

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
NATIONAL ADVISORY COMMITTEE ON
INSTITUTIONAL QUALITY AND INTEGRITY**

The Council on Chiropractic Education,
Commission on Accreditation
Action for Consideration:
Petition for Renewal of Recognition

*Transcripts of Proceedings**

VOLUME II

Tuesday, June 6, 2006
8:55 a.m. Gallery I and II
Hilton Arlington Hotel
950 Stafford Street
Arlington, Virginia 22203

PARTICIPANTS

COMMITTEE MEMBERS PRESENT:

DR. CAROL D'AMICO, Chairperson
DR. LAURA PALMER NOONE, Vice
Chairperson

MR. ROBERT S. BLUMENTHAL
DR. KAREN A. BOWYER
DR. LAWRENCE J. DeNARDIS
DR. THOMAS E. DILLON
MR. DAVID JOHNSON, III
DR. ARTHUR KEISER
DR. GERI H. MALANDRA
MS. ANDREA FISCHER-NEWMAN

DR. GEORGE A. PRUITT

**U.S. DEPARTMENT OF EDUCATION STAFF
PRESENT:**

MR. JOHN BARTH, Director, Accreditation
and State Liaison
MS. FRANCESCA PARIS-ALBERTSON, NACIQI
Executive Director
MS. SARAH WANNER, Office of General Counsel

MS. MARY GERSEMA
MS. CAROL GRIFFITHS
MR. WILLIAM JAMES
MS. JOYCE JONES
MS. KRISTINE LUKEN
MR. CHUCK MULA
MR. STEPHEN PORCELLI
MR. JAMES SNEED
MS. ROBIN GREATHOUSE
MS. CATHY SHEFFIELD

THE COUNCIL ON CHIROPRACTIC EDUCATION
COMMISSION ON ACCREDITATION

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CHAIRPERSON D'AMICO: We'll move on to the Council on Chiropractic Education, Commission on Accreditation, Petition for Renewal of Recognition. Kristine Luken is the Department staff person.

MS. LUKEN: Good afternoon, Madam Chair and members of the committee. I will present a summary of the staff analysis of the petition for renewal of recognition submitted by the Council on Chiropractic Education, Commission on Accreditation, hereafter CCE or the agency. The materials can be found under Tab F.

The Council on Chiropractic Education, Commission on Accreditation, is recognized as a specialized accreditor. The agency's scope of recognition is the accreditation of programs leading to the Doctor of Chiropractic Degree and single-purpose institutions offering the Doctor of Chiropractic program.

It currently accredits 14 doctor of chiropractic programs at 17 sites in 12 States across the nation. Of these 14 programs, CCE accredits two that are single-purpose chiropractic institutions. The agency's two single purpose chiropractic institutions use the agency's accreditation to establish eligibility to participate in the Title IV programs. CCE was first recognized by the Commissioner of Education in 1974 and has received periodic renewal of recognition since then.

The agency was last reviewed for continued recognition in 2001. The following issues were identified during the Department's review of the agency's petition. Since its last five-year review, no work had been done toward a systematic review of standards. However, last month, the agency completed a survey on the standards and plans to conduct a follow-up survey on the reliability and relevancy of the standards in 2007.

The agency is developing a new policy that will ensure the faculty and staff are given the opportunity to provide feedback on proposed revisions to standards and needs to provide evidence of its current activities. Also, the agency didn't have sufficient policies pertaining to operating procedures, notification of accrediting decisions to the public, and regard for decisions of States and other accrediting agencies.

It also needs to provide evidence of adoption and implementation. The Department received eight third-party comments regarding the agency's petition. Most concerns and issues stem from complaints already investigated by the Department and responded to by the agency.

There was little new information in the comments, but what was evident is the ongoing disputes among members of the chiropractic community over differing approaches to chiropractic care and philosophical differences of which the Department has no jurisdiction.

Third-party comments mostly centered around a

few criteria. With regard to conflict of interests, CCE was previously found in noncompliance with its criterion and has already revised its policies and corrected inconsistencies and completed its investigation of alleged violations of conflict of interests as required by the Department. Department staff found the agency in compliance with this section and has no further concerns.

Department staff reviewed the selection criteria for the agency's decision-making bodies as part of the agency's petition and found CCE in compliance with the requirements of the criteria concerning the composition of its evaluation policy and decision-making bodies. During the review of the agency's petition, Department staff did not uncover any bias in the selection and composition of site teams or inconsistency in the application of standards and was found in compliance with the criterion related to consistency in decision-making.

Final ly, with regard to operating procedures, as a result of complaints from other organizations, CCE was previously found in noncompliance with a subsection of this criterion. As already noted in the staff analysis, CCE was again found in noncompliance and was required to revise its policies to reflect the availability of information on organization affiliations. Also, in July 2005, Department staff determined that CCE didn't respond in a timely and fair manner to complaints against itself, as required under the Secretary's criteria, and was required to revise its complaint policy and procedures. Department staff reviewed the agency's complaint policy as part of its current petition and found the agency in compliance. Department staff recommends that the agency's recognition be renewed for five years and requests that the agency submit a report by June 7, 2007, demonstrating its compliance with the issues identified in the staff analysis. Representatives from the agency are here to answer your questions and I'm available as well.

CHAIRPERSON D'AMICO: Dr. Noone and Dr. Pruitt, do you have questions?

DR. PALMER NOONE: Thank you for your thorough and excellent report, Kristine.

MS. LUKEN: Thank you.

DR. PALMER NOONE: And you may not know the answer to this or maybe you said it and I was not paying attention as you did. Are chiropractors licensed on a State-by-State basis?

MS. LUKEN: Yes.

DR. PALMER NOONE: Okay. And to your knowledge, is there any requirement that in order to sit for that licensure exam, that in most States that you must graduate from a Council on Chiropractic Education-accredited program?

MS. LUKEN: That is my understanding, but I believe the agency could provide a little more detailed clarification on that.

DR. PALMER NOONE: Okay. And is there another body that does accredit chiropractors?

MS. LUKEN: I'm sorry? Repeat that again.

DR. PALMER NOONE: Is there another body that accredits chiropractic colleges?

MS. LUKEN: Not that I'm aware of, no.

DR. PALMER NOONE: Okay. Just because of the conversations we had earlier in the day, I thought it was important to get some of those questions out. You, as a result of your review of the agency, feel comfortable that the findings of issues can be addressed by an interim report by June 7, 2007?

MS. LUKEN: Yes, I do. In fact, the agency will provide much more detail than I am prepared to give now. The agency has adopted proposed revisions to its policies as of I guess late last month and they will be implemented shortly. So they have already done their work.

DR. PALMER NOONE: Okay. Thank you. I have no further questions.

DR. PRUITT: Thank you. I too want to compliment you on the thoroughness of your work and I know that there's always a special challenge with this agency because there are so many other people that want to help you. [Laughter.]

DR. PRUITT: So I appreciate the thoroughness of your work. You answered one of my questions about the agency's readiness to satisfy the remaining issues. As to the third party, you are also fairly thorough in your review of the third party, and am I understanding this correctly, as I've gone through this, you have concluded that either the allegations of noncompliance contained in those third parties were either without merit or the agency has responded to those issues that were raised in your review?

MS. LUKEN: Correct.

DR. PRUITT: That's all. Thank you. I don't have any other questions.

CHAIRPERSON D'AMICO: Members of The committee? David Johnson?

MR. JOHNSON: I just have one question. In your report, you stated that the agency did not do anything concerning their standards until last

month. Why did they wait so long from their last visit?

MS. LUKEN: The short answer on that is that they have in their policies, they allow themselves a five-year time frame to review their standards. So 2008 would be when they needed to complete the review of standards. I think there were some outstanding issues as to why they got such a late start. I think they can provide more detailed information on that. But they have completed that survey. I did take a look at that survey and thought it was comprehensive, and I do know that they're going to be doing a follow-up survey again on the relevancy of those standards as well.

MR. JOHNSON: I'll ask the agency the same question.

CHAIRPERSON D'AMICO: Other questions of Ms. Luken? Thank you. Are there representatives of the agency that would like to come forward at this time? Good afternoon.

DR. BRIMHALL: Good afternoon. My name is Dr. Joe Brimhall. I'm a voluntary member of the Board of Directors currently serving as President. Past history, I was in private practice in chiropractic for 22 years, in licensing for ten years, served on the Commission on Accreditation for five years, and currently I also serve as President of Western States Chiropractic College in Portland, Oregon, and I've been on the board since January of 2005. We would simply like to say that we certainly appreciate all of the help that the U.S. Department staff has given us. We appreciate the thorough report; the scrutiny has been very helpful for us. We've tried to be responsive and proactive in addressing the concerns that have been raised and we would welcome your questions.

CHAIRPERSON D'AMICO: Thank you. Dr. Noone and Dr. Pruitt.

DR. PALMER NOONE: I was prepared for a longer statement. I think I saw some heads nodding back there, but I want to ask you the same questions that I asked the staff person. Is the practice of chiropractic licensed on a State-by-State basis?

DR. BRIMHALL: Yes, and it's licensed in all 50 States.

DR. PALMER NOONE: And to your knowledge, in how many of those States is the ability to sit through the exam tied to graduation from a CCE- accredited program?

DR. BRIMHALL: I believe it's 43 require CCE accreditation.

DR. PALMER NOONE: And to your knowledge, there's not another body that's currently accrediting chiropractic education?

DR. BRIMHALL: Not to our knowledge.

DR. PALMER NOONE: Okay. You have seen the staff analysis and the summary of the findings. Do you feel comfortable that you can remedy these issues by the June 7, 2007 date?

DR. BRIMHALL: Yes, of the four issues that were raised, we've already remedied three of them. We had a special board meeting last month where we passed policies to address the three issues, the three lower issues. The top issue we're in the process of addressing right now.

DR. PALMER NOONE: Sorry. The last, which was the issue?

DR. BRIMHALL: The issue about the survey and implementing that. We've already completed the survey and we have follow-up work to do with that as well.

DR. PALMER NOONE: Okay. Thank you. I have no further questions.

