



## **NOTICE OF TELECONFERENCE BOARD MEETING**

### **Board Members**

David Paris, D.C., Chair  
Laurence Adams, D.C., Vice Chair  
Rafael Sweet, Secretary  
Janette N.V. Cruz  
Pamela Daniels, D.C.  
Dionne McClain, D.C.

**The Board of Chiropractic Examiners (Board) will meet by teleconference on:**

**Tuesday, March 22, 2022**  
**12:00 p.m. to 2:00 p.m.**  
(or until completion of business)

**The Board may take action on any agenda item.**

**Note:** Pursuant to the statutory provisions of Government Code section 11133 and Executive Order N-1-22, neither a public location nor teleconference locations are provided. Due to potential technical difficulties or time constraints, members of the public may also submit written comments to the Board on any agenda item by Friday, March 18, 2022. Written comments should be directed to [chiro.info@dca.ca.gov](mailto:chiro.info@dca.ca.gov) for Board consideration.

**Important Notice to the Public:** The Board will hold a public meeting via Webex Events. To access and participate in the meeting, please click on, or copy and paste into a URL field, the link below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=m7468bc768a0c0b595a203ac2e8e94e56>

### **If joining using the link above**

Event number: 2491 004 3539  
Event password: BCE03222022

### **If joining by phone**

+1-415-655-0001 US Toll  
Access code: 249 100 43539  
Passcode: 22303222

Instructions to connect to the meeting can be found at the end of this agenda.

## **AGENDA**

- 1. Open Session – Call to Order / Roll Call / Establishment of a Quorum**
- 2. Update on Board's March 7, 2022 Joint Sunset Review Oversight Hearing and Review, Discussion, and Possible Action on Board's Response to Issues Identified in the [Sunset Review Background Paper](#) and During the Hearing**

### 3. **Public Comment for Items Not on the Agenda**

Note: Members of the public may offer public comment for items not on the agenda. However, 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).]

### 4. **Future Agenda Items**

Note: Members of the Board and the public may submit proposed agenda items for a future Board meeting. However, the Board may not discuss or take action on any proposed matter except to decide whether to place the matter on the agenda of a future meeting. [Government Code Section 11125.]

### 5. **Adjournment**

This agenda can be found on the Board's website at [www.chiro.ca.gov](http://www.chiro.ca.gov). The time and order of agenda items are subject to change at the discretion of the Board Chair and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

The Board plans to webcast this meeting. To view the webcast, please visit <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot be guaranteed due to limitations on resources or technical difficulties. The meeting will not be canceled if webcast is not available. Meeting adjournment may not be webcast if adjournment is the only item that occurs after a closed session.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to it taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board Chair may, at their discretion, apportion available time among those who wish to speak. Members of the public will not be permitted to yield their allotted time to other members of the public to make comments. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125 and 11125.7(a)).

This meeting is being held via Webex Events. The meeting is accessible to individuals with disabilities. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at:

**Telephone:** (916) 263-5355

**Email:** [chiro.info@dca.ca.gov](mailto:chiro.info@dca.ca.gov)

**Telecommunications Relay Service:** Dial 711

**Mailing Address:**

Board of Chiropractic Examiners

1625 N. Market Blvd., Suite N-327

Sacramento, CA 95834

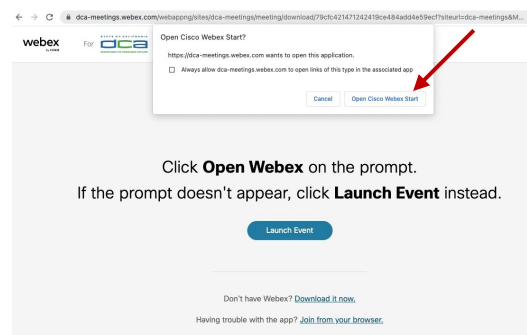
Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

### If joining using the meeting link

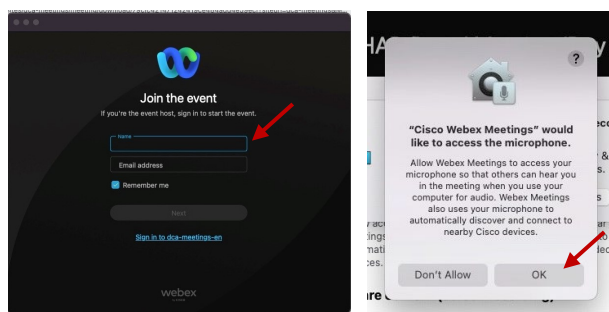
1 Click on the meeting link. This can be found in the meeting notice you received.

2 If you have not previously used Webex on your device, your web browser may ask if you want to open Webex. Click “Open Cisco Webex Start” or “Open Webex”, whichever option is presented.

DO NOT click “Join from your browser”, as you will not be able to participate during the meeting.



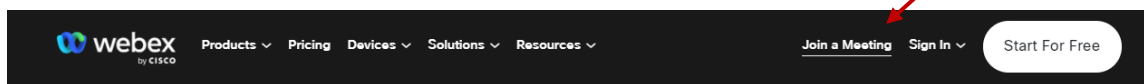
3 Enter your name and email address. Click “Join as a guest”. Accept any request for permission to use your microphone and/or camera.



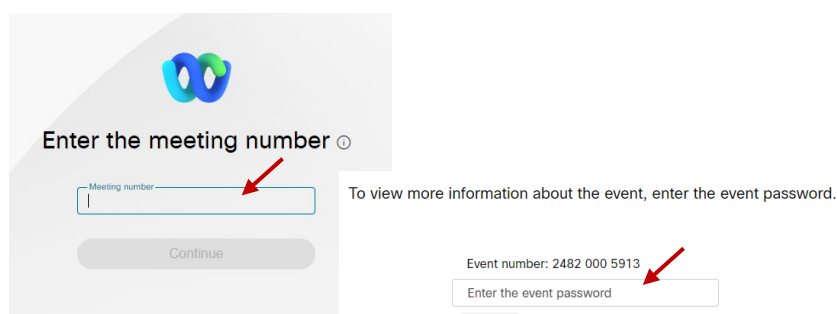
OR

### If joining from Webex.com

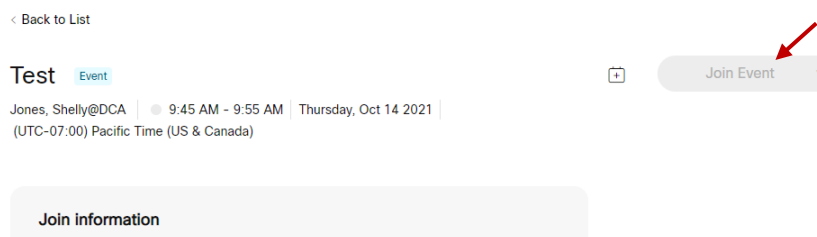
1 Click on “Join a Meeting” at the top of the Webex window.



2 Enter the meeting/event number and click “Continue”. Enter the event password and click “OK”. This can be found in the meeting notice you received.



3 The meeting information will be displayed. Click “Join Event”.



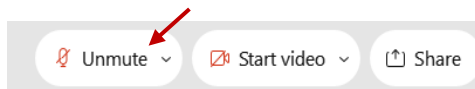
OR

### Connect via telephone:

You may also join the meeting by calling in using the phone number, access code, and passcode provided in the meeting notice.

### Microphone

Microphone control (mute/unmute button) is located on the command row.

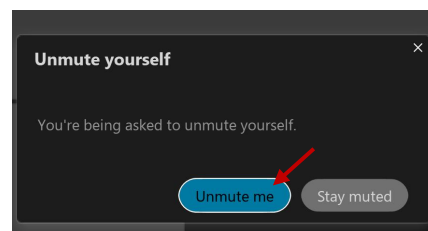


Green microphone = Unmuted: People in the meeting can hear you.



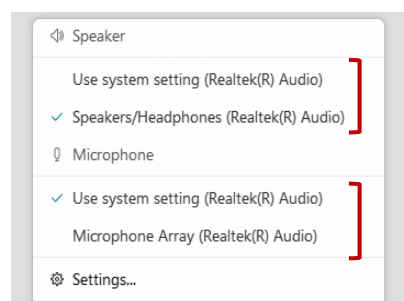
Red microphone = Muted: No one in the meeting can hear you.

*Note: Only panelists can mute/unmute their own microphones. Attendees will remain muted unless the moderator enables their microphone at which time the attendee will be provided the ability to unmute their microphone by clicking on “Unmute Me”.*



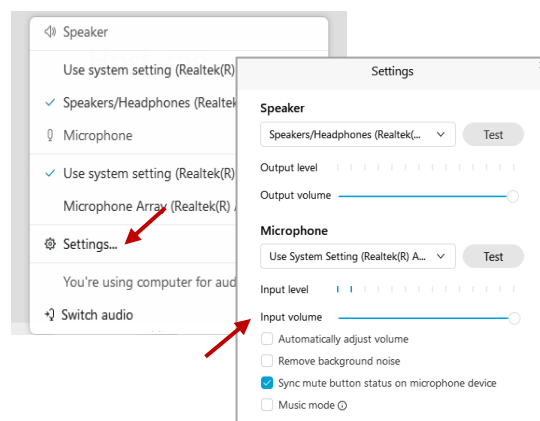
### If you cannot hear or be heard

- 1 Click on the bottom facing arrow located on the Mute/Unmute button.
- 2 From the pop-up window, select a different:
  - Microphone option if participants can't hear you.
  - Speaker option if you can't hear participants.



### If your microphone volume is too low or too high

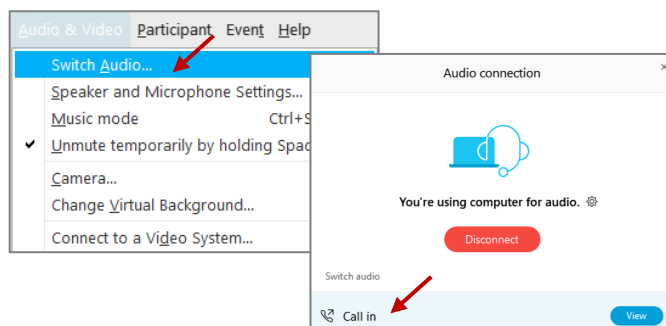
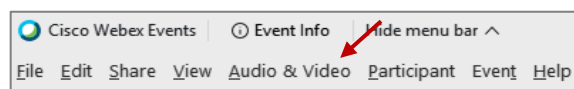
- 1 Locate the command row – click on the bottom facing arrow located on the Mute/Unmute button.
- 2 From the pop-up window:
  - Click on “Settings...”:
  - Drag the “Input Volume” located under microphone settings to adjust your volume.



### Audio Connectivity Issues

If you are connected by computer or tablet and you have audio issues or no microphone/speakers, you can link your phone through webex. Your phone will then become your audio source during the meeting.

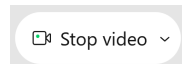
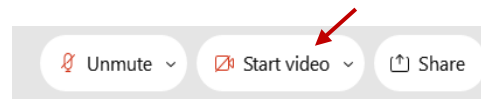
- 1 Click on “Audio & Video” from the menu bar.
- 2 Select “Switch Audio” from the drop-down menu.
- 3 Select the “Call In” option and following the directions.



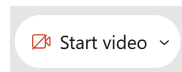
### Web Camera

Only panelists (e.g. staff, board members, presenters) can access the web camera feature.

Camera control (Start Video/Stop Video button) is located on the command row.



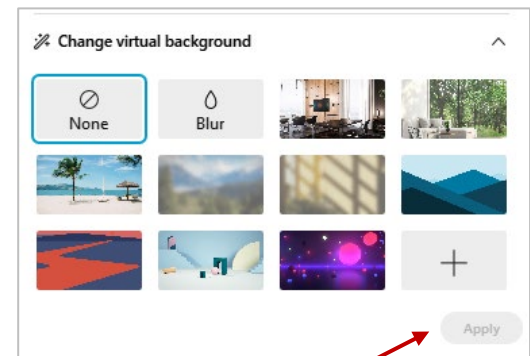
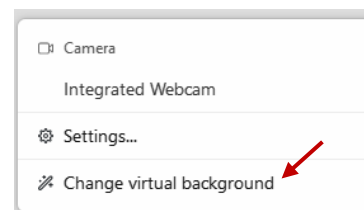
Green dot in camera = Camera is on: People in the meeting can see you.



Red dot in camera = Camera is off: No one in the meeting can see you.

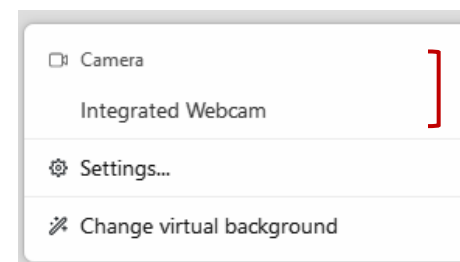
### Virtual Background

- 1 To access virtual backgrounds, click on the bottom facing arrow located on the video button.
- 2 Click on "Change Virtual Background".
- 3 From the pop-up window, click on any of the available images to display that image as your virtual background and click "Apply".



### If you cannot be seen

- 1 Locate the command row – click on the bottom facing arrow located on the video button.
- 2 From the pop-up window, select a different camera from the list.





## Agenda Item 2 March 22, 2022

### Update on Board's March 7, 2022 Joint Sunset Review Oversight Hearing and Review, Discussion, and Possible Action on Board's Response to Issues Identified in the [Sunset Review Background Paper](#) and During the Hearing

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#### **Purpose of the Item**

Board Chair David Paris, D.C. will provide the Board with an update on the Board's March 7, 2022 Joint Sunset Review Oversight Hearing and the Board will review and discuss the issues identified in the Sunset Review Background Paper and during the hearing.

#### **Action Requested**

The Board will be asked to discuss this matter and consider making a motion.

#### **Background**

##### **Board's Sunset Review Report**

The Board's [2021 Sunset Review Report](#) was submitted to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development on January 5, 2022.

##### **Joint Sunset Review Oversight Hearing**

On March 1, 2022, the Board received the Background Paper from Committee staff identifying issues and recommendations for the Board based on the Sunset Review Report.

On March 7, 2022, Dr. Paris and Acting Executive Officer Kristin Walker participated in the Joint Sunset Review Oversight Hearing held by the Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions. During the hearing, questions were raised regarding the:

1. Decreasing licensee population and whether there are indications of the trend stabilizing or reversing;
2. Outstanding loan owed to the Bureau of Automotive Repair based on a judgment against the Board and whether licensees should be responsible for repayment of that loan;
3. Reciprocity requirements for chiropractors seeking licensure in California from other states;

## **Update on BCE Sunset Hearing and Discussion of Issues Identified**

**March 22, 2022**

**Page 2**

4. Impact of the rate increase for legal services by the Attorney General's office on the Board's budget;
5. High noncompliance rate with the Board's continuing education requirements;
6. Spread of medical misinformation in the chiropractic community and whether the Board has sufficient enforcement authority to address violations;
7. Actions taken by the Board for unlicensed activity;
8. Contributions the Board made to the BreEZe program; and
9. Controls in place to limit legal expenses on disciplinary cases.

