BOARD OF CHIROPRACTIC EXAMINERS
ENFORCEMENT COMMITTEE
MEETING MINUTES
March 2, 2023

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 March 2, 2023.

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 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 12:01 p.m. Dr. Paris called the roll. All members were present, and a quorum was established.

2. Review and Possible Approval of December 9, 2022 Committee Meeting Minutes

Motion: Dr. Paris moved to approve the minutes of the December 9, 2022 Enforcement Committee meeting.

Second: Mr. Sweet 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 announced that former Enforcement Analyst Christina Bell retired from state service on February 6, 2023, and recruitment efforts are underway to refill her position, a Special Investigator position, and the Assistant Executive Officer position.

Ms. Walker informed the Committee that February 17, 2023, was the deadline for introducing new legislation and staff has been monitoring a high volume of bills that may potentially affect the Board, other DCA boards and bureaus, and other healing arts professions. She explained Assembly Bill (AB) 765 (Wood) would prohibit the use of any medical specialty title by any person who is not licensed as a physician and surgeon and AB 1028 (McKinnor) would remove the requirement that a health practitioner report to law enforcement when they suspect a patient has an injury caused by assault or abusive conduct and instead mandate that the health practitioner provide brief counseling, education, and a warm handoff or referral.

Ms. Walker noted there are eight pending regulatory proposals related to the Board's Enforcement Program and three of those proposals will be discussed during this meeting. She highlighted the Enforcement Program statistics and stated staff is focusing on closing investigations and pending disciplinary cases.

Ms. Walker also provided an update on the four 2022–2026 Strategic Plan objectives assigned to the Committee. She explained staff is working with the Committee to develop the pending regulatory proposals and she is working to increase specialization within the Enforcement Unit by designating analysts in either a case management or investigative role to improve case processing times. She noted Ms. Bell's prior position has already been designated as a case management position. She stated over the past few months, she had a few discussions with expert consultants and reviewed the comprehensive training that the Medical Board of California (MBC) provides to their expert consultants, and she expects to begin the expert recruitment process after the vacant Assistant Executive Officer position is filled.

Dr. Paris asked if the MBC training could be used for the Board's experts. Ms. Walker replied that she would like to explore that option with MBC, as one of the Board's experts recently completed their program and found it to be helpful because it was presented by MBC investigative staff, the Attorney General's office, an administrative law judge, and a defense attorney, and included many different perspectives.

Public Comment: None.

4. 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 (amend California Code of Regulations [CCR], Title 16, section 384)

Ms. Pitto presented this agenda item and explained that for the past several years, the Board has been working on updates to its *Disciplinary Guidelines and Model Disciplinary Orders* and the implementation of the Uniform Standards for Substance Abusing Licensees. She noted the Committee has already discussed the trigger language to apply the uniform standards and proposed changes to the conditions of probation. She stated the remaining step is for the Committee to discuss the recommended penalties for violations of the statutes and regulations within the Board's jurisdiction. She explained the Board broadly groups violations into four categories and that practice does not provide detailed guidance to staff, the deputy attorney general, or the administrative law judge when negotiating stipulated settlements or preparing proposed decisions. She shared staff's recommendation to specify minimum and maximum penalties for each violation to provide clarity to those involved in the disciplinary process.

Dr. Paris suggested the potential for direct patient harm and impact on medical decision making as factors for determining the appropriate categorization and penalty. He noted some violations have designations as "less egregious" and "more egregious" within the guidelines to provide additional guidance and account for the crossover within categories. He cited CCR, title 16, section 317(x) (Unprofessional Conduct: Substitution of a Spinal Manipulation for Vaccination) as an example where elevation to Category II may be necessary. Mr. Sweet noted similar concerns with CCR, title 16, sections 310.2 (Use of the Title "Chiropractor" by Unlicensed Persons) and 312 (Unlicensed Practice). Dr. Adams concurred. Ms. Walker agreed and explained how the *Disciplinary Guidelines* allow for deviation when necessary to ensure public protection either by increasing the penalty due to aggravating evidence or decreasing the penalty due to the presence of mitigating evidence. She noted the challenge with the current *Disciplinary Guidelines* is that all optional conditions are listed under the categories, so it is difficult for parties involved in the disciplinary process to use the document because it does not specify applicable terms for each violation.

