

**Board of Chiropractic Examiners**

2525 Natomas Park Drive, Suite 260  
 Sacramento, California 95833-2931  
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 CA Relay Service TT/TDD (800) 735-2929  
 Consumer Complaint Hotline (866) 543-1311  
 http://www.chiro.ca.gov

**NOTICE OF PUBLIC MEETING**

**September 24 – 25, 2008**  
**10:00 a.m.**  
**State Capitol**  
**Assembly Room 126**  
**Sacramento, CA 95814**

**Wednesday, September 24, 2008**  
**10:00 a.m**

**AGENDA****1. PUBLIC SESSION Call to Order**

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

**2. Chair's Report****3. Approval of Minutes**

- A. May 22, 2008, Public Session
- B. July 30 – 31, 2008, Public Session

**4. Public Comment****5. Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws****6. Executive Officer's Report**

- A. Budget
- B. Personnel
- C. Licensing
- D. Enforcement
- E. Bureau of State Audits

**7. ~~Committee Reports~~**

- A. Continuing Education Committee - Discussion and Possible Action
  - Approval by Ratification of Formerly Approved Continuing Education Providers
  - Update on the Continuing Education Work Group's Proposed Regulations
- B. Licensing Committee - Discussion and Possible Action
  - Approval by Ratification of Formerly Approved License Applications
  - Update on the Chiropractic Law and Professional Practice Examination
- C. Scope of Practice Committee - Discussion and Possible Action
  - Recognition of Chiropractic Specialties re Advertising
  - Chiropractic Scope of Practice for X-ray
  - Manipulation Under Anesthesia Revised Proposed Regulatory Language
- D. Public Relations Committee - Discussion and Possible Action

**REGULATIONS UPDATE – Discussion and Possible Action**

- Letter of Admonishment

**8. Public Comment**

**9. Future Agenda Items**

**10. Hearings re: Petition for Reinstatement of Revoked License**

- Craig Maurer
- Robert Strohbach

**11. CLOSED SESSION:**

Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions Pursuant to California Government Code Section 11126(c)(3)

**12. PUBLIC SESSION:** Announcements re Closed Session

**Thursday, September 25, 2008  
8:00 a.m.**

**13. CLOSED SESSION**

A. Pursuant to California Government Code Section 11126(e)

- Catherine Hayes v. Board of Chiropractic Examiners  
Sacramento County Superior Court Case No. 07AS03721
- David Hinchee v. Board of Chiropractic Examiners, Catherine Hayes  
Sacramento County Superior Court, Case No. 07AS03721

**14. PUBLIC SESSION: Call to Order**

- Announcements Re Closed Session

**15. Hearings re: Petition for Reinstatement of Revoked License**

- Stanford Sher
- Parviz Kovoossi
- Paul Bologna
- Carlos Seals

**16. Hearings re: Petition for Early Termination of Probation**

- Lee Tan Nguyen
- Steve Ram Nadkeswhar
- Donald Ringer

**17. CLOSED SESSION:**

**18. Deliberation on Disciplinary Matters and Possible Action on Disciplinary Decisions Pursuant to California Government Code Section 11126(c)(3)**

**19. PUBLIC SESSION** Announcements re Closed Session

**20. Adjournment**

***The Board of Chiropractic Examiners' paramount responsibility is to protect California consumers from the fraudulent, negligent, or incompetent practice of chiropractic care.***

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Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at [www.chiro.ca.gov](http://www.chiro.ca.gov).

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The meeting is accessible to persons who are physically disabled. If a person needs disability-related accommodations or modifications in order to participate in the meeting, please make a request no later than five working days before the meeting to the Board by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or sending a written request to that person at the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Requests for further information should be directed to Ms. Valencia at the same address and telephone number.

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**BOARD OF CHIROPRACTIC EXAMINERS  
PUBLIC SESSION MINUTES****May 22, 2008****1625 North Market Blvd., Room S102  
Sacramento, CA 95814****Board Members Present**

**Frederick Lerner, DC., Chair**  
**Hugh Lubkin, D.C. Vice Chair**  
**Francesco Columbu, D.C. Secretary**  
**Jim Conran, Public Member**  
**Judge Duvaras, Public Member**  
**Richard Tyler, D. C.**

**Staff Present**

**Brian Stiger, Executive Officer**  
**LaVonne Powell, Senior Staff Counsel**  
**Thomas Rinaldi, Deputy Attorney General**  
**James Maynard, Staff Counsel**  
**Marlene Valencia, Staff Services Analyst**

**Call to Order**

Dr. Lerner called the meeting to order at 10:36 a.m.

**Roll Call**

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

**Chair's Report**

Dr. Lerner recognized the committees for the work that they have completed, and he applauded the staff for their efforts.

## **Approval of Minutes**

**MR. CONRAN MOVED TO APPROVE THE MARCH 27, 2008 MINUTES AS AMENDED.  
DR. LUBKIN SECONDED THE MOTION.**

**VOTE: 6-0**

**MOTION CARRIED**

### **DISCUSSION:**

Dr. Tyler asked that the minutes reflect his objection to Kathleen Creason's comments on the MUA discussion.

Mr. Conran stated that anyone coming to a public meeting should be able to state their opinions without being chastised by the board. Mr. Conran said it is incumbent upon the Board to welcome any public comments whether the Board agrees with the comments or not.

Dr. Lubkin said since he has been on the Board, the Board has always encouraged and welcomed public comments.

Dr. Columbu suggested that the minutes reflect more details of the discussion to ensure nothing is missed. Dr. Columbu offered an example of the comments made at the March 1, 2007, Board meeting. Mr. Conran offered to take this item up in the Government Relations Committee.

### **PUBLIC COMMENT:**

Mr. Conran announced that Mr. David Prescott died and that he was deeply saddened by his passing. Mr. Conran recommended that the Board send a letter to Mr. Prescott's family expressing the Board's appreciation for his tireless work on behalf of the profession.

Dr. Lerner agreed about the letter and expressed his sadness over Mr. Prescott's passing.

Dr. Lubkin asked that all Board Members have an opportunity to sign the letter.

### **Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws.**

Ms. Powell just returned from family medical leave and did not have a topic for this meeting. Ms. Powell stated she has discussed and trained the Board on every aspect of the Bagley-Keene Act over the past year and at this point will only bring up issues as needed.

Mr. Conran recommended that this subject remain on future agendas items for new Board Members.

Dr. Lubkin asked how Board Members recuse themselves from an agenda item. Ms. Powell said the Board Member would need to say he or she was going to recuse themselves and disclose the reasons why. During close session the minutes must reflect that the Board Member left the room and the time the Board Member returned. During open sessions, the Board Member can remain in the hearing but cannot participate in the discussion.

## Executive Officer's Report

Mr. Stiger discussed the status of the current year budget and the results of the budget hearings for next fiscal year. Both the Assembly and Senate budget committees approved our 08/09 budget, which included an additional 15% for six investigator positions.

Mr. Stiger discussed a new organizational chart effective July 1, 2008, and an update of the filling vacant positions.

Judge Duvaras asked if staffing levels have increased under the current Executive Officer. Mr. Stiger explained that with the six additional field investigator positions the staffing level has indeed increased. Judge Duvaras asked if Mr. Stiger had an assistant. Mr. Stiger stated that he does not have an assistant but will consider creating a position as the program grows.

Dr. Lubkin asked if our staffing levels justified additional managers. Mr. Stiger explained that he submitted personnel packages to add two managers. These packages were reviewed and approved by the DCA personnel office.

Mr. Stiger introduced Ray Delaney and Valerie James as the newest staff members. Dr. Lerner welcomed both on behalf of the Board.

Mr. Stiger provided an update on the recruitment and appointment of all vacant positions.

Dr. Lubkin asked about the status of hiring the special investigators. Mr. Stiger explained that it would take about 45 days to bring on the Supervising Special Investigator and then begin hiring the investigators. Mr. Stiger estimated that the investigators would be brought on in August.

Dr. Lubkin asked when would the Board be caught up on enforcement matters. Mr. Stiger anticipates being current by the end of the year.

Marlene Valencia presented the licensing report. Ms. Valencia thanked the chiropractic colleges and specifically the registrar's office for their assistance and support over the past several months. Ms. Valencia announced that with the addition of new staff the licensing unit is current with all applications.

Ms. Valencia discussed the licensing statistics. Mr. Conran asked if the testing statistics have been consistent over the past several years. Mr. Conran raised a concern with the high failure rate and wondered if the Board could assist without lowering its standards. Ms. Valencia said she would research the test scores.

Dr. Lerner questioned keeping running totals of licensing statistics. Dr. Lerner recommended keeping the licensing statistics year by year rather than a running total. Mr. Stiger agreed with the recommendation and said the Board would receive a revised report at the next Board meeting.