### **Written Response to Issues Identified**

The Board's written response to the issues identified in the Background Paper and during the hearing must be submitted to the Committees by **April 6, 2022**.

### **Staff Recommendation**

The Board should review and discuss the issues identified in the Background Paper and during the hearing, particularly the policy matters found in:

- Issue #1 (Board Composition)
- Issue #4 (Fund Condition and Fees)
- Issue #5 (Fee Increases and Barriers to Chiropractic Practice)
- Issue #6 (Reciprocal License Requirements)
- Issue #7 (CE)
- Issue #8 (Performance-Based Assessment of Licensee Competency)
- Issue #10 (Practice Violations)
- Issue #12 (Impacts of the COVID-19 Pandemic)
- Issue #13 (Technical Changes May Improve Effectiveness of BCE Operations)

Following this discussion, staff recommends the Board designate two members, such as the Board Chair and Vice Chair, to review and approve the final written response to the issues identified through Sunset Review on behalf of the Board.

### **Attachment**

- Background Paper for the California Board of Chiropractic Examiners for the March 7, 2022 Joint Sunset Review Oversight Hearing

# **BACKGROUND PAPER FOR The California Board of Chiropractic Examiners**

**Joint Sunset Review Oversight Hearing, March 7, 2022  
Senate Committee on Business, Professions, and Economic Development  
and Assembly Committee on Business and Professions**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS  
REGARDING CALIFORNIA BOARD OF CHIROPRACTIC  
EXAMINERS**

## **BRIEF OVERVIEW OF THE CALIFORNIA BOARD OF CHIROPRACTIC EXAMINERS**

### **History and Function of the California Board of Chiropractic Examiners**

The Board of Chiropractic Examiners (“BCE” or the Board) was created on December 21, 1922, through an initiative measure approved by the electors of California on November 7, 1922. BCE regulates the chiropractic profession in California, with its primary mission being that of consumer safety. The Board protects Californians from both licensed and unlicensed individuals who engage in the fraudulent, negligent, or incompetent practice of chiropractic. BCE oversees approximately 12,500 licensees from 18 chiropractic schools and colleges located throughout the United States and one in Canada. The BCE was last reviewed in 2017, and its last Sunset Review Report was completed in 2016.

Governed by a seven-member board appointed by the Governor, the Board is comprised of five licensed doctors of chiropractic and two members who represent the public. Board members serve four-year terms.

BCE is comprised of three units. The Administrative/Licensing Unit is responsible for license application and renewal processing, continuing education, administrative, and policy functions. The other two units within BCE, the Enforcement Unit (EU) and the Field Investigations Unit (FIU), are responsible for enforcement functions. The EU handles complaint intake, conducts administrative investigations, recommends case dispositions to the executive officer and/or enforcement manager, including those to be forwarded to the Attorney General for disciplinary action, and issues letters of admonishment and citations with fines. The EU also monitors licensees placed on probation due to prior disciplinary action. The EU refers approximately 25% of complaints received to the FIU. The FIU’s non-sworn investigators conduct field administrative investigations.

The Board has three standing committees. The Board Chair assigns two or three Board members to serve on each committee. Each committee selects a member to serve as chairperson. The chairperson coordinates the committee’s work, ensures progress toward BCE’s priorities, and presents reports at Board meetings.



### Licensing and Continuing Education Committee

This Committee proposes policies and standards regarding chiropractic colleges, doctors of chiropractic, satellite offices, corporation registration, and continuing education providers and courses.

### Enforcement and Scope of Practice Committee

This Committee proposes regulations, policies, and standards to ensure compliance with chiropractic laws and regulations. The Committee continuously seeks ways to improve BCE's Enforcement Program. The Committee also reviews and proposes positions on scope of practice issues.

### Government and Public Affairs Committee

This Committee proposes and reviews policies and procedures to address audit and Sunset Review deficiencies. It works directly with the Executive Officer and staff to monitor budget expenditures, trends and the Contingent Fund level. The Committee reviews and recommends positions on legislative bills that affect BCE and oversees all administrative issues regarding BCE operations. It also develops draft strategic plans and monitors BCE's progress in achieving its goals and objectives.

Since the last review, six new members were appointed to the Board. Governor Brown appointed David Paris, D.C. and Frank Ruffino, a public member. Governor Newsom appointed Laurence Adams, D.C. and Pamela J. Daniels, D.C., and public members Janette N.V. Cruz and Rafael Sweet. There is currently one vacancy on the Board for a professional member. In February 2022, the Board member terms expired for both Dionne McClain, D.C. and David Paris, D.C. Dr. McClain will continue to serve the Board during her one-year grace period and Dr. Paris has recently applied for reappointment to the Board. The Board is working with the DCA to select a candidate to fill Dr. McClain's position following her term's grace period and to fill the current vacancy.

BCE's former Executive Officer, Robert Puleo, recently retired effective December 30, 2021, after 31 years of state service. Mr. Puleo had served as executive officer since November 2009. Recruitment efforts are currently underway to search for and select a new BCE Executive Officer. Kristin Walker, previously the assistant executive officer, has moved into a new role as the Acting Executive Officer until a new Executive Officer is hired.

The following is a listing of the BCE Board members since the last sunset review:

<b><u>Board/Committee Member Roster</u></b>					
Member Name (Include Vacancies)	Year First Appointed	Year Re-appointed	Year Term Expires	Appointing Authority	Type (public or professional)
<b>Sergio Azzolino, D.C.</b> Sergio F. Azzolino has been the director at Azzolino Chiropractic Inc. since 1995. He served as faculty at Life Chiropractic College West from 1996 to 1999 and currently is an assistant professor of Clinical Neurology at the Carrick Institute for Graduate Studies. Dr. Azzolino earned a Doctor of Chiropractic degree from Life Chiropractic College West. He is a diplomate and Vice President of the American Chiropractic Neurology Board, diplomate in pain management through the	2012	2016	2020	Governor	Professional

<p>American Academy of Pain Management, a Fellow of the American College of Functional Neurology and Fellow of the American Board of Childhood Development Disorders. He serves on the editorial board of journal of Functional Neurology, Rehabilitation, and Ergonomics (FNRE). He was voted the Chiropractic Neurologist of the year in 1999 by the American Chiropractic Association Council on Neurology and Clinician of the year in 2010 at the International Conference of Functional Neurology. From 2008 -2010, Dr. Azzolino served as the Northern California Delegate to the American Chiropractic Association. He was recently accepted into the Harvard Medical School Global Clinical Research Scholar Training Program.</p>					
<p><b>Heather Dehn, D.C.</b>  Dr. Dehn is a graduate of Palmer College of Chiropractic in Davenport, Iowa and has been in private practice in Sacramento since 1995. Dr. Dehn was past president of the California Chiropractic Association, Sacramento District from 2004-2009. She also served on the Board of Directors for the California Chiropractic Association from 2009-2012. She received the California Chiropractic Association’s Distinguished Service Award in 2007. Dr. Dehn was an anatomy instructor for the Sacramento Office of Education’s Regional Occupation Program from 2000-2012. Dr. Dehn is a member of the American Chiropractic Association, the California Chiropractic Association and the International Chiropractic Pediatric Association.</p>	2012	2016	2020	Governor	Professional
<p><b>Julie Elginer, DrPH</b>  Dr. Elginer holds faculty appointments in two departments at University of California Los Angeles Fielding School of Public Health: Health Policy and Management and Community Health Sciences. She received the outstanding faculty teaching award from the Public Health Student Association in both 2015 and 2016. Elginer is also the founder of the Elginer Advocacy Group. Prior to joining the UCLA faculty, she spent over a decade in the biotechnology and pharmaceutical industry leading teams in various marketing, strategic planning, finance and managed market roles for Abbott Laboratories and Amgen. Elginer also served as adjunct faculty for the Advisory Board Company at the Johns Hopkins School of Nursing. She earned a Doctor of Public Health degree in health</p>	2012	2012	2016	Governor	Public

services from the University of California, Los Angeles, a Master of Business Administration degree in marketing and strategy from the University of Maryland and a Bachelors of Arts in accounting and business administration from Carthage College.					
<b>Frank Ruffino</b> Mr. Ruffino is the General Services Administrator at the Veterans Home of California-Chula Vista. He was Regional Administrative Officer at the California Department of Fish and Game, Community Partnership Manager at the Richard J. Donovan Correctional Facility in San Diego, and has served in multiple positions at the California Department of Corrections and Rehabilitation from 1985 to 2000. Ruffino serves as President of the Association of California State Supervisors and on the board of the California State Employees Association. Additionally, he has served as a member of the City of Chula Vista Civil Service Commission and the Coalinga City Planning Commission.	2012	2016	2020	Governor	Public
<b>Corey Lichtman, D.C.</b> Dr. Lichtman worked as an associate with Reiley Chiropractic, Inc in Orange County from 2003-2005. Lichtman is the owner and president of Lichtman Chiropractic, Inc since 2006 and has been team chiropractor for the San Diego Sockers since 2009. He currently owns and operates Solana Beach Family and Sports Chiropractic in Solana Beach. Lichtman earned a Doctor of Chiropractic degree from the Southern California University of Health Sciences.	2014	2015	2019	Governor	Professional
<b>Dionne McClain, D.C.</b> Dionne McClain, of Los Angeles has been a chiropractor for McClain Sports and Wellness Inc. since 2000. She was an adjunct professor at Southern California University of Health Sciences from 2008 to 2014, a chiropractor and team consultant for the Los Angeles Avengers from 2000 to 2001 and held several positions in the University of Southern California Athletic Medicine Department from 1989 to 2005, including chiropractor, consultant and assistant athletic trainer. She is a member of the California Consortium on Health, Association for the Care of Elite and Professional Athletes, American Public Health Association, California Chiropractic Association and the American Chiropractic Association. McClain earned a Doctor of Chiropractic degree from the Los Angeles College of Chiropractic and a Master of	2014	2018	2022	Governor	Professional

Business Administration degree from the University of Phoenix.					
<b>John Roza, D.C.</b> John Roza, DC has been licensed to practice chiropractic care since 1988 and has been in private practice in Roseville, California for the past 28 years. Dr. Roza is the father of five children ranging between 17 and 30 years of age. He was appointed to the Board of Chiropractic Examiners in February 2014. He is a member of the California Chiropractic Association. Roza earned a Doctor of Chiropractic degree from the Pasadena College of Chiropractic.	2014	N/A	2018	Governor	Professional
<b>Thyonne Gordon, DrPH</b> Dr. Thyonne Gordon of Los Angeles is a social profit management expert, writer, and producer. Dr. Gordon, an adjunct professor at Antioch University in Los Angeles, has extensive experience in community youth development, sustainable business strategy, and nonprofit management. Dr. Gordon received her Ph.D. and M.A. in Human and Organization Development from Fielding Graduate University, an M.B.A. in Business Management from Pepperdine University, and a B.A. in Communications from Howard University.	2018*	N/A	2022	Governor	Public
<b>David Paris, D.C.</b> David Paris, of Redding, earned a Doctor of Chiropractic degree from Palmer College of Chiropractic in 2001. He was owner at Active Care Chiropractic from 2002 to 2009 in Redding. Paris was an emergency medical technician for Goodhew Ambulance from 1989 to 1990. He has worked in multiple multidisciplinary clinics including Redding Industrial and Occupational Health from 2003-2004, staff chiropractor Sutter Health at Work Medical Associates from 2003 to 2005, Anderson Walk-in clinic (Rural Health Clinic) from 2014 to 2018 and currently full-time at the Veteran's Healthcare Administration clinic in Redding since 2005. He has served on the Veterans Administration national chiropractic Field Advisory Committee (FAC). Paris has been a chiropractic consultant for State Compensation Insurance Fund from 2004 to 2006, chiropractic case manager at Professional Dynamics Corporation from 2004 to 2006, independent medical examiner for Exam Works Corporation since 2012 and file reviewer for Premier File Review LLC from 2018 to 2019. Paris was a qualified medical evaluator at the California Division of Workers' Compensation from 2002 to 2009	2018	N/A	2022	Governor	Professional

<p>and from 2011 to 2013. Paris completed the primary spine practitioner certification program at the University of Pittsburgh and is board certified with the American Chiropractic Rehabilitation Board (DACRB). Paris has multiple preceptorship academic affiliations via the Veterans Administration including adjunct clinical faculty at the University of Western States since 2014, adjunct clinical faculty at Palmer College of Chiropractic since 2009 and Parker University since 2020. He is a member of the Council on Chiropractic Education (CCE) Site Team Academy, serves on the Clinical Compass board (previously Chiropractic Clinical guidelines and Practice Parameters) since 2016. Paris has served multiple years on the executive committee of the California Chiropractic Association including past chair of the Governmental Affairs Committee. He is a current member of the California Chiropractic Association, American Chiropractic Association and the Foundation for Chiropractic Progress. More recently he is finishing a Masters Degree program in Clinical Neuroscience, anticipated graduation 2022.</p>					
<p><b>Laurence Adams, D.C.</b>  Dr. Laurence Adams DC, DACNB received his Doctor of Chiropractic degree from Life Chiropractic College-West in 1996 and his Post-Doctorate degree in Chiropractic Neurology in 1999. Dr. Adams has served as a Senior Examiner for the ACNB. Dr. Adams has served the chiropractic community over the years as VP and President of his local North Bay CCA and as a Key Doctor for his regional Assemblyman and Senator. He later served as the Region 7 Director on the Cal-Chiro Board before stepping down to accept his position on the BCE. During his time as Region 7 Director he served on the Membership and Governmental Affairs Committees. He also served on the Alumni Board at Life Chiropractic College-West. Dr. Adams is currently in private practice in Sonoma, Ca.</p>	2020	N/A	2024	Governor	Professional
<p><b>Rafael Sweet</b>  Rafael Contreras Sweet is a personal injury attorney based in Los Angeles. He founded Sweet Justice P.C., a law firm focused on advocating for the injured. He is featured in the Top 100 Lawyers Magazine for 2022, and is a member of the Consumer Attorneys Association of Los Angeles. Mr. Sweet previously served as a board member for</p>	2021	N/A	2024	Governor	Public

<p>Clinica Monsenor Romero, a health clinic providing quality affordable healthcare to underserved communities of Los Angeles. He earned a Juris Doctor degree from Loyola Law School and his undergraduate degree from University of California Los Angeles. Mr. Sweet was appointed to the Board of Chiropractic Examiners on March 2, 2021.</p>					
<p><b>Janette N.V. Cruz</b>  Janette N.V. Cruz of Sacramento held a variety of roles at CalPERS between 2006 to 2015 within their Health Benefits Division, Investment Office, and Human Resources. Cruz joined SMUD in 2015 and currently oversees SMUD’s Enterprise Metrics and facilitates the governance for their Enterprise Projects. Cruz’s professional &amp; community involvement includes: Sacramento Metro Edge Leadership Council; UC Davis Graduate School of Management Alumni Association Board; Sacramento SPCA External Committee; Nehemiah Emerging Leaders Program Senior Fellow, Class IX; BOLD Speaker Series, Speaker. Cruz was recognized by the Sacramento Business Journal as part of their 2020 40 Under 40 award. Janette received a Bachelor of Science from the University of California, Davis, College of Agriculture in Community and Regional Development, focused on Policy Planning and Organizational Development. Cruz also received a Master of Business Administration from the University of California, Davis, Graduate School of Management.</p>	2021	N/A	2024	Governor	Public
<p><b>Pamela J. Daniels, D.C.</b>  Pamela J. Daniels of El Granada, California has been in private practice in the San Jose area for over twenty years. She earned her Doctor of Chiropractic from Palmer College of Chiropractic West in 1997. Additionally, she obtained her Certified Chiropractic Sports Physician Degree from Palmer in 2004. She has completed extensive post-graduate work including a Diplomate from the American Chiropractic and Neurology Board from the Carrick Institute of Graduate Studies in 2011 and is a Fellow of the American Board of Brain Injury and Rehabilitation Program at the Carrick Institute. Dr. Daniels is currently enrolled in the Master of Science in Clinical Neuroscience Degree Program at the Carrick Institute and is due to graduate in May of 2022. She is a member of the</p>	2021	N/A	2024	Governor	Professional

California Chiropractic Association.					
<b>Vacancy</b>	2021**				

\*Appointed August 2018 and separated February 2019

\*\*Vacant since February 3, 2021

On December 1, 2021, BCE relocated from its downtown Sacramento office space to a suite within the Department of Consumer Affairs (“DCA” or the Department) headquarters building in Natomas. The office move resulted in a cost savings of approximately \$1,600 per month and provides BCE with convenient access to all DCA resources and services.