Ms. Walker suggested that staff prepare a complete proposal for the Committee's review and discussion at a future meeting with specific penalty guidelines for the violations within the existing categories, the updated standard and optional conditions of probation, and the language for applying the Uniform Standards for Substance Abusing Licensees. Mr. Sweet clarified that the Board would still retain its discretion in determining the disciplinary penalties, but the *Disciplinary Guidelines* would provide assistance to other parties in ascertaining the Board's general expectations for specific violations. Ms. Walker concurred and noted that any proposed decisions and stipulated settlements that deviate from the Board's guidelines would describe the circumstances and the reasons for those deviations.

Dr. Paris requested that CCR, title 16, sections 310.2, 312, and 317(x) be moved to Category II violations due to the potential for patient harm. Dr. Adams and Mr. Sweet

agreed. Ms. Walker thanked the Committee for their feedback and stated staff will compile their comments into a final proposal for consideration at a future meeting.

Public Comment: Falkyn Luouxmont commented that the discussion of his request for a rule change was removed from an agenda and asked for clarification regarding the Board's decision to grant provisional acceptance to Keiser University College of Chiropractic Medicine.

5. Review, Discussion, and Possible Recommendation Regarding Proposed Changes to the Record Keeping and Retention Requirements for Chiropractic Patient Records (amend CCR, Title 16, section 318)

Ms. Walker introduced this agenda item and explained that in addition to the Committee's development of proposed changes to the minimum content for patient records, in 2015, the Board had approved a regulatory proposal to implement a consumer notice requirement after the death or incapacity of a licensee or the termination or relocation of a practice, including guidelines for the closure of a practice and the creation of a notice of termination of practice and transfer of records form that would be transmitted to the Board. She noted the Board never formally commenced the rulemaking process on that regulation and the package was placed on hold.

Ms. Walker directed the Committee to the draft language within the meeting materials and stated staff had incorporated portions of that 2015 proposal into the current record keeping proposal being developed by the Committee. She asked the Committee to continue their policy discussion regarding the record keeping proposal and specifically the portions that relate to the transfer or records upon retirement or closure of a practice or the death or incapacity of a licensee.

Dr. Paris noted the proposal refers to unlicensed individuals such as an heir, trustee, executor, administrator, conservator, or personal representative and questioned how the Board could enforce those provisions. Ms. Knight replied that the Board does not have any jurisdiction over unlicensed individuals so that text would be guidance. Ms. Walker suggested that the Committee may want to consider requiring licensees to designate another licensee in their plan for the transfer and maintenance of patient records in the event they become incapacitated or otherwise unable to practice to provide continuity of the Board's jurisdiction.

Dr. Paris expressed his concerns with creating regulatory language that the Board cannot enforce. Mr. Sweet asked if there is any guidance from other healing arts boards and how they handle these situations. Ms. Knight recommended staff review other boards' laws and regulations.

Dr. Paris commented on the relative ease of creating a continuity plan within a group or health care system compared to a solo practitioner. Dr. Adams concurred and shared his support for requiring a plan to be in place. He also asked about the assumption of

risk and liability for the licensee who is designated in the plan. Ms. Knight replied that it is an interesting concept that staff will explore further.

Ms. Walker asked the Committee to discuss the Board's role in the licensees' continuity plans and whether they should be filed with the Board or just retained by the licensee for review when necessary. Dr. Adams replied that it would be difficult for the Board to catalog that information for each practice, and it would make more sense for the plan to be maintained by the practice. He suggested the Board should be notified only in the event of the death or incapacity of a licensee.

Dr. Paris shared that having a regulation in place requiring the plan is a good start and the Board could always come back and strengthen it if needed. Mr. Sweet commented that requiring a plan to be in place would be helpful in these circumstances. Ms. Knight cautioned that the Board should not be involved in the collection and maintenance of patient records. She noted many health practitioners already have plans in place and patients can often get their records by contacting the executor of the estate.

Ms. Walker informed the Committee that staff began drafting text regarding the minimum content of the patient records based on the prior discussions, and she asked if the Committee had any initial thoughts or feedback.

Dr. Paris indicated the requirement for the patient's signature is vague and should either be further specified or eliminated as redundant. Dr. Adams shared that he interpreted that requirement to apply to standard intake, privacy policy, and informed consent forms. Ms. Walker suggested that staff develop that language further to clarify the intent of the patient's signature on the intake forms.

