



**Board of Chiropractic Examiners  
TELECONFERENCE MEETING MINUTES  
Licensing & Continuing Education Committee  
August 22, 2019**

Teleconference Meeting Locations:

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

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**Committee Members Present**

Sergio Azzolino, D.C., Chair  
Heather Dehn, D.C.  
David Paris, D.C.

**Staff Present**

Robert Puleo, Executive Officer  
Marcus McCarther, Assistant Executive Officer  
Michael Kanotz, Senior Attorney  
Dixie Van Allen, Staff Services Manager  
Natalie Boyer, Continuing Education Analyst  
Tammi Pitto, Staff Services Analyst

**Call to Order**

Dr. Azzolino called the meeting to order at 12:03 p.m.

**Roll Call**

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

## **Approval of June 28, 2019 Committee Meeting Minutes**

**MOTION: DR. DEHN MOVED TO APPROVE THE MINUTES OF THE June 28<sup>th</sup>, 2019 LICENSING & CONTINUING EDUCATION COMMITTEE MEETING.**

**SECOND: DR. PARIS SECONDED THE MOTION.**

Discussion: Dr. Azzolino wished to abstain from voting as he was not yet a member of the Committee.

**VOTE: 2-0, 1 - ABSTAINED (DR. PARIS – AYE, DR. DEHN– AYE DR. AZZOLINO – ABSTAIN)**

**MOTION CARRIED.**

## **Review, Discussion and Possible Action on proposed Language to Continuing Education Regulations: Denial & Appeal of Providers and Denial & Appeal of Continuing Education Courses.**

Ms. Boyer introduced the draft language document, beginning with the proposed added California Code of Regulations (CCR) Section 362.1, Continuing Education (CE) Provider Duties and Responsibilities. Ms. Boyer summarized the section and acknowledged that the listed duties and the CE Provider Application were grounds for withdrawal of approval or denial as identified in the newly proposed CCR Section 362.2, Continuing Education Providers Denial and Appeal Process.

Mr. McCarther drew the Committee's attention to proposed draft language in CCR Section 362.1 (a) (5), he suggested adding "substantive changes, including but not limited to,". He also suggested that providers would need to submit new advertising materials, prior to receiving approval, for any substantive changes to their courses and to include a 14-day timeframe to process approval of course changes.

Dr. Azzolino agreed with all suggested changes.

Mr. McCarther inquired if the 14-day processing timeframe would be appropriate considering the potential course changes and approval process.

Ms. Van Allen mentioned that currently providers are required to submit their original CE applications 45 days prior to their events, if they submitted additional changes to the course a week before the event date, staff would be reviewing and offering approval potentially after the course had been offered.

Mr. Puleo suggested including that providers may not implement changes until they have received written approval from the Board.

Public Comment: Ms. Mary Witcraft, Continuing Education Manager from California Chiropractic Association, inquired if there could be a shortened processing time for smaller course changes, versus the 14-days suggested.

Mr. McCarther responded that, in reality, changes would be processed and approved on a much faster timeline but should an unexpected event arise Board staff would need to be allowed appropriate time to complete the review.

Mr. Kanotz suggested including a provision to state that depending on how substantive the change was, a completely new CE application might be required.

The Committee was in agreement on the proposed language and policy changes to CCR Section 362.1 (a) (5).

Ms. Boyer transitioned the conversation to the proposed additional section in the draft language document: CCR Section 362.2, Continuing Education Providers Denial and Appeal Process.

Mr. Puleo suggested changing the section title to Continuing Education Provider Withdrawal, Denial and Appeal Process.

Ms. Boyer summarized the causes for a provider's status withdrawal or denial. She highlighted that several of the causes were related to administrative action against a provider's license or potential criminal background record, which staff members were not confident would be possible to include in the regulation.

Mr. Puleo pointed out that these causes provided a disadvantage to providers who were also California chiropractic licensees, as the Board would have their license history and criminal background record. He reminded the Committee that the providers' demographic consisted of universities, associations, large organizations and not just individual licensees, which would make administering disciplinary action difficult as it would be problematic for the Board to hold one individual accountable from a larger organization for a violation.

Mr. Kanotz agreed that the regulations would have to be very detailed to include all potential scenarios and even due process hearings to administer violations correctly.

Mr. Puleo went on to describe potential situations that would make enforcing this portion of the regulation extremely challenging.

Mr. Kanotz pointed out that it would be the Board's burden to show necessity for requiring criminal background information from providers when submitting regulations to the Office of Administrative Law (OAL).

Mr. Puleo encouraged the Committee to remove the conviction references from the regulation.

Dr. Azzolino voiced his concern with allowing individuals with potential criminal backgrounds to become CE providers.

Mr. Puleo went on to describe the convoluted nature of determining whom would be the best individual to request criminal background information from, especially in larger organizations where there could be multiple staff members who participate in administering CE.

