BACKGROUND PAPER FOR THE
Board of Chiropractic Examiners

Joint Oversight Hearing, February 27, 2017

Assembly Committee on Business and Professions
and
Senate Committee on Business, Professions and Economic Development

BRIEF OVERVIEW OF THE
BOARD OF CHIROPRACTIC EXAMINERS

The Board of Chiropractic Examiners' (BCE) primary mandate is to enforce the Chiropractic Initiative Act (Act). The Act became effective on December 21, 1922, through an initiative measure approved by the electors of California on November 7, 1922. The Act created the BCE to establish standards for chiropractic education and services. The BCE aims to protect and serve the consumers of California through the enforcement and licensing of the chiropractic profession. The BCE was last reviewed in 2013, and its last Sunset Review Report was completed in 2011.

The BCE currently licenses and regulates approximately 13,000 California licensed chiropractors and 20 chiropractic schools and colleges.

The BCE's mandates include:

- Examine applicants in order to issue licenses
- Approve Chiropractic schools
- Deny, suspend or revoke licenses

The BCE's current mission statement, as stated in its 2014-2017 Strategic Plan, is as follows:

To protect the health, welfare, and safety of the public through licensure, education, and enforcement in chiropractic care.

Board Membership and Committees

The BCE is governed by a seven member board appointed by the Governor. The membership is comprised of five licensed doctors of chiropractic (DC) and two members who represent the public. BCE members serve no more than two four-year terms. BCE members receive a $100-a-day per diem. The BCE meets at least four times per year. All Committee meetings are subject to the Bagley-Keene Open Meetings Act. There are currently no vacancies on the Board. The following is a listing of the current BCE members and their background:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority
HEATHER DEHN, D.C., CHAIR **Professional Member** 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.	05/24/12	02/10/20	Governor
FRANK RUFFINO, VICE-CHAIR **Public Member** 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.	02/21/12	11/03/16	Governor
SERGIO AZZOLINO, D.C., SECRETARY **Professional Member** 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 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.	05/24/12	02/10/20	Governor
JULIE ELGINER, Dr. PH. **Public Member** 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	05/24/2012	11/03/16	Governor

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 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.			
COREY LICHTMAN, D.C. **Professional Member** 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.	04/01/14	02/10/19	Governor
DIONNE MCCLAIN, D.C. **Professional Member** Dionne McClain was an adjunct professor at the Southern California University of Health Sciences from 2008 to 2013 and owner of McClain Sports and Wellness Inc. since 2000. She also served as the Western Regional Representative for the American Black Chiropractic Association. She was a chiropractor and team consultant for the Los Angeles Avengers from 2000 to 2001, chiropractic consultant to the Los Angeles Centurions and held multiple positions at the University of Southern California Athletic Medicine Department from 1989 to 2005, including chiropractor, consultant, and assistant athletic trainer. McClain earned a Doctor of Chiropractic degree from the Los Angeles College of Chiropractic and a Master of Business Administration degree from the University of Phoenix.	02/14/14	02/10/18	Governor
JOHN ROZA, JR., D.C. **Professional Member** 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.	02/10/14	02/10/18	Governor

The BCE currently has three standing committees. Each committee is comprised of at least three BCE members. The BCE Chair designates one member of each committee as the committee's chairperson. The chairperson coordinates the committee's work.

Licensing, Continuing Education and Public Relations Committee - proposes policies and standards regarding chiropractic colleges, doctors of chiropractic, satellite offices, corporation registration and continuing education providers and courses. The Committee also develops strategies to communicate with the public through various forms of media.

Enforcement and Scope of Practice Committee - proposes regulations, policies, and standards to ensure compliance with chiropractic law and regulations. The Committee reviews and proposes positions on scope of practice issues.

Government Affairs and Strategic Planning Committee - proposes and reviews policies, procedures to address audit and Sunset review deficiencies. This Committee works with the Executive Officer (EO) and staff to monitor budget expenditures, trends and the Contingent Fund levels. Reviews and recommends positions on legislative bills that affect the BCE, oversees all administrative issues regarding BCE operations, and develops draft strategic plans and monitors the BCE's progress in achieving goals and objectives.

Staffing Levels

The EO is appointed by the BCE. The current EO, Robert Puleo, has served in that position for over seven years. The BCE currently employs 19 staff, in addition to the EO, four staff dedicated to administration, nine dedicated to enforcement, and six dedicated to licensing.

In the BCE's 2016 Sunset Review Report, it was stated that "the BCE is not experiencing any staff issues… the BCE continues to back fill vacancies proactively."

Fiscal and Fund Analysis

As a Special Fund agency, the BCE receives no General Fund (GF) support, relying solely on the fees collected from licensure and renewal fees. The BCE has not made any loans to the GF, and there is no mandated reserve level.

