



State of California
Edmund G. Brown Jr., Governor

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Licensing, Continuing Education & Public Relations Committee
December 17, 2018
901 P Street, Suite 142A
Sacramento, CA 95814**

Teleconference Meeting Locations:

Board of Chiropractic Examiners 901 P Street, Ste 142A Sacramento, CA 95814 (916) 263-5355	Heather Dehn, DC Dehn Chiropractic 4616 El Camino Ave. #B Sacramento, CA 95821 (916) 488-0242	Dionne McClain, DC McClain Sports & Wellness, Inc. 6360 Wilshire Blvd., Ste 410 Los Angeles, CA 90048 (323) 653-1014
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Committee Members Present

Dionne McClain, D.C., Chair
Heather Dehn, D.C.

Staff Present

Robert Puleo, Executive Officer
Kenneth Swenson, Attorney III
Marcus McCarther, Assistant Executive Officer
Dixie Van Allen, Staff Services Manager
Natalie Boyer, Continuing Education Analyst
Andreia McMillen, Policy Analyst

Call to Order

Dr. McClain called the meeting to order at 12:03 p.m.

Roll Call

Dr. Dehn called roll. All Board Members were present at the locations specified on the Agenda.

Approval of Minutes

**MOTION: DR. DEHN MOVED TO APPROVE THE MINUTES OF THE SEPTEMBER 25, 2018
LICENSING & CONTINUING EDUCATION COMMITTEE MEETING**

SECOND: DR. MCCLAIN SECONDED THE MOTION

VOTE: 2-0 (DR. DEHN- AYE, DR. MCCLAIN - AYE)

MOTION CARRIED

T (916) 263-5355
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(866) 543-1311

Board of Chiropractic Examiners
901 P Street, Suite 142A
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Mr. McCarther suggested taking the agenda items out of order, staff wished to start with agenda item four.

Dr. McClain agreed.

Review, Discussion and Possible Action on potential CE Provider Application regulations

Mr. McCarther introduced the Continuing Education (CE) Committee to the Draft CE Provider Application. The draft application had been reviewed with legal counsel and several items in the attestation portion of the application had been identified as problematic, primarily questions regarding a provider's financial and criminal background.

Dr. McClain asked for examples of what type of questions would not be able to be included in the application.

Mr. McCarther responded that questions specifically related to providers being charged or convicted of a criminal offenses would not be able to be included in the application. Mr. McCarther inquired that if the Board was unable to facilitate the type of information they wished to require of providers, then would it be more worthwhile to pursue regulation around CE courses, which staff believed to be a more problematic area.

Dr. McClain agreed that CE courses were a large area of concern but the Board continually expressed frustration over the limited information available when ratifying providers, she felt time invested in improving this process would be worthwhile.

Mr. Puleo agreed with Dr. McClain's frustration and reiterated the Boards inability to require criminal background information from providers.

Dr. McClain inquired what had changed within the law to prevent the Board from receiving criminal background information from providers.

Mr. Puleo shared that the legislature had become stricter in preventing Boards from using criminal background information against applicants and licensees. The Board would be unable to meet the necessity standard for requiring a non-licensed individual to comply with a request of criminal background information or fingerprinting. Mr. Puleo recommended strengthen regulations surrounding CE courses, as well as the resources, processes and procedures that a CE provider should have in place in order to offer quality CE courses.

Dr. McClain asked for clarification surrounding the necessity standard.

Mr. Puleo explained that the Office of Administrative Law (OAL) focused heavily on the necessity of each regulatory change. The Board's burden would be to offer a compelling reason as to why the Board needed to require criminal background information from CE providers, why it would be in the interests of public protection, especially since there are so few complaints issued against providers.

Dr. McClain shared her belief that requirements for CE providers and requirements for CE courses should not be considered mutually exclusive.

Public Comment: Dr. Brian Porteous, chiropractic licensee and CE provider, inquired as to the potential for public relations problems if the Board issued approval for CE providers who ultimately displayed dangerous criminal behavior and injured the public.

Mr. Puleo agreed with protecting consumers but ultimately CE providers had limited contact with the general public, just chiropractic licensees. Mr. Puleo does fear for the potential for fraud or embezzlement but feels that those factors could be identified through the procedures and processes required in a provider application.

Dr. McClain proposed identifying and researching what would be necessary to make a compelling argument that could be supported by OAL. She also proposed adding a portion to the application requiring CE providers to take responsibility for their staff and instructors' behaviors.

Dr. Dehn inquired if the restrictions related to requesting criminal background information was related to AB 2138.

