

Board of Chiropractic Examiners

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**BOARD OF CHIROPRACTIC EXAMINERS
PUBLIC SESSION MINUTES****January 8, 2009****State Capitol****Senate Room 112****Sacramento, CA 95814****Board Members Present**

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

Staff Present

Brian Stiger, Executive Officer
LaVonne Powell, Senior Staff Council
April Alameda, Associate Governmental Program Analyst
Lavella Matthews, Associate Governmental Program Analyst
Rebecca Rust, Associate Governmental Program Analyst
Tammi Pitto, Staff Services Analyst
Valerie James, Office Technician

Call to Order

Dr. Lerner called the meeting to order at 9:30 a.m.

Roll Call

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

Chair's Report

Dr. Lerner wished everyone a happy and healthy New Year and made the following comments: Looking back at 2008, it was very productive and successful. The Board began developing regulations to further protect the public. Today we are presenting six regulations, some of which are simple, others of which months have been spent developing along with public members, professional associations, chiropractic schools and colleges, board staff and legal council.

Those who have participated in these deliberations have much to be proud of. It is my sincere hope that the Board will move all these regulations forward today.

Through the efforts of our Executive Officer, Brian Stiger, we developed a full board staff to handle the day to day activities and requirements of the board. The staff has accomplished an amazing body of work in a very short time. They should all be commended for their efforts. On behalf of the board members, I would like to express my deep gratitude for all that is being accomplished. We continue to benefit from the wisdom and experience of our legal council Ms. LaVonne Powell and Mr. Tom Rinaldi, Deputy Attorney General. As chair of BCE for 2008, it's been a great pleasure and honor to serve with my fellow board members. In my experience, they have moved forward with great professionalism and accomplished more in this past year, than in many previous years put together. Anyone can look at today's agenda to see how far we have progressed in such a short time. As my 2008 term draws to a close today, presiding over the board has been one of the most satisfying experiences of my life. I thank my fellow board members for the strengths you all bring to the board. As one could see from the agenda today, 2009 is starting at full speed.

Election of Officers for 2009

A. Chair

MOTION: MR. CONRAN NOMINATED DR. LERNER AS CHAIR OF THE BOARD

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

B. Vice Chair

MOTION: MR. CONRAN NOMINATED DR. LUBKIN AS VICE CHAIR OF THE BOARD

SECOND: JUDGE DUVARES SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

C. Secretary

MOTION: MR. CONRAN NOMINATED DR. COLUMBU AS SECRETARY OF THE BOARD

SECOND: DR. TYLER SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

Approval of Minutes

November 20, 2008.

MOTION: DR. LERNER MOVED TO APPROVE THE NOVEMBER 20, 2008 MINUTES AS AMENDED

SECOND: DR. COLUMBU SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

Discussion

Mr. Stiger stated on the last page, Dr. Tyler found a correction. The minutes need to be corrected to show that only one of the petitioners was heard.

Public Comment

Charles Davis, D.C. wanted to congratulate the Board on all their work this past year, including the staff and legal council. So much was accomplished this last year, and he hopes to keep it going through this year.

Debbie Snow has been monitoring and writing about the board for some time now. She brought up the subject of raising the continuing education hours required. She suggested that some hours be mandated in sexual boundaries, ethics, and fraud because these are such prevalent problems across all health boards. She also suggested changing the first year practice requirement to 4-6 hours from the current requirement of none. She also gave suggestions on where to go to obtain some continuing education. The Federation of State Medical Boards and an organization called Professional Boundaries Incorporated. She offered to provide more information to Mr. Stiger.

Bill Howe, California Chiropractic Association, congratulated the officers on their re-elections. He also congratulated the board members and staff on working hard to carry out the duties to promote and protect the public's health and safety. We have come a long way and he is very appreciative that the board has open ears for input from the professional association representing doctors of chiropractic. He feels they have the same interest at heart as this regulatory board.

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

Dr. Lerner stated this has been left as a standing agenda item and asked if there are any questions at this time.

