



**BOARD OF CHIROPRACTIC EXAMINERS
ENFORCEMENT COMMITTEE
MEETING MINUTES
December 3, 2021**

In accordance with the statutory provisions of Government Code section 11133, the Enforcement Committee of the Board of Chiropractic Examiners (Board) met via teleconference/Webex Events with no physical public locations on December 3, 2021.

Committee Members Present

David Paris, D.C., Chair
Laurence Adams, D.C.
Rafael Sweet.

Staff Present

Robert Puleo, Executive Officer
Kristin Walker, Assistant Executive Officer
Connie Bouvia, Enforcement Manager
Amanda Campbell, Enforcement Analyst
Tammi Pitto, Enforcement Analyst
Jason Hurtado, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)

1. Call to Order & Establishment of a Quorum

Dr. Paris called the meeting to order at 9:01 a.m. Dr. Adams called the roll. All members were present, and a quorum was established.

2. Approval of October 16, 2020 Meeting Minutes

Motion: Dr. Paris moved to approve the minutes of the October 16, 2020 Enforcement Committee meeting.

Second: Mr. Sweet seconded the motion.

Discussion: Dr. Paris asked if DCA has restarted the expert witness program that was placed on hold due to COVID-19. Mr. Puleo replied the program is still on hold and staff is monitoring the status. Dr. Paris asked about the status of enforcement statistical data showing the percentage of failed continuing education (CE) audits. Ms. Walker replied that the information will be included when the Board resumes the CE audits.

Public Comment: Victor Tong, D.C. brought up an issue regarding the change in video conference requirements starting in January 2022, and opined there seems to be some potential violations of the Americans with Disabilities Act concerning people with medical conditions who cannot attend live seminars. He suggested this might be something that the Board will need to discuss, find a solution, and permanently change the regulation.

Marcus Strutz, D.C. provided statistics on a survey in light of the fact that the DCA is terminating the CE internet-based waiver at the end of the December 2021. He stated 99% of the chiropractors surveyed would like to have live requirements to be done in person or via internet-based Zoom, 97% think technique should have the option of being taught via Zoom as well, and 77% have legitimate concerns about going back to live seminars in January 2022 due to COVID. He requested to put this item on the agenda for the December 16, 2021 Board meeting, expedite the approval of internet-based CE as a permanent option, and ask DCA to immediately reinstate the current waiver.

Vote: 3-0 (Dr. Paris-AYE, Dr. Adams-AYE, and Mr. Sweet-AYE).

Motion: Carried.

3. Review, Discussion, and Possible Action Regarding the Expert Witness Recruitment and Selection Process

Ms. Walker provided an update on the Board's expert witness program and explained for the past few years, the Committee has worked with staff to enhance the selection process, including the criteria, standards, training materials, and application. She indicated staff is requesting the Board's authorization to initiate the recruitment process for additional experts for the Enforcement Program and shared a proposed timeline for the recruitment efforts.

Dr. Adams commended the staff on their work in improving the expert witness program. Dr. Paris concurred with Dr. Adams and asked if staff is considering having an annual recruitment calendar with ongoing recruitments. Mr. Puleo agreed that the Board should conduct this recruitment annually and explained that videoconference technology will allow the interview portion of the process to be conducted more frequently or as needed when seeking an expert with a particular specialty or expertise.

Dr. Adams asked if there is a waiting period for prior Board members before they are eligible to be utilized for expert consultation. Mr. Puleo replied that he does not believe there is a waiting period. Mr. Hurtado disagreed and stated he will look into the issue and respond at the next Board meeting.

Mr. Sweet asked if this differs from how the Board recruited experts in the past. Mr. Puleo explained in the past, the Board had periodic recruitments and staff would review and screen applications and schedule trainings. He stated anyone who attended the training was then eligible to serve as an expert, but now the Committee has developed a more robust screening process, including a written exercise and an interview with Committee members.

Dr. Paris asked if DCA may produce some standardized interview questions through their expert witness program that is currently on hold. Ms. Walker stated she does not

recall interview questions being one of the items that was included in the program. She shared the idea was to develop standardized training materials and a guidebook.

Motion: Dr. Paris moved to recommend to the Board that they authorize staff to initiate the recruitment process for subject matter experts for the Board's Enforcement Program in January 2022.

Second: Dr. Adams seconded the motion.

Public Comment: Philip Rake, D.C. stated he is aware of some problems in the past with deputy attorney generals being unsatisfied with some of the experts' lack of knowledge of the terminology and the law pertaining to specific definitions like negligence and incompetence, and he offered his services to help the Board write certain questions or examples. He stated the Attorney General's office expects sharp expert witnesses because opposing defense attorneys have eviscerated some of the Board's experts in the past at administrative hearings.

