



**BOARD OF CHIROPRACTIC EXAMINERS  
ENFORCEMENT COMMITTEE  
MEETING MINUTES  
December 9, 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 December 9, 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) Ah Po, Enforcement Analyst  
Tammi Pitto, Enforcement Analyst  
Sabina Knight, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)  
Heather Hoganson, Regulatory Counsel, Attorney III, DCA

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

Dr. Adams called the meeting to order at 12:30 p.m. Dr. Paris called the roll. All members were present, and a quorum was established.

**2. Review and Possible Approval of October 6, 2022 Committee Meeting Minutes**

**Motion: Mr. Sweet moved to approve the minutes of the October 6, 2022 Enforcement Committee meeting.**

**Second: Dr. Paris seconded the motion.**

**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 informed the Committee that staff participated in action planning sessions with DCA's SOLID Training and Planning Solutions on November 29–30, 2022, and December 5, 2022, to identify the specific tasks and actions that staff will be taking to implement each of the objectives from the Board's 2022–2026 Strategic Plan. She also shared that staff will present the final action plan to the Board for discussion at the January 20, 2023 meeting. Ms. Walker noted that staff is making progress on the expert recruitment and is planning to begin accepting applications soon.

Ms. Walker updated the Committee on the following regulatory proposals:

- Disciplinary Guidelines and Uniform Standards for Substance Abusing Licensees (Amend California Code of Regulations [CCR], Title 16, Section 384): At the October 6, 2022 meeting, the Committee reviewed and discussed proposed changes to the standard and optional terms and conditions of probation. Staff plans to return this proposal to the Committee to discuss the minimum and maximum penalties for violations of the statutes and regulations within the Board's jurisdiction at the next meeting.
- Collection of Proposals Related to the Consumer Protection Enforcement Initiative (CPEI): The proposals regarding the filing of addresses and licensure notice posting requirements will be moved to the Licensing Committee for discussion. The proposals regarding mandatory penalties for sexual misconduct violations and registered sex offenders and activities performed by unlicensed individuals within a chiropractic practice will be discussed under Agenda Items 4 and 5. Staff is developing the remaining proposals and plans to present them to the Committee for discussion at a future meeting.
- Record Keeping Requirements for Chiropractic Patient Records, Including Retention and Disposition of Records Upon Closure of Practice or Death/Incapacity of Licensee (Amend CCR, Title 16, Section 318): Staff is developing proposed language for discussion by the Committee at the next meeting.

Mr. Sweet noted the number of complaints received so far during fiscal year 2022–23 was significantly lower than prior years and asked if that was due to a specific reason. Ms. Walker replied that staff will monitor the number of complaints received over the next few months and provide an update to the Committee if that trend continues.

**Public Comment:** None.

**4. 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 California Code of Regulations [CCR], Title 16, sections 384.1 and 384.2)**

Ms. Walker asked the Committee to continue their policy discussion regarding the regulatory proposal to add CCR, title 16, sections 384.1 and 384.2, which would: 1) require any proposed decision issued by an administrative law judge that contains a finding of fact that a licensee engaged in an act of sexual contact, as defined, to contain an order of revocation without a stay; 2) allow the Board to issue an order of revocation with a stay and place the licensee on probation following a finding of sexual contact; and 3) require the Board to deny an application for licensure or revoke the license of any individual who is subject to registration as a sex offender pursuant to Penal Code (PC) section 290 or an equivalent law in another jurisdiction and prohibit the Board from reinstating the license or placing the license on probation.

Ms. Walker summarized the updates that were made to California's sex offender registration system through Senate Bill (SB) 384 (Chapter 541, Statutes of 2017) effective January 1, 2021, which transitioned the lifetime registration requirements to a three-tier system that mandates registration for 10 years for a tier-one offense, 20 years for a tier-two offense, and lifetime for a tier-three offense. She explained SB 384 also provided the ability for current registrants to petition the court for removal of their registration requirements after completion of the minimum registration time based on their offense. She also noted staff evaluated similar regulations by other DCA healing arts boards and found that those boards generally prohibit anyone who is subject to registration from practicing within those professions.