Ms. Powell stated there is anticipation of this coming up and happening again, the board members have done a great job in the past, but it's hard when an enforcement case hits the news paper. Many times we don't know about it and it starts with an arrest. Ms. Powell reminded everyone not to read any news articles related to enforcement actions. Mr. Stiger will keep the board members informed of what they are permitted to know.

Executive Officer's Report

Budget

Mr. Stiger informed the Board of the Governor's executive order on December 19, 2008 to furlough employees starting in February 2009. Mr. Stiger provided exhibit 7A which is more specific to our own budget, although we are projected to go into a deficit this year, he will make spending adjustments to ensure it doesn't happen.

Judge Duvaras asked if there was an increase in the cost of operation and if the costs include that of the headquarters.

Mr. Stiger responded that yes, the positions of special investigators is an increase and the lease for headquarters is included.

Personnel

Mr. Stiger informed the Board we are still recruiting for a Special Investigator in Southern California. This has been going on for several months now and we are going to have two more positions added to the Board in July. We have also been involved in an extensive amount of training over the past several months.

Licensing

Mr. Stiger discussed a project assigned by Dr. Lubkin to identify those individuals that have more than five satellite offices. This assignment has been completed, 57 licensees have been identified. The average number is 10 satellite offices.

Judge Duvaras asked if the cost of a satellite office is the same as a regular chiropractic license.

Mr. Stiger clarified that the cost of a satellite office is currently \$5 a year.

Dr. Lubkin asked if the maximum number of 25 satellite office is due to computer restraints or if that is the most one particular licensee has.

Mr. Stiger responded, no according to our records, 25 satellite offices is the most any one licensee has.

Enforcement

Mr. Stiger commented that one of the areas we are most proud of is the pending complaints. There are 654 pending complaints, in previous years it has been as high as 834. We have issued 13 citations for a total of \$5,150.

Mr. Lerner commended the staff for an outstanding job under difficult circumstances.

Dr. Columbu looked at several other boards and feels we are ahead of many other boards.

Web Casting Update

Mr. Stiger stated that in November this Board voted to move forward with webcasting as soon as possible. We have interviewed a few different vendors. We are moving forward with the process for purchasing the hardware. Our goal is to have the May meeting webcasted.

Dr. Lerner stated when we first looked at webcasting, it was also the ability to have audio-visual recording of the meeting that people could access by speaker or topic, who said what and when. We have had on-going difficulties with the current system of audio tapes and transcribing. He really wants to ensure we reserve all of the features.

Mr. Stiger stated we are making every effort to keep all of the features, however there are some challenges.

Ratification of Approved Continuing Education Providers

Discussion

Mr. Stiger stated this is a standing agenda item and there are no new providers since the last meeting.

Ratification of Approved License Applications

MOTION: DR. LUBKIN MOVED TO RATIFY THE APPROVED LICENSE APPLICATIONS

SECOND: DR. TYLER SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

The Board ratified the attached list of approved license applications incorporated herein (Attachment A).

Discussion

None

Ratification of Denied License Applications in Which the Applicants Did Not Request a Hearing

Mr. Stiger explained that this is new. When we deny an application and the applicant appeals, a hearing is conducted before an administrative law judge and then a proposed decision comes to the Board for a final decision. If the applicant does not appeal, then the board never ratifies the decision. So now we are asking the board to ratify those denials of applicants that never filed for an appeal. This is an issue that came from the Bureau of State Audits.

Ms. Powell clarified that no other board does this. The only reason this board needs to do this is based on how the Initiative Act is written.

MOTION: DR. LERNER MOVED TO RATIFY THE DENIED LICENSE APPLICATIONS THAT WERE NEVER APPEALED

SECOND: JUDGE DUVARAS SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

The Board ratified the attached list of denied license applications in which the applicants did not request a hearing incorporated herein (Attachment B).

Discussion

None

Board Newsletter

Dr. Lerner discussed that the public relations committee would like to have a newsletter. He is not aware of a newsletter in the past 7 years and feels it would be a great way for licensees and the public to stay informed.

