



**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
April 19, 2019**

Teleconference Meeting Locations:

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

Sergio Azzolino, D.C., Chair

Azzolino Chiropractic Neurology
& Integrative Wellness
1545 Broadway Street., Suite 1A
San Francisco, CA 94109
(415) 563-3800

David Paris, D.C.

VA Health Administration in
Redding
760 Cypress Ave.
Redding, CA 96001
(530) 244-8806

Frank Ruffino, Public Member

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

Committee Members Present

Sergio Azzolino, D.C., Chair
David Paris, D.C.
Frank Ruffino, Public Member

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Kenneth Swenson, Attorney III
Michael Kanotz, Senior Attorney III
Kristin Walker, Staff Services Manager
Valerie James, Enforcement Analyst

Call to Order

Dr. Azzolino called the meeting to order at 1:42 p.m.

Roll Call

Mr. Ruffino called roll. All members were present at the addresses listed on the agenda. A quorum was established.

Mr. Swenson introduced Mr. Kanotz, Senior Staff Counsel Attorney III, who will be assuming the role of general counsel to the Board. Mr. Kanotz comes to the Department of Consumer Affairs with extensive experience in state service.

Approval of October 10, 2018 Committee Meeting Minutes

MOTION: MR. RUFFINO MOVED TO APPROVE THE MINUTES OF THE OCTOBER 10, 2018 ENFORCEMENT COMMITTEE MEETING.

SECOND: DR. AZZOLINO SECONDED THE MOTION.

Discussion: Dr. Paris stated he would abstain from approving the minutes because he did not participate in the meeting.

VOTE: 2-0-1, (MR. RUFFINO – AYE, DR. PARIS – ABSTAIN, DR. AZZOLINO – AYE) MOTION CARRIED.

Review, Discussion and Possible Action on the Election of Committee Chair

Dr. Azzolino asked if there was background information that needs to be discussed on this topic.

Mr. Swenson clarified the Board Member Administrative Procedure Manual does not specifically govern elections for committee chairs and stated the current chair has discretion on how to proceed. Mr. Swenson recommended calling for a nomination and proceeding with a vote.

Dr. Azzolino called for nominations of Committee Chair.

Mr. Ruffino nominated Dr. Paris.

Dr. Paris accepted the nomination.

Dr. Azzolino seconded the nomination of Dr. Paris and called for the motion to vote.

MOTION: MR. RUFFINO MOVED TO NOMINATE DR. PARIS AS COMMITTEE CHAIR.

SECOND: DR. AZZOLINO SECONDED THE MOTION.

Discussion: There was none.

VOTE: 3-0, (DR. AZZOLINO – AYE, MR. RUFFINO – AYE, DR. PARIS – AYE) MOTION CARRIED.

Review, Discussion and Possible Action Regarding the Expert Witness Program

Ms. Walker provided an update regarding the Board's Expert Witness Program and reminded the Committee that the Board previously approved the revised application for experts. Ms. Walker explained staff sent a sample case to a selection of experts to prepare a sample report with the goal of allowing staff to assess the possibilities for expert witness reports and to update training materials. Ms. Walker shared staff plans to begin the recruitment process for experts to apply or reapply to be an expert witness under the new process.

Dr. Azzolino asked if there were any action items needed at this time.

Ms. Walker replied there was no action needed at this time.

Review, Discussion and Possible Action on the Manner in Which Enforcement Committee Statistical Information is Presented at Board Meetings

Ms. Walker directed the Committee's attention to the four attachments in the meeting materials: 1) Enforcement Statistics Table; 2) Complaints Received Chart; 3) Accusations Filed Chart; and 4) Summary of Monthly Enforcement Actions. Ms. Walker provided an overview of each attachment and asked the Committee to review the statistics and provide feedback on how the Committee would like to see the data presented at Board meetings.

Dr. Azzolino commented that he particularly liked the Complaints Received Chart and asked if failed CE audits were internal complaints.

Mr. Puleo responded that any case opened is considered a complaint, complaints are received from multiple sources, and failed CE audits are internal complaints.

Mr. Azzolino stated the Accusations Filed Chart is a little cumbersome and suggested sorting the data by the number of violations rather than in alphabetical order by code section, because he wants to be able to focus on the code sections with the most violations.

Dr. Paris agreed that the data is helpful and stated it would be interesting to see the data sorted by the number of violations in order to identify the top violations.

Mr. Swenson stated from a legal perspective, this methodology of tracking statistics is consistent with the requirements, but the documents should include the title number as well as the section number for the regulations.

Mr. Puleo asked Mr. Swenson to clarify if it is acceptable to list the title number once as a footnote or at the top of the page.

Mr. Swenson responded the title number could be listed once stating all sections are part of Title 16. The article number is not required.

Mr. Ruffino expressed his satisfaction with the presentation and format of the statistical data.

Mr. McCarther stated Dr. Azzolino had concerns in the past regarding the description of alleged violations not being clear and asked if this information was clear enough.

Dr. Azzolino responded he felt this information was great.

Dr. Paris requested that the code sections also be listed with the description of the violations in the monthly actions reports.

Mr. Puleo agreed to add the code sections to future reports.

