



# **Board of Chiropractic Examiners**

**Public Board Meeting  
June 4, 2020**



## **NOTICE OF TELECONFERENCE BOARD MEETING**

June 4, 2020  
1:00 p.m. to 3:00 p.m.

**Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.**

FOR PUBLIC COMMENT, PLEASE LOG ON TO THIS WEBSITE <https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=e3bbd37a20d7d52b4e58d8aa3947c5c4c> **The preferred audio connection is via mobile phone.** The phone number and access code will be provided as part of your connection to the meeting. When signing into the WebEx platform, participants may be asked for their name and email address. Participants who choose not to provide their names will be required to provide a unique identifier, such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make public comment. Public comments will be limited to 2 minutes per person unless, in the discretion of the Board, circumstances require a shorter period. Members of the public will not be permitted to "yield" their allotted time to other members of the public to make comments.

**Important Notices to the Public:** The Board of Chiropractic Examiners will hold this meeting via WebEx – access information is provided above. General instructions for using WebEx are attached to the agenda. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at (916) 263-5355 or e-mail [chiro.info@dca.ca.gov](mailto: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.

### **AGENDA**

- 1. Open Session – Call to Order & Establishment of a Quorum**  
David Paris, D.C., Chair  
Dionne McClain, D.C., Vice Chair  
Frank Ruffino, Secretary  
Sergio Azzolino, D.C.  
Heather Dehn, D.C.

- 2. Presentation from interested stakeholders on a proposed emergency regulation of California Code of Regulation, Article 16, Chapter 4, Sections §331.**
- 3. Review, Discussion and Possible Action on Pursuing Emergency Regulations of California Code of Regulation, Article 16, Chapter 4, Sections §331.**
- 4. Public Comment for Items Not on the Agenda**  
*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, 11125.7(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 Section 11125.]*
- 6. Adjournment**

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In accordance with Executive Order N-29-20, no physical location is available for observation and public comment, so please plan to attend the meeting via WebEx platform. Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at [www.chiro.ca.gov](http://www.chiro.ca.gov).

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# HOW TO – Join – DCA WebEx Event

The following contains instructions to join a WebEx event hosted by the Department of Consumer Affairs (DCA).

NOTE: The preferred audio connection to our event is via telephone conference and not the microphone and speakers on your computer. Further guidance relevant to the audio connection will be outlined below.

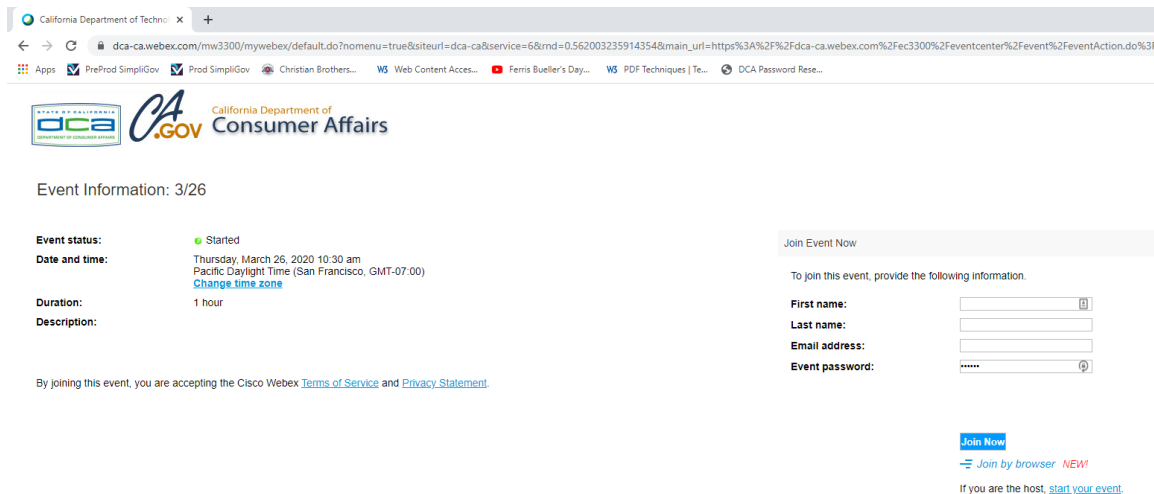
1. Navigate to the WebEx event link provided by the DCA entity (an example link is provided below for reference) via an internet browser.

