OF EXPERT REVIEW

A. Investigative Review

After the investigator assigned to a case has completed his or her investigation, the case is reviewed by a Board reviewer who then makes a recommendation as to whether or not a full expert evaluation is warranted. If the Executive Officer agrees that an expert evaluation is necessary, that is where you come into the process.

You, the expert consultant at this point, will be contacted by the Board and will be

asked to review the case. Information will be provided to you that should be sufficient for you to determine whether you will be able to devote the necessary time to the matter and prepare an expert report in a timely manner. If you agree to review the case, you will be provided with the case file that includes all necessary documents, statements, and other evidence to render your opinion. Your review should include an assessment of all relevant aspects of chiropractic care with strict attention to information provided in the file. If you should require any other information or something is not clear, you should contact the Board's representative, and every effort will be made to provide you with the information necessary.

You must remember that at this stage, the review is primarily concerned with whether the facts as presented constitute unprofessional conduct. You are not asked to be an advocate for the Board, the chiropractor, or the patient. Your evaluation should be objective, well reasoned and impartial because it is the primary factor in deciding whether the case is submitted for disciplinary action.

The Board is not interested in using your services to advocate a position, make an example of a licensee or punish a licensee. The Board only wants you to provide an objective evaluation so that it can determine if public protection warrants the filing of disciplinary charges. Your evaluation may also result in the issuance of a lesser enforcement action such as a citation.

B. Hearing Testimony

Once the case is submitted for disciplinary action, and an accusation is filed, you may be called upon to provide expert testimony, should the case go to a hearing. The majority of cases are settled before a hearing is held.

If a case is set for hearing, the Deputy Attorney General (DAG) assigned to prosecute the case will meet with you, perhaps several times, to review your expert opinion. You will be asked to educate the DAG in the details of your opinion and to assist in the presentation of that opinion in the clearest and most concise manner possible. You may also be asked to assist in reviewing the opinions of the opposing experts and in preparing cross-examination questions for them.

During the hearing, you will be called as the Board's expert witness to testify concerning your opinion and the reasons for your opinion. You will be asked questions by the DAG and by the subject chiropractor or his or her attorney if the chiropractor is represented by counsel. The total time taken for your testimony at the hearing varies with the complexity of the case. The subject chiropractor will have been provided with copies of any written opinions you have submitted during the investigative stage of the case. You should always provide truthful testimony even if it is contrary to the interests of the Board. You may also be asked to evaluate the opinions expressed by respondent's expert at hearing because oftentimes respondents' experts fail to prepare a written opinion.

REGULATION SECTION 317 "UNPROFESSIONAL CONDUCT"

The following are the primary laws that are used when an expert consultant is evaluating a case. However, you should be familiar as an expert in the field with all applicable laws relating to the practice of chiropractic.

Section 317 referred to above under "Quality of Care" includes other acts that constitute unprofessional conduct. This section reads:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

(a) Gross negligence;
(b) Repeated negligent acts;
(c) Incompetence;
(d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
(e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;
(f) The administration to oneself, of any controlled substance, or the use of any dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license;
(g) Conviction of a crime which is substantially related to the qualifications, functions or duties of a chiropractor;
(h) Conviction of any offense, whether felony or misdemeanor, involving moral turpitude, dishonesty, physical violence or corruption. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if such conviction was of an offense involving moral turpitude, dishonesty, physical violence or corruption. A plea or verdict of guilty, or a plea of nolo contendre is deemed to be a conviction within the meaning of the board's disciplinary provisions, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. The board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgement in a criminal matter.
(i) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances
(j) The violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substance;
(k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;
(l) Knowingly making or signing any certificate or other document relating to the

practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;

(m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thererunder;

(n) Making or giving any false statement or information in connection with the application for issuance of a license;

(o) Impersonating an applicant or acting as a proxy for an applicant in any examination required by the board for the issuance of a license or certificate;

(p) The use of advertising relating to chiropractic which violates section 17500 of the Business and Professions Code;

(q) The participation in any act of fraud or misrepresentation;

(r) Except as may be required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment;

(s) The employment or use of persons known as cappers or steerers to obtain business;

(t) The offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person;

(u) Participation in information or referral bureaus which do not comply with section 317.1 of the regulations.

(v) Entering into an agreement to waive, abrogate, or rebate the deductible and/or co-payment amounts of any insurance policy by forgiving any or all of any patient's obligation for payment thereunder, when used as an advertising and/or marketing procedure, unless the insurer is notified in writing of the fact of such waiver, abrogation, rebate, or forgiveness in each such instance. ***(Subdivision contains actual waiver language)***

(w) Not referring a patient to a physician and surgeon or other licensed health care provider who can provide the appropriate management of a patient's physical or mental condition, disease or injury within his or her scope of practice, if in the course of a diagnostic evaluation a chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This subsection shall not apply where the patient states that he or she is already under the care of such other physician and surgeon or other licensed health care provider who is providing the appropriate management for that physical or mental condition, disease, or injury within his or her scope of practice.

(x) The offer, advertisement, or substitution of a spinal manipulation for vaccination.

TYPES OF EVALUATION

Because there are many possible violations of the laws governing the practice of chiropractic, evaluations of cases vary with the subject matter of the possible unprofessional conduct. Listed are the major kinds of evaluations you may be asked to prepare.

1. Quality of Care

These cases involve the quality of care rendered to a patient or patients. The general question asked in this context is whether the subject chiropractor's treatment of the patient constituted gross negligence, repeated acts of negligence, or incompetence. Often, it is difficult to distinguish which of these definitions fits the treatment rendered and sometimes, the conduct described exhibits both incompetence and negligence or gross negligence for a given patient's treatment.

One departure from the standard of care is not considered unprofessional conduct unless it is an extreme departure. Your evaluation should state whether in your opinion it is negligence, repeated acts of negligence, gross negligence or incompetence. You may have situations where the subject's conduct constituted both negligence and incompetence. You should explain this in your report.

The determinations are often difficult to make, but that is why you are called upon to render your expert opinion. With your knowledge of the standards of care within the chiropractic community, especially in your area of expertise, we are asking you to render a professional opinion based upon your education, knowledge, experience, and training.

2. Sexual Misconduct

Section 316 of the regulations prohibits certain sexual acts both on the premises of a chiropractic business and with patients and other individuals. This section reads:

"(a) Every licensee is responsible for the conduct of employees or other persons subject to his supervision in his place of practice, and shall insure that all such conduct in his place of practice conforms to the law and to the regulations herein.

(b) Where a chiropractic license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.