Dr. Paris asked if 10 years was the minimum amount of time that an individual would be subject to registration under the new system. Ms. Walker replied the minimum registration period is 10 years for an adult offense and five years for a juvenile offense. Dr. Paris noted that the draft regulatory language would then impose a minimum 10-year waiting period for relicensure for all individuals subject to registration.

Dr. Adams requested additional information regarding tier-one offenses. Ms. Walker explained tier one is generally used for misdemeanor sex offenses and requires registration for a minimum of 10 years. She noted the severity of the offenses increases progressively for tiers two and three. Dr. Adams asked if tier one would be imposed for offenses such as indecent exposure. Ms. Walker responded affirmatively but noted the proposed language for CCR, title 16, section 384.2, subdivision (b), exempts a misdemeanor conviction for violating PC section 314 (Indecent Exposure) from the mandatory penalty of license denial or revocation.

Dr. Paris recalled other examples of potentially less egregious convictions. Dr. Adams agreed and suggested it would be more appropriate for the Board to retain its discretion to address tier-one offenses based on the facts of the case. Ms. Walker informed the

Committee that staff could prepare language similar to CCR, title 16, section 384.1 where the Board would retain its discretion for handling tier-one offenses and impose mandatory denial or revocation for tiers two and three. Dr. Adams asked how that would apply to registrants under tiers two and three. Ms. Walker explained the registrant would need to successfully petition the court for removal from the list before they would be eligible to apply for licensure or reinstatement. Dr. Paris asked if tier-one offenses are all misdemeanor violations. Ms. Walker replied that tier one includes misdemeanors and non-serious or non-violent felonies, as defined.

Mr. Sweet expressed his support for retaining discretion over tier-one offenses as it provides the Board with flexibility and commented that there would be no need for such discretion for tiers two and three. Dr. Paris agreed.

**Motion: Dr. Paris moved to recommend that the proposed language to add CCR, title 16, sections 384.1 (Sexual Contact With Patient) and 384.2 (Required Actions Against Registered Sex Offenders) with the suggested edit to section 384.2 for tier-one offenses be moved to the Board for consideration.**

**Second: Mr. Sweet 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 the Authorized Activities Performed by Unlicensed Individuals within a Chiropractic Practice (amend CCR, Title 16, section 312)**

Ms. Walker explained CCR, title 16, section 312 outlines and clarifies the role of unlicensed individuals within a chiropractic practice and establishes the supervision requirements for the doctor of chiropractic who will be overseeing those activities. She shared that the proposed regulatory language to amend this section was originally approved by the Board in 2016 and is being presented to the Committee for two reasons: 1) to discuss whether the language adequately addresses the role of an unlicensed individual in a chiropractic practice; and 2) the Board received a public comment at the October 27, 2022 Board meeting expressing concern that this section does not differentiate between an individual who has never been licensed or an individual whose license has been revoked or surrendered for sexual misconduct. She also shared potential ideas to develop a more descriptive term beyond “unlicensed individual” to describe the support staff within a practice and differentiate between staff that are not regulated by any entity and those who are licensed by another DCA healing arts board.

Dr. Adams began the discussion by proposing that the requirement for “indirect supervision” under CCR, title 16, section 312, subdivision (a)(3), be replaced with “under the direct order of the doctor.” He explained there may be circumstances where the doctor of chiropractic may not be physically present at least 50% of the work week, which would not allow the unlicensed staff to follow through with the physiotherapy treatment that had already been ordered by the doctor of chiropractic for the patient following the evaluation. He suggested the Committee consider either reducing or eliminating the time requirement, which can be limiting for the patient, and instead, mandate that any physiotherapy treatment be under the direct order of the licensee.