DR. PRUITT: Do you have information readily available about the pass rates of your graduates on their State licensure exams?

DR. BRIMHALL: Yes, we do have that. The National Board of Chiropractic Examiners provides that information directly to the Commission on Accreditation, and their Part IV is accepted by most States as the licensure exam.

DR. PRUITT: I guess do you know what's the percentage pass rate? What percentage of your graduates that sit for the exam are successful in passing the exam?

MR. BENNETT: Hi. My name is Ray Bennett. I'm the COA manager. Right now currently Part I--this is overall--is 75 percent pass rate and Part II is 80. Part III, I believe that was about 84 percent pass rate. And Part IV, that was closer to 90; it was about 88.

DR. PRUITT: That's the actual experience of your graduates from your schools? Where is the standard? Is there a minimum standard that gets you in trouble or above which you're okay? Where is that? What's that?

DR. GALLIGAN: There's a benchmark, and so for Parts I, II and III, it's 60 percent--I and II. And for the others, it's 70 percent. And if they're below that benchmark, then it triggers Commission activity.

DR. PRUITT: Right. I don't have any questions. Thank you.

CHAIRPERSON D'AMICO: Other questions? David and then Dr. DeNardis.

MR. JOHNSON: Okay. My question goes back again to what I asked Kristine, was why did it take you so long to review or redo your standards from the last time we had the agency before us?

DR. O'CONNOR: My name is Martha O'Connor. I'm the Executive Director of CCE. I assumed my position a little over three years ago, and that was one of the reasons it took awhile for me to get caught up. We have, however, been doing some ongoing work in preparing for the survey that we just completed this past week, in fact, and that was the development of our database that allows us to collect information on frequently cited concerns or areas of noncompliance. We're looking for patterns in those, and we're going to compare those to the results that we get from the survey that we're doing now and the survey that we plan to do in 2007 that will look at the reliability, the validity and usefulness of the standards.

MR. JOHNSON: Okay. Then my second question deals with notification. What are you doing to implement notification when an organization is put on any kind of probation, suspension or any kind of administrative action?

DR. BRIMHALL: We have had a process in place that we have been utilizing whenever there have been adverse actions that we've been using. We simply codified that in policies recently so that the procedure that we've been following is now written in policy.

MR. JOHNSON: So that information would be readily accessible by Internet or by fax or anything like that, published document?

DR. BRIMHALL: Yes, we would notify interested parties, also post it on our Website and make public announcements.

CHAIRPERSON D'AMICO: Dr. DeNardis.

DR. DeNARDIS: Yes, thank you, Madam Chair. Just a point of information from the Executive Director or whoever else would want to answer. All 50 States license chiropractors. That's clearly known. 43 States require that the new chiropractor be a graduate of a CCE-accredited program. What happens in those other States? Could you sort of paint the picture?

DR. BRIMHALL: I think the other States, the language says that the graduate has to come from a program that's either approved by that State Board or by an agency that is recognized by the Secretary. It doesn't specifically say CCE.

DR. DeNARDIS: And could you cite some examples of the route to licensure in those States?

DR. BRIMHALL: In the past, there have been chiropractic programs in the United States that were not accredited by CCE, and sometimes perhaps in that State where they were domiciled, that State Board may have recognized them for licensure. There are no programs that I'm aware of in the United States right now that are graduating students that are not accredited by CCE. So I don't have any real-time examples.

CHAIRPERSON D'AMICO: Other questions from the committee? Thank you. You may want to stick around in case you would like to reply to any of the third-party presenters. Ms. Luken of the Department, do you have anything further to add before we begin third-party comments?

MS. LUKEN: No.

CHAIRPERSON D'AMICO: Thank you. Thank you for coming in. We will begin with those that have registered to make comments. Again, we will notify you when your time is almost complete, and then when it is complete, Mr. Blumenthal will let you know that, too. The first one on the list--and this list was given to me, so they are in no particular order, as far as I know -- Christopher Kent, Vice President, World Chiropractic Alliance.

MR. JOHNSON: Madam Chair, point of information. Madam Chair, does a third-presentation have to be concerning the merits of the Secretary's criteria or are we off the subject of the Secretary's criteria when it comes to third-party communications?

CHAIRPERSON D'AMICO: I'll defer maybe to staff on that. I don't know what the invitation to comment said.

MS. WANNER: I'm sorry. Could you repeat the question?

MR. JOHNSON: Does a third-party comment have to be concerning the Secretary's criteria or can it be anything other than the Secretary's criteria that a third-party presents?

MS. WANNER: Third parties can comment on whatever they like. However, as far as its relevance to the committee, the committee's recommendation to the Secretary should be based on the criteria.

CHAIRPERSON D'AMICO: Does that answer your question?

MR. JOHNSON: Yes.

DR. KENT: Okay. Thank you. My name is Christopher Kent. I'm a chiropractor and an attorney. This is my 33rd year as a member of the chiropractic profession and my background includes serving as a faculty member at two chiropractic colleges, practicing chiropractic, and membership on the board of directors of two national chiropractic organizations. I'm making this presentation in my capacity as Vice President of the World Chiropractic Alliance, a nonprofit organization that represents thousands of chiropractors within the United States and throughout the world. WCA is troubled by CCE's continuing efforts to disenfranchise a significant segment of the profession. As noted in the staff report, the long-standing philosophical disputes in the profession are not within the jurisdiction of the Department.

I will not address the merits of any particular philosophical approach to chiropractic. However, it is entirely appropriate to note that accreditation should be a collegial process of ensuring educational quality. The accreditation process should not be used to force an institution to adopt a mission counter to its purpose. CCE began as an activist political organization and following CCE recognition by then DHEW, State Boards were persuaded to mandate that only CCE-accredited graduates could apply for licensure. Once CCE accreditation became tied to licensure, any claim that accreditation was voluntary became illusory.

The CCE's approach was autocratic and prosecutorial and CCE's standards demanded that chiropractic colleges train chiropractors to become primary care physicians. Today, CCE has become bold in their efforts to exclude advocates of dissenting philosophies from meaningful participation in the decision-making process. One recent example was the strategic planning session held last July. CCE invited only two national associations to participate, ACA and ICA. In a letter dated April 26 in response to WCA's request to participate, we were told chiropractic associations such as the ACA and the ICA are the ones that are limited and are recognized by CCE, and that therefore they limited their invitations to one representative from each of these two organizations. I've been unable to find any reference to CCE having the authority to recognize national chiropractic associations in any CCE or USDE documents. Furthermore, the willful exclusion of representatives from WCA and FSCO contradicts the claim that, quote, "CCE does not seek to define or support any philosophy regarding the practice of chiropractic." It should be noted that the ACA, ICA, WCA and FSCO combined represent a minority of practicing

chiropractors in the United States and the majority who do not belong to any national trade organization have no meaningful input.

Conflicts of interests issues are also a concern. Termination of Life University accreditation by Council on Chiropractic Education involved thousands of individuals and also involved the participation of institutions who stood to benefit by recruiting transfer students. This caused innocent students significant financial loss, displacement of their families, and disruption of their career plans. The USDE staff analysis acknowledges that there were areas of noncompliance that need to be addressed, and I certainly agree. However, I disagree with the Department's conclusion that CCE's activities are not so egregious as to warrant revocation of the Secretary's recognition. How much worse do things have to get? Thousands of students have been injured. An accreditation decision has been superseded by a Federal court. Conflict of interest issues remain unresolved. Complaints remain unsatisfactorily answered. Significant constituencies remain disenfranchised. The agency was permitted to investigate itself and find no wrongdoing. The only rationale for not--

MR. BLUMENTHAL: You have one minute.

DR. KENT: The only rationale for not revoking recognition is that doing so may injure innocent students. Therefore, I encourage the committee to consider deferring their decision on CCE for 12 months. WCA seeks the application of the principles of good governance including transparency, accountability, and meaningful participation for all factions within chiropractic. We seek a collegial rather than adversarial accreditation process that respects diversity. In short, we simply seek the ability of institutions that wish to perpetuate our kind to flourish. The title of this committee includes the words "quality and integrity." This is all we ask. Former Secretary of Education William Bennett wrote a book titled *The Death of Outrage*, and it's my hope that outrage is very much alive in this room today. Thank you.

CHAIRPERSON D'AMICO: Thank you. Are there questions from the committee for Mr. Kent? Thank you for coming in today.

DR. KENT: Thank you.

CHAIRPERSON D'AMICO: The next person on the list is Jennifer Zingone, former Life University student. And I apologize in advance if I mispronounce your names.

MS. ZINGONE: Not a problem. You did very well. My name is Jennifer Zingone, and I'm here representing myself and the hundreds of

students that were damaged by the actions of the CCE against Life University. It is my intention to share my experience with you, not for sympathy, but in the hope that you will do everything in your power to ensure that no student ever again goes through what I did. I feel, as I always did, that I received an excellent academic and clinical education at Life University. The CCE rendered an obviously flawed decision to revoke Life's accreditation. This is evidenced by the fact that Federal Judge Moye of the U.S. District Court who reviewed all the documentation and heard testimony from both sides cited conflict of interests when he granted Life a temporary injunction. The CCE's questionably motivated decision came for me at a time when I had completed about 80 percent of my education at chiropractic school. I had accrued over \$100,000 in student loan debt. I had passed Parts I, II and III of my national boards. I was preparing for the fourth and final part, and I was gearing up for graduation. Suddenly, I was left with nothing. The CCE's decision took away the possibility of me even being able to graduate. Hundreds of students and faculty were panicking and looking for answers.

Instantly, we were being solicited by representatives of other chiropractic schools. I attended two of these meetings and both schools were exceptionally well prepared with information about which of our courses were transferrable and how students in each stage of their education were going to be affected. How could they have been so prepared to fly to Atlanta, arrange for student meetings and offer transfer incentives and be so intimately familiar with our unique situation.

