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Chaos on chiropractic board

**The governor's appointees
– including ex-bodybuilding
chums – accused of 'coup.'**

**By John Hill
and Kevin Yamamura**
BEE CAPITOL BUREAU

Gov. Arnold Schwarzenegger has handed control of the obscure Board of Chiropractic Examiners to appointees, including two friends

from his bodybuilding days, who fired the executive director, ejected a deputy attorney general from a meeting and took other controversial actions in what a critic described as a "coup."

The board, created in 1922 to protect consumers from incompetence and fraud, has become so mired in controversy that at a meeting last week, five California Highway Patrol officers were called in to keep the peace.

"It was a coup," said former board member Barbara Stanfield, who attended the March 1 meeting. "They said, 'This is what we're going to do,' and they did it."

Stanfield said Schwarzenegger appointees to the board, including two-time Mr. Olympia Franco Columbu, have made clear in public meetings that they want to rein in what they see as excessive regulation of chiropractors.

Schwarzenegger spokesman Aaron McLearn, asked whether the governor endorses recent

actions by the board, said "the board operates in an independent manner."

"Everybody he has appointed to the board is eminently qualified to serve the people of California," McLearn said.

After the firing of Executive Director Catherine Hayes last week, newly elected board chairman Richard Tyler took over as "interim" executive director – a highly unusual dual role as an administrator and member of a state

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"The prevailing problem with the Board can be summarized in one word: lawless."

Jana Tuton

deputy attorney general in a Feb. 8 letter

Chiropractic: Industry sees governor as friend

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board.

At the same meeting, the board endorsed a controversial chiropractic technique that is at the heart of a criminal prosecution in San Joaquin County. And it agreed to certify a Florida chiropractic college, despite the staff's warnings that the college did not have an active application before the board.

"The prevailing problem with the Board can be summarized in one word: lawless," Deputy Attorney General Jana Tuton wrote in a Feb. 8 letter to Hayes obtained by The Bee.

Schwarzenegger has credited Tyler with helping to launch him into stardom as a young bodybuilder. Tyler, an editor working for bodybuilding entrepreneur Joe Weider, picked up Schwarzenegger from the airport when he first arrived in California in 1968, according to an article Schwarzenegger wrote for Flex magazine.

Schwarzenegger said Tyler then promoted his early bodybuilding career, "helping to establish me as a rising star and increasing my marketability and, thus, my business opportunities."

Tyler, 74, received his chiropractic license in 1969, according to state records. Schwarzenegger appointed him to the board in August 2004. Tyler did not respond to phone messages left at his Rocklin chiropractic office and his home, or to an e-mail.

Schwarzenegger appointed Columbu, another friend who was key to his early bodybuilding career, in February 2006. Columbu, who got his chiropractic license in 1977, did not respond to phone calls.

Columbu and Schwarzenegger met at a 1965 bodybuilding competition in Munich, Germany, according to Flex magazine. The two friends trained together in later years and were famously featured in the opening shot of the 1977 film "Pumping Iron," working on their posing skills at a ballet studio.

Columbu served as best man in Schwarzenegger's 1986 wedding to first lady Maria Shriver. The 65-year-old Italian native also has appeared in several Schwarzenegger films, including "The Terminator" and "Conan the Barbarian."

Schwarzenegger appointed retired Judge James Duvaras to the board in June 2005. This year, he appointed chiropractors Hugh Lubkin and Frederick Lerner, and James Conran, former director of the Department of Consumer Affairs.

When Schwarzenegger entered office in 2003, he was hailed by chiropractors as a pro-industry governor by industry magazine Dynamic Chiropractic.

Columbu told the magazine just before the 2003 recall that "Arnold is a very strong supporter of chiropractic, because over the years he has come to understand its benefits from several perspectives."

Columbu also said that once Schwarzenegger was elected, chiropractors would be able to show the benefits of chiropractic medicine so that "we will gain something very special — insurance will cover more chiropractic."

When voters removed Gov. Gray Davis and elected Schwarzenegger in 2003's recall, Dynamic Chiropractic stated in an editorial, "Schwarzenegger's election (and Davis' removal) should bring a long-awaited, collective sigh of relief."

In 1999, Schwarzenegger received an honorary degree from Cleveland Chiropractic College, the same school Columbu attended. According to Dynamic Chiropractic, Schwarzenegger at the time said, "People who don't believe in chiropractic always ask me about it. I have now become like a spokesperson for chiropractic."

