

**Board of Chiropractic Examiners**

2525 Natomas Park Drive, Suite 260  
Sacramento, California 95833-2931  
Telephone (916) 263-5355 FAX (916) 263-5369  
CA Relay Service TT/TDD (800) 735-2929  
Consumer Complaint Hotline (866) 543-1311  
<http://www.chiro.ca.gov>

**BOARD OF CHIROPRACTIC EXAMINERS****PUBLIC SESSION MINUTES****Thursday April 19, 2007****9:30 a.m.****Four Points by Sheraton LAX  
9750 Airport Boulevard  
Los Angeles, CA 90045****BOARD MEMBERS PRESENT**

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

**STAFF PRESENT**

Brian J. Stiger, Acting Executive Director  
LaVonne Powell, DCA Senior Staff Counsel  
Lavella Matthews, Senior Licensing Program Analyst  
Marlene Valencia, Business Services Assistant

**PETITION HEARINGS:**

Tim Thomas, Administrative Law Judge  
Barry Thorpe, Deputy Attorney General  
Thomas L. Rinaldi, Deputy Attorney General

**GUESTS PRESENT**

Mike Sackett, D.C., SCUHS  
Steve Hartzell, PTBL  
Joseph Cobbs  
James Barrass, D.C.  
B. Stanfield, D.C.  
John Bueller, D.C., CCA  
Jeffrey Nabatmama  
Charles Davis, ICAC  
Kathleen Hamilton  
Roger Calton  
Ed Cremata, National Academy of MUA Physicians

Kristine Shultz, CCA  
Steven Jaffe, D.C., SCHUS  
Kendra Holloway, D.C., LCCW  
Cherrie DeWonda, OUIUS  
Steven Becker, D.C.  
Sarbjit Dhesi, D.C.  
J.L. Moore  
Craig Gunderson, D.C., AFICC  
Carlos Negrete

## **Call to Order**

Dr. Tyler called the meeting to order at 9:32 a.m.

## **Roll Call**

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

## **Approval of Minutes**

- March 1, 2007, Open Session

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

**JUDGE DUVARAS MOVED TO ADOPT THE MARCH 1, 2007 OPEN SESSION MINUTES. DR. COLUMBU SECONDED THE MOTION. DISCUSSION WAS REQUESTED.**

Dr. Columbu discussed changes he would like made to the minutes. It was agreed that staff would review the proposed changes and compare with records.

**FOLLOWING A DISCUSSION, BOARD MEMBERS AGREED TO TABLE THIS SO THAT STAFF CAN REVIEW THE PROPOSED CHANGES AND PREPARE THE MARCH 1, 2007 OPEN SESSION MINUTES FOR APPROVAL AT THE NEXT BOARD MEETING.**

- March 23, 2007, Open Session

Dr. Tyler asked for a motion to approve the March 23, 2007 open session minutes.

**JUDGE DUVARAS MOVED TO ADOPT THE MARCH 23, 2007 OPEN SESSION MINUTES. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.**

## **Petition for Early Termination of Probation**

Administrative Law Judge Tim Thomas presided over and Deputy Attorney General Barry Thorpe appeared on behalf of the people of the State of California on the following petition hearings:

- John F. Koningh D.C.

## **Petition Hearing for Reinstatement of Revoked License**

Administrative Law Judge Tim Thomas presided over and Deputy Attorney General Thomas L. Rinaldi appeared on behalf of the people of the State of California on the following petition hearings:

- Anthony T. Johnson
- Joseph Cobbs
- Jeffrey Nabatmama

Mr. Robert J. Montoya did not appear for his hearing. Following the petitioners oral testimonies, the Board reconvened into closed session at 12:03 p.m. to consider Dr. Koningh's Petition for Early Termination of Probation and Mr. Johnson, Mr. Cobbs and Mr. Nabatmama's Reinstatement of Revoked License.

The Board recessed for lunch at 12:30 p.m.

Dr. Tyler called the Board into open session at 1:15 p.m. All Board members were present.

