

**NOTICE OF TELECONFERENCE
ENFORCEMENT COMMITTEE MEETING**

October 10, 2018

12:30 p.m. to 1:30 p.m. or until completion of business

One or more Committee Members will participate in this Meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Enforcement Committee at each teleconference location. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:

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

Sergio Azzolino, D.C., Chair
Azzolino Chiropractic Neurology
& Integrative Wellness
1545 Broadway St., Suite 1A
San Francisco, CA 94109
(415) 563-3800

Frank Ruffino, Public Member
Rancho San Diego Branch Library
1555 Via Rancho San Diego
El Cajon, CA 92019
(619) 660-5370

AGENDA

- 1. Call to Order**
- 2. Approval of Minutes**
February 8, 2018
May 31, 2018
- 3. Review, Discussion and Possible Action regarding the Standardized Training and Evaluation of Subject Matter Experts**
- 4. 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.

5. 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.]

6. Adjournment

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 the Board at (916) 263-5355 ext. 5362 or e-mail chiro.info@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
February 8, 2018**

Teleconference Meeting Locations

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

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

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
Marcus McCarther, Assistant Executive Officer
Valerie James, Management Services Technician
Beckie Rust, Compliance Manager
Andreia McMillen, Compliance Analyst

Call to Order

Dr. Azzolino called the meeting to order at 2:00 p.m.

Roll Call

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

Approval of Minutes

MOTION: DR. AZZOLINO MOVED TO APPROVE THE MINUTES OF THE JANUARY 12, 2016 AND JULY 19, 2017 MEETINGS.

SECOND: DR. ROSA SECONDED THE MOTION

VOTE: (2-0) (DR. AZZOLINO – AYE, DR. ROSA – AYE)

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

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 an ongoing topic of discussion. The Committee recently identified the Expert Witness program as an area of concern and proposed working on revisions

to improve the effectiveness and consistency of the program. He added that staff will be reviewing information regarding the Expert Witness program and will consult with the Committee to address this concern.

Ms. McMillen stated that action item 2.4.1, *Create an outreach document that provides information on potential violations resulting from social media activity*, has been completed. The outreach document was included in the Board's Winter/Spring 2018 newsletter.

Review, Discussion and Possible Action regarding Enforcement Committee Statistical Information

Mr. McCarther stated that staff has gathered enforcement data to provide the Committee an opportunity to review and discuss this information and possibly include it in Board meeting packets moving forward.

Mr. Puleo referred to the disciplinary action reports, which are posted on the Board's website every month. He shared that the December 2017 report is provided as a sample for this agenda item; however, the January 2018 report was not available to be reviewed at this meeting. Therefore, it will be included in the upcoming Board meeting packet.

Public Comment: Dr. Gregory Plaugher noted that the description of the violations in the disciplinary action reports is generally broad. He inquired if it is possible to obtain more details when these reports are released to the public.

Mr. Puleo discussed the current enforcement process for presenting specific information regarding disciplinary actions taken against licensees. He stated that once a disciplinary action is finalized by the Board, it can be obtained through a request of public records. Mr. Puleo added that public records provide in depth information about the nature of violations and disciplinary actions. Additionally, Mr. Puleo shared that this information is included in the Board's newsletters, which are posted on our website.

Mr. Puleo agreed with Dr. Plaugher's suggestion and informed the Committee that staff will work on including a brief summary related to the nature of violations in the disciplinary action reports. Additionally, he added that staff will provide this information for review at a future Committee meeting.

Dr. Azzolino encouraged staff to implement the recommendations discussed and emphasized the importance to inform the public about disciplinary actions taken against licensees.

Dr. Plaugher inquired whether practicing on an expired license or not completing the 24-hour CE requirement constitute grounds for unlicensed chiropractic practice.

Mr. Puleo responded that when licensees do not renew their licenses in a timely manner, their practice is unlicensed. He added that the disciplinary action reports do not specify timeframes for unlicensed practice. He shared that he would be happy to provide Dr. Plaugher with additional information.

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

Mr. Puleo referred to the expert training materials as samples for this agenda item. He stated that staff has gathered current expert training materials to provide the Committee an opportunity to review and discuss alternatives to the existing expert consultant selection criteria and standardized training.

Mr. Puleo provided an overview of the expert consultant recruitment process. He explained that, based on the location, a District Attorney from northern or southern California is assigned to deliver a comprehensive lecture on key elements that will assist potential experts in providing effective services.

Dr. Azzolino discussed existing deficiencies in the training materials for expert consultants and the expert referral process. He referred to the second paragraph, page 4 of the Guidebook for Expert Consultants "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 chiropractor specialists would possess and use in similar circumstances." He expressed concern regarding the lack of Board specialists available to review enforcement cases requiring a certain area of expertise.

Dr. Azzolino referred to the Expert Report as a sample for this agenda item, and provided a brief overview of the neuropathy case discussed in the report. He stated that neuropathy falls under the standard of care of a chiropractic specialist. However, the chiropractor, who claims to be an expert in neuropathy, did not provide neurological studies or basic metrics as a part of the patient's records.

Dr. Azzolino explained that this report does not suggest that the chiropractor who claims to be a specialist in neuropathy is qualified as such. Additionally, he directed the Committee's attention to the "expert consultant's" failure to identify discrepancies found in the patient's records. He added that it is clear this "expert" does not demonstrate his level of skill and knowledge in neuropathy to provide an accurate evaluation.

Dr. Azzolino discussed the current expert consultant referral process and encouraged staff to identify enforcement cases requiring a skilled level of review. He added that these cases should be referred to a specialist or diplomate.