In order to modernize the board’s functions, the BCE has been collaborating with three other programs and the Department’s Office of Information Services on the development and implementation of a new application, licensing, and enforcement system known as “Connect”. Through four phased software releases from September 2020 through November 2021, BCE implemented these functions:

- Initial license applications;
- License renewals;
- Address changes and cancellations of satellite certificates;
- Online payment for all other paper applications;
- An online complaint form for consumers; and
- Complaint intake, investigation, cite and fine, discipline, and probation monitoring processes.

In addition, the Enforcement Committee worked with staff to enhance BCE’s expert witness selection criteria, standards, process, training materials, and application. Staff also compiled a sample case and obtained sample reports from three experts, and plans to use this information to create an expert report template and as a baseline to evaluate the writing samples that will be submitted by applicants. In January 2022, BCE began the recruitment process for additional expert witnesses for its Enforcement Program and plans to finalize the selections, execute contracts with selected applicants, and conduct a training session in spring 2022. To be considered for the expert witness program, applicants must have at least 10 years of licensed chiropractic experience, hold an active doctor of chiropractic license in California, be currently active in practicing chiropractic, have no criminal convictions or disciplinary actions against any professional license, and be considered highly knowledgeable in the practice, laws, regulations, and community standards for chiropractic in California.

The BCE’s new strategic plan is currently in development after encountering several delays. The Board typically completes a strategic plan every three years. In October 2016, the Board adopted its 2017-2019 Strategic Plan. Due to multiple Board member vacancies and the ongoing COVID-19 pandemic, which shifted resources from DCA’s Office of Strategic Organization, Leadership, and Individual Development (SOLID) to online meeting facilitation, BCE had to postpone the development of its 2020-2022 strategic plan. Now that the Board is almost fully appointed and SOLID’s strategic planning facilitation services have resumed, BCE plans to conduct its next strategic planning session in August 2022.

DCA boards and bureaus are required to ensure that examination programs being used in the California licensure process comply with psychometric and legal standards. BCE requested that DCA’s Office of Professional Examination Services (OPES) complete a comprehensive review of the National Board of Chiropractic Examiners (NBCE) examination program. The purpose of the OPES review was to

evaluate the suitability of the NBCE examinations for continued use in California. OPES received and reviewed documents provided by NBCE. The NBCE examination program consists of the following five examinations: Part I, Part II, Part III, Part IV, and Physiotherapy. OPES found the procedures used to establish and support the validity and defensibility of the NBCE examination program components meet professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing* (2014) and BPC section 139.

Several studies have been conducted by the Board to assess the function of Board and of chiropractic practice in the state of California:

#### Occupational Analysis of the Chiropractor Profession – March 2017

BCE, in collaboration with the Department's Office of Professional Examination Services (OPES), conducted an occupational analysis to identify critical job activities performed by California licensed chiropractors. The occupational analysis was part of BCE's comprehensive review of chiropractic practice in California. The purpose of the occupational analysis was to define practice for chiropractors in California in terms of actual job tasks that new licensees must be able to perform safely and competently at the time of licensure. The results of this occupational analysis provide a description of practice for the profession that can then be used as the basis for the California Chiropractic Law Examination.

#### BCE Fee Study – December 2021

In order to substantiate budget concerns and provide a factual basis for any future increase in fees charged to licensees, BCE contracted with Matrix Consulting Group to conduct a fee audit to assess the current fees charged by BCE and determine what the fees should be based upon the actual workload incurred by staff. Following their study of BCE, Matrix concluded that BCE is under-recovering its costs by approximately \$1.4 million and the majority of these costs relate to CE applications.

#### **Fiscal, Fund and Fee Analysis**

The BCE's annual budget is funded exclusively by the profession through licensing and other regulatory fees. The BCE does not receive any general fund monies and it is not continuously appropriated. The Department prepares BCE's annual budget for inclusion in the Governor's proposed budget and BCE's appropriation is part of the Budget Act. For FY 2021/22, BCE has a balance of \$2.4 million in reserves, projected revenue of \$4.5 million, and projected expenditures of \$4.9 million.

BCE's current budget is structurally imbalanced and BCE's expenditures continue to outpace the revenue received. Without an increase in revenue, BCE is projected to have a 0.7 month reserve balance at the end of FY 2022/23 and will become insolvent by FY 2023/24. To avoid insolvency, the BCE states that it will need to increase fees in FY 2022/23. In order to substantiate budget concerns and determine a factual basis for the increase in fees charged to licensees, BCE contracted with Matrix Consulting Group to conduct a fee analysis, assess the current fees charged, and determine what the fees should be based on actual workload and expenditures.



<b>Fund Condition</b>						
(Dollars in Thousands)	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Beginning Balance	2,022	2,161	2,086	2,364	2,168	1,402
Revenues and Transfers	3,726	3,962	4,659	4,662	4,268	4,086
<b>Total Revenue</b>	<b>\$3,726</b>	<b>\$3,962</b>	<b>\$4,659</b>	<b>\$4,662</b>	<b>\$4,518</b>	<b>\$4,336</b>
Budget Authority	4,218	4,328	5,086	5,046	4,522*	4,522**
Expenditures	4,217	3,669	4,038	4,772	5,034	5,170
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
<b>Fund Balance</b>	<b>\$1,285</b>	<b>\$2,151</b>	<b>\$2,364</b>	<b>\$2,168</b>	<b>\$1,402</b>	<b>\$318</b>
<b>Months in Reserve</b>	<b>3.9</b>	<b>5.9</b>	<b>5.9</b>	<b>5.2</b>	<b>3.3</b>	<b>0.7</b>

\* 2021-22 Budget Act; \*\* Currently still building the 2022-23 Governor's Budget

During the past four fiscal years, BCE has spent approximately \$7.5 million, or 47%, of its total expenditures on the Enforcement Program. BCE spent \$2 million, or 13%, on its Licensing Program, and \$3.1 million, or 20%, on administration costs. BCE also spent \$3.2 million, or 20%, on pro rata. In addition, on average, BCE's expenditures have been increasing annually at a rate of 10%.

Table 3 below provides a breakdown of expenditures for each of BCE's programs during the past four years.

<b>Expenditures by Program Component</b> (list dollars in thousands)								
	FY 2017/18		FY 2018/19		FY 2019/20		FY 2020/21	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$903	\$777	\$967	\$835	\$937	\$927	\$896	\$1,274
Examination	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Licensing	\$361	\$78	\$387	\$96	\$375	\$145	\$358	\$222
Administration *	\$595	\$98	\$632	\$120	\$621	\$182	\$593	\$278
DCA Pro Rata**	\$0	\$610	\$0	\$751	\$0	\$935	\$0	\$912
Diversion (if applicable)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTALS</b>	<b>\$ 1,859</b>	<b>\$ 1,563</b>	<b>\$1,986</b>	<b>\$1,802</b>	<b>\$1,933</b>	<b>\$2,189</b>	<b>\$1,847</b>	<b>\$ 2,686</b>
*Administration includes costs for executive staff, board, administrative support, and fiscal services.								
** Includes Division of Investigation internal affairs + enforcement costs.								

The BCE has contributed to the DCA BreEZe program since 2009. The BreEZe program was approved in 2009 and was intended to address deficiencies in DCA legacy systems. BCE was originally scheduled for Release 3 of the BreEZe system and contributed a total of approximately \$502,000 to

BreEZe development through FY 2017/18. After technical delays and issues with the BreEZe project, BCE and the other Release 3 boards and bureaus were eliminated from the project. As a result, BCE was reimbursed \$148,000 for the BreEZe program. A summary of BCE’s actual BreEZe expenditures can be found in the table below.

FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
\$3,674	\$11,274	\$62,212	\$4,827	\$96,308	\$48,922	\$47,859	\$125,751	\$101,212

BCE’s three license types – doctor of chiropractic license, satellite location certificate, and corporation certificate – expire on the last day of a licensee’s birth month and must be renewed annually. BCE’s fee authority can be found in Section 12 of the Chiropractic Initiative Act and CCR, title 16, section 370, and BCE’s current fee schedule is codified in BPC section 1006.5.

The annual renewal fee for BCE’s primary license type – doctor of chiropractic – has been increased three times in the last 10 years. AB 1996 (Hill, Chapter 539, Statutes of 2010) increased the annual renewal fee for this license from \$150 to \$250. SB 547 (Hill, Chapter 429, Statutes of 2017) temporarily raised the fee from \$250 to \$300 in 2018. Additionally, effective January 1, 2019, SB 1480 (Hill, Chapter 571, Statutes of 2018) increased the renewal fee from \$300 to \$313 and set the fees charged for other services provided by BCE.

<b>Table 4. Fee Schedule and Revenue</b> (list revenue dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	% of Total Revenue
Renewal Chiro License Fee	\$313.00	\$313.00	\$3,508,050.00	\$3,772,471.00	\$3,817,661.00	\$3,839,571.00	85.3%
Forfeiture Fee	\$313.00	\$313.00	\$31,700.00	\$36,937.00	\$39,751.00	\$71,364.00	1.5%
Renewal Satellite Certificate	\$31.00	\$31.00	\$15,245.00	\$49,650.00	\$66,526.00	\$93,372.00	2.07%
Renewal Corp Registration	\$31.00	\$31.00	\$12,680.00	\$22,816.00	\$33,945.00	\$45,787.00	1.01%
Application Fee	\$371.00	\$371.00	\$30,600.00	\$65,449.00	\$120,946.00	\$134,673.00	2.99%
Licensure Fee	\$186.00	\$186.00	\$31,500.00	\$45,478.00	\$52,452.00	\$61,752.00	1.37%
Corporation Application	\$186.00	\$186.00	\$8,600.00	\$15,546.00	\$19,158.00	\$23,064.00	0.5%
Reciprocity Application	\$371.00	\$371.00	\$250.00	\$596.00	\$371.00	\$742.00	0.016%
Referral Service Registration	\$557.00	\$557.00	\$582	\$0	\$0	\$0	0.00%
Continuing Education Provider Application	\$84.00	\$84.00	\$2,625.00	\$3,123.00	\$2,352.00	\$1,848.00	0.041%
Continuing Education Application	\$56.00	\$56.00	\$78,800.00	\$94,978.00	\$108,584.00	\$118,608.00	2.5%
Dup/Replacement License Fee	\$50.00	\$50.00	\$9,175.00	\$11,575.00	\$10,950.00	\$14,450.00	0.32%
Satellite Application Fee	\$62.00	\$62.00	\$7,195.00	\$33,182.00	\$69,750.00	\$73,904.00	1.6%

Fingerprint Reimbursements	\$49.00	\$49.00	\$2,450.00	\$2,989.00	\$1,813.00	\$2,009.00	0.04%
Miscellaneous	Varies	Varies	\$75.00	\$28.00	\$1,050.10	\$177.00	0.003%
Cost Recovery	Varies	Varies	\$58,963.00	\$116,277.00	\$59,360.00	\$65,323.00	1.4%
Dishonored Check Fee	\$25.00	\$25.00	\$675.00	\$900.00	\$950.00	\$575	0.008%
Cite and Fine	Various	Various	\$29,646.00	\$29,104.00	\$64,820.00	\$33,985.00	0.75%

BCE has not submitted any budget change proposals in the past four fiscal years. However, BCE staff reports they are examining the Board’s budget to determine if any budget change proposals will be necessary for FY 2023/2024.

**Staffing Levels**

Despite previously reported stable staffing levels, BCE reports that it is now experiencing staffing level challenges. BCE expressed difficulty to recruit and hire qualified staff for its vacant office technician, staff services analyst, associate governmental program analyst, and staff services manager positions. As a temporary solution to this issue, BCE hired seasonal clerks and retired annuitants to assist with performing key business functions. In addition, during this timeframe, BCE experienced a loss of key personnel, including the former assistant executive officer and a seasoned licensing and administration analyst, and reports difficulty in recruiting qualified replacements.

BCE staff participated in leadership development and training courses offered by the DCA, the California Department of Human Resources (CalHR), and the California Department of Rehabilitation (DOR). Trainings provided by DCA’s Strategic Organization, Leadership, and Individual Development (SOLID) Program are included in BCE’s pro rata expenditures. Over the past four fiscal years, BCE spent the following on training outside of SOLID:

- FY 2017/18: \$0
- FY 2018/19: \$6,885
- FY 2019/20: \$3,034
- FY 2020/21: \$1,000

**Licensing**

The Licensing and Continuing Education Committee proposes policies and standards regarding chiropractic colleges, doctors of chiropractic, satellite offices, corporation registration, and continuing education providers and courses. The licensing population has overall slightly decreased in the past four fiscal years. In the FY 2020/2021, BCE’s licensing population consisted of 12,579 licensed Doctors of Chiropractic (3 percent decrease from FY 2017/2018). In addition, in FY 2020/2021 there were 1,379 licensed chiropractic corporations (3 percent increase from FY 2017/2018), 4,194 satellite offices (3 percent decrease), and 31 referral services (9 percent decrease from 34 in FY 2017/2018). Over the last four years, the BCE reports receiving and approving between 272 and 341 new license applications per year, and between 12,197 and 12,427 renewal applications.