Dr. Tyler announced that due to guest speaker's time constraints, he moved to the Executive Director Search Committee Report agenda item. Dr. Lubkin introduced Jeffrey Sears, Staff Service Manager I, with Department of Consumer Affairs Office of Human Resources. Mr. Sears explained the process of appointing an Executive Director. Mr. Sears proposed that after the committee has screened the candidates and narrowed down to the top 3 candidates, those candidates would then be presented at a Board meeting for the full Board to interview and make a selection. Mr. Sears said the entire process takes about 2 months. Mr. Sears also reported that executive officer's are exempt from civil service and salaries are set by the Department of Personnel Administration in conjunction with the Governor's Office. He continued by saying that the Board initiative allows the Board to set the salary with the approval of the Department of Finance. Mr. Sears stated that the salary for the executive officer is set at Level M which is \$6,694-\$7,239 per month.

Dr. Tyler stated that he would like to have candidates appear before Board at the next Board meeting. Mr. Stiger stated that he would like to clarify that his purpose in the first meeting of the Executive Director Search Committee was to introduce Mr. Sears to Dr. Lubkin. Mr. Stiger would like it to be on record that because he may or may not be a candidate for the executive director position, so he will no longer be involved in anymore meetings.

#### Review of New Application for Board Approval as a Chiropractic College

Mr. Stiger stated that a new application had been posted on the website since fall of last year. It is the staff's recommendation that the application be moved to a committee for research and recommendation at a future Board meeting. Mr. Stiger stated its recommending the Board revert back to the old application at this time. Dr. Tyler asked for a motion.

**JUDGE DUVARAS MOVED TO ACCEPT THE RECOMMENDATION OF THE BOARD STAFF. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.**

#### Palmer Chiropractic College-Florida Decision

Mr. Stiger reported that last week Board staff and legal staff met with Palmer College representatives. The college has committed to providing the Board the necessary information, including a new application, to make a decision. Board staff recommended that the decision be reconsidered, and anticipates a successful resolution in 10 days. Once the application is received it will be brought before the Board at the next meeting. Dr. Tyler asked for a motion of reconsideration of motion that granted the application at the March 1, 2007 meeting.

**DR. LERNER MOVED TO RECONSIDER THE MARCH 1, 2007 MOTION THAT GRANTED THE APPLICATION. DR. COLUMBU SECONDED THE MOTION.** Dr. Tyler asked for comment. Judge Duvaras asked to hear from the Palmer College representative. Mr. Robert Levanthal confirmed Mr. Stiger's report. **VOTE: 6-0. MOTION CARRIED.**

Ms. Powell stated that in order to move forward, there needs to be a motion to rescind the March 1, 2007 approval. Dr. Tyler asked for a motion.

**DR. LERNER MOVED TO RESCIND THE MARCH 1, 2007 APPROVAL OF PALMER CHIROPRACTIC COLLEGE-FLORIDA. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.**

#### Out-of-State College Application

Mr. Stiger stated this is a duplicative agenda item.

## Chair's Report

Dr. Tyler introduced and welcomed the newest Board member, Jim Conran who was appointed by the Governor on February 23, 2007.

Dr. Tyler appointed Drs. Lerner and Lubkin to the Administrative Committee; Dr. Lerner, Mr. Conran and Judge Duvaras to the Examination and Licensing Committee; Drs. Columbu and Lubkin to the Enforcement Committee; Mr. Conran and Drs. Lerner and Lubkin to the Legislative Committee; Drs. Tyler and Lubkin to the Continuing Education Committee; Judge Duvaras and Dr. Lubkin to the Regulations Committee; and Mr. Conran, Drs. Tyler and Lubkin and the Board Executive Officer to the Sunset Review Committee.

## Executive Director's Report

Mr. Stiger reported on recent changes to ensure the security of the Board's business and personal information. Locks have been changed on both the exterior and interior doors; secured the computer network by eliminating remote access; staff has access to the building during normal business hours; staff attended mandatory training regarding the safeguarding of personal information. In order to improve customer service, phone coverage is now rotated amongst all staff. We are also in the process of updating our website to include a Press Release link and a Subscription List. The Board has implemented a Media Relations Policy to ensure that all media inquiries are directed to the Executive Director. The Board has also entered into a Short Term Contract with the Department of Consumer Affairs for Personnel, Legal and Fiscal Services. This contract will expire at the end of the fiscal year.

Mr. Stiger also reported on two recent bills, AB1113 and SB801, which were released this week. Board staff will analyze, track and report on those bills at the next meeting.

Mr. Stiger stated that both Mr. Conran and Dr. Lubkin will attend the Federation of Chiropractic Licensing Boards in St. Louis, Missouri on May 2-6, 2007.

