

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS****PUBLIC SESSION MINUTES*****Thursday, March 1, 2007******9:00 a.m. to 5:00 p.m.******State Capitol, Assembly Room 126******Sacramento, CA 95814*****BOARD MEMBERS PRESENT**

Richard Tyler, D.C., Secretary
Judge James Duvaras, Ret.
Francesco Columbu, D.C.
Frederick Lerner, D.C.
Hugh Lubkin, D.C.

BOARD MEMBERS ABSENT

James Conran

STAFF PRESENT

Catherine Hayes, Executive Director
David Hinchee, Assistant Executive Director
Jana Tuton, Deputy Attorney General
Lavella Matthews, Licensing Program Analyst
Marlene Valencia, Business Services Assistant

PETITION HEARINGS:

Ann Sarli, Administrative Law Judge
Lorrie Yost, Deputy Attorney General

GUESTS PRESENT

Sarbjit Dhesi, D.C.
Charles G. Davis, D.C., ICAC
Rick Skala, D.C.
Carole M. Arbuckle
George Cate, Sen. BP & Ed Comm.
John Bueler, D.C., CCA
Bill Howe, CCA
Bill Updyke, D.C., CCA
Patrick Walborn, D.C.
Ed Cremata
Roger Calton

Louise Phillips
David Oranen
Azita Banooni
Kendra Holloway, D.C.
Al Dockus

Call to Order

Dr. Tyler called the meeting to order at 9:05 a.m.

Roll Call

Dr. Tyler called the roll. All members were present.

Dr. Tyler introduced and welcomed the newest Board member, Frederick Lerner, D.C., who was appointed by the Governor on February 16, 2007.

Approval of Minutes

- December 14, 2006, Open Session

JUDGE DUVARAS MOVED TO ADOPT THE DECEMBER 14, 2006 OPEN SESSION MINUTES. DR. LERNER SECONDED THE MOTION. VOTE: 4-0. MOTION CARRIED.

Election of Officers

Dr. Tyler requested nominations for Chair.

Judge Duvaras nominated Dr. Tyler. There being no further nominations, Dr. Tyler closed the nominations for Chair.

DR. TYLER CALLED FOR A VOTE. DR. TYLER WAS ELECTED AS CHAIR. VOTE: 4-0.

Dr. Tyler requested nominations for Vice Chair. Dr. Columbu nominated Dr. Lerner. There being no further nominations, Dr. Tyler closed the nominations for Vice Chair.

DR. TYLER CALLED FOR A VOTE. DR. LERNER WAS ELECTED AS VICE CHAIR. VOTE: 4-0.

Dr. Tyler requested nominations for Secretary. Dr. Lerner nominated Dr. Columbu. There being no further nominations, Dr. Tyler closed the nominations for Secretary.

DR. TYLER CALLED FOR A VOTE. DR. COLUMBU WAS ELECTED AS SECRETARY. VOTE: 4-0.

Chairperson's Report

Dr. Tyler asked Judge Duvaras to head a committee to establish policies or bylaws for the Board. Judge Duvaras accepted.

Dr. Tyler announced that delegates for the National Board of Chiropractic Examiners are due Monday March 5, 2007. Dr. Lerner was chosen as the delegate and Dr. Columbu as the alternate for National Board of Chiropractic Examiners.

Dr. Tyler read a statement regarding the direction of the Board of Chiropractic Examiners. Dr. Tyler stated that with the Board's permission he would like to send it to the various chiropractic publications.

Dr. Tyler then called for a closed session. Dr. Tyler asked that everyone leave the room with the exception of Cynthia Butler, Shawn Steele and Catherine Hayes. Jana Tuton informed the Board that a closed session is with only Board members and Board staff. Dr. Tyler stated that he would then like to have Board members and David Hinchee remain.

The meeting was recessed into closed session at 9:20 a.m. and reconvened into open session at 9:50 a.m.