<b>Licensee Population</b>					
		<b>FY 2017/18</b>	<b>FY 2018/19</b>	<b>FY 2019/20</b>	<b>FY 2020/21</b>
Doctor of Chiropractic	Active <sup>1</sup>	13,075	12,943	12,771	12,579
	Out of State	847	828	803	794
	Out of Country	85	81	76	375
	Delinquent/Expired	1,076	1,156	1,265	1,404
	Retired Status <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	1,407	1,411	1,391	1,355
	Other <sup>2</sup>	N/A	N/A	N/A	N/A
Chiropractic Corporation	Active	1,338	1,371	1,397	1,379
	Out of State	0	1	1	0
	Out of Country	0	0	0	0
	Delinquent/Expired	1,172	1,209	1,259	1,363
	Retired Status <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	0	0	0	0
	Other	N/A	N/A	N/A	N/A
Satellite Office	Active	4,304	4,247	4,082	4,194
	Out of State	0	0	0	0
	Out of Country	0	0	0	0
	Delinquent/Expired	5,716	6,195	6,798	7,265
	Retired Status <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	18	17	17	18
	Other	N/A	N/A	N/A	N/A
Referral Service	Active	34	31	31	31
	Out of State	0	0	0	0
	Out of Country	0	0	0	0
	Delinquent/Expired	0	0	0	0
	Retired Status <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	0	0	0	0
	Other	N/A	N/A	N/A	N/A

Note: 'Out of State' and 'Out of Country' are two mutually exclusive categories. A licensee should not be counted in both.

To be licensed, an applicant must complete educational requirements, pass a national licensing examination as well as the California Jurisprudence Examination, and be cleared of any convictions through a criminal history background check. The BCE's licensing program is designed to ensure licenses or registrations are issued only to applicants who meet the minimum requirements for licensure as specified in the Act, through BCE's regulations and who have not committed acts that would be grounds for licensure denial.

BCE reports that it has no regulations mandating application processing timeframes. However, BCE set a target of three to five months to process new applications and is meeting these expectations with an average processing time of 2.5 months. Since the last review, BCE's average processing timeframe for applications has decreased by approximately one month due to efficiencies gained as a result of BCE's Business Modernization Project and the implementation of BCE's new application, licensing, and enforcement system, Connect.

<sup>1</sup> Active status is defined as able to practice. This includes licensees that are renewed, current, and active.

<sup>2</sup> Other is defined as a status type that does not allow practice in California, other than retired or inactive.

In the past four years, BCE has denied one license based on an applicant's criminal history that was determined to be substantially related to the qualifications, functions, or duties of a doctor of chiropractic. This license was denied in FY 2019/20 due to an applicant's 2017 felony conviction for Medicare fraud and the applicant was still on criminal probation at the time of application.

In order to verify information provided by the applicant, the BCE reviews the official pre-chiropractic hours form submitted directly from BCE-approved chiropractic colleges to ensure that all pre-chiropractic coursework has been completed prior to enrollment in chiropractic college. Additionally, the college registrar submits the Chiropractic College Certificate directly to BCE which certifies the number of hours completed by the applicant in each required educational subject.

BCE requires all applicants to submit fingerprints via Live Scan for a background check through the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). BCE also checks the National Board Practitioner Databank (NPDB) for any actions against reciprocal applicants. In addition, BCE requires all applicants to disclose disciplinary actions for all professional licenses they hold prior to issuing a license. BCE has not denied any licenses over the last four years based on an applicant's failure to disclose information on the application.

BCE previously started the promulgation of regulations containing provisions that would have required BCE to check NPDB and the Healthcare Integrity and Protection Data Bank prior to the issuance of a new license or renewal; however, the Department of Finance informed the BCE that it would not approve the proposed regulations because the cost of conducting the data bank checks would be \$46,391 initially, and \$90,350 ongoing, which cannot be absorbed within BCE's existing budget appropriation. As a result, BCE withdrew this provision from the Omnibus Consumer Protection Regulations package (now known as the Consumer Protection Enforcement Initiative [CPEI] regulations) and will pursue this authority in a separate regulation package if sufficient additional appropriation is approved.

For out-of-state applicants to obtain licensure, BCE provides reciprocity for candidates licensed in other states. The candidate must have graduated from a BCE-approved chiropractic college and completed the minimum number of hours and subjects as required by California law at the time the candidate's license was issued. The candidate must also have passed an equivalent examination in each of the subjects examined in California in the same year as the candidate was issued a license in the state from which they are applying. Additionally, they must have five years of chiropractic practice and hold a valid and up-to-date license from the state from which they are reciprocating, and the state from which they are licensed must offer reciprocal licensure to California chiropractors. BCE does not have the authority to grant reciprocal licensure to applicants who are licensed in another country.

The BCE asks applicants to identify if they have ever served in the United States military on their applications and expedites the processing of military veterans' license applications. However, the United States military does not currently offer education, training, or experience in the practice of chiropractic, therefore military education or training cannot be used towards meeting licensing requirements. Over the last four fiscal years, BCE waived renewal fees and/or continuing education requirements for eight applicants pursuant to BPC section 114.3, resulting in a total loss in revenue of \$4,069. BCE has expedited seven applications for licensure for military spouses pursuant to BPC section 115.5 over the past four fiscal years.

The examinations required for licensure as a doctor of chiropractic include Parts I through IV and Physiotherapy of the national examination administered by the National Board of Chiropractic Examiners (NBCE) and the California Chiropractic Law Examination (CCLE) that was developed by BCE and is offered through a testing vendor, PSI Services. These examinations are only offered in English. The passage rate for the CCLE has risen over the past four years from 68.8 percent to 87.4 percent. For the CCLE, 78.8% of applicants passed the examination on their first attempt and 80.2% passed a reexamination. The passage rate for the NBCE over the past four years remained consistent, with an 88.7% pass rate in FY 2017/2018 and an 88.6% pass rate in FY 2020/2021. Applicants passed the national examination during their first attempt at an average rate of 87.1% compared with an average pass rate of 81.0% for reexaminations.

BCE utilizes computer-based testing for its CCLE, which is available throughout the year in various locations throughout the United States. The NBCE national examination is not computer-based and is administered each year in the spring and fall at various locations throughout the United States, including three sites in California: Hayward, San Jose, and Whittier.

### **School Approvals**

BCE regulations define the requirements needed to approve schools. Schools need to demonstrate that they meet the following requirements: supervision, financial management, records, catalog, calendar, faculty, student faculty ratio, faculty organization, scholastic regulations, curriculum, physical facilities, and quality of instruction. The Bureau for Private Postsecondary Education (BPPE) does not play a role in approving the BCE schools. BCE's regulation states that no school shall be approved until it has been inspected by the Council on Chiropractic Education (CCE), which is the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the Doctor of Chiropractic degree.

There are 19 BCE-approved chiropractic schools. BCE's regulation provides for reviews and inspections to be conducted by CCE. CCE has established requirements to inspect and review schools on an eight-year cycle for established schools and four-year cycle for schools gaining initial accreditations. Typically, established school site visits occur at the four-year mark, halfway through the cycle.

A chiropractic school cannot be approved until it has been in operation for at least two years, meets all regulatory requirements, and is inspected by CCE. Currently, CCE only recognizes chiropractic colleges within the United States and does not grant approval to international schools.

### **Continuing Education (CE)**

BCE's continuing education (CE) requirements (CCR, title 16, section 361) state that in order to renew the doctor of chiropractic license in active status, licensees must complete 24 hours of CE, including:

- 2 hour minimum on Ethics and Law
- 4 hour in any one of, or a combination of, the following subject areas:
  - History Taking and Physical Examination Procedures
  - Chiropractic Adjustive Techniques or Chiropractic Manipulation Techniques
  - Proper and Ethical Billing and Coding.

The remaining 18 hours of CE may be met by taking BCE-approved courses in any subject areas and/or completing courses that are approved by the California Department of Industrial Relations, Division of Workers Compensation, or any healing arts board or bureau within Division 2 of the Business and Professions Code, or approved by any organization authorized to approve CE by any healing arts board or bureau.

In addition, licensees may only complete a maximum of 12 hours of CE through distance learning (i.e., computer, Internet, digital video, etc.). However, due to the COVID-19 pandemic, the DCA recently approved a request to extend a waiver of this 12 hour cap CE through distance learning through March 31, 2022. This allows for licensees to complete more continuing education training through distance learning, as long as the distance learning instruction consists of Internet- or web-based instruction that allows participants to concurrently interact with instructors or presenters while they observe the training.

BCE verifies completion of CE through random audits of license renewal applications. BCE sends notices to the licensees who have been randomly selected for the CE audit requesting that they provide BCE with a copy of their certificates of completion for the coursework they completed in the previous renewal period. Licensees who fail to complete the required CE or fail to respond to the audit are referred to BCE’s Enforcement Unit for appropriate action. In addition, the online renewal application available to licensees through BCE’s Connect system allows licensees to upload their CE certificates of completion and attach them to their application for staff review. In the event a licensee fails a CE audit, BCE’s Enforcement Unit typically issues letters of admonishment or citations and fines to licensees who fail CE audits. However, egregious cases, such as those involving the falsification of documentation or repeat offenders, are referred to the Attorney General’s office for disciplinary action.

In fiscal years 2017/18 through 2019/20, BCE conducted a total of 3,456 CE audits and found 531 cases, or 15.4 percent, where licensees had failed to comply with the annual CE requirement. BCE temporarily suspended its CE audits beginning in FY 2020/21 based on the CE waivers that were issued by the Department due to the ongoing COVID-19 pandemic. BCE plans to resume conducting CE audits in spring 2022.

<b>Fiscal Year</b>	<b>Audits Conducted</b>	<b>Failed Audits</b>
2017/18	694	93 (13.4%)
2018/19	1,669	181 (10.8%)
2019/20	1,093	257 (23.5%)
2020/21	0	N/A

BCE is not currently able to receive primary source verification of CE completion through the Department’s cloud or any other resource. However, as part of BCE’s Business Modernization Project, BCE plans to integrate primary source verification into the CE provider dashboard. This functionality will allow BCE-approved CE providers to upload course completion information directly into BCE’s Connect system and automatically integrate that data into licensees’ records in the system.

CE provider applications are reviewed for completion and approved by staff. Approved provider applications are then ratified by the Board at its next meeting. During the past four fiscal years, BCE received 105 CE provider applications and approved/ratified 108 applications. In this timeframe, BCE received a total of 6,701 CE course applications and approved 7,273 applications (including pending applications from prior FY 2016/17).

<b>Fiscal Year</b>	<b>CE Provider Applications Received</b>	<b>CE Provider Applications Approved</b>
2017/18	35	34
2018/19	22	23
2019/20	28	32
2020/21	20	19

<b>Fiscal Year</b>	<b>CE Course Applications Received</b>	<b>CE Course Applications Approved</b>
2017/18	1,576	1,544
2018/19	1,017	1,719
2019/20	1,939	2,035
2020/21	2,169	1,975

BCE audits CE providers randomly and in response to complaints. As part of the audit process, an expert reviewer or a designee appointed by BCE inspects and audits CE provider and course documentation, attends the course, and prepares a report detailing their findings. If any violations of BCE’s regulations are found through the audit, the CE provider is educated on BCE’s regulations and requirements. In addition, the CE provider and/or course approval may be withdrawn by BCE.

The BCE reports that it has not discussed moving toward performance-based assessments of licensees’ continuing competence in lieu of CE coursework requirements. However, the Licensing and Continuing Education Committee is developing proposed changes to the CE regulations to align the mandatory course categories with the core competencies necessary for a doctor of chiropractic to safely practice in California.

### **Enforcement**

BCE’s target cycle time for complaint intake is 10 days from receipt of a complaint to assignment for investigation. For investigations that do not result in a referral to the Attorney General’s office for disciplinary action, BCE previously set a target of 120 days from receipt of the complaint to closure of the case. However, during this reporting period, BCE’s average cycle time for this metric is 215 days. BCE states that some of the delays in closing cases may be caused by factors such as tracking licensee arrests through the prosecution process, difficulties in obtaining documents and evidence from licensees, or difficulties in obtaining cooperation from complainants and witnesses during an investigation.

BCE’s target cycle time for discipline is 540 days from receipt of the complaint through the effective date of the disciplinary action. BCE has been unable to meet this target during this reporting period. The Board posits that factors that may contribute to this delay include the amount of time it takes for licensee arrests to eventually result in convictions, hearing scheduling with the Office of Administrative Hearings, licensee requests for hearing continuances, and witness availability for hearings. BCE management is closely monitoring the status of pending disciplinary cases.

The number of complaints received annually by BCE has been comparable to the last review, with the exception of FY 2020/21, when BCE only received a total of 474 complaints. This reduction in



workload may be caused by a temporary decrease in patient visits to chiropractic offices and BCE’s suspension of continuing education audits due to the COVID-19 pandemic.

Since the last review, the number of disciplinary actions taken against licensees has decreased by approximately 32%, but the number of pending disciplinary cases has increased 23%. BCE believes these changes are primarily due to delays in prosecuting criminal cases and holding administrative hearings as a result of the ongoing COVID-19 pandemic.

The Board’s Enforcement Unit typically receives consumer complaints with allegations of unprofessional conduct, negligence, fraud, sexual misconduct, inaccurate billings, and failure to provide records upon request.

The Enforcement Unit also initiates internal complaints against licensees based on failed continuing education audits, arrests, convictions, discipline by another agency, and malpractice settlement notifications.

<u>Enforcement Statistics</u>			
	<b>FY 2018/19</b>	<b>FY 2019/20</b>	<b>FY 2020/21</b>
<b>COMPLAINTS</b>			
Intake			
Received	563	739	415
Closed without Referral for Investigation	0	0	0
Referred to INV	597	755	417
Pending (close of FY)	20	4	2
Conviction / Arrest			
CONV Received	79	46	59
CONV Closed Without Referral for Investigation	0	0	0
CONV Referred to INV	79	49	59
CONV Pending (close of FY)	3	0	0
Source of Complaint <sup>3</sup>			
Public	254	274	275
Licensee/Professional Groups	15	53	22
Governmental Agencies	20	34	18
Internal	339	403	127
Other	0	0	0
Anonymous	14	21	32
Average Time to Refer for Investigation (from receipt of complaint / conviction to referral for investigation)	19	7	9
Average Time to Closure (from receipt of complaint / conviction to closure at intake)	N/A	N/A	N/A
Average Time at Intake (from receipt of complaint / conviction to closure for referral for investigation)	19	7	9
<b>INVESTIGATION</b>			
Desk Investigations			
Opened	557	690	381

<sup>3</sup> Source of complaint refers to complaints and convictions received. The summation of intake and convictions should match the total of source of complaint.