## Procedure for Placing Items on the Agenda

Mr. Stiger read the procedure for placing items on the agenda. After a discussion, it was agreed that Mr. Stiger will revise the procedure and present it at the next Board meeting.

Dr. Columbu would like to see contact information on website. Mr. Stiger agreed that it is a good suggestion and primary contact information will be on the website.

## Board Member training on Bagley-Keene Open Meetings Act

Ms. Powell advised the Board members on concerns such as the when there are more than two members discussing an issue, that they don't violate the act; the public has a right to make comment; we always need to have an agenda item regarding public comment; the Board follows Robert Rules of Order in order to conduct a meeting however, if it conflicts with the open meetings act, then the Board needs to follow the open meetings act; keep motions simple; closed session must be noticed properly and cite the government code that allows the Board to discuss in closed session; agendas must be noticed to the public 10 days before a meeting; the agenda can not be changed once it is noticed. Ms. Powell also discussed the Administrative Procedures Act, Enforcement. Ms. Powell stated that Board members need to respect the boundary and not discuss any complaints with licensees. Board members are only entitled to hear the proposed decision. Ms. Powell encouraged members to have a copy of the disciplinary guidelines next to them while going over discipline cases.

## **Program Reports**

### Budget Update

Mr. Stiger reported on the Board's budget and stated that the Budget is "healthy". During discussion, Judge Duvaras asked about cost recovery. Mr. Stiger referred to agenda item K. Ms. Powell recommended reviewing the tax intercept program at the Respiratory Board. Ms. Powell also stated that there is movement in legislature regarding cost recovery.

### Statistics

Mr. Stiger reported on Enforcement statistics over the last three fiscal years. During discussion, Dr. Columbu recommended the Enforcement Unit prioritize the complaints so that the investigators can be used for more serious issues. Dr. Lubkin shared his concerns by asking if the investigators being used for complaints such as the license not being properly displayed or are we using them for more serious allegations. After discussion, it was agreed that, depending on the nature of the complaint, it could be cost effective to be more pro-active in the Enforcement Unit, such as sending a letter to the chiropractor versus conducting a whole investigation. Mr. Stiger stated that he would look into these issues.

Charles Davis, D.C., expressed his concerns regarding reimbursement to the doctor if the doctor wins a case. He further commented on his desire to put Regulations 306.1 and 306 on a future agenda.

Mr. Stiger stated that it is staff's recommendation that Regulations 306.1 and 306 be assigned to the Enforcement Committee for review on how it should be implemented.

Roger Calton, an attorney, stated that he has seen an increase in claims by insurance companies against patients. Mr. Calton expressed his concerns regarding the privacy of the patients who are not making the complaint themselves.

### Cost Recovery Data

This topic was discussed during the Budget Update.

### License Statistics

Ms. Matthews reported on the license statistics. Dr. Lerner would like to see comparison figures on future reports.

### California Law and Professional Practices Exam (CLPPE) Statistics

Ms. Matthews reported on the 2007 Quarterly CLPPE exams. After brief discussion, it was agreed that Board staff will prepare the report so that it is easier to read.

### Discussion and Action: Approval of CE Courses

Ms. Powell reported that there was some confusion in regards to the title of this agenda. MS. Powell met with Genie Mitsuvara in the CE unit for clarification. Ms. Powell stated that if there is a syllabus then lecturer notes are not needed. Ms. Mitsuvara is working on a wish list to streamline the process and suggestions will be brought to the CE committee.

## **Manipulation under Anesthesia (MUA) decision**

Dr. Tyler stated his views and the Board members views have already been made known that they feel MUA is within the pervue of the chiropractic practice. He added that there is now ongoing litigation and it is his understanding has nothing to do with the process but is a condition of fraud. Dr. Tyler stated that he doesn't feel it's the type of thing the Board should be engaged in and asked how the members would like to handle it. Judge Duvaras stated that he would like to hear comments from the public.

Dr. Tyler asked for a motion regarding the reconsideration of Board's motion to reaffirm MUA as authorized under the Chiropractic Initiative Act; stating that it was not the intention of the Board to interfere in a criminal case or any ongoing enforcement case.

**JUDGE DUVARAS MOVED TO RECONSIDER THE MARCH 1, 2007 MOTION TO REAFFIRM MUA AS AUTHORIZED UNDER THE CHIROPRACTIC INITIATIVE ACT. DR. LUBKIN SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.**

Charles Davis, D.C., expressed his feelings and spoke in favor of MUA.

