

**BOARD OF CHIROPRACTIC EXAMINERS  
PUBLIC SESSION MINUTES**

March 22, 2022  
Teleconference

**Board Members Present**

David Paris, D.C., Chair  
Laurence Adams, D.C., Vice Chair  
Rafael Sweet, Secretary  
Janette N.V. Cruz  
Dionne McClain, D.C.

**Board Member Absent**

Pamela Daniels, D.C. (Excused)

**Staff Present**

Kristin Walker, Acting Executive Officer  
Dixie Van Allen, Licensing & Administration Manager  
Andreia McMillen, Policy Analyst  
Tammi Pitto, Enforcement Analyst  
Jason Hurtado, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)

**1. Open Session – Call to Order / Roll Call / Establishment of Quorum**

Dr. Paris called the meeting to order at 12:01 p.m. Mr. Sweet called the roll. Dr. Daniels was excused from the meeting. All remaining members were present and a quorum was established.

**2. Update on Board's March 7, 2022 Joint Sunset Review Oversight Hearing and Review, Discussion, and Possible Action on Board's Response to Issues Identified in the Sunset Review Background Paper and During the Hearing**

Dr. Paris updated the Board on the March 7, 2022 Joint Sunset Review Oversight Hearing held by the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions that he and Ms. Walker participated in on behalf of the Board. He explained the purpose of this meeting is to discuss the Board's responses to the issues raised in the background paper prepared by Committee staff. Dr. Paris added the complex issues that require a deeper discussion can be addressed through a Board or committee meeting or the strategic planning process.

Ms. Walker shared staff's recommendation for the Board to designate two members to review and approve the final written responses that will be prepared by staff after the meeting.

- **Issue #1: (BOARD COMPOSITION.) Does BCE's composition need to be updated to include additional members of the public or non-chiropractic medical professionals?**

Dr. Paris stated the Board's current composition has not compromised consumer protection, as Board members are appointed by the Governor, held accountable by the Administration, and conduct business transparently at public meetings consistent with the Board's mission to protect and serve the public, not the profession. Dr. Paris noted this topic should be referred to the Board's strategic planning session scheduled for August 18, 2022.

Ms. Cruz agreed that the issue should be discussed thoroughly, potentially at the strategic planning session.

- **Issue #2: (REGULATIONS.) What is the current timeframe for BCE regulatory packages to be approved and finalized?**

Ms. Walker shared the average timeframe for regulatory packages is about one and half years from initial package submission for departmental approval through the effective date of Board regulations, and the new Regulations Unit within the DCA Office of Legal Affairs has drastically reduced the timeframe for reviewing regulatory packages.

Ms. Walker articulated the issue that remains is the regulatory workload currently in the concept development stage. The goal for upcoming years is to clear the overaccumulation of pending regulations in this stage. The Board is also dividing some of the larger pending packages into smaller proposals so that noncontroversial portions of the regulations can move forward while other concepts are developed.

Ms. Walker noted the Board currently only has one staff position dedicated to working on regulatory and policy work and due to current vacancies, the position is often redirected to assist with essential functions and projects. To make the internal operations more efficient, staff is working closely with the DCA Office of Human Resources (OHR) on a reorganization plan and to reclassify an existing vacancy to assist with regulatory work.

Dr. McClain asked if the reorganization of staff will further affect the staff shortage and increase staff workloads. Ms. Walker explained the reorganization plan will create separate Administration and Licensing/Continuing Education Units and delineate the duties performed by each unit. She also shared after the reorganization is complete, the Board will work with DCA on a recruitment effort to fill the vacant staff positions.

- **Issue #3: (STRATEGIC PLAN.) What is the status of the BCE's strategic plan? In addition, what will the priorities be for the upcoming strategic planning sessions.**

Dr. Paris acknowledged the Strategic Plan for 2020-2022 was postponed due to COVID-19 and Board member vacancies. Now that the Board is almost fully appointed, staff has been working with SOLID Strategic Planning Solutions to resume strategic planning. The focus of the strategic planning session will be the trends identified through the environmental scan and sunset review process, and the goal is to have a new strategic plan presented to the Board during the October meeting for approval.

- **Issue #4: (FUND CONDITION AND FEES.) BCE states the need for a statutory fee increase based on the result of a recent fee audit. Does the Board anticipate the need to further increase fees proposed by the fee study? What is causing the need for multiple fee increases over such a short period of time?**

Ms. Walker identified that the prior fee study conducted a few years ago did not account for the costs associated with the Board's Business Modernization IT project (Connect), the repayment of the loan the Board obtained from the Bureau for Automotive Repair (BAR), and the unanticipated and substantial rate increase for legal services provided to the Board by the Attorney General's office.