Judge Duvaras asked the definitions of a satellite office, chiropractic corporation, and referral service. Ms. Valencia, Mr. Stiger, and Ms. Powell explained these licensing categories to Judge Duvaras.

Judge Duvaras asked if the chiropractic referral service was similar to that of the State Bar's referral service. Ms. Powell explained that the Board regulates chiropractic referral services but does not require chiropractic referral services to refer a specific number of chiropractors to consumers.

Ms. Powell explained how consumers could conduct their own research through accessing the Board's website.

Dr. Lubkin asked Mr. Stiger if the licensing report could include disciplinary actions. Dr. Lerner reiterated that enforcement reporting will be important as the Board moves forward.

Dr. Lubkin expressed a concern that California has lost thousands of licensees over the past decade and would like statistical information on why this is occurring. Mr. Stiger stated that this study would be more appropriate conducted by an association.

Mr. Conran agreed with Dr. Lubkin that the Board should be kept abreast of the demographic changes occurring in California. Ms. Powell stated that Board staff would not be able to collect this information and suggested that the Board contract with an outside consultant to conduct this study. Mr. Conran recommended that Government Relations Committee take this issue up.

Mr. Stiger presented the Enforcement Report. Dr. Tyler expressed a concern about the Board acting on anonymous complaints. Mr. Stiger stated that the Board is updating its complaint intake procedures. Mr. Stiger said the Board does receive a number of legitimate anonymous complaints particularly dealing with unlicensed activity. Dr. Tyler is concerned that the Board may be spending resources investigating anonymous complaints because the complainant does not like a certain chiropractor. Mr. Stiger said the Board does not investigate every single complaint it receives.

Dr. Lubkin requested that the Chair assign the Continuing Education Committee to work with the associations to educate licensees in those core areas that constitute the majority of the complaints the Board receives.

Dr. Lerner agreed and added that the Continuing Education Committee should review bone fide ethics classes that require testing to demonstrate comprehension. Dr. Lerner would like a requirement put in place that requires licensees to take a class on the Board's laws and regulations.

## **COMMITTEE REPORTS**

### **Enforcement Committee:**

Dr. Lubkin reported that the Enforcement Committee voted to recommend to the full Board that CCR 306.1 be repealed.

**MOTION: DR. LUBKIN MOVED THAT THE BOARD REPEAL CCR 306.1.**

**SECONDED: DR. TYLER SECONDED THE MOTION**

**VOTE: 6-0**

**MOTIONED CARRIES**

### **Public Comment:**

Dr. Charles Davis cautioned with the repeal of 306.1 there is nothing in the regulation structure that would prevent what happened in the past. Dr. Davis raised a concern that once the current staff left enforcement could revert to the old system.

Licensing Committee:

Mr. Stiger presented the report. Mr. Stiger discussed the need for the full Board to ratify license applications previously approved by Board staff.

**MOTION: JUDGE DUVARAS MOVED THAT THE BOARD RATIFY LICENSES PREVIOUSLY APPROVED BY THE BOARD STAFF SINCE JULY 1, 2007.**

**SECONDED: MR. CONRAN SECONDED THE MOTION**

**VOTE: 6-0**

**MOTION CARRIES**

Continuing Education Committee:

Dr. Tyler discussed the list of Continuing Education Providers previously approved by the Board staff. Dr. Tyler expressed a concern that Board staff cannot approve courses without Board Member assistance. Mr. Stiger said he would agendize this topic at the next Continuing Education Committee meeting.

Mr. Conran asked if the list of providers were new or had they been providing courses in the past. Mr. Stiger stated these providers have been approved since May 2006.

Judge Duvaras asked for the number of providers that are currently approved. Mr. Stiger said he could provide that information in future reports.

Dr. Tyler discussed the proposed 24 hour increase in continuing education requirement and the possibility of distance learning. Dr. Tyler thanked Mr. Carlye Brankensiek for his presentation on distance learning at the last Continuing Education Committee Meeting.

Dr. Lerner asked for clarification on the Continuing Education Work Group and expressed his appreciation for the work group's anticipated proposals.

Mr. Conran said the idea of cross discipline classes was intriguing. He expressed concern about the Board allowing Continuing Education credit for classes on how to run a business.

Dr. Lerner provided an example of cross discipline training in which the North American Spine Society provides an annual course attended by 600 health professionals in multiple disciplines.

Dr. Tyler stressed that the classes must emphasize the practice of chiropractic.

Dr. Lubkin added that during the committee meeting the members asked the providers to submit security information regarding distance learning. Dr. Lubkin discussed instituting a fast track approval for chiropractic colleges, associations, and PACE approved programs. Smaller more individual providers would continue to use the current approval process. Dr. Lubkin discussed a goal of auditing 10% of all courses and courses regarding mandatory reporting.

Dr. Lerner reminded the committee to research potential reciprocity with FCLB for continuing education courses especially for nationally based providers.

Scope of Practice Committee:



Dr. Lubkin reported that the committee discussed chiropractic specialties and issues related to advertising and that Board staff would be researching this topic.

Dr. Lerner added that the committee voted to recommend to the full board that the board begin the regulation process to recognize chiropractic specialties and write a letter informing the Department of Industrial Relations, Division of Workers Compensation of this action.

Ms. Powell added that the board is limited to recognizing specialties through advertising restrictions, which is the method used by the Medical Board and Dental Board. Ms. Powell states this needs to be made very clear to avoid the perception that the Board is attempting to create an additional license category.

Dr. Lerner asked for an example of an advertising restriction. Ms. Powell gave an example that you can only advertise as an orthopedist specialist in chiropractic care if you have a certification from a bona fide private organization.

**MOTION: DR. LERNER MOVED THAT THE BOARD BEGIN THE REGULATORY PROCESS OF RECOGNIZING CHIROPRACTIC SPECIALTIES AND SEND A LETTER TO THE DEPARTMENT OF INDUSTRIAL RELATIONS INFORMING THEM THAT WE ARE BEGINNING THIS PROCESS. SECONDED: DR. TYLER SECONDED THE MOTION.**

**VOTE: 6-0**

**MOTION CARRIED**

A discussion ensued regarding Department of Industrial Relations' proposed regulation.

Mr. Conran spoke in support of the motion and suggested that the Board raise this issue to the highest level and speak to John Duncan.

Dr. Charles Davis stated that establishing chiropractic specialties would not increase the chiropractic scope of practice.

Mr. Caryle Brakensiek, CSIMS, spoke in support of the motion and urged that the Board move with all deliberate speed to get this approved.

Kristine Schultz, CCA, spoke in support of the regulation as described by Ms. Powell.

Dr. Charles Davis, stated the Board recognized chiropractic orthopedics in 1996.

Dr. Lubkin asked for an update on chiropractic scope of practice for x-ray use. Ms. Powell introduced James Maynard who is a new attorney for the Department of Consumer Affairs. Mr. Maynard will provide a legal paper to the committee regarding this issue, which will be presented to the committee.

Dr. Lubkin commented that chiropractors were taught in Chiropractic College to x-ray the skull, torso, extremities, and the spine and he is looking forward to Mr. Maynard's legal opinion.

Dr. Lerner commented that the Initiative Act does not specify what kind of x-rays chiropractors can take. He continued that the regulations allow for diagnostic x-rays but does not specify chiropractic x-rays. Dr. Lerner said he does not understand the need for a legal opinion.

Ms. Powell stated she does not read the law that way. Ms. Powell added that no background work has been completed and the legal opinion provides the Board with the background to make an informed decision.

Dr. Lerner and Dr. Lubkin requested to meet with Mr. Maynard to discuss prior to him writing the legal opinion.

Dr. Schell commented that the Board has taken a long time to make a decision and asked if he could contact Mr. Maynard. Ms. Powell recommended that Dr. Schell could submit additional information to Mr. Stiger.

Dr. Cheryl Dietrick provided background information on how she became aware of the chiropractic x-ray issue. Dr. Dietrick hopes that this would open a door to work with other medical health care providers.

Government Relations Committee:

Mr. Conran presented the major topics addressed at the last committee meeting including: hiring staff, sunset review, and Bureau of State Audit's 60 day response, and state issued e-mail accounts.

Mr. Conran reported that the committee thought favorably of the 60 day BSA audit response.

**MOTION: MR. CONRAN MOVED THAT THE DRAFT 60 DAY AUDIT RESPONSE BE FORWARDED AS THE BOARD'S OFFICIAL RESPONSE WITH A COPY TO THE GOVERNOR'S OFFICE, STATE AND CONSUMER SERVICES AGENCY, AND THE DEPARTMENT OF CONSUMER AFFAIRS.**

**SECONDED: JUDGE DUVARAS SECONDED THE MOTION.**

**VOTE: 6-0**

**MOTION CARRIED.**

Dr. Tyler raised concerns about hiring a chiropractic consultant in the same capacity it was formally used. Mr. Stiger stated that this is an issue that needs to be addressed.

