

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****October 22, 2009****State Capitol****Fourth Floor, Assembly Room 447****Sacramento, CA 95814****Board Members Present**

Frederick Lerner, D.C., Chair
Hugh Lubkin, D.C., Vice Chair
Richard Tyler, D.C.
Jeffrey Steinhardt, D.C.

Staff Present

Robert Puleo, Interim Executive Officer
LaVonne Powell, Senior Staff Counsel
Linda Shaw, Staff Services Manager
Valerie James, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 9:06 a.m.

Roll Call

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

Chair's Report

Dr. Lerner gave the Chair's Report and announced that Martin Mariscal, Public Member, has resigned from this Board and all others that he sat on.

Approval of Minutes

September 24, 2009 Board Meeting

MOTION: DR. TYLER MOVED TO APPROVE THE SEPTEMBER 24, 2009 MINUTES**SECOND: DR. STEINHARDT SECONDED THE MOTION****VOTE: 3-0-1****MOTION CARRIED****Discussion**

Dr. Steinhardt asked if he abstained since he was not present at the September 24, 2009 meeting, would it affect the quorum.

Ms. Powell clarified that it would not.

Manipulation under Anesthesia (MUA) Proposed Regulations

Dr. Lerner stated there were a few minor changes to go over.

Ms. Powell stated we are asking if the Board agrees with staff's recommendations regarding the responses to comments and she also has something that needs to be clarified.

Dr. Lerner stated the recommendations are excellent.

MOTION: DR. LERNER MOVED TO APPROVE STAFF'S RECOMMENDATIONS AS A WHOLE

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 4-0

MOTION CARRIED

***See attached Memo which is incorporated herein by reference that contains all of the staff recommendations.**

Discussion

Dr. Steinhardt asked for clarification regarding the last comment on page 5 from the COA.

Ms. Powell and Dr. Lerner provided clarification.

Public Comment

None

Ms. Powell suggested a change to subdivision (a) to clarify and further breakdown the section. She recommended changing the language to read it can be done in a hospital that's licensed by the California Department of Public Health or an ambulatory center that's licensed by the California Department of Public Health and is either operating pursuant to section 1248.1 or is accredited by an agency approved by the Medical Board of California. She will provide this language to Mr. Puleo by next Monday to get the 15 day change out.

Dr. Lerner, Ms. Powell, and Dr. Lubkin discussed the change.

MOTION: DR. LUBKIN MOVED TO ACCEPT THE CLARIFICATION CHANGES PROPOSED BY MS. POWELL

SECOND: DR. TYLER SECONDED THE MOTION

VOTE: 4-0

MOTION CARRIED

Discussion

Dr. Lubkin stated these are good changes that will make the language read more smoothly.

Public Comment

None

Continuing Education Proposed Regulations

Dr. Lerner and Ms. Powell provided an update on the 45 and 15 day public comment periods. The

45-day has 45 comments, and the 15-day has 13 comments, all of them will be addressed.

45-Day Comment Period

Comment 1: Richard E. Thornton, D.C. raised concerns that the proposed regulations are ambiguous, cumbersome, and confusing, and requests that the Board clarify the mandatory section of the proposed regulations. In addition, Dr. Thornton requests that the Board include eight (8) hours of chiropractic technique in the mandatory section and four (4) additional hours as optional because it is the essence of chiropractic practice.

Response: The Board feels as professionals, chiropractors should be able to choose what areas they need continuing education in as individuals.

Comment 2: Randy Jones, D.C. raised concerns that the additional twelve (12) hours of CE will result in an economic hardship and the limitation of eight (8) hours of instruction time will result in additional challenges. Dr. Jones requests that the Board reconsider the proposal.

Response: Additional continuing education hours are justified based on the high percentage rate of licensees who are being disciplined due to violating the laws.

Comment 3: Mha Atma S. Khalsa, D.C. urges the Board to reject the proposal to increase the required CE hours and to limit the class instruction time to no more than eight (8)* hours in a twenty-four hour period because it is financially burdensome on licensees. In addition, Dr. Khalsa comments that other professions require additional CE hours because their scope of practice requires prescribing drugs, performing surgeries, and other invasive procedures that require additional CE hours, and disagrees with the Board's point of increasing CE hours because it will increase public safety.

Response: As a Board, decisions should not be based on economic hardship to licensees, but rather on protecting the public and raising education awareness. Ultimately it goes to a higher standard of care, as well as keeping with other boards and professions. However, there are low cost and even free seminars available.

Comment 4: Teresa M. Wisner, D.C. raised concerns that the proposed regulations will result in an economic hardship for licensees, is unnecessary, and the limitation of CE courses and criteria for instructors will reduce the options licensees have for CE.

Response: The proposed regulations will provide many more options to licensees than they ever had. In addition, we are proposing 1 hour less per year than any other California health care profession.

Comment 5: Kai Tiltmann, D.C. opposes the proposed regulations to increase CE hours because additional hours does not increase public safety, chiropractors compared to other professions have a lower risk to public health and safety, and it will result in unnecessary additional expenses.

Response: The Board disagrees based on our enforcement statistics. This is a tool to help with our high level of enforcement problems. There is a considerable level of risk to the public as medicine advances, and it's important that chiropractors are educated on when it's appropriate to refer

patients.

Comment 6: Eric Banta, Executive Director of the International Chiropractics Association of California requests that the Board clarify what a seminar is in the regulations.

Response: Courses are defined. There is no difference between a course and a seminar.

Comment 7: Deken Smith, D.C. raised concerns that the additional twelve (12) hours of CE and the limitation of eight (8) hours of instruction time will result in an economic hardship.

Response: This has already been corrected.

Comment 8: Richard C. Nohrden, D.C. raised concerns that the additional twelve (12) hours of CE and the limitation of eight (8) hours of instruction time will result in an economic hardship.

Response: This has already been corrected.

Comment 9: E. Swida-Skillen, D.C. opposes the proposed regulations to increase CE hours because it will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 10: Barry J. Lieberman, D.C. opposes the proposed regulations and stated that there are too many problems and liability issues with the changes.

Response: The Board cannot provide a response because Mr. Lieberman did not provide any specific problems in the regulations that he's objected to. The names of the authors of the proposed changes were provided during the open board meetings. Full disclosure of any industry and political affiliations is not a requirement of the APA for regulations.

Comment 11: Andrew C. Cohen, D.C. supports the proposed regulations as it improves public protection.

Response: Thank you for your support.

Comment 12: Charles Wray, D.C. opposes the proposed regulations because is will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 13: Hari Bhajan S. Khalsa, D.C. opposes the proposed regulations because is will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 14: Tami S. Auerbach, D.C. requests that the Board consider the following issues:

1. Clarify when a licensee would have to comply with this regulation;
2. Clarify the number of hours that can be completed through distant learning versus in person;

3. Have two (2) categories for CE courses and require twelve (12) hours in each category, which is similar to other professions;
4. Clarify if chiropractic technique is a mandatory course or optional;
5. Include course topics such as rehabilitation, functional restoration, etc;
6. Clarify why there are exclusions for instructors to teach;
7. Instructors should have the option to decide when a break is appropriate;
8. CE providers should not be required to provide the Board with a formal assessment of their courses;
9. Instructors who teach CE should be given more credit hours towards their CE requirements;
10. Increase of CE hours will result in an economic hardship.

Response: 1-5) Comments have already been clarified.