Mr. Puleo agreed with Dr. Azzolino's suggestion and recommended having further discussions with the Board to streamline the expert referral process. He addressed the slight disconnect between the Guidebook for Experts and the Expert Sample report.

Mr. Puleo recommended the implementation of expert referral guidelines to ensure consistency when referring a case to an expert consultant.

Dr. Roza agreed with Mr. Puleo's recommendation and stated that establishing criteria will help staff effectively determine whether expert consultant referrals require a specific level of expertise or fall under the standard chiropractic care.

Mr. Puleo explained that expert consultants are required to notify the Board when a case is outside of their area of expertise. Mr. Puleo noted that a majority of the Board's expert consultants do not possess any specialties.

Dr. Roza suggested having experts disclose their areas of expertise in their application.

Dr. Azzolino stated that, at times, relying on a chiropractor's self-assessment of his or her expertise may result in an inaccurate evaluation.

Dr. Roza clarified that he was referring to experts who are board-certified, possess a specialty or are in a chiropractic diplomatic program.

Mr. McCarther reemphasized the importance to address existing deficiencies in the expert program and evaluate alternatives to revise the program. He noted that the weaknesses in the application and referral process can ultimately impact expert consultant reports.

Dr. Plaughner inquired if there is a case law referring to chiropractic specialists or diplomats in California. He also asked if there are any specialties within a chiropractic license.

Mr. Puleo responded that the Board issues chiropractic licenses and does not regulate specialties. He also added that the Board can only hold licensees to a minimum level of competency. Licensees can choose to hold themselves to a higher level of skill and expertise.

Mr. Puleo stated that the issue is premised upon determining the level of standard of care when a licensee practices a specialty. However, in a clear-cut case, it is important that staff identifies the need to make a referral to a specialist when it is necessary.

Dr. Azzolino stated that staff should carefully consider the nature of the complaint prior to referring a case to a specialist.

Mr. Puleo noted that the existing training materials should be revised in order to provide guidance to expert consultants. He also highlighted the need to establish criteria to help staff determine when to refer a case to a specialist.

Dr. Plaughner requested clarification regarding the terms “Doctor of Chiropractic” and “board-certified specialist”.

Mr. Puleo stated that doctors of chiropractic are required to refer patients to the appropriate health care provider when a case is outside of area of expertise.

Mr. Puleo explained that a board-certified specialist is not certified by the Board of Chiropractic Examiners. He added that the Board does not preclude licensees from obtaining specialties. Typically, licensees can obtain specialty certifications through other boards such as the American Chiropractic Neurology Board.

Mr. Puleo suggested discussing this topic with the Board’s legal counsel to help enhance the expert consultant program.

Dr. Azzolino recommended that the Committee continues to work with staff to improve the expert witness selection criteria, standards, training materials, and application requirements.

Dr. Azzolino inquired whether staff would be able to propose a recommendation regarding this topic at the next Committee and Board meetings.

Mr. Puleo noted that staff will begin working on this assignment. He asked for the Committee’s guidance during this process.

Dr. Plaughner inquired if there are any case laws that should be taken into consideration.

Mr. Puleo responded that he will consult with legal counsel to determine if there is an applicable case law in place.

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

Dr. Azzolino stated that many of the complaints received by the Board are related to potential advertising violations. He added that educating licensees about chiropractic rules and regulations would be a proactive step to address this issue.

Dr. Azzolino suggested that the Board should inform licensees that the rules and regulations can be found on the Board's website. He also added that the Board should provide a link to the chiropractic rules and regulations whenever possible.

Dr. Azzolino encouraged the Board to carefully review claims related to misleading advertising and determine if there is any validity to them.

Dr. Roza recommended the Board take proactive steps by informing licensees of potential advertising violations.

Dr. Azzolino agreed and stated that the Board is protecting the public by educating licensees.

Mr. Puleo discussed the current enforcement process related to advertising complaints and the steps taken by the Board to address potential violations. He explained the Board reminds licensees to comply with Section 15 of the Chiropractic Initiative Act and the California Code of Regulations, section 311 relating to advertisements. He also added that some of these letters include the Board's website link, which is www.chiro.ca.gov.

Mr. Puleo suggested providing guidelines to licensees by posting information related to potential advertising violations on the Board's website.

Dr. Plaughter stated that he is aware of five chiropractors who were disciplined by the Board for not complying with section 15 of the Act. Specifically, he shared that these chiropractors used the prefix *Dr.* without writing the "D.C." immediately after their names. Dr. Plaughter inquired whether there are any recent changes to the Act or if it remains the same.

Mr. Puleo explained that for first violations, the Board reminds licensees of their responsibilities to comply with section 15 of the Act and CCR 311. Additionally, the Board provides licensees with a link to review chiropractic rules and regulations. He then stated that the Board asks licensees to correct their letterhead and any advertising materials. In the event the Board receives subsequent complaints of the same nature, it is likely that a citation and fine will be issued. Mr. Puleo added that the referenced laws have not changed recently.

Dr. Plaughter stated that a chiropractor informed him that he was disciplined by the Board for using the prefix *Dr.* without D.C. following his name on a check submitted to renew his license.

Mr. Puleo stated that, in this case, there is no intent to mislead and deceive the public through advertising. He added that he does not believe this is a compliance issue. Mr. Puleo explained that the Board carefully reviews complaints related to advertisements and makes determinations on a case-by-case basis.