Dr. Lerner recommended that this issue be taken up by the Government Relations committee.

Mr. Conran stated that the committee is sensitive to Dr. Tyler's concerns and the committee will provide continual updates to the Board.

Mr. Conran presented the BSA recommendation to issue e-mail accounts to Board Members and discussed the benefits.

Judge Duvaras presented an analysis prepared by Roger Calton regarding the major problems experienced by this Board and former Boards. Mr. Calton recognized the positive improvements made by the Board and the Board's staff. Judge Duvaras congratulated and commended Mr. Calton for his analysis.

**MOTION: DR. LUBKIN MOVED THAT THE BOARD IMPLEMENT BOARD MEMBER STATE ISSUED E-MAIL ACCOUNTS EFFECTIVE JUNE 1, 2008.**

**SECONDED: MR. CONRAN SECONDED THE MOTION**

**VOTE: 6-0**  
**MOTION CARRIED.**

Public Relations Committee:

Dr. Lerner provided an update on the major topics discussed at the committee meeting. Dr. Lerner reported that the committee heard from the Russ Heimrich from the Department of Consumer Affairs. Dr. Lerner said that the committee has requested cost estimates from a few different organizations.

Dr. Lerner discussed the need for a newsletter and informational brochure on how to choose a chiropractor. Dr. Lerner hopes to receive a lot of input from the profession and the public in these areas.

Legislative Committee:

Dr. Lerner reported that the committee recommends that the Board take a "Support if Amended" position on SB 1402 and send a letter to the author.

**MOTION: DR. COLUMBU MOVED THAT THE BOARD TAKE A SUPPORT IF AMENDED POSITION ON SB 1402 AND SEND A LETTER TO THE AUTHOR.**  
**SECONDED: DR. TYLER SECONDED THE MOTION.**  
**VOTE: 6-0**  
**MOTION CARRIED.**

Dr. Lerner reported that the committee voted to take a "Support" position on AB 2969 (Lieber).

**MOTION: DR. LUBKIN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON AB 2969.**  
**SECONDED: DR. COLUMBU SECONDED THE MOTION.**  
**VOTE: 6-0**  
**MOTION CARRIED**

Dr. Lerner reported that the committee voted to take a "Support" position on SB 1441 (Ridley-Thomas)

**MOTION: MR. CONRAN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON SB 1441.**  
**SECONDED: DR. COLUMBU SECONDED THE MOTION**  
**VOTE: 6-0-2**  
**MOTION CARRIED**

Judge Duvaras spoke in opposition of the bill because it duplicates what the Board is currently doing.

Dr. Lubkin asked if the author planned to use public interest groups and use them as monitors.

Ms. Powell explained the bill and that it is designed to establish best practices for diversion programs.

Mr. Conran spoke in support of the bill and if it passes we would be able to comment on the diversion program.

Dr. Columbu asked if this bill establishes an enforcement monitor. Ms. Powell said the bill does not establish an enforcement monitor and that if the bill is amended to include an enforcement monitor he would notify the Legislative Committee.

Strategic Planning Committee:

Dr. Tyler reported that the committee reviewed and discussed proposed strategic goals and objectives. He explained this is a work in progress and would keep the Board updated.

**Regulations Update:**

Mr. Stiger provided an update to the three pending regulation packages.

Mr. Stiger explained that the Board previously approved of proposed regulatory language for the Letter of Admonishment. However, after further review, Board staff revised the language to ensure the Board had the authority to implement.

Ms. Powell added that the initial language would have raised a concern with the Office of Administrative Law.

Judge Duvaras spoke in support of the motion.

**MOTION: DR. LUBKIN MOVED THAT THE BOARD ADOPT THE REVISED LANGUAGE FOR THE LETTER OF ADMONISHMENT AS AN ADDITIONAL ENFORCEMENT TOOL.**

**SECONDED: DR. COLUMBU SECONDED THE MOTION.**

**VOTE: 5-0**

**MOTION CARRIED.**

**Board Meeting Schedule for 2008**

Mr. Stiger reported that Board Member concerns have been raised about conducting two-day Board Meetings and that the schedule should be reviewed. Mr. Stiger also mentioned that SCUHS invited the Board to hold its next meeting at the campus in Whittier.

Dr. Lerner commented that the Board needs to conduct a couple of two-day meetings to alleviate the backlog of petitioner hearings.

Dr. Tyler suggested that we have monthly one day meetings rather than two-day meetings to save expenses.

Dr. Lubkin offered that he has cut his practice by half to complete Board business and suggested more frequent meetings.

Dr. Columbu proposed more one day meetings.

Mr. Conran built his schedule around previously adopted Board meetings and his schedule does not provide a lot of elasticity.

Dr. Lerner stated that having monthly one day meetings is the same as having two day meetings every two months.

Mr. Stiger clarified that the schedule is to have only two meetings that cover two days.

Ms. Powell said that Boards typically meeting no more than five times in a year and she would not be able to meet monthly due to her schedule.

Ms. Powell also suggested that meeting at a chiropractic school may give the wrong impression.

Ms. Powell recommended that the Board agendaize a discussion on delegating petitioner hearings to the Attorney General's Office.

Mr. Conran stated that the Board move meetings throughout the state to give the opportunity for the public to attend and Mr. Conran supports meeting at chiropractic schools.

Judge Duvaras opposes keeping the schedule the same and recommends that petitioner hearings be held in Sacramento.

Dr. Lubkin stated that the decision made to conduct two-day meetings was made during the board's reduced budget and he is opposed to two-day meetings

**MOTION: DR. TYLER MOVED THAT THE SCHEDULE REMAIN THE SAME FOR THE REMAINDER OF THE YEAR.**

**SECONDED: MR. CONRAN SECONDED THE MOTION.**

**VOTE: 3-3**

**MOTION FAILS**

The schedule remains the same.

**MOTION: JUDGE DUVARAS MOVED TO RESTRUCTURE THE BOARD MEETINGS TO ELIMINATE TWO-DAY MEETINGS.**

**SECONDED: DR. COLUMBU SECONDED THE MOTION**

**VOTE: 3-3**

**MOTION FAILS**

The schedule remains the same.

Dr. Lerner reported that the Board was invited to SCHUS for a future Board meeting.

**MOTION: DR. LUBKIN MOVED THAT THE BOARD HOLD A FUTURE MEETING AT SCHUS.**

**SECONDED: DR. COLUMBU SECONDED THE MOTION.**

**VOTE: 6-0**

**MOTION CARRIED**

## **PUBLIC COMMENT**

Dr. Charles Davis suggested that the Board hold more public meetings in Southern California.

Dr. Lerner proposed to move the San Diego meeting to Burbank.

## **Future Agenda Items**

Mr. Conran would like to invite deans from Chiropractic Colleges to update the full Board on their curriculums and other matters.

Dr. Keith Henry, Cleveland Chiropractic College, announced that he will be attending Board meetings on a regular basis.

## **ADJOURN TO CLOSED SESSION**

Dr. Lerner adjourned the meeting to closed session.

## **OPEN SESSION**

Dr. Lerner opened the session and announced that the Board discussed two disciplinary matters.

## **ADJOURNMENT OF PUBLIC SESSION**

Dr. Lerner adjourned the public session at 2:42.

**Board of Chiropractic Examiners**

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**BOARD OF CHIROPRACTIC EXAMINERS  
PUBLIC SESSION MINUTES****July 30-31, 2008**

**Southern California University of Health Science  
1600 E. Amber Valley Dr.  
Building M, Room 41  
Whittier, CA 90604**

**Board Members Present**

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

**Staff Present**

Brian Stiger, Executive Officer  
LaVonne Powell, Senior Staff Counsel  
Thomas Rinaldi, Deputy Attorney General  
Marlene Valencia, Staff Services Analyst  
Lavella Mathews, Associate Governmental Program Analyst  
Valerie James, Office Technician  
John Melendez, Licensing and Continuing Education Manager  
Sandra Walker, Compliance Manager  
April Alameda, Staff Services Analyst

**Call to Order**

Dr. Lerner called the meeting to order at 11:10 a.m.

**Roll Call**

Dr. Columbu called the roll. All members were present with the exception of Judge James Duvaras (Ret.) Public Member, who was absent.

**Chair's Report**

Dr. Lerner welcomed the students and faculty of Southern Californian University of Health Sciences (SCUHS) to the Board Meeting. Dr. Lerner expressed being honored as an SCUHS alumnus and voiced his gratitude to Debra Mattos, Dr. Meadows, Dr. Craft and the University staff for making this possible today. Dr. Lerner introduced the Board members and staff. Dr. Lerner explained how the Board works for educational purposes.

