



**BOARD OF CHIROPRACTIC EXAMINERS
ENFORCEMENT COMMITTEE
MEETING MINUTES
June 8, 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 June 8, 2023.

Committee Members Present

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

Committee Member Absent

Rafael Sweet (Excused)

Staff Present

Kristin Walker, Executive Officer
Tammi Pitto, Assistant Executive Officer
William Walker III, Enforcement Manager
Amanda Ah Po, Enforcement Analyst
Sabina Knight, Board Counsel, Attorney III, Department of Consumer Affairs (DCA)
Steven Vong, Regulatory Counsel, Attorney III, DCA

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

Dr. Adams called the meeting to order at 12:00 p.m. Dr. Paris called the roll. Mr. Sweet was excused from the meeting. Drs. Adams and Paris were present, and a quorum was established.

2. Review and Possible Approval of March 2, 2023 Committee Meeting Minutes

Motion: Dr. Paris moved to approve the minutes of the March 2, 2023 Enforcement Committee meeting.

Second: Dr. Adams seconded the motion.

Public Comment: None.

Vote: 2-0 (Dr. Adams-AYE and Dr. Paris-AYE).

Motion: Carried.

3. Update on Board's Enforcement Program

Ms. Walker explained the statutory provisions of Government Code section 11133 that currently allow the Board to conduct meetings remotely with no physical locations will expire on June 30, 2023, and the Board will need to revert to the traditional teleconference meeting requirements within the Bagley-Keene Open Meeting Act beginning July 1, 2023. She stated that the July 20, 2023 Board meeting will be conducted as a hybrid meeting with a primary physical location at the DCA headquarters building in Sacramento, and Board members will have the option to either travel to that meeting location or participate remotely via Webex from a publicly identified and accessible meeting location.

She shared that Austin Maha was recently hired to fill the Administrative Technician position and will be providing front desk and general office support and handling all cashiering duties. She also announced that Tammi Pitto was promoted to the Assistant Executive Officer position effective June 1, 2023.

Ms. Walker updated the Committee on the following bills:

- Assembly Bill (AB) 765 (Wood) [Physicians and surgeons: medical specialty titles] was held in the Assembly Appropriations Committee and is dead for 2023.
- AB 1028 (McKinnor) [Reporting of crimes: mandated reporters] passed the Assembly on May 31, 2023, and is pending assignment in the Senate.
- AB 1707 (Pacheco) [Health professionals and facilities: adverse actions based on another state's law] passed the Assembly on May 22, 2023, and is scheduled to be heard by the Senate Business, Professions and Economic Development Committee on June 19, 2023.
- Senate Bill (SB) 372 (Menjivar) [Department of Consumer Affairs: licensee and registrant records: name and gender changes] passed the Senate on May 22, 2023, and is scheduled to be heard by the Assembly Business and Professions Committee on June 20, 2023.
- SB 802 (Roth) [Licensing boards: disqualification from licensure: criminal conviction] passed the Senate on April 13, 2023, and has been referred to the Assembly Business and Professions Committee.

She also noted there are eight pending regulatory proposals that affect the Board's Enforcement Program and highlighted the enforcement statistics within the meeting materials. She explained staff in the Enforcement Unit have been focusing on disciplinary cases, and as a result, the number of pending disciplinary cases decreased from 107 as of July 1, 2022, to 58 as of May 31, 2023, and the number of probationers

being monitored by the Board increased from 64 to 73 during that same timeframe.

Dr. Adams asked about the status of the Board's proposal to amend the continuing education (CE) regulations. Ms. Walker replied that staff is drafting the regulatory package for DCA approval and noted that the proposals to update the CE requirements and establish minimum penalties for sexual misconduct cases are the highest priority for staff.

Drs. Paris and Adams congratulated Ms. Pitto on her recent promotion to the Assistant Executive Officer position.

Public Comment: None.