(c) The commission of any act of sexual abuse, sexual misconduct, or sexual relations by a licensee with a patient, client, customer or employee is unprofessional conduct and cause for disciplinary action. This conduct is substantially related to the qualifications, functions, or duties of a chiropractic license.

This section shall not apply to sexual contact between a licensed chiropractor and his or her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment."

In this area you are asked to assess, based upon the standard of care, whether a chiropractor's relationship or conduct with a patient constitutes unprofessional conduct based on California law and the facts presented in each case.

In evaluating these cases, you are not asked to evaluate the CREDIBILITY of the complaining witness or whether the alleged statements or actions actually occurred.

This will be determined at the hearing, if one is held. For purposes of your review, you are to assume that the complainant's account of the doctor's conduct is true.

While some actions clearly constitute sexual misconduct, there are cases in which you will need to consider whether the conduct was appropriate because the doctor used an acceptable diagnostic or treatment technique.

In these cases, your evaluation should address whether the diagnostic or treatment technique is appropriate and whether the doctor used the diagnostic or treatment technique in an appropriate manner with the patient.

3. **Excessive Treatment Violations**

California Code of Regulations Section 317 states that the "administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees..." In this type of case, you are asked to state the standard of the local community of licensees concerning the number of chiropractic visits necessary to treat a certain condition and the kind and extent of diagnostic procedures necessary to diagnose the condition. Excessive treatment may also constitute gross negligence or repeated acts of negligence. The insurance industry does NOT set the standard of care, therefore whether or not an insurance company considered treatment to be excessive is irrelevant.

4. **General Unprofessional Conduct**

Section 317 states that a chiropractor may be disciplined for unprofessional conduct, which includes, BUT IS NOT LIMITED TO certain enumerated conduct. Any unprofessional conduct which is not set forth as such in the Chiropractic Initiative Act, governing regulations, or other statutes covering the practice is referred to as "general unprofessional conduct." General unprofessional conduct reflects conduct which demonstrates an unfitness to practice chiropractic that does not fit into other categories.

In a case entailing ethical violations, you are asked to set forth the standard of conduct for a chiropractor in the circumstances described, and perhaps the underlying ethical code, and then you are asked to describe in what manner the subject chiropractor violated that standard.

Section V

THE OPINION ITSELF

There are Sample Expert Reports appended to this booklet at Section VI. Please refer to those when writing your report, but remember they are guidelines only, and your case and the contents of your report will necessarily differ.

A. Contents

Your expert report should contain:

1) An accurate listing of the records and other documents sent to you –for review. Additionally, all of the documents provided for your review will be stamped with a sequential number ("Bates Stamped.) For example, if you receive a five-page investigation report and 50 pages of patient records, each one will contain a page number stamped at the bottom of the page starting from 1 to 55. You should refer to these numbers whenever you reference a document in your evaluation. This will assist the DAG who will later review your report. It will also ensure that your testimony before an administrative law judge will be organized and time-efficient.

2) The substance of the opinion, which should consist of the following for each patient, if there is more than one patient:

   a. Do a summary of the patient's case, including relevant patient history and presenting complaint. Describe the subject chiropractor's treatment, and any subsequent treatment. Summarize the facts of the treatment and the findings.

   b. State the standard of care for the treatment of such a patient. Remember to state the standard of care for the community of chiropractors, not just the way in which you personally would treat such a patient. The standard reflects what a reasonable chiropractor would do under the circumstances.

   c. Specifically describe any departures from the standard of care and explain why. Each finding of a departure from the standard of care should be specifically described.

   d. State your opinion as to whether the overall care of this patient constitutes no departure, a departure, an extreme departure, a lack of knowledge or ability, excessive treatment, excessive use of diagnostic procedures, sexual misconduct, and so on, or any combination. You must also state the basis for each opinion.

B. Violation vs. Mitigation

In writing your report, you are asked to summarize the treatment rendered and the findings of the subject chiropractor. In preparing your summary, you may have identified certain factors that could have hampered accurate treatment. Please remember that it is your obligation to state the standard of care and the departure therefrom.

Mitigation is defined as an abatement or diminution of penalty or punishment imposed by law. Although there are instances where mitigating circumstances are relevant to the imposition of any penalty, those factors will be considered by the trier of fact. Therefore, you are asked to refrain from commenting whether the subject chiropractor should or should not be punished because of certain mitigating or aggravating factors.

The actual discipline to be imposed on the chiropractor is the province of the trier of fact, and you are not expected to prescribe or recommend any discipline in the case.

C. Injury Is Not Essential

The primary focus in an expert review is whether there has been a departure from the standard of care of chiropractic, not whether the patient has been injured. Although the potential for injury because of the violation of the standard of care may be relevant to a determination of the degree of departure, actual injury is not required to establish unprofessional conduct. Also, just because there was no injury does not mean there was no departure from the standard of care. Conversely, injury to a patient in and of itself may not constitute violation of the standard of care.

D. Evaluation and Credibility

In many cases, the significant facts will not be in dispute. However in some cases, (such as sexual misconduct or allegation of assault) significant facts may be disputed. For example, the patient may state that something happened, while the subject may deny that it occurred. In those cases, your opinion should not include an assessment as to the subject and witnesses credibility, but if you render an opinion as to whether certain conduct constituted unprofessional conduct you should state in your report whose statement you relied to reach that conclusion.

E. Assess the Standard of Care as of the Time of the Violation.

The standard of care of chiropractic is constantly evolving, and so it is particularly important to be cognizant of the time that the violation occurred and assess the case in terms of the standard of care **AT THAT TIME**.

This does **not** mean, however, that if you were not in practice at the time of the violation, you are disqualified as an expert consultant. If you are aware of the standards at the time the violation occurred through your education, training and

experience, you may render an opinion on the case.

F. Objectivity

In performing your review, you should maintain objectivity, and view the assigned case without regard to any other legal activity that may surround it. In specific, you should ignore the existence, non-existence or magnitude of any civil judgments or settlements involving the case. Since you may not be reviewing the same documents that were used to support or refute a civil case, no attention should be paid to any past adjudicatory history. The expert consultant should focus on the patient records and other case records, not on the reports, depositions or other testimony of other expert witnesses. However, you may review deposition testimony of patients or non-expert witnesses.

Section VI

COMPENSATION

The Board staff will provide you with a form entitled "Expert Chiropractic Consultant Statement of Services" and a form entitled "Payee Data Record" for use in billing for services which you render to the Board as an expert consultant. You will be asked to fill out the Statement of Services form **COMPLETELY** for each case that you review and you may be required to fill out more than one Statement of Services form during the course of a case. Failure to fill out the form completely will delay your compensation. The Payee Data Record is only required to be completed annually.