Mr. Puleo encouraged Dr. Plaughter to inform him of any concerns or issues regarding potential advertising violations. He shared that he would be happy to review any of his concerns.

Dr. Plaughter expressed concern regarding the advertisement of chiropractic specialties to the credulous public. He indicated that this could be perceived as misleading advertising because consumers may think that chiropractic specialties are identical to the specialties doctors of medicine obtain in the medical field.

Mr. McCarther emphasized that chiropractic rules and regulations do not prohibit chiropractors from holding themselves out as being specialists.

Dr. Azzolino stated that “chiropractic specialist” is an erroneous term. He explained the term can spur confusion among the public and noted that using the term board-certified following the area of expertise is an appropriate option for chiropractic advertisements.

Mr. McCarther agreed that using the term specialty in chiropractic is a compelling issue and advised the Committee to direct Dr. Plaughter’s concern to the Board’s legal counsel for further review.

Mr. Puleo validated Dr. Plaughter’s concern and explained that the chiropractic rules and regulations do not address some of his concerns regarding the advertisement of chiropractic specialties. He reiterated that the Board does not issue specialties and cannot preclude chiropractors from obtaining them.

Dr. Plaughter stated he would like to be informed of a case law that may apply chiropractic advertisements. He shared information regarding a radiology case that emerged in the 70’s. The case law at the time determined that there was no such thing as a chiropractor radiologist.

Mr. Puleo explained that the Board cannot discipline a licensee who claims to be a specialist and provides proof that he/she is board-certified and received the minimal level of training required.

Mr. Puleo added that if licensees do not hold a certification, they cannot advertise that they are certified by a certain entity even if they received training. He noted that licensers who received the appropriate training are allowed to advertise that they are trained in a certain area of expertise.

Mr. Puleo stated that he will share sample letters the Board uses when corresponding with licensees in regard to potential advertising violations. He added these sample letters are based upon the feedback received and may address some of the concerns discussed during this meeting.

Public Comment for Items not on the Agenda

N/A

Future Agenda Items

Review current expert program and enhance the expert witness selection criteria, standards, training materials, and application prior to the next Committee meeting.

Dr. Roza inquired if, pursuant to the Bagley-Keen Opening Meeting Act, he is allowed to have a discussion about this topic with Dr. Azzolino.

Mr. Puleo explained that the Bagley-Keen Open Meeting Act mandates that no more than two Board members actively discuss Board business.

Dr. Azzolino agreed to work on a list of items with Dr. Roza.

Discussion of Dates for Future Committee Meetings

N/A

Adjournment

Mr. Puleo adjourned the meeting at 3:16 p.m.

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
May 31, 2018**

Teleconference Meeting Locations

<p><u>Board of Chiropractic Examiners</u> 901 P Street, Ste 142A Sacramento, CA 95814 (916) 263-5355 (Board Staff)</p>	<p><u>Sergio Azzolino, D.C.</u> Azzolino Chiropractic Neurology & Integrative Wellness 1545 Broadway St. Suite.1A San Francisco, CA 94109 (415) 563-3800</p>	<p><u>Dionne McClain, D.C.</u> McClain Sports & Wellness, Inc. 6360 Wilshire Blvd., Ste 410 Los Angeles, CA 90048 (323) 653-1014</p>
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Committee Members Present

Sergio Azzolino, D.C., Chair
Dionne McClain, D.C.

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Beckie Rust, Compliance Manager
Kenneth Swenson, Attorney III

Call to Order

Dr. Azzolino called the meeting to order at 12:02 p.m.

Roll Call

Dr. McClain called the roll. All Committee Members were present at the locations listed on the agenda.

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

Mr. McCarther briefed the committee on the status of action item 2.1.4, Publish *Expert Witness Guidelines in the "Licensees" and "Publications" tabs of the Board website*. He explained the Committee has recently identified the Expert Witness program as an area of concern and recommendations will be addressed during this meeting.

Mr. McCarther stated that action item 2.4.1, *Create an outreach document that provides information on potential violations resulting from social media activity*, has been completed. The outreach document was included in the Board's Winter/Spring 2018 newsletter.

Dr. McClain referred to action item 2.1.3., *Create outreach publications and materials educating the public on the complaint process*, and inquired about the "on hold" status.

Mr. McCarther stated that the Committee has determined that outreach materials such as complaint brochures are not effective methods of disseminating information about the Board's complaint process

to the public due to limited resources. He added that the Board's website provides relevant information related to the complaint process.

Dr. McClain referred to the Committee's discussion at the February 8, 2018 meeting and inquired if the Committee had the opportunity to disseminate information about the complaint process to recent graduates of chiropractic at school events or ask CE providers to share information with licensees attending courses for CE credit.

Dr. Azzolino reiterated that this action item will not serve the Board's purpose in disseminating the information efficiently. He added that the Committee's focus is to take proactive steps to mitigate and minimize complaints received by the Board. He stated that the information related to the complaint process on the Board's website is sufficient.

Dr. McClain inquired whether the public has the ability to easily find information on the complaint process whenever it is needed. She added that it is important to inform the public of the complaint process and ensure that resources are available to make this information visible.

Dr. Azzolino suggested using resources within chiropractic schools and the California Chiropractic Association (CCA) to educate the public, stakeholders and students about the complaint process.

Dr. Azzolino inquired about other boards within the Department of Consumer Affairs (DCA) and the steps they have taken to minimize and mitigate these occurrences.

Mr. Puleo responded that the Governor's office placed restrictions on promotional materials a few years ago. Therefore, DCA boards do not have unlimited resources to market their services.