Meeting link:

<https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=e3bbd37a20d7d52b4e58d8aa3947c5c4c>

**Event number: 929 572 121**

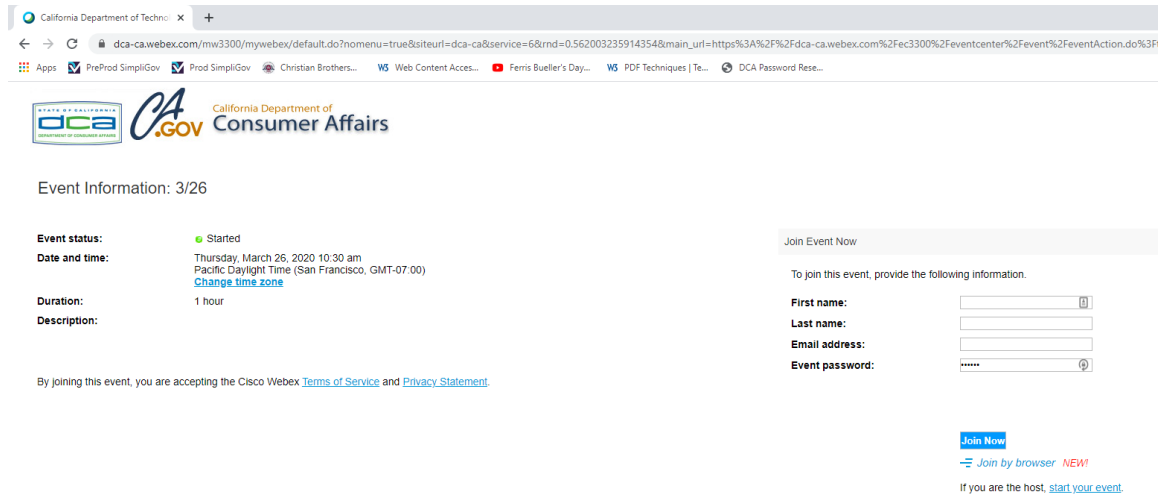
**Event password: ahP7AZBfS23**



2. The details of the event are presented on the left of the screen and the required information for you to complete is on the right.

NOTE: If there is a potential that you will participate in this event during a Public Comment period, you must identify yourself in a manner that the event Host can then identify your line and unmute it so the event participants can hear your public comment. The 'First name', 'Last name' and 'Email address' fields do not need to reflect your identity. The department will use the name or moniker you provide here to identify your communication line should you participate during public comment.

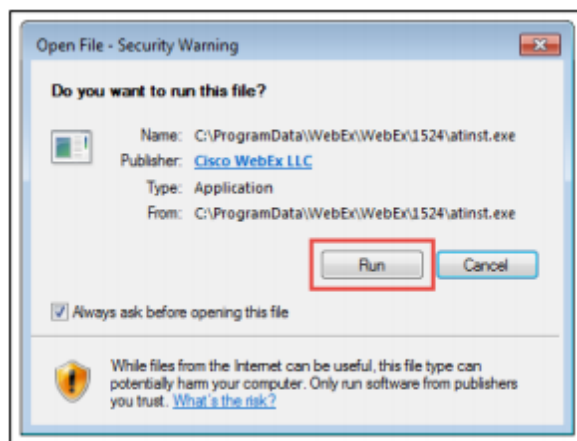
# HOW TO – Join – DCA WebEx Event



3. Click the 'Join Now' button.

**NOTE:** The event password will be entered automatically. If you alter the password by accident, close the browser and click the event link provided again.

4. If you do not have the WebEx applet installed for your browser, a new window may open, so make sure your pop-up blocker is disabled. You may see a window asking you to open or run new software. Click 'Run'.



Depending on your computer's settings, you may be blocked from running the necessary software. If this is the case, click 'Cancel' and return to the browser tab that looks like the window below. You can bypass the above process.

## HOW TO – Join – DCA WebEx Event

### Starting Webex...



Still having trouble? [Run a temporary application](#) to join this meeting immediately.

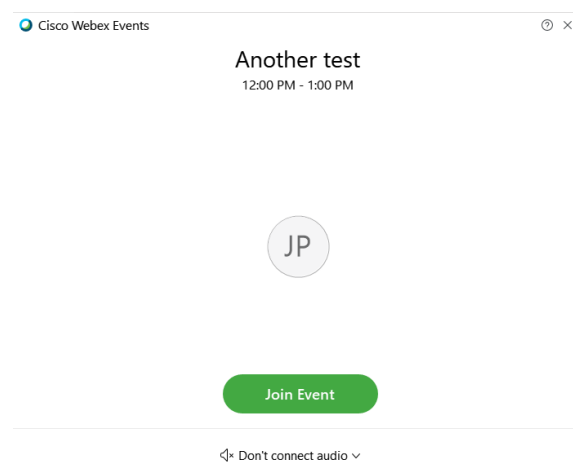
5. To bypass step 4, click 'Run a temporary application'.