Dr. Paris also commented on the proposed requirement for a key to any abbreviations within the patient records. He noted there are standard abbreviations that are very common throughout most health care systems and facilities so it may be unnecessarily burdensome. He suggested that it may be more appropriate for the key to be available upon request in the office but not required on every patient record. Dr. Adams and Mr. Sweet concurred. Ms. Walker explained the purpose of the abbreviation key is to provide guidance to patients when they review their records and also ensure the Board's investigative staff and expert consultants can understand the records when investigating a complaint. She agreed that the key could be maintained the office and would not need to be in each patient record or file.

Mr. Sweet noted the proposed language requires a notification to be sent within 30 days after a licensee passes away and questioned whether it may be appropriate to provide additional time for sending that notice. Dr. Adams and Dr. Paris concurred and suggested increasing the deadline to 60 days.

Dr. Paris recommended adding goals of care to the documentation requirements. Dr. Adams proposed adding "treatment plan, goals of care, including any

recommendation or orders." Dr. Paris also suggested clarifying that the treatment record would be signed or initialed by the treating doctor of chiropractic or individual. Ms. Walker proposed that any record signed by an unlicensed individual should also identify the supervising doctor of chiropractic. Dr. Adams explained the doctor's signature would appear on the direct order authorizing the treatment provided by the individual.

Public Comment: A caller identified as "ML" asked the following questions of the Committee: Does the treating chiropractor's name have to be in patient records even if they are working with a medical doctor supposedly doing physical therapy? What if the chiropractor's name is nowhere to be found in the medical record even if the patient was treated by that chiropractor, not a physical therapist nor the medical doctor in her case? ML indicated her medical records state she went in for physical therapy, but she went in for chiropractic care with adjustments and some physical therapy elements. She also stated the entire practice name is not mentioned anywhere, just the medical doctor who co-owned the practice. She stated the practice may be billing for physical therapy under the guide of chiropractic care, her records seem strange, and she is waiting for a response from Ms. Walker.

6. Review, Discussion, and Possible Recommendation Regarding the Authorized Activities Performed by Unlicensed Individuals within a Chiropractic Practice (amend CCR, Title 16, section 312)

Ms. Pitto summarized the background information on this Consumer Protection Enforcement Initiative (CPEI) regulatory proposal and shared that at the December 9, 2022 meeting, the Committee discussed the proposed language that had been approved by the Board in 2016, the role of the supervising doctor of chiropractic, the preparation of the doctor's orders and treatment plan, and requirements for the licensee's physical presence at the facility. She also stated the Committee discussed prohibiting former licensees whose licenses were revoked or surrendered from performing any unsupervised patient treatments and how the terms "work week" and "readily available" are too vague. She shared that staff gathered summary research on similar requirements from other states and asked the Committee to continue the discussion of this regulatory proposal.

Dr. Paris expressed his concern with the high variability the Board may see in training and establishing consistency in the activities that may be performed by unlicensed individuals. He noted that licensees spend semesters learning how to perform some of those services during the doctor of chiropractic degree program, and shared his reservations about allowing those services to be performed by unlicensed individuals without establishing competencies and minimum training requirements. He suggested strengthening those requirements in the interest of public protection and to provide assurances that those individuals are trained to provide the therapies, modalities, and treatments when the doctor of chiropractic is not present or directly supervising them.

Dr. Adams highlighted the inconsistencies in how other states regulate chiropractic assistants and unlicensed staff and explained the regulatory proposal is based on the assumption that the supervising doctor has trained their staff on the procedures they will be performing. Dr. Paris commented that there are national certification and training programs for chiropractic assistants through continuing education providers, chiropractic colleges, and associations. He also noted that many states require direct supervision and added there should be additional training in physiotherapy and emergency procedures and continuing education requirements for staff who will be indirectly supervised.

Mr. Sweet noted the Texas regulation requires licensees to document that the qualified individual has adequate training and skill to perform an act and suggested the Committee consider similar language. He also commented on the progress with this proposal. Dr. Adams proposed implementing a minimum level of training, examination, or experience requirements for staff within a practice. He also suggested expanding the language beyond physiotherapy to include other activities such as instructing a patient on proper lifting and rehabilitation exercises. He added the minimum of 25% of hours on a weekly basis could be changed to monthly basis.

Dr. Adams explained the language also needs to address a situation where a patient presents with a change in condition or status and require that a doctor of chiropractic evaluate that change and make any necessary changes to their order before the unlicensed individual can proceed.