Review, Discussion and Possible Action Regarding Chapter 570, Statutes of 2018 (SB 1448 – Probation Status: Disclosure)

Mr. McCarther stated this bill was introduced last year and signed by the Governor, and it requires licensees who are placed on probation on or after July 1, 2019, to disclose their probationary status to their patients verbally and in writing. Mr. McCarther explained staff prepared draft language and draft notices to licensees and patients for the Committee's review.

Dr. Azzolino asked to discuss a concern with the background information stating the disclosure requirement would not apply in situations where, "The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit."

Mr. McCarther clarified this exemption is already in the law and pertains to emergency situations.

Dr. Paris agreed this provision could be confusing in practices with walk-in structures where patients do not always see a specific chiropractor.

Mr. Puleo asked legal counsel if the Board has the flexibility to specify that chiropractors have to notify the patient of their probationary status unless in an emergency situation.

Mr. Swenson responded the Board has the regulatory authority to further define what is meant by that subdivision; however, being too prescriptive could create difficulties getting it through the regulation approval process because the Board must show necessity, and there may be some unanticipated situations where the Board will want to have flexibility in the interpretation of the provision.

Mr. Swenson suggested not pursuing specific regulatory language that further defines that subdivision at this time.

Mr. McCarther asked legal counsel if requiring licensees to have a notice posted in their office could be considered.

Mr. Swenson responded a posting requirement may be permissible, as long as it does not conflict with the specific provisions of the statute.

Mr. McCarther stated it will be up to the Committee to decide whether to take Mr. Swenson's advice to not to further define that subdivision at this time or, if it is a concern, discuss suggestions to mitigate the risks surrounding the lack of clarity on that topic.

Drs. Azzolino and Paris indicated they are fine with leaving the proposed language as is.

Mr. Puleo stated the Board can amend the regulation later if needed.

Mr. McCarther redirected the Committee's attention to the draft Notice to Licensees and the Patient Notification of Probation Status. Mr. McCarther explained after a licensee is placed on probation, the probation monitor will send the Notice to Licensees informing them of the probation status disclosure requirement and their responsibility to comply with the law. Mr. McCarther explained the Patient Notification of Probation Status form will likely be incorporated by reference into the regulation and used by probationers to obtain their patients' written acknowledgement of their probationary status. Mr. McCarther asked if there were any questions or concerns.

There were no questions or concerns.

MOTION: MR. RUFFINO MOVED FOR THE COMMITTEE TO RECOMMEND TO THE BOARD THAT IT APPROVE THE REGULATORY LANGUAGE AS PROPOSED OR WITH AMENDMENTS, INCLUDING THE PATIENT NOTIFICATION OF PROBATION STATUS FORM INCORPORATED BY REFERENCE, AND COMMENCE THE RULEMAKING PROCESS TO ADD SECTION 308.1 (PROBATION STATUS DISCLOSURE PURSUANT TO PROBATIONARY ORDERS EFFECTIVE JULY 1, 2019) TO THE CALIFORNIA CODE OF REGULATIONS AND TO DELEGATE AUTHORITY TO THE EXECUTIVE OFFICER TO MAKE NON-SUBSTANTIVE CHANGES TO THE PROPOSED LANGUAGE IN THE RULEMAKING FILE.

SECOND: DR. PARIS SECONDED THE MOTION.

Discussion: There was none.

VOTE: 3-0, (MR. RUFFINO – AYE, DR. AZZOLINO – AYE, DR. PARIS – AYE) MOTION CARRIED.

Review, Discussion and Possible Action Regarding Chapter 995, Statutes of 2018 (AB 2138 – Denial of Application: Revocation or Suspension Licensure: Criminal Conviction)

Mr. McCarther asked the Committee to review and approve the proposed regulatory language to implement the provisions of AB 2138. Mr. McCarther also clarified there have been no major changes since the last time it was presented to the Board.

MOTION: MR. RUFFINO MOVED FOR THE COMMITTEE TO RECOMMEND TO THE BOARD THAT IT APPROVE THE REGULATORY LANGUAGE AS PROPOSED OR WITH AMENDMENTS AND COMMENCE THE RULEMAKING PROCESS TO ADD SECTION 316.5 (SUBSTANTIAL RELATIONSHIP CRITERIA), AMEND SECTION 326 (REHABILITATION CRITERIA FOR DENIALS AND REINSTATEMENTS), AND ADD SECTION 327 (REHABILITATION CRITERIA FOR SUSPENSIONS OR REVOCATIONS) TO THE CALIFORNIA CODE OF REGULATIONS AND TO DELEGATE AUTHORITY TO THE EXECUTIVE OFFICER TO MAKE NON-SUBSTANTIVE CHANGES TO THE PROPOSED LANGUAGE IN THE RULEMAKING FILE.

SECOND: DR. PARIS SECONDED THE MOTION.

Discussion: Mr. Swenson stated these proposed regulations are based on language that was developed by the Department of Consumer Affairs Legal Affairs Division in consultation with the Office of Administrative Law and should go through the approval process without objection.

VOTE: 3-0, (MR. RUFFINO – AYE, DR. PARIS – AYE, DR. AZZOLINO – AYE) MOTION CARRIED.

Public Comment on Items Not on the Agenda

There was none.

Future Agenda Items

There were none.

Adjournment

Dr. Paris adjourned the meeting at 2.25 p.m.