6. A dialog box will appear at the bottom of the page, click 'Run'.



The temporary software will run, and the meeting window will open.

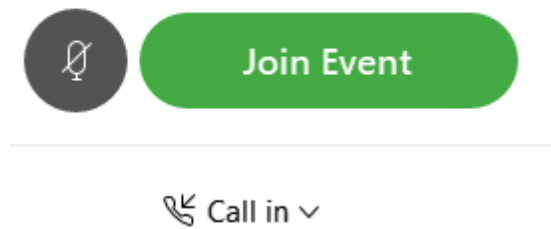
7. Click the audio menu below the green 'Join Event' button.



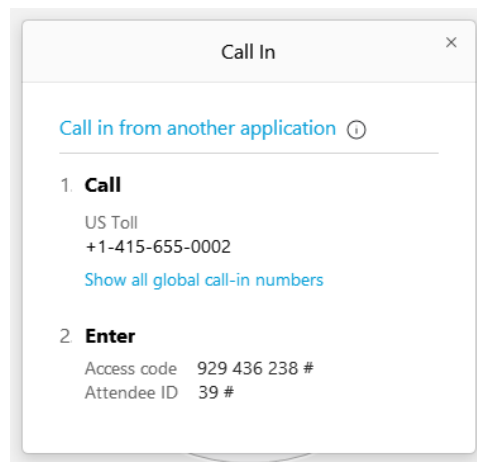
8. When the audio menu appears click 'Call in'.

## HOW TO – Join – DCA WebEx Event

9. Click 'Join Event'. The audio conference call in information will be available after you join the Event.



10. Call into the audio conference with the details provided.

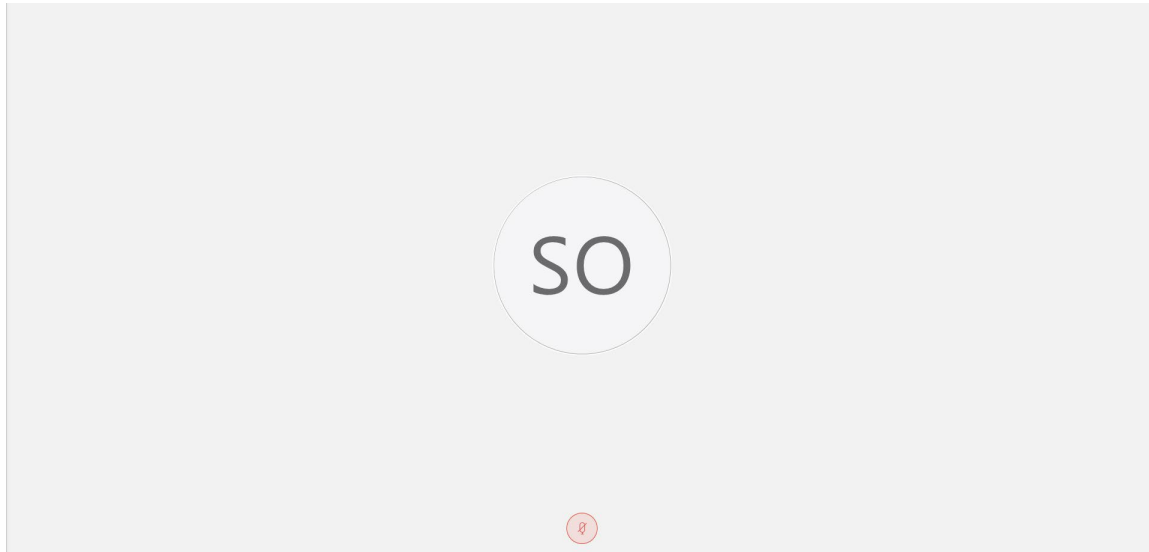


**NOTE:** The audio conference is the preferred method. Using your computer's microphone and speakers is not recommended.

## HOW TO – Join – DCA WebEx Event

Once you successfully call into the audio conference with the information provided, your screen will look like the screen below and you have joined the event.

Congratulations!