To paraphrase Judge Moye recruitment of Life students by competitors whose representatives were involved in the decision-making on accreditation is evidence of conflicting financial interest. I was just a few months away from graduating Life University when it became obvious that my only option was to transfer. According to CCE requirements, I was forced to complete an entire year at another school before I was eligible for graduation. I had to break a lease, hire a mover, pack my things, have my car shipped out to California, find a new place to live. Describing this time to you could never convey exactly how confusing, how frightening, stressful and expensive this experience was for me and for hundreds of other students, all of whom had their time, their money and their hope for the future invested in their education. I survived the emotional trauma, but I'm left with significantly higher student loan debt as a result although I consider myself lucky because eventually I was able to graduate.

For many students I knew, the stress and the costs were too much and they never completed their education. Shortly after I transferred, to add insult to injury, the CCE turned around, made a settlement and gave back accreditation as if their

original decision had meant nothing. This action was in flagrant violation of their own regulations which say that once an institution's accreditation has been revoked, they must begin the reapplication process. And this action was not forced by the Federal court.

The court's only action was to grant a temporary injunction. The decision to disregard their own policies was made solely by the CCE, effectively making all the turmoil that I endured and all the damage done to the profession, the school, the community, the faculty and the students needless and senseless. I don't pretend to be an expert on accreditation. However, it would seem to me the very purpose of accreditation would be to ensure that a school delivers what it is promising, thereby protecting the student. At no point have I felt or seen evidence that the CCE was acting to protect--

MR. BLUMENTHAL: One minute.

MS. ZINGONE: --me or to improve my education. Instead, everything I've seen leads me to believe that the CCE acted only to protect themselves and to further their own political and financial agenda with no regard for the thousands of lives that were being damaged in the process. It's three years after the fact. I haven't seen anything that suggests that the major flaws in the CCE, which allowed such a tragedy to occur, have been corrected. And although I believe the CCE's actions absolutely warrant a revocation of their recognition, I would never want any other student to potentially be affected by something like that. Therefore, I feel a deferral would be a satisfactory compromise to allow time to investigate and correct the faulty policies while preventing any students from being negatively impacted. Thank you for your time.

CHAIRPERSON D'AMICO: Thank you for coming in today and sharing your story. Are there questions from the committee? Thank you. Next presenter, Thomas Sidoti, Council of New Jersey Chiropractors. Thank you.

DR. DeNARDIS: Madam Chair, I just want to make--

CHAIRPERSON D'AMICO: I'm sorry.

DR. DeNARDIS: I just want to make a quick comment because Ms. Zingone spoke clearly and well. Determining the facts will be another matter. But I just want people who are speaking as third-party presenters and who will do so in a fashion that might resemble a parade to know that we're listening carefully and that we will take into consideration in subsequent questioning things that should be further addressed.

CHAIRPERSON D'AMICO: Thank you for

saying that. I had that same feeling. Just because there are no questions doesn't mean we're not listening.

DR. PRUITT: Yes. Madam Chair, I'd also like to add on to that that the third-party written testimony was provided to us all. We have all had the written testimony and had the opportunity to read it. So we are essentially requesting brief summaries of information that we already have, and I know that most of us, and I can tell you with certainty that two of us, have gone through the third-party comments with great detail, that testimony in great detail.

CHAIRPERSON D'AMICO: Thank you for adding that. That's important. Thank you, Dr. Pruitt.

DR. SIDOTI: My name is Dr. Thomas Sidoti, and I represent the Council of New Jersey Chiropractors. I'd like to start by saying that the Council commends the USDE staff for its detailed analysis of the CCE. The Council is concerned, however, that the USDE recommendation for renewal is not justified in light of the many areas of noncompliance. As the committee may know, in June 2002, CCE revoked the accreditation of Life University based on questionable grounds. Shortly thereafter, Life filed the request for a temporary injunction in Federal court. After a thorough review of all evidence, the court found CCE's actions so egregious that it ordered it to immediately restore Life's accreditation.

The court's ruling detailed numerous conflicts and stated in part, and I quote: "Although decisions of accrediting agencies have historically been given deference, where, as here, accreditation decisions are made by actors with a financial interest in the outcome, little deference should be given. Here there were admitted conflicting economic financial interests in the decisions that were made." In March 2003, the Council filed a complaint with CCE requesting information concerning conflict of its members in the flawed Life decision and also requesting the organizational affiliations of its decision-making bodies.

Rather than respond to the complaint and address the conflict it admitted to in court, CCE instead advised the Council that its complaint was not valid. Lacking other recourse, the Council submitted its complaint to the USDE. After a two-year investigation, the USDE formally cited CCE for numerous violations including failure to investigate conflicts of interest in its accreditation decision, failure to provide the organizational affiliation of its decision-making bodies and failure to respond to complaints against itself. In its decision, the USDE mandated that CCE investigate conflicts of interest in its Life decision. I have included a copy of CCE's investigative report with my submitted materials. If the committee will please review that report, it will note that it lacks even the most basic investigative elements and

fails to address the number conflicts identified by the court.

Notable is that the report does not investigate if CCE members involved in the Life decision gave advance notice of the decision to others at the respective school. The report doesn't address how competing schools were able to logistically plan and hold student recruitment meetings nearby the Life campus the day after the decision. It does not investigate when the travel reservations to the Life campus were made for the recruitment officers, when the rooms for recruitment meetings were booked or when the buses to transport Life students to the competing schools were scheduled. If any of those items were booked prior to the June 10 announcement, clear improprieties would have been revealed. When one considers the extreme consequences of CCE's reckless decision and the conflicts detailed by the Federal court, an investigation that consists of nothing more than a phone call with four questions seems highly inadequate. It is interesting to note that while the court found that there were admitted conflicting economic financial interests in the decisions that were made, CCE's investigation concludes that there were no conflicts. The Council is concerned that the CCE admitted to financial conflicts in Federal court but then filed the report with Department of Education stating that no conflicts existed at all.

In addition to the substandard investigative report, CCE still failed to provide the Council with the requested organizational affiliations of the decision-making bodies. On February 27, 2006, the Council submitted a follow-up complaint to CCE requesting information about the inadequacies of its investigative report as well as a third request for the organizational affiliations of its decision-making bodies at the time of the Life decision. I have also attached a copy of this complaint with my submitted materials. Despite the new policies that state otherwise, as of this date, more than three months later, CCE has once again failed to respond to a complaint against itself and address the issues.

Despite being cited by the USDE for these precise violations, more than three years have passed and still the CCE refuses to address the conflicts it admitted to in court, provide the organization affiliations of its members or respond to complaints against itself. These actions demonstrate that CCE continues its failure to adhere to new policies it has provided to USDE. In closing, while the Council credits USDE staff for detailing the numerous areas of CCE noncompliance, it strongly disagrees with the recommendation that CCE's recognition be renewed. In this case, CCE admittedly made an accreditation decision fraught with economic conflicts that were so egregious that a court--

MR. BLUMENTHAL: One minute.

DR. SIDOTI: -- immediately granted an injunction. Sadly, CCE refuses to this day to address the circumstances surrounding that flawed decision and more importantly what steps they have taken to prevent a similar occurrence. While the Council believes that numerous areas of noncompliance are sufficient to revoke CCE's recognition, the Council also believes that doing so would only serve to further harm the institutions and the students they serve.

The Council therefore recommends that the public is better served by granting CCE a one-year deferral to allow for an independent investigation of conflict of interest and to ensure that all outstanding areas of noncompliance are resolved before granting a full five-year renewal. CCE has a long track record of failing to comply with the Secretary's criteria. The failure is shown by the fact that the Council has waited three years for a response from CCE that is yet to come, this despite intervention by the USDE. The Council fears that without a deferral, CCE will never take the steps necessary to resolve the conflicts detailed by the court or even respond to complaints against itself. Thank you so much.

CHAIRPERSON D'AMICO: Thank you. Are there questions? Yes.

DR. KEISER: I'm sorry. Who is the Council? What is the Council?

DR. SIDOTI: Council of New Jersey Chiropractors.

DR. KEISER: Is that a trade association or is it a regulatory body?

DR. SIDOTI: That's a trade association in the State of New Jersey.

DR. KEISER: Thank you.

CHAIRPERSON D'AMICO: Other questions? Thank you.

DR. SIDOTI: Thank you.

CHAIRPERSON D'AMICO: David O'Bryon, Executive Director, The Association of Chiropractic Colleges.

MR. O'BRYON: I am here.

CHAIRPERSON D'AMICO: Good.

MR. O'BRYON: I'm David O'Bryon, the Executive Director of the Association of Chiropractic Colleges. We represent all the accredited colleges in the United States as well as those in North America. We represent other schools internationally in England as well as "down under" and New Zealand. I'm here today.

I'll be very brief. I represent every chiropractic college that's accredited in the country, and my board has asked me to come here today to testify in favor of re-recognition of CCE.

CHAIRPERS ON D'AMICO: Thank you.

MR. O'BRYON: It's going to be short and sweet. One of the issues that came up on the conflict of interest that has been back and forth, I will address briefly here because it's been raised once or twice. None of those conflict-of-interest questions from any other organization ever addressed our organization whatsoever, but there are some changes in the conflict-of-interest things that have taken members of my board off my board because they're serving at CCE, and it's a change, what I consider a change in policy from the published regulations that you have. As you go down the pike and look at conflict-of-interest issues, there seems to be some variation on how that is applied, but it applies to us and anybody else in the room if a member of my board serves on a CCE board or another accrediting body. Any other accrediting body here that's in the same circumstance, they could lose members of their board off as a conflict of interest under the current interpretation of the law and I would commend you all to look at that as well. I'll end where I started. I represent all the schools and all the schools have asked that I come forward and urge you all to renew CCE's five-year recognition. I yield back the balance of my time, Madam Chair.

CHAIRPERSON D'AMICO: Thank you. Are there questions? Thank you very much.

DR. DILLON: I have a question.

CHAIRPERSON D'AMICO: Maybe you could sell your time.

DR. DILLON: I do have a question.

MR. O'BRYON: Yes, sir.

DR. DILLON: Are you saying that within the -- oh, what's the name now-- the acronym --

MR. O'BRYON: The ACC.