6) Teachers are given CE exemptions because they are engaging in activity that's equivalent to what you gain when you do CE.

7-10) Comments have already been addressed.

Comment 15: Rory S. Brinkerhoff, D.C. opposes the proposed regulations because it will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 16: George Casey, D.C. raised concerns that the proposal provides for a full exemption of CE requirements for Board Members and is not a reasonable exemption. Dr. Casey believes it to be more appropriate that Board Members receive a partial exemption and be required to complete CE for the purpose of consumer protection. Dr. Casey request that the full exemption from CE requirements be granted to full-time teaching faculty at chiropractic colleges. Dr. Casey believes that the requirement of CE in the areas of mandatory, category I, and category II is confusing and will require substantial administrative oversight and will be costly. Lastly, Dr. Casey expressed his concern that the proposal to increase the CE hours will result in an economic hardship.

Response: There is a one year exemption for board members, not a full exemption. It has already been in placed and cannot be revised by vote at this time, except to be eliminated. The other items have already been addressed.

Comment 17: Randall Cafferty, D.C. raised the concern of increasing the CE hours because it requires chiropractors to be away from their office and less available to their patients.

Response: There are choices such as weekend seminars or online courses so a chiropractor would not need to be away from their office during regular business hours.

Comment 18: Travis Sanchez, D.C. opposes the proposed regulations because it will result in an economic hardship. Dr. Sanchez also stated that other professions require more CE hours because they prescribe drugs, perform surgeries, and invasive procedures that require the additional education. Dr. Sanchez suggests that the Board increase the CE hours to sixteen.

Response: Economic hardship has been addressed. Changes to the regulations are being made to protect the public, not due to prescribing drugs, performing surgery or invasive procedures.

Comment 19: Gail Rosenberg, D.C. opposes the proposed regulations because it will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 20: Robert K. Gray, D.C. requests that the Board consider exempting full time instructors from the CE requirements.

Response: Exempting teachers has already been addressed.

Comment 21: Ben Griffes, M.A.D.C. supports the increase of CE hours, but raised concern on limiting the CE courses to eight (8) hours within a twenty-four hour period. In addition, Dr. Griffes recommends that the Board impose additional accountability methods to those offering on-line courses, such as a written examination and approval of the hours by an instructor.

Response: Limiting CE courses to 8 hours has been addressed. There are requirements for online courses, Section 357.1 more than meets the concerns, "(G) show formal outcome assessment of course", will be deleted.

Comment 22: William Meeker, D.C., MPH, President, West Campus, Palmer College of Chiropractic states that they are in favor of the increase of CE hours from twelve (12) to twenty-four (24), the acceptable categories of topics and the distance learning methods, but have concerns with current verbiage and the rationale for the changes. Comments and recommendations are as follows:

1. Section 356 (a) (b) (c) – the three (3) categories provide overlap that will cause confusion and a hardship to CE providers to decide on categorization for the learners. CE providers must have one topical area to input into databases for accurate and consistent transcription. There was also confusion with x-ray that could fall in all three categories and is confusing to track for learners as well as the board;
2. Section 356.5 (a) – it appears that the board is requiring both provider status and individual course approval, which is a hardship and unwarranted;
3. Section 356.5 (b) (2) – This section is an unreasonable requirement with no rational. To require instructors to have five (5) consecutive years of teaching eliminates a pool of potentially qualified instructors and creates undue hardship for providers. Providers should ensure that instructors teaching courses have appropriate expertise in the subject matter being taught;
4. Section 356.5 (b) (3) – withdrawal or denial of previous course approval of provider status is harsh for what could be a clerical error;
5. Section 356.5 (b) (5) – this section is not a rational enforcement request. Surveys are a tool for providers to gain truthful information and optional for attendees. It would be unethical to revoke an attendee's credit for CE for not participating in the survey. In addition, the proposal would require unnecessary administrative tasks. The survey should remain optional;
6. Section 356.5 (b) (6) – this is an unethical enforcement request. Learners earn hours for the time they are in the room;
7. Section 356.5 (10) (f) – The provider shall provide a certificate identifying the course topic and the number of hours the licensee earned in each topic. Proper categorization should be the responsibility of the licensee. Palmer College would support a model like Florida where providers would pay a yearly fee to the Board for unlimited courses;

8. Section 357 – requests that the Board continue with the \$50 per course. In addition, a course has not been clarified by the board and needs to be, as it appears to change. The proposal to limit the hours of instruction time is not feasible and is unfair. Additionally, the proposal for breaks is overcomplicated and should be at the discretion of the instructor. Furthermore, distant learning should be simplified and clarified;

9. Section 358 (2) – this requirement is unreasonable. All individuals formally employed by a college are involved in chiropractic appropriate education and should be acceptable by the Board.

10. Section 358 (8) - would create a hardship and liability for all involved and recommends that this section be deleted;

11. Section 360 – the withdrawal or denial of a previous course or provider status approval for ten (10) years seems harsh.

Response: 1) Comment has been addressed.

2) The Board does not want to delegate this to providers in order to have appropriate oversight to ensure CE regulations are being followed.

3-9) Comments have already been addressed.

10) Comment is unclear, section quoted is incorrect numbering.

11) Comment has already been addressed.

Comment 23: John L. Mayfield, D.C. raised concerns with the proposed regulations and suggests that the Board review the proposal and clearly demonstrate the need for the revisions. Specific comments to the following sections are as follows:

1. Section 356, CE Requirement, subsection (a) Mandatory - too restrictive and should include chiropractic technique, which has been part of chiropractic for many years. D. Mayfield recommends that technique be included in the mandatory section and is needed to protect the public by ensuring that chiropractors have the clinical competency to deliver the safest possible care;

2. Section 356 – Category I and II – proposal excludes traditional CE courses and does not provide for “Other” topics; it is also unclear if current CE providers will automatically retain their status and should only pertain to new applicants; the proposal, which includes an appeal process, appears to be unfair and could result in a lawsuit, and suggests that this be removed from the proposed language;

3. Section 356.5 (b) - the proposal replaces a current system that has worked for many years with a process that is unclear and unnecessary. It's suggested that the Board maintain the current system;

4. Section 356.5 (b)(6) – the proposal is unnecessary and shows a disregard to chiropractors who are handicapped or pregnant, and no other current state or profession has such a requirement;

5. Section 356.5 (b) (8) – providers that are authors of books and educational materials should be made available to attendees as long as it is not sold during actual seminar hours. In addition, this proposal contradicts with subsection 356.5 (b) 7;

6. Section 357 (a) – this proposal provides for an individual to arbitrarily deny an applicant and should be deleted from the proposal;

7. Section 357 (b) (1) – this proposal is unnecessary and creates a financial burden on the licensees, and requests that the Board delete this proposal;

8. Section 357 (b) (2) – this proposal is without merit and the way it is currently written would extend a seminar by a couple hours, and should be deleted;

9. Section 357 (b) 4 – this proposal is unclear and needs discussion if it is necessary;

10. Section 357 (b) 6 – this proposal gives the Board power to arbitrary invalidate a seminar without cause and should be deleted.

Response: 1 & 2) Comments have already been addressed. 3) The Board disagrees, based on federal law, this is very necessary.

4) Disabilities have been addressed, pregnancy is not considered a disability.

5) Section 356.5 (b)(8) will be changed from “where” to “while”.

6-10) Comments have already been addressed.