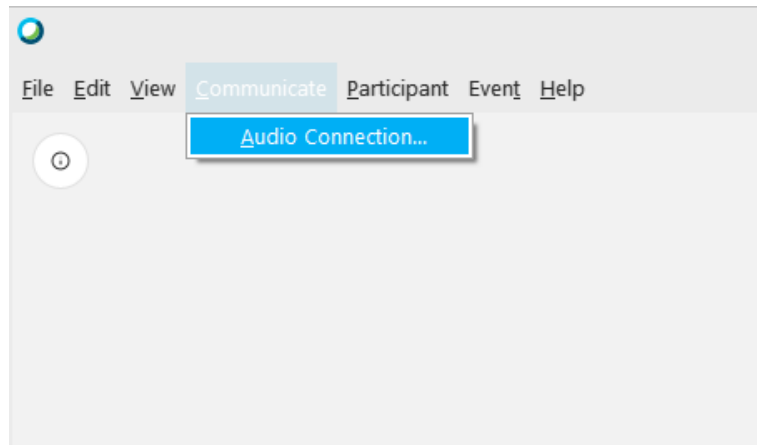
**NOTE:** Your audio line is muted and can only be unmuted by the event host.

If you join the meeting using your computer's microphone and audio, or you didn't connect audio at all, you can still set that up while you are in the meeting.

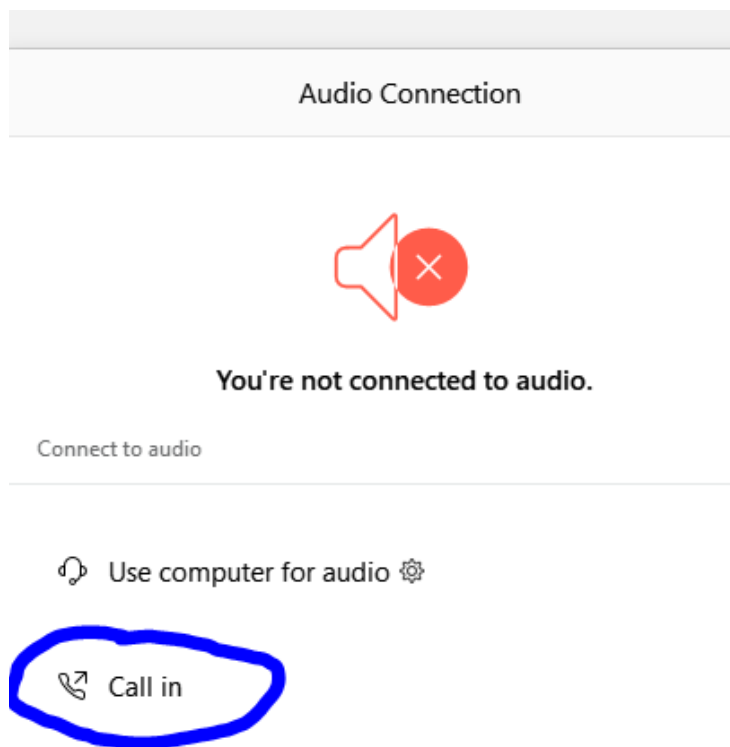
Select 'Communicate' and 'Audio Connection' from top left of your screen.



## HOW TO – Join – DCA WebEx Event



The 'Call In' information can be displayed by selecting 'Call in' then 'View'



You will then be presented the dial in information for you to call in from any phone.

## HOW TO – Join – DCA WebEx Event Participating During a Public Comment Period

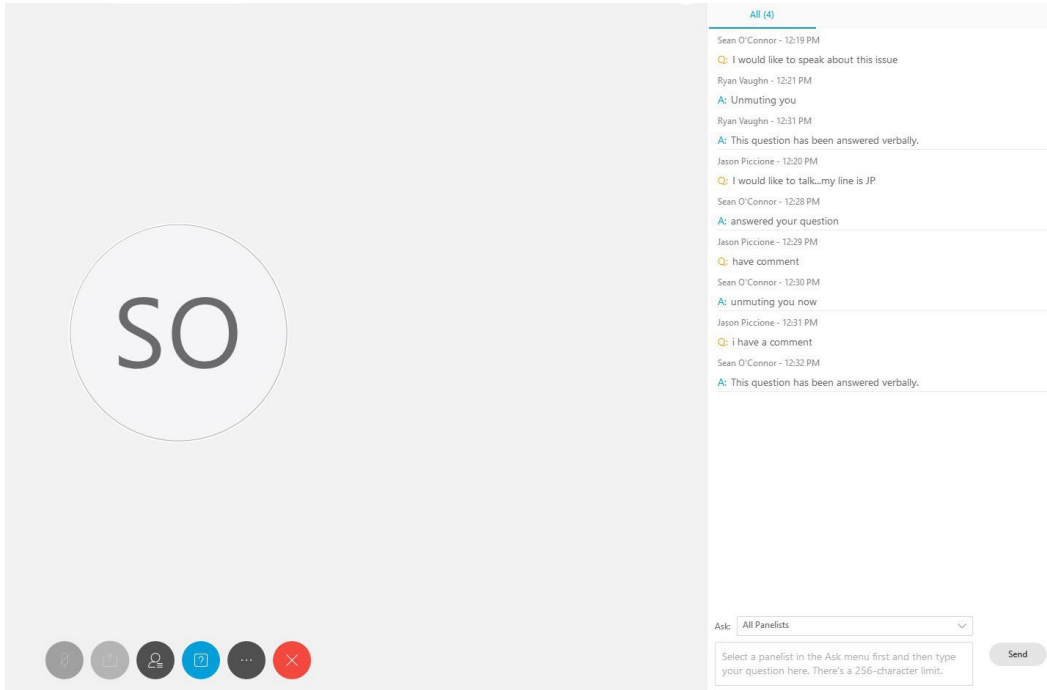
At certain times during the event, the facilitator may call for public comment. If you would like to make a public comment, click on the 'Q and A' button near the bottom, center of your WebEx session.