At this time the newsletter is being proposed to run quarterly and be posted on the Board's website.

Mr. Conran feels there are many topics that could be included and that it would be a good idea to have this posted at least quarterly. When he first joined the Board he was surprised to find out there was no newsletter being produced. He is very supportive of this idea.

Proposed Legislation to Increase License Fees

Dr. Lerner stated that the Legislative Committee met this morning and had voted to bring this to the full board for a vote. He turned this over to Mr. Stiger for presentation.

Mr. Stiger explained back in 2005, the Board expressed intentions to raise license fees and they just didn't know how to do it. Many things have happened since that time such as the operation of our special investigation unit, which takes about \$600,000 a year. At the present time we are spending about \$1,000,000 more than we are bringing in each year. Fiscal year 2011 we are projected to go into a deficit and now we feel its time to proceed with legislation to increase our licensing fees and other miscellaneous fees. We know this is a difficult environment to get this done right now. We are proposing a range to use so once this is passed, if we need to increase our fees again, it can be done through the regulatory process not through legislation. This is something that we have to do.

MOTION: DR. LUBKIN MOVED TO ADVANCE THIS PROPOSED LANGUAGE FORWARD

SECOND: DR. TYLER SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

Discussion

Mr. Conran stated that most licensing boards do have ranges to give them flexibility and to not have to go through legislation each time they need a fee increase.

Dr. Davis commented that he continues to be against some of the rates of increases. He feels some of them are not justifiable or warranted.

Judge Duvaras clarified that the revenue we receive is the only thing that operates this organization. We are never dependent on the general fund. He wonders if everyone is aware of this and feels this is important for the public to know how exactly how this organization is run and that its not based on the general fund or sales tax revenue, its all based upon fees collected.

Ms. Powell stated we have made some progress in getting the message out there. The Governor's office recognizes general fund agencies versus special fund agencies. Special fund agencies are not subject to lay-offs in the recent executive orders. We are subject to furloughs, but not lay-offs.

Proposed Regulations

A. Continuing Education

Dr. Tyler stated that the Continuing Education Committee, just like the Board, always tries to keep in mind the protection of the public.

We feel that continuing education should reflect our position to protect the public and to educate and re-educate our licensees so that they can become the finest doctors possible. We have had numerous work shops and meetings. What we have come up with may not be perfect and everyone will not love it, but it's a great start and hopefully is a benchmark for other boards to look at and say this is something they should look at and maybe even copy. He thanked Ms. Powell for her input, Mr. Stiger for his leadership of the staff, and Dr. Lubkin for crossing all the "T"s and dotting all the "I"s. He is proud to be part of this committee.

Dr. Lubkin reiterated the outstanding job of all involved, we have put in hundreds of hours into this project. It is an excellent improvement from what we have.

MOTION: DR. LERNER MOVED TO ACCEPT THE AMMEDED REGULATORY CHANGES TO THE CONTINUING EDUCATION REGULATIONS

SECOND: DR. TYLER SECONDED THE MOTION

VOTE: 4-2

MOTION CARRIED

Discussion

Mr. Conran stated that he appreciates the amount of work that has been put into this. He recognized there's been a lot of hard work, however, he does not feel comfortable voting on all of this information. He is concerned about the issue that there is an exemption to licensees taking continuing education if they are on the Board. He cannot vote for something that exempts licensees who have to set the standard, although he knows the board wants to set the standard to the highest professional conduct. For the Board to exempt themselves from something every other licensee must do is not walking the talk. He recognizes that the Board did not put this in and that it is a pre-existing regulation, but he does feel he has to protest this. To his understanding no other licensing board in the state does this and he doesn't feel that we should do it.

Dr. Lerner commented that he would like to see a start date of January 1, 2010. He feels this is such a significant change that licensees have a chance to prepare for it.