Mr. Puleo shared that the public can easily find information about the Board's complaint process when searching for the word "chiropractor" in search engines such as google. He added the Board's link is at the top of the search page because of our affiliation with DCA, which has a large web presence.

Mr. Puleo stated the Board provides a consumer link on its home page with steps for how to file a complaint. He explained that, due to constraints placed on DCA boards regarding promotional materials, most boards use their website to inform the public about their complaint process. The Board is following the same steps.

Mr. McCarther suggested that further research can be done on this topic if the Committee deems it necessary.

Mr. Puleo recommended contacting the American Chiropractic Association (ACA) and CCA inquire about the possibility to include a link to the Board's website on their page. He added that this could help direct individuals who inadvertently accesses ACA's or CCA's webpage/site.

Review, Discussion and Possible Action regarding the Expert Witness program

Mr. McCarther stated that staff has researched and gathered information related to other DCA programs to consider alternatives to the Board's existing expert review process. He announced that staff is presenting recommendations for consideration during this meeting.

Mr. McCarther discussed the research findings and resulting policy questions. He recommended a minimum monthly practice hour requirement such as 80 hours a month in direct patient care, clinical activity or teaching, and at least 40 hours in direct patient care.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Mr. McCarther noted it would be appropriate to require a minimum year requirement of licensed professional experience given that it is a common requirement for other DCA healing arts boards. He inquired if a ten-year minimum requirement is suitable.

Dr. McClain stated that, although a ten-year minimum requirement is suitable, requiring more years of licensed professional experience does not necessarily mean that expert consultants are abreast of the current and evolving practice of the chiropractic profession.

Dr. Azzolino agreed that the ten-year minimum requirement is appropriate as it allows licensees to obtain the necessary level of skill and knowledge to render services as a subject matter expert.

Mr. McCarther suggested it would be beneficial to implement criteria for disqualification of applicants. He added that said criteria would allow staff to easily identify applicants who do not meet the minimum requirements to serve as an expert consultant for the Board.

Dr. McClain inquired if it is possible to have existing expert consultants comply with new the criteria established by the Committee.

Dr. Azzolino stated that the Board may choose to disqualify an existing expert by discontinuing consultation services.

Dr. McClain asked if the Board notifies expert consultants of its decision for disqualification.

Mr. Puleo responded that the Board does not provide a formal disqualification letter to experts.

Dr. Azzolino stated that he is not opposed to the idea of being forthcoming.

Mr. Puleo stated that he is not aware of any legal requirements precluding this information from being disclosed to applicants. However, it is likely that the experts in question will be offended should they be informed of the Board's decision to no longer accept their work based on unsatisfactory performance. He expressed concern about the potential issues that could arise given that said experts could challenge the Board's decision.

Mr. Puleo asked for legal counsel advice.

Mr. Swenson stated that if said experts are informed they will no longer be appointed to cases from the Board, it could implicate their professional reputation, which then, gives them a right to due process based on liberty interest (hearing request). He added that the Board does not need to renew a contract with an expert as it is purely discretionary. During the remainder of the contract period for the Board, the best approach would be to simply not appoint said experts for a particular matter.

Mr. McCarther discussed the disqualification criteria staff could possibly use when conducting the initial screening of applications. He provided examples such as failure to complete the application, failure to meet the ten-year minimum requirement of licensed professional experience or any disciplinary actions taken against a Qualified Medical Evaluator (QME).

Mr. McCarther inquired if an active employment relationship with an insurance company would be consideration for disqualification.

Dr. Azzolino stated that there is a conflict of interest because the case may come before the Board and the insurance company. It is not in the Board's interest to employ an expert consultant who may be biased.

Dr. McClain inquired if QMEs are likely to face the same issue.

Dr. Azzolino clarified that, unlike working for an insurance company, QMEs are appointed by the Department of Industrial Relations, Division of Workers Compensation. This entity should be completely unbiased. He also added that the Committee's intent is to seek candidates who will not act as advocates for the Board or the respondent chiropractor. The Board's mission is to enhance consumer protection.

Dr. McClain agreed that there could be a predisposition to deny in favor of the insurance company.

Mr. McCarther inquired if the Committee would like to consider asking applicants about disciplinary action against their QME appointment.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Dr. Azzolino questioned the necessity of considering "an incomplete application" as screening criteria for Board staff conducting the initial screening of applications. He stated that it appears to be a redundant requirement.

Mr. Puleo stated that including this requirement will help simplify the initial screening process so that the second-level review of applications is streamlined.

Mr. Puleo inquired whether the screening criteria will be released to the public.

Mr. Swenson recommended that the internal administrative screening criteria should not be made available to the public. The criteria discussed will determine the suitability of potential experts on a case-by-case basis.

Mr. Puleo suggested that disciplinary action taken against any professional license in California or any other state constitute grounds for disqualification.

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

Mr. Swenson recommended adding disciplinary actions taken by a specialty board to the screening criteria. He emphasized the importance to consider entities other than licensing agencies.

Mr. McCarther stated that disciplinary issues may constitute grounds for disqualification.

Mr. Swenson suggested considering disciplinary actions against academic appointments.

Mr. Puleo shared that chiropractic schools do not report that information to the Board. Therefore, applicants would have to disclose that information on the application.

Dr. Azzolino and Dr. McClain agreed with Mr. Swenson's recommendation.

Mr. McCarther asked if the Committee would like to provide licensees with Continuing Education (CE) credit for participation in the expert consultant training. He proposed that CE credit is given to licensees upon approval to serve for the Board as subject matter experts.

