



BOARD OF CHIROPRACTIC EXAMINERS PUBLIC SESSION MINUTES

June 4, 2020
Teleconference

Board Members Present

David Paris, D.C., Chair
Dionne McClain, D.C., Vice Chair
Frank Ruffino, Secretary
Heather Dehn, D.C.
Sergio Azzolino, D.C.

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Michael Kanotz, Senior Attorney
Clay Jackson, Attorney
Dixie Van Allen, Licensing and Continuing Education Manager I
Kristin Walker, Enforcement Manager I
Natalie Boyer, Licensing Analyst
Amanda Campbell, Licensing Analyst

Call to Order

Dr. Paris called the meeting to order at 1:07 p.m.

Roll Call

Mr. Ruffino called the roll. All members were present. A quorum was established.

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

Discussion: The Board was addressed by interested stakeholders including Ronald Oberstein, D.C., President of Life Chiropractic College West, David O'Bryon, President of the Association of Chiropractic Colleges, and Craig Little, D.C., President of the Council of Chiropractic Education (CCE). These stakeholders believe addressing their specific curriculum concerns via the emergency regulation process will help provide the flexibility needed to allow students to continue and complete their education without increasing their student debt burden.

Dr. Oberstein addressed the Board first stating that he has spoken with the other colleges and they believe they have identified how to move forward in light of COVID-19 (C19). The stakeholders' key concerns include California Code of Regulation (CCR) 331.7, 331.11, and 331.12.2 (e) (1-4). Dr. Oberstein stated he believes there will be great damages if nothing is done to address these concerns.

Dr. Oberstein stated the colleges have been converting to all online in order to keep their students on track to graduate. He stressed the importance of making a change with an emergency regulation along with a permanent regulation.

Dr. Little offered his support of an emergency regulation so that students do not have an increase of debt. Their plan has no negative impact on the graduating students' competency. He stated waiving CCR 331.7 would allow colleges to provide flexibility through realigned and extended schedules to provide the lab and clinical components of the program in an appropriate and safe manner. Waiving CCR 331.11 and 331.12.2 (e) (1-4) also give students flexibility to define their own attendance while meeting CCE's accreditation standards.

Dr. Little stated CCE has competency requirements so a waiver of these requirements in the regulations won't negate the competency of the students, as graduating from a CCE accredited college is mandatory. Dr. Little further noted the California Board of Chiropractic Examiners (Board) is one of the few licensing boards that has requirements outside of CCE. He believes waiving these standards won't impact the quality of the student's education or competency.

Mr. O'Bryon stated the Association of Chiropractic Colleges has vigorous oversight to ensure competency of students for public safety and believes the Board should adopt these changes permanently. He thanked the Board for their time and effort.

Public Comment: Dawn Benton, Executive Director of the California Chiropractic Association, stated she has been in communication with the colleges and is in support of an emergency regulation.

Public Comment: Ana Facchinato, D.C., Dean of Los Angeles College of Chiropractic, voiced her support for this request.

MOTION: DR. AZZOLINO MOVED TO HAVE THE BOARD MOVE FORWARD IN DRAFTING EMERGENCY CURRICULUM REGULATIONS TO BE PROPOSED AND VOTED ON AT THE NEXT MEETING.

SECOND: MR. RUFFINO SECONDED THE MOTION

Discussion: The Board discussed whether the emergency regulation process was the best course of action.

Dr. Dehn agreed changes needed to be made to the regulations but asked if these changes were different than the draft currently being worked on by the Board. She

asked if an emergency regulation quickened the process.

Dr. Oberstein stated his understanding is that an emergency regulation can only be approved if someone can be harmed and believes that to be true in this case. He stated they would like both an emergency regulation and a permanent regulation because they are currently working outside of compliance due to necessity.

Dr. Dehn stated she understood why we needed these changes but was concerned if an emergency regulation were appropriate due to the strict requirements of what constitutes an emergency.

Dr. McClain stated her agreement with Dr. Dehn as an emergency regulation request has high standards and requires proof of serious harm to the public health or general welfare. Dr. McClain inquired if a temporary waiver would be more effective.

Dr. Paris requested suspending the motion until after the next agenda item had been discussed.

Dr. Azzolino suspended his motion.

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

Discussion: Mr. Clay Jackson, Attorney for the Regulation Unit for the Department of Consumer Affairs (DCA), discussed whether the materials presented would require a waiver, emergency regulation, or a standard regulation and what the differences were. He explained if items were to be removed from the regulations, a waiver would suffice. If items were added, a standard regulation would be necessary. He then clarified the level of emergency determined how quickly action would be taken.

