

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Continuing Education: Distance Learning

Section Affected: Amend section 363.1 of Division 4 of Title 16 of the California Code of Regulations (CCR)¹

Background and Statement of the Problem:

The Board of Chiropractic Examiners (Board) regulates the practice of chiropractic in California, including approximately 12,000 licensed doctors of chiropractic, 106 providers of chiropractic continuing education, and 20 chiropractic colleges located throughout the United States and Canada. The Board was created on December 21, 1922, through the Chiropractic Initiative Act of California (Act), as the result of an initiative measure approved by California voters on November 7, 1922.

Protection of the public is the Board's highest priority when exercising its licensing, regulatory, and enforcement functions, and the Board's vision is ensuring California consumers receive high-quality, patient-centered and collaborative care. The primary methods by which the Board achieves this objective are: establishing minimum standards for chiropractic colleges, licensure and practice, and continuing education programs; issuing licenses to eligible applicants; investigating complaints against licensees and disciplining them for violating provisions of the Act, the Board's regulations, and other laws that govern the practice of chiropractic; and monitoring licensees who have been placed on probation.

The Act, section 4(b), authorizes the Board to adopt regulations as it deems proper and necessary for the performance of its work, the effective enforcement and administration of the Act, the establishment of educational requirements for license renewal, and the protection of the public. The Act, section 4(e), authorizes the Board to do any and all things necessary or incidental to the exercise of its powers and duties.

The Act, section 10(a), authorizes the Board to, by rule or regulation, adopt, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of professional service and the protection of the public.

Existing law, CCR sections 360 through 366, establishes the Board's annual continuing education requirements for actively licensed doctors of chiropractic. The Board last

¹ Unless otherwise noted, all references to the CCR hereafter are to Title 16.

amended these requirements in 2011 by increasing the number of required hours from 12 to 24; adding mandatory subject areas in ethics and law, history taking and physical examination procedures, and proper and ethical billing and coding; and allowing licensees to complete up to 12 hours annually through distance learning. When the Board adopted this new distance learning option, the Board considered any learning completed outside of a traditional, in-person classroom setting to be distance learning and cited examples such as computers, internet, manuals, and audio and video tapes in the regulation text.

Since that time, innovation in online learning has significantly evolved from self-paced reading and discussion boards to live webinars and virtual classrooms. This expansion was accelerated during the recent pandemic when students at all levels from kindergarten through college quickly shifted to these online learning platforms to help slow the spread of COVID-19.

However, the Board's distance learning regulation, CCR section 363.1, did not account for these technological advancements and made no distinction between synchronous and asynchronous learning, so licensees were still limited to a maximum of 12 hours of credit for participation in live webinars. Recognizing this issue, the Director of the Department of Consumer Affairs (DCA) issued a series of orders² during the pandemic waiving CCR section 361, subdivision (c), from September 23, 2020, through March 31, 2022, to the extent that it limits to 12 hours the maximum number of continuing education hours that may be completed 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 subsequently discussed necessary changes to CCR section 363.1 to narrow the definition of distance learning and allow courses delivered through live, interactive learning platforms to have the same standing as traditional, in-person classroom environments. The Board also proposed requiring licensees to pass an interactive or graded test as a condition for successful completion of a distance learning course for consistency with current industry best practices.

The Board has drafted a proposal amending CCR section 363.1 to:

- Define distance learning continuing education as a form of asynchronous learning conducted online or outside of a classroom and that does not offer participatory interaction between the licensee and the instructor during the instructional period.
- Add programs and applications on a data-enabled device, such as a tablet or smartphone, to the examples of acceptable distance learning course formats.

² DCA Waivers DCA-20-63, DCA-21-203, and DCA-22-209

- Replace the existing requirement for continuing education providers to establish a deadline for completion of a distance learning course with a requirement for licensees to pass an interactive or graded test of the subject matter as a condition for successful completion of distance learning.
- Delete a redundant requirement for providers of distance learning courses to review their instructional materials annually.
- Make additional, minor changes to the regulation text to incorporate gender-neutral language and to clarify that continuing education providers are strictly prohibited from endorsing manufacturers, distributors, or other sellers of chiropractic products or services in their course material.

At the May 23, 2024 meeting, the Board approved text amending CCR section 363.1, directed staff to commence the formal rulemaking process, and authorized the Executive Officer to make any non-substantive or technical changes to the package.

Anticipated benefits from this regulatory action:

This proposal benefits the health and welfare of California residents by ensuring that actively licensed doctors of chiropractic, as health care practitioners, have access to a broad range of continuing education courses on topics such as advancements in the field of chiropractic practice, clinical competence, patient care, evaluation and diagnostic skills, and legal and ethical obligations, regardless of their geographic location. This proposal further benefits California residents by confirming licensees can demonstrate their understanding and command of asynchronous distance learning courses through an interactive or graded test of the material.