Comment 24: Rayce Meyers, D.C. opposes some of the proposed regulation changes and provides the following comments and recommendations:

1. Section 356.5 – this proposal is inconsistent with other healthcare professions, unnecessary and will create additional costs and time for the Board. In addition, it is an inconvenience to the CE providers who have complied with the CE regulations. It's suggested the Board grandfather all current providers and institute the biannual application renewal for new providers;

2. Section 357 (b) 1 – the proposal to limit the instruction time to eight (8) hours within a twenty-four (24) hour period would create an unnecessary financial burden on licensees and is not currently done by other healthcare professions;

3. Section 356 (a) – opposes the change to remove the traditional required four (4) hours of chiropractic technique, which has been an essential part of chiropractic CE for many years. This proposal would allow a licensee to never have to take a technique course and would endanger the public. It's suggested that chiropractic technique be placed in the mandatory list option;

4. Section 356.5 - this proposal would restrict current instructors and providers who have been following Board guidelines for many years. It is further unclear if providers have the option to change their program. It's suggested that this be removed and the Board maintain the current requirements;

5. Section 356.5 (8) – this restrictive guideline is unnecessary;

6. Section 357 (2) – it's unclear of the purpose of the requirements and should be at the discretion of the instruction when a break should be given;

7. Section 357 (3) – questions the validity of distant learning and opposes this proposal unless the Board can ensure that it is ethical, safe, and secure;

8. Section 357 (4) – requests that practice management be included in CE;

9. Section 357 (b) (6) – this proposal would provide the Board with the power to arbitrarily invalidate seminars without due process and requests that this be eliminated;

10. Section 358 – it is unclear why the Board wants to eliminate the full exemption to instructors;

11. Section 358 (7) – Board member should receive the same treatment as other licensees and there is no basis for this exemption;

12. Section 360 – this proposal is arbitrary and would put providers in jeopardy. It is also inconsistent with other healthcare professions. It's suggested that this be removed;

13. Section 356 (c) – This proposal is unclear and is unfair to instructors and providers.

Response: All comments have already been addressed.

Comment 25: Mark S. Kimes, D.C. opposes the proposal to increase the CE hours from twelve (12) to twenty-four (24), and to limit instruction time to eight (8) hours within a twenty-four (24) hour period, and believes that this proposal will create a financial hardship on licensees. Dr. Kimes states that chiropractor's scope of practice is limited compared to other healing art professions and should not require the same hours of CE. Furthermore, Dr. Kimes disagrees with the proposal to

require a biannual renewal for CE providers and states that this would result in unnecessary work and economic impact to the Board and CE providers.

Response: All comments have already been addressed.

Comment 26: Kenneth Oikawa, D.C. raised concern that due to the economic issues in California, it is not the time to submit this proposal.

Response: Economic hardship has been addressed.

Comment 27: Steve Whitelaw, D.C. opposes the proposal to increase CE hours and feels that additional hours are unnecessary.

Response: The Board respectfully disagrees with this comment.

Comment 28: Scott M. Sawyer, D.C. opposes the proposal and feels that it is unnecessary and unreasonable.

Response: The Board respectfully disagrees with this comment.

Comment 29: Laura Sheehan, D.C. opposes the proposal to increase the CE hours because it will create a financial burden. In addition, public safety is not a huge concern in chiropractic care.

Response: The Board strongly disagrees with these comments.

Comment 30: Aine Sweeney, D.C. opposes the proposal to increase the CE hours because it will create a financial burden.

Response: Economic hardship has been addressed.

Comment 31: Daniel Bunch, B.S., D.C. supports the proposal to offer online courses and provided information regarding the security measures he takes to ensure that participants are involved and how he verifies their participation.

Response: Thank you for your support.

Comment 32: Matt Rosenstein, D.C. supports the Board's proposal.

Response: Thank you for your support.

Comment 33: Charles G. Davis, D.C., International Chiropractors Association of California supports the proposed regulations and provided the following comments and suggestions:

1. Section 357 (a) - requests that an application should be for one course per year;
2. Section 356.5 – recommends that eligibility requirement to be an instructor should be has taught, has research experience, or has practical experience;
3. Section 357 - recommends a provision that allows long term CE providers in good standing to self-certify CE courses. This would save staff time and reduce the need for revenue sources;

4. Section 357 (b) (1) – recommends that the instruction time should be amended to limit the hours of instruction during a calendar day.

Response: Thank you for your support. 1 & 2) Comments have already been addressed.
3) This has been rejected several times for fairness and because it doesn't give oversight.
4) Comment has already been addressed.

Comment 34: Erica Schafer, D.C. opposes the proposed regulations because it will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 35: Steven Perry, D.C. states that the proposal is unnecessary and will result in an economic hardship.

Response: Economic hardship has been addressed.

Comment 36: Paul Powers, D.C. raised concerns that the accountability in learning cannot be achieved with other formats identified in this section other than internet based programs. In addition, the application fee for CE providers is high and inconsistent with other states. Dr. Powers recommend that the fee be set at \$25 and provided suggested language for the Board to consider.

Response: 1) Comment has already been addressed.
2) The fees are not based on other states fees, a cost analysis was conducted.

Comment 37: Maia James, D.C., President, California Chiropractic Association supports the proposal to increase of CE hours from twelve (12) to twenty-four (24). The following comments and recommendations are as follows:

1. Section 355 - recommends that the term "forfeiture" license status be defined,
2. Section 355 (c) - recommends language be added providing a mechanism for a licensee to request inactive status for clarity purposes;
3. Section 355 (d) - the proposal would require a licensee whose license has been cancelled for failure to renew to wait two (2) years from the cancellation date to apply for restoration of his or her license. The proposal references section 10 of the Initiative Act; however, the section addresses license suspension or revocation, not cancellation. CCA does not understand the purpose of this policy and is not aware of any problems or abuse related to cancellation. CCA recommends this provision be eliminated;
4. Section 355 (b), (c), and (d) - the requirement that a licensee complete the Board's CE requirements that were in effect for each year the license was "expired" should state "or portion thereof" in each instance; subsection 1 and 2 references "expired", but there is no mention of "expired". For clarity purposes, CCA requests that each subsection should refer to the particular license status referenced (e.g., forfeiture status, inactive status, and cancelled);
5. Section 356 - The first paragraph relating to the minimum CE required for renewal and through distance learning is confusing. CCA recommends that the transition date be extended at least one year after the regulations are enacted to allow licensees time to comply with the changes. In addition, CCA included suggested language for the Board to consider;
6. Section 356 (a) – the Board's paramount responsibility is to protect the public's health and safety; therefore, the mandatory CE coursework should meet this standard. In addition, CCA believes that

all coursework under this section be mandatory for all licensees as opposed to the proposal to allow a licensees to choose from a menu. CCA recommends that the Board maintain the current requirement of four (4) hours of adjustive technique by lecture, demonstration or both, a minimum of four hours in comprehensive, full-body physical examination, including but not limited to, patient history, diagnosis, differential diagnosis and adverse event avoidance, and a minimum of two (2) hours in ethics and law, including but not limited to, professional boundaries, ethics, mandatory reporting requirements and law related to the practice of chiropractic. CCA also recommends that category I and II be combined and the hours be adjusted to fourteen (14). CCA also states that there appears to be no policy reason for the separation and it would be burdensome to licensees to comply;

