STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

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BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES (Amended November 20, 2008)
Thursday, August 16, 2007
10:00 a.m.
Department of Transportation
4050 Taylor Street
San Diego, CA 92110
619-220-7363

BOARD MEMBERS PRESENT

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

STAFF PRESENT

Brian J. Stiger, Acting Executive Officer
LaVonne Powell, DCA Senior Staff Counsel
Marlene Valencia, Staff Services Analyst

CALL TO ORDER

Dr. Tyler called the meeting to order at 10:05 a.m.

ROLL CALL

Dr. Columbu called the roll. All members were present with the exception of Judge Duvaras.

CLOSED SESSION

The Board went into closed session for interviews and possible selection of Executive Officer and also to deliberate on disciplinary matters.

OPEN SESSION

Dr. Tyler called the Board into open session at 10:45 a.m. All members were present with the exception of Judge Duvaras.

Dr. Tyler stated that the deliberations concerning the Executive Officer position has been postponed and will be concluded at the end of the open session meeting.

APPROVAL OF MINUTES

- June 21, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 1, 2007 open session minutes.

MR. CONRAN MOVED TO ADOPT THE JUNE 21, 2007 OPEN SESSION MINUTES. DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

EXECUTIVE OFFICER'S REPORT

Administration

Budget Update

Mr. Stiger stated that the Budget Conference Committee proposed a cut in the Board's budget by 50%, the budget has not passed yet, however if the state budget passes in its current form, we will have to enact immediate cost-saving measures which would include a staffing reduction and a reduction in our cases that go to the Attorney General's office. Services all around would have to be cut in order to the meet the level.

Dr. Lerner asked if the Board can issue a statement on behalf of the Board. Ms. Powell suggested writing a letter to the author of the budget bill or the committee stating that cutting our budget will compromise consumer protection because we will have to cut back drastically on our enforcement activities.

DR. LERNER MOVED THAT THE BOARD SUBMIT A LETTER TO THE LEGISLATURE OR THE COMMITTEE REQUESTING EMERGENCY LEGISLATION TO THE RESTORE THE BUDGET ON THE BASIS THAT THIS IS GOING TO HARM OUR ABILITY TO PROTECT THE CONSUMER WHICH IS OUR NUMBER ONE PURPOSE. DR. LUBKIN SECONDED THE MOTION. MR. CONRAN ADDED THAT IF A LETTER IS TO BE SENT IT SHOULD ALSO BE SENT TO THE LEGISLATIVE LEADERSHIP AS WELL AS THE BUDGET CHAIR AND COPIES TO THE OVERSIGHT COMMITTEE'S AND A COPY TO THE GOVERNOR'S OFFICE. DR. LERNER ACCEPTED THE AMENDMENT. VOTE: 4-0. MR. CONRAN

ABSTAINED.

Personnel Update

Mr. Stiger handed out the newest organizational chart. There is one revision to the chart that was included in the Board packet. There are a couple of changes since the last Board meeting. Lavella Matthews has been moved into an out-of-class Staff Services Manager I position. In her role, she will oversee licensing and administrative functions. The purpose of the change was to be sure that licensing had management oversight. It is currently a three month out-of-class with the ability to extend it. Mr. Stiger stated that these changes have been approved by the Consumer Affairs personnel office. As of Friday, August 10, 2007, the Chiropractic Consultant position is now vacant. At this current time, there is no plan to refill the position for a couple of reasons. One, with the budget uncertainties we should start saving money now. Second, we want to take a look at the Enforcement structure and perhaps reclassify the position in order to improve the enforcement operations. Mr. Stiger also announced the promotion of Marlene Valencia to Staff Services Analyst. She will now serve as the Board member liaison.

Mr. Conran inquired about the oversight of the Enforcement Program with the vacant consultant position and a manager that is currently working half-time. Mr. Stiger stated that he oversees the Enforcement program however; the absence of a consultant is more of an issue. Mr. Stiger has asked the Attorney General's office to provide recommendations of good, solid subject matter experts. Several of them have been contacted so that they're aware of our vacancy and that we may be requesting their assistance relating to scope of practice and quality of care questions. Mr. Stiger further stated that this may be an option to use on a permanent basis. Mr. Stiger also stated that these consultants are chiropractors and not state employees.