Chiropractic licenses are renewed annually expiring on the last day of the licensees' birth month. The BCE's fee authority for renewals is established through the Chiropractic Initiative Act of California, section 12, and specified in Title 16, California Code of Regulations (CCR) section 370. Initial license fees are specified in16 CCR section 321. Current license fees are as follows: Renewal Fee: $250; Initial Application Fee: $100; and Licensure Fee: $100. In addition to the above mentioned licenses, the BCE issues corporation certificates, satellite office-certificates, referral services registration, and approves continuing education (CE) providers and courses.

Fee Schedule and Revenue (list revenue dollars in thousands)

Fee	Current Fee Amount	Statutory Limit	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	% of Total Revenue
Renewal Chiro License Fee	$250.00	$250.00	$,3,187,750.00	$3,363,000.00	$3,264,250.00	$3,214,500.00	89.8%
Forfeiture Fee	$250.00	$250.00	$51,500.00	$53,000.00	$49,500.00	$37,500.00	1.05%
Renewal Satellite Certificate	$5.00		$10,270.00	$12,680.00	$12,955.00	$13,755.00	.38%
Renewal Corp Registration	$10.00		$12,020.00	$12,660.00	$13,060.00	$13,570.00	.38%
Application Fee	$100.00	$100.00	$35,600.00	$35,600.00	$36,200.00	$33,000.00	.92%
Licensure Fee	$100.00	$100.00	$31,700.00	$32,100.00	$34,700.00	$30,200.00	.84%
Corporation Application	$100.00	$100.00	$9,600.00	$11,300.00	$11,300.00	$9,900.00	.28%
Reciprocity Application	$25.00	$25.00	$350.00	$325.00	$250.00	$300.00	.008%

Referral Service Registration	$25.00	$25.00	$0	$25.00	$25.00	$25.00	.001%
Continuing Education Provider Application	$75.00	$75.00	$5,025.00	$4,050.00	$4,350.00	$2,325.00	.06%
Continuing Education Application	$50.00	$50.00	$58,150.00	$72,400.00	$75,950.00	$72,250.00	2.02%
Dup/Replacement License Fee	$25.00		$6,925.00	$7,925.00	$9,225.00	$8,750.00	.2%
Satellite Application Fee	$5.00		$8,220.00	$6,695.00	$6,490.00	$7,625.00	.2%
Fingerprint Reimbursements	Various	Various	$4,590.00				
Miscellaneous	Various	Various	$4,138.50	$1,495.22	$3,258.61	$330.00	.001%
Cost Recovery	Various	Various	$151,128.94	$138,618.70	$144,963.61	$119,320.60	3.33%
Dishonored Check Fee	$25.00	$25.00	$775.00	$925.00	$975.00	$850	.02%
Cite and Fine	Various	Various	$23,440.12	$17,872.59	$13,882.00	$9,412.50	.26%

Note: This table was taken from the BCE's 2016 Sunset Review Report.

The BCE's projected revenue for FY 2016/17 is $5.6 million. For FY 2017/18 the BCE's revenue has remained consistent since its last sunset review report from 2011. However, revenues increased approximately 53% from almost $5.9 million in FY 2013/14 to $9.1 million in FY 2014/15, due to increased revenue received from a loan from the Bureau of Automotive Repair (BAR) to pay a litigation settlement in the same FY.

The BCE projects in FY 2017/18 a 13% decline in revenues. Although the BCE's anticipated reserve level in FY 2017/18 is only projected to be at 1.9 months, it was stated in the BCE's 2016 Sunset Review Report, "that the BCE has a healthy reserve and does not anticipate a deficit in the foreseeable future."

Fund Condition						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Beginning Balance	1873	2361	2931	3437	2278	1526
Revenues and Transfers	3656	3632	6241	2210	3344	3338
Total Revenue	$5529	$5993	$9172	$5647	$5622	$4864
Budget Authority	3697	3823	3844	4051	4091	4091
Expenditures	3235	3070	5746	3369	4096	4178
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
Fund Balance	$2,294	$ 2,923	$3,425	$2,278	$1,526	$686
Months in Reserve	9.0	6.1	12.2	6.7	4.4	1.9

Note: This table was taken from the BCE's 2016 Sunset Review Report.

Expenditures by Program Component – For the last four FYs, the BCE has expended approximately 70% on enforcement, 20% on licensing and 10% on administration. The BCE does not expend resources for a licensing examination.

The BCE has not submitted any BPCs in the last four FYs.

The BCE seeks cost recovery under BPC section 125.3. The BCE also has authority to seek cost recovery as a term and condition of probation. In revocation cases, where cost recovery is ordered, but not collected, the Board will transmit the case to the Franchise Tax Board Intercept Program for collection.

Licensing

The BCE licenses approximately 13,000 Chiropractors. Additionally, the BCE issues 1,400 corporation certificates; approximately 4,600 satellite office certificates, and has 34 referral service registrations.

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 licensing population has remained fairly consistent in the past four FYs except for satellite office certificates, which have increased from 3,612 in FY 2013/14 to 3,955 in FY 2015/16.

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.

The BCE reports that it has not established formal regulations relative to application processing times, but has set an internal target for processing applications within 3 to 5 months. The BCE reports in its *2016 Sunset Review Report*, that it is currently meeting its internal application target by processing applications within a 3.5 month timeframe.