Ms. Walker assured the Board that the current fee study takes those factors into account with a future growth factor to rebuild six months of reserves within five years. However, as a point-in-time study, it did not account for the need to increase the Board's allocation to DCA's Division of Investigation (DOI) for sworn investigations. Staff is also monitoring proposed legislation to reduce the inactive license fee to half of an active license. Both factors may necessitate the numbers be adjusted further. Ms. Walker affirmed that the purpose of the fee study is to realign the fees with the actual costs associated with providing the services, and staff has been working closely with DCA's Budget Office to finalize a proposal.

Dr. McClain asked what efficiencies have been gained through the Connect system and if the efficiencies will save the Board money. Ms. Walker explained a significant amount of staff resources are currently dedicated to the development of the Connect system, but the online functionality has decreased the amount of staff time spent on routine tasks and will allow for more time to be dedicated to the Board's regulatory work. Ms. Walker noted staff is finalizing the testing for the final project phase and then will be moving to the maintenance and operations phase with the opportunity to finetune what has already been developed.

Dr. McClain asked when the maintenance phase would begin and end and if a cost benefit analysis for Connect could be added to a future agenda item at a committee or

board meeting. Ms. Walker informed the Board that the maintenance and operations phase is scheduled to begin in the spring and is anticipated to last between 12 to 18 months. Ms. Walker recommended the Board discuss measuring the benefits of the project through a formal study during strategic planning.

Ms. Cruz asked if the budget could be a topic for the strategic plan and if there were plans to further adjust the fees to address the items that were not taken into consideration during the fee study. Ms. Walker stated that the fees recommended in the fee study completed by Matrix Consulting should put the Board in a better financial position; however, if the proposed legislation to reduce the inactive license fee passes, then adjustments to the fee structure would be necessary.

Ms. Walker welcomed the Board to discuss tracking the budget formally through a strategic plan objective, so the Board is not only measuring efficiencies but anticipating future budgetary concerns.

- **Issue #5: (Fee Increases and Barriers to Chiropractic Professionals.) With the need for statutory fee increases, has BCE considered how to minimize the impact of these fee increases on early-career chiropractic professionals or on underrepresented chiropractic professionals?**

Dr. Paris acknowledged the Board has not formally studied the impacts of licensing fees on early-career professionals or underrepresented groups but would like it to be a topic of discussion during strategic planning. The fee study unveiled the efficiencies gained in the initial licensing application process through the Connect system; accordingly, the Board is looking to reduce the initial application fee. Dr. Paris stated the increase to the annual license renewal of \$23 is marginal compared to other costs incurred by licensees, such as running a small business or repaying student loan debt. Ms. Walker added that the new fee structure creates parity and accurately reflects the costs of the functions performed by the Board.

Ms. Cruz and Dr. McClain agreed the strategic planning session should include a discussion on how to evaluate the impact of licensing fees on early-career professionals or underrepresented groups.

- **Issue #6: (Reciprocal License Requirements.) BCE requires applicants that hold active licenses from other states and are seeking license reciprocity in California to have completed training and evaluation equivalent to California requirements. How do California licensing requirements compare to other states? Has the BCE considered revising license reciprocity requirements for candidates holding chiropractic licenses in other states or allow reciprocity with candidates who are licensed in other countries?**

Dr. Paris shared the initial licensure and licensure through reciprocity processes are very similar except the reciprocity path allows for licensure under prior formats of the National Board of Chiropractic Examiners (NBCE) examination. In order to be eligible for licensure by reciprocity, the applicant must graduate from a Board-approved chiropractic college, complete successful examination in each of the subjects examined in California in the same year, possess a license in another state that provides reciprocity to California licensees, pass the California Chiropractic Law Examination (CCLE), and have practiced for five years. If not all criteria are met, then the applicant can apply through the initial application process. Dr. Paris requested the Board include this as a topic of discussion during strategic planning session.

- **Issue #7: (CE.) What accountability metrics are in place to ensure CE earned through distance learning is appropriate? Are licensees complying with CE requirements, as demonstrated in ongoing audits BCE staff conducts to determine CE was actually completed?**

Dr. Paris informed the Board that the Licensing & Continuing Education Committee is currently developing comprehensive changes to the Board's continuing education (CE) requirements and recently voted to move forward with a smaller regulatory proposal to narrow the definition of distance learning to asynchronous coursework, with the exception of adjustive technique, and give the Board the authority to grant exemptions to the CE requirements in cases where licensees were affected by a natural disaster or state of emergency.

Dr. Paris noted the failed audit percentage of 15.4% is higher than comparable professions, but the Board expects the failure rate to decrease over time through licensee outreach, regular auditing, and primary source verification. Ms. Walker added the primary source verification would come directly from the CE providers through the new IT system, Connect.