A. Initial Evaluation

You will be compensated at the rate of $100 per hour for your evaluation and expert report. Please record the hours worked on the case for each DAY for your eventual billing.

The Board keeps its accounts by Fiscal Year, which begins July 1 through June 30. Please do not submit bills for two Fiscal Years on one form. Instead, use a separate form for each Fiscal Year.

B. Consultation with Deputy Attorney General

This includes any consultation, in person or by telephone, before the case is filed, during the pendency of the action, or in preparation for hearing. You will be compensated at the rate of $100 per hour.

C. Testimony at Hearing

You will be compensated at the rate of $600 for a half day of testimony and $1200 for a full day of testimony.

D. Miscellaneous Expenses

Expenses incurred in fulfilling the various requests may be itemized on a separate sheet of paper. Mileage and parking can be charged in connection with testimony at hearings. All expenses incurred in this category must be accompanied by a receipt, excluding mileage. In the event your testimony requires an overnight stay, the Board will make the appropriate arrangements for you.

Section VII

SAMPLE EXPERT OPINION(S)

The attached expert consultant report samples are what the Board expects from your expert review.

These are provided for purposes of reference as to format and expression only, and in no way reflects the decisions or opinions of the Board with reference to any of the fact situations cited. You may, in fact, agree or disagree with, or have no opinions about the opinion in substance.

TERMS TO BE AVOIDED IN REPORTS

Guilt or Innocence: The expert consultant's role is to determine whether, and in what manner, a chiropractor's actions depart from the standard of care, or demonstrate a lack of knowledge or ability.

Judgmental or subjective comments: Your report should objectively establish what behavior was expected and how the chiropractor failed to meet the expectation. Avoid terms such as "*this guy is clearly incompetent*" or *"no-one in his right mind would do..."*

Malpractice: Malpractice is a term which applies to civil law (i.e., suits between individuals). The Board functions under administrative law, and its cases deal with unprofessional conduct. Also, the expert consultant should not let any information regarding malpractice filings, settlements or judgments affect their review of a case. The standards of evidence and proof for civil cases are different than for administrative cases.

Penalties: It is not the role of the expert consultant to propose a penalty. This will be determined at hearing, based on detailed guidelines adopted by the Board and utilized by Administrative Law Judges.

Personalized comments: Avoid characterizing the actions of the chiropractor in personal terms: *"She was rude and unprofessional to the patient."* Instead, describe what the expected standard was, and how the chiropractor deviated from the standard.

Section VIII

SERVING AS AN EXPERT WITNESS

A. EXPERT WITNESS

You have been asked to testify at an *administrative hearing* against a chiropractor. You will be an *expert witness.* What this means is that because of your background, training and experience you can express opinions and make evaluations that a layperson could not make.

Prior to the hearing date, you will be contacted by the *Deputy Attorney General* (DAG) assigned to represent the Board and to present our case at the hearing. The DAG may arrange to meet with you to review the case, your written expert opinion, your qualifications to serve as an expert, and what you can expect at the hearing. The DAG also may ask you to review expert opinions provided by the respondent chiropractor or his or her attorney in the discovery phase of the case.

Discovery is when each side provides the other with all documents and other exhibits it will use, as well as the names of any witnesses it intends to call.

If the case is unusually complex or involves voluminous records, you may have to meet with the DAG more than once prior to the hearing.

B. THE HEARING

The hearing afforded a chiropractor who is charged by the Board, is known as an "administrative hearing," and is conducted under the Administrative Procedure Act (APA). While an APA hearing has some things in common with a criminal trial, it also has numerous differences. In general, APA hearings are less formal than trials. The hearing will be conducted by an Administrative Law Judge (ALJ) who works for an independent state agency, not for the Board. No jury is used in APA hearings. The attorneys (or the subject chiropractor, if he or she represents him or herself) can ask questions of witnesses for both sides (direct and cross-examination). The ALJ also may choose to ask a witness questions to clarify specific points.

As with a trial, the burden of proving the case rests with the Board, which brings the accusation against the subject chiropractor on behalf of the Board's Executive Officer who is the Complainant in these cases. In an APA hearing, the standard of proof that the Board must meet when an accusation is filed against a chiropractor is *"clear and convincing evidence to a reasonable certainty".* The standard that is used when a statement of issues (filed against an applicant) or citation is appealed is "preponderance of the evidence."

As with criminal trials, the Board presents its charges against the subject chiropractor first. The chiropractor or attorney can cross-examine each witness.

Then the chiropractor presents his or her defense, and the Board (DAG) has the opportunity to cross-examine. Each side has the opportunity to give an opening statement describing what they intend to prove and a closing statement summarizing what they have attempted to prove.

C. YOUR TESTIMONY

Before you can give evidence, you must establish your expertise at the hearing. This is done by the DAG asking you questions about your qualifications. This process is known as *voir dire*. You may be asked about the following, or about other matters relating to your qualifications:

1. Your license status and history.
2. Your education, chiropractic education and training.
3. Your experience.
4. Any private board certification or board eligibility you have achieved.
5. The extent of your experience as it relates to the types of chiropractic care or treatment at issue in this case.
6. Your professional affiliations, memberships, staff appointments and other associations.
7. Your publications.
8. Any other information that could shed light on your qualifications to be considered an expert.
9. You probably will be asked whether you know or have any kind of business or professional relationship with the subject chiropractor.

During direct and cross-examination, you probably will be asked questions about the documents and other "exhibits" you reviewed as you prepared your expert opinion report. You should be prepared to identify any publications or resources you referred to as part of your review. You also may be asked to describe the kinds and extent of experience you have in performing the chiropractic procedures or treatments involved in the case.

It is extremely important that you be able to describe what is the *standard of care in the chiropractic community* for the type of procedure involved in the case. The term "standard of practice" or "standard of care" is set by the community of licensed chiropractors based upon their training, education and experience. This standard may change over time with new advancements in chiropractic. It will be necessary for you, as an expert witness, to articulate what the current acceptable standard is in chiropractic for various diagnosis and treatment procedures. Focus on what the standard is. Also, use lay terms whenever possible, and explain unavoidable technical terms and acronyms.

Focus on how the treatment in a particular case departed from the standard of care.

You also may need to address a charge of incompetence based on use of outmoded procedures. In some instances, you may be faced with a lack or inadequacy of patient records upon which to assess the quality of the case the patient received. Your testimony may consist of pointing out that based on the patient chart, it is not possible to determine what tests, if any were ordered, what

instructions were given the patient, what in-office procedures were done, etc. You could be asked to explain the standard of care as it relates to documenting such information in the patient record.

Be prepared to discuss the degree to which the treatment departed from the standard of care. Was the treatment a departure or an extreme departure? For more information on this, see the Guidelines For Expert Consultants in Section IV.