Ms. Powell stated there can be two dates. One date can be for the providers having to comply with all the course previsions. The other date can be for the licensees. She suggested giving the licensees a full licensing cycle to do the increase in hours. If the Board votes to allow that, she and Mr. Stiger can plug in the dates since they can get tricky depending on how long it takes to get through the administrative process. She has some language from another board that may be helpful.

Judge Duvaras referred to page 4 and 5 regarding the mandatory categories. Judge Duvaras opposes the placement of adjustive techniques in an optional category. His feeling is that this should be in a mandatory class.

Judge Duvaras has been a chiropractic patient for a number of years, and he has talked to many chiropractors about the various techniques that have been brought into the chiropractic profession. If you go back as far as 1935 to the Palmer College of Chiropractic, where his father graduated from, the only technique was HIO, hole in one method, then other methods started coming into effect. There have been all types of techniques that have been brought about to try to improve the way a patient is adjusted to relieve him of a particular symptom and if that particular technique doesn't work maybe another technique would be more helpful. Judge Duvaras believes chiropractic manipulation is the basis of the profession.

This is what the chiropractic profession is all about, which is why he feels this particular subject should be put in the mandatory class.

Ms. Kristine Shultz, California Chiropractic Association, thanked the Board on drafting these regulations. They feel it's important to move this forward to the regulatory process now.

Dr. Davis feels this is a really good start and commends everyone that put this language together.

Dr. Ray Welch opposes 24 hours and mandatory manipulative therapy. He commented that the term chiropractic adjustive technique should be in the category that is mandatory. He provided the Board with detailed information of his concerns in an effort to remain brief in comments. He is in favor of a licensee who is unable to attend continuing education courses due to a physical disability and provides written certification from a primary health care provider may be exempted from completing continuing education requirements. He is concerned with the Executive Officer's decision being the final order in a denial, he feels if the Executive Officer's decision is based on a chiropractic issue and not a legal one, then the appointed board should be consulted. He understands the rationale of no more than 8 hours of instruction shall be given during a 24 hour period. He feels this puts an additional financial burden on the DCs and that there should be no issues with attending a 12 hour seminar. He has been doing 12 hour seminars since 1994. Regarding class breaks being at the discretion of the instructor and breaks shall not count toward a course hour. He doesn't feel this protects the public, only hurts the DC.

Dr. Lubkin responded to Dr. Welch's comments indicating that he was reading from an old version of the language. There is updated language that satisfies some of Dr. Welch's concerns.

Kendra Holloway, Life Chiropractic College West, they just now received the latest copy of the proposed language and has provided some comments to Mr. Stiger on the December 18th draft. There are some major issues on clarity, necessity and consistency with existing law. There are also conflicts such as in order to renew an inactive license, the licensee must complete all the years of being inactive, however, the Business and Professions code says the licensee only has to do one. She reads this from the point of an end user, a CE provider and as a licensee, and has trouble reading it. She feels that this needs to go back to the work group so it can be cleaned up to be something everyone can understand.

Dr. Sherry McAllister, thanked the board for the work that has been done. She commented that at the last board meeting Ms. Scurri stated that the language had some refining to do and feels this new document has made some improvements. She would like to support Dr. Holloway's remarks for the possibility that this respectfully be returned to the work group. She feels this would be an excellent idea.

Dr. George Casey, Life Chiropractic College West, asked for clarification on if the Board approves it at this point, what are the time lines and steps that will occur for continued public comment.

Mr. Stiger responded once the document is filed with the Office of Administrative Law, there is a 45 day comment period. There is also another 15 days and comments may even be submitted now.

B. Fingerprinting of Applicants and Licensees

Ms. Powell stated that all boards have not always fingerprinted licensees, and since Live Scan technology came into being in about 1999, we now have a better process for fingerprinting and also subsequent arrest information. Some issues have been raised with other boards who have licensees who are not fingerprinted, or who were fingerprinted, but DOJ doesn't have a record of the fingerprint. The licensee gets arrested and the board not knowing until a newspaper article comes out and this is just not acceptable for consumer protection. This proposed regulation would give the board specific authority to fingerprint. Although we already have it under the penal code, the FBI doesn't like the way our language reads, so in order to continue to get FBI information we need to update the language to have our own stand alone regulation.