This proposal also benefits actively licensed doctors of chiropractic, particularly those located in rural areas or outside of the state or with permanent or temporary medical conditions or disabilities, by providing them with increased access to a variety of live continuing education courses with other licensees from diverse backgrounds and experiences.

This proposal benefits the environment by reducing carbon emissions and pollutants through eliminating the requirement for licensees to annually commute or travel to attend in-person continuing education courses.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

1. Add a new subsection (a) to define the term “distance learning”.

Purpose: This new subsection will define the term “distance learning” as a form of asynchronous learning conducted online or outside of a classroom and that does not offer participatory interaction between the licensee and the instructor during the instructional period.

Rationale: It is necessary to define “distance learning” to provide clarity in the distinction between the types of courses that qualify for live classroom credit and the types of courses that are considered distance learning and limited to no more than 12 hours annually. The current regulation does not define this term, and instead, only provides examples of distance learning formats such as computers and internet. As a result, live courses delivered by an instructor through a virtual classroom or lecture setting are subject to the same 12-hour annual limit as independent, self-paced learning. By narrowly defining distance learning as asynchronous coursework, synchronous courses delivered through online learning platforms will qualify for the same classroom credit as traditional, in-person courses.

2. Renumber and amend subsection (b).

- Add new examples of distance learning formats.

Purpose: The examples of distance learning formats are being expanded to include programs or applications on a data-enabled device, such as a tablet or smartphone.

Rationale: It is necessary to add programs and applications on a data-enabled device, such as a tablet or smartphone, as examples of distance learning formats to bring the regulation current with present technology. When this regulation was adopted in 2011, the Board included the terms “computer” and “Internet” as examples of distance learning, but since then, significant technological advancements and increased access to high-speed internet have also enabled licensees to participate in distance learning courses through applications or programs on data-enabled mobile devices, such as smartphones and tablets.

- In new subsection (b)(5), add a requirement that a licensee must pass a test of the subject matter for successful completion of a distance learning course. Also adds (b)(5)(A) and (b)(5)(B) that the test includes electronic answer submission and feedback and notification of passing, or a self-assessment that must be submitted, graded, and returned to the licensee with an explanation of the answers.

Purpose: The requirement for continuing education providers to establish a deadline for completion of a distance learning course is being deleted and replaced with a new requirement for licensees to pass an interactive or graded test of the subject matter.

Rationale: The prior requirement for continuing education providers to establish a deadline for completion of a distance learning course is unnecessary and redundant because licensees are not granted credit for a course until completion and the Board’s regulations already establish two course completion deadlines for licensees through their annual license expiration date and the expiration date of the course approval by the Board (see CCR sections 363 and 371). Licensees who seek continuing education credit through distance learning must complete the course before their license expiration date and before the Board’s approval of the course expires.

Instead, the Board is proposing to require licensees to demonstrate their competence and practical application of the material covered in the distance learning course by passing an interactive or self-assessment test of the subject matter. Submitting answers electronically is allowable through distance learning. This new interactive test or self-assessment requirement is current industry best practice to ensure the continuing education is effective and promotes engagement, active participation, and long-term memory retention by mandating that licensees demonstrate their ability to apply what they have learned in distance learning courses. An explanation of why the answer is correct or incorrect also helps learning progress by providing feedback to licensees and allowing them to identify areas where their understanding of the course material may be weak or where they need to review the material again. In addition, this requirement allows course instructors to gauge the effectiveness of their course and identify common misconceptions or gaps in understanding across the participant group, enabling them to make targeted improvements to their course content, design, or delivery method.

3. Delete requirement for providers to review distance learning instructional materials annually.

Purpose: The requirement for providers of continuing education courses offered through distance learning formats to review instructional materials annually to ensure the content is current and relevant is being deleted.

Rationale: This requirement is redundant and unnecessary because CCR section 363, subsection (c)(2) already requires continuing education providers to submit a final copy of the course syllabus containing, among other things, a course description, educational objectives, teaching methods, and recommended reading, with their annual application for Board approval of the course. Through this requirement, all continuing education providers, not just providers of distance learning courses, must review their instructional materials annually when preparing their course applications. Further, CCR section 363, subsections (d) and (h) provide the Board with authority to deny or withdraw approval of a course if the instructional content is found to be outdated or irrelevant.

4. Renumber subsection (c), delete “he or she” and replace with “the licensee”, and replace the term “may not” with “shall not”.

Purpose: The term “he or she” is being deleted and replaced with “the licensee” and the term “may not” is being deleted and replaced with “shall not”.

Rationale: The deletion of the term “he or she” and replacement with “the licensee” is a technical, non-substantive change that is being made to ensure the use of gender-neutral language in the Board’s regulations in accordance with Assembly Concurrent Resolution 260 (Low, Chapter 190, Statutes of 2018), which encourages state agencies to avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.

