

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES*****Friday, March 23, 2007******2:00 p.m. to 5:00 p.m.******Department of Consumer Affairs
1625 N. Market Blvd., Suite S102
Sacramento, CA 95834*****BOARD MEMBERS PRESENT**

Richard Tyler, D.C., Chair
Judge James Duvaras, Ret.
Francesco Columbu, D.C., Secretary
Frederick Lerner, D.C., Vice-Chair
Jim Conran
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Temporary Interim Executive Director
LaVonne Powell, DCA Senior Staff Counsel
Don Chang, DCA Supervising Staff Counsel
Marlene Valencia, Business Services Assistant

GUESTS PRESENT

David Prescott, Attorney
Charles Davis, D.C., ICAC
Patrick Walborn, D.C.
Kevin Eckery
George Cate, Senate BP & Ed. Committee
Dean Fallorick, D.C.
Art Taggart, Deputy Attorney General
Maggie Crow, D.C.
Carol Arbuckle
Louise Phillips
Lewis Meltz
Deborah Mattos, SCUHS
Kendra Holloway, D.C., LCCW

Call to Order

Dr. Tyler called the meeting to order at 2:03 p.m.

Roll Call

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

Determination of Necessity for Special Meeting – Disciplinary Action Against Board Employee

Dr. Tyler stated after learning that it was not proper that he act as both a Board Member and the Board's Interim Executive Director, assistance was requested from the Department of Consumer Affairs (DCA) to provide the Board with a temporary acting Executive Director. DCA offered the services of Mr. Brian Stiger who is, temporarily, serving the Board in that capacity. Dr. Tyler deferred to Mr. Stiger for further explanation of the process that will be used at the meeting. Mr. Stiger explained the process of the day's meeting.

Dr. Tyler asked the panel to briefly introduce themselves. After the introductions, Dr. Tyler read a statement regarding the March 1, 2007 Board meeting. Dr. Tyler deferred to Ms. LaVonne Powell for further explanation of the purpose of the day's meeting. Ms. Powell explained that the Board published two notices of meeting. The first was a regularly noticed meeting to discuss the continued employment of the Executive Director. The second was for a special meeting for the Board to decide its decision made at the March 1, 2007 meeting to withdraw an adverse disciplinary action against a Board employee. After giving the definition of a special meeting, Ms. Powell deferred the matter to the Attorney General's Office for briefing on the action concerning the disciplinary action against a Board member. Mr. Jacob Applesmith, Senior Assistant Attorney General, gave a description of the special meeting under Government Code section 11125.4. Mr. Applesmith concluded that today's special meeting is authorized under that provision of the Government Code. Dr. Tyler asked for a motion that the Board makes a finding that immediate action is necessary to protect the public's interest.

JIM CONRAN MOVED THAT THE BOARD FINDS IT NECESSARY TO HOLD A SPECIAL MEETING. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Reconsideration of Board Decision in Adverse Action against Board Employee

Dr. Tyler deferred to Ms. Powell for meaning of reconsideration. Ms. Powell stated that the motion to reconsider can only be made by a member who voted for the prevailing side. Since the vote was unanimous any of the four members who were present at the March 1, 2007 meeting may make a motion. Dr. Tyler asked for a motion to reconsider the vote on the Board's decision to withdraw the adverse action against the Board employee.

DR. COLUMBU, ONE OF THE FOUR BOARD MEMBERS WHO VOTED TO TAKE THE ORIGINAL ACTION THAT LED TO THIS MOTION FOR RECONSIDERATION, MOVED TO RECONSIDER THE DECISION TO WITHDRAW THE ADVERSE ACTION AGAINST THE BOARD EMPLOYEE. JUDGE DUVARAS SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Dr. Tyler asked legal counsel to explain the employee rights to a public hearing to Mr. Hinchee. Ms. Powell explained the rights to have a public hearing in this matter. Mr. Gaspar Garcia, attorney for Mr. Hinchee, stated that the March 1, 2007 vote was lawful. He continued to say that he personally delivered the signed letter to State Personnel Board (SPB) and Department of Personnel Administration (DPA). Mr. Garcia continued by saying the only problem Judge Connelly had was not with the letter itself but with delivery process because it did not follow normal procedures. Mr. Garcia stated that because the adverse action was unwarranted, it is their position for the Board to continue with its current action in revoking the adverse action against his client.

Continued Employment of the Executive Director

Dr. Tyler asked for a motion to hear Catherine A. Hayes' on continuance of her employment as the Executive Director.

JIM CONRAN MOVED TO HEAR THE POSITION OF CONTINUED EMPLOYMENT OF THE EXECUTIVE DIRECTOR. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.

Dr. Tyler asked legal counsel to explain the employee's rights to a public hearing to Ms. Hayes. Ms. Powell explained the rights to have a public hearing in this matter. Ms. Hayes chose to make a statement after public comment.

David Prescott, Attorney at Law, spoke in opposition of Ms. Hayes' continued employment as Executive Director.

Carole Arbuckle, previous Board employee supervised by Catherine A. Hayes, spoke in opposition of Ms. Hayes' continued employment as Executive Director.

Louise Phillips, former Board employee, spoke in opposition of Ms. Hayes' continued employment as Executive Director.

There being no further public comment, Ms. Hayes, accompanied by her attorney Mr. John Kennedy, read a statement that expressed her feelings regarding her position.

Following Ms. Hayes' statement, the Board recessed into closed session at 2:50 p.m. for deliberations.

Dr. Tyler called the Board into open session at 3:45 p.m.

Dr. Tyler stated that in closed session, the Board voted to rescind its decision of March 1, 2007 that withdrew the adverse action against David Hinchee. The Board voted to terminate without cause, the employment of Ms. Hayes as Executive Director. The Board appointed Brian Stiger as the acting Executive Director for the Board in accordance with the interagency agreement with the Board and the Department of Consumer Affairs. Dr. Tyler clarified that Ms. Hayes termination is effective immediately.

Dr. Tyler appointed Mr. Conran and Dr. Lubkin on a committee to work with Department of Consumer Affairs and Human Resource Office to develop a plan on the selection of a new executive director and report back at the April meeting.

Dr. Tyler asked Mr. Stiger to place reconsideration of the Board's action on its policy regarding manipulation under anesthesia and the application for the approval of Palmer College of Chiropractic Florida on the April Board meeting agenda.

Mr. Conran stated that over the next couple of years he hopes the Board will be viewed as an agency that is preeminent in its ability to reach out to the people it licenses and the people that it's entitled to protect, the people of California.

Judge Duvaras would like to add the following items on the next Board meeting agenda: a rule that Board members are able to place items on the agenda, general discussion regarding chiropractic college out-of-state applications and explanation of the Cooper v. Board of Chiropractic Examiners case.

Dr. Tyler expressed his gratitude to everyone for being so helpful during these trying times. Dr. Tyler adjourned the meeting at 3:50 p.m.