Dr. Paris asked if the term “work week” had been defined and if the 50% presence is based on the hours the office is open or the actual patient care times, as those are often less. He noted the use of that term within the text is vague.

Dr. Paris also questioned whether other activities such as rehabilitation exercises would be included under the regulation. Mr. Sweet agreed and asked for clarification regarding the proposed change from the term physical therapy to physiotherapy. Dr. Adams explained the term physiotherapy is the appropriate term within the practice of chiropractic.

Dr. Adams redirected the Committee to his suggestion to require that such services be performed “under the direct order of the doctor” following the licensee’s evaluation and preparation of a treatment plan. Dr. Paris expressed his concern with the fact that the language requiring the doctor to perform periodic reevaluations at least every 30 days had been removed through this proposed language. He explained it is important that the licensee reassess the treatment plan and patient’s progress at least once per month and suggested strengthening the language to prevent circumstances where a patient could be visiting the office for physiotherapy or rehabilitative care for months without seeing the licensee. Dr. Adams concurred with Dr. Paris and suggested removing the 50% presence requirement, and instead, keeping the requirement for periodic reevaluations and reassessments. Dr. Paris commented that the term “readily available” should be further defined or replaced with language such as “immediately available by direct verbal contact.” He also suggested including language for circumstances where a patient presents with a new complaint or change of condition and minimum training requirements. Dr. Paris stated it is in the interest of public protection to ensure the licensee is spending some time on site with the unlicensed staff and shared that he could see the potential for abuse and risk by not mandating it. Dr. Adams replied that periodic reevaluations would help strengthen public protection.

Mr. Sweet asked if the periodic evaluation would be defined and occur at specific intervals. Dr. Adams explained that reevaluations are typically conducted every 30 days. Mr. Sweet indicated he would be comfortable with that. Dr. Adams asked his opinion on the percentage of time during the work week. Mr. Sweet replied he does not think it is necessary.

Dr. Adams raised another issue about multidisciplinary offices with staff that may be licensed in other healing arts professions and how the proposed language would apply to them. Dr. Paris replied that those individuals would be practicing within the scope authorized by their license.

Dr. Adams returned the discussion to the physical presence requirement. Dr. Paris provided an example of a licensee conducting a telehealth or in-person visit with patients, including evaluation and development of a treatment plan, and then sending them to various satellite clinics where the licensee never actually works for physiotherapy and rehabilitation to be provided by unlicensed staff. He expressed the concern for public safety and potential for fraud if licensees were able to operate facilities where there is never a licensee physically present. Dr. Adams reiterated his concern with how the language could prevent patients from accessing ultrasound or rehabilitation services while a licensee is away from the office for vacation. Dr. Paris acknowledged the importance of continuity of care but noted it is a business decision by the licensee to make arrangements for coverage during their absence or close the office. Dr. Adams proposed reducing the time requirement to 25%. Dr. Paris indicated his concern was with completely eliminating the physical presence requirement. He also reiterated the need to strengthen the definition of "readily available," how to address a patient's change in condition, keep the requirement for periodic reevaluations, and replace "individual's performance in relation to the patient" with the patient's progress towards treatment goals. Mr. Sweet thanked Drs. Adams and Paris for sharing their perspectives on the issue.

Ms. Walker asked if the use of the term physiotherapy within the draft language was appropriate or if it potentially limits the type of activities that could be performed by unlicensed staff. She also noted the language contains an exemption for preceptor programs but they are not defined or addressed anywhere in the Board's regulations. Dr. Adams asked if Ms. Walker was referring to a preceptorship or postceptorship. Ms. Walker replied that both types of programs are not addressed in the regulations. Dr. Adams explained that physiotherapy is inclusive of any adjunctive activity in support of the adjustment, including through exercise or the use of modalities.