Dr. Paris requested that the on-call language be updated to ensure that staff will immediately act in an emergency situation and not subject a patient to an unnecessary wait for a call-back from the supervising doctor. Dr. Adams concurred and noted staff should activate the emergency system immediately. Dr. Paris also proposed strengthening the language to ensure that the supervising doctor of chiropractic is present and interacts with their staff to prevent a situation where the supervisor and unlicensed individual are never present together in the practice. Dr. Adams replied that level of detail may not be necessary.

Dr. Paris requested that staff provide multiple versions of the proposed language with different requirements for the Committee’s comparison and discussion at a future meeting. Ms. Walker agreed and offered to develop and present a few different options for the Committee to consider. Dr. Paris and Dr. Adams discussed the national chiropractic assistant certification training and examination requirements and possible options for substituting prior experience to qualify for the examination.

Public Comment: Falkyn Luouxmont stated there are some codes that are specifically based on a doctor’s tiered orders and that power should not be given to non-doctors due to the precedent it would establish in regard to patient safety.

ML stated she was told the discussion would be about revoked licensees continuing to work with patients in an unlicensed capacity and asked why it was not addressed. She stated she does not agree that 25% presence is enough because there are offices where ethics are not their main priority. She thanked Dr. Paris for his concern for patient safety because her experience revealed what happens when there is no specific oversight or regulations. She stated she brought to the Board's attention an individual who continued to work with patients after his license was revoked for sexual misconduct, and the Board's regulations need clarification between someone who lost their license and chiropractic students and assistants. She stated in her scenario, the administrative law judge wrote in their decision that protection of the public requires that respondent's license be revoked and it would pose a risk of harm to the public to allow respondent to continue to practice as a chiropractor, even with restrictions, but it seems this former licensee still works at the same practice supposedly doing physical therapy and appears to be interacting with patients as he has new Yelp reviews indicating his title as "doctor." She asked how will the Board enforce former licensees at integrative practices and how will the Board inform licensees of the regulation changes. She stated another licensee was recently accused of sexually assaulting at least seven women and cannot work as a licensed chiropractor but can work in the capacity of an unlicensed assistant. She asked how is that okay, why are there no public records on his license profile, and did none of the patients come forward to the Board. She also asked how does the Board define physical therapy versus physiotherapy and where is the line between a chiropractor being allowed to do physical therapy versus an unlicensed person versus a doctor of physical therapy. She stated she called the Physical Therapy Board of California and they directed her to the Board to request this information and it seems the two boards may want to work together on what appears to be a confusing delineation.

Dr. Paris asked Falkyn Luouxmont to share the code references with Board staff. He thanked ML for her comments, noted the meeting materials contain proposed language that address the situation she mentioned, and stated the term physiotherapy is used in a chiropractic practice so the public does not confuse it with the physical therapy profession. Ms. Walker stated the meeting materials are available on the Board's website and emailed a copy to ML.

7. Public Comment for Items Not on the Agenda

Public Comment: ML asked why the Board is inconsistent with which licensees' public disciplinary documents are uploaded to profiles and why Enforcement Manager William Walker III told her the Board does not post public documents which she now knows is incorrect information. She stated Ms. Walker informed her that the Board does post these documents, but it seems everyone is confused because her Assemblymember's office had to reach out to DCA. She stated the only reason the former licensee who committed misconduct against her has his public documents uploaded is because her Assemblymember contacted DCA and was told it was an oversight by Board staff and

they are now working to fix the issue and upload the files onto the Board website. She stated there are many disciplinary documents that have not been uploaded.

8. Future Agenda Items

Public Comment: ML stated the materials Ms. Walker just sent to her were not on the Board's website the other day so she was unable to review any of this. She stated she is disappointed in Ms. Walker's lack of response to her after continually telling her that she is going to respond and send her answers. She stated she is patiently waiting for Ms. Walker to respond to many important items she has brought to her attention to protect patients and consumers and would like to see enforcement of the Board's employees for how long they take to respond to the public when items of importance are brought to their attention. She asked what is the timeframe for responding to the public and requested timely responses to her comments and questions listed and emailed previously. She asked the following questions: Why could the Board not have ordered probation on any or all of this person's misconduct or negligence, limited his interaction with female patients or required a female chaperone, requested that he stop drawing blood and doing IVs while falsely claiming to be a licensed vocational nurse, checked his public review pages, or interview more patients other than the few women who came forward? How is the Board making sure a revoked licensee is not continuing to practice? Is there a checkout process to explain what they can and cannot do? How will the revoked licensees find out when the Board's regulations are changed?

9. Adjournment

Dr. Adams adjourned the meeting at 2:27 p.m.