Dr. Tyler stated that he is thoroughly against having a chiropractic consultant again. He feels that we should aggressively contemplate going back to the way it was prior to 1995. Ms. Powell clarified how the experts would be utilized.

After discussion, it was decided to discuss the chiropractic consultant position at a future Board meeting.

Bureau of State Audits Update

Mr. Stiger reported the Bureau of State Audits have begun their process. Staff has been very responsive to their requests. It is anticipated that this audit will take approximately seven months.

Dr. Columbu suggested writing a response to the legislatures addressing the accusations against the Board. It was decided to places this topic on the agenda for the next Board meeting.

Department of Consumer Affairs

Mr. Stiger stated we just signed a contract with the Department of Consumer Affairs for administrative, legal and investigative services. The contract goes through December 31, 2007.

Dr. Lerner asked what happens to these contracted services if our budget is cut. Mr. Stiger responded that these are critical areas. He continued to state that he has identified which areas to scale back on in order to continue these services.

Enforcement

Statistics

Mr. Stiger reported that some of the enforcement cases are aged and he expects many of these cases will be completed within the next 60 days.

Julie D'Angelo-Fellmeth, Center for Public Interest Law, stated the following: "Earlier today in the Enforcement Committee meeting, I made some comments on the Enforcement Program. We have for 27 years monitored state agencies that oversee business, professions, and trades and over the years we have looked at a lot of the enforcement programs and in fact have been appointed by the legislature or by the executive branch to serve as independent, external enforcement monitors at three (3) different agencies: State Bar, Contractors Licensing Board, and the Medical Board, so we have a lot of expertise on how to structure an enforcement program and I just want to offer that to you as you are moving forward looking at alternatives, looking at budget restraints, if you would like to consult with us, we are at your disposal."

An unidentified member of the audience asked, Ms. Fellmeth if this consulting would cost the Board anything, and Ms. Fellmeth replied, "The first phone call is free."

Board Member training on Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell clarified board member questions regarding when to recuse themselves from a case. Ms. Powell continued to provide ongoing training regarding the Bagley-Keene Open Meetings Act.

MISSION STATEMENT

After discussion on the mission statement for the Board, it was decided to table this item for a future meeting.

PROGRAM REPORTS

Licensing

License Statistics

Mr. Stiger referred to the license statistic chart for the last two years.

California Law and Professional Practices Exam (CLPPE) Statistics

Mr. Stiger referred to the CLPPE statistical chart.

DISCUSSION RE LICENSING OF CHIROPRACTIC ASSISTANTS

This item was tabled until the next Board meeting.

The Board recessed for lunch at 12:00p.m.

Dr. Tyler, D.C. called the Board into open session at 1:00 p.m. All Board members were present.

COMMITTEE REPORTS

Administrative Committee

Board Member Procedure Manual

Mr. Conran reported that the Administrative Committee met and discussed the procedure manual. There was lengthy discussion and revisions were suggested.

MR. CONRAN MOVED TO ACCEPT THE BOARD MEMBER ADMINISTRATIVE MANUAL WITH THE CORRECTIONS MADE TODAY. DR. LUBKIN SECONDED THE MOTION. VOTE: 2-3. MOTION FAILED.

MR. LERNER MOVED TO MAKE THE CHANGES AND PRESENT A FINAL DRAFT AT THE NEXT BOARD MEETING. DR. LUBKIN SECONDED THE MOTION. VOTE 5-0. MOTION CARRIED.

Ex Parte Policy re Board Member Communications

Mr. Conran stated at the Administrative Committee there was a 3-0 vote to approve the adoption of an Ex Parte Policy by the Board. The concept of an Ex Parte rule is to ensure there is transparency in communications to Board members when there is an issue on the agenda. Mr. Conran introduced Julie Fellmeth, Michael Shames and Steve Alexander to share the views on the Ex Parte Policy. All three guests shared the views on why they support adopting an Ex Parte Policy.