Closed	256	714	427
Average days to close (from assignment to investigation closure)	169	144	248
Pending (close of FY)	439	415	370
<b>Non-Sworn Investigation</b>			
Opened	118	114	94
Closed	70	82	110
Average days to close (from assignment to investigation closure)	364	394	642
Pending (close of FY)	116	148	131
<b>Sworn Investigation</b>			
Opened	1	0	1
Closed	7	6	22
Average days to close (from assignment to investigation closure)	541	993	1194
Pending (close of FY)	37	31	10
<b>All investigations<sup>4</sup></b>			
Opened	676	804	476
Closed	333	802	559
Average days for all investigation outcomes (from start investigation to investigation closure or referral for prosecution)	218	176	363
Average days for investigation closures (from start investigation to investigation closure)	192	168	299
Average days for investigation when referring for prosecution (from start investigation to referral prosecution)	504	381	650
Average days from receipt of complaint to investigation closure	238	183	372
Pending (close of FY)	592	594	511
<b>CITATION AND FINE</b>			
Citations Issued	28	111	34
Average Days to Complete (from complaint receipt / inspection conducted to citation issued)	326	258	545
Amount of Fines Assessed	\$25,200	\$71,850	\$48,250
Amount of Fines Reduced, Withdrawn, Dismissed	\$800	\$2,000	\$4,250
Amount Collected	\$29,104	\$64,820	\$35,635
<b>CRIMINAL ACTION</b>			
Referred for Criminal Prosecution	N/A	N/A	N/A
<b>DISCIPLINE</b>			
AG Cases Initiated (cases referred to the AG in that year)	27	34	61
AG Cases Pending Pre-Accusation (close of FY)	20	25	47
AG Cases Pending Post-Accusation (close of FY)	19	25	33
<b>DISCIPLINARY ACTIONS</b>			
Proposed Decision	9	2	2
Default Decision	6	2	4
Stipulations	26	8	18
Average Days to Complete After Accusation (from Accusation filed to closure of the case)	257	382	366
Average Days from Closure of Investigation to Imposing Formal Discipline	484	705	584
Average Days to Impose Discipline (from complaint receipt to final outcome)	754	1234	856
<b>PROBATION</b>			
Probations Completed	15	13	12
Probationers Pending (close of FY)	80	67	61
Probationers Told	5	5	6

<sup>4</sup> The summation of desk, non-sworn, and sworn investigations should match the total of all investigations.

Petitions to Revoke Probation / Accusation and Petition to Revoke Probation Filed	7	2	1
<b>SUBSTANCE ABUSING LICENSEES</b>			
Probationers Subject to Drug Testing	24	18	14
Drug Tests Ordered	371	259	178
Positive Drug Tests	34	4	9

<b>Enforcement Aging</b>						
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	Cases Closed	Average %
<b>Investigations (Average %)</b>						
Closed Within:						
90 Days	142	79	335	149	705	31.9%
91 - 180 Days	157	76	143	49	425	19.2%
181 - 1 Year	153	131	211	120	615	27.8%
1 - 2 Years	45	36	99	152	332	15.0%
2 - 3 Years	14	5	9	69	97	4.4%
Over 3 Years	6	6	5	20	37	1.7%
Total Investigation Cases Closed	517	333	802	559	2211	100%
<b>Attorney General Cases (Average %)</b>						
Closed Within:						
0 - 1 Year	5	5	0	7	17	14.0%
1 - 2 Years	3	8	1	3	15	12.4%
2 - 3 Years	18	23	5	13	59	48.8%
3 - 4 Years	4	6	1	3	14	11.6%
Over 4 Years	4	2	5	5	16	13.2%
Total Attorney General Cases Closed	34	44	12	31	121	100%

BCE’s complaint prioritization policy is consistent with DCA’s *Complaint Prioritization Guidelines for Health Care Agencies*. During the complaint intake process, cases are prioritized as “urgent”, “high”, or “routine”.

Examples of “urgent” cases include allegations of serious patient/consumer harm, injury, or death; mental or physical impairment with potential for public harm; practicing while under the influence of alcohol or drugs; sexual misconduct; and gross negligence or incompetence. The majority of patient complaints, allegations of unlicensed practice, and licensee arrest and conviction notifications are categorized as “high” priority. Cases involving failure to release patient records, general recordkeeping violations, and continuing education audits are categorized as “routine”.

BPC sections 801 and 802 require certain entities to report settlement amount over \$3,000 to the BCE. BPC section 803 requires courts to report judgments in excess of \$30,000.00. The BCE reports that is not aware of any problems receiving the required reports and receives them on a routine basis.

In addition, CCR, title 16, section 314 states it is the duty of every licensee to notify BCE of any violation of the Act or Board regulations so the Board may take appropriate disciplinary action.

The average dollar amount of settlements reported to BCE during the last four fiscal years is \$126,647.

	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Settlement Reports Received	18	16	10	16
Average Settlement Amount	\$70,692	\$130,281	\$168,520	\$159,792

During the past four years, 19 default decisions were issued, 76 cases were settled, and 16 cases resulted in an administrative hearing.

During the past four years, the Board settled 68.5% of disciplinary cases and 14.4% of cases resulted in a hearing. In addition, the Board issued default decisions in 17.1% of cases.

BCE does not have a statute of limitations. However, CCR, title 16, section 318 only requires licensees to maintain patient records for five years from the last treatment date. Therefore, when complaints are submitted over five years after the last treatment date, BCE is often limited in its ability to investigate the allegations, substantiate any violations, and take any action.

Section 15 of the Act and CCR, title 16, section 310.2 prohibit the unlicensed practice of chiropractic and the use of the titles “chiropractor” and “D.C.” by unlicensed individuals. BCE uses cite and fine authority to address routine violations of these provisions such as use of titles in advertising or licensees who practiced on an expired license. Of the 2,675 complaints the Board received from July 2017 through December 2021, 238 complaints (8.9%) contained allegations of unlicensed practice. However, the majority of these complaints were against licensees who continued practicing after their license expired due to a late renewal and were resolved by issuing a letter of admonishment or warning to the licensee. During this timeframe, the Board issued eight citations for the unlicensed advertising and/or practice of chiropractic. Egregious cases of unlicensed activity are referred to DCA’s Division of Investigation or local law enforcement to pursue criminal action against the individuals.

BCE has authority to issue citations containing an order to pay a fine between \$100 and \$5,000 and an order of abatement to licensees for any violation of the Act, Board regulations, or any laws governing the practice of chiropractic. BCE may also issue citations against unlicensed individuals who are acting in the capacity of a licensee and are not otherwise exempt from licensure.

BCE increased its maximum fine amount to the \$5,000 statutory limit in 2008. BCE is currently working on a regulatory package to amend CCR, title 16, sections 390.4 and 390.5 by adding the following required provisions from BPC section 125.9 to BCE’s citation system:

- If a hearing is not requested, payment of any fine shall not constitute an admission of the violation charged. (BPC section 125.9(b)(4))
- Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine. (BPC section 125.9(b)(5))

BCE’s cite and fine authority provides an efficient means to address violations of the Act or Board regulations that do not warrant formal disciplinary action. When determining if a citation is appropriate for a violation, BCE considers the nature and severity of the violation; length of time that has passed since the violation; consequences of the violation, such as potential or actual patient harm; history of previous violations; and other factors.

BCE commonly issues citations for failed continuing education audits, record keeping violations, failure to maintain patient records, and unprofessional conduct.

The five most common violations for which citations are issued are:

1. Failure to comply with the annual continuing education requirement (CCR, title 16, sections 361(b) and (e), 366, and 371(c))
2. Failure to include the required content in chiropractic patient records (CCR, title 16, sections 318(a)(1) through (7))
3. Unprofessional conduct (CCR, title 16, section 317)
4. Conviction of a substantially related crime (CCR, title 16, section 317(g))
5. Failure to make chiropractic patient records available to the Board (CCR, title 16, section 318(a))

During the past four fiscal years, the average pre-appeal fine amount was \$1,346 and the average post-appeal fine was \$715.

The Board seeks recovery of its full investigation and prosecution costs for all disciplinary cases whenever possible. However, if a case proceeds to an administrative hearing, the administrative law judge from the Office of Administrative Hearings may reduce or eliminate cost recovery as part of their proposed decision. In addition, when negotiating stipulated settlements or surrenders, the Board may agree to reduce the amount of cost recovery upon a showing of financial hardship or other mitigating circumstances.

The Board seeks reimbursement of all costs incurred during the investigation and prosecution of a disciplinary case up to the date of the administrative hearing, including expert consultant expenses and charges by the Attorney General's office.

During the past four fiscal years, the Board ordered an average of \$7,129 in cost recovery per disciplinary case. Cost recovery assessed against licensees placed on probation is collectable because if a licensee fails to pay the costs as directed by the Board, the Board can seek to revoke their probation and impose a penalty of license revocation. Cost recovery for cases resulting in a license revocation or surrender is usually not due until the former licensee petitions the Board for reinstatement of their license. As a result, the Board is often unable to recover its costs for disciplinary cases where a license has been surrendered or revoked.

BCE's *Disciplinary Guidelines and Model Disciplinary Orders* contain an optional term of probation to order restitution for consumers. However, BCE is generally unable to seek restitution in its disciplinary cases, as the majority of cases involve matters of sexual misconduct or insurance fraud that have already been prosecuted through the criminal justice system, or instances of gross negligence and malpractice that have already been settled through civil action.

**Cost Recovery** (list dollars in thousands)

	<b>FY 2017/18</b>	<b>FY 2018/19</b>	<b>FY 2019/20</b>	<b>FY 2020/21</b>
Total Enforcement Expenditures	\$1,680,000	\$1,802,000	\$1,864,000	\$2,170,000
Potential Cases for Recovery *	34	41	12	24
Cases Recovery Ordered	27	35	10	20
Amount of Cost Recovery Ordered	\$97,869.49	\$214,752.50	\$179,724.08	\$163,563.75
Amount Collected	\$58,962.88	\$116,277.49	\$59,360.00	\$65,322.75
* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.				

## PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

BCE was last reviewed by the Legislature through sunset review in 2016-2017. During the previous sunset review, 11 issues were raised. In January 2022, BCE submitted its required sunset report to the Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, BCE described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. For those which were not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under “Current Sunset Review Issues.”

- **Long Term Fund Condition.** BCE’s annual budget is funded exclusively by the profession through licensing and other regulatory fees. The BCE was informed at the February 16, 2017 meeting about the need for a fee increase and the ongoing meetings with the Budget Office. Despite ongoing efforts to closely monitor and limit BCE’s expenses, BCE’s increasing operating costs (i.e., employee compensation and benefits, statewide and departmental pro rata, enforcement costs, etc.) continue to outpace the annual revenue received through licensing and regulatory fees. Without an increase in revenue, BCE is at risk of becoming insolvent by FY 2023/24. BCE’s fund condition and a discussion about potential fee increases are further discussed in the Current Sunset Review Issues section.
- **Application Processing Timeframes.** In September 2020, BCE implemented its new application, licensing, and enforcement system known as “Connect”. Through phased software releases from September 2020 through June 2021, BCE implemented initial license applications, license renewals, address changes, cancellation of satellite certificates, and online payment for all other paper applications, in the Connect system. As a result of this business modernization project, BCE’s average application processing time has decreased by one month (from approximately 3.5 to 2.5 months). BCE states that it will continue to assess its licensing timeframes and automate the licensure and renewal processes wherever possible.
- **National Practitioner Data Bank [NPDB].** Following the last review, BCE researched the NPDB program and inquired about the cost of query services. BCE found that the initial cost to conduct the data bank checks would be \$46,391 plus \$90,350 in ongoing costs, which could not be absorbed within BCE’s existing budget appropriation or revenue projections. However, focusing NPDB queries on select applicants is a more feasible and useful approach, BCE has determined it is feasible to check NPDB for applicants applying for a reciprocal license from another state, as out-of-state applicants may have had disciplinary action taken against them in another state that was not disclosed on their licensure application. BCE states that this policy allows BCE to protect California consumers without a significant impact to BCE’s fund.
- **Enforcement Timeframes.** BCE states that the Board continues to focus on reducing enforcement timeframes and on monitoring the status of pending investigations and disciplinary cases. BCE holds weekly case review meetings with Enforcement staff to ensure the timely completion of cases. Since the last review, the average number of days for BCE to complete formal discipline decreased from 1,292 days to 861 days, and over 75% of BCE’s disciplinary cases are closed within two to three years. BCE’s target cycle time for discipline is 540 days from receipt of the complaint through the effective date of the disciplinary action.

BCE has been unable to meet this target during this reporting period. Reasons for these delays may include factors such as the amount of time it takes for licensee arrests to eventually result in convictions, hearing scheduling with the Office of Administrative Hearings, licensee requests for hearing continuances, and witness availability for hearings. With the recent implementation of BCE's enforcement functions in the new Connect system, BCE expects further reductions in the enforcement timeframes that are within BCE's control. The number of complaints received annually by BCE has been comparable to the last review, with the exception of FY 2020/21, when BCE only received a total of 474 complaints. This reduction may be caused by a temporary decrease in patient visits to chiropractic offices and BCE's suspension of continuing education audits due to the COVID-19 pandemic.

- **Continuing Education (CE) Audit Targets.** Following the last review, BCE set a goal to audit 10% of licensees for compliance with the annual CE requirement. From FYs 2017/18 through 2019/20, BCE audited 9.4% of licensees annually and found a total of 531 cases where licenses had failed to comply with the CE requirement. BCE took appropriate enforcement action against these licensees and issued letters of admonishment or citations and fines for these failed CE audits. With the onset of the COVID-19 pandemic, the Department issued a waiver that provided licensees with additional time to comply with their annual CE requirement. As a result, BCE temporarily suspended its CE audits beginning in FY 2020/21. BCE found its goal of auditing 10% of licensees was overly ambitious given BCE's small staff and a lack of technology to enable the audit process to be automated. BCE plans to resume CE audits in spring 2022 at a rate of 5%. BCE anticipates higher audit and compliance rates when BCE is able to receive documentation electronically through an automated system.
- **Breeze Implementation Status: New IT System.** The BreEZe program was approved in 2009 and was intended to address deficiencies in DCA legacy systems. BCE was originally scheduled for Release 3 of the BreEZe system and contributed a total of approximately \$502,000 to BreEZe development through FY 2017/18. After technical delays and issues with the BreEZe project, BCE and the other Release 3 boards and bureaus were eliminated from the project. As a result, BCE was reimbursed \$148,000 for the BreEZe program. In October 2019, BCE launched an online renewal portal to provide licensees with the ability to renew their licenses through BCE's website. Within a short time, more than 50% of licensees transitioned to renewing their licenses online, which greatly reduced the time and resources consumed by BCE's manual, paper-based renewal process. BCE is currently collaborating with DCA OIS and three other programs (California Acupuncture Board; Board for Professional Engineers, Land Surveyors, and Geologists; and Bureau for Private Postsecondary Education) in the first cohort of a Business Modernization Project to develop and implement a new application, licensing, and enforcement system known as "Connect". Through three phased software releases from September 2020 through June 2021, BCE implemented these licensing functions: (1) Initial license applications (doctor of chiropractic and satellite certificates), (2) License renewals (doctor of chiropractic and satellite certificates), (3) Address changes and cancellation of satellite certificates, and (4) Online payment for all other paper applications. In addition, BCE developed a system-integrated online complaint form for consumers and transitioned all new complaints and investigations to the Connect system effective July 1, 2021, to streamline the complaint intake and investigation process. Through an additional software release in November 2021, BCE added the cite and fine, discipline, and probation monitoring processes to the Connect system. BCE states that the Board continues to work directly with OIS and the vendor to implement CE provider and course applications and other system refinements during



the final project phase that is planned to be completed in late 2022. BCE has contributed \$1,006,000 to this new IT system.