Dr. McClain asked why it is suggested that the target audit rates for CE be reduced from ten percent to five percent. Ms. Walker stated the target of ten percent was difficult to maintain as it is currently a paper-based process. She suggested that if the Board would like to continue auditing ten percent of the licensee population, staff can work with DCA's Office of Information Services to see if there is a more efficient way to analyze the submitted data.

Dr. McClain requested the Board examine updated CE audit data during the strategic planning session to ascertain whether the number of failed audits has returned to normal following the increase in failures at the beginning of the COVID-19 pandemic.

Dr. McClain inquired about an error on page 16 which stated DCA approved a request for a waiver extension to March 31, 2022, when the waiver was extended as a public health measure. Ms. Walker confirmed that the waiver was extended by the

Administration based on concerns relating to the Omicron variant, not a specific request that was made. Dr. McClain requested it be corrected in the written response.

- **Issue #8: (Performance-Based Assessment of Licensee Competency.) Has the Board considered adding performance-based assessment of licensee competency in addition to or in lieu of CE coursework?**

Dr. Paris reported that as part of the CE enhancements, the Licensing & Continuing Education Committee discussed requiring “knowledge check” examinations and course evaluations for Board-approved CE courses. He also noted concerns regarding a licensee’s competency are often brought to the Board’s attention through enforcement cases wherein the Board may order a licensee to take an ethics and boundaries assessment, post-licensure examination, or mental or physical examination. Dr. Paris requested the Board refer this topic for consideration during the Board’s strategic planning session.

- **Issue #9: (Enforcement Timeframes.) Since the last sunset review, the BCE has reduced the time required to complete formal discipline, but it still has not been able to meet the target timeframes set by the BCE and DCA. Has the Board considered implementing additional measures to reduce enforcement timeframes?**

Ms. Walker conveyed the Board is committed to protecting consumers through its Enforcement Program and set an aggressive goal of closing investigations within 120 days. Through technology, training, and reorganization, the Board hopes to achieve this goal in coming years.

Dr. McClain asked about the discrepancy regarding enforcement costs as the Board is collecting less than forty percent of what was assessed in disciplinary cases.

Ms. Walker replied the Enforcement Committee is working on updates to the Board’s disciplinary guidelines, and one of the key factors relating to the issue of cost recovery is when a license is revoked or surrendered, oftentimes the cost recovery is not due until they petition the Board for reinstatement of their license. Ms. Walker suggested the Enforcement Committee discuss having the cost recovery be due within a specific timeframe rather than upon reinstatement of a license.

Dr. McClain agreed and added that most petitioners do not pay cost recovery prior to petitioning the Board for reinstatement. Ms. Walker reported the Enforcement Committee is currently looking at the petitioner process as part of the Consumer Protection Enforcement Initiative regulation discussion and could include payment of cost recovery as a condition precedent to being heard by the Board. Dr. McClain requested the Enforcement Committee discuss this issue at their next meeting.

Dr. Paris agreed and affirmed that the Board's response should include that each board sets its own timeframe and in the interest of consumer protection, the Board has set an ambitious goal of 120 days.

Dr. McClain inquired about other healing arts boards' timeframes for their enforcement measures. Ms. Walker answered that staff looked at boards across the Department and found that it ranges from 90 to 365 days, but the most common timeframe was between 180 to 270 days. Dr. McClain requested that a comparison to other healing arts boards be included in the response.

Dr. McClain noted that the target timeframe for discipline was 540 days from start to finish and currently the Board is at 800 to 900 days. She asked what other boards averages are for discipline. Ms. Walker responded that 540 days, or 18 months, is the departmental standard and if internal investigation average can be reduced to 120 days, then the 540-day target is achievable. Ms. Walker agreed that a comparison to other healing arts boards discipline timeframes may be included in the response.

- **Issue #10: (Practice Violations.) Has the Board sought additional enforcement measures to curb the spread of medical misinformation within the chiropractic community?**

Dr. Paris reported the Board has had several complaints against licensees who are advertising or inferring that chiropractic care can help patients reduce their risk of COVID infection. In many cases, these complaints were related to misleading information on licensees' websites with claims about the "immune boosting" effects of chiropractic along with general health, nutritional, and wellness advice. The Board took an educational approach by notifying licensees of the complaint, reviewing their response, and closing the case after they removed any questionable or unsupported claims.

Ms. Walker added that there are egregious cases currently under investigation and the Board takes appropriate action against licensees who exceed the scope of practice.

- **Issue #11: (Enforcement Disclosures.) The Patient's Right to Know Act requires BCE licensees to disclose probationary status to patients. The BCE recommended in their report that two exemptions be removed from the Act (BPC § 1007 subdivision (c)) to strengthen consumer protection. Are there any additional measures that can be taken to ensure consumers are aware of the probationary status of licensees?**

Dr. Paris confirmed that it is in the best interest of consumer protection to remove the exemptions that could allow, from a chiropractic context, for a patient to not be informed of a licensee's probationary status. He noted that this has been previously discussed and agreed on by the Board.