The BCE reports that it has consistently received between 300 and 365 licensure applications annually during the last three FYs.

The BCE requires primary source documentation for any educational transcripts, experience records, license verification from other states, and professional certifications. As part of the licensing process, all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the DOJ and Federal Bureau of Investigation (FBI). DCs licensed prior to January 1, 1997, were not required to submit electronic fingerprints as a requirement for licensure. . As a result, in 2011, the BCE required, by regulation, all licensees whose fingerprints were on hard cards or non-electronic forms to provide fingerprints electronically. According to the BCE, as of February 1, 2017, approximately 21 percent or 2780 licensees have not submitted electronic fingerprints to the BCE.

Currently, the BCE does not query the National Practitioner Databank (NPDB).

Continuing Education

24 hours of CE is required annually for licensure renewal. Prior to June of 2013, licensees were required to complete 12 hours for annual licensure renewal. Title 16 CCR section 361(e) specifies the acceptable course content and required hours which must be completed.

The BCE reports that it conducts approximately 900-1,000 random CE audits annually. The BCE reports the following audit numbers for the last three FYs:

Fiscal 2012-2013: No data available
Fiscal 2013-2014: 473 audits 56 failed (12%)
Fiscal 2014-2015: 539 audits 97 failed (18%)
Fiscal 2015-2016: 572 audits so far and 93 failures (16%)

The BCE staff approves CE courses. As specified in Title 16 CCR section 363, CE providers must submit a CE Course Application and pay a fee, 45-days prior to the date the course is to commence. In addition, each course application is to include an hourly breakdown of the CE course; a final copy of the syllabus or course schedule, including: a copy of the course brochure and all other promotional material to be used; and the curriculum vitae of each instructor. The BCE staff reviews, verifies and analyzes all documentation. Once approved, a notification letter is sent to the provider.

CE provider applications are reviewed and initially approved by BCE staff and final approval is determined by the full Board at a subsequent Board meeting. The two tables below represent the BCE's CE provider and course applications received and approved during the last four FYs.

Fiscal Year	CE Providers	Received	Approved
2011/12	CE Providers	45	10
2012/13	CE Providers	67	73
2013/14	CE Providers	54	24
2014/15	CE Providers	58	26
2015/16	CE Providers	31	5

Fiscal Year	CE Courses	Received	Approved
2011/12	CE Courses	981	1,014
2012/13	CE Courses	1,163	1,140
2013/14	CE Courses	1,448	1,431
2014/15	CE Courses	1,519	1,484
2015/16	CE Courses	1,445	1, 421

CE courses are audited on a random basis or as a result of a compliance complaint. A BCE-determined expert reviewer or a designee appointed by the BCE has the right to inspect or audit any approved CE course or provider. A report is generated detailing the findings of the audit. If violations are alleged, a complaint is opened and investigated.

Continuing Competency

The BCE reports that it "has not implemented CE competence assessments since the profession is specialized."

Enforcement

The BCE did not specify its internal performance targets for its enforcement program; but reports that it utilizes the Department of Consumer Affairs (DCA) department-wide performance measures. These performance measures are the targets the BCE staff use internally to measure performance. The BCE noted in its 2016 Sunset Review Report that it is currently meeting expectations.

The BCE reports that since its last sunset review in 2014, that complaints intake has remained relatively consistent, with a modest increase of 88 complaints. Additionally, the BCE reports that cases pending at the end of each FY have dropped by 60 percent, from an average of 250 cases to less than 100 pending cases. However, the BCE's data comparing the current and past sunset review reports, does not take into account FYs 2011-12 and 2012-13.

The table below identifies the actual formal disciplinary actions taken by the BCE in the past three years.

Enforcement Statistics	**FY 2013/14**	**FY 2014/15**	**FY 2015/16**
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions	13	9	4
Stipulations	10	3	25
Average Days to Complete	**1389**	**741**	**391**
AG Cases Initiated	30	41	44
AG Cases Pending (close of FY)	64	65	66
Disciplinary Outcomes			
Revocation	13	9	4
Voluntary Surrender	8	9	9
Suspension	1	0	0
Probation with Suspension	4	2	4
Probation	20	17	15
Probationary License Issued	16	11	13
Other	0	2	4
PROBATION			
New Probationers	19	16	16
Probations Successfully Completed	17	23	27
Probationers (close of FY)	118	120	113
Petitions to Revoke Probation	10	6	8
Probations Revoked	5	2	1

Probations Modified	0	1	1
Probations Extended	0	1	4
Probationers Subject to Drug Testing	28	28	25
Drug Tests Ordered	503	531	469
Positive Drug Tests	6	29	16
Petition for Reinstatement Granted	1	0	1

Note: This table was taken from the BCE's 2016 Sunset Review Report

Mandatory Reporting Requirements

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.