- **Examination Passage Rates.** Since the last review, the average pass rate for first-time candidates taking the California Chiropractic Law Examination (CCLE) has been 78.8%. According to DCA's Office of Professional Examination Services (OPES), this average pass rate is comparable to the pass rates for law and ethics examinations for other health care professions. BCE, in collaboration with OPES conducted an occupational analysis to identify critical job activities performed by California licensed chiropractors. The occupational analysis was part of BCE's comprehensive review of chiropractic practice in California. The purpose of the occupational analysis was to define practice for chiropractors in California in terms of actual job tasks that new licensees must be able to perform safely and competently at the time of licensure. The results of this occupational analysis provided a description of practice for the profession that could then be used as the basis for the licensing examination in California. BCE plans to work with OPES to conduct a new occupational analysis by 2023. Following completion of the occupational analysis, the content of the CCLE will be updated to ensure compliance with BPC section 139 requirements.
- **Customer Satisfaction Survey Rates.** BCE solicits feedback on its enforcement process by including a link to an online complaint process survey conducted by the Department in the closure letters that are sent to complainants at the conclusion of its enforcement cases. Since the last review, BCE sent notifications about the survey to approximately 800 complainants and received a total of 10 responses. In the survey responses, two complainants expressed their satisfaction with BCE's complaint process and eight complainants expressed their dissatisfaction with BCE's handling of their complaint. Due to the low survey response rate, it is difficult for BCE to draw meaningful conclusions from the survey results. To increase survey response rates, BCE management is considering the development of a general customer satisfaction survey that would be available to stakeholders with a link available on BCE's website and in staff's email signature blocks.
- **KTVU FOX2 News Article: Ensuring Consumer Protection and Enhancing Consumer Outreach.** In February 2017, BCE staff encountered a situation in which a licensee was sentenced to two years in prison but was released early with time served. The BCE was not immediately notified upon the individual's release and the licensee was able to resume practicing before the BCE was able to impose discipline or place restrictions on the license. When a licensee is arrested and the BCE believes the individual is a threat to consumers, a PC 23 hearing is requested and the BCE can, and usually does request a temporary suspension of a license or restrictions on the license. When the BCE became aware of this situation, the Board states that it worked with the DAG to obtain a suspension order which prohibited the licensee from practicing pending the outcome of the BCE's administrative process. BCE states that it continues to closely track and monitor licensee arrests and convictions and proactively collaborates with the Attorney General's office to pursue PC 23 practice suspensions and restrictions, interim suspension orders, and petitions for mental and physical evaluations to protect the health, welfare, and safety of California consumers.

## CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to BCE (also referred to in this report as the Board) or areas of concern that should be considered, along with background information for each issue. There are also recommendations Committee staff have made regarding particular issues or problem areas BCE needs to address. BCE and other interested parties have been provided with this Background Paper and BCE will respond to the issues presented and the recommendations of staff.

### **BCE ADMINISTRATION ISSUES**

#### **ISSUE #1: (BOARD COMPOSITION.) Does BCE's composition need to be updated to include additional members of the public or non-chiropractic medical professionals?**

**Background:** In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (BDE) for exclusion of non-dentists from the practice of teeth whitening. The FTC alleged that the BDE's decision was an uncompetitive and unfair method of competition under the Federal Trade Commission Act. This opened the BDE to lawsuits and substantial damages from affected parties.

The North Carolina State BDE was composed of 6 licensed, practicing dentists and 2 public members. The practice of teeth whitening was not addressed in the statutes comprising the Dental Practice Act. Instead of initiating a rulemaking effort to clarify the appropriate practice of teeth whitening, the BDE sent cease-and-desist letters to non-dentists in the state offering teeth whitening services. The BDE argued that the FTC's complaint was invalid because the BDE was acting as an agent of North Carolina, and according to state-action immunity, one cannot sue the state acting in its sovereign capacity for anticompetitive conduct. A federal appeals court sided with the FTC, and the BDE appealed to the United States Supreme Court (Court).

In February 2015, the Court agreed with the FTC and determined that the BDE was not acting as a state agent and could be sued for its actions. The Court ruled, "Because a controlling number of the Board's decision-makers are active participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met."

The Court was not specific about what may constitute "active participants" or "active supervision." However, the Court did say that "active supervision" requires "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy," and that "the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it."

In October 2015, the FTC released a staff guidance, *Active Supervision of State Regulatory Boards Controlled by Market Participants* in order to better explain when active supervision of a state regulatory board would be required, in order for a board to invoke the state action defense. The guidance also aimed to highlight what factors are relevant when determining if the active supervision requirement has been satisfied. The FTC states that active supervision includes the ability of a state supervisor to review the substance of the anticompetitive decision and have the power to veto or modify a decision. The state supervisor may not be an active market participant. In addition, the FTC states that active supervision must precede the implementation of the alleged anticompetitive restraint.

The FTC states that the guidance addresses only the active supervision requirement of the state action defense, and antitrust analysis is fact-specific and context-dependent. This means that although a state action defense might not be applicable in a certain case, this does not mean that the conduct of a regulatory board necessarily violates federal antitrust laws.

On October 22, 2015, the Committees held a joint informational hearing to explore the implications of the Court decision on the DCA's professional regulatory boards and consider recommendations.

In response to the Court's decision, State Senator Jerry Hill requested an opinion from the Office of Attorney General Kamala Harris (AG). The AG released the following:

“North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

“Whatever the chosen response may be, the state can be assured that North Carolina Dental's ‘active state supervision’ requirement is satisfied when a non-market-participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.”

Boards like BCE are semiautonomous bodies whose members are appointed by the Governor. Although most of the non-healing arts boards have statutory authority for a public majority allotment in their makeup, most healing arts and non-healing arts boards are comprised of a majority of members representing the profession.

*North Carolina State Board of Dental Examiners v. FTC* placed limitations on the immunity of regulatory boards controlled by active market participants. This is because individuals who are directly affected by their own rulemaking may not be able to detect their biases, potentially placing their benefit over those of the public. As the Supreme Court stated, “Dual allegiances are not always apparent to an actor.”

In addition, the BCE presently does not have any Board member positions that must be held by a member of a non-chiropractic licensed healing arts profession, such as a medical doctor or doctor of osteopathic medicine. Several healing arts boards such as the Naturopathic Medicine Committee (NMC), the Respiratory Care Board, and the Speech-Language Pathology, Audiology and Hearing Aid Dispenser Board are required to have medical doctors or other medical specialty professionals serve on the board. As chiropractic professionals frequently work collaboratively with other medical professionals, the addition of a physician to the BCE may serve to improve collaboration between chiropractic professionals and patients' medical care teams. A recommendation for the Board is to consider implementing a requirement that one public member of the board must be a Medical Doctor or Doctor of Osteopathic Medicine in order to diversify the fields of expertise held by Board members.

Although the boards are tied to the state through various structural and statutory oversights, it is presently unclear whether current laws and practices are sufficient to ensure that the boards are state actors and, thus, immune from legal action. Changing BCE's composition to increase the number of public members may decrease BCE's risk of exposure to lawsuits, improve the Board's cooperation with medical practitioners, and orient the Board towards a more patient centric program.

**Staff Recommendation:** *The Committees should discuss whether a proposal to alter the BCE's composition may be beneficial to the Board, patients, and the public.*

**ISSUE #2: (REGULATIONS.) What is the current timeframe for BCE regulatory packages to be approved and finalized?**

**Background:** Promulgating regulations is at the heart of BCE's work to implement the law and establish a framework for consumer protection. According to the Office of Administrative Law (OAL), a "regulation" is any rule, regulation, order or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it. When adopting regulations, every department, division, office, officer, bureau, board or commission in the executive branch of the California state government must follow the rulemaking procedures in the Administrative Procedure Act (APA) (Government Code section 11340 et seq.) and regulations adopted by OAL, unless expressly exempted by statute from some or all of these requirements. The APA requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations or rules that have the force of law by California state agencies and to ensure the creation of an adequate record for the OAL and judicial review.

The rulemaking process does provide some discretion to agencies. While each agency must comply with timeframe requirements and must produce the same uniform documents supporting rulemaking efforts to submit to OAL, there are not the same standards for how regulation packages are determined, written, and produced.

Prior to 2016, boards and bureaus like BCE that are organized within DCA filed rulemaking packages directly with OAL. Boards and bureaus were not required to submit rulemaking packages to DCA or the overseeing agency for review and approval prior to submission for publication in the Notice Register. OAL reported that this process was unusual within state government: most programs must submit regulations packages to their respective agency for approval. As a result, in September 2016, the Secretary of the Business, Consumer Services and Housing Agency (BCSH) changed the procedures: boards and bureaus were now required to submit rulemaking packages to the department and BCSH for review prior to filing with OAL. BCSH stated that the reason for the decision was an increase in the number of regulations disapproved by OAL for failing to meet their statutory requirements.

According to a 2019 DCA report to the Legislature, Internal Review of Regulation Procedures, "the resulting enhanced scrutiny from Agency and DCA's Legal Affairs Division successfully reduced the number of disapproved regulation packages, with the number of disapprovals falling from nine in 2016 to only one in 2018." The report also found that "while disapproval rates plummeted, a consequence was lengthened timelines to adopt regulations. Several boards and bureaus raised objections to the lengthened review time and reported difficulty obtaining timely updates about regulation packages under review." The "pre-review" process required regulations to go through DCA's entire review process prior to the package being submitted for public comment. DCA established a formal Regulations Unit to "minimize the length of time it currently takes to review regulatory packages; allow board and bureau attorneys to focus on the increased workload of non-regulatory work; respond to the demand of regulation packages under review and the increase of regulation packages from AB 2138 (Chiu and Low; Chapter 995, Statutes of 2018); avoid the habitual carry-over of regulation

packages; and, enhance the level of regulation training provided to boards and bureaus to improve the quality of regulations and create efficiencies by having better quality packages submitted for review.”

It would be helpful for the Committees to have a better understanding of the status of necessary BCE regulations, the timeframe for regulations to be processed and complete and what efficiencies BCE has realized since the creation of the Regulations Unit.

**Staff Recommendation:** *BCE should provide the Committees with an update on pending regulations and the current timeframes for regulatory packages. In addition, the BCE should inform the Committees of any achieved efficiencies in promulgating regulations in recent years.*

**ISSUE #3: (STRATEGIC PLAN.)** What is the status of the BCE’s strategic plan? In addition, what will be the priorities will be for upcoming strategic planning sessions.

**Background:** The BCE reports that it typically completes a strategic plan every three years. However, due to Board member vacancies and the COVID-19 pandemic, BCE states that the Board postponed development of the 2020-2022 strategic plan. While the Board reports that BCE plans to resume development of the strategic plan in collaboration with DCA’s SOLID Training and Planning Solutions on August 18, 2022, and is expected to adopt its next strategic plan during the October 27, 2022 Board meeting. In addition, the BCE reports that that the Board is working with the Office of Board and Bureau Relations to identify candidates to fill the vacant Board member positions prior to the strategic planning session.

**Staff Recommendation:** *BCE should provide the Committees with an update on the status of upcoming meetings for the BCE strategic plan. The Board should also inform the Committees the Board’s priorities for the strategic plan.*

## **BUDGET ISSUES**

**ISSUE #4: (FUND CONDITION AND FEES.)** BCE states the need for a statutory fee increase based on the result of a recent fee audit. Does the Board anticipate the need to further increase fees proposed by the fee study? What is causing the need for multiple fee increases over such a short period of time?

**Background:** The BCE budget is projected to have only a 0.7-month reserve by the end of FY 2022/2023, and to become insolvent in FY 2023/2024. There is clearly a need to address the BCE budget if the Board is to continue to function. After a fee study conducted by the Matrix Consulting Group, it was found that the BCE is under-recovering its costs by approximately \$1.4 million, especially in regards to CE provider applications. As BCE’s annual budget is funded exclusively the profession through licensing and other regulatory fees, it is expected that the BCE will need to raise fees in order to alleviate strain on the budget.

The anticipated fee changes are specified below:

Fee Name	Current Fee	Total Cost Per Unit	Surplus / (Deficit) per Unit
Biennial continuing education provider fee	\$56	\$118	(\$62)
Continuing education provider application fee	\$84	\$291	(\$207)
Continuing education course application fee	\$56	\$558	(\$502)
Corporation registration application fee	\$186	\$171	\$15
Corporation special report filing fee	\$31	\$98	(\$67)
Corporation renewal filing fee	\$31	\$62	(\$31)
Corporation duplicate certificate fee	\$50	\$70	(\$20)
Duplicate license fee	\$50	\$71	(\$21)
Initial license fee	\$186	\$137	\$49
License application fee	\$371	\$345	\$26
License certification / Out-of-state license verification	\$124	\$83	\$41
License renewal fee	\$313	\$336	(\$23)
Petition for early termination of probation or reduction of penalty fee	\$371	\$3,195	(\$2,824)
Petition for reinstatement of a revoked license fee	\$371	\$4,185	(\$3,814)
Preceptor fee	\$31	\$72	(\$41)
Reciprocal license application fee	\$371	\$283	\$88
Referral service application fee	\$557	\$279	\$278
Satellite certificate application fee	\$62	\$69	(\$7)
Satellite certificate renewal fee	\$31	\$50	(\$19)
Satellite certificate replacement fee	\$50	\$71	(\$21)

Due to the impending risk of insolvency in FY 2023/2024, the Board may benefit from assessing how to optimize both working costs and the budget reserve. Additional factors that may affect spending in the upcoming years should be considered in order to ensure that BCE has the funds necessary to perform their required functions.

The Board is currently repaying a \$2.689 million-dollar loan obtained from the Bureau of Automotive Repair (BAR) with annual repayments of \$250,000 since 2014/2015. This loan was obtained by BCE to satisfy a multi-million dollar judgement resulting from a lawsuit filed by a former employee. So far, the Board has repaid \$1.5 million dollars of this loan and will continue to pay \$250,000 each fiscal

year to the BAR. It would be helpful to know if the Board will take future unexpected costs, such as litigation, into account when building back the BCE budget reserve in order to minimize the necessity of obtaining such loans in the future. In addition, BCE should specify whether fees will be reduced or maintained at existing levels once the loan to the BAR is fully repaid.

In July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor’s Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without meaningful notice to client agencies. For special funded entities such as BCE, unexpected cost pressures can quickly prove problematic. It would be helpful for the Committees to understand the impact of the increase in the Attorney General’s billing rate on BCE costs.

