



State of California
Edmund G. Brown Jr., Governor

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
February 8, 2018**

Teleconference Meeting Locations

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355
(Board Staff)

Sergio Azzolino, D.C.
1545 Broadway St., Suite.1A
San Francisco, CA 94109
(415) 563-3800

John Roza, D.C.
800 Douglas Blvd
Roseville, CA 95678
(916) 786-2267

Committee Members Present

Sergio Azzolino, D.C., Chair
John Roza, D.C.

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Valerie James, Management Services Technician
Beckie Rust, Compliance Manager
Andreia McMillen, Compliance Analyst

Call to Order

Dr. Azzolino called the meeting to order at 2:00 p.m.

Roll Call

Dr. Roza called the roll. All Committee Members were present at the locations listed on the agenda.

Approval of Minutes

MOTION: DR. AZZOLINO MOVED TO APPROVE THE MINUTES OF THE JANUARY 12, 2016 AND JULY 19, 2017 MEETINGS.

SECOND: DR. ROSA SECONDED THE MOTION

VOTE: (2-0) (DR. AZZOLINO – AYE, DR. ROSA – AYE)

Review and Discussion regarding Enforcement Committee Action Items from the 2017- 2019 BCE Strategic Plan

Mr. McCarther stated that action item 2.1.4, *Publish Expert Witness Guidelines in the “Licensees” and “Publications” tabs of the Board website*, has been an ongoing topic of discussion. The Committee recently identified the Expert Witness program as an area of concern and proposed working on revisions

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to improve the effectiveness and consistency of the program. He added that staff will be reviewing information regarding the Expert Witness program and will consult with the Committee to address this concern.

Ms. McMillen stated that action item 2.4.1, *Create an outreach document that provides information on potential violations resulting from social media activity*, has been completed. The outreach document was included in the Board's Winter/Spring 2018 newsletter.

Review, Discussion and Possible Action regarding Enforcement Committee Statistical Information

Mr. McCarther stated that staff has gathered enforcement data to provide the Committee an opportunity to review and discuss this information and possibly include it in Board meeting packets moving forward.

Mr. Puleo referred to the disciplinary action reports, which are posted on the Board's website every month. He shared that the December 2017 report is provided as a sample for this agenda item; however, the January 2018 report was not available to be reviewed at this meeting. Therefore, it will be included in the upcoming Board meeting packet.

Public Comment: Dr. Gregory Plaugher noted that the description of the violations in the disciplinary action reports is generally broad. He inquired if it is possible to obtain more details when these reports are released to the public.

Mr. Puleo discussed the current enforcement process for presenting specific information regarding disciplinary actions taken against licensees. He stated that once a disciplinary action is finalized by the Board, it can be obtained through a request of public records. Mr. Puleo added that public records provide in depth information about the nature of violations and disciplinary actions. Additionally, Mr. Puleo shared that this information is included in the Board's newsletters, which are posted on our website.

Mr. Puleo agreed with Dr. Plaugher's suggestion and informed the Committee that staff will work on including a brief summary related to the nature of violations in the disciplinary action reports. Additionally, he added that staff will provide this information for review at a future Committee meeting.

Dr. Azzolino encouraged staff to implement the recommendations discussed and emphasized the importance to inform the public about disciplinary actions taken against licensees.

Dr. Plaugher inquired whether practicing on an expired license or not completing the 24-hour CE requirement constitute grounds for unlicensed chiropractic practice.

Mr. Puleo responded that when licensees do not renew their licenses in a timely manner, their practice is unlicensed. He added that the disciplinary action reports do not specify timeframes for unlicensed practice. He shared that he would be happy to provide Dr. Plaugher with additional information.

Discussion and Possible Action regarding the Standardized Training and Evaluation of Expert Consultants to Improve Effectiveness and Consistency

Mr. Puleo referred to the expert training materials as samples for this agenda item. He stated that staff has gathered current expert training materials to provide the Committee an opportunity to review and discuss alternatives to the existing expert consultant selection criteria and standardized training.

Mr. Puleo provided an overview of the expert consultant recruitment process. He explained that, based on the location for the training, either a District Attorney from northern or southern California is assigned to deliver a comprehensive lecture on key components of an effective consulting service.

Dr. Azzolino discussed existing deficiencies in the training materials for expert consultants and the expert referral process. He referred to the second paragraph, page 4 of the Guidebook for Expert Consultants “If a chiropractor is a specialist, then “negligence” is the failure to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful chiropractor specialists would possess and use in similar circumstances.” He expressed concern over the lack of Board specialists available to review enforcement cases requiring various areas of expertise.