Very often, the other side will attempt to discredit you, belittle your qualifications, or use other techniques to raise doubts about your testimony.

You should make every effort to remain objective and detached. Try not to become defensive or to lose your professional demeanor. Your role is as a teacher, not as an advocate for the Board.

D. AFTER THE HEARING CONCLUDES

When the hearing is completed, the ALJ will take the case under submission. He or she has 30 days to prepare a proposed decision (PD). The PD is sent to the Board, which then has 100 days to decide whether to accept the PD, reject it and substitute its own decision in the case, or modify and adopt the decision.

SAMPLE REPORT

[redacted] CHIROPRACTIC

[redacted]

Board of Chiropractic Examiners
901 P Street, Suite 142-A
Sacramento, CA 95814

Attn: [redacted]

RE: [redacted]
Case No: [redacted]

At the request of the Board of Chiropractic Examiners, I have carefully reviewed the submitted records regarding the treatment of [redacted], [redacted] in relation to a complaint of unprofessional conduct *I* gross negligence. Thank you for [redacted] the case to me for evaluation.

RECORD REVIEW:

The records reviewed in this matter consist of 175 pages of Bates Stamped records. Page 1 is a Consumer Complaint Form signed by [redacted], and dated 7/12114. It complains of treatment of her mother, [redacted], [redacted] during the time period May 5-July 3, 2014. She states that [redacted] is " dangerous, greedy, and harmed the health of my 91-year-old mother and took advantage of her". Page 2 is a BCE authorization for release of patient records form, unsigned by the patient, with a notation by [redacted] that her mother likes [redacted] and doesn't want her to report him. Page 3 is a letter from the Board to [redacted] acknowledging receipt of her complaint against [redacted] on behalf of [redacted]. It notifies her that the Board has no jurisdiction to obtain monetary restitution, or over fee/billing disputes and general business practices. Board actions are independent of any civil remedies available to her. It requests that she completes and returns the authorization for release of patient records. Page 4 is the record release form signed by [redacted], dated 9/27/14. Pages 5-6 are the Investigative Subpoena Assignment report of [redacted], dated I0/15/14. Allegations include violations of B & P codes 317 (a) (c) (e): Unprofessional Conduct - Gross Negligence, Incompetence, and Conduct Endangering the Public. It further alleges a violation of 318 (a) (b): Failure to Maintain

Records, Accurate Billing. According to [redacted], she processed an investigative subpoena to [redacted] for [redacted] records on 9/17/14, requesting the records be returned by 9/30/14. On 9/29/14, she was informed that [redacted] retained attorney [redacted], who requested additional time to review the records before submitting them to the Board. Extension was granted until 10/10/14. The Authorization for Release of Records signed by [redacted] was received by the Board on 10/1/14. The patient records were received from [redacted] on 10/10/14.

The next section of the records is identified as Evidence 1, and consists of pages 7-10. It contains a copy of the consumer complaint form, as well as a signed and unsigned copy of the record release forms.

The next section of the records is identified as Evidence 2, and consists of pages 11-15. It contains a copy of the Investigative Subpoena to Produce Patient Records in Case Number [redacted]. It was issued to [redacted]. on 9/17/14, by [redacted], Supervising Special Investigator of the Board of Chiropractic Examiners. It requested that any and all information relating to [redacted] be provided to [redacted] by 9/30/14.

The next section of the records is identified as Evidence 3, and consists of pages 16-170. Pages 17-20 contains a letter from attorney [redacted] to [redacted] of the Board. It advises that he is representing [redacted], and that he is providing the records and billing documents. It also gives a chronological summary of the treatment provided to [redacted]. According to this letter, [redacted] first presented to [redacted] on or about 5/5/12 at which time she had a consultation and examination. A treatment plan was formulated on a subsequent visit. He recommended a trial of 12 weekly chiropractic treatments and the purchase of vitamins, minerals and cleansing agents, as part of her participation in a Neuropathy Program. She was encouraged to research his nutritional/weight loss program online. She then contacted the office about a week later to enroll in the program after her daughter researched it and recommended that she try it. She was provided with a "Neuropathy Breakthrough" binder and advised that the supplements she was purchasing were not returnable. After 3-4 weeks of visits, she began complaining. According to [redacted], she was not compliant with taking her vitamins and supplements as directed. He gave her additional supplements without charging her, and encouraged her to eat in a healthy manner, exercise appropriately, take the vitamins and supplements as recommended, and to follow the cleanse routine. [redacted] was contacted by [redacted] son-in-law who also stated that the program was not helping her and might be making her worse. At one point, [redacted] recommended that [redacted] increase her treatment frequency to twice weekly, which she did for one week only. She continued to complain about the program, although [redacted] claims the chart notes demonstrated some symptom improvement. At some point thereafter, [redacted] told her that if she was unhappy with the program, she was welcomed to stop. He offered to refund her for any unopened supplements, despite his no-refund policy. [redacted] then stopped all credit card purchases for services received that had not been fully processed by the credit card company.

Pages 21-23 are copies of the investigative subpoena. Page 24 is an affidavit of custodian of records signed by [redacted] on 10/9/14, indicating that she was providing true copies of the indigency forms, chiro record packet, account/club reduce records, and neuropathy program. Page 25 is an Indigency Policy & Agreement of Health Source of Pasadena, signed by [redacted], dated 5/9/14, agreeing to a $45.00 examination fee. Page 26 is a Medicare ABN form, dated 5/5/14, signed by [redacted]. Requesting that electrical muscle stimulation, ultrasound, manual therapy, neuromuscular re-education, and therapeutic exercises be performed and not billed to Medicare. Page 27 is a Health Source financial agreement signed by [redacted], dated 5/5/14. Page 28 is the first page of a two-sided informed consent document. It contains the initials "[redacted]" next to each of the listed procedures. The second page of the document was not copied. Page 29 is a HIPAA Patient Consent Form signed by [redacted], dated 5/5/14. Pages 30-40 contain the new patient history and examination paperwork, dated 5/5/14. The history forms appear to have been completed both by patient and [redacted]. Patient complaint is neuropathy, following a lumbar laminectomy in 2004. Her symptoms are moderate with pain level 5-6/10, affecting her ankles and feet, worse on the left. According to [redacted] notations, symptoms are constant, no aggravating activities, and no prior treatments (physical therapy, acupuncture, Vitamin B-12 shots, laser, spinal decompression) have given relief. She was referred to the office by her daughter, [redacted], and the internet. Her past history included a left sided stroke with mild loss of function, right wrist fracture, and a thyroid condition. She is taking lisinopril for hypertension, levothyroxin, and aspirin. She uses a walker and rarely exercises. The examination forms, dated 5/5/14, show a height of 5' 2" and a weight of 98 pounds. It **appears that the weight may have been altered to reflect 98 lbs.** Blood pressure was not recorded, but indicates "reported normal". Her gait is assisted by a walker. Sensory examination demonstrates bilateral loss along the L4, L5, and S1 dermatomes by pinwheel. Her care plan (page 37) is for 12 visits, twice weekly for 6 weeks, to include spinal manipulation (3-4 levels), ultrasound, electrical stimulation, manual therapy, and therapeutic exercises. The therapy plan of care form (page 39) lists the complicating factors as: her age of 91 years, presence of DDD/DJD, moderate/severe pain level, and poor physical condition. Prognosis is listed as guarded or poor, based upon failed low back surgery. Recommended 12-week neuropathy program and chiropractic care twice weekly X 6 weeks.