4. Review, Discussion, and Possible Recommendation Regarding Discipline Against Licensees by Other Public Agencies and Licensee Reporting of Convictions, Disciplinary Actions, and Other Violations to the Board (amend California Code of Regulations [CCR], Title 16, sections 304 and 314)

Ms. Pitto explained at the May 19, 2016 Board meeting, as part of a planned comprehensive Consumer Protection Enforcement Initiative (CPEI) regulatory package, the Board approved proposed language to amend CCR, title 16, sections 304 (Discipline by Another Jurisdiction) and 314 (Law Violators) and to add CCR, title 16, section 317.3 (Licensee Reporting Requirements), and staff later merged section 317.3 with section 314 to place the licensee reporting requirements in a single section.

She noted at that time, the Board was seeking to amend CCR, title 16, section 304 to broadly make any disciplinary action of a professional license by a state or federal agency or foreign government constitute unprofessional conduct and grounds for disciplinary action against a licensee. She shared staff's recommendation for the Committee, and ultimately the Board, to discuss this concept and consider whether the regulation should be limited to discipline by another agency that is substantially related to the practice of chiropractic.

Ms. Pitto further explained that CCR, title 16, section 314 makes it the duty of every licensee to notify the Executive Officer of any violation of the Chiropractic Initiative Act or Board regulations, and staff recommends potentially: 1) expanding this requirement to include suspected or actual violations; 2) allowing the notification to be made by filing a complaint; and 3) establishing a deadline for making this notification to the Board.

She added that the proposed subdivision (b) of CCR, title 16, section 314 would require a licensee to report a felony charge, a felony or misdemeanor conviction, or any disciplinary action to the Board within 30 days of the action, and staff recommends also requiring licensees to report any arrest to the Board within 30 days.

Dr. Paris indicated CCR, title 16, section 314 has always been interpreted to require any

licensee to report any violation that was brought to their attention to the Board, but some of the proposed language within the meeting materials appears to only reflect self-reporting. He emphasized the importance of clarifying the language to clearly state that licensees are obligated to report any known violations to the Board. He also noted the proposed language for CCR, title 16, section 304 within the meeting materials states that any disciplinary action from another licensing entity constitutes unprofessional conduct and suggested the Committee discuss narrowing that broad, definitive language.

Ms. Knight informed the Committee that most of the other DCA healing arts boards have similar provisions within their regulations, and the Board has discretion when imposing discipline and staff evaluates each situation on a case-by-case basis.

Dr. Adams questioned whether licensees should be required to report arrests and criminal charges to the Board because those matters have not yet been adjudicated. Ms. Walker explained the Board already receives licensee arrest notifications through the Department of Justice (DOJ) and handles them by opening a case, evaluating the circumstances and pending charges, and determining whether the matter requires an immediate referral to the Attorney General's office to make a criminal court appearance on behalf of the Board and recommend practice restrictions during the pending criminal proceeding, such as in cases involving allegations of sexual assault. She indicated routine criminal cases that do not pose an immediate risk to public safety are tracked by staff until the conviction occurs, and at that point, staff determines if the conviction is substantially related to the practice of chiropractic and warrants action by the Board. She noted the Board does not always receive the arrest notifications from DOJ and emphasized the importance of staff receiving timely notifications of licensee arrests so they can make the initial assessment of the matter and determine whether it needs to be immediately referred to the Attorney General's office to protect the public.

Ms. Walker further explained the difference between licensee reporting of actions under the proposed language for CCR, title 16, section 314 and the Board's authority to take disciplinary action based on those actions under CCR, title 16, sections 304 and 317. She reiterated the public safety benefits of ensuring all arrests, convictions, and disciplinary actions by other agencies are reported to the Board, and assured the Committee that staff, and ultimately the Board, still exercise discretion when determining which actions warrant disciplinary action by the Board. She redirected the Committee to the proposed language for CCR, title 16, section 304 within the meeting materials and stated that language may be too broad by allowing the Board to discipline a licensee for any disciplinary action taken by another agency. She suggested adopting the same "substantially related to the practice of chiropractic" standard that is already used by the Board when evaluating criminal convictions.

Dr. Adams indicated Ms. Walker's explanations cleared up his questions and concerns. Dr. Paris shared his support for including the "substantially related" language in CCR, title 16, section 304, and requested that the language for CCR, title 16, section 314,

subdivision (b) be clarified so it is easily understood that a licensee must report any violations of the Chiropractic Initiative Act or Board regulations, not just those committed by themselves, to the Board. He emphasized the need for the language to fully describe the licensee's obligation to report a violation committed by any licensee or unlicensed individual so the Board can investigate and take appropriate action. Ms. Knight suggested inserting "any violation [...] by any individual" to further clarify the text. Drs. Adams and Paris concurred.