## **Approval of Minutes**

Dr. Lerner tabled the approval of the May 22, 2008, minutes until the September meeting.

**DR. COLUMBU MOVED TO AMEND THE AUGUST 16, 2007, MINUTES TO ADD JULIE DEANGELO FELLMETH'S OFFER TO ASSIST THE BOARD IMPROVE ITS ENFORCEMENT PROCESSES. DR. LUBKIN SECONDED THE MOTION; VOTE: 5-0; MOTION CARRIED.**

## **Board Member Training on the Bagley-Keene Open Meetings Act and other relevant laws**

Ms. Powell announced that the Department of Consumer Affairs is having a consumer conference in November, which will include Board Member training on the Bagley-Keene Open Meetings Act.

Dr. Tyler would like to see a policy in place that some designated Board member would prepare questions to have for Ms. Powell.

Dr. Lerner would like to leave Bagley-Keene on the agenda for future Board members that will come on Board.

Jim Conran would like to leave on the agenda to be a constant reminder to stay in compliance.

## **Executive Officer's Report**

### Budget:

Mr. Stiger provided a status of the budget. He reported that the Board will revert money back into the fund to be utilized for future services.

Mr. Stiger commented that the budget will be very tight this year and noted the need to manage appropriately as the office will be fully staffed. He also stated there are a number of projected expenditures that are going to be expensive and assured the Board that the budget will be managed appropriately.

### Personnel:

Mr. Stiger provided a progress report on the vacant positions.

He updated the Board on the status of filling the Supervising Special Investigator and Investigator positions. Interviews for the Supervising Investigator have been conducted and we have potential candidates. Background checks on the candidates are in process.

Mr. Stiger stated that the Board's goal was to be fully staffed by July 1, 2008. We nearly achieved that goal.

### Licensing Report:

Mr. Stiger informed the Board presented the licensing report.

Mr. Stiger informed the Board that the number of licensed chiropractors increased by 36 over last year, satellite certificates increased by 160, corporations increased by 35 and referrals remained about the same. Over all, we have 230 more licensees than the previous fiscal year.



Dr. Lubkin requested Board staff to present information on licensees that hold more than five registered satellite offices.

In response, Mr. Stiger informed the Board that it would be a difficult manual process, but could be accomplished if the Board wanted the information.

### Enforcement

Mr. Stiger presented the enforcement report which included a 3 year comparison.

Mr. Stiger reported having eight hundred pending complaints but noted that this does not mean that all pending complaints are in back log.

Mr. Stiger informed the Board that staff is working diligently to eliminate the back log and consolidating resources to accomplish the task.

Mr. Stiger asked the Board members for their feedback on the new format of reports.

Mr. Conran replied the report format was simple and easy to read. He commented that once the Cite and Fine process is functioning, he would like to know the number of fines being assessed for the associated infractions.

Dr. Lubkin requested a color break down chart of the License Reports. He noted it would be beneficial for continuing education providers to be updated as to the source of the majority of complaints in order to improve and develop continuing education programs by specifically addressing complaint issues.

### **Committee Reports**

#### Public Relations Committee

Dr. Lerner informed the Board the committee was attempting to determine who to contract with for the development of public relation materials.

Dr. Lerner asked that the Board members be aware that the state prefers using its own agencies, and to deter from that preference would cause delays. Conversely, he noted that an outside source may provide a higher level of creativity.

Mr. Stiger informed the Board members of the requirements for initiating a State contract with a private entity noting the process would take approximately 190 days.

Mr. Conran recommended that the Board use a state agency, so that we could address the needs of the public more promptly. Mr. Stiger stated that DCA would be our source to development public materials.

Mr. Conran indicated another possible provider would be the Department of General Services.

Dr. Tyler asked about the scope of the public relations endeavors. Dr. Lerner identified four products, a newsletter, as well as a brochure, a Board seal, and press releases.

**MR. CONRAN MOTIONED FOR THE BOARD TO DIRECT THE EXECUTIVE OFFICER TO PROCEED IN FINALIZING A CONTRACT WITH THE STATE AGENCY TO PROVIDE SERVICES. THE MOTION FAILED.**

Mr. Stiger commented that a public relations program is an integral part of the enforcement program and noted that the choice before the Board was whether to contract with an outside vendor or a state agency.

Dr. Tyler asked about the financial impact of outside vendor versus a state agency.

Dr. Columbu recommended considering a short term contract.

Dr. Lubkin requested public relations presentations be provided in the future, but agreed that the Board should move forward with DCA in the interim.

**DR. LUBKIN MOVED THAT THE BOARD MOVE FORWARD WITH A ONE YEAR CONTRACT WITH THE DEPARTMENT OF CONSUMER AFFAIRS WITH THE PROVISION THAT THE CONTRACT BE REVIEWED IN THE FUTURE IN ORDER TO DETERMINE WHETHER THE CONTRACT WOULD BE RENEWED. MR. CONRAN SECONDED THE MOTION WITH AN AMENDMENT FOR THE INCLUSION OF OTHER GOVERNMENT AGENCIES IN ADDITION TO THE DEPARTMENT OF CONSUMER AFFAIRS. DR LUBKIN ACCEPTED THE AMENDMENT. VOTE: 5-0.MOTION CARRIED.**

#### Licensing Committee

Dr. Tyler presented the committee report due the absence of Judge Duvaras.

Mr. Stiger presented the list of previously approved licensees along with approval dates to the Board to ratify the approvals.

**DR. LUBKIN MOTIONED FOR APPROVAL BY RATIFICATION WHICH CONSISTS OF A LIST OF LICENSEES. MR. CONRAN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.**

Dr. Tyler suggested that the Board observe the qualifications of the individual as well as the institution that they come from with regard to license reciprocity with other states.

Mr. Stiger informed the Board that all licensees applying for reciprocity must meet the requirements of the Board.

Dr. Tyler expressed concerns about public safety. Ms. Powell acknowledged Dr. Tyler's concerns relative to scope of practice and concerns about chiropractic college curriculums.

Dr. Lubkin advised that other States require that applicants from other states complete coursework in order to meet their educational requirements.

Mr. Stiger advised that the issue before the Board is whether or not the document provided would be accepted by the Board as meeting the requirements of Section Nine of the Act along with meeting all other requirements. He inquired whether the letter, as submitted, met the requirement.

**DR. LUBKIN MOTIONED THAT THE BOARD BE ALLOWED TO EXPECT ENDORSEMENTS OF RECIPROCITY FROM OTHER STATES AND HAVE THAT MEET THE CRITERIA SET FORTH IN SECTION NINE OF THE INITIATIVE ACT. VOTE 5-0 MOTION CARRIED.**

Mr. Conran requested clarification on the standards for reciprocity.

**Public Comment**

Mr. Keith Henry, Clinic Director of Cleveland Chiropractic College, added to the discussion the issue that other states exams do not have part four.

Dr. Tyler informed the Board the possibility of recognizing Chiropractic Assistant needs to be addressed by the Board. Dr. Lerner expressed his concerns regarding public safety and stated that he believes it prudent that the Board set standards for Chiropractic Assistants.

The Licensing Committee was directed to research other Boards for standards.

Ms. Powell advised that the issue is whether the Board can issue another license/certify under the Initiative Act. Ms. Powell informed the Board that they could start by changing Section 312 of the regulations in regards to Chiropractic Assistants.

Dr. Lerner directed the licensing committee to research training requirements of chiropractic assistants.

Dr. Tyler informed the Board of the future increase of license fees. Mr. Stiger informed the Board of the current budget status but commented that 2011/2012 there will be a need to have the license fees increased.

Continuing Education Committee

Dr. Tyler asked Mr. Stiger to provide an update regarding the continuing education work group. Mr. Stiger informed of the formation of a work group from within the profession including Dr. William Updyke, Erik Banta, Dr. Kyndra Hallway, Dr. Lou Ringler, Dr. Linda Shanks, Dr. Mitchell Peritz, Dr. J. Ray Welch and Carlye R. Brakensiek, who are providing valued input in the revision of existing CE regulations. Additionally, Board staff members John Melendez, Licensing and Continuing Education Manager, Licensing Analyst Genie Mitsuvara and Executive Officer, Brian Stiger are participating in the work group.

The goal is to present revised language to the Board at the September meeting.

Dr. Tyler expressed concern that the Board Members are not actively involved in the course review and approval process. He would like to make sure that the continuing education committee meets with Board staff relative to the approval continuing education courses; not providers.

Mr. Stiger informed the Board that approval by ratification will be a standing agenda item.

Scope of Practice Committee

Dr. Lubkin reported that the Scope of Practice committee meeting had voted to have the document submitted by David Prescott, Attorney sent to the Secretary of State for either the authentication or rejection.