Dr. McClain stated that the Continuing Education Committee is working on revising CE guidelines and restructuring all of the Committee categories. She explained that the CE Committee will select the

appropriate category for CE credits (possibly special projects). Additionally, the CE Committee will determine the appropriate number of CE hours that newly appointed expert consultants should obtain. Dr. McClain agreed with Mr. McCarther's recommendation; however, the CE Committee will have to revise CE guidelines prior to releasing that information to potential expert consultants.

Mr. Puleo agreed with the option to provide CE credit to newly appointed expert consultants. He added that CE credit is a way to compensate for their time gathering and submitting required documents for the recruitment process.

Mr. McCarther stated that the Enforcement Committee will follow up with the CE Committee to obtain a status update on CE credit for expert consultants.

Mr. McCarther provided a summary of the Board's current application for expert consultants. He referred to section 1, *Current Employment Information*, and suggested including a question regarding the time an applicant has held his or her current position.

Dr. McClain suggested including an additional question asking if their current position has been held for less than 3 years. If so, they would be required to provide their previous employment information.

Mr. McCarther explained that applicants are required to submit their curriculum vitae with the application, and it may not be necessary to request that information under section 1.

Dr. McClain requested clarification regarding the 10-year minimum requirement of professional licensure. She explained that being licensed for 10 years does not necessarily mean that licensees have an active practice for 10 years.

Mr. McCarther stated the staff will work on the language to address Dr. McClain's concern.

Mr. Puleo referred to the *Practice Setting* portion of section 2 and inquired whether it is self-explanatory or if clarification is needed. Mr. Puleo asked the Committee to provide examples of practice settings such V.A. hospitals and multi-disciplinary practices.

Dr. McClain stated that would be beneficial to request information regarding the practice setting.

Dr. Azzolino suggested specifying different types of practices in a parenthesis as it would provide some guidance to applicants. Some examples are private and group practices.

Mr. McCarther referred to section 2, *Professional Qualifications* of the application and suggested adding a question requesting information about any disciplinary action(s) against an applicant's QME appointment.

Dr. McClain suggested adding in other disciplinary questions under this section.

Mr. McCarther stated that this question could be added to section 7, *Disciplinary Information*.

Dr. Azzolino suggested asking why applicants are no longer QMEs. He explained that he is interested in understating if applicants simply resigned or if their QME appointment was terminated for other reasons.

Dr. McClain stated that the question related to disciplinary action taken against QME should suffice. She added that if any action was taken against a QME appointment, then the Board would require an explanation as to why in order to make an informed decision.

Dr. McClain referred to section 2 and requested clarification regarding a question related to the percentage of time applicants actively treat patients. She asked if the percentage of time is indicative of the 80-hour monthly requirement in active practice. Additionally, Dr. McClain suggested asking about the number of hours per month instead of asking about the percentage of time.

Mr. McCarther stated that, although the 1 page-recruitment enumerates 80-hour monthly requirement along with the 40 hours of direct patient care, this question may be redundant

Mr. Puleo recommended maintaining this question because it will allow staff to verify if applicants meet the minimum requirements.

Dr. McClain agreed to not modify the question and leave it as is.

Mr. McCarther referred to section 3, *Court Expert Witness Experience*, and inquired if the Committee proposed any changes to this section.

Mr. McCarther questioned the necessity for the Board to ask applicants whether they have knowledge in testifying as an expert witness. He noted that, in this case, asking for knowledge and experience may be redundant.

Dr. McClain and Dr. Azzolino agreed with the suggestion.

Mr. Puleo stated that it is unnecessary to ask applicants if they have knowledge as their experience should suffice under section 3.

Ms. Rust noted that this section includes two questions that are very similar. The first question reads "Have you testified in court as expert witness as a Doctor of Chiropractic?", whereas the second question reads "do you have knowledge and experience with presenting testimony in court, arbitrations or depositions as an expert in medical and legal proceedings?". She inquired if it is necessary to include both questions.

Dr. Azzolino stated that there is a difference as some cases and hearings may require the legal opinion of the treating provider as opposed to the legal opinion of an expert, who reviews facts independently and impartially.

Mr. Puleo recognized that there is a difference. He stated that both questions include the terms *expert witness as a Doctor of Chiropractic* and *expert in medical and legal proceedings*, which appears to spur confusion.

Dr. Azzolino suggested having two separate categories under this section.

Mr. Swenson recommended asking the question "Have you testified in court as a retained expert Witness?". He explained that non-retained expert witnesses in court proceedings provide testimony as treating providers.

Dr. Azzolino suggested distinguishing the difference between a retained expert and a treating provider who has experience presenting a testimony in court, arbitrations, or depositions in medical or legal proceedings.

Mr. Swenson agreed with Dr. Azzolino's recommendation. He stated that presenting testimony in court or depositions is not as rigorous as being retained to testify as an expert witness.

Mr. McCarther referred to section 4 of the application, *Knowledge and Experience*, which refers to questions identifying the knowledge and experience of applicants on various topics.

Dr. Azzolino asked Mr. Swenson if the Committee should redefine this section by removing the term knowledge and strictly focus on experience.

Mr. Swenson stated that there is a distinction between the term knowledge and experience. For example, there is an ability to interpret laws and experience interpreting the laws and regulations in actual cases. He recommended that the Committee maintains the term knowledge in this section.

Dr. McClain asked if the Committee should have two separate questions for each category under section 4. For example, one question would apply to knowledge and another one to experience in order to distinguish the level of skill they may have.

