



**BOARD OF CHIROPRACTIC EXAMINERS
ENFORCEMENT COMMITTEE
MEETING MINUTES
October 6, 2022**

In accordance with the statutory provisions of Government Code section 11133, the Enforcement Committee of the Board of Chiropractic Examiners (Board) met via teleconference/Webex Events with no physical public locations on October 6, 2022.

Committee Members Present

Laurence Adams, D.C., Chair
David Paris, D.C.
Rafael Sweet

Staff Present

Kristin Walker, Executive Officer
William Walker III, Enforcement Manager
Dixie Van Allen, Licensing & Administration Manager
Amanda Campbell, Enforcement Analyst
Tammi Pitto, Enforcement Analyst
Sabina Knight, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)

1. Call to Order / Roll Call / Establishment of a Quorum

Dr. Adams called the meeting to order at 2:36 p.m. Dr. Paris called the roll. All members were present, and a quorum was established.

2. Review and Possible Approval of December 3, 2021 Committee Meeting Minutes

Motion: Mr. Sweet moved to approve the minutes of the December 3, 2021 Enforcement Committee meeting.

Second: Dr. Paris seconded the motion.

Discussion: None.

Public Comment: None.

Vote: 3-0 (Dr. Adams-AYE, Dr. Paris-AYE, and Mr. Sweet-AYE).

Motion: Carried.

3. Update on Board's Enforcement Program

Ms. Walker provided an update on the Board's Enforcement Program. She indicated staff has been working to finalize the recruitment announcement for expert witnesses and shared a proposed timeline for the Committee to conduct interviews with qualified applicants and make final selections in spring 2023. She informed the Committee that Senate Bill 1434 (Roth, Chapter 623, Statutes of 2022) was signed by Governor Newsom and becomes effective on January 1, 2023. She explained this bill will strengthen the existing patient notification requirement for licensees placed on probation by the Board by removing specified exemptions.

Ms. Walker updated the Committee on the regulatory proposals that affect the Enforcement Program, including the: 1) Delegation of Authority and Citation Program package, which clarifies role of the Assistant Executive Officer as the Executive Officer's designee and also ensures the Board's citation program is consistent with the provisions of Business and Professions Code (BPC) section 125.9; 2) proposal to update the Board's *Disciplinary Guidelines* and implement the Uniform Standards for Substance Abusing Licensees; 3) collection of regulatory proposals related to the Consumer Protection Enforcement Initiative (CPEI); and 4) updates to the Board's record keeping requirements.

Ms. Walker also shared that enforcement staff has been working DCA's Organizational Improvement Office (OIO) on a project to review and update its enforcement processes and identify strategies to improve productivity, reduce timeframes, and provide excellent customer service to those involved in the complaint process. She also provided the Committee with a comparison of Enforcement Program statistics for fiscal years 2017-18 through 2021-22.

Mr. Sweet asked who will be conducting the expert recruitment training sessions and about the content that will be covered during those sessions. Ms. Walker explained the Attorney General's office will deliver the majority of the training and noted their Licensing Section has a robust program for training experts on expert witness testimony and report writing.

Public Comment: None.

4. Review, Discussion, and Possible Recommendation Regarding Proposed Changes to the Record Keeping and Retention Requirements for Chiropractic Patient Records (California Code of Regulations [CCR], Title 16, section 318)

Ms. Pitto informed the Committee that the Board's current record keeping regulation – CCR, title 16, section 318 – does not: 1) specify the necessary documentation for the patient history, complaint, diagnosis/analysis, and treatment; 2) differentiate between an initial patient encounter and an established patient visit; or 3) address the retention or transfer of patient records following the closure or sale of a practice due to the

retirement, discipline, or death of a licensee. She asked the Committee to continue the discussion regarding the appropriate record keeping requirements for licensees, provide feedback and direction to staff, and consider selecting a Committee member to work directly with staff on this issue.