DR. DILLON: Within the CCE, every accredited school is happy about this and there are no dissenters about the A--

MR. O'BRYON: There were no dissenters when we asked whether we would be supportive of CCE's reaccreditation. That's not to say I represent everybody across the board. You've heard people from all the institutions and some of the issues that you've had addressed here today. And I think part of the story that you're hearing is some of the journey that any group or body takes

as they travel along. I think you're hearing about some of the chapters that have happened in the past, and I think as we turn to a new chapter in the CCE, that a lot of those things are being addressed and that's I think why people are confident in CCE's --

DR. DILLON: Yes, so is this the case that you polled all the members and all the members responded positively or you gave them an opportunity to respond and you heard nothing negative?

MR. O'BRYON: Two different instances. A year and a half ago, we posed the question in one of our board meetings about CCE and everybody adopted a position of support.

DR. DILLON: At the board level?

MR. O'BRYON: At the board level. And that represents all the schools because all my schools are members of our board.

DR. DILLON: How many schools are there?

MR. O'BRYON: Well, there are 15 programs in the United States and then I have three or four others that are international programs. But all those schools that are recognized in the United States by the Commission on Accreditation and thus by the Secretary are members of my organization.

DR. DILLON: So you have board meetings of 50?

MR. O'BRYON: I only have 15. There are 15 schools.

DR. DILLON: I'm sorry.

MR. O'BRYON: We're a small community in that regard.

DR. DILLON: Okay.

MR. O'BRYON: And that's what makes it difficult when I start losing board members. If they sit on one, they can't sit on the other, that makes it difficult for us. We lose. The reason they're being pulled into these leadership spots is because they have leadership and expertise, and when we're looking for--

MR. BLUMENTHAL: One minute.

MR. O'BRYON: -- knowledge and what not, that's why these people keep--

DR. DILLON: I want to be clear. You represent all the schools?

MR. O'BRYON: Correct.

DR. DILLON: But the number of schools comes to 15 that are accredited by the CCE?

MR. O'BRYON: Right.

DR. DILLON: Okay. Thank you.

CHAIRPERSON D'AMICO: Thank you very much. Mr. Pizza, President, Georgia Council of Chiropractic --Chiropractic something.

DR. PIZZA: Yes. Good afternoon, ladies and gentlemen, and thank you for allowing us this opportunity as a profession to come to the United States Department of Education as a body that can help to perhaps shed some light on some issues that are going on in our profession today. I'm an alumni of Life College, a 1983 graduate. I have two active practices in Atlanta, Georgia, and I represent three to 400 doctors of chiropractic as the president of our State association. I have been very, very involved with the activities at Life University from its onset in 1983 when I became a graduate.

We have found that when the students were told that their accreditation had been voided, the entire State of Georgia was devastated as far as the chiropractic profession was concerned. This is a committee that's out of control, ladies and gentlemen. They policed the chiropractic profession as if it's a German Nazi investigation of people and lives. The Georgia chiropractors want this board to know the things that happened at Life University in 2002 were deplorable. There was one reason for the largest chiropractic college in the world to have its accreditation revoked. The devastating effect that it had on the community of Atlanta, on the State of Georgia and the students that were at that college, it's unbelievable how far the reach that may go today.

I would like to just read a few principal points. The revocation of the accreditation of Life University was devastating to the faculty and the students and the community. Dr. Brimhall was the chairman of the CCE, COA at the time, and is responsible to guide the commission, not destroy a college that we took so long to build. The decision resulted in two lawsuits. The decision was overturned at the Federal level. Lawsuits are now settled and the accreditation is restored and now Brimhall is the President of the CCE. The CCE needs to be reformed, ladies and gentlemen.

The one that thing I'd like you to leave with this afternoon is to let you know that Life University produced the most chiropractic students in the country, they got an excellent education, and they were able to go to every State and pass every licensure that was asked of them, and they did it wonderfully. The educational institute of Life University bar none was magnificent. We graduated students that went on to become very

successful doctors and took care of thousands and thousands of patients, and one organization decided that that institution didn't have to be. Was it professional jealousy? Was it motivated by money? I ask this board. I'm not a politician, nor am I someone in the educational field. There are many people in this room that have more expertise than I do, but I'd like to let you know, ladies and gentlemen, That the education at Life University that those students were receiving at that time had absolutely nothing to do with the loss of that accreditation, and I would like someone in this room to investigate that further. The CCE has manipulated the system and I think it's time they need an adjustment. Thank you for your time.

CHAIRPERSON D'AMICO: Thank you for coming in. Richard Cole, Federation of Chiropractic Licensing Boards.

DR. COLE: Good afternoon, Madam Chairwoman --

CHAIRPERSON D'AMICO: Good afternoon.

DR. COLE: --and committee members. I'm Dr. Richard Cole. I'm the immediate past President of the Federation of Chiropractic Licensing Boards. I'm here on behalf of our President, Dr. Ed Weathersby and The Board of Directors for the Federation of Chiropractic Licensing Boards. I'm a private practitioner in Memphis, Tennessee, been there for about 28 years now. The FCLB, as we call it, was founded in 1926 and serves as the chiropractic profession's only nonprofit organization comprised of governmental agencies responsible for the licensure and regulation of doctors of chiropractic. Our member boards include all 51 chiropractic licensing boards in the United States and several U.S. territories as well as select regulatory agencies in Australia and Canada. The FCLB supports our member regulatory agencies in fulfilling their mission of public protection. An essential component of protecting the public includes assuring and acceptable level of quality regarding the academic credentials of licensure candidates. Currently 43 chiropractic regulatory agencies in the United States and many throughout the world depend on the Council on Chiropractic Education to assist them through its Commission on Accreditation's direct assessment of educational programs leading to the doctor of chiropractic degree.

In light of our members' reliance on the CCE and the COA, the Federation has actively observed the organization's functions and actions since its inception. We do this to assure our members of the CCE's continued effectiveness and due diligence. We have recently reviewed the standards and processes of CCE and have found them to be reasonable and appropriate for doctor of chiropractic programs in the United States.

From the standpoint of regulation and public protection and to the best of our knowledge and experience, we believe that CCE carefully follows its rules in the administration of its duties and fairly applies the standards and processes to its member programs without bias. I'm pleased to report that regulatory boards continue to rely with confidence on the accrediting functions of the CCE. Thank you very much for your time and I'd be able to answer any questions if you have some.

CHAIRPERSON D'AMICO: Thank you for coming in. Are there questions? How long has it been since the licensing boards have required the accreditation?

DR. COLE: That's a great question. This is probably a better question for somebody here from the CCE because there was an accrediting agency that predated CCE. One was accrediting by the ICA, the International Chiropractic Association, and one was the American Chiropractic Association. So we had two different accrediting bodies. I believe at that time one of them was then accepted by the U.S. Department of Education and then they ended up with one accrediting agency, and it ended up being CCE. I think it was termed differently at the time though.

CHAIRPERSON D'AMICO: I'll ask the agency that when they come back. Thank you.

DR. COLE: Yes, ma'am.

CHAIRPERSON D'AMICO: Donald Hirsh, Chairman, Doctors for Excellence in Chiropractic Education.

DR. HIRSH: Good afternoon.

CHAIRPERSON D'AMICO: Good afternoon.

DR. HIRSH: My name is Donald W. Hirsh, and I am a practicing chiropractor and conveniently located in Laurel, Maryland. I'm the Chairman of DECE, which stands for the Doctors of Excellence in Chiropractic Education. We were formed almost four years ago as a chiropractic watchdog group based upon widespread concern regarding our accrediting agency, CCE. We have nearly a thousand members from 12 different chiropractic programs. It's hard and painful to look at our own agency and feel so concerned. It's also very difficult for me to be here today testifying against chiropractors' only accrediting body, one that represents this profession which I love so passionately. However, DECE has thoroughly reviewed the chiropractic accreditation landscape over the last four years and we're not happy with what we see. We see an agency that had a very difficult four years, fraught with multiple lawsuits and complaints. In fact, CCE is

the first accrediting body in U.S. educational law to have its accrediting decision reversed by a Federal judge.

Further, the Department of Education has repeatedly found instances where CCE has been and continues to be out of compliance with its criteria. Lastly, three national chiropractic organizations have published votes of no confidence in this agency. We ask why one agency can have so many difficulties during their last five years and the four years we've been studying them? Well, it begins with leadership. You have heard testimony earlier this afternoon regarding questionable organization and governance issues. I won't rehash this testimony, but I ask that the Department and this commission and this Secretary closely look at that issue. It's still unresolved and still concerns us. These leadership problems and corporate maneuvering have been a major factor in why CCE has lost the trust of a large part of the chiropractic community.

The problems within CCE and its Commission on Accreditation go far deeper than leadership and governance. These problems go to the core of accreditation standards. Note DECE doesn't have any significant problems with the standards. That might surprise some, albeit they are sorely out of date. Our problems lie in how these standards are apply and that's the crux of my testimony.

First, as others before you have outlined, there's a minority medical viewpoint that has gained a stranglehold on the political nominating and governance of CCE. All power to them. Hey, they did a good job getting there. However, they have not used this power justly. They have created a climate of fear that has been heightened with a death blow to Life University. As Chairman of DECE, I get calls from administrators from around the country from chiropractic programs, universally these administration officers and staff insist on confidentiality. Matter of fact, one president requires me and makes me assure him that a land line, non-corded phone is used. Others will not even speak to me directly out of fear. They deliver messages to me through third-party messengers. Frankly, that's rather sad that it's come to that. But based upon this confidential information, DECE has uncovered a deep and disturbing pattern in which site visitation teams make suggestions and ultimately recommendations that are beyond the published standards, and this is in direct violation of USDE criteria 602.18, ensuring consistent decision-making. I can give you only one example that won't hurt my sources and break my confidences. The use of X-rays for diagnostic purposes has been widely used by the chiropractic profession for almost a hundred years. A small minority of the profession feel that X-rays should only be taken in the likely presence of serious pathology, while the majority of the profession relies on X-rays to better understand the alignment condition of the spine in order to better serve our

patients. Unfortunately, the minority dominates the site visitors.