Pages 41-64 contain the daily treatment notes, covering the dates of 5/9/14 through 6/23/14. It appears that each daily note contains 2 sections, one listed as DC and the second as PR. I asstm1e that these abbreviations refer to a "chiropractic" section and a "progressive rehab" section.

Pages 41-42 contain the notes of 5/9/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) and ultrasound was performed. Symptoms: initial treatment. Visit 1112.

Pages 43-44 contain the notes of 5/13/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) and

ultrasound was performed. Symptoms: no changes. Comments: soreness of spine after last visit. Explained it is a normal response. Visit 2/12.

Pages 45-46 contain the notes of 5/16/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) was performed. Symptoms: same. Comments: No significant changes. Ultrasound has no lasting effect. Will focus on manual therapy and stretching. Visit 3/12.

Pages 47-48 contain the notes of 5/19/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) was performed. Symptoms: same. Comments: no significant changes. Cannot perform home exercise program on her own. No strength. Explained that due to her chronic and degenerative condition, it may take a little more time to notice changes. Visit 4/12.

Pages 49-50 contain the notes of 5/23/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascialstripping) was performed. Symptoms: same. Comments: LU111bar spine feels a little more flexible after treatment, but no significant changes in numbness or neuropathy.

Pages 51-52 contain the notes of 5/27/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) was performed. Symptoms: temporarily better. Comments: feels slight improvement immediately after treatment, neuropathy also slightly improved after visit. Foam roller technique to lumbar spine and pelvic girdle.

Pages 53-54 contain the notes of 5/30/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping, proprioceptive re-education) was performed. Symptoms: feels weak. Comments: All symptoms feel additional relief from 7-8/10 to 5/10. Apply kinesiotape to ankle and foot for neuropathy.

Pages 55-56 contain the notes of 6/2/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascialstripping) and ultrasound was performed. Symptoms: worse. Comments: No significant change to neuropathy. Symptoms increased witl1walking and standing. No improvement from kinesiotape. Apply ultrasound to feet and ankles.

Pages 57-59 contain the notes of 6/6/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) and ultrasound was performed. Symptoms: same. Comments: Temporary relief of symptoms for a few hours. Once she stands and walks neuropathy returns. Trial period of ultrasound to lower extremities.

Pages 59-60 contain the notes of 6/9/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) and ultrasound was performed. Symptoms: better temporarily, worse after a couple days. Comments: Ultrasound on feet helped for a few days. Continue with ultrasound.

Pages 61-62 contain the notes of 6/16/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping) was performed. Symptoms: same. Comments: Slight improvement since last visit. Difficult to perform any home exercise due to muscle weakness and numbness of lower extremity. She is very discouraged by lack of long lasting improvement. Consider discharge and discuss next visit.

Pages 63-64 contain the notes of 6/23/14. CMT performed to thoracic and lumbar spine by activator. Manual therapy (trigger point release, myofascial release, fascial stripping, PNF muscle re-education) and ultrasound was performed. Symptoms: same. Comments: Patient reports no significant improvement of her neuropathy. Discussed with patient that objectively she shows slight improved range of motion and joint mobility and decreased tender points along the thoracic and lumbar spine and ankle/foot. Discharged patient from active care due to lack of consistent progress.

Pages 65-66 contain an account statement, dated 10/3/14. Reflects products and services provided from 5/9/14 through 6/27/14. There were chiropractic manipulations provided on 15 dates. These appear to have been billed to and paid by Medicare. **There are charges for manipulation on 6/11, 6/13, and 6/20, but there are no corresponding treatment notes for those dates.** There were also charges for "energy balancing" and "inch loss body wraps" that appear to have been paid by the patient. On 6/20/14, the manipulation was billed twice, but the second charge appears to have been adjusted off. On 6/23/14, the patient's last date of service, there were additional charges for neuropathy supplements, SMT (self-mastery technique) visit, energy balancing, body wrap and weight loss exercise, with total charges of $514.80 being paid by the patient. There is also a charge incurred on 6/27/14 for a body wrap showing a patient payment of $80, despite the fact that patient was discharged on 6/23/14. The statement reflects an available credit of $885.60 and a total due of $878.90. Pages 67-68 are duplicate copies of pages 65-66.

Pages 69-81 contain the Club Reduce 12-week Neuropathy Program. The 12-week neuropathy program contract is signed by [redacted] on 5/16/14. It shows a price list for each service with total charges of $3162, a senior discount of $316.20, and patient responsibility of $2845.80. There is an ACH auto-debit form signed by [redacted] on 5/16/14, authorizing a debit of $213.30 per month for. I O months beginning 5/16/14. The program breakdown appears to show

CONFIDENTIALITY AND CONFLICT OF INTEREST AGREEMENT RE EXPERT CONSULTANTS

Thank you for assisting the Board of Chiropractic Examiners in its efforts to protect the consumers of California. More specifically, the Board of Chiropractic Examiners appreciates your agreeing to serve as an expert consultant to provide professional consultation, advice and services to the Board of Chiropractic Examiners related to its enforcement program. Please communicate directly with **Board Analyst** regarding the specific services the Board of Chiropractic Examiners needs from you. Those services may include reviewing records and providing consultation for determination of unprofessional conduct, incompetence, fraudulent action, or other unlawful activities of the professional work under investigation.

SCOPE OF SERVICES: You may be asked to serve as an expert witness and may be called upon to provide expert opinions on technical subject matters, professional standards and the quality and completeness of evidentiary material. You may additionally be requested to provide assistance for all phases of the judicial and administrative process including administrative hearings, appeals, and expert witness testimony at administrative hearings.

BILLINGS AND PAYMENTS: Your services will be billed at a rate of $ 100 per hour for Record Review, Report Preparation, and/or Conference with Attorney General. Testimony at Hearing is $600 maximum allowable fee per half day testimony at Hearing. Testimony at Hearing is $1200 maximum allowable fee per full day.