The deletion of the term “may not” and replacement with “shall not” is necessary to clarify that continuing education providers are strictly prohibited from endorsing manufacturers, distributors, or other sellers of chiropractic products or services in their course materials. The prior use of the term “may not” in this context could be misinterpreted by continuing education providers and imply that this prohibition is discretionary, not mandatory.

5. Amend Note.

Purpose: The Note is being amended to correct the citation of the Chiropractic Initiative Act of California in the authority and reference sections.

Rationale: These technical, non-substantive corrections to the authority and reference sections are being made to ensure the accuracy of the citations and have no effect on the regulation.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- Proclamation of a State of Emergency Regarding COVID-19 by Governor Gavin Newsom, Issued March 4, 2020
- DCA Waiver DCA-20-63 Order Waiving Restrictions on Internet-Based Continuing Education Training for Chiropractors and Naturopathic Doctors by DCA Director Kimberly Kirchmeyer, Issued September 23, 2020
- DCA Waiver DCA-21-203 Order Terminating Order Waiving Restrictions on Internet-Based Continuing Education Training for Chiropractors and Naturopathic Doctors by DCA Director Kimberly Kirchmeyer, Issued November 22, 2021
- DCA Waiver DCA-22-209 Order Extending Order Waiving Restrictions on Internet-Based Continuing Education Training for Chiropractors and Naturopathic Doctors by DCA Director Kimberly Kirchmeyer, Issued January 11, 2022
- Agendas, Materials, and Minutes from the Following Public Meetings:
 1. January 25, 2022 Board Meeting – Agenda Item 9
 2. February 9, 2022 Licensing and Continuing Education Committee Meeting – Agenda Item 3
 3. April 22, 2022 Board Meeting – Agenda Item 15B
 4. October 6, 2022 Continuing Education Committee Meeting – Agenda Item 5
 5. October 25, 2022 Continuing Education Committee Meeting – Agenda Item 2
 6. October 27, 2022 Board Meeting – Agenda Item 18

7. December 2, 2022 Continuing Education Committee Meeting – Agenda Item 4
 8. January 4, 2023 Continuing Education Committee Meeting – Agenda Item 4
 9. January 20, 2023 Board Meeting – Agenda Item 15B
 10. April 20, 2023 Board Meeting – Agenda Item 17
 11. May 23, 2024 Board Meeting – Agenda Item 12
- PACE Policies & Procedures: Criteria for Quality Continuing Education – Criterion 23 (Distance Learning), p. 22, Federation of Chiropractic Licensing Boards Providers of Approved Continuing Education, Revised April 29, 2021
 - “Using Testing as a Learning Tool,” *American Journal of Pharmaceutical Education*, Vol. 83, Article 7324. Yang, Brenda W. et al., 2019

Business Impact:

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

Existing law, CCR sections 361 through 363.1, already requires actively licensed doctors of chiropractic to annually complete 24 hours of continuing education courses, establishes a process for continuing education providers to obtain Board approval of classroom and distance learning courses, and limits licensees to no more than 12 hours annually through distance learning.

This proposal will narrow the definition of distance learning to asynchronous coursework, thereby allowing live courses delivered via online learning with participatory interaction between the licensee and an instructor to qualify as classroom courses rather than distance learning.

This proposal will also require providers of distance learning courses to establish successful completion of the course through an interactive or graded test of the subject material, an existing industry best practice, and make additional minor and clarifying edits to the regulation.

This proposal is not anticipated to result in additional costs to licensees or businesses or to have any adverse impact on businesses, including those owned or operated by licensees because continuing education providers and courses are typically currently in compliance with the proposed regulations. However, to the extent a continuing education provider is required to add a testing or self-assessment process to an existing course, any workload and costs are anticipated to be completed within normal business operations.

Economic Impact Assessment:

The Board has determined that this regulatory proposal will have the following effects:

- It will not create jobs or eliminate jobs within the State of California because the proposal only makes minor updates to the acceptable formats for classroom and distance learning chiropractic continuing education courses. The proposed changes will not affect the number of jobs within the state.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only makes minor updates to the acceptable formats for classroom and distance learning chiropractic continuing education courses. The proposed changes will not affect the number of businesses within the state.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only makes minor updates to the acceptable formats for classroom and distance learning chiropractic continuing education courses. The proposed changes to these requirements will not impact the expansion of business within the state.
- This regulatory proposal benefits the health and welfare of California residents by ensuring that actively licensed doctors of chiropractic have access to a broad range of continuing education courses regardless of their geographic location and by confirming licensees can demonstrate their understanding and command of material covered during distance learning courses through an interactive or graded test.
- This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.
- This regulatory proposal benefits the environment by reducing carbon emissions and pollutants through eliminating the requirement for licensees to annually commute or travel to attend in-person continuing education courses.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.