The average dollar amount of settlements reported to the BCE is as follows:
FY 2013/2014: $78,558
FY 2014/2015: $205,789
FY 2015/2016: $104,947

The BCE does not operate within a statute of limitations for disciplinary actions and per Title 16 CCR section 318(a), licensees are not required to maintain patient records for longer than five years, unless state or federal law require a longer retention period.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection (Renamed in 2015 to: The Assembly Committee on Business and Professions) in 2013. For additional information about the BCE or to obtain a copy of the BCE's *2016 Sunset Review Report*, please visit the BCE's website at http://www.chiro.ca.gov/.

During the previous sunset review, the Committee staff raised eight issues and provided recommendations. Below, are actions which have been taken over the last four years to address those issues. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under the *Current Sunset Review Issues for the BCE* section.

1) Staff Recommendation: The BCE should update the Committees on its progress on the implementation of the Uniform Standards for Substance Abuse since the submission of the 2011 Sunset Review Report. The BCE should update its guidelines and implement testing procedures congruent with the Uniform Standards.

BCE Response: The BCE CPEI regulatory proposal would make changes to enhance the BCE's enforcement and administrative processes by defining terms in regulation, establishing reporting and disclosure requirements, and amending regulations specific to its disciplinary guidelines and applicant requirements. The BCE is proposing these changes in order to increase the BCE's enforcement

authority and access to critical information for use in investigations to improve efficiency in enforcement processes and procedures for enhanced consumer protection.

However, the BCE has been unsuccessful in completing the regulation package. Since January 2013, the package has been under development in the BCE Enforcement Committee and has come to the full BCE multiple times to review and discuss complicated policy issues that have been raised. The process has been prolonged due to various issues such as BCE Member concerns with specific provisions, the Governor's Reorganization Plan, changing legal counsel and opinions on policy issues, staffing and workload concerns, and the prioritization of legislatively mandated regulations.

Following guidance from the AG's office and DCA's Office of Legal Affairs, the BCE has moved forward in efforts to promulgate this regulation. The Board is currently developing a regulation package that would update the Boards Disciplinary Guidelines and Uniform Standards.

2) Staff Recommendation: The BCE will serve under the DCA beginning July 1, 2013. The Board should update the Committee on its plans regarding any future implementation of the Consumer Protection Enforcement Initiative regulations and how CPEI regulations compare to the Omnibus Consumer Protection Regulations the BCE is currently guiding through the rulemaking process.

BCE Response: Since the 2013 Sunset Hearing, the BCE had been developing a regulation that would incorporate the Uniform Standards for Substance Abusing Licensees into the Disciplinary Guidelines. The Uniform Standards have been subject to delays related to completing the CPEI package and a recommendation from legal counsel to cease work on the Uniform Standards until the DCA received an Attorney General opinion regarding the implementation of the Uniform Standards for Substance Abusing Licensees.

The DCA received the AG opinion in February 2016 and provided guidance to its programs on how to proceed with the regulation package shortly thereafter. Therefore, the BCE has not promulgated a regulation to incorporate by reference the Uniform Standards into the Disciplinary Guidelines. However, the BCE would like to promulgate a regulation regarding this topic in Q1 of FY 2017/2018.

3) Staff Recommendation: The Board should prepare and submit to the Committee a written plan stating how the Board will work with the DCA to handle the upcoming reorganization.

BCE Response: Effective July 1, 2013, the Governor's Reorganization Plan moved the BCE under the oversight of the Department of Consumer Affairs. Since then, the BCE has had a relatively seamless transition to the DCA. Many of the practices and procedures of the BCE were in line with how things were done at the DCA. The BCE worked with the DCA to ensure accounting, payroll, human resources and other fiscal components transitioned smoothly. The BCE has since utilized DCA's SOLID Training & Planning Solutions to complete two strategic plans and worked with various programs and units within the DCA to complete multiple projects.

4) Staff Recommendation: The Board should create a plan for how it will implement a program for granting waivers of the renewal fees, continuing education requirements, and other renewal requirements for any qualified licensee called to active duty. The Board should begin the regulatory process related to this plan immediately so that the Board is compliant with BPC section 114.3 as soon as the Board is under DCA oversight.

BCE Response: The BCE has promulgated a regulation package titled Application for Licensure and Continuing Education. The package amends the Application for Licensure and Continuing Education Requirements. The proposal seeks to amend the BCE application form, incorporated by reference, to include recent statutory changes that would provide an exemption from Continuing Education for licensees on active duty in the military or the California National Guard.

The package is under review with the DCA and the BCE anticipates the submission of the package to the Office of Administrative Law for approval in Q2 of fiscal year 2016/2017.

5) Staff Recommendation: The BCE should create a plan for how it will implement an expedited licensure process for qualified military spouses. The BCE should begin the regulatory process related to this plan immediately so that the BCE is compliant with BPC Section 115.5 as soon as the BCE is under DCA oversight.

BCE Response: The Application for Licensure and Continuing Education regulation package would amend the BCE application form, to include recent statutory changes that assist past and present members of the U.S. military and their spouses or domestic partners who have professional or occupational licenses to obtain licensure in California. The Application for Licensure and Continuing Education regulation package would establish a process for identifying past and present members of the U.S. military and their spouses or domestic partners, thereby enabling the BCE to expedite the processing of their applications.