Motion: Dr. Paris moved to recommend that the proposed text to amend CCR, title 16, sections 304 (Discipline by Another Jurisdiction) and 314 (Licensee Reporting Requirements) be moved to the full Board for consideration with the following changes: 1) add "substantially related to the practice of chiropractic" to section 304; 2) add "by any individual" to subdivision (a) of section 314; and 3) add self-reporting of arrests to subdivision (b) of section 314.

Second: Dr. Adams seconded the motion.

Public Comment: A caller identified as "ML" stated it is important to always include unlicensed activity, licensees on probation, and former licensees who have been revoked for misconduct so there are no loopholes in the Board's regulations.

Vote: 2-0 (Dr. Adams-AYE and Dr. Paris-AYE).

Motion: Carried.

5. Review, Discussion, and Possible Recommendation Regarding the Filing and Evaluation Process for Petitions for Reinstatement, Reduction of Penalty, and Early Termination of Probation (amend CCR, Title 16, section 365 and add CCR, Title 16, section 385)

Ms. Walker provided background information regarding a pending CPEI regulatory proposal to establish regulations for the process for petitioning the Board for reinstatement of a license or reduction of penalty. She asked the Committee to engage in a policy discussion regarding the minimum requirements that must be met before an individual is qualified to be heard before the Board. She stated CCR, title 16, section 365 currently requires an individual to complete the CE requirements for each year their license has been revoked or surrendered. She recalled that the Continuing Education Committee briefly discussed this regulation when developing the comprehensive CE proposal and recommended that the Enforcement Committee consider setting a maximum cap of four years of CE requirements, or 96 hours, and requiring successful completion of the National Board of Chiropractic Examiners (NBCE) Part IV examination if their license has been revoked or surrendered for over five years. She asked the Committee to discuss whether the NBCE Part IV examination requirement should be met before the individual can be heard by the Board or required as a condition precedent to reinstating the license in the petition decision. She also referenced the

petition processes at other DCA healing arts boards and noted that some boards prohibit individuals from being heard while they are currently under sentence for any criminal offense or while any accusation or petition to revoke probation is pending against them. She highlighted how those programs also request a detailed narrative statement with the petition application outlining the individual's specific request, rehabilitation efforts, and plans for practice and require the individual to submit verified recommendations from other licensees with their petition. She concluded by also suggesting that the Board establish a process for the handling of abandoned petition applications, such as the one-year period used during the licensure process.

Dr. Adams commended staff for their work on the regulatory proposal and their recommendations to the Committee. Dr. Paris liked the format and structure of the Medical Board of California's petition application. He supported staff's recommendations of establishing a one-year abandonment process and requiring petitioners to provide two letters of recommendation with their petition package.

Dr. Adams supported the Continuing Education Committee's recommendations of setting a cap of four years of CE and requiring the successful completion of the NBCE Part IV examination after four or five years of nonpractice. Dr. Paris suggested it may be more beneficial for the Board to reinstate the petitioner's license and provide them with six months or one year to pass the examination instead of requiring the examination prior to being heard by the Board. Dr. Adams agreed. Dr. Paris added there is value in the person being in practice while preparing for the NBCE Part IV examination because it requires hands-on practice and clinical experience. Dr. Adams concurred and commented that taking and passing the NBCE Part IV examination, particularly after five years of nonpractice, ensures public protection. Ms. Walker suggested that making the NBCE Part IV examination a condition precedent to license reinstatement could be an effective option because the petitioner would be unable to practice until they have demonstrated their competency to the Board by passing the practical examination.