Your travel and per diem expenses necessarily incurred in performance of the services rendered shall be reimbursed in accordance with the current State of California, Department of Personnel Administration Regulations applicable to State of California employees.

You understand that no Federal or State income tax shall be withheld from the payments under this agreement. However, the State of California is required to report all payments to the Internal Revenue Service and Franchise Tax Board for tax purposes.

INDEPENDENT OBJECTIVE OPINIONS: Your retention is not contingent upon any specific opinions that you may ultimately form or render and that you are being retained as an independent expert consultant who will render independent opinions. The payment of your fees and expenses, and the timing of such payments are not contingent in any way upon the substance of your opinions, the outcome of the above-referenced matter, or upon any other contingent factors.

CONFLICT OF INTEREST: If you have a current or prior social, personal, familial or business relationship with the subject chiropractor or you have prior knowledge about this licensee or if you feel for any reason that you cannot be objective in your assessment, you must immediately contact the Board of Chiropractic Examiners.

CONFIDENTIALITY OF DATA: Government Code Section 11183 makes confidential the character of information acquired in the course of an investigation conducted by the Board of Chiropractic Examiners. As an expert consultant to the Board of Chiropractic Examiners, you are expected to safeguard the confidentiality of the records delivered to you for review and to safeguard the identity of the patients, complainants and licensees involved. You will be given materials to review, including relevant patient records and investigative materials. You are obligated not to divulge any information contained in these materials to other parties. After your report is written, all materials received should be returned to the Board of Chiropractic Examiners. The obligation to preserve confidentiality also extends to any assistant you may utilize in the preparation of your report.

QUALIFIED IMMUNITY: Section 43.8 of the California Civil Code reads in pertinent part:

". . . . there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, . . . professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under section 12529 of the Government Code, peer review committee, . . . when such communication is intended to aid in the evaluations of the qualifications, fitness, character . . . of a practitioner of the healing arts . . . . "

This statutory provision provides for immunity from civil liability for expert consultants acting within the scope of their duties in evaluating and testifying in cases on behalf of the Board of Chiropractic Examiners. If you are served a lawsuit related to your participation in this process, you should immediately contact Board of Chiropractic Examiners staff. Failure to do so may result in a default decision being taken against you.

CURRENT LICENSE: Please remember that you should maintain an active and current chiropractic license during the entire time you are providing services.

After review of this agreement, please sign it and return it to the Board of Chiropractic Examiners to the attention of **Board Analyst** at 901 P Street, Suite 142-A, Sacramento CA 95814. You will not be paid for any work that is commenced before the Board of Chiropractic Examiners receives this agreement back with your signature.

If you have any questions or concerns regarding the terms set forth in this agreement, please call **Board Analyst** directly at **(916) 263-5355 ext. 1234.**

I, _____, hereby acknowledge that I have read and understood this entire agreement and I agree to abide by all of the above terms.

Signature: _____ **Date:** _____

BOARD of CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

State of California
Edmund G. Brown Jr., Governor

CHIROPRACTIC EXPERT CONSULTANT
STATEMENT OF SERVICES

If you render expert services in any one case in which your service days overlap for two or more months, please provide a Statement of Service form for each of those months.

This form is not valid if the reverse side is blank. Only original forms will be accepted for payment. Please print in ink or type.

Name: (Subject Chiropractor)	Case No.:

I certify under penalty of perjury under the laws of the State of California that the services specified below were rendered on the dates shown in connection with the preceding subject and case number, and that this statement constitutes a request for full payment for these services: (See reverse side for instructions)

Service	Date	Hours/Miles	Fee
☐ Record Review			
☐ Report Preparation			
☐ Conference w/Attorney General			
☐ Testimony at Hearing(s)			
☐ Mileage/Parking			
☐ Other Expenses:			

Total $ _____

Payable to: (Expert Consultant)

ADDRESS:

CITY:	State:	Zip Code:
Taxpayer I.D. or SSN: ☐ Exempt		Phone:

For Board Use Only	
Index: 1900 PCA: 19000	
Enforcement Unit/Date	
Executive Director/Date	

_____
Original Signature of Expert Consultant

_____
Date

Comments:

T (916) 263-5355
F (916) 327-0039
TT/TDD (800) 735-2929
(866) 543-1311

Board of Chiropractic Examiners
901 P Street, Suite 142-A
Sacramento, California 95814

STATEMENT OF SERVICES
INSTRUCTIONS

Box 1	One hundred dollars ($100) per hour maximum fee for Record Review
Box 2	One hundred dollars ($100) per hour maximum fee for Report Preparation
Box 3	One hundred dollars ($100) per hour maximum fee for Conference with Attorney General
Box 4	Six hundred dollars ($600) maximum allowable fee per half day testimony at Hearing Twelve hundred dollars ($1200) maximum allowable per full day testimony at Hearing
Box 5	Mileage and parking can be charged in connection with testimony at hearings. A State mileage reimbursement rate of 56 cents per mile is allowed. All expenses incurred in this category must be accompanied by a receipt, excluded mileage
Box 6	Expenses incurred in fulfilling the various requests may be itemized in this space

FEES CHARGED WHICH ARE NOT IN CONFORMANCE WITH THE ABOVE SCHEDULE MUST BE NEGOTIATED AND APPROVED BEFOREHAND

TAX INFORMATION

Title 26, Section 6041 of the Federal Internal Revenue Code and 18631 of the State Revenue and Taxation Code require the State to report consulting fees to individuals or partnerships. In order to report these payments as required, we must be informed of your Taxpayer I.D. Number or Social Security Number.

If the fee is payable to a corporation or government unit, no reporting is required...if this is the case, please check the "Exempt" box.

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9)

STD. 204 (Rev. 8-2003)

1

INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/office) address shown at the bottom of this page. Prompt return of this **fully completed** form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement.

NOTE: Governmental entities, federal, State, and local (including school districts), are not required to submit this form.

2

PAYEE'S LEGAL BUSINESS NAME (Type or Print)	
SOLE PROPRIETOR – ENTER NAME AS SHOWN ON SSN (Last, First, M.I.)	**E-MAIL ADDRESS**
MAILING ADDRESS	**BUSINESS ADDRESS**
CITY, STATE, ZIP CODE	**CITY, STATE, ZIP CODE**

3

PAYEE ENTITY TYPE

CHECK ONE BOX ONLY

ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN): ___ - _____

☐ **PARTNERSHIP**

☐ **ESTATE OR TRUST**

CORPORATION:
- ☐ **MEDICAL** (e.g., dentistry, psychotherapy, chiropractic, etc.)
- ☐ **LEGAL** (e.g., attorney services)
- ☐ **EXEMPT** (nonprofit)
- ☐ **ALL OTHERS**

☐ **INDIVIDUAL OR SOLE PROPRIETOR ENTER SOCIAL SECURITY NUMBER:** ___ - __ - ____

(SSN required by authority of California Revenue and Tax Code Section 18646)

NOTE: Payment will not be processed without an accompanying taxpayer I.D. number.