Determining which sole individual to focus on would be extremely taxing and potentially would not serve the ultimate purpose of preventing consumer harm.

Dr. Dehn inquired if a statement could be included that allowed the Board the ability to review a situation if they became aware of misdeeds. She felt it important to have a provision that allowed the Board the ability to investigate if the need arose.

Mr. Puleo responded that for a licensee that could be possible but for universities and larger organizations it would be challenging to investigate or even have jurisdiction over whomever appeared to be behaving inappropriately.

Dr. Dehn reiterated that including some provision to allow the Board to review complaints or suspicions would be appropriate. Without one, the Board has no authority to investigate.

Dr. Azzolino agreed and felt that the discretion to pursue action needed to lie with the Board.

Dr. Paris inquired if it was possible to have CE providers attest that they did not have a criminal background but not require them to produce a background check or report.

Mr. Kanotz responded that due processes actions would need to be taken into account if the Board was interested in having a discretionary category to review providers behavior or if the Board wished to have criminal records as a standard for denial of CE providers. Mr. Kanotz went on to suggest that there would be more opportunity to ask criminal background questions of CE instructors.

Mr. McCarther proposed removing the subsections that referred to criminal backgrounds and relying on the proposed language additions of CCR Section 362.2 (a) (4) to fulfill the Board's desires. Providers could attest to 'yes' or 'no' questions regarding their backgrounds and the Board would ultimately only seek violations if it became known that a provider answered dishonestly.

Mr. Kanotz responded that it would be challenging to prove necessity if the criminal conviction was not a part of the application's denial criteria but was included in an attestation.

Mr. Puleo hypothesized that OAL would deny the regulatory package if it required criminal backgrounds of providers.

Dr. Dehn agreed that she did not want the package denied, but was still interested in any possibility that could allow the Board discretion into reviewing providers.

Mr. Puleo stated that he would research the possibility of including any items related to background checks and he would report back to the Committee.

The Committee agreed to table the conversation until more information could be presented.

Ms. Van Allen inquired about CCR Section 362.1 (6) (H) and whether the meta-competencies would take the place of the subject areas on the CE completion certificate.

Mr. McCarther agreed that it would and also went on to state that 'meta' would be removed from all future CE documents and going forward only 'competency' would be listed.

Dr. Dehn also had a question regarding proposed language in CCR Section 362.2 (a) (6), she felt that the language was not clear enough for providers to understand potential violations.

Mr. McCarther agreed that the subsection should be clarified.

Mr. Puleo suggested separating CCR Section 362.2 into three distinct sections; Cause for Denial of a Provider Application, Cause for Withdrawal of Approval and an Appeal Process.

Ms. Boyer went on to summarize the proposed draft components included in CCR Section 362.2 (b) "Categories of recommended penalties". She included the proposed changes to CCR Section 362.2 (b) (1), which would include adding a timeframe a violation notice would be displayed on the board's website. The suggestion was to have the violation available on the board's website for the duration of the current provider's approval timeframe or no less than one year.

The Committee was in agreement.

Ms. Boyer went on to review the appeal process for a provider whose status had been withdrawn.

Dr. Azzolino and Dr. Paris agreed that a CE Review Committee would be more appropriate and expeditious than the full Board, but also suggested listing the make up of the CE Review Committee as the standing members of the Licensing & CE Committee.

Mr. McCarther questioned whether there should be a timeframe when a provider would be required to stop offering CE courses if they were in the appeal process of a revoked provider status.

Mr. Puleo suggested that they wouldn't be required to stop until they had exhausted their due process and received a final decision from the CE Review Committee.

Mr. Kanotz added that he would like to conduct some research into whether or not the Committee would be required to make a recommendation for a vote by the full Board.

Dr. Dehn inquired whether mail votes would be appropriate in this context.

Mr. Kanotz implied that mail votes could be a possibility or potentially a brief report at a full Board Meeting.

Ms. Boyer voiced her concern over having a provider wait for a decision until a full Board Meeting, as it could be a lengthy amount of time that they would continue to offer CE courses, despite their potentially egregious violation.

Mr. Puleo inquired if it was necessary to have the Review Committee hear the full appeal, or if he could issue a report and his decision to the Committee Members.

Mr. Kanotz implied that the Executive Officer could not issue a report, as it would go against administrative law protocol, the Board or one of its Committees would need to hear the appeal and ratify the decision.

Ms. Boyer went on to introduce CCR Section 363, Approval of Continuing Education Courses and the draft CE Provider Application and CE Course Event Application.

Mr. McCarther wished to review the CE Provider Application with the Committee.

Ms. Boyer reviewed the CE Provider Application and the number of contact individuals needed on the form; the Responsible Party, a primary CE contact and a secondary CE contact.