Ms. Powell expressed her concern that someone might read the document submitted by David Prescott and mistake it for current law. The document does not establish the scope of practice and it is not current law.

Dr. Lerner expressed that the Board should submit document to the Secretary of State for their records.

**DR. LERNER MOTIONED TO AMEND THE COMMITTEES DIRECTIVE TO SEND THE DOCUMENT SUBMITTED BY DAVID PRESCOTT TO THE OFFICE OF THE SECRETARY OF STATE FOR INFORMATION PURPOSES ONLY. DR. TYLER SECONDED THE MOTION. VOTE 4-1 MR CONRAN ABSTAINED.**

Dr. Lubkin advised that the Chiropractic Scope of Practice for X-ray to the Board is waiting for a legal opinion from Department of Consumer Affairs.

Dr. Lubkin reported that the Scope of Practice Committee is waiting for staff to provide a list of various chiropractic Specialties approved programs.

Mr. Stiger clarified that the Board agreed to move forward with the regulatory language to recognize Chiropractic Specialties.

#### Government Relations Committee

Mr. Conran reported that the committee met with three issues addressed. The first issue was Board member use for state issued to email accounts. The Board has agreed to this with the caveat that training on how to use and retrieve email be provided.

Mr. Stiger provided a draft instruction to the Dr. Lerner, to access his email.

Mr. Conran advised the Board members that in the event they receive a questionable email from the public, they should discontinue reading the email and forward it to Mr. Stiger for review.

Mr. Conran stated that the Board meeting minutes were meeting the needs of the public in current format.

Mr. Conran requested that the staff come back with a recommendation in regards to revision of the Chiropractic Consultant Classification within six months.

Mr. Conran would like to have a procedure in place in how to discard documents. This would be a future agenda at next Government Relations Committee meeting.

#### **Public Comment**

An unidentified member of the public opined that there were not enough of public comments included in the minutes.

#### Legislative Committee

Dr. Lerner informed to the Board legislative committee recommended that the Board take an opposed position to Senate Bill 963.

**DR. COLUMBU MOVED TO OPPOSE SB 963; DR. TYLER SECONDED THE MOTION;  
VOTE 4-1; MOTION CARRIED.**

Mr. Conran spoke in opposition to the motion and expressed the value of reporting ex-parte communication to the public.

Dr. Lerner explained that the Legislative Committee reviewed the latest amendments to SB 1402 and the Committee recommended that the Board retain its current position of "Support if Amended."

An unidentified member of the public requested clarification on Bill 1402 about requirements of a licensee's reporting convictions to the Board.

Ms. Powell stated that the Board does not want licensees deciding that their conviction wasn't substantially related to the practice of Chiropractic.

Dr. Lerner adjourned the meeting for a lunch break at 12:05 p.m.

Dr. Lerner reconvened the public meeting at 1:35 p.m. Board members were present with the exception of Judge James Duvaras (Ret.) Public Member.

**Hearings re: Petition for Early Termination of Probation**

Administrative Law Judge Samuel De Reyes presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Anthony Loc Boa Nguyen
- Thomas Nutting
- Kwang E. Kim declined his hearing.

**CLOSED SESSION:**

**Public Session: Announcements re: Closed Session**

Dr. Lerner announced that the Board deliberated on the two petitions for early termination and evaluated the Executive Officer's work performance.

**Meeting Adjourned**

Dr. Lerner adjourned the public meeting for the evening.

**Thursday, July 31, 2008**

**Public Session:**

Dr. Lerner reconvened the public session at to order 8:22 am

**Roll**

Dr. Columbu called roll all Board members present, with the exception of Jim Conran and Judge James Duvaras who were both absent.

## **CLOSED SESSION:**

### **Public Session: Announcement re: Closes Session**

Dr. Lerner announced that the Board deliberated on the disciplinary matter regarding Aster Kifle-Thompson.

### **Hearings re: Petition for Early Termination of Probation**

Administrative Law Mr. Sawyer presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Adam Kleinberg
- Asghar Ebadat
- James Slusher
- James Dresser
- Paul Kobulnicky
- Olatungie Fergusson
- Joseph Scannell

## **Closed Session:**

### **Public Session: Announcement re: Closed Session**

Dr. Lerner called the Board to open session at 4:10 p.m. and announced that the deliberated on the seven petitions for early termination of probation.

### **Adjournment**

Dr. Lerner adjourned the public meeting at 4:30 p.m.

**FUND NO. 0152**

**BOARD OF CHIROPRACTIC EXAMINERS  
BUDGET REPORT  
EXPENDITURE PROJECTION**

Expense Index

September 15, 2008

MONTH 3

Mos. Remaining: 9

OBJECT DESCRIPTION	FY 2006-07	FY 2007-08	FY 2008-09		
	ACTUAL EXPENDITURES	ACTUAL EXPENDITURES	BUDGET ALLOTMENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
<b>PERSONAL SERVICES:</b>					
Salaries and Wages					
Civil Service-Perm.	697,255	411,012	926,393	825,876	100,517
Temp Help (907)	0	4,861	0	53,760	(53,760)
Statutory-Exempt (EO)	0	92,243	80,328	83,904	(3,576)
Board/Commission (910,920)	8,600	4,300	16,000	9,000	7,000
Overtime (909)	0	3,512	4,615	4,000	615
Staff Benefits	263,773	208,524	389,158	290,059	99,099
Salary Savings	0	0	(1,219)	0	(1,219)
<b>TOTAL, PERSONAL SVC</b>	<b>969,628</b>	<b>724,452</b>	<b>1,415,275</b>	<b>1,266,599</b>	<b>148,676</b>
<b>OPERATING EXPENSE AND EQUIPMENT:</b>					
General Expense	31,149	12,638	52,000	32,000	20,000
Printing	3,103	4,495	7,331	5,000	2,331
Communication	26,688	18,697	61,136	28,000	33,136
Postage	2,821	21,284	11,662	20,000	(8,338)
Travel In State	17,403	12,792	21,241	20,000	1,241
Travel, Out-of-State	6,803	2,708	24,121	8,000	16,121
Training	5,235	863	13,331	10,000	3,331
Facilities Operations	111,579	109,487	140,754	110,000	30,754
C & P Services - Interdept.	1,068,744	179,027	57,384	100,000	(42,616)
C & P Services - External	175,843	417,461	124,513	250,000	(125,487)
DP Billing (OIS) Prorata	0	0	6,936	6,936	0
Consolidated Data Center	26,800	26,800	25,985	27,000	(1,015)
Interagency Agreement IT	183,067	70,000	51,723	70,000	(18,277)
NOC Serv IT (Security)	0	49,500	63,881	50,000	13,881
IT Consultant	0	0	54,136	50,000	4,136
DP Supplies	0	1,217	0	0	0
Central Admin Pro Rata	92,361	0	126,458	126,458	0
Administrative External Svcs	0	178	0	0	0
Major Equipment	0	97,530	85,000	50,000	35,000
Minor Equipment	0	0	50,000	50,000	0
Vehicle Operations	0	0	6,000	17,000	(11,000)
<b>ENFORCEMENT:</b>					
Attorney General	0	342,327	941,000	941,000	0
Attorney General Fingerprinting	0	5,128	10,000	5,000	5,000
Office Admin. Hearing	0	48,411	217,379	217,379	0
Evidence / Witness Fees	0	17,168	75,000	75,000	0
Consultant Investigations	0	120,000	40,754	0	40,754
Div. of Investigations	0	0	0	0	0
Special Adjustments	0	0	0	0	0
<b>TOTALS, OE&amp;E:</b>	<b>1,751,597</b>	<b>1,557,712</b>	<b>2,267,725</b>	<b>2,268,773</b>	<b>(1,048)</b>
<b>TOTAL EXPENSE:</b>	<b>2,721,225</b>	<b>2,282,163</b>	<b>3,683,000</b>	<b>3,535,372</b>	<b>147,628</b>
Sched. Reimb. - Other	0	(4,312)	(33,000)	(5,000)	(28,000)
Sched. Reimb. - Fingerprints	0	0	(11,000)	0	(11,000)
Unsched. Reimb.	0	0	0	0	0
<b>TOTAL REIMBURSEMENTS:</b>	<b>0</b>	<b>(4,312)</b>	<b>(44,000)</b>	<b>(5,000)</b>	<b>(39,000)</b>
<b>NET APPROPRIATION:</b>	<b>2,721,225</b>	<b>2,277,851</b>	<b>3,639,000</b>	<b>3,525,372</b>	<b>108,628</b>
					2.99%