The package is under review with the DCA and the BCE hopes to submit the package to the Office of Administrative Law for approval in Q2 of fiscal year 2016/2017.

6) Staff Recommendation: If the Administrative Procedure Manual is not meeting the contemporary needs of the Board, the Board should immediately agree upon a revision process, create an up-to-date manual, make the revised manual available on the Board's Website, and consistently comply with the policies therein.

BCE Response: The Board Member Administrative Procedures Manual (manual) was created in 2007. Since 2013, annually, the BCE has revised and adopted the manual. The manual was created to serve as a reference guide for Board Members regarding the functions of the BCE and its committees, roles of BCE members, and procedures for BCE and committee meetings. The manual also provides general information regarding BCE operating procedures, administration and staff, and other policies and procedures.

7) Staff Recommendation: To enable the Committee to evaluate current consumer satisfaction, the Board should provide any available data to the Committee. If the Board has not been tracking the data, the Board should develop and implement a plan to do so immediately.

Board Response: Traditionally, the BCE has mailed a survey out to consumers following the closure of a complaint. However, very few are returned. Since the last Sunset Review, the BCE has developed and deployed an electronic survey that makes it easier for consumers to complete and return.

8) Staff Recommendation: Should the current composition of the Board, with five professional and two public members, be changed to add two additional public members, with one member

appointed by the Speaker of the Assembly and one member to be appointed by the Senate Committee on Rules?

BCE Response: The BCE's position on this issue remains unchanged. The BCE is open to the idea of increasing the public representation on this BCE. The BCE embraces the perspective gained by non-licensee members on the issues that face consumers and the profession. However, the fiscal concerns related to amending the Act have not changed. The composition of the Board is established in the Act. The Act can only be amended by the voters of California through the ballot initiative process. Our last estimate in 2005 placed the cost of putting a measure on the ballot over $200,000. The fiscal and political realities become a deterrent to the addition of public members to the BCE.

Major changes:

Since the BCE's last sunset review in 2011, the BCE reports the following major changes:

- The Governor appointed seven new BCE members and four have been reappointed.
- Headquarters relocated from North Sacramento to Downtown Sacramento.
- Created a legislative bill-tracking manual in 2013.
- Reinstituted the BCE's newsletter and developed "A Consumer's Guide to Chiropractic Care" and a brochure about the practice of chiropractic and regulation of the profession by the BCE.
- Revised its Strategic Plan, 2017-2020.
- Established a new Assistant Executive Officer position.

CURRENT SUNSET REVIEW ISSUES FOR THE BOARD OF CHIROPRACTIC EXAMINERS

The following are unresolved issues pertaining to the BCE, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The BCE and other interested parties, including the professions, have been provided with this *Background Paper* and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: ***What is the status of the long term fund condition?***

Background: The BCE reported in its *2016 Sunset Review Report* that it "has a healthy reserve and does not anticipate a deficit in the foreseeable future" however; the same report projects the BCE to have a 1.9 month reserve in FY 2017/18, as shown in the table below. Typically it is prudent to maintain a reserve level of at least six months to cover unanticipated costs, such as litigation. Although the BCE reports that it has maintained a minimum six month reserve since FY 2012/13, it is concerning that the reserves are declining.

Fund Condition						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Beginning Balance	1873	2361	2931	3437	2278	1526
Revenues and Transfers	3656	3632	6241	2210	3344	3338
Total Revenue	$5529	$5993	$9172	$5647	$5622	$4864
Budget Authority	3697	3823	3844	4051	4091	4091
Expenditures	3235	3070	5746	3369	4096	4178
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
Fund Balance	$2,294	$ 2,923	$3,425	$2,278	$1,526	$686
Months in Reserve	9.0	6.1	12.2	6.7	4.4	1.9

Note: This table was taken from the BCE's 2016 Sunset Review Report.

In FY 2014/15, the BCE received a $2.698 million loan from the Bureau of Automotive Repair (BAR) to pay a litigation settlement. The table noted above does not necessarily reflect the recent loan or any repayments to the BAR, although BCE staff indicates that payments are currently being distributed to the BAR.

In addition, the table above reflects increased expenditures by the BCE for FYs 2016/17 and 2017/18. It is unclear what the increased expenditures are a result of. However, when expenditures are broken down by program component as referenced in the table below, the BCE is seeing significant increased costs as part of pro-rata to the DCA.

Table 3. Expenditures by Program Component (list dollars in thousands)								
	FY 2012/13		FY 2013/14		FY 2014/15		FY 2015/16	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	1,195,231	1,468.881	1,043,687	775,461	1,180,327	781,461	1,207,200	921,812
Examination	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Licensing	341,494	419,678	298,194	221,560	337,236	223,272	344,914	263,374
Administration *	170,747	209,839	149,097	110,780	168,618	111,636	172,457	131,687
DCA Pro Rata	N/A	66,820	N/A	431,646	N/A	376,618	N/A	439,104
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	$1,707,472	$2,165,218	$1,490,978	$ 1,539,447	$ 1,686,181	$ 1,492,987	$ 1,724,571	$ 1,755,977
*Administration includes costs for executive staff, board, administrative support, and fiscal services.								