Mr. Swenson noted that it depends on what the Committee deems relevant. He explained that if the Committee is mainly seeking experience and the skill to apply laws and regulations, it would be best to include two separate questions under the same category.

Mr. McCarther emphasized that this application allows applicants to self-identify their knowledge and experience. He added that, ultimately, the Committee will make the determination on the applicant's ability to sufficiently render the services to the Board.

Mr. McCarther referred to section 6 of the application, *Publications*. He inquired whether the Committee would like to consider peer reviewed publications as opposed to other publications.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Mr. McCarther referred to section 7 of the application, *Disciplinary Information*. He recommended adding the question about disciplinary action against an applicant's academic appointment under section 5 and maintain section 7 as is.

Mr. McCarther referred to section 8 of the application, *Personal Summary/Writing Sample*, and inquired whether the Committee has a preference between a Statement of Qualifications or a personal summary explaining their interest in serving as an expert consultant for the Board.

Dr. Azzolino and Dr. McClain shared they would like to review both, the personal summary and the Statement of Qualifications, as it is important to understand the reason why an applicant is interested in becoming an expert.

Mr. McCarther also stated that staff will provide a redacted case to the Committee for review. Requiring applicants to prepare a short-written report and provide their opinion based on the case facts will be a way to ensure consistency among expert consultant reports.

Dr. McClain agreed with the recommendation.

Mr. McCarther referred to section 9, *References*, and inquired whether it is necessary to maintain this section on the application.

Dr. Azzolino recommended limiting section 9 to professional references only.

Mr. Puleo suggested requesting medical or legal professional references. He noted that it would be beneficial to limit professional references those two fields.

Mr. Puleo also proposed that, if the Committee has additional questions regarding an application, it should direct staff to call references and ask specific questions whenever it is necessary. Dr. Azzolino agreed with Mr. Puleo's recommendation.

Mr. McCarther asked if this newly created expert consultant process, whereby the committee reviews applications and other materials, is of interest to the Committee and it will move forward with it

Dr. Azzolino and Dr. McClain agreed.

Mr. McCarther inquired if the Committee would be interested in conducting interviews of applicants to determine if they are suitable candidates for the position. He proposed conducting interviews in Northern and Southern California on a rolling basis. All the logistics will be finalized with the Committee.

Dr. McClain agreed. She inquired whether there is any type of reevaluation of existing expert consultants as it may be important to ensure they undergo training and are abreast of the current and evolving practice of the chiropractic profession.

Mr. Puleo stated the Board reminds existing experts to re-apply once their contract has expired. He explained that if they do not re-apply, they are automatically out of the pool. If they are accepted to serve as experts for the Board, then they would be required to undergo training once again.

Dr. McClain inquired if the Board has taken steps to recruit board certified specialists for the expert consultant program.

Mr. McCarther stated that the new application will request applicants to identify any areas of specialty. Additionally, staff will contact entities that certify diplomates and ask their members to apply to the Board's expert consultant program.

Dr. Azzolino suggested asking CCA to inform their members of the Board's interest in recruiting new experts and diplomates.

Mr. Puleo stated that, typically, the Board contacts CCA to recruit expert consultants. CCA has been extremely helpful by disseminating information related to the Board's expert recruitment process. The Board will continue to work with CCA.

Dr. McClain inquired if the Committee should also reach out to American Chiropractic Association (ACA) for applicants moving to California.

Dr. Azzolino stated he can get a list of potential experts from ACA.

**MOTION: DR. AZZOLINO MOVED TO APPROVE THE PROPOSED EXPERT CONSULTANT PROGRAM WITH RECOMMENDATIONS AS PER DISCUSSION.
SECOND: DR. MCCLAIN SECONDED THE MOTION.**

DISCUSSION:

Mr. Swenson stated that this is a 2-member Committee and, therefore, an opportunity has to be provided to the public for discussion. However, a motion is already in place and it's been seconded.

Mr. Puleo inquired if a Board vote is required to revise the recruitment process for experts.

Mr. Swenson responded that the Board would be required to vote as the power of a 2-member committee is limited.

MOTION: NOT CARRIED

Dr. McClain inquired if it is possible for Board members to attend the expert training.

Mr. Puleo stated that if there are more than 2 Board members at a training, it would have to be noticed as a public meeting. Mr. Puleo explained that the Bagley-Keen Open Meeting Act mandates that no more than two Board members actively discuss Board business.

Mr. Puleo suggested implementing a rotation system so that Board members, who are interested in attending or participating, are given an opportunity do to so at any given training.

Dr. McClain stated that it would be beneficial to the licensed members of the Board to be informed of these topics in the event they are assigned to the Enforcement Committee.

Public Comment for Items not on the Agenda

N/A

Future Agenda Items

N/A

Adjournment

Mr. Puleo adjourned the meeting at 1:30 p.m.

Subject Matter Expert Program

The Board of Chiropractic Examiners (Board) established the Subject Matter Expert program as an impartial means to support the investigation and enforcement functions of the Board. The program consists of a statewide pool of skilled licensed chiropractors who consult with Board staff, review case materials and records, prepare written reports and testify at administrative hearings.

Minimum Qualifications

To be considered for an appointment as a subject matter expert, applicants must meet the minimum qualifications shown below:

- Have ten (10) or more years of licensed professional experience. Possess a current and valid license in good standing.
- Have an active practice (defined as 80 hours a month in direct patient care, clinical activity, or teaching, at least 40 hours of which is in direct patient care)
- No current or prior disciplinary action pending or taken against any professional license in California or any other state or territory. No criminal convictions, including any that were expunged or dismissed.
- Knowledgeable in the practice, laws, regulations and community standards of care for the practice of chiropractic in the State of California.