Mr. Jackson believes a waiver would be more appropriate for this situation given an emergency regulation could take months or longer. If the Board then wanted to make the changes permanent, all steps of the regulation process would need to be duplicated after the emergency regulation expired.

Dr. Azzolino expressed concern the schools would all be shut down if nothing was done and wanted to clarify that this wouldn't be considered an emergency.

Mr. Jackson stated the decision of whether this was an emergency was determined by DCA's Director, the California Business, Consumer Services and Housing Agency (Agency), and the Office of Administrative Law (OAL). He believes this would be a timing issue and the level of emergency determines how quickly the emergency regulation is processed.

Dr. Azzolino asked how long a waiver would take to process.

Mr. Jackson deferred to Mr. Kanotz who will be addressing the waiver process later in the meeting.

Dr. McClain asked how long it takes for OAL to process an emergency regulation.

Mr. Jackson stated it takes 15 days for OAL to process an emergency regulation and 30 days to process a standard regulation.

Dr. McClain asked Mr. Jackson to provide examples of an emergency regulation.

Mr. Jackson clarified and added that there is not currently a draft of changes to the regulations and Board staff would need to write a draft. He stated OAL would likely not define changes to the curriculum as an emergency.

Mr. Kanotz provided details of Governor Newsom's Executive Order N-39-20 pertaining to waivers. Item 5 in the Executive Order allows DCA's Director to waive Business and Professions Code (BPC) statutes and their accompanying regulations. Mr. Kanotz stated a waiver is for the duration of the executive order.

Mr. Kanotz stated the director needed specific information regarding how social distancing requirements are making it impossible to fulfill these regulations and what needs to be waived. The waiver needs to be justified by necessity whereas an emergency regulation requires substantial evidence of an emergency and general changes are not accepted.

Dr. Azzolino asked what Mr. Kanotz suggested.

Mr. Kanotz recommended submitting a waiver request to the Director while also expediting the standard regulation package. He added if the Board were to submit an emergency regulation and on-campus classes resumed before the emergency regulation was approved, the justification for the emergency would no longer exist.

Dr. Azzolino asked how long the waiver would be in effect and how long it would take the Director to approve a waiver request.

Mr. Kanotz stated the waiver is for the duration of the crisis but he is unaware of the Director's timeframe to process waivers. He added a waiver request only requires review and approval by the Director, which is a shorter process than an emergency regulation. He estimated it would take a few weeks.

Dr. Azzolino stated he wanted to ensure the schools and students were taken care of.

Dr. Dehn asked if the information in the Board packet stating that waivers were reviewed in four to seven business days was inaccurate.

Mr. McCarther stated he believed that was an initial estimate but is not reflective of the current timeframe due to the volume of requests received by DCA and the substantive documentation submitted, which requires more thorough analysis.

Dr. Dehn confirmed with Mr. Kanotz that the waiver was easier to get approved and would be quicker than an emergency regulation.

Dr. Dehn asked if it was the Board and legal staff who will be writing the regulations, not other staff at DCA.

Mr. Kanotz clarified it would be the Board staff and DCA legal counsel.

Dr. Dehn confirmed with Mr. Kanotz that the staff who worked on the emergency regulation would also work on the standard regulation.

Dr. McClain asked if the waiver was the responsibility of Board staff and legal staff.

Mr. Kanotz stated a waiver could be submitted by an outside party or by Board staff and many waivers have been submitted by associations.

Dr. McClain requested Mr. Puleo's opinion on collaborating with outside entities for submitting the waiver or providing input to Board staff.

Mr. Puleo stated Board staff and legal counsel would prepare the waiver request and if more information was required, he would ask stake holders for supporting documentation or information.

Mr. Puleo stated he believes the waiver was retroactive for the duration of the Executive Order whereas the emergency regulation was not, so there would be a period not addressed by an emergency regulation.

Mr. Azzolino requested Mr. Jackson's opinion.

Mr. Jackson recommended the Board submit a waiver request. He added that many of California's public universities and colleges have said they were going virtual in the fall. He said he can't imagine the Governor wouldn't extend the educational waivers DCA entities currently have in place. Mr. Jackson believes a waiver would be consistent with the swift and flexible approach public universities and colleges are taking, whereas an emergency regulation would require a longer process and be more labor intensive due to the duplication of effort. He believes submitting a waiver while simultaneously working on a standard regulation would be a better use of the Board's time and effort and ultimately have a better outcome.