7. Section 356 (b) (3) – recommends deleting the reference to procedures and techniques and provided suggested language for the Board to consider;
8. Section 356 (b) (4) – recommends the Board add theory to this subsection to be clear that the Board has no intention to increase the scope of practice. Recommends adding “but not limited to” encourage broader coursework to the theory of treating pain;
9. Section 356 (b) (5) – for clarity, CCA provided suggested language to this section for the Board to consider;
10. Section 356 (b) (7) – CCA provided suggested language to this section for the Board to consider;
11. Section 356 (c)(2) – it is unclear if classes under this provision would need to be approved by the Board, and if so, the Board is not equipped to evaluate the content of CE from other licensing boards or bureaus. CCA supports these courses, but suggests that the Board limit the CE courses to only allow for a maximum of six (6) hours;
12. Section 356 (c) (3) – CCA provided suggested language for the Board to consider;
13. Section 356 (c) (4) – recommends amending this section to accurately describe a chiropractic’s legal obligations in the area of advertising and requests that a licensee be limited to the number of hours a licensee may earn in this area;
14. Section 356 (c) (5) (6) – move this section to the mandatory category;
15. Section 356 (c)(7) – recommends this section be in two subsections as pharmacology does not involve blood and urinalysis testing and provided suggested language for the Board to consider;
16. Section 356 (c) (10) – this section lacks clarity and conflicts with section 358 (10). It is unclear if the Board would require meeting the obligations of all other CE providers, including stamping or CE forms, tracking licensee’s attendance, etc, and recommends that additional topics of coursework be included in this section;
17. Section 356.5 – the Board should retain the current requirement that CE providers have offered no less than one course in each year of the five (5) previous years; a provision that references subsection 1-10 of this section as required to be met by CE providers, and language specific to failure to comply would result for application denial. This would ensure that the Board denies only those applications that fail to meet specified criteria;
18. Section 356.5 (b) (2) – strongly recommends that the requirement of five years teaching experience in mandatory and category I be eliminated because it would reduce the pool of qualified instructors. In addition, there does not appear to be a policy reason for this change. Lastly, it would also create an increase of costs to chiropractors due to the availability of instructors.
19. Section 356.5 (b) (3) – the penalty for non-compliance with this subsection should be limited to one year;
20. Section 356.5 (b) (5) – CCA opposes the mandatory survey requirement and, if required there will be many instances that a licensee will not be truthful and will be of no value to the Board or the provider;

21. Section 356.5 (b) (7) – CCA provided suggested language for the Board to consider;
22. Section 356.5 (b) (9) – recommends that any changes to a speaker be included to the list of changes that providers must notify the Board about;
23. Section 356.5 (b) (10) – the proposal to require an additional pre-printed certificate of completion to be given to each licensee would be unnecessary paperwork and will result in an increase of costs. CCA recommends that the requirement include written proof of the CE credits earned;
24. Section 357 (a) – CCA strongly opposes the requirement that providers submit one application for each CE course. In addition, course is not defined; therefore, it is unclear what constitutes a course. If a course is defined as a two to six hour class, this proposal would substantially increase the cost to providers and licensees, and would financially penalize providers wishing to offer a more diverse menu of courses. CCA would consider supporting a requirement that providers submit one application and pay an application fee for up to 24 hours of CE for one program. CCA further states that this section should include that failure to pay the required fee or submission of an incomplete application would be criteria for denial;
25. Section 357 (b) (1) – recommends that the hours of instruction be during a calendar day rather than twenty-four (24) hours;
26. Section 357 (b) (2) – for clarity purpose, CCA provided suggested language for the Board to consider;
27. Section 357 (b) (3) – for clarity purposes, it's recommended that distance learning have its own separate section and that the rules be broadened to establish meaningful standards. CCA provided suggested language for the Board to consider;
28. Section 357 (b) (5) – to be consistent with other provisions of the proposal, CCA provided suggested language for the Board to consider;
29. Section 358 (a) (3) – this section is too restrictive, unnecessary from a public protection standpoint, has no rationale, and should be eliminated. CCA recommends that the existing exemption for full-time instructors remain and that part-time instructors receive a partial exemption;
30. Section 358 (a)(4) – recommends that the existing exemption that allows instructors to receive two (2) hours of credit for each hour taught remain;
31. Section 358 (a) (6) – recommends that licensees that proctor the national Board examination be given a full exemption;
32. Section 358 (a) (8) – CCA supports the exemption to licensees who are in peer-reviewed, nationally recognized publications, and provided suggested language for the Board to consider;
33. Section 360 – CCA provided suggested language for the Board to consider.

Response: 1-30) Comment have already been addressed.

31) Section 358 (a)(6) language will be modified to remove “both days” and “two days”, to read “Licensees who participate as an examiner for the entire part four portion of the NBCE examinations shall receive a maximum of (6) hours of continuing education credit for each examination period conducted by the NBCE....”. Also, in last sentence, language will be modified to remove “involvement in the exam”, to read “meeting the requirements of this section”.

32) Section 358 (a)(8) will be removed completely.

Comment 38: Michelle Hallam, D.C. opposes the proposal. The proposal to limit instruction time to eight (8) hours has no basis and would result in a financial hardship to licensees. Dr. Hallam opposes the removal of adjustive technique and requests that this requirement remain as is. CE course should include practice management and is needed to learn how to effectively manage a

practice. The proposal also allows the Board to invalidate a seminar without good cause or due process.

Response: All comments have already been addressed.

Comment 39: Mark Cymerint, D.C. recommends that a more thorough discussion and evaluation be done before a proposal is drafted and provided specific comments and recommendations to the following sections:

1. Section 356.5 - the proposal appears to be a re-application process to get rid of providers who have followed the guidelines and suggests that a grandfather clause be considered;
2. Section 357 (b)(1) - the proposal to limit instruction time to eight (8) hours during a twenty four (24) hour period is too restrictive, has no basis, and would result in a financial hardship to licensees;
3. Section 356 - opposes the removal of adjustive technique and requests that this requirement remain as is;
4. Section 356.5 – the requirement to have five (5) years teaching experience in mandatory and category I would eliminate qualified instructors and should be eliminated. In addition, there does not appear to be a policy reason for this change and disagrees with the restriction that providers may not advertise, market, or display materials in the classroom ;
5. Section 357 – this proposal to provide for guidelines for breaks during courses has no merit and is unnecessary; CE course should include practice management, and is needed to learn how to effectively manage a practice. The proposal also allows the Board to invalidate a seminar without good cause or due process;
6. Section 358 – the proposal has no basis and recommends that the existing exemption for full-time instructors remain;
7. Section 360 – this section is arbitrary and inconsistent with other boards, and recommends that the provider be placed on probation for one (1) year.

Response: 1-6) Comments have already been addressed.
7) The discipline will be related to the activity.

Comment 40: Ray Welch, D.C. submitted a petition signed by several chiropractors that requested the Board to reconsider the proposal. In addition, it was requested that adjustive technique be included in the mandatory category of the required CE hours, and that the class instruction time remain at the current twelve (12) hours.

Response: All comments have already been addressed.