Dr. Paris opined that the Colorado record keeping regulations are well-defined between an initial patient visit and an established patient visit and suggested those regulations may be a good model for consideration. Dr. Adams concurred with Dr. Paris, and also shared that in his experience, many patients visit a chiropractic practice to maintain their wellness and may not necessarily have a chief complaint. Dr. Adams emphasized the importance of ensuring any proposed requirements reflect the various types of patient encounters. Dr. Paris commented that providers still typically use a standard documentation method, such as SOAP (subjective, objective, assessment, and plan) or another model, to document the patient visit regardless of whether the patient has a chief complaint or any new findings between visits.

Mr. Sweet agreed that the Colorado regulations are well-defined and asked if those documentation and retention requirements would be burdensome for providers to implement. Dr. Adams replied that it should not be an issue as chiropractic offices often have a significant volume of records and noted that digitization of records has significantly increased within the profession and drastically reduces physical storage needs.

Motion: Mr. Sweet moved to direct staff to prepare proposed language to amend CCR, title 16, section 318 to address current record keeping requirements and the retention of records following the death of a licensee or the sale of a practice, with Dr. Paris identified to assist staff with the technical components of the language, and present the proposed language to the Committee for review and discussion at a future meeting.

Second: Dr. Adams seconded the motion.

Public Comment: None.

Vote: 3-0 (Dr. Adams-AYE, Dr. Paris-AYE, and Mr. Sweet-AYE).

Motion: Carried.

5. Review, Discussion, and Possible Recommendation Regarding Proposed Changes to the Board's *Disciplinary Guidelines and Model Disciplinary Orders* and Implementation of the Uniform Standards for Substance Abusing Licensees (CCR, Title 16, section 384)

Ms. Walker provided background information on the proposal to amend the Board's *Disciplinary Guidelines* and implement the Uniform Standards for Substance Abusing

Licensees. She explained BPC section 315 established the DCA Substance Abuse Coordination Committee and required the Committee to formulate uniform and specific standards that each healing arts board shall use in dealing with substance abusing licensees. Through this proposal, the Board is seeking to implement those standards by regulation and make necessary updates to the *Disciplinary Guidelines* to enhance its disciplinary penalties and strengthen public protection.

Ms. Walker shared that staff has been working on updates to the standard and optional conditions of probations within the *Disciplinary Guidelines* to increase the effectiveness of its probation program. She provided an overview of the proposed changes, which, in addition to clarifying the language, include:

1. Adding new standard conditions of probation requiring probationers to maintain a current and active license, reimburse the Board for its probation monitoring costs, practice a minimum of 24 hours per week while on probation, not serve as a continuing education (CE) instructor while on probation, file their current contact information and employment status, and notify their patients of their probation status;
2. Adding new optional conditions of probation for the Part IV national examination, ethics and boundaries essay examination, and limitations on practice locations; and
3. Strengthening the optional conditions of probation for practice monitoring and third-party chaperone requirements.

Mr. Sweet asked for clarification on the basis and rationale for the proposed additions and changes to the conditions of probation. Ms. Walker replied that the proposed changes are based on similar requirements other healing arts boards have implemented, challenges the Board has faced in its disciplinary cases, and opportunities to further strengthen the probation monitoring program.

Dr. Adams asked for additional information regarding the proposed condition for probationers to pay the costs of monitoring. Ms. Walker explained this idea was being presented to the Committee for initial discussion and the purpose would be to help shift the burden of paying for probation monitoring activities from the general licensing population to the specific probationers whose conduct warranted monitoring by the Board. Dr. Adams shared his support for the idea of recovering the direct costs of the time spent on probation monitoring. Mr. Sweet concurred.

Dr. Paris inquired about the potential need to include “postceptor” arrangements (postgraduate intern experiences) in the language. Ms. Walker clarified that although the Board’s regulations only address a “preceptor” program, some chiropractic colleges allow graduates to remain temporarily enrolled to participate in a “postceptor” program.

She confirmed the language in the *Disciplinary Guidelines* would prohibit a licensee on probation from serving as the intern's supervisor in either of those scenarios.

Dr. Paris suggested prohibiting a licensee on probation in any state from serving as a CE instructor, broadening the language for the ethics and boundaries assessment to allow the utilization of equivalent examinations as approved by the Board, and adding language to the community service condition to prohibit the probationer from completing their service with an organization if they have a financial, personal, or business relationship.