Ms. Walker added that staff needs to include information on the impact of amending the Patient's Right to Know Act in the response. She stated these changes would benefit patients by eliminating inadvertent exemptions to the requirement that could allow probationers to find ways around notifying their patients of their probationary status. Since this notification requirement became effective, staff consistently receives questions from probationers related to the exemptions for "unscheduled visits" and when "the licensee is not known to the patient until immediately prior to the start of the visit", presumably in an attempt to find an avenue to circumvent this important notification requirement.

Ms. Walker added that this is troubling as these two scenarios illustrate situations where it is imperative that patients be informed of the licensee's probationary status, as they may not have had the opportunity to utilize DCA's License Search to research the licensee's background on their own.

Dr. Paris asked if there were additional measures that can be taken to ensure consumers are aware of the probationary status of licensees. Ms. Walker expressed that disciplinary information is available to consumers through DCA's License Search, but it remains a challenge ensuring that patients know about the Board and where to look for this information. She suggested the Board would benefit from additional outreach to consumers to increase public awareness.

- **Issue #12: (Impacts of the COVID-19 Pandemic.) Since March 2020, there have been a number of waivers issued through Executive Orders that impact BCE operations, BCE licensees, providers, and patients throughout the state. Do any of these waivers warrant an extension or statutory changes? How has the BCE addressed issues resulting from the pandemic and how does the Board aim to continue to address these issues as the pandemic endures?**

Ms. Walker stated that the Board supports telework for its employees but there are challenges, as the Board's current fund condition has prevented the Board from purchasing necessary equipment and software to allow staff to effectively telework on a full-time basis and the Board still heavily relies on paper-based processes. As a result, the Board currently allows up to two days per week of remote work for staff. However, the phone and fax service have recently been upgraded to allow staff to utilize these services from home.

Ms. Walker explained the Board has not yet discussed regulating telehealth within the chiropractic profession, but the Board has not observed an increase in complaints regarding telehealth. She requested that the Board discuss this issue further during strategic planning.

- **Issue 13: (Technical Changes May Improve Effectiveness of BCE Operations.) There are amendments to BCE's Practice Act that are technical in nature but may improve BCE operations and the enforcement of the Act.**

Dr. Paris stated the Board has not yet discussed any changes to the Act. Ms. Walker asked if the Board believed there were no technical changes needed in the Act or if the Board would like to further discuss it during strategic planning.

Dr. McClain, Dr. Adams, and Dr. Paris agreed that this topic should be discussed during strategic planning.

- **Issue #14: (Regulatory Review.) Review of the regulatory functions of the BCE.**

Dr. Paris informed the Board that the Board will be reviewed again on a future date to be determined.

Ms. Walker noted an additional issue raised during the meeting was the Board's outstanding loan from BAR which was based on a judgment against the Board for an employee issue and whether the licensees should be responsible for repayment of that loan. However, Ms. Walker specified that the Board's funding solely comes from licensees, applicants, or others for whom the Board is providing services. Ms. Walker asked if the Board was supportive of this being the response.

Dr. Paris, Dr. McClain, and Dr. Adams voiced their agreement.

Ms. Walker stated another issue raised during the hearing was whether there are controls in place for the Board to limit legal expenses on disciplinary cases, in light of the significant expenses incurred through the Attorney General's office. Ms. Walker noted only 14 percent of disciplinary cases go to hearing and the majority of cases are settled. While there are no formal controls in place, the Board works closely with the Deputy Attorney General (DAG) and takes their advice on determining the appropriate course of action.

**MOTION: DR. MCCLAIN MOVED TO NOMINATE MS. CRUZ AND DR. PARIS TO REVIEW AND APPROVE THE FINAL WRITTEN RESPONSE TO THE ISSUES IDENTIFIED THROUGH SUNSET REVIEW ON BEHALF OF THE BOARD.**

**SECOND: MR. SWEET SECONDED THE MOTION.**

**Discussion:** None.

**Public Comment:** None.

**VOTE: 5-0, (DR. PARIS-AYE, DR. ADAMS-AYE, MR. SWEET-AYE; MS. CRUZ-AYE; DR. MCCLAIN-AYE).**

**MOTION: CARRIED.**

### **3. Public Comment for Items Not on the Agenda**

There were no public comments.

### **4. Future Agenda Items**

Victor Tong, D.C., a CE provider, requested the Board discuss allowing live webinars to be considered for in person credit.

### **5. Adjournment**

Dr. Paris adjourned the meeting at 1:52 p.m.