MR. BLUMENTHAL: One minute.

DR. HIRSH: And they are imposing their views on the clinic staff. Out of fear, the clinics and the schools are recommending that the number of X-rays be reduced. Students are graduating now from chiropractic school with barely the opportunity to learn how to X-ray their patients even though they can use it in their States. There are two distinct problems with this. One is the fact that it's going to hurt the students' ability to be educated properly. The second, it's against U.S. Department of Education criteria to have a nontransparent set of standards. It comes back to leadership. The site visitation process goes unchecked and there's a climate of fear that this has become pervasive. This is not good accreditation. Good accreditation should be like a parent. Clarity, transparency and equal treatment among siblings would be expected. No less should be expected from accreditor. The staff, I thought, did a good job with the report.

MR. BLUMENTHAL: I'm sorry, but your time is up.

DR. HIRSH: Okay. Thank you.

CHAIRPERSON D'AMICO: Thank you. Could you tell me who are your members, the individual doctors?

DR. HIRSH: Yes, our members are doctors, our members are faculty, and we are throughout the United States. All our members practice in the United States or teach in United States' institutions.

CHAIRPERSON D'AMICO: Primarily faculty then?

DR. HIRSH: No. Primarily practicing doctors.

DR. MALANDRA: Can I ask a related question then? Would members of your association be members of some of the other associations that are represented here or vice versa?

DR. HIRSH: I would say that out of a thousand or so members, that there's probably members also of other associations. I'm, for example, the chairman, but I'm also a member of my State and a national organization.

DR. MALANDRA: Which national organization?

DR. HIRSH: I'm a member of the

International Chiropractors Association.

MR. BLUMENTHAL: Did you say that your organization was formed explicitly to provide oversight of CCE?

DR. HIRSH: I didn't use those words. Based upon the crisis which you've heard about about Life, a number of people, many from other institutions by the way, started to talk and a grass-root movement formed and ultimately six months or eight months into the process, we clarified and kind of codified what we were really about.

At first, we were very angry with our chiropractic college. They let us down. How could you let us down? I was frightened because I'm in practice and my license was now going to be questioned. My patients were hearing about it in the press. But we quickly, after doing some investigation, switched to a watchdog role when we realized that the problem was not with Life; it's with, unfortunately, with our accrediting agency.

MR. BLUMENTHAL: Thank you.

CHAIRPERSON D'AMICO: Thank you. Oh. David.

DR. DeNARDIS: I yield to you.

MR. JOHNSON: My one question is dealing with, since you have this watchdog agency, and we've talked about this earlier in our meetings, isn't there a way that you can form your own accrediting agency to do the same things that this agency is doing? There is no monopoly in accreditations.

DR. HIRSH: Yes, yes. Mr. Barth and I have had this conversation many times. Hello, Mr. Barth. The answer to that question is I think at this time if some of-- if the Department and this body recognized the severe and fundamental nature of the problems, they deferred this body's accreditation until these problems were cleaned up, I think the profession probably is best served by our accrediting body. However, if the problems are not remedied, there will be a time when there probably will be another one.

CHAIRPERSON D'AMICO: Dr. DeNardis.

DR. DeNARDIS: Dr. Hirsh, you may have mentioned this. You are a graduate of Life?

DR. HIRSH: Yes, I am a graduate of Life, with honors, I might add.

DR. DeNARDIS: Congratulations. That's clearly the most celebrated or notorious case we have here today. Are there other cases comparable to what happened at Life that you might want to cite?

DR. HIRSH: Regarding other institutions? Yes. While this is a very different situation, I think there are a tremendous amount of similarities here. Before you on a number of occasions, the Bar Association has had similar brawls and there are a tremendous amount of similarities here. There are schools that wanted to teach constitutional law and they thought that everybody should be a constitutional scholar because that's the basis of this country and the law in this country. But there are schools, the University of the District of Columbia, for example, Law School. You have to get people out of jail. You now there are basic things, you know, people being evicted. There's basic law that needs to be practiced. So in a sense, there was a philosophical divide and the American Bar Association has struggled with how to house within one agency a diversity of opinion. My feelings are they're doing a whole lot better than this accrediting body. The fact that site visitation teams have their own agenda and are going to schools and forcing upon them decisions, changing their mission, forcing clinical changes that are not part of the standards, hey, they have the power, change the standards. Say you can't take X-rays unless there is pathology. But don't do it through a back door. That's not right and not acceptable.

The American Bar Association has worked it out. There's a need. The public is best served by graduates of the diverse basis of the decisions. Similarly, the chiropractic profession will be best served. Some people need a more medical driven approach to chiropractic. Some people need a more holistic sense. Don't dilute the education at the extremes. Everybody has got to know both sides of the equation. A lawyer in the District of Columbia has to know constitutional law. There has to be a change in this agency that allows permissiveness and allows diversity of education.

CHAIRPERSON D'AMICO: Other questions from the committee? You may want to come to our December meeting before you use the ABA again. [Laughter.]

DR. HIRSH: Oh, by the way, I'm signed up to testify. [Laughter.]

CHAIRPERSON D'AMICO: Thank you for coming in today.

DR. HIRSH: Thank you.

CHAIRPERSON D'AMICO: There are three presenters from the International Chiropractors Association, Welsh, Maltby and Fallon. Oh, did I skip somebody? Oh. Okay. Sorry about that. Mr. Corcoran, I apologize. It was an oversight on my part.

MR. CORCORAN: You've got a long list. It's understandable. My name is Kevin Corcoran.

I'm the Executive Vice President of the American Chiropractic Association and I'm here today in support of the U.S. Department of Education's continued recognition of CCE's Commission on Accreditation as the officially recognized accrediting body within the chiropractic profession. The ACA is the nation's largest premier society representing doctors of chiropractic and chiropractic students with a membership in excess of 16,000 individuals. As the premier association representing the interests of the chiropractic profession on a nationwide basis, the ACA is appropriately and keenly interested in ensuring that the highest possible educational standards are maintained within the field of chiropractic higher education. Without question, much of the profession's progress including the high levels of professionalism that exist and the excellent quality of care delivered to chiropractic patients relates directly to the quality the higher education.

Much of the credit for achieving and maintaining this positive success story is due to the excellent work of the CCE over these many years. In the opinion of the American Chiropractic Association, the CCE has performed its role admirably well and we believe the organization is professionally, fairly and capably managed and deserves continued recognition by the U.S. Department of Education. Unfortunately, as you've seen, there are significant philosophical and organizational differences within the chiropractic profession and these differences are sometimes expressed through forums such as this one. On occasion, some individuals or organizations, typically representing a small minority of the entire chiropractic profession, will attempt to fault CCE's efforts to maintain high educational standards within chiropractic higher education.

While the details of the specific complaints vary from time to time, they almost always seek to lower standards, implement competing standards or exceptions that would undermine the accreditation process. Lowering standards or implementing competing standards are not in the interest of the chiropractic profession or the patients that the chiropractic profession serves. ACA wishes to make clear that it is aware of no substantive complaint today regarding the work of CCE and certainly no complaint that is widely held or supported within the chiropractic profession and reject any notion to the contrary.

We believe that CCE Commission's procedures for conducting its business are appropriate and have added greatly to the quality of the chiropractic educational experience. Your Advisory Committee has a distinguished track record of carrying out your responsibilities in a fair and thorough manner. On several previous occasions, you've examined the work and status of the CCE, Commission on Accreditation, and have recommended continued Department of Education

recognition. We respectively urge the Advisory Committee to do the same thing in response to the CCE Commission's current petition. Thank you for the opportunity to speak. I'd be glad to answer any questions you might have.

CHAIRPERSON D'AMICO: Thank you. Fair to say there's not much overlap in membership between your organization and Doctors for Excellence in Chiropractic Education?

MR. CORCORAN: None that I'm aware of. I've not seen their membership list, but it's unlikely.

CHAIRPERSON D'AMICO: You seem to be suggesting that they would be seeking to lower standards. Why would practitioners want to do that?

MR. CORCORAN: Again, it comes down to philosophical differences within the profession, and just some background, I'm not a chiropractor. I'm relatively new to ACA. I've been the Executive Vice President for about nine months. But there is very much a philosophical difference between two sides of the profession and you're seeing that playing out here, and one can argue that it's a diminishing of the standards. It's certainly a changing of the standards to reflect philosophical interests in what is or is not appropriate within the chiropractic profession, and that's what we perceive happening here.

CHAIRPERSON D'AMICO: Questions from the committee? Yes, Dr. Dillon.

DR. DILLON: Can you express in a sentence or two what that philosophic difference is essentially?

MR. CORCORAN: It comes down really to the definition of chiropractic and whether or not, as I believe Dr. Hirsh commented on, whether or not it should be a holistic approach to chiropractic or a very strict interpretation of what chiropractic treatment is and what parts of the body and what aspects they should treat. So it comes down to that sort of thing. Is it the spine; is it the entire body; how do we address the needs of the body and people's health?

DR. DILLON: And where does the CCE line up?

MR. CORCORAN: CCE has traditionally been on a more holistic approach, has taken a broader approach, which is in line with the philosophy of many of ACA's members. Our membership is diverse, but we like to make things as broad as possible and let people come to their own conclusions about how they want to practice as chiropractors.

DR. DILLON: Thank you.

MR. CORCORAN: Thank you.

CHAIRPERSON D'AMICO: Other questions? Thank you for coming in today?

MR. CORCORAN: My pleasure; thank you.

CHAIRPERSON D'AMICO: Now we're ready for the three representatives from the International Chiropractors Association.

DR. WELSH: Do you want us all to come up at the same time?

CHAIRPERSON D'AMICO: It was my understanding that was what you wanted to do. Sorry about that. Different notes. Are you Mr. Welsh?

DR. WELSH: That is me.

CHAIRPERSON D'AMICO: Okay. Thank you.