Ed Cremata, D.C., spoke in favor of MUA. He also expressed his feelings regarding the professionalism of the Board.

Roger Calton, Attorney at Law, expressed his feelings and spoke in favor of MUA.

Kristin Shultz, representing the California Chiropractic Association, expressed her feelings and spoke in favor of MUA.

Sarbjit Dhesi, D.C, expressed his feelings and spoke in favor of MUA. Dr. Dhesi referenced a case involving MUA and Worker's Compensation, noting that the judge in the case said that everything was legal and all was done correctly.

Ms. Powell recommended the Board make a motion to rescind its motion of March 1, 2007 reaffirming its position on MUA that it is in its scope of practice however, the rescinding of the motion does not change the Board's longstanding position that MUA is in within the scope of practice.

**MR. CONRAN MOVED THAT THE BOARD RESCIND ITS MOTION OF MARCH 1, 2007 AND IN DOING SO ALSO AFFIRMS ITS BELIEF THAT MUA IS WITHIN THE SCOPE OF PRACTICE. THERE WAS NO SECOND MOTION. MOTION FAILED.**

Ms. Powell recommended the Board make a motion that the motion of March 1, 2007 to reaffirm that MUA is within the scope of practice was in no way intended to interfere with the criminal case in San Joaquin County and the Board acknowledges that the appropriate means to have this affirmed as scope of practice is through the regulatory process.

**JUDGE DUVARAS MOVED THE MOTION RECOMMENDED BY MS. POWELL. DR. LERNER SECONDED THE MOTION. VOTE: 6-0. MOTION CARRIED.**

## **Sunset Review Committee's Recommendation**

Mr. Stiger reported on the nine recommendations that were made. Mr. Stiger commented on the recommendations that required the staff to take an action. Mr. Stiger addressed issue #6 reported that Board staff met with Office of Administrative Law (OAL) to discuss the fee regulation. The OAL director commented that he did not foresee any problem with the Board's fee regulation proposal. Mr. Stiger also stated that Board staff researched the fee structure to determine to the basis for the fees and a background paper has been prepared. Staff is waiting for the assignment of a regulation committee so that it can be presented for discussion and recommendation to the Board for a full vote. Mr. Stiger

continued with issue #7 and reported that as part of the regulation review and revisions that need to be made to the current regulations, Board staff is in the process of preparing a summary to be associated with the various citations. Mr. Stiger addressed issue #8 and reported that this item still needs to be researched and worked out with legal counsel. Mr. Stiger stated that at the next meeting he could provide additional reports on these issues.

### **Announcements**

It was announced that the next Board meeting will be held on June 21, 2007. There was discussion on having a meeting of the committee's prior to the next Board meeting. The date will be determined.

### **New Business**

Dr. Lerner commented that while researching how other Board's operate. He would like to see a discussion for periodic Board publication on the next Board agenda.

### **Public Comment**

Dr. Clum expressed his concerns regarding previously approved institutions would be re-approved in 3-year cycles. Dr. Clum continued by stating that there is nothing in regulation or law to this effect. The institutions have cooperated and provided requested information. However, at this time, there is no regulation to support this behavior. He would like to suggest that while the Board is looking at other regulations, that this matter be taken into consideration for regulation and put it into place.

Jim Barris expressed his concerns regarding the renewal of his California license. He currently needs 288 Continuing Education units (CEU) in order to renew his inactive license. He currently has 204 CEU. He is requesting that he be able to renew his license with the provision that he obtain the remaining 84 CEU within 6 months. Mr. Barris also wanted to say the Genie in the CEU department is "a gem".

Carlos Negrete, general counsel to the World Chiropractic Alliance (WCA) and Dr. Terry Rondberg. He voiced his concern and upset over recent articles by the Sacramento Bee, placing the certain Board members integrity and commitment into question. He said that it should be noted that the Sacramento Bee was contacted by the WCA but refuse to correctly report the story.

Stephen Hartzell, Executive Officer with the California Physical Therapy Board. Mr. Hartzell commented that he wanted to introduce himself and let the Board know that routinely he or a staff person will be at our meetings and will be available if there are any common interests for discussion.

Following public comment, the Board recessed into closed session for deliberations on disciplinary matters and action on disciplinary decisions.

Dr. Tyler adjourned the public meeting at 4:33 p.m.