4

PAYEE RESIDENCY STATUS

☐ California resident - Qualified to do business in California or maintains a permanent place of business in California.

☐ California nonresident (see reverse side) - Payments to nonresidents for services may be subject to State income tax withholding.
- ☐ No services performed in California.
- ☐ Copy of Franchise Tax Board waiver of State withholding attached.

5

I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the State agency below.

AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print)		**TITLE**
SIGNATURE	**DATE**	**TELEPHONE** ( )

6

Please return completed form to:

Department/Office: DEPARTMENT OF CONSUMER AFFAIRS

Unit/Section: BOARD OF CHIROPRACTIC EXAMINERS

Mailing Address: 901 P STREET, SUITE 142A

City/State/Zip: SACRAMENTO, CALIFORNIA 95814

Telephone: (916) 263-5355 **Fax:** (916) 327-0039

E-mail Address: _____

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

STD. 204 (Rev. 6-2003) (REVERSE)

1	**Requirement to Complete Payee Data Record, STD. 204** A completed Payee Data Record, STD. 204, is required for payments to all non-governmental entities and will be kept on file at each State agency. Since each State agency with which you do business must have a separate STD. 204 on file, it is possible for a payee to receive this form from various State agencies. Payees who do not wish to complete the STD. 204 may elect to not do business with the State. If the payee does not complete the STD. 204 and the required payee data is not otherwise provided, payment may be reduced for federal backup withholding and nonresident State income tax withholding. Amounts reported on Information Returns (1099) are in accordance with the Internal Revenue Code and the California Revenue and Taxation Code.
2	Enter the payee's legal business name. Sole proprietorships must also include the owner's full name. An individual must list his/her full name. The mailing address should be the address at which the payee chooses to receive correspondence. Do not enter payment address or lock box information here.
3	Check the box that corresponds to the payee business type. Check only one box. Corporations must check the box that identifies the type of corporation. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN). The TIN is required by the California Revenue and Taxation Code Section 18646 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the Internal Revenue Code Section 6109(a). The TIN for individuals and sole proprietorships is the Social Security Number (SSN). Only partnerships, estates, trusts, and corporations will enter their Federal Employer Identification Number (FEIN).
4	**Are you a California resident or nonresident?** A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California. A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident. For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident. Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for State income taxes. However, no withholding is required if total payments to the payee are $1,500 or less for the calendar year. For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below: Withholding Services and Compliance Section: 1-888-792-4900 E-mail address: wscs.gen@ftb.ca.gov For hearing impaired with TDD, call: 1-800-822-6268 Website: www.ftb.ca.gov
5	Provide the name, title, signature, and telephone number of the individual completing this form. Provide the date the form was completed.
6	This section must be completed by the State agency requesting the STD. 204.
	Privacy Statement Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, State, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it. It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and State law imposes noncompliance penalties of up to $20,000. You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the State agency(ies) with which you transact that business. All questions should be referred to the requesting State agency listed on the bottom front of this form.

TOP ENFORCEMENT VIOLATIONS

Here are examples of frequent violations that may result in disciplinary actions. Please refer to the Board of Chiropractic Examiners (BCE) Rules and Regulations link (**www.chiro.ca.gov/laws_regs/regulations.pdf**) and Initiative Act link (**www.chiro.ca.gov/laws_regs/initiative_act.shtml**) for comprehensive coverage of all possible grounds of discipline.

BEYOND SCOPE OF PRACTICE:

- Performing surgical procedures
- Claiming to treat/cure cancer
- Furnishing/prescribing controlled substances

CONVICTION OF A CRIME(S):

- Theft
- DUI
- Domestic violence
- Vandalism

EXCESSIVE TREATMENT:

- Treatment beyond what is reasonable/necessary or within the standard of care
- Failure to document necessity (conduct a thorough exam, diagnose the condition, implement a treatment plan, and conduct follow-up exams to assess progress)

FAILURE TO RELEASE PATIENT RECORDS WITHIN 15 DAYS OF REQUEST:

- Includes requests from patient, patient attorney, patient representative, insurance company, or BCE representatives

FALSE AND/OR MISLEADING ADVERTISING:

- Sensational claims
- Fraud/misrepresentation
- No "D.C." after chiropractor's name

INSURANCE FRAUD:

- Double billing
- Up coding
- Billing for service not rendered
- Excessive treatment

NEGLIGENCE/INCOMPETENCE:

- Physical harm to patient
- Failure to exercise appropriate standard of care

PAYMENT FOR REFERRALS:

- Discounts
- Free services
- Cash/gift cards

SEXUAL MISCONDUCT:

- Erotic behavior
- Inappropriate touching
- Sexual contact or having sexual relations with a patient, client, customer, or employee

UNLICENSED PRACTICE:

- Practicing after license expired
- Aiding and abetting unlicensed individuals
- Failing to promptly renew

VIOLATION(S) INVOLVING DRUGS/ALCOHOL:

- DUI
- Practicing while impaired
- Possession or use of any illicit drugs
- Prescription medication abuse

State of California
Edmund G. Brown Jr., Governor

Agenda Item #6
February 8, 2018

Discussion and Possible Action regarding False, Misleading or Deceptive Advertising by Licensees

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Purpose of the item

The Committee will discuss enforcement issues resulting from false, misleading and deceptive advertising. Additionally, the Committee will review chiropractic rules and regulations relating to advertising.

Action(s) requested

N/A

Background

Advertising is a powerful marketing strategy for licensees to establish and grow their practice. However, the increased competition among licensees may spur deceptive consumer advertising. The Committee will discuss issues resulting from misleading advertising by licensees and inform them of the importance to comply with chiropractic rules and regulations.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- Title 16 of the California Code of Regulations, Division 4, Section 311 – Advertisements
- BCE Initiative Act, Section 15 – Noncompliance with and violations of act
- Business and Professions Code, Division 7, Part 3, Chapter 1, Article 1 – False Advertising in General [17500-17509]

statement as to the circumstances of loss of said license, or the return to the board office of the mangled license.

§310.2. Use of Title by Unlicensed Persons.