Ms. Walker thanked the Committee members for their feedback on the proposed changes to the conditions of probation and explained staff will incorporate their comments into the draft language and develop recommended changes to the minimum and maximum penalties for specific violations for the Committee's discussion at a future meeting.

Public Comment: A caller identified as Dr. Vy asked if the regulations could be updated to require counseling to figure out what led to the event that resulted in disciplinary action, as there are many programs that could help and there are many great teachers with disciplinary actions. Dr. Vy also asked if someone could continue to hold seminars if they are not the instructor and if participants would get credit for the seminars. In response, Ms. Knight informed Dr. Vy that those types of rehabilitative efforts may be imposed as optional terms depending on the specific facts of a case.

Dr. Paris asked about a voluntary option for treatment of substance abusing licensees be made available prior to any discipline being imposed. Ms. Walker clarified that some healing arts boards have a diversion program for this purpose and offered to provide additional information on diversion programs to the Committee at a future meeting.

Christopher Greene, D.C. stated he served as a practice monitor for several states and believes clarification to the monitoring program requirements and expectations would be very beneficial. He shared that one of the challenges for a monitor is knowing how to structure a report and what the Board expects the monitor to review. Dr. Greene also commented that there are training programs for chaperones and although the chaperone could be a staff member, the chaperone should not: 1) serve dual purposes; 2) be allowed to leave the room; or 3) be a family member.

6. Review, Discussion, and Possible Recommendation Regarding Proposed Regulations for Disciplinary Decisions Involving Sexual Contact with a Patient and Required Actions Against Registered Sex Offenders (add CCR, Title 16, sections 384.1 and 384.2)

Ms. Pitto explained on August 29, 2016, as part of the comprehensive CPEI regulatory package, the Board had approved proposed language to add CCR, title 16, sections

390.7 and 390.8, and staff subsequently renumbered these proposed sections as 384.1 and 384.2 to place them within the disciplinary portion of the Board's regulations.

Ms. Pitto stated the proposed section 384.1 (Sexual Contact with Patient) would require any proposed decision or decision that contains a finding of fact that a licensee engaged in any act of sexual contact, as defined in BPC section 729, subdivision (c), to contain an order of revocation, and a proposed decision shall not contain a stay of the revocation. She also informed the Committee that the proposed section 384.2 (Required Actions Against Sex Offenders) would require the Board to deny an application for licensure or revoke a license for an individual who is required to register as a sex offender, and would prohibit the Board from reinstating or reissuing the individual's license, issuing a stay of revocation, or placing the license on probation. Ms. Pitto asked the Committee to review and discuss the previously approved language and provide feedback to staff on whether any additional changes should be made.

Dr. Paris asked if the proposed section 384.2 would remove the Board's discretion for someone who was convicted and is currently registered as a sex offender. Ms. Walker confirmed the proposed language, as drafted, would eliminate the Board's discretion in those circumstances. Dr. Adams raised his concerns with removing the Board's discretion and provided an example of circumstances where it may not be necessary to deny an application or revoke a license to protect the public. Dr. Paris and Mr. Sweet agreed with Dr. Adams' concerns.

Ms. Walker informed the Committee that staff will gather additional information on the tiers of registration for sex offenders and similar regulations by other healing arts boards and report back to the Committee for further discussion.

Public Comment: None.

7. Public Comment for Items Not on the Agenda

Public Comment: None.

8. Future Agenda Items

Dr. Paris indicated the Continuing Education Committee was referring the issue of petitioners repeating the same continuing courses for credit to the Enforcement Committee and suggested adding this topic to a future agenda.

Dr. Adams proposed discussing a requirement for petitioners to pass Part IV of the National Board of Chiropractic Examiners (NBCE) examination.

Ms. Walker explained the Committee will be discussing the petition process as part of the CPEI regulatory proposals and suggested including those two items during that discussion. Drs. Adams and Paris concurred.

Public Comment: A caller identified as Dr. Vy inquired about obtaining CE credit for attending Board meetings. Ms. Walker informed her that the Board's regulations only allow CE credit for attendance at a Board meeting that also includes petition hearings on the same agenda.

9. Adjournment

Dr. Adams adjourned the meeting at 4:25 p.m.