Dr. Azzolino referred to the Expert Report as a sample for this agenda item, and provided a brief overview of the neuropathy case discussed in the report. He stated that neuropathy falls under the standard of care of a chiropractic specialist. However, the chiropractor, who claims to be an expert in neuropathy, did not include neurological studies or basic metrics as in the patient’s records.

Dr. Azzolino added that this report does not suggest that the chiropractor specialist in neuropathy is qualified as such. Additionally, he directed the Committee’s attention to the “specialist’s” failure to identify discrepancies found in the patient’s records. He added that it is clear the “specialist” does not demonstrate his level of skill and knowledge in neuropathy to provide an accurate evaluation.

Dr. Azzolino discussed the current expert consultant referral process and encouraged staff to identify enforcement cases requiring a skilled level of review. He added that these cases should be referred to a specialist or diplomate.

Mr. Puleo agreed with Dr. Azzolino’s suggestion and recommended having further discussions with the Board to streamline the expert referral process. He addressed the slight disconnect between the Guidebook for Experts and the Expert Sample report.

Mr. Puleo recommended the implementation of expert referral guidelines to ensure consistency when referring a case to an expert consultant.

Dr. Roza agreed with Mr. Puleo’s recommendation and stated that establishing criteria will help staff effectively determine whether expert consultant referrals require a specific level of expertise or fall under the standard chiropractic care.

Mr. Puleo explained that expert consultants are required to notify the Board when a case is outside of their area of expertise. Mr. Puleo noted that a majority of the Board’s expert consultants do not possess any specialties.

Dr. Roza suggested having experts disclose their areas of expertise in their application.

Dr. Azzolino stated that, at times, relying on a chiropractor’s self-assessment of expertise may result in an inaccurate evaluation.

Dr. Roza clarified that he was referring to experts who are board-certified, possess a specialty or are in a chiropractic diplomate program.

Mr. McCarther reemphasized the importance to address existing deficiencies in the expert program and evaluate alternatives to revise the program. He noted that the weaknesses in the application and referral process can ultimately impact expert consultant reports.

Dr. Plaughter inquired if there is a case law regarding chiropractic specialists in California. He also asked if there are any specialties within a chiropractic license.

Mr. Puleo responded that the Board issues chiropractic licenses and does not regulate specialties. He also added that the Board can only hold licensees to a minimum level of competency. Licensees can choose to hold themselves to a higher level of skill and expertise.

Mr. Puleo stated that the issue is premised upon determining the level of standard of care when a licensee practices a specialty. However, in a clear-cut case, it is important that staff identifies the need to make a referral to a specialist when it is necessary. Mr. Puleo suggested establishing criteria to assist staff when making referrals to specialists.

Dr. Azzolino stated that staff should consider carefully the nature of the complaint prior to referring a case to a specialist.

Mr. Puleo noted that the existing training materials should be revised to provide additional guidance to expert consultants.

Dr. Plaughter requested clarification regarding the titles "Doctor of Chiropractic" and "board-certified specialist".

Mr. Puleo stated that doctors of chiropractic are required to refer patients to the appropriate health care provider when a case is outside of area of expertise.

Mr. Puleo explained that a board-certified specialist is not certified by the Board of Chiropractic Examiners. He added that the Board does not preclude licensees from obtaining specialties. Typically, licensees can obtain specialty certifications through other boards such as the American Chiropractic Neurology Board.

Mr. Puleo suggested discussing this topic with the Board's legal counsel to help enhance the expert consultant program.

Dr. Azzolino recommended that the Committee continues to work with staff to improve the expert witness selection criteria, standards, training materials, and application requirements.

Dr. Azzolino inquired whether staff would be able to propose a recommendation regarding this topic at the next Committee and Board meetings.

Mr. Puleo noted that staff will begin working on this assignment. He asked for the Committee's guidance during this process.

Dr. Plaughter inquired if there are any case laws that should be taken into consideration.

Mr. Puleo responded that he will consult with legal counsel to determine if there is an applicable case law in place.

Discussion and Possible Action regarding False, Misleading or Deceptive Advertising by Licensees

Dr. Azzolino stated that many of the complaints received by the Board are related to potential advertising violations. He added that educating licensees about chiropractic rules and regulations would be a proactive step to address this issue.

Dr. Azzolino suggested that the Board should inform licensees of the rules and regulations found on the Board's website. He also recommended providing a link to the chiropractic rules and regulations whenever possible.