DR. WELSH: Distinguished members of the Advisory Committee, allow me to introduce myself, Dr. Stephen Welsh. Prior to getting my D.C. degree in '96, I had over 20 years experience in corporate America. In 1984, I was appointed Vice President, Network Design for Telephone Operations, the largest business unit of Contel, a multi-billion dollar corporation, headquartered in Atlanta, Georgia. From 1985 to 1989, I was a member of the Board of Directors of the Exchange Carriers Standards Association. This was a nonprofit corporation formed shortly after the breakup of the Bell System. My experience overseeing standards development in a competitive environment, sensitive to antitrust concerns, has proven to be extremely valuable in assessing the recent organizational behavior of CCE.

It is generally understood that the voluntary peer review process of accreditation involves competing educational institutions making decisions that have the potential to impact their competitors. In the standard setting arena, however, competitors are not exempted from antitrust considerations. This concept seems to have escaped the attention of the executive leadership of the CCE since approximately 2002. The Council on Chiropractic Education has the capacity to change educational clinical practice standards, and for various reasons that are beyond the scope of a five-minute presentation could impact the standards of practice of approximately 60,000 chiropractors in the United States and ultimately affect the standards of practice on an international level. Department staff has found no such egregious issues to warrant revocation of the Secretary's recognition.

For the record, ICA concurs with this assessment. It would be a travesty for the Secretary to revoke the recognition of this agency which for almost 30 years has demonstrated that it is a reliable authority on quality education. It is the assessment, however, of ICA that the findings of the Department staff to be reasonable and fair, however that ICA disagrees with the staff's final recommendation to renew recognition for a full five years. I would like to address some of the reasons why. Five years ago, this agency appeared before this committee seeking a five-year extension which was appropriately granted. Five years ago, this agency accredited 16 doctor of chiropractic programs at 16 sites. Seven of these programs are ICA affiliated schools. In 2004, the COA extended accreditation to Palmer College of Florida, another ICA affiliated program. This should have brought the total to 17 doctor of chiropractic programs at 17 sites. That would have been the situation if CCE was operating under the bylaws that existed five years ago when recognition was last extended. You will notice that the current application reads 14 programs at 17 sites. ICA respectfully suggests that the agency that stands before you today is not the same agency that appeared before this committee five years ago.

Five years ago, CCE was incorporated in the State of Wisconsin. Now, CCE is incorporated in the State of Arizona. Five years ago, all 16 programs participated in and had responsibility for corporate governance; all accredited programs participated in the election of all board seats. Now, most programs do not participate in corporate governance and all programs do not participate in the election of all board seats. ICA recognizes that any corporation including CCE has the right to reorganize and restructure. ICA, however, also recognizes that all corporations have a legal obligation to follow their own organizational bylaws when doing so. ICA asserts that the current structure, improperly formed, was not based on sound accreditation principles. Please refer to my first attachment that was prepared by a think tank known as the Institute for Alternative Futures. ICA affiliates had 1,949 graduates out of a total of 3,284 in 2002. Using the graduation numbers as a surrogate for determining market share, it is reasonable to estimate that ICA affiliated programs had approximately 60 percent of the market in 2002.

MR. BLUMENTHAL: One minute.

DR. WELSH: All right. In that case, it seems that these changes were never approved by two-thirds of the 16 programs as required by the 2001 bylaws. Okay. In fact, the 2001 bylaws were changed by an affirmative vote of just eight non-ICA affiliated DCPs over the objection of the other eight. Okay. It is ICA's contention that until this

egregious act in defiance of the rights of the ICA affiliated programs is reversed and corrected, the CCE will continue to be noncompliant with several of the criteria of the Secretary. In closing, I would like to reaffirm that the ICA agrees with the Department staff when it declares that the CCE continued noncompliant in several areas, some of which have already been addressed. The ICA does not support continuation of recognition for the full five years as requested. We respectfully request that the committee reduce the length of recognition and in essence put this agency on a short leash. Given some time and a little incentive from this committee--

MR. BLUMENTHAL: Thank you. Your time is up.

CHAIRPERSON D'AMICO: Thank you. I have a question. I'm a little confused about what ICA affiliated schools, what does that mean, affiliated?

DR. WELSH: Okay.

CHAIRPERSON D'AMICO: The members of your organization, but what does that mean?

DR. WELSH: Okay. The ICA schools and colleges have an opportunity to voluntarily join and pay a fee and become affiliated with the International Chiropractors Association.

CHAIRPERSON D'AMICO: They do that why?

DR. WELSH: Okay. Because you might say the International Chiropractors Association represents the ideals, as some people said, the philosophy is a more conservative approach to chiropractic. Okay. In fact, three board seats. There is greater representation on the ICA Board of Directors-- okay --by ICA affiliated programs than there is representation on the CCE Board of Directors from ICA affiliated programs.

If you look at the committee structure, the ICA affiliates have approximately 60 percent market share and they have nine percent participation on the formal committee structure within CCE.

CHAIRPERSON D'AMICO: I see what you're saying now. Thank you. Questions? Other questions from the committee?

DR. DILLON: Yeah. I'm a little confused. Are there ICA schools or programs that are accredited by the CCE?

DR. WELSH: They are not ICA schools, okay.

DR. DILLON: Just members.

DR. WELSH: Each school is a school. Okay. And I think somebody said historically 30 years ago, there were certain schools that were accredited by the ICA Committee and there were certain schools accredited by the ACA Committee. Okay. It was the ACA Committee, okay, that actually finally got recognition by the Department of Education, so historically there has been a little bit of a difference because of that. That's probably why the gentleman from the ACA is fully supportive of the committee that his institution originated 30 years ago. But the other schools, there are other schools that were not originally part of that, that had no choice but to seek recognition from the CCE because of the State requirements for licensure.

DR. DILLON: Are they happy, those schools, or unhappy with the CCE?

DR. WELSH: I would suggest it depends upon who you talk to. Okay. I don't think there's anybody on either side of the fence that has a desire for the recognition to be revoked. Okay. But there are those on one side of the fence that are extremely concerned that this organization does need to be reformed. In essence, if you look at the track record of the past five years, it's been very embarrassing for the entire profession.

DR. DILLON: But is your testimony contrary to Mr. O'Bryon's who I thought said that those who are members of the CCE--I may have got the wrong name--were not unhappy with—

DR. KEISER: ACA.

DR. WELSH: With the ACA.

DR. DILLON: Yeah.

DR. WELSH: Okay.

PARTICIPANT: ACC.

DR. WELSH: Ah. Okay.

DR. DILLON: I don't know all the players. Sorry.

DR. WELSH: Yes. Again, I think what you're asking me about is the Association of Chiropractic Colleges and all of the chiropractic colleges belong to that association.

DR. DILLON: Yes, right. That's right. That's what I'm asking.

DR. WELSH: Okay. And if I think what the answer was, the question that was posed to all of the institutions was are you in favor of continued recognition? Okay. And all of us are in favor of continued recognition--the ACA is as well as

the ICA. Okay. But we're just concerned that reform is necessary and a full five years isn't warranted.

DR. DILLON: I understand now perfectly —

DR. WELSH: Does that help?

DR. DILLON: -- what you're saying. It's very helpful. Thank you.

DR. WELSH: Thank you.

CHAIRPERSON D'AMICO: Yes, Art. Art has a question.

DR. KEISER: Sir, before, you leave—

CHAIRPERSON D'AMICO: Mr. Welsh.

DR. KEISER: -- are you suggesting that, it's my understanding that the members of the commission, the CCE Commission, are elected by the members of the chiropractic academic and professional community. And you're suggesting that the election was unfair?

DR. WELSH: No, what I'm suggesting is five years ago, the statement that all of the board seats for the Board of Directors of the CCE were elected by representatives of all of the institutions, that is correct. However, they changed the bylaws in a manner that didn't follow their own rules and now only seven of the 13 seats are elected by the institutions, and six of the seats are elected by the board themselves, which creates kind of a perpetual organization with no chance for reform unless this body recognizes what's happened during the past five years and puts that on the list of concerns.

CHAIRPERSON D'AMICO: Other questions for Mr. Welsh? Okay. Thank you. Mr. Maltby, International Chiropractors Association. Same association.

MR. MALTBY: Same guys.

CHAIRPERSON D'AMICO: Okay.

DR. MALTBY: Thank you for allowing me to be here today. My name is John Maltby. I'm a chiropractor. I've been in practice for 29 years in the hot community of Blythe, California. Presently I'm serving as President of the International Chiropractors Association. The ICA has an official affiliation with seven chiropractic colleges in the U.S., as well as a membership outside the United States representing almost 50 countries. You've just heard from Dr. Welsh. You will hear from Dr. Fallon, and they will represent concerns that ICA has regarding the CCE. What this committee needs to be aware of

and what we want you to be aware of is that the CCE of today is not the CCE that appeared before this committee five years ago.

From documents that we have presented to this committee, it appears as though certain individuals felt the rules didn't apply. A motion to dissolve the corporation in 2002 failed to receive a two-thirds majority required vote. This was stated in the minutes of the meeting. A few days later, about a week later, a letter signed by the CCA President, the Board Chair, and the Chairman of the Committee on Accreditation wrote a letter stating that a majority was sufficient to dissolve the corporation and restructure the CCE--as Dr. Welsh has already shared --in a configuration which gives a strong slant against the conservative chiropractic view. I guess our question is under what authority do these three individuals have the right to say that a two-thirds majority vote wasn't required? Rules should be followed no matter what your opinion is.

Our question is were in fact laws broken? It is not your responsibility to sort out the philosophical differences in our profession. We have a hard enough time doing that ourselves. It is, however, your responsibility to ensure that rules are followed and that laws are not violated. CCE should be apolitical. The truth of the matter is, is that whatever is done politics will always play some role. There was and should be again a governance structure of the CCE that ensures a balanced representation of the profession, ensuring the quality of chiropractic education at all institutions. Over the past several months, I have received several reports from college administrators and educators that they are not willing to share with you today because of fear of retribution against their institution. I'm unable to elaborate on these reports and that I received them second-hand. However, the similar nature of them all is that CCE has an unwritten policy of intimidation. This must stop.