Schwarzenegger showed his support for the chiropractic community as recently as Saturday. He spoke at an International Chiropractors Association conference in Columbus, Ohio, that coincided with the Arnold Sports Festival that bears Schwarzenegger's name.

Another player in the recent controversy at the Board of Chiro-

BOARD OF CHIROPRACTIC EXAMINERS

Created in 1922, the Board of Chiropractic Examiners is a policy-making body made up of seven members appointed by the governor, including five professionals and two members of the public. One position is currently vacant. The board's primary responsibility is to protect consumers from incompetent or fraudulent practices of chiropractors, who manipulate the spine and musculoskeletal system to improve the function of the body.

Current members, year appointed

Richard Tyler, September 2004

Frederick Lerner, February 2007

Franco Columbu, February 2006

Hugh Lubkin, March 2007

James Conran, February 2007

James Duvaras, June 2005

practic Examiners is Shawn Steel, an attorney who specializes in defending chiropractors, who was chairman of the state Republican Party during the 2003 recall election.

The board has said it wants Steel to be its legal representative instead of the attorney general's office, former board member Stanfield said.

State law requires the attorney general's office to represent boards.

At the meeting last week, Deputy Attorney General Jana Tuton refused the board's demand that she leave when they went into closed session.

"That's when Shawn Steel stood up, and there was a shouting match," Stanfield said. Steel did not respond to phone calls seeking comment.

Later, Stanfield said, five CHP officers arrived. Two stood behind Hayes as board member Duvaras handed her a notice of termination.

State open meetings law requires employees subject to discipline to be given written notice 24 hours before the meeting of their right to have a public hearing rather than a closed session. Hayes' employment by the board was not listed on the agenda for the Thursday meeting.

The dismissal follows a tense confrontation Tyler had with Hayes and Tuton, both of whom declined to comment for this story, at the board's December meeting.

Tyler insisted that he has cured earaches in children by adjusting the atlas, the vertebra closest to the head, and using homeopathic remedies.

He then took Hayes to task for signing a pending review of a case stating that "no forensic or scientific evidence" supports claims that chiropractic and homeopathic remedies are helpful in curing earaches, adding that there is more than 100 years of proof.

After Hayes' firing, the board took up a couple of controversial measures that have been on its plate for months.

It voted to license chiropractors who graduated from Palmer

College of Chiropractic Florida, despite the staff's warning that the college did not have an active application before the board, and backdated the approval to Dec. 1, 2005.

A timeline put together by the staff said that Palmer did apply in 2005, but then withdrew the application a year later. A few months after that, the Florida college sent a letter trying to reactivate its application but did not fill out a new form, according to the timeline. As recently as November, a staff counsel sent Palmer a letter saying that a new application had to be submitted.

Board member Duvaras argued at the board's December meeting that there was no need for the college to submit another application, according to the minutes from that meeting.

"Judge Duvaras stated that he feels the application for the college has been stonewalled for over 18 to 20 months," the minutes state. Duvaras did not respond to a phone call seeking comment.

The other controversial topic the board tackled involves a technique known as "manipulation under anesthesia," or MUA, in which chiropractors team up with medical doctors to work on patients under anesthesia.

In 2005, the Office of Administrative Law, which oversees the making of state regulations, rejected a rule proposed by the Board of Chiropractic Examiners that would have allowed chiropractors to perform MUAs under specified conditions.

Some chiropractors say the technique is allowed under the current "scope of practice." But J.C. Weydert, a San Joaquin County prosecutor, said state law clearly states that chiropractors cannot perform MUA procedures.

He suggested the board would not have pursued a new regulation through the Office of Administrative Law if MUAs were already legal. He cited a 2005 appellate court decision that said the state's 1922 initiative prevents chiropractors from engaging in procedures that were not taught in chiropractic schools as of that time.

Weydert is prosecuting a case in which chiropractors are charged with unlicensed practice of medicine and other counts of insurance fraud related to MUA.

The board last week approved a resolution supporting MUAs as part of the chiropractor's "scope of practice."

"We upheld the long-term opinion of the board that it's within the scope of practice for chiropractors," new board member Lerner said. "MUA has been done for decades."

The state Senate Committee on Business, Professions and Economic Development has inquired about the meeting and plans to review a forthcoming state attorney general's report, said the committee's chairman, Sen. Mark Ridley-Thomas, D-Los Angeles.

"We can't just have the specter of impropriety at this level," Ridley-Thomas said.

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