Dr. Tyler stated that due to time schedules of certain people in the audience he moved to Exhibit Q, Discussion Regarding Manipulation Under Anesthesia (MUA). Dr. Tyler asked anyone who would like to speak regarding this issue to please step forward.

Patrick Shannon, an attorney with the law firm of Greenberg Traurig and Roger Calton, an attorney with the law firm of Calton & Burns, both were representing Dr. Ed Cremata, D.C. Along with them were Ed Cremata, D.C. and Charles Davis, D.C., with the International Chiropractors Association of California (ICAC). Mr. Shannon commented that manipulation under anesthesia (MUA) is chiropractic in nature, MUA is taught in chiropractic schools and that MUA does not violate the use of drugs because the chiropractor is not involved in the administration of anesthesia. Mr. Shannon further stated that he was asked in a previous Board meeting if there were any outstanding contradiction cases. Mr. Shannon continued by stating that the Tain case in no way contradicts, but in fact, reaffirms the authority of the Board of Chiropractic Examiners to make scope of practice decisions. Mr. Shannon then asked the Board if they are prepared to make a resolution reaffirming their position since 1990 that MUA is legal and within the scope and secondly, are they prepared to initiate a rulemaking to solidify that.

Judge Duvaras made a motion that the Board of Chiropractic Examiners reaffirms its longstanding interpretation that manipulation as part of a MUA procedure is authorized under the Chiropractic Initiative Act and is not made illegal simply because the patient is under anesthesia. The acts ban on the practice of medicine and the use of drugs pertains only to the activity of a doctor of chiropractic by his or her own hand and does not preclude a doctor of chiropractic from performing manipulation in a procedure where a qualified anesthesia provider is exclusively responsible for the drugs.

JUDGE DUVARAS MOVED TO REAFFIRM THAT MUA IS AUTHORIZED UNDER THE CHIROPRACTIC INITIATIVE ACT AND IS NOT ILLEGAL. DR. LERNER SECONDED THE MOTION. VOTE: 4-0. MOTION CARRIED.

Judge Duvaras requested that MUA be placed on the next Board meeting agenda to initiate a rulemaking to clarify that MUA is within the scope of practice under the act. All members agreed.

Petition Hearing for Reinstatement of Revoked License

Administrative Law Judge Ann Sarli presided over and Deputy Attorney General Lorrie Yost appeared on behalf of the people of the State of California on the following petition hearings:

- Carlos Seals
- David J. Oranen
- Thomas J. Wiltse

Petition for Early Termination of Probation

Administrative Law Judge Ann Sarli presided over and Deputy Attorney General Lorrie Yost appeared on behalf of the people of the State of California on the following petition hearings:

- Azita Banooni, D.C.
- Geoffrey A. Hodies, D.C.
- William W. Schrader, D.C.

Following the petitioners oral testimonies, the Board heard public statements from Robert Levanthal, Larry Hagman, and Dr. Peter Martin regarding Palmer College Florida. Mr. Levanthal stated that Palmer College Florida first submitted its application on May 18, 2005 seeking approval from the Board, He continued by saying Palmer College Florida is fully accredited by the Council on Chiropractic Education (CCE). Mr. Levanthal asked the Board to approve the Palmer College Florida application that is on file and to make the approval retroactive to December 1, 2005.

JUDGE DUVARAS MOVED TO APPROVE THE APPLICATION OF PALMER COLLEGE FLORIDA AND MAKE IT RETROACTIVE TO DECEMBER 1, 2005. DR. COLUMBU SECONDED THE MOTION. VOTE: 4-0. MOTION CARRIED.

The Board then recessed for lunch at 1:30 p.m. The Board reconvened into executive session at 2:30 p.m. to consider Mr. Seals, Mr. Oranen and Mr. Wiltse's Petition for Reinstatement of Revoked License and Drs. Banooni, Hodies and Schrader's Petition for Early Termination of Probation.

Dr. Tyler, D.C. called the Board into open session at 3:02 p.m. All Board members were present.

