

Board of Chiropractic Examiners

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

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

Staff Present

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

Call to Order

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

Roll Call

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

Chair's Report

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

Approval of Minutes

**MR. CONRAN MOVED TO APPROVE THE MARCH 27, 2008 MINUTES AS AMENDED.
DR. LUBKIN SECONDED THE MOTION.
VOTE: 6-0
MOTION CARRIED**

DISCUSSION:

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

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

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

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

PUBLIC COMMENT:

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

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

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

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

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

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

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

Executive Officer's Report

Mr. Stiger discussed the status of the current year budget and the results of the budget hearings for

next fiscal year. Both the Assembly and Senate budget committees approved our 08/09 budget, which included an additional 15% for six investigator positions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE REPORTS

Enforcement Committee:

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

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

SECONDED: DR. TYLER SECONDED THE MOTION

VOTE: 6-0

MOTIONED CARRIES

Public Comment:

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

Licensing Committee:

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

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

SECONDED: MR. CONRAN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIES

Continuing Education Committee:

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

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

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

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

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

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

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

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

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

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

Scope of Practice Committee:

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

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

Ms. Powell added that the board is limited to recognizing specialties through advertising restrictions,

which is the method used by the Medical Board and Dental Board. Ms. Powell states this needs to be made very clear to avoid the perception that the Board is attempting to create an additional license category.

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

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

VOTE: 6-0

MOTION CARRIED

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

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

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

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

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

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

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

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

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

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

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

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

information to Mr. Stiger.

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

Government Relations Committee:

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

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

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

SECONDED: JUDGE DUVARAS SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED.

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

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

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

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

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

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

SECONDED: MR. CONRAN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED.

Public Relations Committee:

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

Dr. Lerner discussed the need for a newsletter and informational brochure on how to choose a

chiropractor. Dr. Lerner hopes to receive a lot of input from the profession and the public in these areas.

Legislative Committee:

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

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

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

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

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

**MOTION: MR. CONRAN MOVED THAT THE BOARD TAKE A "SUPPORT" POSITION ON SB 1441.
SECONDED: DR. COLUMBU SECONDED THE MOTION
VOTE: 4-0-2
MOTION CARRIED**

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

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

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

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

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

Strategic Planning Committee:

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

Regulations Update:

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

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

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

Judge Duvaras spoke in support of the motion.

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

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 5-0

MOTION CARRIED.

Board Meeting Schedule for 2008

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

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

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

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

Dr. Columbu proposed more one day meetings.

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

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

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

Ms. Powell said that Boards typically meeting no more than five times in a year and she would not

be able to meet monthly due to her schedule.

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

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

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

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

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

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

SECONDED: MR. CONRAN SECONDED THE MOTION.

VOTE: 3-3

MOTION FAILS

The schedule remains the same.

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

SECONDED: DR. COLUMBU SECONDED THE MOTION

VOTE: 3-3

MOTION FAILS

The schedule remains the same.

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

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

SECONDED: DR. COLUMBU SECONDED THE MOTION.

VOTE: 6-0

MOTION CARRIED

PUBLIC COMMENT

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

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

Future Agenda Items

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

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

ADJOURN TO CLOSED SESSION

Dr. Lerner adjourned the meeting to closed session.

OPEN SESSION

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

ADJOURNMENT OF PUBLIC SESSION

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