This will bring up the 'Q and A' chat box.

**NOTE:** The 'Q and A' button will only be available when the event host opens it during a public comment period.

## HOW TO – Join – DCA WebEx Event



To request time to speak during a public comment period, make sure the 'Ask' menu is set to 'All panelists' and type 'I would like to make a public comment'.

Attendee lines will be unmuted in the order the requests were received, and you will be allowed to present public comment.

**NOTE:** Your line will be muted at the end of the allotted public comment duration. You will be notified when you have 10 seconds remaining.

**Agenda Item 2  
June 4, 2020**

**Presentation from interested stakeholders on a proposed emergency regulation  
of California Code of Regulation, Article 16, Chapter 4, Sections §331**

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**Purpose of the item**

The Board will be addressed by interested stakeholders including Dr. Ron Oberstein, President of Life Chiropractic College West, Dr. John Scaringe, President of Southern California University of Health Sciences, and Dr. Bill Meeker, President of Palmer College of Chiropractic. The stakeholders will present documentation in support of their request that the Board move forward with emergency regulations for California Code of Regulation (CCR), sections 331.7 Calendar, 331.11 (f) Scholastic Regulations, and 331.12.2 (e) (1-4) Curriculum.

**Action(s) requested**

This is an informational presentation.

**Background**

Due to the Covid-19 pandemic and Governor Newsom's Executive Order N-30-20, Californians are required to shelter-in-place. According to stakeholder correspondence provided to the Board, the shelter-in-place order has required the chiropractic colleges to make major adjustments in order to continue to administer their programs. Specifically, stakeholders expressed concern with their ability to comply with numerous Board regulations. These stakeholders believe that addressing their specific concerns via the emergency regulation process, will help provide the flexibility needed to allow students to continue and complete their education on the pace they have set for themselves.

**Recommendation(s)**

Review materials presented in support of promulgating emergency regulations for an eventual Board decision.

**Next Step**

N/A

**Attachment(s)**

- Stakeholder proposed changes to BCE regulation and justification for changes
- Letter of Support from Dr. Little, President of the Council on Chiropractic Education.

- Letter of Support from Dr. Welsh, President of the International Chiropractors Association.

To maintain compliance with AB 434 (Baker) State Web accessibility: standard and reports, we are no longer able to provide scanned documents on our website. Copies of the Letter of Support will be made available to the public via a Public Records Request.

## Stakeholder proposed changes to BCE regulation and justification for changes

### 331.7 Calendar.

A school calendar shall designate the beginning and ending dates of terms or semesters, the vacation periods and legal holidays observed, and the dates for semester and final examinations. The recitation or lecture period shall be not less than 50 minutes in length. The school may operate on a five or six-day week or any combination thereof, but the total number of hours of instruction shall be not less than 30 hours nor more than 35 hours per week. The total number of hours provided for each complete student's course, leading to the degree of Doctor of Chiropractic, shall be not less than 4,400 hours distributed over four academic years of nine months each.