Mr. Puleo thanked Mr. Jackson for mentioning the Executive Order could be extended because he believes waivers likely will be needed for a while after the C19 pandemic. He stated he's putting a lot of faith in the Administration because 40 DCA regulatory

boards are currently facing the same obstacles.

Mr. Kanotz clarified the Executive Order could be extended, but at this time, the Director is only authorized to issue waivers for the duration of the Executive Order.

Mr. Puleo agreed, but believes that the Administration will authorize the necessary extensions

Dr. Dehn requested to hear from Dr. Oberstein and Dr. Scaringe.

Dr. Oberstein stated if the waiver served the purpose they needed, he would be fine with it since it would be faster. He believed the Governor would understand the effects and ramifications would last much longer than the pandemic. Dr. Oberstein asked if the waiver would defer them to CCE for compliance.

Mr. Puleo believes the waiver would address the provisions that need to be waived. He stated the waiver would need to be specific and clearly address CCE's guidelines.

Dr. Oberstein stated his biggest concern was the schools being unable to operate in compliance. He stated he was in favor of the waiver.

Mr. Puleo stated he anticipates the Board voting on the regulations package at the July meeting and hopes to have a comprehensive regulation in place in a year.

Dr. Scaringe stated he was in favor of the waiver. The Association of Independent Colleges and Universities has a taskforce looking into these items and will be submitting a report to the Governor.

Dr. Paris asked when that document was expected to be finalized.

Dr. Scaringe stated it would be available as soon as possible but he cannot give a definite date.

Public Comments: None

Mr. Kanotz stated the Board can move forward with the motion.

**MOTION: DR. AZZOLINO AMENDED THE MOTION TO HAVE THE BOARD PURSUE A WAIVER FOR THE COLLEGES AFFECTED BY THE CRISIS SO THEY CAN CONTINUE TO FUNCTION PROPERLY GIVEN THE C19 RESTRICTIONS.
SECOND: MR. RUFFINO SECONDED THE MOTION.**

Discussion: None

MOTION: DR. AZZOLINO AMENDED THE MOTION TO INSTRUCT STAFF TO

DEFER TO CCE FOR REGULATION GUIDELINES DURING THE C19 RESTRICTIONS.

SECOND: MR. RUFFINO SECONDED THE MOTION.

Discussion: Mr. Puleo asked legal counsel if deferring to another regulatory agency was admissible for a waiver.

Mr. Kanotz stated the waiver must be specific and deferring to CCE would require a general regulation package. To do so through a waiver would not be viable.

Dr. Azzolino asked if the Board could adopt CCE's regulations.

Mr. Jackson added he did not believe a third party could be a regulatory agency. He recommended adding "in consultation with" CCE to the wording.

Dr. Azzolino asked if it would be appropriate to make a motion stating the Board should consult with CCE to modify the Board's regulations in concert with theirs.

Mr. Kanotz stated the best motion would be to direct staff to draft a waiver proposal in consultation with the desired agency.

Mr. Puleo recommended the motion be to direct staff to request a waiver form DCA to address the issues raised by stakeholders at this meeting.

Mr. Kanotz agreed with Mr. Puleo's phrasing of the motion.

MOTION: DR. AZZOLINO MOVED TO DIRECT STAFF TO REQUEST A WAIVER FROM DCA TO ADDRESS THE ISSUES RAISED BY STAKEHOLDERS AT THIS MEETING.

SECOND: MR. RUFFINO SECONDED THE MOTION.

Discussion: None

VOTE: 5-0, (DR. PARIS-AYE, DR. MCCLAIN-AYE, MR. RUFFINO-AYE, DR. AZZOLINO-AYE, DR. DEHN-AYE).

MOTION: CARRIED.

Public Comment for Items Not on the Agenda

Public Comment: Dr. Oberstein thanked the Board Members, attorneys, Mr. Puleo, and Mr. McCarther for their diligence.

Public Comment: Dr. Mark Cymerint, a chiropractor and continuing education provider, thanked the Board for working with the colleges and stated he was requesting a waiver for continuing education (CE) providers who are facing similar challenges due to social

distancing requirements. He stated he would be submitting a waiver requesting live teleconference calls to be considered the same as in person CE courses during the state of emergency.

Public Comment: Mr. O'Bryon thanked the Board for assisting the colleges.

Future Agenda Items

Dr. McClain requested the Board release a statement regarding the current crisis.

Discussion: Dr. Azzolino stated Dr. McClain should work with staff to draft a message.

Adjournment

Dr. Paris adjourned the meeting at 2:52 p.m.