Prior years’ expenditures as presented by the Board are shown below. This information highlights, for example, how personnel costs have remained stable over the past four fiscal years, but operating expenses and DCA Pro Rata have significantly increased since FY 2017/2018. BCE should discuss what is causing this increase in operating expenses.

<b>Expenditures by Program Component</b> (list dollars in thousands)								
	FY 2017/18		FY 2018/19		FY 2019/20		FY 2020/21	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$903	\$777	\$967	\$835	\$937	\$927	\$896	\$1,274
Examination	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Licensing	\$361	\$78	\$387	\$96	\$375	\$145	\$358	\$222
Administration *	\$595	\$98	\$632	\$120	\$621	\$182	\$593	\$278
DCA Pro Rata**	\$0	\$610	\$0	\$751	\$0	\$935	\$0	\$912
Diversion (if applicable)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTALS</b>	<b>\$ 1,859</b>	<b>\$ 1,563</b>	<b>\$1,986</b>	<b>\$1,802</b>	<b>\$1,933</b>	<b>\$2,189</b>	<b>\$1,847</b>	<b>\$ 2,686</b>

\*Administration includes costs for executive staff, board, administrative support, and fiscal services.  
 \*\* Includes Division of Investigation internal affairs + enforcement costs.

Since the last sunset review oversight discussions, the annual renewal fee for doctors of chiropractic has already increased two times. SB 547 (Hill, Chapter 429, Statutes of 2017) temporarily raised the fee from \$250 to \$300 in 2018. Additionally, effective January 1, 2019, SB 1480 (Hill, Chapter 571, Statutes of 2018) increased the renewal fee from \$300 to \$313 and set the fees charged for other services provided by BCE. In light of these multiple recent statutory fee increases, rare for special fund programs within the DCA, it would be helpful for the Committees to understand why the Board is still facing insolvency, why these newly increased licensing fees were insufficient to cover actual costs for processing license renewals, and what accounts for the remaining imbalances, and whether efficiencies have been undertaken to address rising costs without negatively impacting BCE’s important work.

**Staff Recommendation:** *BCE should provide an update on the status of discussions with licensees and the Department of Finance to assist the Legislature in charting a course forward that allows BCE to have resources to conduct its important work. This should include discussions of cost-saving measures, fee increases, and long-term plans to bolster the reserve balance to sustainable levels.*

## **ISSUE #5: (FEE INCREASES AND BARRIERS TO CHIROPRACTICE PROFESSIONALS)**

**With the need for statutory fee increases, has BCE considered how to minimize the impact of these fee increases on early-career chiropractic professionals or on underrepresented chiropractic professionals?**

**Background:** The proposed fee increases to ensure a balanced budget may impose a financial barrier to some applicants. With the increasing demand for health care professionals in the state of California, it may be prudent to assess options to reduce obstacles for early career chiropractors or chiropractors with historically underrepresented identities.

Based on the results from fee analysis conducted by the Matrix Consulting Group, BCE is currently collecting a surplus from fees collected for initial license fees (+\$49), license application fees (+\$26), out-of-state license verification (+\$41), and reciprocal license application fees (+\$88). Applicants who are early in their career or transitioning their practices to California from other jurisdictions may face higher barriers to starting their careers as chiropractors in California than other licensees. BCE may also wish to consider the effects of fee increases on licensees who are members of these communities or who identify with traditionally marginalized groups may face higher barriers to their professional practice than other licensees. Racial minorities and women are significantly underrepresented in the chiropractic profession. According to data from the U.S. Census Bureau, in 2019 only 32.5 percent of chiropractors in the United States identified as female.<sup>5</sup> These statistics are especially disproportionate to the patient demographics of those seeking chiropractic care, as approximately 60 percent of chiropractic patients identify as female.<sup>6</sup> Female chiropractors make an average of 36.8 percent less than male chiropractors. In addition, 88 percent of chiropractors identified as White (non-Hispanic), with only 4.76 percent identifying as White (Hispanic), 3.48 percent identifying as Asian, and 2.64 percent identifying as Black.<sup>7</sup> Minority chiropractic doctors make an average of 6.2 – 8.1 percent less than white chiropractors.<sup>8</sup> In addition, it is estimated that only 15 percent of chiropractic practices are minority-owned.<sup>9</sup>

Given the inadequate representation and the significant wage gaps present in chiropractic profession, BCE should address mechanisms to reduce the impacts of licensing fee increases for underrepresented chiropractic professionals. It would be helpful to understand whether tools like fee waivers, grants, or fee assistance programs can be used to minimize the impacts of licensing fee increases for underrepresented chiropractic professionals, given the surplus in certain categories noted above.

**Staff Recommendation:** *BCE should update the Committees on the impacts of proposed fee increases on current and future licensees.*

### **BCE LICENSING ISSUES**

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<sup>5</sup> “Chiropractors.” *Data USA*. Accessed February, 2022. <https://datausa.io/profile/soc/chiropractors#demographics>

<sup>6</sup> Stevens, Gerald et al. “Retrospective Demographic Analysis of Patients Seeking Care at a Free University Chiropractic Clinic.” *Journal of chiropractic medicine* vol. 15,1 (2016): 19-26. doi:10.1016/j.jcm.2016.02.001.

<sup>7</sup> “Chiropractors.” *Data USA*. Accessed February, 2022. <https://datausa.io/profile/soc/chiropractors#demographics>

<sup>8</sup> “Chiropractic Doctor: Demographics and Statistics in the US”. *Zippia*. Accessed February, 2022. <https://www.zippia.com/chiropractic-doctor-jobs/demographics/>

<sup>9</sup> Payne, A.M. “Results: Chiropractic Economics 2021 Salary & Expense Survey”. *Chiropractic Economics*. <https://www.chiroeco.com/chiropractic-economics-2021-salary-expense-survey/>



**ISSUE #6: (RECIPROCAL LICENSE REQUIREMENTS.) BCE requires applicants that hold active licenses from other states and are seeking license reciprocity in California to have completed training and evaluation equivalent to California requirements. How do California licensing requirements compare to other states? Has the BCE considered revising license reciprocity requirements for candidates holding chiropractic licenses in other states or allow reciprocity with candidates who are licensed in other countries?**

**Background:** In order to attract qualified chiropractic professionals to the state of California, should the BCE consider revising the requirements for considering license reciprocity with applicants holding active chiropractic licenses in other states or countries?

For interstate reciprocity, California currently requires that candidates for licensure must provide documentation demonstrating that they have graduated from an approved chiropractic college, completed at least 4,400 instruction hours over four academic years, completed an examination in all subjects examined in California, hold a valid active license in their current state, five years of chiropractic practice, and be licensed in a state which will reciprocate with California.

There are several states which do not specify reciprocity or endorsement agreements with other states (Arkansas, Florida, Kentucky, and New Mexico), and some states offer interstate licensure through endorsement rather than through reciprocity (such as Colorado, New York, Washington, and others).<sup>10</sup> It would be helpful for the Committees to understand the impacts of the current requirement for five years of practice before an applicant may qualify for reciprocity. BCE may also benefit from assessing whether there are countries with similar training requirements for licensed chiropractors as what is required in California, and options for international chiropractic professionals seeking to practice in California.

**Staff Recommendation:** *BCE should provide the Committees with information about reciprocity requirements and whether statutory updates are necessary.*

**ISSUE #7: (CE.) What accountability metrics are in place to ensure CE earned through distance learning is appropriate? Are licensees complying with CE requirements, as demonstrated in ongoing audits BCE staff conducts to determine CE was actually completed?**

**Background:** BCE guidelines allow for up to 12 out of the annually required 24 hours of continuing education (CE) training for licensed chiropractors to be completed by distance learning. Due to the COVID-19 pandemic, the DCA allowed for a temporary waiver of this 12-hour cap to allow for the full 24 hour CE requirement to be completed online until March 31, 2022. In addition, the DCA also issued a waiver to allow for licensees to postpone the 24-hour CE requirement until early 2022. It would be helpful for the Committees to better understand the impacts of this change.

One of the issues raised during the prior sunset review was that BCE was finding high levels of non-compliance with CE requirements during audits. In FY 2018/2019, BCE audited 1,669 licensees for CE compliance and found 181 (10.8 percent) failed CE audits. In FY 2019/2020, BCE audited 1,093 licensees and found 257 (23.5 percent failed audit). BCE states that it temporarily suspended CE audits

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<sup>10</sup> Pennsylvania State Board of Chiropractic. "Occupational Licensing Study: 50 State Comparison". 2020. <https://www.dos.pa.gov/ProfessionalLicensing/Documents/50-State-Licensing-Comparison/Chiropractic.pdf>

in FY 2020/2021 due to the CE waivers issued by the DCA, but that the Board plans to resume audits in spring 2022.

<b>Fiscal Year</b>	<b>Audits Conducted</b>	<b>Failed Audits</b>
2017/18	694	93 (13.4%)
2018/19	1,669	181 (10.8%)
2019/20	1,093	257 (23.5%)
2020/21	0	N/A

BCE should discuss the results of these audits going forward, particularly in its evaluation of the allowance for CE to be earned entirely through distance learning in light of the pandemic.

In addition, BCE discussed challenges facing the Board in regards to conducting CE audits, as there is currently not a system in place for BCE to receive primary source verification of CE completion. As part of BCE's Business Modernization Project, BCE plans to integrate primary source verification into the CE provider dashboard. This will allow BCE-approved CE providers to upload course completion information directly into BCE's Connect system and automatically integrate that data into licensees' records in the system. Computer-based CE courses may aid in providing an automatic verification of completion in this new system to streamline the CE audit process for the Board.

**Staff Recommendation:** *BCE should address how it will ensure that chiropractors across the state can continue to access required CE training, the accountability for those courses, and the status of CE evaluation and discussions.*

**ISSUE #8: (PERFORMANCE-BASED ASSESSMENT OF LICENSEE COMPETENCY.)**  
**Has the board considered adding performance-based assessment of licensee competency in addition to or in lieu of CE coursework?**

**Background:** Licensed chiropractors in California are currently required to complete 24 hours of continuing education (CE) training, however there are no requirements for routine performance-based assessments for license renewals. The BCE sunset report states that the board has not discussed moving toward performance-based assessments of licensees' continuing competence in lieu of CE coursework requirements. However, the report also mentions that the Licensing and Continuing Education Committee is proposing changes to the CE regulations to align the mandatory course categories with the core competencies necessary for a doctor of chiropractic to safely practice in California. Since the submission of the sunset report, has the board considered adding performance-based assessment in addition to the proposed changes to CE training?

It is the responsibility of chiropractic providers to remain up to date on new professional policies, best practices, and new research in the field of chiropractic. CE training can provide informative content for each of these areas, but participation in a CE course does not necessarily ensure subject comprehension or retention. BCE does not presently have requirements for reexamination or performance-based competency testing for license renewal applicants. Incorporating performance-based assessment into the current CE framework may provide greater insight into licensee competency and encourage greater retention of CE concepts.

**Staff Recommendation:** *The Board should provide information about the positive and negative impacts that could arise from utilizing performance-based assessment of licensee competency, either in addition to or in lieu of CE coursework, and whether the BCE has considered this possibility for the future.*

### **BCE ENFORCEMENT ISSUES**

**ISSUE #9: (ENFORCEMENT TIMEFRAMES.)** Since the last sunset review, the BCE has reduced the time required to complete formal discipline, but it still has not been able to meet the target timeframes set by the BCE and DCA. Has the Board considered implementing additional measures to reduce enforcement timeframes?

**Background:** Despite some improvements in enforcement timelines since the last report, the BCE reports that it still has not been able to meet the enforcement timeframes set by the DCA. In the report, BCE reports that many of the factors which extended these timeframes were outside of the control of the Board. As the BCE has had success with reducing functional timeframes by automation of some processes, are there additional measures which will be explored to further reduce enforcement timeframe? If not, do these timeframes need to be reevaluated to better reflect the actual time necessary to complete these tasks?

BCE reports that while the Board is able to meet target cycle times for complaint intake, the Board faces challenges meeting investigation and discipline timeframes. Target cycle timeframes for investigations that do not result in a referral to the Attorney General's office for disciplinary action are set by BCE at 120 days, however BCE reports that the actual investigation cycle time averaged 315 days in 2021. Target cycle time for discipline is 540 days from receipt of the complaint through the effective date of the disciplinary action, however BCE reports that the actual discipline time averaged 914 days in 2021. BCE states in the report that it has been unable to meet these targets due to obstacles such as the amount of time it takes for licensee arrests to eventually result in convictions, difficulty obtaining documents, hearing scheduling with the Office of Administrative Hearings, licensee requests for hearing continuances, and witness cooperation and availability for hearings.

In the BCE Sunset Report, the Board provided the following data regarding investigation and formal discipline cycle timelines:

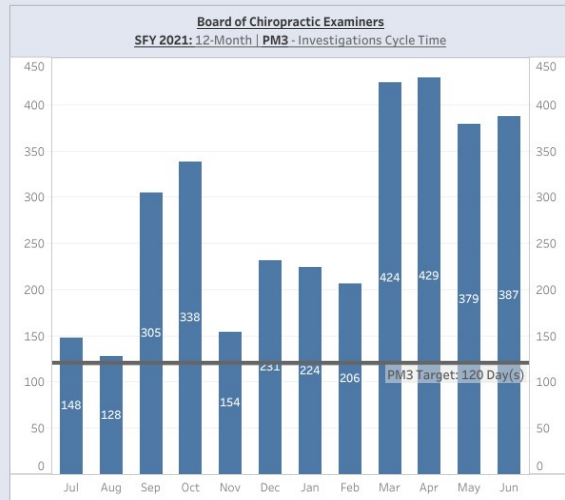
# Investigation Cycle

Select a DCA Entity  
Board of Chiropractic Examiners

Select a Fiscal Year  
SFY 2021

Processing Time  
Actual Target

Performance versus Target  
Above Target



	Case Volume	Target	Actual	Variance
Grand Total	443	120 Days	315 Day(s)	▲ 195 Day(s)
July	10	120 Days	148 Day(s)	▲ 28 Day(s)
August	17	120 Days	128 Day(s)	▲ 8 Day(s)
September	22	120 Days	305 Day(s)	▲ 185 Day(s)
October	45	120 Days	338 Day(s)	▲ 218 Day(s)
November	37	120 Days	154 Day(s)	▲ 34 Day(s)
December	38	120 Days	231 Day(s)	▲ 111 Day(s)
January	26	120 Days	224 Day(s)	▲ 104 Day(s)
February	24	120 Days	206 Day(s)	▲ 86 Day(s)
March	30	120 Days	424 Day(s)	▲ 304 Day(s)
April	36	120 Days	429 Day(s)	▲ 309 Day(s)
May	46	120 Days	379 Day(s)	▲ 259 Day(s)
June	112	120 Days	387 Day(s)	▲ 267 Day(s)

**Data Source:** California Department of Consumer Affairs, OIS/Data Governance Unit. The data included in this interactive tool is compiled from monthly enforcement statistical reporting from DCA Boards and Bureaus. In some instances historical enforcement performance data may differ slightly from the data reported in this tool due to errors and omissions in the previously released reports.