Dr. Azzolino inquired if instructors would be identifying themselves on this application.

Ms. Boyer responded that the instructors would be listed on the CE Course Event Application.

Mr. McCarther added that staff would be adding a portion to include the contact details of the primary and secondary CE contact individuals.

Mr. McCarther went on to review the provider questions listed on the second page of the application. He inquired of Mr. Kanotz whether the questions were valid, considering the Board would not deny a provider based on the information they submitted.

Mr. Kanotz responded that the standards of qualifications for providers would need to be identified in the regulation for there to be denial criteria. If the Board wished to ask for these materials without necessarily evaluating them, then the provision in the regulation could simply state 'without a response to these questions the provider would be denied'.

Mr. McCarther agreed that was more likely what would be needed.

Staff discussed the possibilities of requiring providers to submit supplemental material with their CE Provider Application but not specifically stipulating what would constitute as a denial if content was not to the Board's specifications. Determining appropriate criteria for the documents would be extremely burdensome for the regulatory process.

Dr. Paris suggested responding to providers with areas of concern regarding their supplemental material, without being prescriptive of what their documentation needed to consist of.

Mr. Puleo responded that if staff were to raise concerns with the provider's material there would also have to be a corresponding criteria section for those materials in the regulation.

Mr. McCarther agreed with Dr. Paris' sentiment, that staff would be available to offer guidance to providers should their documents be lacking in any particular way, but ultimately without corresponding language in the regulation, the Board would not have the authority to make providers change or alter what they had submitted with their application.

Dr. Paris asked for clarification about whether the providers would simply be attesting to their willingness to complete the items listed on the application or would they be required to demonstrate their ability to do so.

Mr. McCarther responded that providers would be required to provide examples of all items listed on the application but there would not be criteria to evaluate the material for a potential approval or denial. By complying with the application and providing all material to the Board, that would ultimately suffice as grounds for approval.

Dr. Paris suggested simply changing the form to 'yes' or 'no' questions, if the material would not have the possibility of being reviewed for quality.

Ms. Boyer supplied that a potential benefit of requiring providers to submit material was that should complaints arise of poor attendance keeping or completion certificates the Board would have the initial application and their material and hold the providers accountable for any indiscretions.

Mr. Puleo agreed that the Board would be able to hold the providers accountable for their own documents for future disciplinary actions.

Mr. Kanotz added that as a state entity, the Board did not have any mechanism to adjudicate whether a fact was true or not on a particular application. Other than going through an administrative law judge, which would require supplying evidence and a considerable amount of time.

Ms. Van Allen inquired if there could potentially be problems with the necessity standard through OAL, if the application required specific material but the regulations did not include standards for each item requested.

Mr. Kanotz responded that the necessity could be achieved by highlighting the Board's need to validate licensees CE records with the CE providers.

Mr. McCarther moved on to the final page of the application with the criminal background questions and acknowledged that those would be removed.

Dr. Azzolino raised concerns over approving providers that Board Members might have knowledge of their past criminal convictions.

Mr. McCarther wished to move on to the CE Event Application as there was additional information in that application that could potentially ease some of the Committee Member's fears.

Mr. McCarther reviewed the contents of the CE Event Application, on the second page the provider would identify which competency the course content would be based on and the amount of hours they were requesting.

Dr. Paris inquired if any learning objectives would be listed on the application for providers to select from.

Ms. Boyer shared that the course outline and hourly breakdown documents would be the most robust portion of the application, with the outline including the competency and specific objective for each hour of content.

Dr. Paris agreed with this method.

Mr. McCarther drew the Committee's attention to the final page of the application, with the instructor's attestation form. Mr. McCarther felt that any instructor who responded in the affirmative for these specific questions would be grounds for course denial.

The Committee agreed.

Dr. Dehn also inquired if a question could be included of whether an instructor had been excluded from an insurance or Medicare panel or has had their privileges revoked from working with a particular insurance company.

Dr. Paris inquired of legal counsel whether a question regarding insurance exemptions could be included as it was not a criminal action nor was it an action from a licensing board.

Mr. Kanotz responded that if the question was included, the Board would need to take the word of the instructor, as they had signed the attestation form. As previously mentioned, there would be challenges to adjudicate whether the answer was true or not. Mr. Kanotz went on to state that the Board would have more latitude with questions to instructors as the argument could be made that it was the Board's inherent duty to vet those individuals teaching licensees. But ultimately there could be problems related to resolving a dispute should an instructor challenge a denial.

Dr. Dehn posed a final request to have the Post Course Evaluation Form available for review and discussion at the next Committee Meeting.

### **Public Comment on Items Not on the Agenda**

There was none.

### **Future Agenda Items**

There was none.

### **Adjournment**

Dr. Azzolino adjourned the meeting at 1:23 p.m.