After a lengthy discussion, it was agreed that this item be deferred to the Administrative Committee for design of the Ex Parte and it will be brought back to the Board for further discussion.

Continuing Education Committee

Dr. Lubkin reported that the committee has had a few meetings. The committee is recommending there be due process for denials of a continuing education course. The Board will give the party notice and they will have 10-days to meet with the Executive Officer to address any concerns.

The committee also suggests the concept of having the evaluation of courses be handled by staff rather than the Board members. This will allow the Board members to work towards regulations and administrative changes to improve the process. The committee also discussed going back to a regulatory phase to increase the hours. Dr. Tyler stated that the chiropractic presence is essential in determining the educational requirements because staff is not knowledgeable of all techniques. Dr. Lubkin continued by stating that when there is a denial, the person who is denied will be notified of an exact code section that pertains to the denial.

Dr. Lerner asked the committee to discuss the acceptance of the FCLB policy. Dr. Lubkin stated the committee did discuss this issue and concluded that this needs to be part of the regulation.

MR. CONRAN MOVED TO ACCEPT THE CONTINUING EDUCATION COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Enforcement Committee

Dr. Lubkin reported the committee discussed adding fine authority to the citation program. A letter of admonishment procedure was also discussed. Staff will prepare the language and it will be presented at the next meeting.

DR. LUBKIN MOVED TO ACCEPT THE ENFORCMENT COMMITTEE REPORT. DR. LERNER SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.

Legislative Committee

AB1137

Dr. Lerner reported that AB 1137 did not get out of the Senate, Business and Professions committee and is now dead.

SB801

Dr. Lerner gave a description of bill SB801 and reported that SB801 is moving forward. Dr. Lerner stated the based on the committee's previous recommendation the Board took a position of watch.

DR. COLUMBU MADE A MOTION TO TAKE A NEW POSITION THAT THE BOARD OPPOSES BILL SB801. DR. LERNER SECONDED THE MOTION. Mr. Conran stated that he does not agree that the Board should take opposition to the bill. Dr. Lubkin commented that taking a new position should be done carefully and suggests this go to the committee for thorough discussion.
Following public comment from Charles Davis, D.C., Michael Blott, D.C., David Prescott and others, a vote was taken. **VOTE: 4-1. MOTION CARRIED.**

Dr. Lerner asked for clarification of bill SB840. Dr. Lerner recommended that this bill be looked at during the next Legislative Committee meeting.

Manipulation Under anesthesia (MUA)

Dr. Lerner reported that the committee, Mr. Stiger and Ms. Powell met with representatives from Office of Administrative Law (OAL) on July 17, 2007. Ms. Powell stated that the main fault with the way the regulations were written before was that it created a sub-category of licensure. Instead, the regulations should be focused on if you are a chiropractor, what is the standard of care if you are performing MUA. OAL stated that they would need a legal opinion that MUA is in fact, within the scope of practice for chiropractic. That is describing MUA appropriately so that it's very clear that the chiropractor is performing the adjustment and is in no way directing the anesthesiologist or the physician surgeon who is sedating the patient. Ms. Powell will provide a legal opinion to the Board by the end of October.

Dr. Lerner commented that at the next MUA Committee meeting, David Prescott will give a 90-minute presentation on Scope of Practice.

DISCUSSION OF BOARD MEETING SCHEDULE AND PETITIONER HEARING DATES

Mr. Stiger indicated that the next scheduled Board meeting will be October 25, 2007. Board business will be held in the morning and petitioner hearings will be in the afternoon.

PUBLIC COMMENT

No public comment.

ADJOURNMENT

Dr. Tyler adjourned the public meeting at 3:31 p.m.

CLOSED SESSION

The Board went into closed session for further discussion regarding the selection of Executive Officer.

The Board briefly returned to open session to announce that the position of Executive Officer has been offered to Brian J. Stiger. Mr. Stiger has temporarily accepted the position until personnel issues can be worked out.