The purpose of the CCE is to ensure quality standards of chiropractic education based on standards that are set. Recently I was asked by CCE Board Chair Dr. Joseph Brimhall to serve on a task force to review and make recommendations regarding CCE standards. I'm honored to do that, and I consider this a positive step by Dr. Brimhall and CCE to include DCs from all aspects of the chiropractic community in this important process. A task force, however, may only make recommendations to a board of directors. I would hope that this body would consider the options available to them as they consider the recognition of CCE. ICA strongly supports the continuation of recognition by the Secretary, but not for the full five years as requested.

The ICA recommends that the Secretary extend recognition to the CCE for a period not to exceed two years, during which time the CCE must demonstrate a restructuring which represents—

MR. BLUMENTHAL: One minute.

DR. MALTBY: --an equitable representation for all chiropractic institutions. Also, the ICA requests the Department of Education investigate the dissolution process of the CCE in 2002 and see if, in fact, there was any illegal action taken by any individuals. Only when these questions can be answered will CCE be able to move forward with the trust of this profession. Not only is the future of chiropractic education at risk but surely the future of chiropractic. It has been estimated by some that ten to 15 new chiropractic institutions will open within the next decade outside the United States. Actions taken by this agency will be a model not only for chiropractic education in the United States but internationally as well. I want you to know how much the ICA appreciates this opportunity to share with you our concerns for the future of chiropractic education. All we're asking for is fairness.

MR. BLUMENTHAL: Thank you. Your time is up.

DR. MALTBY: Thank you. Any questions?

CHAIRPERSON D'AMICO: Thank you. Are there any questions? Thank you for coming in. Dr. Fallon, International Chiropractors Association, Council on Chiropractic Pediatrics.

DR. FALLON: Madam Chair and committee, I thank you for this time for allowing me to testify concerning education requirements as written and enforced by the Council on Chiropractic Education with respect to pediatric education. I would first like to give you some background on my qualifications which allow me to testify here today. I am Dr. Joan Fallon, Doctor of Chiropractic, a fellow of the International Chiropractors Association's Council on Chiropractic Pediatrics. I have been a past Chair of that Council and presently serve on the Executive Committee. The ICA Council has taken the initiative in accordance with CCE regulations and have granted diplomate status to doctors of chiropractic who have completed a 360 post-graduate course in pediatrics as administered by a CCE accredited school and who have passed rigorous board examinations.

Further, to my qualifications, I received a bachelor's degree from Franklin and Marshall College and a doctor of chiropractic from Palmer College of Chiropractic and I have just completed a master's program at Harvard in clinical investigation which is a joint program with Massachusetts General Hospital. I've been treating children chiropractically in active clinical practice for 23 years, specializing in children with development disabilities. I've lectured in

pediatrics extensively throughout the world both in chiropractic and medical venues, and I have been a Assistant Professor at Yeshiva University for ten years. I sit before you today to bring to your attention information concerning the actions of CCE or rather their inaction. An area of primary concern to me is the inclusion of topics pertaining to pediatric chiropractic in the chiropractic college curriculum. I ask you to consider at this time the dearth of pediatric education in the CCE accredited colleges. As someone who has intimate education contact with doctors of chiropractic on an ongoing basis, and these doctors have a keen interest in pediatrics as a discipline, I find increasingly that their education lacks significantly in the area of pediatrics. In some cases, the doctor of chiropractic has left their educational institution without ever taking a pediatric course, given an exam, given an adjustment, taken an X-ray or made a diagnosis on a child. All 50 of the United States have licensure for chiropractic, which allows for the care of children. That care begins at birth without exception. There is no medical legal barrier for the doctor of chiropractic to provide chiropractic care to children even though their pre-licensure education may be in some ways deficient.

CCE as part of its mission is charged to monitor, to oversee and to define with input from the profession areas of importance with respect to the education of the doctor of chiropractic. In that charge, CCE has forgotten the children. While some may argue that within the sub-disciplines taught at the chiropractic colleges, there are sections devoted to pediatrics, but the reality is that the doctor of chiropractic is leaving school with an inadequate education and knowledge of the pediatric patient. Chiropractic care is extremely safe for children. The underwriting statistics reveal that annually. Because the doctor of chiropractic is so finely trained in the ability to determine whether a particular problem lies within the scope of practice or within their purview, there exists to my mind no public safety issue at this time. However, with the morbidity and the demographics of children changing so rapidly, CCE needs to keep up with the times and recognize that children are coming to the offices of doctors of chiropractic in record numbers. I fear this may pose a public safety issue in the future. The CCE is not unlike other institutions where it strives to protect the public good while establishing standards for institutions. Fulfilling these requirements allow the graduate to obtain licensure. The CCE is unlike other organizations —

MR. BLUMENTHAL: One minute.

DR. FALLON: -- in that it has for a long time now skewed the educational direction of the profession from one of balance to one heavily weighted in areas which do not necessarily reflect

the educational needs of the doctor of chiropractic or the demographics of the patient population being seen in the offices around the country and around the world. This flaw from my perspective and that of the Council's is an unforgivable one. While many on CCE may want to change the face of chiropractic, the fact remains that the State laws are intact and allows for the care of children. It is therefore imperative that CCE amend its standards, look at itself very closely to include by the education of chiropractic students and pediatrics across all sub-disciplines and I ask that they do it immediately. Thank you.

CHAIRPERSON D'AMICO: Thank you, Dr. Fallon. Are there questions? Thank you for coming in today?

DR. FALLON: Thank you.

CHAIRPERSON D'AMICO: Richard Plummer, Chair, Federation of Straight Chiropractors and Organizations.

DR. PLUMMER: Good afternoon, Madam Chair. Thank you very much and thank you members of the committee. I'm Dr. Richard Plummer. I practice in South Carolina, and I have served on the Board of the Chiropractic Examiners in South Carolina for nine years. I was a member of a chiropractic college administration and also faculty for 12 years. But today I'm here because I serve currently as the Chairman for the Federation of Straight Chiropractors and Organizations, also known as the FSCO. For 30 years, the FSCO has represented on a national level that segment of our profession that is generally considered the most conservative and hence the descriptive "straight chiropractors." We believe that there has been a deliberate and consistent effort on the part of the Council on Chiropractic Education to ignore the views of our segment of the profession as well as others. This was notably documented as recently as last May when the FSCO requested time to address the CCE's strategic planning session and was informed by the CCE Executive Director Dr. Martha O'Connor that, quote, "The CCE recognizes the United States national chiropractic associations as the ACA and the ICA. We have therefore limited our invitation to those two organizations."

By allowing only favored national organizations with philosophical biases toward a condition-centered only model of chiropractic, to send representatives to participate in strategic planning, CCE created conflicts of interest that placed it out of compliance with the intention of their own criteria. We find this exclusionary position of the CCE troubling on a number of counts. When we had two accrediting agencies, the CCE and the Straight Chiropractic Academic Standards Association, SCASA, the straight chiropractic schools had a choice as to which agency they

would seek accreditation from. We no longer have that option in the chiropractic education.

The schools and the profession were assured that the CCE could and would accommodate the entire philosophical spectrum within chiropractic education and not dictate institutional mission or objective. Unfortunately, this has not been the case starting with defining chiropractors as primary care physicians. The use of this term could be used to open many doors leading outside the relevant chiropractic practice. The CCE standards and requirements continually move the educational programs further and further into an allopathic or medical model. Constantly populating site visitation teams to straight chiropractic colleges with individuals who do not possess the unique credentials or background necessary to competently evaluate the clinical program in light of the stated mission of a straight chiropractic college, the CCE has demonstrated a pattern of noncompliance with Department of Education guideline 602.15(a) and (2). As long as the CCE maintains a condition-centered approach to chiropractic and excludes the subluxation-centered straight chiropractic input and participation, they fail to meet their own mission and criteria. We ask for full representation input and participation by both philosophical viewpoints and that both factions be recognized and considered by the CCE. I appreciate your time today and I thank you for giving me the opportunity to speak to you.

CHAIRPERSON D'AMICO: Thank you. I get that there used to be two. When did they merge?

DR. PLUMMER: They did not merge. There was the straight--the SCASA and with the struggle between the two accrediting agencies, then it was agreed that the one SCASA would cease functioning because the CCE could accommodate all schools of thought.

CHAIRPERSON D'AMICO: And that happened when? I missed the time frame?

DR. PLUMMER: 19—

CHAIRPERSON D'AMICO: 30 years ago?

DR. PLUMMER: No, no, '95.

CHAIRPERSON D'AMICO: Oh, 1995.

DR. PLUMMER: There were two other chiropractic colleges that closed that did not have accreditation with CCE. And they closed in 1995 so it was around that time period.

CHAIRPERSON D'AMICO: Okay.

DR. PLUMMER: I don't have the exact date off the top of my head.

CHAIRPERSON D'AMICO: Thank you. Other questions? Dr. Dillon.

DR. DILLON: I just want to be clear. By whom were the assurances made that the CCE could accommodate a broad spectrum of philosophy and not dictate mission and in what context?

DR. PLUMMER: In--I would have to call it negotiations, not being part of it--the negotiations of who would be the one accrediting agency, CCE did make those assurances to us, and as a profession, we said great, fine, if that can be carried out, we would welcome that, but we don't feel that it has.

DR. DILLON: Thank you.

DR. PLUMMER: Thank you.

CHAIRPERSON D'AMICO: Other questions? Thank you for coming in today.

DR. PLUMMER: Thank you.

CHAIRPERSON D'AMICO: Gerald Clum, President, Life Chiropractic College West.

DR. CLUM: Madam Chairperson, members of the committee, thank you very much for your time, your patience and your diligence in this process. I'm the most senior member of the chiropractic college community in the educational circle. I've been President of Life West for 25 years, was on the faculty, the founding faculty of Life University, then Life Chiropractic College in 1975, and on the faculty of the Palmer College of Chiropractic before that. In addition to serving as President of Life West, I presently serve as the First Vice President of the World Federation of Chiropractic and, barring any unforeseen foolishness on my part, will assume the presidency of that later in the month. You've heard a great deal about the history of the profession, the recent traumas of the profession, the problems with the agency, the differences of opinion and viewpoint, and as I think about this discussion today, it comes down to issues: does the agency fulfill the requirements of the Secretary and does it do so in a fair and equitable fashion with the institutions it accredits?