Dr. Azzolino encouraged the Board to monitor claims related to misleading advertising and determine if there is any validity to them.

Dr. Roza recommended the Board take proactive steps by informing licensees of potential advertising violations.

Dr. Azzolino agreed and stated that the Board is protecting the public by educating licensees.

Mr. Puleo discussed the current enforcement process related to advertising complaints and the steps taken by the Board to address potential violations. He explained the Board reminds licensees to comply with Section 15 of the Chiropractic Initiative Act and the California Code of Regulations, section 311 relating to advertisements. He also added that some of these letters include the Board's website link, which is www.chiro.ca.gov.

Mr. Puleo suggested providing guidelines to licensees by posting information related to potential advertising violations on the Board's website.

Dr. Plaughter stated that he is aware of five chiropractors who were disciplined by the Board for not complying with section 15 of the Act. Specifically, he shared that these chiropractors used the prefix *Dr.* without writing the "D.C." immediately after their names. Dr. Plaughter inquired whether there are any recent changes to the Act or if it remains the same.

Mr. Puleo explained that, for first violations, the Board reminds licensees of their responsibilities to comply with section 15 of the Act and CCR 311. Additionally, the Board provides licensees with a link to review chiropractic rules and regulations. He then stated that the Board asks licensees to correct their letterhead and any advertising materials. In the event the Board receives subsequent complaints of the same nature, it is likely that a citation and fine will be issued. Mr. Puleo added that the referenced laws have not changed recently.

Dr. Plaughter stated that a chiropractor informed him that he was disciplined by the Board for using the prefix *Dr.* without D.C. following his name on a check submitted to renew his license.

Mr. Puleo stated that, in this case, there is no intent to mislead or deceive the public through advertising. He added that he does not believe this is a compliance issue. Mr. Puleo explained that the Board carefully reviews complaints related to chiropractic advertisements and makes determinations on a case-by-case basis.

Mr. Puleo encouraged Dr. Plaughter to inform him of any concerns or issues regarding potential advertising violations. He shared that he would be happy to review any of his concerns.

Dr. Plaughter expressed concern regarding the advertisement of chiropractic specialties to the credulous public. He indicated that this could be perceived as misleading advertising because consumers may think that chiropractic specialties are identical to the specialties doctors of medicine obtain in the medical field.

Mr. McCarther emphasized that chiropractic rules and regulations do not prohibit chiropractors from holding themselves out as being specialists.

Dr. Azzolino stated that the use of “chiropractic specialist” is misleading. He explained the term can spur confusion among the public and noted that using the term board-certified following the area of expertise is an appropriate option for chiropractic advertisements.

Mr. McCarther agreed that using the term specialty in chiropractic is a compelling issue and suggested directing Dr. Plaughter’s concern to the Board’s legal counsel for further review.

Mr. Puleo validated Dr. Plaughter’s concern and explained that chiropractic rules and regulations do not address some of his concerns regarding the advertisement of chiropractic specialties. He reiterated that the Board does not issue specialties and cannot preclude chiropractors from obtaining them.

Dr. Plaughter inquired if there is a case law that may apply to chiropractic advertisements. He shared information about a radiology case that emerged in the 1970’s. Dr. Plaughter added that the case law at the time determined that it is not appropriate to use the title “chiropractor radiologist”.

Mr. Puleo explained that the Board cannot discipline licensees who claim to be specialists so long as they provide proof of certification. However, the Board can take disciplinary action against licensees who are unable to substantiate their claims. He clarified that it is appropriate for licensees to advertise the training they have in a specific area of expertise.

Mr. Puleo stated he will share sample letters that are used to notify licensees of noncompliance with advertising rules and regulations. He added that the Committee will be asked to review the verbiage used in the sample letters at a future meeting.

Public Comment for Items not on the Agenda

N/A

Future Agenda Items

Review and revise the current expert witness selection criteria, standards, training materials, and application prior to the next Committee meeting.

Dr. Roza inquired if, pursuant to the Bagley-Keen Opening Meeting Act, it is permissible to have a discussion about this topic with Dr. Azzolino.

Mr. Puleo explained that the Bagley-Keen Open Meeting Act mandates that no more than two Board members actively discuss Board business.

Dr. Azzolino agreed to work on a list of items with Dr. Roza.

Discussion of Dates for Future Committee Meetings

N/A

Adjournment

Mr. Puleo adjourned the meeting at 3:16 p.m.