Qualities of a Successful Subject Matter Expert

As a Subject Matter Expert, you must be able to: review facts independently and impartially; review investigative case materials and prepare thorough and concise reports; interpret and apply sections of state law governing the practice of chiropractic; have effective communication, both when testifying and in writing reports; provide a written report describing the standard of care applicable to a given case; establish whether or not a departure from the standard of care or unprofessional conduct occurred; maintain confidentiality; able to complete and submit a written opinion within 30 days of receipt of case materials; willing to assist investigators, prosecutors, and administrative law judges in understanding the chiropractic aspects of a case; must understand the necessity of maintaining the minimum standards of the practice of chiropractic; not act as advocate for the board or the respondent chiropractor; understand the Board's role as a regulatory agency and its responsibilities to consumers of chiropractic services and the profession.

Testimony at Administrative Hearings

As a Board expert witness, you may be required to testify at administrative hearings held before an administrative law judge for cases you have reviewed, which may also require minimal travel.

Reimbursement for Subject Matter Expert Reviews

Subject matter experts are reimbursed on a case-by-case basis. The Board pays experts at the rate of \$ 100 per hour for record and case review, preparation of a written report and/or conference with Attorney General. Testimony at hearings range from \$600 maximum allowable fee per half day and \$1200 maximum allowable fee per full day.



State of California
Edmund G. Brown Jr., Governor

If you meet the minimal requirements and are interested in serving as a subject matter expert for the Board, please complete the **application** (link attached). Once completed, send the application and your Curriculum Vitae/resume to:

BOARD OF CHIROPRACTIC EXAMINERS
901 P Street, Suite 142A
Sacramento, California 95814

If you have additional questions, please email the Board at: www.chiro.ca.gov



APPLICATION FOR SUBJECT MATTER EXPERT



BOARD OF CHIROPRACTIC EXAMINERS
 901 P Street, Suite 142A
 Sacramento, California 95814
 916-263-5355

Complete each section and attach your curriculum vitae/resume. If you need additional space, you may attach a separate sheet. **PLEASE TYPE OR PRINT LEGIBLY**

SECTION 1 – APPLICANT INFORMATION

NAME: (Last, First, Middle)		CHIROPRACTIC LICENSE NO.:
BUSINESS ADDRESS:		
CITY:	STATE:	ZIP Code:
TELEPHONE NUMBERS (include area code) Office: Mobile:		EMAIL ADDRESS: WEBSITE ADDRESS(ES):

CURRENT EMPLOYMENT INFORMATION

EMPLOYER:		
ADDRESS:		
CITY	STATE	ZIP Code
TELEPHONE NUMBERS (include area code) Office: Fax:		EMAIL ADDRESS:
POSITION:	START DATE:	PRACTICE SETTING: (i.e. private, multi-disciplinary, hospital, type of group practice)
How long have you held your current position?		

EDUCATION INFORMATION

Name & Location of Institution	Attendance		Course of Study	Date of Graduation	Degree Received
	From	To			

SPECIALIZATIONS

Diplomate of (Organization)	Date Attained	Specialty

SECTION 2 – PROFESSIONAL QUALIFICATIONS

Year of Initial Licensure:	Are you actively treating patients? YES <input type="checkbox"/> NO <input type="checkbox"/>
Current Status of License (i.e., active; inactive):	How many hours, per month?
Have you ever been employed by or provided services to the Board? YES <input type="checkbox"/> NO <input type="checkbox"/> If so, when and what services did you provide?	
Have you, at any time in the past two years, worked for an insurance carrier, self-insured plan, third party administrator, or chiropractic claims review company? YES <input type="checkbox"/> NO <input type="checkbox"/> If yes, attach a description of the services you provided and your employment relationship with the above-mentioned entities.	
Are you a State of California Qualified Medical Evaluator? Have you had disciplinary action against your QME Appointment? YES <input type="checkbox"/> QME Cert No.: _____ NO <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> If yes, attach a copy of the certificate.	

SECTION 3 – COURT EXPERT WITNESS EXPERIENCE

<p>Have you testified in court as a retained Expert Witness?</p> <p>YES <input type="checkbox"/> I have this experience No <input type="checkbox"/> I do NOT have this experience</p> <p>If yes, how many total years have you testified as a retained Expert Witness? _____</p> <p>Within the last 3 years:</p> <p>How many times have you testified as a retained Expert Witness? _____ How often? _____</p> <p>What was the approximate date of your last retained Expert court testimony: _____</p> <p>Additionally, do you have experience with presenting testimony in court, arbitrations or depositions in medical and legal proceedings? (Please specify the experience that applies to your area of expertise. I.e. testimony in court)</p> <p><input type="checkbox"/> I have extensive experience * _____</p> <p><input type="checkbox"/> I have some experience _____</p> <p><input type="checkbox"/> I have minimal experience _____</p> <p><input type="checkbox"/> I have no experience</p> <p>You may describe your court experience on a separate attachment if necessary.</p> <p>*If you have checked the boxes indicating extensive experience, provide explanation on a separate sheet.</p>

Have you testified in court as a **non-retained Expert witness?**

YES I have this experience No I do NOT have this experience

Do you have knowledge of and ability to interpret current laws and regulations in Expert testimony?