Even though the BCE is projected to maintain a reserve, it would be helpful to understand if the BCE forecasts its expenditures to continue to increase or if this is limited FY trend.

Staff Recommendation: ***The BCE should explain to the Committees its current fiscal situation and projected budget reserves beyond FY 2014/15. Will the BCE need to consider a fee increase? In addition, the BCE should explain the purpose of the loan from the BAR in FY 2014 and how the BCE is paying it back.***

LICENSING ISSUES

ISSUE #2: *Application Processing Times.*

Background: Currently, the BCE has no statutory or other requirements relative to the timeframe for processing of applications. The BCE states that it has established internal timeframe is between 3-5 months and that it is currently meeting its target with a 3.5 month average processing timeframe for new applications. The BCE's established internal timeframe for processing applications has not changed since its last review in 2013. While the BCE is meeting its internal timeframe for application processing, three months or 90 days is a fairly lengthy processing time for new applications. In comparison, the Speech, Language, Pathology, Audiology and Hearing Aids Dispensers' Board reports an internal target processing timeframe of less than 30 days, for an Audiologist license. The Board of Occupational Therapy reports in its *2016 Sunset Review Report* that, "the Board is meeting its regulatory goal in processing applications and notifying applicants within 30 days of the status of their application." The Physical Therapy Board reports in its *2016 Sunset Review Report*, that it has established an internal timeframe for processing applications at 45-days, almost half the time established by the BCE. In its *2016 Sunset Review Report*, the BCE does not indicate that the processing times are an issue.

Staff Recommendation: ***The Board should explain to the Committees how it established its internal processing timeframes in 2011 and if it is considering revising its internal performance expectations for application processing in the future.***

ISSUE #3: *Should the BCE query the NPDB?*

Background: As specified in 16 CCR Section 321.1, all applicants for licensure are required to submit to the BCE, fingerprints for purposes of conducting criminal history background checks in addition to disclosing all disciplinary actions on initial applications for licensure and renewal applications. Though other states utilize the NPDB, which includes information about an applicant or licensees disciplinary actions, the BCE does not check the National Databank.

The BCE indicated in its 2016 Sunset Review Report…"The [BCE] previously attempted to promulgate regulations containing provisions requiring the BCE to annually check the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank prior to the issuance of a license or a renewal." However, the Department of Finance informed the BCE staff 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 the BCE's existing budget appropriation. Therefore, the BCE withdrew this provision from the Omnibus Consumer Protection Regulations package and will pursue this authority in a separate regulation if we are able to get sufficient additional appropriation authority.
In the BCE's *2011 Sunset Review Report*, it was asked a similar question about the NPDB and responded as follows: "[as] originally drafted, the BCE's Omnibus Consumer Protection Regulations

contained provisions requiring the BCE to annually check the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank prior to the issuance of a license or a renewal. However, the Department of Finance informed the [BCE] staff 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 the [BCE's] existing budget appropriation. Therefore, the [BCE] withdrew this provision from the Omnibus Consumer Protection Regulations package and will pursue this authority in a separate regulation if we are able to get sufficient additional appropriation authority."

The BCE's reported figures detailing the cost of the program are the same as estimated in its *2011 Sunset Review Report*. It is unclear if the BCE recently inquired about the cost of utilizing the NPDB or if it is relying on statistics from 2011; however, the Act authorizes the Legislature to establish the fees payable by applicants and licensees so if the BCE wanted to query the system it would need to seek authorization from the Legislature. The last fee increase for the BCE occurred in 2010 as a result of AB 1996 (Hill), Chapter 539 Statutes of 2010, which increased the licensure renewal fee from $100 to $250. If the BCE was interested in requiring licensees to be queried through the NPBD, the BCE would need to pay for the query out of existing resources (if possible) or require an applicant or licensee to pay for the cost, as a result, a statutory or regulatory change may be necessary.

Staff Recommendation: ***The BCE should advise the Committees on whether or not it thinks the use of the NPDB would be beneficial for the BCE and if it could increase the protection of the public. If the cost of continuous query services is too high, the BCE may consider conducting periodic checks of sets of licensees or charging the $2 at the time of initial license and renewal. The BCE may confer with other boards to gain insight about how other regulatory entities utilize the NPDB.***

ENFORCEMENT ISSUES

ISSUE #4: *Enforcement Timeframes*

Background: One of the general questions that the Committees ask of each board, bureau or other regulatory entity under the DCA pertains to enforcement timelines and performance metrics. Including, "what are the [BCE's] performance targets/expectations for its enforcement program?" And, "is the [BCE] meeting those expectations?" The BCE responded to these questions in its 2016 Sunset Review Report that "yes, [the] BCE is meeting those expectations." The BCE states that it uses the DCA's performance measures.