#### Explanation of Emergency:

The COVID19 (C19) emergency has required colleges to pivot rapidly away from on-campus classes to online teaching and learning. It has meant major re-adjustments of technique, lab and clinical schedules, and students will need to catch up with labs, clinics and other courses that require hands-on instruction. This will inevitably be outside the parameters of the calendar set out in the regulation as new schedules are extended out to a 5 to 6 day week, possibly 7 days, evenings and weekends. If colleges are not able to implement this flexibility with course and lab scheduling, the ability of our students to graduate on time will be greatly impaired. Additional time and cost will be added to their degrees through no fault of their own. Extra tuition and fees, rent and cost of living, will be added to their student debt burden. Their inability to graduate on time, take Board tests and enter practice on time will be a financial burden for them well into the future as they manage their loans. While sheltering in place, students need colleges to provide the flexibility for them to achieve their outcomes on the pace they have previously set for themselves if not for C19. Colleges are able to provide this flexibility through realigned and extended schedules to provide the lab and clinical components of the program in an appropriate and safe manner.

### 331.11 (f) Scholastic Regulations.

(f) Attendance. In order to obtain credit for a course, a student shall have been present in class at least 90 percent of the time and shall have received a passing letter grade. When the absence exceeds 10 percent, the student shall be automatically dropped from the class.

If the absences have been due to illness or other excusable reasons and if evidence of these reasons can be submitted, the student may apply for readmission through the dean's office and may be given credit for attendance upon the recommendation of his instructor and completion of course requirements.

#### Explanation of Emergency:

The current Shelter in Place has put the attendance policy in the regulations into question. Students right now are at home. As well as taking online courses, they are caring for their children, for other adults, as well as managing their households. They need the flexibility to take online classes when they are able to, without being penalized for an attendance regulation that provides little or no flexibility. Rather than focusing on a strict attendance regulation, colleges now need to be focused on developing students' competencies, preparing students to pass college and National Board tests, and should be given the flexibility to define their own attendance requirements and management based on CCE accreditation standards.

### 331.12.2 (e) (1-4) Curriculum.

(1) Twenty-five (25) physical examinations of which at least ten (10) are of outside (not student) patients.

A physical examination shall include an evaluation of all vital signs, case history, orthopedic and neurological testing.

Students shall also have practical clinical laboratory training, including twenty-five (25) urinalyses, twenty (20) complete blood counts (CBCs), ten (10) blood chemistries, and thirty (30) X-ray examinations. Students shall perform ten (10) proctological and ten (10) gynecological examinations. Proctological and gynecological examinations may be performed on a phantom approved by the Board. Gynecological and proctological examinations not completed prior to graduation may be completed after graduation at a Board-approved chiropractic college.

(2) Students shall perform a minimum of two hundred and fifty (250) patient treatments (visits), including diagnostic procedures, chiropractic adjustive technique and patient evaluation.

(3) Written interpretation of at least thirty (30) different X-ray views, either slide or film, while a senior in the clinic, in addition to other classroom requirements which shall include the spinal column, all other articulations of the body, and soft tissue.

(4) Minimum of five hundred eighteen (518) hours of practical clinical experience (treating patients in the clinic).

#### Explanation of Emergency:

Due to C19, with clinics either closed or severely curtailed due to Social Distancing and Shelter in Place, our students are now unable and or severely hindered in their ability to meet a specified regulatory minimum number of hours in clinical experience since this experience is based on person to person contact. Now with college clinics closed and students required to shelter in place or work from a safe distance, students will be unable to graduate on time under the current regulations. Colleges will be challenged to meet the regulatory requirements because they cannot provide the face to face traditional experiences. The solution is to defer to CCE and a competency based approach that is used by other accrediting agencies as well as the CCE. If colleges are not able to implement this competency based approach, the ability of our students to graduate on time will be greatly impaired. Additional time and cost will be added to their degrees through no fault of their own by extra tuition and fees, rent and cost of living. All this will be added to their student debt burden. Their inability to graduate on time, take National Board tests and enter practice on time will be a financial burden for them well into the future as they manage their loans. While sheltering in place, students need colleges to provide the flexibility for them to achieve their outcomes on the pace they have previously set for themselves if not for C19. Colleges are able to provide this flexibility through implementing the competency based approach used by CCE.



**Agenda Item 3  
June 4, 2020**

**Review, Discussion and Possible Action on Pursuing Emergency Regulations of  
California Code of Regulation, Article 16, Chapter 4, Sections §331**

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**Purpose of the item**

The Board will discuss and consider whether to move forward with emergency rulemaking procedures for California Code of Regulation (CCR), Article 16, Chapter 4 Sections 331.7 Calendar, Sections 331.11 (f) Scholastic Regulations, and Section 331.12.2 (e) (1-4) Curriculum.

The Board will be addressed by several staff members from the Department of Consumer Affairs (DCA):

- Clay Jackson, Attorney for Legal Affairs Division – Regulation Unit.
- Michael Kanotz, Senior Attorney for Legal Affairs Division and Legal Counsel to the Board of Chiropractic Examiners.