- I have extensive experience *
- I have some experience
- I have minimal experience
- I have no experience

***If you have checked the boxes indicating extensive experience, provide explanation on a separate sheet**

SECTION 4 – KNOWLEDGE AND EXPERIENCE

For each phrase listed below, please mark the statement that most accurately represents the depth of your knowledge and experience in the field of Chiropractic:

- A. Knowledge and skill in case review of medical records (including x-rays) for the purpose of medical and legal proceedings.
- I have extensive knowledge and experience *
 - I have some knowledge and experience
 - I have minimal knowledge and experience
 - I have no knowledge and experience
- B. Knowledge of and ability to interpret current chiropractic laws and regulations, including standard of care.
- I have extensive knowledge and ability *
 - I have some knowledge and ability
 - I have minimal knowledge and ability
 - I have no knowledge and ability
- C. Knowledge and experience rendering opinion or summary of findings regarding treatment utilization or questionable billing issues.
- I have extensive knowledge and experience *
 - I have some knowledge and experience
 - I have minimal knowledge and experience
 - I have no knowledge and experience
- D. Knowledge and experience in performing case management / peer review evaluations regarding the professional conduct of licensees as required by chiropractic related law.
- I have extensive knowledge and experience *
 - I have some knowledge and experience
 - I have minimal knowledge and experience
 - I have no knowledge and experience
- E. Knowledge and experience in reviewing chiropractic laws and regulations and rendering written opinions relating to the review of chiropractic related laws and regulations.
- I have extensive knowledge and experience *
 - I have some knowledge and experience
 - I have minimal knowledge and experience
 - I have no knowledge and experience

***If you have checked the boxes indicating extensive knowledge and experience, provide explanation on a separate sheet.**

SECTION 5 – ACADEMIC APPOINTMENTS

Have you ever held any academic appointments at any college or university? YES NO

If yes, attach a description of each appointment and your job duties.

Have you had disciplinary action against your academic appointment? YES NO

SECTION 6 – PEER REVIEWED PUBLICATIONS

Please list all published peer reviewed journals which you have written:

SECTION 7 – DISCIPLINARY INFORMATION

Have you ever been involved in a malpractice lawsuit or arbitration proceeding related to your treatment of a patient? YES NO

If yes, attach an explanation on a separate attachment, for each lawsuit or arbitration complaint.

Are there currently any medical malpractice lawsuits or arbitration claims pending against you? YES NO

If yes, attach an explanation on a separate attachment, for each lawsuit or arbitration complaint.

Has your professional liability insurance coverage ever been denied, limited, or cancelled by the action of any insurance company? YES NO

If yes, attach an explanation on a separate attachment, for each occurrence.

Be sure to answer all questions. If you answer “yes” to any of the following, attach an explanation on a separate piece of paper.

(A) Has your chiropractic license (in this state or another state) or any health-related professional licensing or disciplinary body in any state, territory or foreign jurisdiction, or any branch of the military, denied, limited, placed on probation, restricted, suspended, cancelled or revoked any professional license, certificate, or registration granted to you, or imposed a fine, reprimand, or taken any other action against you? YES NO

(B) Has your participation in any private, state, or federal health insurance program ever been the subject of disciplinary action? YES NO

(C) Has any other type of professional sanction, discipline, or other adverse action ever been taken against you? YES NO

(D) Have you ever been the subject of an investigation by any private, state, or federal health insurance program? YES NO

(E) Have you ever been convicted of a misdemeanor or felony or are you currently under indictment for any alleged criminal activities? YES NO

(F) Have you ever been the subject of an administrative, civil, or criminal complaint or investigation regarding sexual misconduct? YES NO

(G) Have you ever voluntarily surrendered a professional license, staff privileges or consented to a limitation of the same pending a review or investigation? YES NO

(H) Are there any other issues that should be disclosed that may have an adverse impact on your ability to deliver effective and objective professional services? YES NO

SECTION 8 – PERSONAL SUMMARY/WRITING SAMPLE

Attach a 1-page typed document, answering the following question (include an overview of your qualifications, including experience and training):

Why do you want to be an expert witness for the California Board of Chiropractic Examiners? How does your experience qualify you to serve as an expert for the Board of Chiropractic Examiners?

Attach a 1-page typed Statement of Qualifications (SOQ) providing a narrative discussion of the knowledge, skills, and abilities you possess in relation to the desirable qualifications as an expert consultant.

SECTION 9 – PROFESSIONAL REFERENCES (MEDICAL/LEGAL)

List two **medical or legal professional references** who can verify your knowledge and ability to perform the necessary functions of an Expert for the Board:

Name: (Last, First)	Relationship: How long have you known
Company	Telephone No.:
Address:	
City:	State: ZIP Code:
Name: (Last, First)	Relationship:
Company	Telephone No.:
Address:	
City:	State: ZIP Code:

SECTION 10 – AFFIDAVIT

Please Read and Initial each Paragraph

I hereby certify that I have not knowingly withheld any information that might adversely affect my appointment as an expert reviewer and the answers given by me are true and correct to the best of my knowledge. I further certify that I, the undersigned applicant, have personally completed this application. _____

I hereby authorize the Board to thoroughly investigate all of the information I have provided on this application, including attachments, as well as my references, work record, education and other matters related to my suitability for appointment as an expert and, further, authorize the references I have listed to disclose to the Board any and all letters, reports and other information related to my work records, without giving me prior notice of such disclosure. In addition, I hereby release the Board, my current and former employers and all other persons, corporations, partnerships and associations from any and all claims, demands or liabilities arising out of or in any way related to such investigation or disclosure. _____

I hereby certify that the information provided is true, correct and complete to the best of my knowledge.