Mr. Puleo stated that it did not but was closely related, as the legislature seemed to be moving in the direction that Boards and Bureaus were overreaching in their requirement of background information that would prevent individuals from obtaining a license. Mr. Puleo also stated that there were no other Department of Consumer Affairs (DCA) programs that regulated providers with background screenings.

Dr. Dehn agreed with Dr. McClain's proposed idea to include a provision into the application to require CE providers to do their due diligence and verify the qualifications of their staff members. Dr. Dehn followed up with her sentiment that pursuing regulation solely for the CE provider application would be premature, due to the limits on criminal background information and due to the inevitable changes that would need to be made to the application once the full CE regulations were submitted.

Mr. Puleo agreed that this was a large regulation with multiple moving parts and if the regulations were to be separated it could cause confusion and drain staff resources. Mr. Puleo suggested focusing on the process and procedures that all CE providers should be incorporating, so that if a CE provider were to receive complaints the Board would have disciplinary actions in place.

Dr. McClain reaffirmed her position that these regulations were not mutually exclusive, she stated that the CE provider application needed quality time and attention and that this did not mean other regulations would not be able to be worked on in tandem. She also stated that confusion would occur, no matter which order regulations were worked on, simply due to the convoluted nature of the legislative process.

Mr. Puleo stated that if it was the CE Committee's desire to make a recommendation to the full Board to pursue a separate regulation related to the CE provider application, then he would direct staff accordingly.

Dr. Dehn inquired how the full CE regulation and curriculum regulation would be affected if staff's efforts were redirected to the CE provider application regulation.

Mr. Puleo stated staff would do their best to accommodate all regulations.

Dr. Dehn reasserted her position against pursuing separate regulations for the CE provider application, considering the time investment and the potential for future changes once other regulations were put forward.

Mr. Puleo stated his desire to have the full Board agree on which regulations were of the utmost priority, as there were a lot of separate regulations being assigned to Board staff.

Dr. McClain respectfully disagreed with Dr. Dehn and felt it necessary to continue to pursue separate regulations related to the CE provider application.

Mr. Puleo shared the workload of Board staff and his concerns over adding additional regulations, that a separate CE provider regulation would not be the most efficient use of staff's time.

Dr. McClain appreciated Mr. Puleo's sentiment and the time investment from staff, she requested a statement be presented to the full Board regarding the complications and workload requirements for undertaking an effort such as this.

Dr. Dehn and Dr. McClain agreed that the full Board would need to determine which regulations should be a priority. Dr. McClain also suggested that the full Board could develop language or arguments in favor of supporting the criminal background requirement for OAL.

Ms. Van Allen wished to add that regardless of what questions were included in the CE provider application, the problematic content and therefore the provider, became apparent during the review of CE course applications.

Dr. McClain agreed that both sides of the application process were important and needed to be updated but felt strongly that the current CE provider application was unacceptable and action needed to be taken to rectify it.

Mr. Swenson stated that from a legal perspective any questions asked in the CE provider application would have to be authorized by regulation and existing law required a showing of necessity or demonstrating through substantial evidence the need for each regulatory provision. The criminal background request would be very challenging to provide substantial evidence for need, due to the limited complaints against CE providers. Mr. Swenson is concerned in having staff invest time in attempting to gather evidence or research to support background checks, that would ultimately not pass the necessity rule of OAL.

Dr. McClain and Dr. Dehn agreed that they would seek the opinion of the full Board.

Update, Discussion, and Possible Action on Continuing Education Focus Group

Dr. McClain inquired how the CE providers for the focus group were selected for participation.

Mr. Puleo responded that the focus group was informal and for the benefit of staff research. The participants were individuals who were heavily engaged with the Board and staff members; the California chiropractic schools, chiropractic associations and a few sole proprietor CE providers.

Mr. McCarther provided a high-level overview of the CE provider focus group's discussion surrounding proposed mandatory hours and subject matter breakdown.

Dr. McClain asked for the reasoning behind one of the suggestions from the focus group; eliminating chiropractic adjustive technique as a mandatory subject area or as subject area completely.

Mr. McCarther shared that many of the providers did not feel that requiring CE hours in chiropractic adjustive technique was needed to maintain minimum competency of licensees and there were limited instances of adjusting causing harm to patients.

Dr. McClain and Dr. Dehn stated their disagreement with this rationale.

Mr. McCarther shared that staff continually encouraged participants of the focus group to come to CE Committees and Board Meetings in order to share their perspective and rationale for their suggestions.

Dr. Dehn and Dr. McClain refuted the suggestion that little harm could be done from an improper adjustive technique.

Mr. McCarther also shared that the focus group felt that assessment procedures should be given more weight over adjustive technique, as that is where licensees could devote time and attention to prevent harm to patients.