Comment 41: Gerard W. Clum, D.C., Life Chiropractic College West believes that the proposal fails to meet necessity, clarity, and consistency standards used by OAL to approve rulemaking packages. In addition, Dr. Clum suggests that this proposal be given to the experts and staff, with directives as to the general areas of concern, to develop language and a rulemaking file that can meet the requirements of California's rulemaking law. The following comments and recommendations are as follows:

1. Section 355 (a)-(d) – the Initial Statement of Reasons states that the proposal defines license status of active, inactive, forfeiture, and cancellation; however, this information is absent in the language. This section also lacks clarity such as: it fails to inform the licensee or the public when a license expires; in subsection b it addresses restoration of a forfeited license, but defines a cancelled license; subsection (d) allows the Board to cancel a license if not renewed within five (5)

years after its expiration and references section 10 (c) of the Act, but there is no license cancellation date in the Act;

2. Section 355 – the names on the forms differs from the name given in the proposed language;
3. Section 355(c) – the language is inconsistent as it states that an inactive license is exempt from the CE requirements; however, this is inconsistent with subsection (c) (1) and Section 358 (1), which exempts inactive licentiates. Additionally, the language is inconsistent with Business and Professions Code Section 704, which allows a licensee to restore an inactive license to active by completing CE equivalent to that required for a single license renewal period;
4. Section 355 (d) – it appears that licensees have two types of cancelled licenses: Act Section 10 act 10 (c) revocation after a formal disciplinary proceedings, and Section 355, if not renewed within 3 (now 5 yrs) years after it expires. Intent of Act was to prevent the Board from revoking/cancelling a license in a disciplinary action and then immediately restoring the license. The voters did not intend to put a two (2) year hold on chiropractors coming out of retirement or returning to practice. The conflicting definition should be rectified so innocent licensees may return to practice within a two (2) year delay;
5. Section 355 (c) (1) – sets the amount of several fees and should be a separate regulation under Article 1 establishing fees charged by the Board;
6. Section 356 – the Board has failed to cite facts, studies or expert opinions to demonstrate the need to increase the CE requirements. The language delineating what hours must be earned is unclear and should be simplified. It is further unclear of the purpose to require licensees to actively participate in the CE course and might be interpreted to mean that a non-active participant might be identified by an authority (Board monitor) and reprimanded in some way that is not defined by the regulation;
7. Section 356 (a) –(c) – the three-category system is complicated and confusing, and will be difficult for providers to categorize the courses. The proposal fails to meet clarity as it conflicts with the agency’s description of the effect of the regulation (CCR 16(a) (2). It further presents information in a format that is not understandable by persons directly affected. It is unclear whether providers approved by Department of Industrial Relations, Divisions of Workers Compensation or approved by healing arts board within Division 2 of the Business and Professions Code are exempt from the Board requirements for monitoring attendance, retaining records, providing rosters, course survey etc.;
8. Section 356.5 – there are no facts offered to demonstrate the proposal to require instructors to have five (5) years experience in the course being taught. There is also no need to require surveys when the board only audits a handful of seminars a year and the information can be obtain from a course roster. Further, the Board has not established criteria for a basis for denial;
9. Section 357 - the Board has failed to demonstrate the need to require guidelines for breaks. The proposed language references an hour, but also refers to CE credit. In addition, the regulations does not address whether a live seminar may be repeated for credit, and the Board uses a term without defining its meaning (Section 357 (b) (3));
10. Section 358 – the Board does not provide any rationale or evidence for the restrictions on CE credit for instructors. For clarity this section should be subdivided into exemptions, accommodations and reductions. Board members who treat patients should be as well educated as any other licensee and should be required to take CE;
11. Section 360 – provides a harsh penalty if a provider presents false or inaccurate verification of licensee participation and does not provide for a hearing or an appeal to the Board. A harsh penalty should be reserved for fraudulent activities and not a simple clerical error.

Response: The Board is meeting today to work on clarity and consistency. 1) Comment has already

been addressed.

2) The forms will need to be updated along with the regulations.

3-5) Comments have already been addressed.

6) Comment is addressed in our underlying data such as our statement of reasons.

7-11) Comments have already been addressed.

Kendra Holloway provided public comment on the Life West written comment regarding an effective date for the CE requirements after filing with the Secretary of State.

Ms. Powell and Dr. Lerner clarified the proposal gives licensees one renewal cycle to obtain the new CE hours. If the new language has not been modified, it will be clarified to address the intent.

Comment 42: Robert E. Dubor, D.C. supports the Board's proposal to increase the CE requirements.

Response: Thank you for your support.

Comment 43: Kristine Schultz, California Chiropractic Association overall supports the concepts of the proposed regulations and submitted detailed information regarding the proposed regulations. CCA support a self-certifying program for CE providers and request that this be considered. CCA also comments that the proposed language previously presented by the working group was positive and would request that the Board consider that language. Further, the three-category system is burdensome and recommends that the Board consider a two-category system.

Response: All comments have already been addressed.

Comment 44: Carlyle R. Brakensiek, Executive Vice President, California Society of Industrial Medicine and Surgery supports the written comments submitted by CCA. In addition, CSIMS supports a self-certifying program for CE providers and states that this is done by most organizations and proves to be beneficial.

Response: All comments have already been addressed.

Comment 45: Sherry McAllister, Palmer College of Chiropractic supports CCA comments and also submitted formal written comments.

Response: All comments have already been addressed.

15-Day Comment Period

Comment 1: Brian J. Porteous, D.C. contends that §356, subparagraph 11, which allows chiropractors to take courses offered by other healing arts boards, could be interpreted by a licensee to expand their scope of practice and raise the issue of public safety and should be eliminated. Additionally, Dr. Porteous recommends that the proposal allow a chiropractor to receive hour for hour credit for the length of a CPR course because the courses offered exceed two (2) hours. He questions why §356, subparagraph 16 only allows two hours of course credit for CPR training and argues that this provision does not meet the standard of clarity and consistency.

Response: 1) Restraining a chiropractor to taking courses specific to chiropractic does a disservice to the public and raises public safety issues. The idea of making this section more broad is to broaden our education, improve communication and encourage referrals with other physicians and further ensure public safety. It would be to the public's great interest that many chiropractors become more familiar with how to do that. In addition, just because a chiropractor learns something, does not increase their scope of practice beyond what the legal definition is.

2) Regarding hour for hour credit for CPR, although there are courses that exceed two hours, basic recertification courses are generally universally two hours.

Comment 2: Rory S. Brinkerhoff, D.C. opposes the proposed regulations because it will result in an economic hardship.

Response: Economic hardship has been addressed

Comment 3: Gail Rosenberg, D.C. opposes the proposed regulations because it will result in an economic hardship and states that some areas of the CE requirements may or may not address the needs of her practice. In addition, Dr. Rosenberg asked if there could be special accommodations to those that have been licensed for many years.

Response: 1) Economic hardship has been addressed.

2) Regulations cannot be based on an individual's practice. There is plenty of latitude and choice available.

3) Being licensed for many years does not justify any special accommodations. The Board respectfully disagrees with these comments.

Comment 4: Mark S. Kimes, D.C. states that section 356.5 (b) (4), should state "during credited instruction time" because individuals or organizations that underwrite or subsidize CE courses should be allowed to display or market their products or services in the same room (e.g., before the CE program commences or during a non-credited lunch break).

Response: This comment has already been addressed.

Comment 5: Daniel Saint-Germain, D.C., President, Federation of Chiropractic Licensing Boards (FCLB) recommends that the Board add "Providers of Approved Continuing Education for Chiropractic" (PACE) as a secondary route to approve CE provider status because: 1) it is unnecessary for Board staff to review CE providers that have been thoroughly assessed by the FCLB's PACE program 2) the PACE program requirements match or exceed the proposed California standards 3) similar centralized approval programs are relied upon by other regulated professions 4) PACE's national experts in continuing education are able to perform an in-depth review of candidates providers 5) PACE approval represents a cost savings to CE providers who must duplicate approval processes. FCLB provided suggested language to section 356.5 for the Board to consider.