Dr. Paris commented that the discussion of regulations regarding postceptorships should include defining a timeframe for participation after completing the degree program. Dr. Adams recalled that he participated in a preceptorship for six months and a postceptorship for another six months and then obtained his license. He asked staff to contact a few of the chiropractic colleges to gather additional information regarding their postceptor programs. Ms. Walker confirmed that staff would report back to the Committee with that information.

Ms. Walker asked the Committee to discuss the potential need to exclude individuals whose licenses were revoked or surrendered from serving as support staff and whether to attempt that exclusion through the regulatory process or by seeking legislation. She



noted the Board's jurisdiction extends only to chiropractic practices and the issue also affects other healing arts boards. Dr. Adams replied that individuals whose licenses were revoked or surrendered due to sexual misconduct should be prohibited from being involved in unsupervised direct patient care. He recalled previous petitioners who worked in billing or other assistant roles in chiropractic offices to keep themselves involved in the profession and prepare for their reinstatement hearings. Dr. Paris agreed and commented that the Board's expectation would be to see the petitioners make an effort to integrate themselves back into the profession.

Dr. Paris asked for clarification regarding the situation specified in the public comment. Ms. Walker replied a former licensee was revoked by the Board for sexual misconduct but the individual is still employed by the same office, a medical corporation, performing front office tasks and acting in a chiropractic support role because there is no law that currently prohibits them from doing so. Dr. Paris acknowledged the difficulty in balancing the ability for the former licensee to integrate back into a chiropractic office and address the complainant's valid concern of having to face that individual in the same office. He also suggested broadening the language to potentially exclude other circumstances such as preventing a former licensee who was convicted and revoked for fraud from billing and coding.

Ms. Walker thanked the Committee and indicated staff would incorporate their feedback into updated language for discussion at the next meeting.

**Public Comment:** None.

#### **6. Review, Discussion, and Possible Recommendation Regarding Proposal to Amend or Repeal CCR, Title 16, section 354 (Successful Examination)**

Ms. Walker informed the Committee that CCR, title 16, section 354 became effective in 1979 and states: "...applicants who are notified in writing by the Board of the successful completion of the Board examination, may immediately commence the practice of chiropractic in California pending the receipt of their certificate." She shared that staff has significant concerns with this regulation as it conflicts with CCR, title 16, section 310.2 and Sections 5 and 15 of the Chiropractic Initiative Act, which prohibit an unlicensed individual from practicing chiropractic.

Ms. Walker added that the regulation causes confusion for applicants because the testing vendor immediately notifies them of the results of the California Chiropractic Law Examination (CCLE) after they complete the examination but the licensure process is not complete until the applicant submits a copy of their CCLE results to the Board with the initial license fee and staff performs a final review of their application package, confirms all requirements have been met, and issues a doctor of chiropractic license. She noted in rare circumstances, staff may find grounds for denial of a license and instead of issuing a license, staff would notify the applicant that their application has been denied and their right to appeal that determination.

Ms. Walker asked the Committee to consider recommending to the Board that CCR, title 16, section 354 be repealed for these reasons.

Dr. Adams asked if the matter is within the purview of the Licensing Committee. Ms. Walker replied that it is appropriate for the Enforcement Committee as it is an issue of unlicensed practice.

**Motion: Dr. Paris moved to recommend to the Board that CCR, title 16, section 354 (Successful Examination) be repealed.**

**Second: Dr. Adams seconded the motion.**

**Public Comment:** None.

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

**Motion: Carried.**

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

**Public Comment:** None.

#### **8. Future Agenda Items**

**Public Comment:** None.

#### **9. Schedule 2023 Committee Meetings**

The Committee scheduled their next meeting for Thursday, March 2, 2023, from 12:00 p.m. to 2:00 p.m. via teleconference/Webex.

The Committee concurred that Thursdays work well for future meetings and requested that staff send a poll to the members to schedule the rest of the meetings for 2023.

**Public Comment:** None.

#### **10. Adjournment**

Dr. Adams adjourned the meeting at 2:30 p.m.