**Action(s) requested**

Vote from the full Board regarding whether staff will proceed with emergency rulemaking procedures for CCR Sections 331.7, 331.11 (f), and 331.12.2 (e) (1-4).

**Background**

Interested stakeholders including Life Chiropractic College West, Southern California University of Health Sciences, and Palmer College of Chiropractic, requested the Board consider utilizing the emergency rulemaking process to enact changes to CCR sections 331.7 Calendar, 331.11 (f) Scholastic Regulations and 331.12.2 (e) (1-4) Curriculum.

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the impacts of COVID-19 and to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare to respond to an increasing number of individuals requiring medical care and hospitalization as a result of a broader spread of COVID-19.

Pursuant to the Governor's Executive Order N-39-20, during the State of Emergency, the Director of the California Department of Consumer Affairs may waive any statutory or regulatory requirements with respect to a professional license issued pursuant to Division 2 of the Business and Professions Code.

**Recommendation(s)**

N/A

**Next Step**

N/A

**Attachment(s)**

- Office of Administrative Law – Emergency Rulemaking Process
- Department of Consumer Affairs – Waiver Information

## **About the Emergency Rulemaking Process**

### **What is the emergency rulemaking process?**

The emergency rulemaking process generally includes a brief public notice period, a brief public comment period, review by OAL and an OAL decision. In addition, some agencies have requirements related to emergency rulemakings that are unique to that particular agency.

### **What constitutes an emergency?**

An “emergency” means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. (Government Code section 11342.545.) In order for an emergency regulation to be approved, an emergency situation must be shown to exist.

### **How does an agency demonstrate that an emergency situation exists?**

Unless a situation is expressly deemed in statute to meet the emergency standard, an agency must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. In addition, if the emergency existed and was known by the agency in sufficient time to have been addressed through nonemergency regulations, the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations. A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency. (Government Code section 11346.1(b)(2).)

### **How may the public comment on a proposed emergency rulemaking action?**

Emergency rulemakings have a five calendar day comment period that begins when OAL posts the notice of the pending emergency action on the OAL web site. OAL may approve an emergency rulemaking without public comment if “the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.” (Government Code section 11349.6(b).)

Comments on a proposed emergency rulemaking action must be submitted directly to OAL within five calendar days from when OAL posts the proposed emergency regulation on the OAL web site. When submitting a comment on an emergency

rulemaking action, a copy of the comment must also be submitted to the rulemaking agency's contact person. OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency rulemaking action currently under OAL review and include the topic of the emergency. (Title 1, CCR, section 55(b)(1) through (4).)

The rulemaking agency is not required to respond to comments submitted in connection with an emergency rulemaking action. If the agency chooses to respond, however, it must submit its response to OAL within eight calendar days after the date of submission of the proposed emergency rulemaking action to OAL (Title 1, CCR, section 55), unless specific exceptions apply.

### **What must the rulemaking agency submit to OAL for review in an emergency rulemaking action?**

The agency proposing an emergency regulation must include the following in the file submitted to OAL (Title 1, CCR, section 50):

1. Proposed Emergency Regulation Text and STD. Form 400 (7 copies). (Government Code section 11346.1(b)(2); Title 1, CCR, section 6.)
2. Finding of Emergency (1 copy)
3. Agency statement of specific facts demonstrating existence of emergency and by substantial evidence need for immediate action (unless deemed an emergency by statute). (Government Code Section 11346.1(b)(2).)
4. Information required by Government Code Section 11346.5(a), including:
  - Authority and Reference citations
  - Informative Digest
  - Specific Agency Statutory Requirements
  - Local Mandate Determination
  - Fiscal Impact Estimate and Form 399
5. Identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies. (Government Code section 11346.1(b)(2).)
6. Facts explaining the failure to address the situation through nonemergency regulations (only necessary if the emergency existed and was known by the agency in sufficient time to have been addressed through nonemergency regulations). (Government Code section 11346.1(b)(2).)

### **What is OAL's review process for the proposed emergency rulemaking?**

OAL has 10 calendar days within which to review and make a decision on the proposed emergency rulemaking file. If OAL approves the emergency rulemaking, OAL will file the

approved regulation with the Secretary of State. If OAL disapproves the regulation, it must write a decision explaining the reasons for disapproval.

OAL reviews the file for the following (Government Code section 11349.6(b).):

- Does the agency's finding of emergency demonstrate that the situation addressed by the regulations is an emergency?
- Do the proposed emergency regulations comply with the six substantive standards of Government Code section 11349.1?
- Did the agency comply with the procedural requirements of Government Code section 11346.1?
- What is the effective period of an approved emergency regulation?