Response: Although PACE offers a high quality program; the Board wants to retain control over what is authorized to ensure we have adequate oversight.

Ms. Powell added a correction to Section 355 (a), in defining an inactive license after Business and Professions Code 700, add an "e" to read "licensee who is not actively engaged".

Comment 6: Maia James, D.C., President, California Chiropractic Association provides the following comments and recommendations:

- 1.) Section 354.5 (b) – supports this change and provided minor changes for clarity purposes;
- 2.) Section 355 (a) (1) – suggests minor changes to the language for clarity purposes;
- 3.) Section 355 (a) (2) – suggests minor changes to the language;
- 4.) Section 355 (a)(3) - states that this section does not make sense because licensees with forfeited status do not have renewal dates and suggests changes to the language;
- 5.) Section 355 (a)(5) – noted a few technical, non substantive changes;
- 6.) Section 356 -- requests that the 24-hour CE requirement take effect no earlier than 01/01/2012;
- 7.) 356 – suggests renumbering subparagraphs for purposes of clarity;
- 8.) 356 – requests that the Board allow up to six hours of distance learning immediately upon the effective date of this regulation
- 9.) 356 -- recommends adding a statement to ensure that licensees are not obtaining credit for the same course more than once in the renewal period.
- 10.) 356 subparagraph 3 – Recommends that description of physical exam be more general
- 11.) 356 subparagraph 4 – Recommends a more general statement that would automatically include future tests that do not yet exist.
- 12.) 356 subparagraph 7 – Recommends a more general statement that would automatically include future physiotherapy topics that do not yet exist.
- 13.) 356 subparagraph 9 – Suggests revising this section to allow for all identifiable special population care educational programs
- 14.) 356 subparagraph 11 – Recommends limiting the number of hours a DC can earn from courses approved by other regulatory agencies to six hours. Also recommends limiting courses to those approved by a doctor-level health care provider licensing board.
- 15.) 356 subparagraph 12 – recommends removing the words “or patient fees per case”
- 16.) 356 subparagraph 16 – recommends technical/clarifying amendments.
- 17.) 356 subparagraph 17 – recommends rewording this provision for clarity and removal of redundancy
- 18.) 356 – CCA strongly recommends adding the following as permitted topics eligible for CE credit: Principles of Practice; Wellness; Nutrition; Rehabilitation; and Public Health
- 19.) 356.5 – Suggests the Board retain the current requirement that new CE providers must have offered no less than one course in each year of the five previous years immediately preceding application to become a CE provider to ensure the quality and commitment to the education DCs.
- 20.) 356.5 (a) – Recommends technical/clarifying changes.
- 21.) 356.5 (b) – Suggests amendments to: 1) ensure the CE provider has a full 30 days to file its appeal; and 2) make various technical clarifying changes.
- 22.) 356.5 - Recommends an amendment to give the Board explicit authority to withdraw approval of a CE provider’s status for failure to follow the rules.
- 23.) Section 357 (a) – suggests technical changes to distinguish the CE course application fee referenced in this section and to be consistent with other portions of the proposed regulations in referencing CE course fees;
- 24.) Section 357(b) – suggests changes to the language to ensure that CE providers have full 30-days to file an appeal;

- 25.) Section 357(c)(1) – supports the proposal, but is concerned that the language would unintentionally restrict the number of CE hours a provider could offer in a calendar day as opposed to the number of hours a licensee could earn in the same period;
 - 26.) Section 357 (c)(2) – supports the first three (3) sentences of the paragraph, but opposes the remaining section as it is overly prescriptive and would require CE providers to do duplicative, unnecessary work;
 - 27.) Section 357.1 – Recommends the elimination of research projects from this section.
 - 28.) Section 357.1 (d) – is concerned that this provision is overly restrictive. States that there is no policy reason for the Board to mandate that distance learning courses contain security measures to protect course-related content from others.
 - 29.) 357.1(f) – CCA states that the various course delivery systems listed in this section will have differing timeframes in which the licensee can interact with the instructor. Recommends amending this section to reflect these realities.
 - 30.) Section 357.1 (i) – Recommends eliminating the requirement that the licensee sign an affidavit of compliance.
 - 31.) Section 358 (a)(5) and (9) – suggests changes to the language for clarity purposes;
 - 32.) Section 358 (a)(6) – is concerned that limiting the amount of CE allowed to six (6) hours could reduce the number of doctors willing to devote their time and expertise in this function. Additionally, under this new regulation few California chiropractors will be eligible for the full one six (6) hour credit as an examiner because many times examinations sites are limited to one day;
 - 33.) Section 359 – The last sentence is unclear.
- In addition, CCA suggests changes to several applications that conform to their recommendations.

Response: Thank you for your support. 1) Section 354.5 (b) the words “applicant” and “renewal” will be added prior to the fees, and remove the word “renewal” prior to provider.

2) 355 (a)(1) will be modified to say “day” instead of “date”, and add the words “been” and “consecutive”.

3) Section 355 (a)(2) will be modified to read “To renew a license or an active license, or restore a license that is forfeited or cancelled”.

4) Section 355 (a)(3) remove “Regarding forfeited and”, replace with “To renew a license or”, also remove “s” to read “inactive license”.

5) Section 355 (a)(5) change “or” to “nor”, replace “per” with “as provided by”.

6) Section 356 will be modified to read, “one year from (insert effect date)”, OAL will insert the effective date.

7) Section 356 will be modified to put all the mandatory stuff in the beginning for clarity.

8) The Board discussed this comment stating breaking up items would be too difficult to manage, and the regulation should become effective as a whole. Everything except the 24 hours will be effective in one year, the 24 hours will be effective in two years.

9) The Board rejects this comment, licensees taking the same course twice in one renewal period does not pose a problem.

10) The Board rejects this comment, the intent is to provide general guidelines for providers and staff on what an acceptable course is. This section also states “including but not limited to” so chiropractors are not limited.

Dr. Steinhardt recommended modifying the third line in 356 (3) to remove the words “but may also include” and replace with “and includes”.

11) Section 356 (4) will be modified to read “Diagnostic testing procedure, interpretation and technologies that aid in differential diagnosis of all conditions that affect the human body”.

12) Section 356 (7) will be modified to read “Physiotherapy”.

13) Section 356 (9) will be modified to read “Instruction in the aspects of special population care, including, but not limited to, geriatric, pediatric, and athletic, as related to the practice of chiropractic”.

14) Section 356 (11) will be clarified by removing “Courses” and replacing with “Related to subjects identified in Section 356”, or separated and insert a statement similar to “The courses specified in Section 356 can be met by taking CE provided by providers approved by other boards or bureaus”. The Board rejects limiting courses to doctor-level health care provider licensing boards because it would cause an unnecessary burden on licensees to ensure the level of the course, and many beneficial courses are not doctor-level.

15) The Board rejects this comment, this language will help address enforcement issues.

16) Section 356 (16) will be modified to read “A licensee may earn up to a maximum of two (2) hours continuing education credit in” and remove that language from the end.

17) Section 356 (17) will be modified to replace the word “shall” with “may”, add an “s” to read “probationary licenses”, remove the second sentence stating “A licensee may earn a maximum of four...” modifying it to read “The attendance of a licensee at a board meeting under this subparagraph shall be...”.