In 2010, the DCA launched the CPEI to overhaul the enforcement process of healing arts boards. According to the DCA, the CPEI was a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. Once fully implemented, the DCA expected the healing arts boards to reduce the average enforcement completion timeline to between 12-18 months.

Each board, bureau, and program was asked to establish initial performance targets, or specific levels of performance against which actual achievement is compared. As an example, a target of an average of 540 days for the cycle time of formal discipline cases was established by the DCA Director. Although the BCE does not specify its internal performance measures in its *2016 Sunset Review Report*, it reports that it follows the guidelines as set forth by the DCA.

The Quarterly Performance Measures of the BCE which are provided on the DCA's website at http://www.dca.ca.gov/about_dca/cpei/quarterly_reports.shtml. Those reports demonstrate that the BCE is not meeting a number its presumed performance target goals.

Staff Recommendation: ***Although there has been improvement, the BCE should advise the Committees on its continued efforts to decrease the timeframes. In addition, the BCE should advise the Committees on why it continues to see such high number of complaints against DCs.***

ISSUE #5: *CE Audits*

Background: The BCE reports that it conducts approximately 900-1,000 random CE audits annually. The BCE reports the following audit numbers for the last three FYs:

Fiscal 2012-2013: No data available
Fiscal 2013-2014: 473 audits 56 failed (12%)
Fiscal 2014-2015: 539 audits 97 failed (18%)
Fiscal 2015-2016: 572 audits so far and 93 failures (16%)
Based on the date the BCE provided in its *2016 Sunset Review Report, the BCE* is not meeting its CE audit performance targets. Further, the rate of noncompliance is high (between 12-18%) relative to other healing arts boards.

Staff Recommendation: ***The BCE should discuss the barriers it faces in meeting its CE audit targets. Further, the BCE should discuss potential reasons for the high rates of noncompliance and discuss potential solutions, such as completing more audits or increasing fines for noncompliance.***

TECHNOLOGY ISSUES

ISSUE #6: *What is the status of BReEZe implementation by the BCE?*

Background: In 2009, the DCA began an IT project to replace multiple antiquated standalone information technology systems used by the boards, bureaus, and committees within its jurisdiction, with one fully integrated system. In 2011, the DCA awarded a grant to Accenture LLC to develop and implement the IT system, commonly referred to as BReEZe.

The original project plan called for the BreEZe system to be implemented into three releases beginning in July of 2012. The BCE was scheduled to be a part of the third release, along with 19 other boards and bureaus. However, numerous technical delays and problems with the project forced the delay of both the first and second releases of the system; and subsequently eliminated the project for those boards and bureaus scheduled for release three, including the BCE. Instead, DCA reported its intentions to conduct a cost-benefit analysis for Release 3 boards after the completion of release two in early 2016. According to the DCA, the BCE has completed its first step to initiate the process of establishing a new IT system, which would require the BCE to map out their business processes and determine what the requirements of an IT system must be in order to meet the BCE's needs. The second step would include a business justification, cost benefit analysis, alternatives analysis, and fiscal analysis.

The table below reflects current, past and anticipated expenditures by the BCE on the BreEZe project which the BCE will not utilize the current form of the BreEZe system.

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	FY 2018/19
Actual	**Actual**	**Actual**	**Actual**	**Actual**	**Actual**	**Actual**	**Budget**	**Budget**	**Budget**
3,674	11,274	62,212	4,827	96,308	48,922	47,859	130,308	95,308	113,308

As reported by the BCE, "the BCE has been working with DCA's Executive Office and Office of Information Services to find a solution to satisfy the BCE's IT needs. BCE staff has met with DCA's Office of Information Services and has agreed to develop a plan that would place the BCE on a track to procure an IT system that fits its IT needs. The BCE anticipates commencing this process to replace the current IT platform in Q1 2017-2018.

Staff Recommendation: ***The BCE should update the Committees about its future technology plans including information provided to the BCE by the DCA and any anticipated costs of a new system. In addition, the BCE should explain to the Committees any enforcement or licensing related problems as a result of its current outdated IT system. The BCE should update the Committees on the total amount they anticipate spending on the BreEZe system, which they will not be utilizing. The BCE should update the Committees on where it is in the sequence mentioned above to secure a new IT system.***

ADMINISTRATIVE ISSUES

ISSUE #7: *Examination Passage Rates.*

Background: In order to become a licensed Chiropractor in California, an individual must graduate from a Council of Chiropractic Education (CCE) accredited chiropractic college that is approved by the Board, take and pass a national examination, along with the California Jurisprudence Examination. In the BCE's *2016 Sunset Review Report*, it provided a snapshot of the passage rates for the California Jurisprudence Examination. The passage rate for first time test-takers the last four FYs averaged approximately 68% for the Jurisprudence Examination. During the period of the previous sunset review (FYs 2007/08-2010/11) the pass rate was approximately 63%.

In the BCE's *2016 Sunset Review Report*, it noted that it completed a review and revision of the California Jurisprudence Examination in 2014, as a result of changes to the law and regulations relative to chiropractic.