Sarb Dhesi, D.C. concurred with Dr. Rake and added he thinks a feedback system would be ideal for the reviewers. He shared the training provides some guidance, but ongoing feedback and the ability to ask questions, even to other experts as a reference, would be ideal and can be made part of the training program. He stated it would go much further in developing the experts, so they do not get into situations where they are not making the right comments or not looking at the right laws or regulations.

Lewis Meltz, D.C. asked if there will be an initial screening process that would identify the qualifications, credibility, and competence of those people that are interested and what criteria will be used to initially screen those that may be unqualified or ill-equipped.

Dr. Adams asked if there is a provision that our experts should have advanced certification in specialty areas, such as orthopedics, neurology, or pediatrics. Mr. Puleo explained the applicants are asked to identify any specialties or advanced certifications during the recruitment process and staff is seeking a diverse pool of experts so staff can select an appropriate expert for each type of case.

Dr. Paris suggested including information regarding specific needs or areas of practice during the recruitment announcement. Mr. Puleo concurred.

Vote: 3-0 (Dr. Paris-AYE, Dr. Adams-AYE, and Mr. Sweet-AYE).

Motion: Carried.

4. Review, Discussion, and Possible Action Regarding the Record Keeping Requirements for Chiropractic Patient Records (California Code of Regulations, Title 16, Section 318)

Ms. Walker explained the Board's current record keeping regulation outlines the minimum requirements for documenting and maintaining chiropractic patient records; however, it does not specify the necessary documentation for the patient history, complaint, diagnosis/analysis, and treatment, and it does not differentiate between an initial patient encounter and an established patient visit. She shared as a result, the Board's Enforcement Program must often rely on expert opinions regarding the standard of care to support inadequate record keeping violations. She stated staff included a copy of comparable regulations from Colorado and Texas for reference and asked the Committee to discuss whether it may be appropriate to develop language to amend California Code of Regulations (CCR), title 16, section 318.

Dr. Paris offered his support and suggested reviewing the Centers for Medicare and Medicaid Services (CMS) guidelines for coding and reporting of evaluation and management services. He also suggested utilizing those guidelines as a baseline for documentation requirements. Mr. Puleo explained staff will need to rely heavily on the expertise of the licensee Board members in evaluating the appropriate requirements for documenting the initial and follow-up patient visits. He suggested making the regulation as specific as possible, so the expectations are clear to licensees.

Mr. Hurtado recommended the Committee direct staff to work with the Board's regulatory counsel on any amendments to CCR, title 16, section 318, before proposed language is presented to the full Board.

Dr. Adams agreed with the discussion and shared the Colorado and Texas regulations are very clear. He also stated the SOAP note format is not currently codified even though it is taught in all of the chiropractic colleges. Dr. Paris commented that he does not think SOAP notes should be mandated in the regulation and shared that he prefers the Texas regulatory language because it is broad and comprehensive, and would work well to ensure public protection.

Public Comment: Dr. Rake stated this is a great topic and the requirements for record keeping are outdated and need to be updated. He shared these are the issues he is up against as an expert. He stated he has not reviewed the Texas requirements for record keeping and opined SOAP notes are the standard of care but not codified.

Brian Killeen, D.C. agreed with Dr. Rake and Dr. Adams, and stated this whole process needs to be revamped. He shared he has done work for the Board for a number of years, and there are defense experts who appear at Board administrative hearings and testify that if it is not codified, it is okay. He also stated he feels there needs to be a distinction between the standard of care and minimum levels of competency.

5. Review, Discussion, and Possible Action Regarding Proposed Statutory Language to Amend Business and Professions Code Section 1007, subdivision (c) - Specified Exemptions to the Patient Notification Requirement for Licensees Placed on Probation by the Board

Ms. Walker explained Senate Bill 1448 (Hill, Chapter 570, Statutes of 2018), known as the Patient's Right to Know Act of 2018, added Business and Professions Code (BPC) section 1007, which requires licensees placed on probation by the Board on or after July 1, 2019, to provide a separate disclosure to their patients notifying them of their probation status. She stated BPC section 1007, subdivision (c), specifies the exemptions to this notification requirement; however, some of these exemptions are not applicable to doctors of chiropractic or can be misused to avoid making the notification. She shared staff prepared proposed language to amend BPC section 1007 for the Committee's review and discussion, and suggested including this proposal in the New Issues section of the Board's Sunset Review Report to the Legislature.