**Recruitment and Selection of Vacant Position Update  
September 17, 2008**

<b>Classification</b>	<b>Date Advertised</b>	<b>Application Review</b>	<b>Interviews Conducted</b>	<b>Background Checks</b>	<b>Formal Offer</b>	<b>Start Date</b>
Office Technician Policy / Admin	07/03/08	In Process	In Process			
Sup. Spec. Investigator I Field Op. Manager	05/27/08	complete	Complete	Complete	9/15/08	10/01/08
Spec. Investigator (Northern California)	07/10/08	Complete	Complete	Complete	9/15/08	10/01/08
Spec. Investigator (Southern California)	07/10/08	In Process	In process			



**BOARD OF CHIROPRACTIC EXAMINERS  
LICENSE STATISTICAL DATA**

**FY 2007/08 – FY 2008/09 COMPARISON**

LICENSE TYPE	TOTAL LICENSES 8/30/2007	TOTAL LICENSES 8/30/2008	NET VARIANCE
CHIROPRACTORS	13812	13843	+31
SATELLITES	2230	2436	+206
CORPORATIONS	1305	1346	+41
REFFERALS	17	17	0
<b>TOTALS</b>	<b>17364</b>	<b>17642</b>	<b>+278</b>

**JULY 1, 2008 – AUGUST 30, 2008**

LICENSE TYPE	FORFEITED LICENSES	CANCELLED LICENSES	INACTIVE LICENSES	TOTAL
CHIROPRACTORS	-31	101	19	89
SATELLITES	41	61	N/A	102
CORPORATIONS	4	3	N/A	7
REFFERALS	0	0	N/A	0
<b>TOTALS</b>	<b>14</b>	<b>165</b>	<b>19</b>	<b>198</b>

**Definitions:**

Forfeiture: Occurs due to failure to renew license within 60 days of license expiration.

Cancellation: Occurs voluntarily or results from failure to renew a license within three years of forfeiture.

## Compliance Unit Statistics

<b>Fiscal Year</b>	<b>05/06</b>	<b>06/07</b>	<b>07/08</b>	<b>08/09*</b>
<b><u>Complaints</u></b>				
Received	764	702	665	89
Pending	834	729	799	744
Closed with Insufficient Evidence	116	131	106	26
Closed with No Violation	96	60	78	33
Closed with Merit	319	200	321	36
Citations and Fines Issued (Total Fine Amount)	36	34	28	1 (\$100)
<b><u>Accusations</u></b>				
Filed	45	41	14	3
Revoked	16	27	8	0
Revoked, Stayed, Probation	31	37	20	1
Voluntary Surrender of License	8	4	3	0
Dismissed/Withdrawn	0	3	4	1
<b><u>Statement of Issues</u></b>				
Filed	4	11	7	0
Denied	0	0	0	0
Probationary License	8	6	6	0
Withdrawn at Applicants Request	0	2	1	0
Granted	7	3	0	0
<b><u>Probation Cases</u></b>				
Active	188	173	159	158

\* FY.08/09: July 1, 2008 - August 31, 2008

Updated: September 2, 2008

# FISCAL YEAR 2007

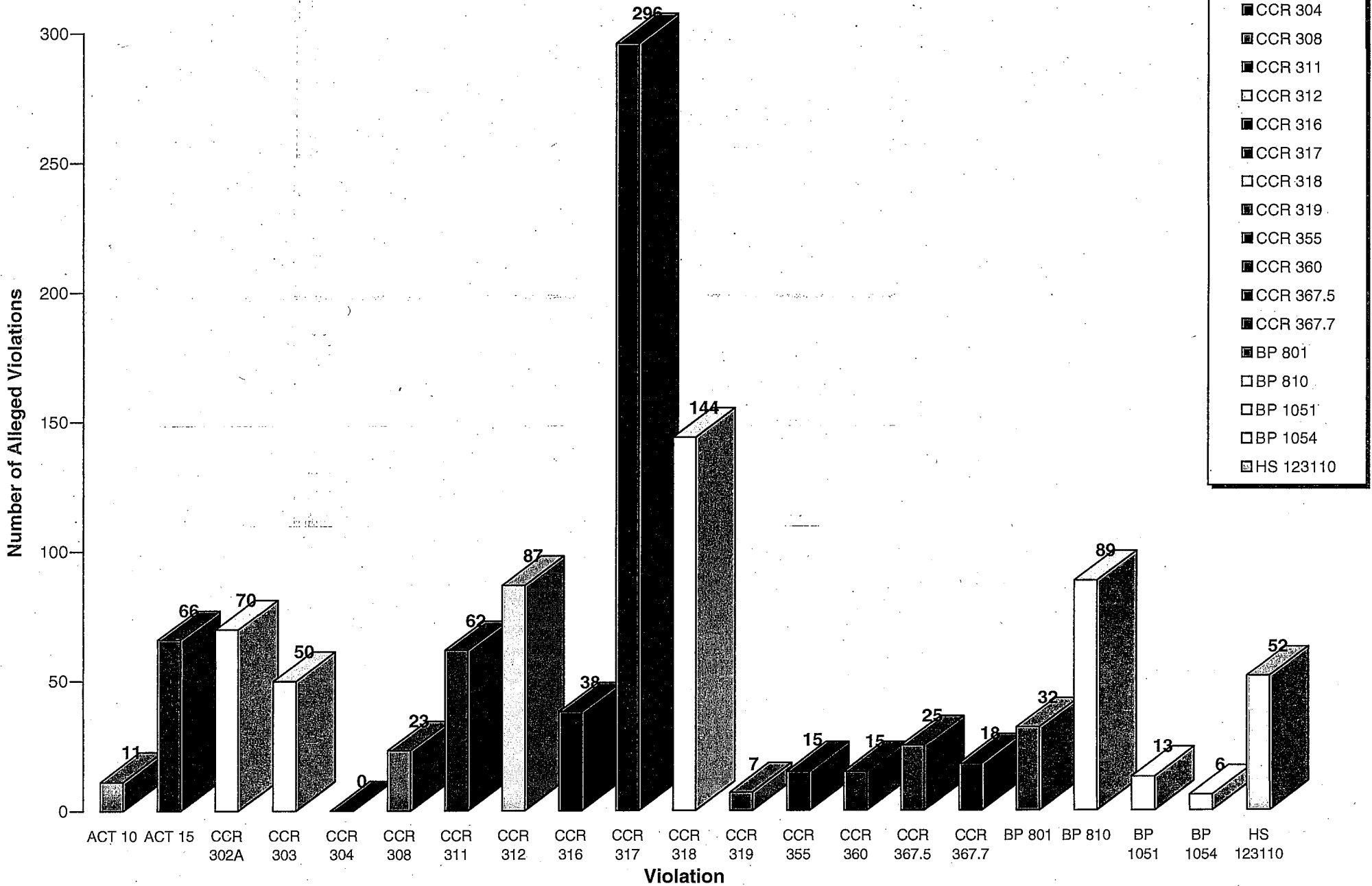
July 1, 2006 - June 30, 2007

Total Number of Complaints Opened - 702

Total Number of Violations - 1129

(A complaint may contain multiple violations)