Examination Data (2012-2016)	
California Examination:	
License Type	Doctor of Chiropractic
Exam Title	California Law & Professional Practice Examination (*Renamed California Jurisprudence Examination*)

FY 2012/13	# of 1st Time Candidates	319
	Pass %	66%
FY 2013/14	# of 1st Time Candidates	331
	Pass %	67%
FY 2014/15	# of 1st Time Candidates	342
	Pass %	73%
FY 2015/16	# of 1st time Candidates	313
	Pass %	69%
	Date of Last OA	2004
	Name of OA Developer	HZ Assessments
	Target OA Date	2012

Note: This table was taken from the BCE's 2016 Sunset Review Report

Examination Data (2007-2011)		
California Examination:		
	License Type	Doctor of Chiropractic
	Exam Title	California Law & Professional Practice Examination *(Renamed California Jurisprudence Examination)*
FY 2007/08	# of 1st Time Candidates	228
	Pass %	59%
FY 2008/09	# of 1st Time Candidates	239
	Pass %	62%
FY 2009/10	# of 1st Time Candidates	293
	Pass %	65%
FY 2010/11	# of 1st time Candidates	237
	Pass %	68%
	Date of Last OA	2004
	Name of OA Developer	HZ Assessments
	Target OA Date	2012

Note: This table was taken from the BCE's 2011 Sunset Review Report

Staff Recommendation: ***The BCE should explain to the Committees why it believes the passage rate for the California Jurisprudence Examination is perceived to be low and if the BCE has any concerns with the examination passage rates.***

ISSUE #8: *How can the BCE improve survey response rates?*

Background: In order to ensure that licensees and other members of the public have a venue to report satisfaction or dissatisfaction with boards, many of the regulatory entities under the DCA often make consumer satisfaction surveys available on their website. Consumer surveys are important tools boards and bureaus utilize to track customer satisfaction and determine where improvements can be made.

The BCE's *2016 Sunset Review Report*, provided survey response rates from the last three FYs, which were considerably low. For the last three FYs, the response rates were between eight and twelve percent. The BCE sent out over 100 surveys each year. A low response rate makes it difficult to develop an accurate picture. Currently, the BCE only sends surveys to consumers involved in the complaint process.

During the BCE's 2013 sunset review, this issue was also raised in the Committee staff background paper. According to that paper, "…the [BCE] had not been tracking its consumer satisfaction surveys, but that the [BCE] intended to begin conducting surveys and keeping updated statistics on the results.

The [BCE] said that it would provide the statistics to the Committee at a future date. The Committee is concerned that the [BCE] should have accurate records of consumer satisfaction feedback and be able to use that data to improve the [BCE]'s performance and better fulfill the [BCE}'s mission of consumer protection.

At that time, it was recommended that "to enable the Committee to evaluate current consumer satisfaction, the [BCE] should provide any available data to the Committee. If the [BCE] has not been tracking the data, the [BCE] should develop and implement a plan to do so immediately."

Staff Recommendation: The BCE should advise the Committees on any contemplated solutions to the low consumer satisfaction survey response rates or any plans to conduct additional surveys.

ISSUE #9: ***News Articles: Ensuring consumer protection and enhancing consumer outreach.***

Background: A recent news article published by KTVU FOX2 covered a case where there was some concern over a DC who was convicted of sexual battery who continued to practice for four months after his conviction.[1] The story noted that the practitioner "was sentenced in July 2016 to 2 years in prison but [the practitioner] was released early because of credit for time already served."

As a result, the BCE sought to suspend the practitioner's license (and the licensee stipulated to an interim suspension order).[2] The BCE did not do so sooner because the BCE "was not aware he had resumed seeing patients." The story reported that the BCE "says a temporary suspension of [the practitioner's] chiropractic license expired when he completed his sentence and the agency thought his sentence would last longer." The news outlet also noted that the licensee's discipline page did not mention the reason for the order. The order only describes the terms of the stipulation and the requirements on the licensee, such as prominent notice of the suspension in a conspicuous place.

Staff Recommendation: ***The BCE should discuss any potential barriers it faces when learning of convicted licensees who are released early from correctional institutions, such as a lack of DOJ or court notice. The BCE should advise the Committees if there are shortfalls in its enforcement process and if there are any potential legislative remedies necessary.***

TECHNICAL CLEANUP

[1]KTVU FOX2, *Convicted chiropractor back to work in Campbell*, NOV 22 2016. http://www.ktvu.com/news/219339706-story (accessed Feb 1, 2017).
[2] BCE, *Interim Order of Suspension*, Dec 20, 2016, http://www.chiro.ca.gov/enforcement/ac_2014_985.pdf (accessed Feb 1, 2017)

ISSUE 10#: ***Is there a need for technical cleanup?***

Background: There may be a number of non-substantive and technical changes to the BCE's practice act as it may be prudent to strikeout outdated references and obsolete code sections.

Staff Recommendation: ***The BCE should recommend cleanup amendments.***

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

ISSUE 11#: ***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: ***Recommend that the BCE continue to be reviewed once again between two to four years.***