Dr. Paris suggested discussing situations where this disclosure would not be possible or if it is even reasonable to have any exceptions to the requirement. He acknowledged there are chiropractors embedded in emergency rooms and that could be defined. He also suggested discussing and defining the situation where a licensee does not have a direct treatment relationship with the patient, as his impression is that the intent is for licensees conducting evaluations, such as QME, where there is no anticipation of providing treatment; instead, they are performing an evaluation and writing a report.

Ms. Walker provided an example of a group practice with multiple chiropractors each with their own patient pools – if only one of the chiropractors is on probation, the other chiropractors' patients would not need to be notified of the probation status because there is no treatment relationship. Mr. Puleo opined it would be a matter of if the treatment is immediately necessary and the disclosure would be impossible in those circumstances.

Dr. Adams asked for clarification of when the licensee on probation would not be required to notify the patient. Mr. Puleo responded that he thinks the exemptions are not clear, but the licensee should notify the patient they will be treating even if the person is not their patient. Dr. Adams added he believes a group setting scenario is more common than a patient being incapacitated and unable to be informed.

Public Comment: A caller identified as Nick asked to discuss the importance of the CE requirements in hopes it could be placed on the agenda for the next meeting.

Motion: Dr. Paris moved to recommend to the Board to include the proposal to amend Business and Professions Code section 1007 in the New Issues Section of the Board's Sunset Review Report.

Second: Mr. Sweet seconded the motion.

Public Comment: None.

Vote: 3-0 (Dr. Paris-AYE, Dr. Adams-AYE, and Mr. Sweet-AYE).

Motion: Carried.

6. Review, Discussion, and Possible Action regarding:

A. Consumer Protection Enforcement Initiative (CPEI)

Ms. Walker updated the Committee on the status of the CPEI regulation package and shared that staff recommends dividing the package into separate portions grouped by general topic to expeditiously move them forward.

Dr. Paris expressed his support for the plan. Mr. Sweet agreed with Dr. Paris.

Motion: Dr. Paris moved to approve staff's plan to develop and update the proposed language for each of the CPEI regulations and present those to the Committee for review and discussion at a future meeting.

Second: Mr. Sweet seconded the motion.

Public Comment: None.

Vote: 3-0 (Dr. Paris-AYE, Dr. Adams-AYE, and Mr. Sweet-AYE).

Motion: Carried.

B. The Board's *Disciplinary Guidelines and Model Disciplinary Orders* and Implementation of the Uniform Standards for Substance Abusing Licensees (California Code of Regulations, Title 16, Section 384)

Ms. Walker explained the Board has been working on updates to the *Disciplinary Guidelines and Model Disciplinary Orders* and the implementation of the Uniform Standards for Substance Abusing Licensees. She stated the Board previously voted on "trigger" language for the application of the Uniform Standards and selected the option of finding evidence establishing that the respondent is a substance-abusing licensee after providing them with notice and conducting a hearing. She shared additional work must be done on the proposed changes to the disciplinary guidelines and staff will bring suggestions to the Committee for review and discussion at a future meeting.

Public Comment: None.

7. Public Comment for Items Not on the Agenda

Dr. Strutz stated CE providers and about 8,000 licensees have communicated to him and he is just acting as the spokesperson on their behalf. He shared they are requesting that this item be placed on the agenda of the next meeting and that they be provided with a longer period of time to talk, such as five to 10 minutes, so they can go in-depth. He further stated he wrote a letter to Mr. Puleo and believes it was shared with the Board members with hundreds of testimonials regarding attendance issues and lawsuit concerns. He stated the Board is having teleconference meetings due to COVID but licensees must go back to live seminars in January 2022 where they have a high chance of getting sick. He reiterated his request for the Board to place this item on the agenda of the next meeting and ask DCA to immediately reinstate the current waiver.

A caller identified as Vijay stated she hopes the Board would consider continuing to allow virtual seminars for CE requirements.

Nick Campos, D.C. wanted to reiterate what Dr. Strutz shared with the Board and stated the issue is of importance for the reasons Dr. Strutz stated and provided in his written report, so hopefully the item is placed on the agenda of the next meeting.

Cliff Tao, D.C. echoed the same sentiment and requested that the CE issue be placed on the agenda of the next meeting out of concerns for public safety.

8. Future Agenda Items

Dr. Paris requested a future agenda item for discussion and feedback on the expert witness program from the public and licensees.

Public Comment: Dr. Meltz reiterated Dr. Rake's comments and requested that the Board utilize those who previously served as experts and have successfully completed cases during the evaluation process.

9. Adjournment

Dr. Paris adjourned the meeting at 10:25 a.m.