Revised August 2008\*



### FISCAL YEAR 2008

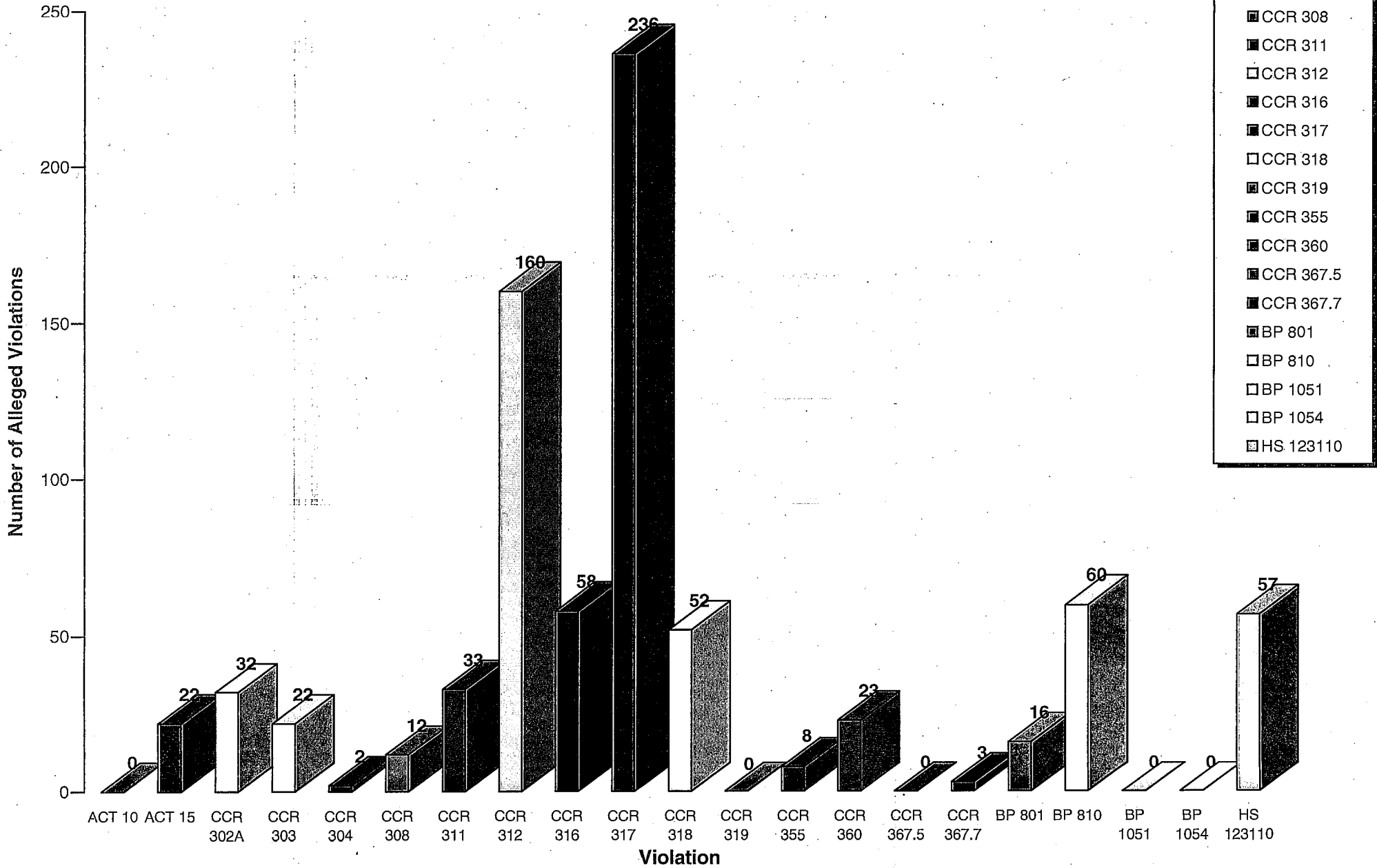
July 1, 2007 - June 30, 2008

Total Number of Complaints Opened - 665

Total Number of Violations - 796

(A complaint may contain multiple violations)

Revised August 2008\*



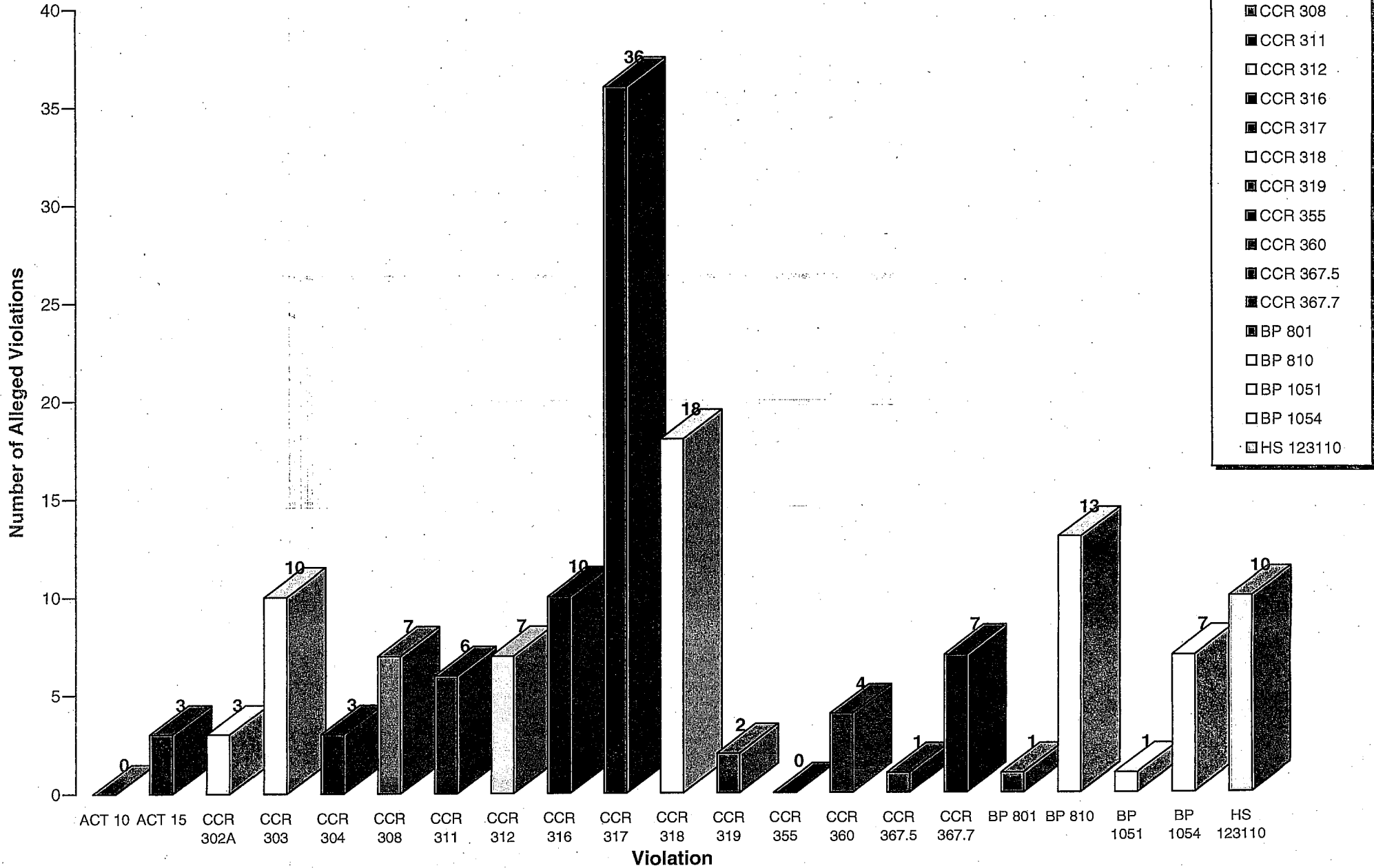
# FISCAL YEAR 2009

July 1, 2008 - August 31, 2008

Total Number of Complaints Opened - 89

Total Number of Violations - 149

(A complaint may contain multiple violations)



**MEMORANDUM**

**Date:** September 24, 2008

**To:** Board Members ^

**From:** Brian J. Stiger,  
Executive Officer

**Subject:** Ratification of Formerly Approved Continuing Education Providers

This is to request that the Board ratify the following list of continuing education providers at the September 24-25, public meeting.

Staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

<u>CONTINUING EDUCATION PROVIDERS</u>	<u>DATE APPROVED</u>
<u>1. Mueller College of Holistic Studies</u>	<u>08/08/08</u>
<u>2. The Upledger Institute, Inc.</u>	<u>08/14/08</u>

If you have any questions or concerns, please contact me at your earliest opportunity.

# MEMORANDUM



**Date:** September 17, 2008

**To:** Board Members

**From:**   
Brian J. Stiger  
Executive Officer

**Subject:** Ratification of Formerly Approved Doctors of Chiropractic for Licensure

This is to request that the Board ratify the attached list of individuals as Doctors of Chiropractic at the September 24-25, 2008, public meeting.

Between July 23, 2008 and September 16, 2008, staff reviewed and confirmed that the applicants met all statutory and regulatory requirements.

If you have any questions or concerns, please contact me at your earliest opportunity.