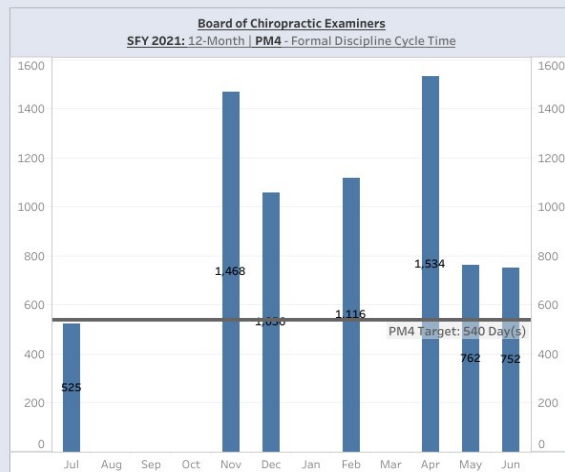
# Formal Discipline Cycle

Select a DCA Entity  
Board of Chiropractic Examiners

Select a Fiscal Year  
SFY 2021

Processing Time  
Actual Target

Performance versus Target  
Above Target Below Target



	Case Volume	Target	Actual	Variance
Grand Total	20	540 Days	914 Day(s)	▲ 374 Day(s)
July	3	540 Days	525 Day(s)	▼ -15 Day(s)
November	1	540 Days	1,468 Day(s)	▲ 928 Day(s)
December	3	540 Days	1,056 Day(s)	▲ 516 Day(s)
February	4	540 Days	1,116 Day(s)	▲ 576 Day(s)
April	1	540 Days	1,534 Day(s)	▲ 994 Day(s)
May	5	540 Days	762 Day(s)	▲ 222 Day(s)
June	3	540 Days	752 Day(s)	▲ 212 Day(s)

**Data Source:** California Department of Consumer Affairs, OIS/Data Governance Unit. The data included in this interactive tool is compiled from monthly enforcement statistical reporting from DCA Boards and Bureaus. In some instances historical enforcement performance data may differ slightly from the data reported in this tool due to errors and omissions in the previously released reports.

BCE also states that the number of complaints received in FY 2020/2021 declined as compared to previous years, from 739 complaints received in FY 2019/2020 to 474 complaints received in FY 2020/2021. The Board reports that this reduction in complaint volume is likely due to decreased clinic visits and the suspension of continuing education audits during the COVID-19 pandemic. However, the decrease in total cases did not lead to reductions in investigation cycle timelines between FY 2019/2020 and FY 2020/2021, and enforcement timelines remained well above the 540 day target during this timeframe.

Finally, BCE mentions that it is currently facing staffing issues across Board units, including the enforcement unit. It would be helpful for the Committees to better understand the causes for enforcement delays and potential impacts to patients, the public, and licensees.

***Staff Recommendation:*** *The BCE should provide an update on enforcement timeframes and efforts for efficiency and swift resolution of disciplinary cases.*

**ISSUE #10: (PRACTICE VIOLATIONS.) Has the Board sought additional enforcement measures to curb the spread of medical misinformation within the chiropractic community?**

**Background:** Several news stories during the COVID-19 pandemic have described instances where chiropractic practitioners claimed to be able to cure or prevent COVID-19 through medically inaccurate means, or were found to be distributing misinformation regarding vaccinations.<sup>11,12,13</sup> Has BCE sought to address this issue to ensure that chiropractic professionals are providing safe, reliable, and medically valid services which align with the policies and values of the state of California?

According to the BCE's rules and regulations, as revised in November 2021, it is the approved Scope of Practice outlined in the California Code of Regulations, tit. 16, §302(a)(3) that a "a duly licensed chiropractor may treat any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine by exceeding the legal scope of chiropractic practice as set forth in this section." In addition, §302(a)(5) states that "A duly licensed chiropractor may employ the use of vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the above substances are also included in section 4057 of the Business and Professions Code, so long as such substances are not included in materia medica as defined in section 13 of the Business and Professions Code. The use of such substances by a licensed chiropractor in the treatment of illness or injury must be within the scope of the practice of chiropractic as defined in section 7 of the Act." §302(a)(7) states that "A duly licensed chiropractor may only practice or attempt to practice or hold himself or herself out as practicing a system of chiropractic."

The state regulatory boards of Minnesota and West Virginia both state that claims of chiropractic care being beneficial in either the prevention or treatment of COVID-19 violate state statutes outlining the chiropractic scope of practice, and other state chiropractic boards have also explicitly discouraged

<sup>11</sup> Astor, M. "Vocal Anti-Vaccine Chiropractors Split the Profession." *The New York Times*. July 14, 2021. <https://www.nytimes.com/2021/07/14/health/anti-covid-vaxxers.html>

<sup>12</sup> Guerrero, J. "Op-Ed: How conspiracy theories about COVID-19 prey on Latinos." *Los Angeles Times*. May 2, 2021. <https://www.latimes.com/opinion/story/2021-05-02/latinos-covid-vaccines-resistance-skepticism>

<sup>13</sup> Smith, M.R., et al. "Anti-vaccine chiropractors rising force of misinformation." *Associated Press*. Oct. 8, 2021. <https://apnews.com/article/anti-virus-chiropractors-rising-force-misinformation-02b347767b45cab1d6d532be03c57529>

these claims.<sup>14,15,16</sup> The World Federation of Chiropractic (WFC) publicly stated in 2020 that “There is no credible scientific evidence that chiropractic spinal adjustment/manipulation confers or boosts immunity. Chiropractors should refrain from any communication that suggests spinal adjustment/manipulation may protect patients from contracting COVID-19 or will enhance their recovery. Doing otherwise is potentially dangerous to public health.”<sup>17</sup> Based on these precedents set by other states and chiropractic professional guidelines, it is recommended that BCE should make it clear to licensees that claims of chiropractic care for the prevention or treatment of COVID-19 are outside the Scope of Practice for chiropractors as outlined in California state law.

In addition, the state of California maintains that COVID-19 vaccines are both safe and effective. BCE rules and regulations also state in California Code of Regulations, tit. 16, §317(x) that unprofessional conduct for a licensed chiropractor includes “the offer, advertisement, or substitution of a spinal manipulation for vaccination.” Therefore, any claim by a chiropractor in California that chiropractic services can be used as a substitute for vaccination against COVID-19 constitutes unprofessional conduct which may be addressed by the Board.

BCE should describe any actions it has taken against chiropractors found to be violating California’s chiropractic Scope of Practice and professional conduct expectations in regard to the spread of medical misinformation about COVID-19 and the COVID-19 vaccines. In Spring 2020, the Board reported several complaints were received about licensed doctors of chiropractic who were advertising that chiropractic care can help patients reduce their risk of COVID-19 infection. The Board investigated the complaints, and the licensees removed the advertisements from their websites. The Board should continue to update the Committees on the Board’s response to such complaints. In addition, the BCE should discuss any actions taken to educate licensees about the spread of medical misinformation regarding COVID-19 and vaccines, as well as the consequences for making such claims in chiropractic practice.

***Staff Recommendation:*** *BCE should provide an update on efforts to prevent the spread of medical misinformation within the chiropractic community, particularly in regard to the COVID-19 pandemic. In addition, BCE should describe how it plans to address unlicensed activity and professional conduct violations in regard to chiropractors providing services or medical advice beyond the scope of their training or legal practice.*

**ISSUE #11: (ENFORCEMENT DISCLOSURES.)** The Patient’s Right to Know Act requires BCE licensees to disclose probationary status to patients. The BCE recommended in their report that two exemptions be removed from this Act (BPC § 1007 subdivision (c)) to strengthen consumer protection. Are there any additional measures that can be taken to ensure consumers are aware of the probationary status of licensees?

**Background:** Senate Bill 1448 (Hill, Chapter 570, Statutes of 2018), known as the Patient’s Right to Know Act of 2018, added BPC section 1007. This section requires licensees placed on probation by the Board on or after July 1, 2019, to provide a separate disclosure that includes the licensee’s

<sup>14</sup> Axén, Iben et al. “Misinformation, chiropractic, and the COVID-19 pandemic.” *Chiropractic & manual therapies* vol. 28,1 65. 18 Nov. 2020, doi:10.1186/s12998-020-00353-2

<sup>15</sup> Minnesota Board of Chiropractic Examiners. <https://mn.gov/boards/chiropractic-examiners/>

<sup>16</sup> West Virginia Board of Chiropractic. “Covid-19 email to chiropractic licensees” <https://boc.wv.gov/>

<sup>17</sup> “Coronavirus Disease 2019 (COVID-19): Advice for Chiropractors”. *World Federation of Chiropractic*. March 17, 2020. [https://www.wfc.org/website/images/wfc/Latest\\_News\\_and\\_Features/Coronavirus\\_statement\\_2020\\_03\\_17.pdf](https://www.wfc.org/website/images/wfc/Latest_News_and_Features/Coronavirus_statement_2020_03_17.pdf)

probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the Board, the Board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the Board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation. The purpose of this bill was to ensure that patients are properly notified of the probationary status of a licensee prior to receiving chiropractic care.

BPC section 1007, subdivision (c), specifies the following exemptions to this patient notification requirement where a licensee is not required to disclose their probationary status to the patient:

- 1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.
- 2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.
- 3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.
- 4) The licensee does not have a direct treatment relationship with the patient.

The BCE recommends removing two of these exemptions in order to ensure that doctors of chiropractic cannot misuse these exemptions to avoid notifying patients of their probationary status. The exemptions suggested for removal are:

- The visit occurs in an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities; and
- The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

BCE states that these exemptions generally do not apply to chiropractors and that amending this section can improve transparency with patients in regards to a practitioner's probationary status. In addition, this language can also be further amended to clearly define "direct treatment relationship" to ensure that this exemption is only used as intended by law.

***Proposed Language to Amend Business and Professions Code section 1007, subdivision (c):***

**§ 1007.** (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:



(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room ~~or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.~~

~~(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.~~

(43) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee’s profile page on the board’s online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) “Board” for purposes of this section means the State Board of Chiropractic Examiners. *(Added by Stats. 2018, Ch. 570, Sec. 2. (SB 1448) Effective January 1, 2019.)*

**Staff Recommendation:** *BCE should provide information on the impacts of amending the Patient’s Right to Know Act.*

### **COVID-19**

**ISSUE #12: (IMPACTS OF THE COVID-19 PANDEMIC.)** Since March 2020, there have been a number of waivers issued through Executive Orders that impact BCE operations, BCE licensees, providers, and patients throughout the state. Do any of these waivers warrant an extension or statutory changes? How has the BCE addressed issues resulting from the pandemic and how does the Board aim to continue to address these issues as the pandemic endures?

**Background:** In response to the COVID-19 pandemic, a number of actions were taken by the Governor, including the issuance of numerous executive orders in order to address the immediate crisis. For example, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the



Director of DCA to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic – including rules relating to examination, education, experience, and training.

Some of the waivers impact BCE work and BCE licenses. For example, [Executive Order N-40-20](#) permits the Director of DCA to waive any statutory or regulatory requirements with respect to CE a number of healing arts licensees. BCE noted in its 2021 Sunset Review Report, that it worked with DCA on the following waivers:

### *Continuing Education Requirements*

[DCA Waiver DCA-22-209 Order Waiving Restrictions on Internet-Based CE Training - Extended Through March 31, 2022](#). This order extends [DCA Waiver DCA-20-63](#) through March 31, 2022, which allows licensees to complete their continuing education hours through distance learning, subject to the condition that distance learning in excess of 12 hours must consist of Internet- or web-based courses that allow participants to concurrently interact with instructors or presenters while they observe the courses.

The Board of Chiropractic Examiners has referred to this format as Interactive Video Conference. Interactive Video Conference courses that have been approved by the Board and are taken on or before March 31, 2022, will be accepted and will count as classroom hours for licensees' current renewal period.

After this waiver terminates on March 31, 2022, the maximum number of continuing education (CE) hours that can be completed via distance learning (as defined in [California Code of Regulations, title 16, section 363.1](#)) will be reinstated to twelve (12) hours.

### *Distance Learning at Chiropractic Colleges*

[DCA Waiver DCA-21-185 Order Extending July 28, 2020, Order Waiving Restrictions On Chiropractic School Schedules And Class Lengths](#) waives the requirements that lecture classes be at least 50 minutes long, schools may only operate between five and six days per week, and instructional time must be between 30 and 35 hours per week. This is a four-month extension, to align with the school-year calendar. This waiver was extended to December 31, 2021.

COVID-19 led to a strong interest in developing frameworks for telemedicine. As chiropractic care frequently necessitates in-person appointments with patients, it is understandable that telehealth may not be feasible for all chiropractic appointments. However, BCE does report that licensees have utilized some forms of telehealth measures during the COVID-19 pandemic where possible. Even beyond the pandemic, chiropractors may find telehealth useful for appointments such as patient consultations, follow-up visits, and wellness coaching. BCE should discuss if the Board would find it valuable to set statutory guidelines in place for regulating telehealth within the chiropractic profession.

The BCE reports that during the COVID-19 pandemic, the Board implemented teleworking policies for staff. Meetings transitioned to online videoconferences and BCE intends to continue to use the WebEx videoconference platform until the COVID-19 State of Emergency is lifted. Recently, BCE reports that most staff have returned to work in the office on staggered schedules to comply with social distancing. Masking is required in the office for all staff. BCE does not have a vaccine mandate for

staff, but instead requires that staff members who have not provided proof of vaccination to be tested for COVID-19 weekly at DCA headquarters. As COVID-19 still has a significant infection rate in California, BCE should discuss whether it plans to continue to allow telework for employees who may not yet be comfortable returning to the office due to the COVID-19 pandemic.

**Staff Recommendation:** *BCE should update the Committees on the impact to licensees and patients stemming from the pandemic and potential challenges for future doctors of chiropractic. BCE should discuss any statutory changes that are warranted as a result of the pandemic.*

## **TECHNICAL CHANGES**

**ISSUE #13:** (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF BCE OPERATIONS.) There are amendments to the BCE’s Practice Act that are technical in nature but may improve BCE operations and the enforcement of the Act.

**Background:** There are instances in the BCE Practice Act where technical clarifications may improve BCE operations and application of the statutes governing BCE’s work.

**Staff Recommendation:** *The Committees may wish to amend the Act to include technical clarifications.*

## **CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT PROFESSION BY THE BOARD OF CHIROPRACTIC EXAMINERS**

**ISSUE #14:** (REGULATORY REVIEW.) *Review of the regulatory functions of the BCE.*

**Background:** The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory body with oversight over DCs. Because the BCE was established through the initiative act, only a vote through the initiative process can repeal the authority of the BCE. The BCE should be reviewed again in the next two to four years to determine whether or not the issues and recommendations in this Background Paper have been addressed.

**Staff Recommendation:** *BCE should be reviewed again on a future date to be determined.*