An emergency regulation usually becomes effective when filed with the Secretary of State. An emergency regulation generally remains in effect for 180 days unless OAL approves a readoption of the emergency regulation during that time period. If an agency requests a readoption of an emergency, it should be submitted to OAL at least 10 calendar days prior to the expiration of the emergency effective period to avoid the possibility that the regulation lapses by operation of law during OAL's 10-day review. If approved by OAL, the emergency readoption extends the emergency regulation for an additional 90 days; however, no more than two readoptions are permitted. (Government Code section 11346.1(h).)

### **Can an emergency regulation become permanent?**

Yes. An emergency regulation can become permanent if the agency adopts the emergency regulation through the regular rulemaking process within the time period the emergency regulation is in effect. This is commonly referred to as filing a "certificate of compliance." When the agency submits a timely certificate of compliance to OAL, the emergency regulation stays in effect during OAL's review. OAL reviews the certificate of compliance action to ensure it satisfies all APA requirements for a regular rulemaking. (Government Code section 11346.1(e).) OAL has 30 working days to review a certificate of compliance.

If a certificate of compliance is submitted, the maximum time period for OAL review is 30 working days, although OAL may act earlier. A proposed rulemaking submitted with a certificate of compliance usually becomes effective on filing by OAL with the Secretary of State.

Information provided from the website of the Office of Administrative Law:  
“About the Emergency Rulemaking Process”, Office of Administrative Law,  
[https://oal.ca.gov/emergency\\_regulations/emergency\\_regulation\\_process/](https://oal.ca.gov/emergency_regulations/emergency_regulation_process/)

## Department of Consumer Affairs Waiver Information

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the impacts of COVID-19 and to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare to respond to an increasing number of individuals requiring medical care and hospitalization as a result of a broader spread of COVID-19.

Pursuant to the Governor's Executive Order N-39-20, during the State of Emergency, the Director of the California Department of Consumer Affairs may waive any statutory or regulatory requirements with respect to a professional license issued pursuant to Division 2 of the Business and Professions Code.

### DCA Waiver Request Information

#### How do I request a waiver?

The Department of Consumer Affairs is working with the licensing boards to determine which licensing requirement waivers would allow individuals to continue assisting with the COVID-19 pandemic and allow licensees regulated by the Department to maintain and renew an active license, to facilitate the continued provision of care to individuals affected by the COVID-19 outbreak.

#### How quickly does DCA anticipate waivers will be approved?

Waivers will be reviewed daily. Working closely with the licensing boards and other state partners, DCA expects waivers to be approved within 4-7 business days.

[https://www.dca.ca.gov/licensees/waiver\\_request\\_info.shtml](https://www.dca.ca.gov/licensees/waiver_request_info.shtml)

### DCA Waivers

- DCA Waiver DCA-20-01 Continuing Education
- DCA Waiver DCA-20-02 Reinstatement of Licensure
- DCA Waiver DCA-20-03 Nursing Student Clinical Hours
- Guidance on Waiver of Restrictions on Nursing Student Clinical Hours Under DCA Waiver DCA-20-03 (Spanish)
- DCA Waiver DCA-20-04 Physician Assistant Supervision Requirements

- Guidance on Physician Assistant Supervision Requirements Waiver Under DCA Waiver DCA-20-04 (Spanish)
- DCA Waiver DCA-20-05 Nurse Practitioner Supervision Requirements
- DCA Waiver DCA-20-06 Nurse-Midwife Supervision Requirements
- DCA Waiver DCA-20-07 Division 3 Continuing Education
- DCA Waiver DCA-20-08 Nurse Preceptorship Requirements and Restrictions on Nursing Student Clinical Training
- DCA Waiver DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment
- DCA Waiver DCA-20-10 Face-to-Face Supervision Requirements for Psychology Trainees
- DCA Waiver DCA-20-11 Supervision Requirements for Speech-Language Pathology Assistants and Required Professional Experience Temporary Licensees
- DCA Waiver DCA-20-12 Training and Supervision Requirements for Marriage Family Therapists, Professional Clinical Counselors, and Clinical Social Workers
- DCA Waiver DCA-20-13 Medical Board and Osteopathic Medical Board Postgraduate Training License Deadline
- DCA Waiver DCA-20-14 Restrictions on Pharmacists Ordering and Collecting Specimens for COVID-19 Tests

[https://www.dca.ca.gov/licensees/dca\\_waivers.shtml](https://www.dca.ca.gov/licensees/dca_waivers.shtml)