Dr. Tyler, D.C. introduced and welcomed the newest Board member, Hugh Lubkin, D.C., who was appointed by the Governor on March 1, 2007. Dr. Lubkin, D.C. joined the meeting at 3:02 p.m.

Program Reports

Administration

Mr. Hinchee reminded Dr. Tyler that the Board needs to select Federation of Chiropractic Licensing Boards (FCLB) delegates. Dr. Tyler stated that he would call Mr. Hinchee with that information.

Budget Update

Mr. Hinchee referred to Exhibit H, regarding the Board's current expenditures. Mr. Hinchee stated that the budget is doing well. Dr. Columbu, D.C. questioned the expenses for IT services rendered by Powell Consulting. Mr. Hinchee explained that the expenses are due to excessive computer mishaps and frequent repairs to the server. Dr. Columbu, D.C. asked if it was normal for the Board staff to have laptops and remote access. Mr. Hinchee responded by recommending the removal of remote access to all Board staff. Following a brief discussion regarding the removal of remote access by all Board staff, Dr. Lerner made a motion.

Dr. Lerner, D.C. stated that he would like to see the policies for other State agencies. Dr. Lerner, D.C. then asked Mr. Hinchee to obtain guidelines from other agencies and present it to the Board as an agenda item at a future meeting.

Cost Recovery Data

Judge Duvaras asked how the Board is doing on collecting attorney fees. Mr. Hinchee referred to Exhibit K. Judge Duvaras suggested that it should be made part of the stipulation that the fees are paid within so many days. Mr. Hinchee stated that it should be a staff project and involve Judge Duvaras to find a solution on how to plan on cost recovery. Dr. Tyler, D.C. asked Judge Duvaras to meet with staff and prepare a plan on cost recovery and report back to the Board at the next Board meeting.

Strategic Plan

Mr. Hinchee referred to Exhibit I, the proposed Strategic Plan and stated that it was prepared by Mr. Hinchee based on the prior approved version prepared by Catherine Hayes. Dr. Tyler, D.C. suggested this item be tabled for discussion until the next Board meeting.

Mr. Hinchee indicated that after the committee assignments have been made, the Regulation Committee can work on the fee regulations.

Enforcement

List of Complaints

Mr. Hinchee referred to Exhibits J, and reported on the List of Complaints and the various types of complaints the office receives.

Pending Disciplinary Actions

Mr. Hinchee referred to Exhibit L. Dr. Lerner, D.C. asked what the codes "L" and "A" mean. Mr. Hinchee stated that he did not know, but would find out and let them know.

Licensing

License Statistics

Ms. Matthews reported on Exhibit M and reported on the license statistics.

California Law and Professional Practices Exam (CLPPE) Statistics

Mr. Hinchee referred to Exhibit N, and reported on the number of applicants who have taken the exam.

Review of Palmer Chiropractic College-Florida

Mr. Hinchee referred to Exhibit O, and stated that this is the timeline and supporting documents for the Palmer Chiropractic College, Florida application.

Web License Lookup Statistics

Mr. Hinchee referred to Exhibit P, and reported on the amount and type of license lookups that the Board's website receives.

Dr. Tyler, D.C. would like to add the discussion of pro-adjuster concerns to the next agenda.

Announcements

The next meeting is expected to occur on April 19, 2007, in Los Angeles. Dr. Tyler, D.C. stated that he would contact Mr. Phillips to inquire about having the Board's next meeting at the Southern California University of Health Sciences. There will be a committee meeting on June 21, 2007 in Sacramento.

Public Comment

Charles Davis, D.C. representing ICAC, stated that he would like to revisit and discuss the 50 minutes of CE instructional hours that are equivalent to one hour. He also commented on the need to discuss Regulations 306 and 306.1 at a future meeting.

Barbara Stanfield, D.C., former chair of the Board, voiced concerns about the actions taken by the Board today.

Eric Rice, commented that there is no way that a server can be totally secured.

Dr. Tyler, D.C. adjourned the public session at 3:55 p.m.