MOTION: MR. CONRAN MOVED TO PROGRESS THE PROPOSED REGULATION OF FINGERPRINTING APPLICANTS AND LICENSEES FORWARD

SECOND: DR. LUBKIN SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

C. Chiropractic Specialties

Dr. Lerner stated that this went from 4 pages to 8 pages and the overall feedback was that it's much to complex. It's now down to one sentence and he can't imagine a more simplified regulation.

Ms. Powell stated it's different but she wants to clarify that it's simple because it specifies who the board recognizes however, it does not address advertising at all. It is merely what specialties the board recognizes and that is important, we narrowed it down to address the actual problem.

Dr. Lerner read the language, "The board recognizes those specialty programs that are recognized by the American Chiropractic Association, the International Chiropractors Association, and equivalent specialty programs as determined by the board."

MOTION: DR. LUBKIN MOVED TO PROGRESS THE PROPOSED REGULATION OF CHIROPRACTIC SPECIALTIES FORWARD

SECOND: DR. COLUMBU SECONDED THE MOTION

VOTE: 6-0

MOTION CARRIED

Discussion

Ms. Shultz is in support of the changes and said it looks really good.

Dr. Davis stated it looks much better than what we saw in November, it's a great improvement.

D. Proposed Regulations Regarding Time Frame to Petition for Reinstatement of a License and Modification of Probation or Early Termination of Probation

Mr. Stiger clarified that this was approved by the board back in November and this is only an update that we are project to file this regulation with OAL on February 3, 2009, so the 45 day comment period should be February 13 through March 30 and we are looking at a scheduled public hearing on March 31, 2009 here in Sacramento.

E. Manipulation Under Anesthesia

Mr. Stiger stated the Ms. April Alameda filed the MUA regulations with OAL on December 30. The 45 day comment period is from January 9 through February 23 and we are scheduled for a public hearing on February 24, 2009 here in Sacramento.

F. Letter of Admonishment

Mr. Stiger stated we are waiting on the Department of Finance to approve our Economic Impact Statement. Once that document is approved we can move on to the final phases.

G. Repeal of Quality Review Panels

Mr. Stiger stated we just received verbal approval from the Department of Finance on December 29. They approve our Economic Impact Statement and it's been filed with OAL on January 6.

Public Comment

None

Future Agenda Items

Dr. Tyler is concerned about where the future meeting will be held.

Dr. Lerner stated something that he feels fell through the cracks, chiropractic consultant position, he believes we were suppose to look at this and would like some idea of where we are at and if we should take further action or not.

Mr. Conran feels we need to develop a policy of disposing of confidential documents and not leave it up to the discretion of board members. He had an experience where he walked into a room to do a presentation and a previous board had left confidential documents on the table. Although this board has not done that, he feels there is a need for security within our administrative procedure manual so board members have clear direction to ensure this doesn't happen. His policy is to hand it to board staff, but we should have a policy to practice.

Judge Duvaras suggested a topic on petition hearing. Specifically, he feels that all of the petition hearings should be held in Sacramento. Past history is shown is more costly to bring documentation and staffing. Petitions for hearing, with proper notice should be held here

Dr. Lubkin would like to see us continue to work on the seal.

Dr. Davis commented he would like to retire from video recording responsibility.

Hearings re: Petition for Reinstatement of Revoked License

Administrative Law Judge Catherine B. Frink presided over and Deputy Attorney General Tom Rinaldi appeared on behalf of the people of the State of California on the following hearings.

- Todor P. Azgorov
- Robert L. Horan
- David L. Hagen

Following oral testimonies, the Board went into closed session to consider Charles Whitney and Todor Azgorov for reinstatement of Revoked License.

Closed Session

Following oral testimonies, the Board went into closed session for deliberation and determinations of Petitioners.

Adjournment

Dr. Lerner adjourned the public meeting at 3:55 p.m.