**Approval By Ratification of Formerly Approved License Applications  
July 23, 2008 – September 16, 2008**

<b>Name (First, Middle, Last)</b>			<b>Date Issued</b>	<b>DC#</b>
Ronald	McCormick	French	8/20/2008	30982
Adam	Michael	Atkinson	8/20/2008	30983
Kendra	Suzanne	Beal	8/20/2008	30984
Matthew	David	Bernstein	8/20/2008	30985
Tammy	Kay	Cassa	8/20/2008	30986
Matthew	Nicholas	Chang	8/20/2008	30987
Michael	Jonathan	Day	8/20/2008	30988
Thomas	Craig	Gibson	8/20/2008	30989
Brandon	William	Haskins	8/20/2008	30990
Ranjeeta		Lal	8/20/2008	30991
Joel	Adiv	Levitz	8/20/2008	30992
Megan	Leigh	Moon	8/20/2008	30993
Todd	Benjamin	Plutchok	8/20/2008	30994
Roger		Seto	8/20/2008	30995
Kyle	Hitoshi	Taketa	8/20/2008	30996
Richard	Jason	Veirs	8/20/2008	30997
Eric	Joseph	Walker	8/20/2008	30998
Jinmo		Yoon	8/20/2008	30999
Rhonda	E	Basarich	9/3/2008	31000
Maria Anna	Shaner Sumayao	Bongalon	9/3/2008	31001
Michelle	Aline	Caplan	9/3/2008	31002
Selena		Cermeno	9/3/2008	31003
Jack	Charles	Hewitt	9/3/2008	31004
Takehisa		Horii	9/3/2008	31005
Jerry		Lee	9/3/2008	31006
Jossue		Ortiz	9/3/2008	31007
Lawson	Victor	Sealey	9/3/2008	31008
Manuel		Urteaga	9/3/2008	31009
Matthew	Justin	Valusek	9/3/2008	31010
Sean	Michael	Zarzana	9/3/2008	31011
Venessa	Carmita	Bartholomew	9/5/2008	31012
Christopher	Wayne	Berry	9/5/2008	31013
Kaisa		Bidali	9/5/2008	31014
Dana	Rachelle	Carlucci	9/5/2008	31015
Benedict	Young II	Choi	9/5/2008	31016
Ronald	Leon	Evans	9/5/2008	31017



Petra	Alexandra	Gill	9/5/2008	31018
Adam	Jonathan	Jacobs	9/5/2008	31019
Ashkan		Khodabakhsh	9/5/2008	31020
Shahid	Zaheer	Lateef	9/5/2008	31021
Jennifer	Mihoko	Ota	9/5/2008	31022
Trevis	Tyree	Rawlinson	9/5/2008	31023
Richard	J.	Rojas	9/5/2008	31024
Heather		Shott	9/5/2008	31025
Noushin		Sorkhiroz	9/5/2008	31026
Michael	Yu Long	Sun	9/5/2008	31027
Trent	Jacob	Teegarden	9/5/2008	31028
Howard	Scott	Vance	9/5/2008	31029
Erica	Denise	Witter	9/5/2008	31030

# SECTION 139 REPORT

EXAMINATION PROGRAM		PREREQUISITES <sup>1</sup> for admittance to the examination			EXAMINATION VALIDATION <sup>2</sup> Occupational Analysis (OA) Examination Development (ED)				COSTS (in Thousands) <sup>3</sup> per occurrence (po) or per year (py)				
	License Type(s)	Exam Title(s)	Mandating Code		Assessment	Most Recent OA	ED Linked to OA	Passing Score Method	Ongoing Item Analysis	OA (po)	ED (po)	Testing (py)	Program Evaluation (po)
			B&P	CCR									
Chiropractic Examiners, Board of		Clinical/Practical (Written)	Chiropractic Initiative Act of California Section 5		OA; internal/external review	2005		Modified Angoff; equating		n/a	n/a	n/a	n/a
		Chiropractic Law and Professional Practice Examination	Chiropractic Initiative Act of California Section 6			2004		Angoff					

*Brian J. Seeger*

\_\_\_\_\_  
Signature of Executive Officer

*9/2/2008*

\_\_\_\_\_  
Date

Comments:

## FAX SIGNED FORM TO OER AT (916) 575-7291

<sup>1</sup> Prerequisites for admittance to the examination are mandated; and assessed using a number of methods, including valid occupational analyses (OA), national standards, and regulatory review. CCR codes are Title 16 unless otherwise indicated.

<sup>2</sup> Methods used to establish passing scores vary across exam administrations, and are based on minimum competence criteria necessary for licensure.

<sup>3</sup> Included are costs for personnel required to perform these functions.

STEPHEN B. GORMAN  
OF COUNSEL

PETER J. KOZAK  
TRIAL COUNSEL

GORMAN & KOZAK, LLP  
ATTORNEYS AT LAW  
1010 CAMERADO DRIVE, SUITE 101  
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TAX ID 41-2165581  
(530) 677-6000 / FAX (530) 677-9893

DOUGLAS E. STEIN  
SPECIAL COUNSEL

MATTHEW D. ENGBRETSON  
ASSOCIATE COUNSEL

June 27, 2006

VIA US MAIL AND FAX

Board of Chiropractic Examiners  
2525 Natomas Park Dr., Ste. 260  
Sacramento, CA 95833-2931  
Fax: 916-263-5355

Re: Board meeting of July 20, 2006

Dear Gentlepersons:

I am writing on behalf of my client, Rodney Schell, D.C. Dr. Schell has been licensed as a chiropractor in the State of California for many years. He has also been licensed as a X-Ray Supervisor and Operator by the California Department of Health Services. Until recently he was employed by Community Mobile Diagnostics to supervise and operate x-ray machines. After receiving a "NOTICE OF VIOLATION" from Ephraim Maura of the Inspection, Compliance and Enforcement Section, Radiologic Health Branch, Richmond Regional Office of the Department of Health Services, Dr. Schell's employer terminated his services. Upon investigation we discovered that the "violation" that Mr. Maura complained of was simply that Dr. Schell was a chiropractor. I have attached copies of the notice of violation and Community Mobile Diagnostic's response for your review.

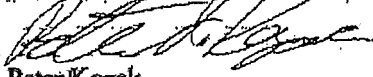
Under §302(a)(6) of Title 16 of the regulations of the California Board of Chiropractic Examiners, as a licensed chiropractor Dr. Schell is licensed to use x-ray equipment for diagnostic purposes. The scope of Dr. Schell's work with Community Mobile Diagnostics was entirely diagnostic; none of the procedures he did were "treatment". It would seem that Mr. Maura's contention is that as a chiropractor he did not meet the requirement established by California Health and Safety Code §107110, specifically that anyone operating an x-ray machine be certified by a recognized examining board in radiology. Dr. Schell's license was valid for diagnostic work, and he did not exceed the scope of that license.

I believe that a short Letter of Opinion from the Board to Mr. Maura and his Department supervisor would be invaluable in clarifying this issue. On Dr. Schell's behalf, I respectfully request that the Board place this matter on the agenda for the next Board of Chiropractic Examiners meeting scheduled to be held July 20, 2006. Dr. Schell plans to attend that meeting and he will be pleased to provide whatever information you may need to resolve this issue.

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I appreciate your assistance in this matter. Should you have any questions or if I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



Peter Kozak  
Attorney at Law

PJK:ap

bcc: Rodney Schell, D.C.  
(fax) 916-990-0131

## Proposed Regulatory Language for MUA

Section 318.1 is hereby added to Title 16, Division 4, Article 2 of the California Code of Regulations:

### 318.1 Standard of Care re Manipulation Under Anesthesia ("MUA")

(a) MUA may only be performed in a hospital or ambulatory surgery center licensed by the California Department of Public Health, Bureau of Hospital Licensing and Certification and approved by either the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Accreditation Association of Ambulatory Health Care, or Medicare.

(b) Anesthesia may only be administered by a California licensed physician and surgeon, or other health care provider authorized under California law to administer anesthesia. The chiropractor may not direct, instruct, interfere, or make any orders to the physician and surgeon, or other health care provider who is administering and maintaining the anesthesia.

(c) MUA shall be performed by two chiropractors trained and competent to safely perform MUA. The "primary chiropractor" shall formulate the chiropractic portion of the MUA treatment plan and shall be responsible for performing the chiropractic manipulation for that procedure. The "second chiropractor" shall insure that all movements are accomplished with patient care and safety as his or her primary focus and shall assist the "primary chiropractor" when necessary. The chiropractic portion of MUA is limited to techniques within the scope of practice of a chiropractor.

(d) For the purpose of this section, the primary chiropractor and the second chiropractor may not be involved in nor interfere with the physician and surgeon or other health care provider in the discharge of the patient following the MUA procedure.

(e) Failure to follow the standard of care contained in this section when performing MUA shall constitute unprofessional conduct.

(f) "MUA" means the manipulation of a patient who is sedated by the administration of anesthesia by a physician and surgeon or other health care provider who is legally authorized to administer anesthesia. "Manipulation" means the manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord.

**Board of Chiropractic Examiners**  
**Proposed Regulations**  
**Title 16, Division 4, California Code of Regulations**

**§ 389. Letter of Admonishment.**

- (a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.
- (b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated and may contain an order of abatement.
- (c) The letter of admonishment shall be served upon the licensee personally or by certified United States mail at the licensee's address of record with the board. If the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.
- (d) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:
  - (1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.
    - (A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference. Upon request and approval by the Executive Officer or his or her designee, the licensee may participate in the office conference by telephone.
    - (B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.
    - (C) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified United States mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.
    - (D) Within thirty days of service or mailing of the written decision, the licensee shall comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order.
  - (2) Comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order.

NOTE: Authority cited: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii. Reference: Sections 1000-4(b) and 1000-10, Business and Professions Code; and Chiropractic Initiative Act of California, Stats. 1923, p. 1xxxviii.

HISTORY: 1. New section filed 9-25-2000; operative 10-25-2000 (Register 2000, No. 39).