Dr. Dehn was not opposed to potentially combining assessment procedures and chiropractic adjustive technique as one subject area, as many providers wanted assessment and technique evaluated in the same CE course application.

Ms. Van Allen also shared the focus group's concern over the list of chiropractic adjustive techniques provided by the chiropractic colleges, as another rational for removing mandatory hours in the adjustive technique subject area.

Mr. Puleo reiterated staff's commitment in encouraging these providers to attend Board events, as there were many strong opinions about proposed changes that had already been discussed at length by the full Board, and should these opinions not get shared it could significantly bog down the formal commentary process for the regulations.

Dr. McClain agreed and wished to hear highlights of the event. She also made a recommendation for staff, that for future provider focus groups the Committee Members be made aware, so they could assist with generating participant recommendations.

Mr. McCarther continued with a high-level overview of the discussion highlights from the CE provider focus group, topics included; potential changes to the Draft CE Provider Application, distance learning requirements, CE subject matter and fee options for the CE course application.

Dr. McClain inquired if audio recording could be utilized for these types of focus groups.

Mr. Puleo and Mr. McCarther agreed to this request.

Dr. McClain thanked staff for their effort and reiterated her desire to assist with selecting participants in order to achieve a more diverse group and in taking these views into consideration as the Board continued efforts towards CE regulations.

Review, Discussion and Possible Action on Oregon regulation OAR 811-015-0025

Dr. Dehn shared her interest in reviewing Oregon regulation, OAR 811-015-0025, as a potential option for California CE regulations. She felt it could be potentially useful in making specific courses mandatory for licensees.

Ms. Boyer pointed out that section 4 of the regulation contained the language allowing the Oregon Board to mandate specific CE courses. She went on to share her conversation with the Oregon Board staff regarding the execution of this particular provision of the law.

Mr. Swenson hypothesized that a provision similar to this could potentially become a part of California regulation but the necessity rule would need to be met to justify an addition such as this.

Dr. Dehn asked for potential examples for what could meet the necessity rule for OAL.

Mr. Puleo suggested that a provision could be included as part of disciplinary orders or an order of abatement to require the licensee to complete a specific CE course.

Confusion arose around if the provision was specifically mandating a CE course for a specific licensee or requiring a specific CE course for all licensees.

Mr. Puleo was curious if this could potentially be interpreted as an underground regulation, as the course would not be identified in regulation but selected at the will of the Board.

Mr. Swenson responded that one of the other requirements when submitting a regulation was clarity, the language in the Oregon regulation was ambiguous but if the California Board could define 'specific course' in the regulation, then there could be more potential of OAL accepting the provision.

Mr. McCarther agreed that there was enough interest from Committee Members for staff to pursue further research of this topic, especially among DCA programs to see if they have similar regulations.

Review, Discussion and Possible Action on List of Chiropractic Adjustive Techniques Provided by National Chiropractic Colleges

Ms. Boyer introduced the compiled list of chiropractic adjustive techniques provided by Board approved chiropractic colleges.

Dr. Dehn inquired into the feedback from the CE provider focus group regarding this list.

Mr. McCarther responded that Dr. Meeker from Palmer Chiropractic College had felt strongly that the clubs and their techniques should not be listed in the report as they have limited oversight from the colleges and not all techniques represent the profession.

Ms. Van Allen added that Dr. Meeker suggested staff review chiropractic techniques listed by the National Board of Chiropractic Examiners (NBCE) as they capture data from the majority of chiropractors. Ms. Van Allen also noted that our regulation specifically identifies 'chiropractic' adjustive or manipulative techniques and that the list from the colleges opened the term up to any technique within multiple professions.

Mr. McCarther mentioned that a reason for the extensive list is the term 'chiropractic adjustive technique' was not heavily emphasized within the schools. Mr. McCarther went on to state that staff would defer to the Committee Members when verifying the validity of the techniques presented on the list.

Dr. McClain agreed that professional members of the Board could review the list for accuracy but that it was a helpful means for staff to cross reference when reviewing CE course applications submitted under chiropractic adjustive technique.

Dr. Dehn suggested potentially removing techniques found in student led clubs as a more accurate compilation of college techniques.

Dr. McClain inquired if responses regarding recognized techniques had been compiled from Specialty Boards.

Ms. Boyer updated the Committee that many Specialty Boards had not yet responded and that the response from the other Specialty Boards were consistent in that they do not approve or support a recognized list of chiropractic adjustive techniques.

Dr. McClain wished to have that information shared as part of the CE Committee memo for the next full Board Meeting.

Dr. Dehn summarized her desire to review the list from the colleges for any potential duplicates.

Public Comment

No public comment.

Future Agenda Items

None.

Adjournment

Dr. McClain adjourned the meeting at 1:31 p.m.