18) A new section will be added to 356 to include “As related to chiropractic; Principles of Practice, Wellness, Rehabilitation and Public Health”.

19) The Board rejects this comment, although it is current regulation, this makes an additional requirement other than pay the fees, submit an application and follow the regulations.

20) Section 356.5 (a) will be modified to replace “a new” with “an”, “per” with “as provided in”, and “or” with “nor”.

21) Section 356.5 (b) will be modified to replace “letter” with “notification”, “This” with “The”, “denial date” with “date of the denial notification”, remove “Upon request for informal hearing”, capitalize “The”, replace “that” with “the appeal”, remove “with the Executive Officer”, insert “within 30 days of the date of the Executive Officer’s denial notification”, remove “on the denial” and “if their request for such a hearing before the board is received within 30 days of the denial date”, insert “to appeal the denial”, remove “Upon request for such a hearing before the board”, capitalize “The”, insert “requested”, replace “from” with “following”, “that” with “the”, and “following” with “of”.

The word “business” will not be added before days because in the government code; days is presumed calendar days if not specified.

22) A new section will be added to 356.5 to include “The Executive Officer, after notification, may withdraw approval of ant continuing education course for good cause, including violations of any provisions of this regulations, falsification or information or other substantial reason, and shall provide written notification of such action to the provider. The provider may appeal the decision to the Executive Officer within 30 days of such notice by following the steps outlined in detail in section 356.5 (b)”.

Ms. Powell recommends repeating the language and not referring back to the section.

23) Section 357 (a) will be modified by inserting “as provided by Section 354.5(b)(3)” (due to changes, the section will need to be verified), replace “renewal” with “continuing education course”.

24) Section 357 (b) will be modified to replace “letter” with “notification”, “This” with “The”, “denial date” with “date of the denial notification”, remove “Upon request for informal hearing”, capitalize “The”, replace “that” with “the appeal”, remove “with the Executive Officer”, insert “within 30 days of

the date of the Executive Officer's denial notification", remove "on the denial" and "if their request for such a hearing before the board is received within 30 days of the denial date", insert "to appeal the denial", remove "Upon request for such a hearing before the board", capitalize "The", insert "requested", replace "from" with "following", "that" with "the", and "following" with "of".

The word "business" will not be added before days because in the government code; days is presumed calendar days if not specified.

25) Section 357 (c)(1) will be modified to replace "instruction" with "continuing education credit" and "given during a" with "awarded to an individual licensee for coursework completed in a day".

26) The Board rejects this comment, this language is intended to simplify the process and put the burden on the licensee rather than the provider.

27) Section 357.1 will be modified to remove "research projects".

Mr. Puleo added a correction to Section 357.1, remove the initial "Continuing Education" to read "Providers of continuing education..."

28) Section 357.1 (d) will be modified to add "from unauthorized access".

29) The Board rejects this comment, this language is already broad enough.

30) Section 357.1 (h) will be modified to read "Instructional materials shall be reviewed annually in order to ensure they provide current and relevant information".

Section 357.1 (i) will be deleted.

Section 357.1 (j) will be modified to insert "distributors and or other sellers".

31) Ms. Powell stated we will come up with language to modify Section 358 (a)(5).

Section 358 (a)(9) will be modified to replace "of" with "with" and "may earn" with "shall be permitted to take all", insert "required, remove "requirements", and replace "within" with "by Section".

32) This has already been addressed.

Dr. Lerner stated that the forms will all be addressed.

Comment 7: William Meeker, D.C., MPH, President, West Campus, Palmer College of Chiropractic provides the following comments and recommendations:

1.) Section 356 (5) – Dr. Meeker questions if this section still limits to core technique categories or has it been opened up to include more techniques. This should be clarified since it has been limited to techniques taught in a CCE accredited institution;

2.) Section 356 (11) – do the providers of other healing arts boards go through the same application process and pay the required fees? If not, this section needs to be clarified how the Board will track approvals;

3.) Section 356.5 – this proposal requires both provider status and individual course approval, which is a hardship and it seems unwarranted. Additionally, random audits surveying attendees is not a problem; however, a single attendee opinion is subjective;

4.) Section 357 – the language appears to limit an event to no more than 12 hours total. As for class breaks, most events are planned by the provider not the instructor;

5.) Section 357.1 – clarification to this section is needed because some courses have to show equipment needed for the technique and use for demonstration purposes;

6.) Section 358 (3) – licensed chiropractors serving CCE accredited institutions as full or part time faculty, faculty clinicians, or via administrative posts are ingrained in the chiropractic profession, academics, and research. It is recommend that the language clarify that it is not just faculty in the classroom at a college, but clinical faculty and chiropractors working in administration as well;

7.) Section 358 (8) - this section will be troublesome for Board staff to manage. For example, how will staff handle multiple authors and how will it define nationally recognized and scientifically based. If the Board moves forward with this section it will have to clarify how the remaining twelve (12) hours can be earned and if ethics, laws, and examination will still be required. It is recommended that this section be deleted;

8.) Section 360 – this section seems harsh for what could be a clerical error and should include protective language for fairness to the provider.

Response: 1) The language does not say core, we do not have the authority to regulate this.

2) This is outside of the scope of our regulations.

3) This comment has already been addressed.

4) The Board rejects this comment, we do not limit the time, only the CE credit.

5) The Board rejects this comment, our regulations do not limit use of equipment.

6) The Board rejects this comment, clinical competency is intended for public safety.

7) This comment has already been addressed.

8) Section 360 will be modified to replace “shall” with “may” lose their provider status.

Comment 8: Kendra L. Holloway, D.C., Director, Postgraduate and Continuing Education, Life Chiropractic College West comments that there has been progress on the proposal; however, there still is confusion, conflicting language, and nothing additional added to the rulemaking record to demonstrate necessity. Life West urges the Board to return the project to the experts and Board staff to assemble language and a rulemaking file that meet the requirements of the Administrative Procedures Act. Comments and recommendation are as follows:

1.) Section 354.5 (a) (3) – this subsection is not necessary because there are only two fees;

2.) Section 354.5 (b) (2) – this section refers to a \$50 biannual CE renewal provider fee; however, the application references a \$75 fee for a new provider. In addition, this section currently makes it a subset of Article 5, Examinations and should fall in Article 6, CE;

3.) Section 355 (a) – this section includes several definitions of licensure status and would gain clarity if it were divided into subsections for each license definition. This subsection applies to non-disciplinary renewal and restoration; however, it was mentioned at a public board meeting that holders of a disciplinary license must also complete CE requirements and pay annual renewal fees. Business and Professions Code 700 was to create a licensure status that allowed a non-practicing professional to maintain a license in good standing and should be clear that a suspended, revoked or otherwise punitively restricted license may not be placed on inactive status. The proposal asserts that disciplinary license renewal conditions are defined in Article 10 of the Initiative Act; however, the Act is silent on this topic. The subsection references a “Renewal or Restoration Application; however, there is no such form. The regulation and the forms should be edited for consistency;

4.) Section 355 (b) – this subsection does not make clear the criteria for applicants seeking license restoration;

5.) Section 356 – the subject matters could be simplified in this section. This section includes courses approved by the Department of Industrial Relations or any Healing Arts Boards or Bureaus, but the proposal fails to include if providers of these courses must comply with the remaining sections of Article 6. The Board also has not fully examined the credentialing criteria or the coursework for these Boards and Bureaus. Furthermore, there are no provisions for the Board to approve/disapprove coursework;