No person shall engage in the practice of chiropractic, as defined in Section 302, without holding a license which is in an active status, issued by the Board. Any person who advertises or promotes, in any manner, the words "doctor" or "chiropractor", the letters, prefixes or suffixes "Dr." or "D.C.", or any other word, title or letters indicating or implying that he or she is engaged in the practice of chiropractic, or who represents or holds himself or herself out as a doctor of chiropractic without having, at the time of so doing, a valid, unrevoked, or unsurrendered license, is in violation of the Chiropractic Initiative Act.

§311. Advertisements.

Constructive educational publicity is encouraged, but the use by any licensee of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, constitutes grounds for the imposition of any of the following disciplinary penalties:

(a) Suspension of said licensee's right to practice in this State for a period not exceeding one (1) year.

(b) Placing said licensee upon probation.

(c) Taking such other action, excepting the revocation of said licensee's license, in relation to disciplining said licensee as the board in its discretion may deem proper.

§311.1. Chiropractic Specialties.

For purposes of the Department of Industrial Relations' Qualified Medical Evaluator Eligibility regulations (Division of Workers' Compensation, Title 8, California Code of Regulations, Section 12), the board recognizes only those specialty boards that are recognized by the American Chiropractic Association or the International Chiropractors Association.

§312. Illegal Practice.

Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. An "unlicensed individual" is defined as any person, including a student or graduate of a chiropractic institution, who does not hold a valid California chiropractic license. An exemption is hereby created for student doctors participating in board approved preceptorship programs.

The permitted activities of unlicensed individuals are as follows:

(a) Unlicensed individuals may take the history of a patient. However, this activity is separate from the consultation which at all times must be conducted by the licensed doctor.

(b) Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations, except they may not perform such examinations which require

Chiropractic licentiates shall observe and be subject to all state and municipal regulations relating to all matters pertaining to the public health, and shall sign death certificates and made reports as required by law to the proper authorities, and such reports shall be accepted by the officers of the departments to which the same are made.
(Initiative Measure, Stats. 1923, p. xcii, § 13.)

§ 14. Receipts; deposit; monthly report; state board of chiropractic examiners' fund; use

The executive officer shall at the end of each month report to the State Controller the total amount of money received by the board from all sources, and shall deposit with the State Treasurer the entire amount of such receipts, and the State Treasurer shall place the money so received in a special fund, to be known as the "State Board of Chiropractic Examiners' Fund". Such fund shall be expended in accordance with law for all necessary and proper expenses in carrying out the provisions of this act, upon proper claims approved by said board or a finance committee thereof.
(Initiative Measure, Stats. 1923, p. xcii, § 14. Amended by Stats. 1971, c. 1755, p. 3787, § 10.)

§ 15. Noncompliance with and violations of act

Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor" or "D.C." or any word or title to induce, or tending to induce belief that he or she is engaged in the practice or chiropractic, without first complying with the provisions of this act; "(or any licensee under this act who uses the word "doctor" or the prefix "Dr." without the word "chiropractor." or "D.C." immediately following his or her name) or the use of the letters "M.D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or the word "osteopath," or the letters "D.O." or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he or she held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) and not more than seven hundred fifty dollars ($750), or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment.
(Initiative Measure, Stats. 1923, p. xcii, § 15. Amended by Stats. 1988, c. 1094, § 2.)

§ 16. Exceptions to application of act; construction of act

Nothing in this act shall be construed to prohibit service in case of emergency, or the domestic administration of chiropractic, nor shall this act apply to any chiropractor from any other state or territory who is actually consulting with a licensed chiropractor in this state; provided, that such consulting chiropractor shall not open an office or appoint a place to receive patients within the limits of the state; nor shall this act be construed so as to discriminate against any particular school of chiropractic, or any other treatment; nor to regulate, prohibit or apply to any kind of treatment by prayer; nor to interfere in any way with the practice of religion. Nor shall this act apply to persons who are licensed under other acts.
(Initiative Measure, Stats. 1923, p. xcii, § 16.)

§ 17. Enforcement of act

It shall be the duty of the board to aid attorneys and law enforcement agencies in the enforcement of this act.
(Initiative Measure, Stats. 1923, p. xciii, § 17. Amended by Stats. 1971, c. 1755, p. 3787, § 11.)

§ 1000-18. Repeal of conflicting provisions in medical practice act

Nothing herein shall be construed as repealing the "medical practice act" of June 2, 1913, or any subsequent amendments thereof, except in so far as that act or said amendments may conflict with the provisions of this act as applied to persons licensed under this act, to which extent any and all acts or parts of acts in conflict herewith are hereby repealed.
(Initiative Measure, Stats. 1923, p. xciii, § 18.)

§ 19. Severability

If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The electors hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.
(Initiative Measure, Stats. 1923, p. xciii, § 19.)

§ 20. Intent of the amendments approved by the electors at the November 1978, general election

Intent of the amendments approved by the electors at the November 1978, general election. In approving the amendments to this act submitted to the electors at the November 1978, general election, it is the intent of the people of the State of California to respond to a decision of the Superior Court of the County of Los Angeles which held that the board's interpretation of the amendments to this act approved by the electors at the November 1976, general election did not reasonably provide adequate opportunity for two chiropractic colleges then instructing students in California to apply for an obtain status as Recognized Candidates for Accreditation by the Accrediting Commission of the Council on Chiropractic Education. The people deem the amendments to the act approved by the electors at the November 1978, general election to reasonably provide adequate opportunity for the two chiropractic colleges which were the subject of the aforementioned decision, other chiropractic schools and colleges instructing students as of the effective date of the amendments to this act approved by the elector sat the November 1976, general election, and chiropractic schools and colleges which may be established and commence instruction following the effective date of the amendments to this act approved by the electors at the November 1976, general election, to attain status with the accrediting agency, as those terms are defined in subdivision (g) of Section 4. All courts shall be guided by this statement of intent in any decisions they may render relative to this act, but nothing in this act shall be construed to proscribe judicial review of any actions of the board relative to the administration and enforcement of this act.
(Added by Stats. 1978, c. 307, p. 641, § 4.)

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Highlight

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 7. GENERAL BUSINESS REGULATIONS [16000 - 18001] *(Division 7 added by Stats. 1941, Ch. 61.)*

PART 3. REPRESENTATIONS TO THE PUBLIC [17500 - 17930] *(Part 3 added by Stats. 1941, Ch. 63.)*

CHAPTER 1. Advertising [17500 - 17606] *(Chapter 1 added by Stats. 1941, Ch. 63.)*

ARTICLE 1. False Advertising in General [17500 - 17509] *(Article 1 added by Stats. 1941, Ch. 63.)*

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

(Amended by Stats. 1998, Ch. 599, Sec. 2.5. Effective January 1, 1999.)