Dr. Adams questioned the benefit of requiring a petitioner to complete both CE and the NBCE Part IV examination because the examination preparation will require them to study the current principles of chiropractic practice. He suggested requiring CE for those who have been revoked or surrendered for four years or less and mandating the NBCE Part IV examination in lieu of CE after five years of nonpractice. Dr. Paris explained that the NBCE Part IV examination primarily focuses on the clinical components of physical examination and technique with some case management, and it does not cover all of the mandated CE categories. He recalled the Board wanted all petitioners to complete CE and additionally require an examination in cases where the Board questions the petitioner's clinical competency, such as after an extended period of nonpractice. Dr. Adams added successful completion of the NBCE Part IV examination ensures the petitioner possesses the minimum competency to safely practice chiropractic.

Dr. Paris asked Ms. Walker for clarification regarding the potential options for imposing the CE and NBCE Part IV examination requirements. Ms. Walker explained the options

for mandating CE and/or the NBCE Part IV examination as a requirement that must be fulfilled before the petitioner can be heard by the Board or adding the requirement to the Board's *Disciplinary Guidelines* and imposing it through the petition decision. She added that CCR, title 16, section 365 establishes the CE as a requirement prior to being heard by the Board, so staff verifies that the petitioner has completed the necessary CE hours before their application is deemed complete and scheduled to be heard by the Board. She explained that by adding the NBCE Part IV examination as a recommended condition to the Board's *Disciplinary Guidelines*, the Board could impose the condition in most cases while still retaining its discretion to make deviations when appropriate, such as when the individual has already demonstrated their competency through other means.

Drs. Adams and Paris expressed their support for the Board retaining its discretion when imposing the NBCE Part IV examination for petition decisions and agreed with discussing that item further when considering the proposed changes to the Board's *Disciplinary Guidelines*.

Drs. Adams and Paris continued their discussion of setting a maximum of four years of CE in CCR, title 16, section 365. Dr. Paris requested that the language reflect that the petitioner must complete the proportionate amount of mandated CE as part of the requirement. Ms. Walker confirmed the petitioners would be required to complete the same mandatory CE categories as licensees and would be prohibited from receiving credit for repeating a CE course. Dr. Adams concurred.

Ms. Walker asked if the Committee agreed with staff's recommendations to prevent a petition from being heard while the individual is under sentence for a criminal offense or while an accusation or petition to revoke probation is pending against them. Drs. Adams and Paris concurred.

Motion: Dr. Paris moved to recommend that the Committee's suggested changes and recommendations for CCR, title 16, sections 365 and 385 be finalized by staff and moved to the full Board for consideration at a future meeting.

Second: Dr. Adams seconded the motion.

Public Comment: None.

Vote: 2-0 (Dr. Adams-AYE and Dr. Paris-AYE).

Motion: Carried.

Dr. Paris requested that staff consider developing a petition application similar to the one used by the Medical Board of California. Ms. Walker confirmed that staff will be significantly updating the Board's petition forms before presenting them to the full Board for approval.

6. Public Comment for Items Not on the Agenda

Public Comments: ML commented that the Board is working on regulations for supervision of unlicensed individuals, including revoked licensees, within a chiropractic office and stated she would also like to see these policies include an integrative office setting where a chiropractor works with licensees in other professions.

Falkyn Luouxmout stated the Licensing Committee made no progress during the May 12, 2023 meeting on his request to amend CCR, title 16, section 331.12.2, subdivision (e) to allow for a partial point in cases where the student performed an evaluation, but did not perform an adjustment because no subluxation was detected. He requested that the Licensing Committee members be reassigned if the requested language to amend this regulation is not presented to the full Board for consideration at the July 20, 2023 meeting.

7. Future Agenda Items

Public Comment: ML requested the following future agenda items: 1) legislative changes to implement interim restrictions such as a chaperone on licensees who are accused of sexual misconduct or assault to protect patients while an investigation is conducted; 2) mandatory professional boundaries training, including sexual harassment and assault prevention, for licensees every few years because California employment laws do not require this training for licensees with less than five employees; and 3) a discussion between the Board and the Physical Therapy Board of California to clarify language regarding which services chiropractors, physical therapists, and unlicensed individuals can perform. ML stated that she also submitted written comments to the Board and was one of four women who testified against a former chiropractor whose license was revoked in December 2021 for sexual misconduct.

Dr. Paris noted the Board receives and reviews all written comments received and thanked the public for submitting them. Dr. Adams concurred.

8. Adjournment

Dr. Adams adjourned the meeting at 1:53 p.m.