6.) Section 356.5(a) – this is unclear whether all providers must file a new application or if there will be grandfathering provisions;

- 7.) Section 356.5(b) – there are two denial dates referenced in the language which makes it confusing, additionally the denial and appeal process is the same for the provider application and the course application; therefore, its suggested that this process be set out in a separate regulation;
- 8.) Section 356.5(c) – this should be moved to subsection (a) for clarity purposes;
- 9.) Section 356.5 (d) (2) and (3) – the final sentence in subsection (d)(2) gives the board authority to contact course attendees as part of the auditing process and should be moved to section 360. Subsection (d) (3) requires providers to maintain instructors curriculum vitae, if applicable, who makes the decision when this provision is applicable?
- 10.) Section 357 (a) - this subsection creates confusions and additional work for providers and the board staff to track when course approvals expire. In addition, there is no provision in the regulation for renewing approval of a course;
- 11.) Section 357 (g) – this subsection is related to course audits and should be moved to section 360;
- 12.) Section 357.1 (a) – the term course curriculum is unclear;
- 13.) Section 357.1 (f) – it is unclear what is timely and who would make that decision;
- 14.) Section 357.1 (h) – this subsection should require instructional materials to be reviewed to assure they provide current and relevant information;
- 15.) Section 358 (3) – the 2-year tenure requirement for college instructors should be dropped;
- 16.) Section 359 – the language should be moved to section 355;
- 17.) Section 360 – this section is silent on the documentation for course hours obtained at courses approved by other healing boards/bureaus as allowed under section 356(11).

Response: 1 & 2) These comments have already been addressed.

3) Section 355 (a) will be divided into subsections for each license definition. Disciplinary renewal language will modified for clarity.

4) Section 355 (b) will be modified for clarity.

5 & 6) These comments have already been addressed.

7) Section 356 will be reviewed and modified for clarity.

8) Section 356.5 (c) will be moved to subsection (a) for clarity.

9) Section 356.5 (d)(2) will be moved to Section 360. Section 356.5 (d)(3) will be modified to read “maintain for four years”.

10) The Board respectfully disagrees, this will simplify the process for staff.

11) Section 357 (g) will be moved to Section 360.

12) This comment has already been addressed.

13) Section 357.1 (f) will be removed.

14) This comment has already been addressed.

15) Section 358 (3) will be modified to one year.

16) Section 359 will be moved to Section 355.

17) Documentation is required for all courses.

Comment 9: Paul Townsend, D.C. opposes the proposal and states that part IV examiners who participate in Friday and Saturday session will have 11 ½ contact hours. Examiners who participate in Friday, Saturday, and Sunday session will have 20 ½ contact hours. Certification is provided from the National Board of Chiropractic Examiners to the examiner. Recommends that Part IV examiner should be given exemption from continuing education requirements in the years they participate at least twelve (12) hours annually.

Response: This comment has already been addressed.

Comment 10: J.Ray Weltch, D.C. opposes the proposal to increase CE hours from twelve (12) to twenty-four (24) stating it fails to meet the standards used by OAL, and the board has not done enough research to warrant the changes. Comments and recommendations are as follows:

- 1.) Section 356.5 – bi-annual renewal for CE providers is not needed;
- 2.) Section 356 – increasing the CE required hours is not protecting the public, the maximum number of CE hours should be 36 hours for reinstatement, the current range of topics is more than adequate, providers should not teach out of scope topics, adjustive technique should not be taught to non chiropractic doctors, the current appeals process is successful, the current rules regarding management, practice building collection, and discipline of a CE provider are adequate, the need for administrative designees has not been shown, disabled chiropractors should be exempt from CE requirements.

Response: These comments have already been addressed.

Comment 11: Deborah Snow supports the proposal to increase CE hours from twelve (12) to twenty-four (24). Ms. Snow recommends that a minimum of two (2) mandated hours focus specifically on issues that provide greater protection of the public such as sexual boundaries, and laws and ethics.

Response: Thank you for your support.

Comment 12: Mark Cymerint, D.C. opposes the proposed regulatory changes stating they fail to show clarity, necessity or consistency, and no regulatory changes are necessary or warranted. Comments and recommendations are as follows:

- 1.) Section 356.5 – bi-annual renewal for CE providers is not needed, current regulation is less expensive and more efficient;
- 2.) Section 356 – increasing the CE required hours is not necessarily better, the mandatory categories are confusing and no change is needed; the category “other” should be retained; all current guidelines and regulations for CE course approval should remain the same; the proposed CE provider denial and appeal process would give too much power to the Executive Officer and future Boards; obtaining email addresses could be an invasion of privacy, people may not have an email address, email is not a way to transfer professional communications, educational materials, adjusting instrument, and other aids improve the quality of education, practice management should be a part of CE seminars, chiropractors need to be taught how to manage a practice including ethical business practices;
- 3.) Section 360 – change to this regulation is not needed, this would give too much power to the Executive Officer, changing the provider application to include administrative designees, record keeper names and attestation of appointed representative is not needed, those individuals are under the responsibility of the CE provider, not the Board, changing the sample certificate to include every hour that an attendee has received in subjects is extremely burdensome on the providers and board staff;
- 4.) Section 357 – identifying the test taker is an issue, chiropractic is a hands-on health care and attendees must physically attend to hands-on training, only chiropractors with disabilities who cannot physically attend a live seminar should have the option of distance learning.

Response: These comments have already been addressed.

Comment 13: Tim O'Shea, D.C. submitted a letter of response signed by several chiropractors that opposes the proposed regulatory changes stating they fail to show clarity, necessity or consistency, and no regulatory changes are necessary or warranted. In addition, it was stated that there has been no recognition of any responsibility to OAL's 1996 decision. Comments and recommendations are as follows:

- 1.) Section 356 – there is no evidence of necessity, which is the prime rulemaking prerequisite for change;
- 2.) Section 356.5 – the current apprenticeship is an excellent system that generates no unnecessary paperwork or expense to the board;
- 3.) Section 356.5 (d) (4) – many providers are recognized experts and authors, books and educational materials are valuable resources that should be made available to attendees, as long as materials are not being sold during actual seminar hours, they should be allowed to be displayed provided they relate to course material;
- 4.) Section 357 (c) – there are several reasons to maintain the 12 hour seminar such as an unnecessary burden of a second day relating to time, effort, financial hardship, and hardship to the handicap and pregnant, the 50 minute academic hour has been the standard in not chiropractic, but every university and center of higher learning both in the US and abroad;
- 5.) Section 357.1 (a) – details of verifiability, identification, course content, accreditation, academic status, and credentials have long been elaborated, tested and proven valid by virtually every accrediting agency evaluating our colleges and universities;
- 4.) Section 360 – not necessary because it does not differ much from the current policy.

Response: These comments have already been addressed.

MOTION: DR. LERNER MOVED TO ACCEPT THE CHANGES AS REVIEWED

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 4-0

MOTION CARRIED

Public Comment on Items Not on the Agenda

None

Future Agenda Items

Dr. Lubkin would like to bring someone from the Department of Managed Care to the November Board Meeting to discuss proper rules and regulations to be in compliance with their statutes.

Dr. Lerner would like to try and have Judge Duvaras at the November meeting.

Closed Session

Adjournment

Dr. Lerner adjourned the public meeting at 4:15 p.m.