My experience over the last 25 years is that I've been on the winning side of votes and I've been on the losing side of votes. I've helped make good policy and I've helped make bad policy. I've made good decisions and bad decisions. In the fullness of time, the agency has served the profession and the institutions and the public most importantly very well. Its continued recognition to serve that public, to serve the institutions and the profession at large is my deepest desire from you today. The goals of the Council on Chiropractic Education I believe are for the

betterment of the chiropractic profession. Those goals have been applied by persons who have frailties, who have faults, who have not exercised the best judgment over time, to institutions that have done the same.

Today, the agency I think is as well positioned as it has ever been with good solid professional staff in its administrative offices and very sincere, well-intentioned leadership within its executive ranks to fulfill the expectations of the Secretary and this committee for its functioning on behalf of the public of the United States. Thank you very much the opportunity to present.

CHAIRPERSON D'AMICO: Thank you. Are there questions? Mr. Blumenthal.

MR. BLUMENTHAL: Is your affiliation with--

DR. CLUM: Life Chiropractic College West.

MR. BLUMENTHAL: --affiliated with the Life University that had its accreditation terminated three years ago?

DR. CLUM: No, we've always been separate institutions. We certainly are aligned conceptually and ideologically within the profession, but we have been separate institutions. We have maintained separate accreditation and been totally separate entities since our inception in 1981.

MR. BLUMENTHAL: Thank you.

DR. CLUM: Yes, sir.

CHAIRPERSON D'AMICO: Other questions? Thank you for coming in today.

DR. CLUM: Thank you, ma'am.

CHAIRPERSON D'AMICO: Vernon Temple, President, National Board of Chiropractic Examiners.

DR. TEMPLE: Good afternoon, and thank you, Madam Chair and committee members. I don't know whether I'll speak loud or fast to get my point across. Let me tell you I'm here on behalf of the National Board of Chiropractic Examiners. I'm Dr. Vernon Temple. I'm President of the NBCE, former Chair of the FCLB and former past Chair of the Vermont Board of Chiropractic Examiners. The National Board testing organization was established in 1963 and it was done so at the request of the State licensing boards. We are the only testing organization for chiropractic licensure in the United States. We develop and administer standardized written and practical examinations throughout the U.S. for candidates seeking licensure to practice.

The written exams are accepted or required in all 50 States and the District of Columbia and the practical exam is accepted or required in 48 States plus the District of Columbia. The two States that do not accept it have ingrained into their system a practical test system within their State. In addition to providing the testing and competency assessment for the State licensing boards, we do at the schools' request provide feedback for scores of each school. This allows them the data to do a critical self-assessment. In addition, CCE relies upon the test scores as one of their benchmarks for assessment of chiropractic colleges.

The NBCE and the CCE share a common goal and that is a uniform level of competency in preparation for the practice of chiropractic. This provides the foundation for public protection. Accreditation by the CCE is the sole criteria in determining whether a chiropractic college can provide a doctor of chiropractic an education that meets a uniform standard. We then the NBCE rely on the CCE. Only those students who have graduated or in a program of a CCE accredited college are able to take the National Board exams. We depend on CCE to provide an educational standard for the chiropractic profession without which there would be no uniform testing. The CCE's role in assuring high standards in a chiropractor's education is reflected in the practice of chiropractic in the document "The NBCE Job Analysis." This document is a randomized survey of the chiropractic profession at large and we ask the profession in this survey to report on their daily tasks, their professional responsibilities as well as conditions that they observe, manage and treat.

The job analysis reveals information that is required to practice safely and effectively and therefore must be part of a chiropractic education. It is consistent with CCE goals. As past President of the Vermont Board of Chiropractic Examiners in another life, I can tell you that the CCE recognition is part of State statute. The NBCE believes that CCE is a credible organization that has been careful and consistent in evaluating chiropractic college programs for accreditation. We further believe that the public will be best served by the continued recognition of CCE. No organization that requires institutions or individuals to conform to a standard does so without generating some discontent. Criticism is inevitable at this level. Some will be constructive, and where it is so, the organization has to listen to it and use it to improve their performance, as I have seen CCE do in the past. Some will be distractive and destructive, and that must be recognized and weighed appropriately. I suspect that evaluating that is much of what your responsibility is here today. I hope that the information that I brought--

MR. BLUMENTHAL: One minute.

DR. TEMPLE: I hope that the information I have presented is helpful in your deliberations. On behalf of the National Board, we would support the continued endorsement of the Council of Chiropractic Education by the U.S. Department of Education. Thank you.

CHAIRPERSON D'AMICO: Thank you. You spoke neither loud nor fast and got your point across. Let me make sure I understand what you said. The examination board, your board, made a decision to require that only people who went through the CCE schools can take the exam; is that correct?

DR. TEMPLE: We need to have a requirement for application for testing, and that requirement, part of that requirement is that you be enrolled in a CCE accredited school. Of course, that is not a problem for us because all of the schools are accredited by CCE.

CHAIRPERSON D'AMICO: It is part of the requirement. That's a must though?

DR. TEMPLE: That is a must. There are other musts.

CHAIRPERSON D'AMICO: Okay.

DR. TEMPLE: It's a four part examination. The first part being basic science so they must be enrolled in a CCE school. They must have completed a certain amount of time in that school. In order to take Part IV, which is the final exam, you must have successfully completed Part II and be within six months of graduation. So there a number of criteria. CCE recognition of the program that they are enrolled in is an important one.

CHAIRPERSON D'AMICO: Do you have common membership among your board, the licensing board, the CCE? Are there common members?

DR. TEMPLE: No. We are an independent testing organization. We are a not-for-profit organization, as I said, developed at the request of the State licensing boards. But really, because State licensing boards at that time wanted to get out of the testing business because it has become so complex and so critical that it be fair and standardized across the board.

CHAIRPERSON D'AMICO: Are your exams calibrated across the globe or are you unique to the U.S.?

DR. TEMPLE: They are predominantly U.S. We have an international branch which is just investigating supporting the international testing community, especially as chiropractic expands

outside of the U.S. But the NBCE Parts I through Part IV particularly are for State licensing within the U.S.

CHAIRPERSON D'AMICO: Are there other questions? Dr. Noone? Dr. Dillon?

DR. PALMER NOONE: Yes, in the event that another organization would come forward and seek recognition and be granted recognition by the Department of Education as an accreditor of chiropractic education, would the National Board of Chiropractic Examiners accept that as that minimum standard for ability to sit for the exam?

DR. TEMPLE: Well, we're not in a position to set the political agenda of accrediting institutions. One of the things we are is a reflection of what the State licensing boards need and as we review the current situation, what they need is someone from a CCE accredited school. Should another organization come, they can certainly sit the examination. Our concern would be that they're in an education which gives them the information necessary to practice chiropractic, and that concern comes because the State licensing boards have really given us the authority to examine and document the competency of a physician to go out and practice. And so we really answer indirectly to the State licensing boards for that responsibility, so that is one of the criteria. If there was more than one accrediting agency out there, we would have to look at the State licensing boards and look at the process of education. In other words, we can't have someone coming from a dental school and taking chiropractic licensing examinations because when they have all four parts of our examination, they are entitled to walk into 48 States and practice chiropractic.

DR. PALMER NOONE: But just to make sure I understand the answer to my question, if this supposed new entity was able to get some of the States to recognize them as an accrediting body that would be sufficient for purposes of this, would you entity agree to--I'm sorry--I keep calling you entity--the National Board of Chiropractic Examiners--would you be willing to listen to that call from five or ten or 15 States who were willing to acknowledge the existence of another accrediting body?

DR. TEMPLE: We would have to assess the criteria of a CCE accredited school and perhaps add to that. But let me say that just because they obtain, even we recognize it as a criteria or an additional criteria, and they take the examination, that does not ensure that they can be licensed in any State because that is a State board responsibility and that is out of our purview.

CHAIRPERSON D'AMICO: Dr. Dillon and then Dr. Pruitt.

DR. DILLON: My question is probably more appropriately addressed to Mr. Cole who represented the Federation of Chiropractic Licensing Boards and testified on behalf of the CCE, but you've got some relation there, so maybe I can--I formulated my question as he was walking away from the table, so I'm going to pick on you instead. Is it the case, as far as you know, that the Georgia licensing board was happy with the CCE and your relationship with the CCE after the Life University difficulties?

DR. TEMPLE: I'm not going to answer that question because I don't think I have any information to add. I will give Dr. Cole time to answer that question if he desires.

DR. DILLON: So nobody expressed to you any difficulty from the Georgia licensing board?

DR. TEMPLE: None has been expressed to me.

DR. DILLON: Okay.

DR. TEMPLE: And the Georgia licensing board recognizes the National Board of Chiropractic Examiners as their testing institution.

DR. DILLON: Yes. Thank you.

CHAIRPERSON D'AMICO: Dr. Pruitt.

DR. PRUITT: I'd like to follow up to Dr. Noone's question. If your client--you work for the licensing boards. I mean who is your client? Who commissioned you? Who commissioned these exams and on whose behalf do you administer them?

DR. TEMPLE: Well, I don't--our clients are obviously the students who take the exam. I think that we have a number of stakeholders that we answer to. We certainly answer to the State governments and the State licensing boards. They came to us and said here is our requirement for licensure of chiropractors in our State; can you develop an examination which tests for this competency? And not only were we able to do that, but we were able to do that and encompass all 50 States' requirements for licensure. So I guess we answer to the State licensing boards and if the State licensing board said we no longer want the National Board to do the testing, then we would be out of a job. So we listen to them and we take a lot of input from them, but we also recognize that good testing standardizes the profession, and it allows for good public protection, which is really the responsibility of State licensing boards.

DR. PRUITT: But if a State or group of States came to you and said that it is our intention to allow in our States students that are graduates

from institutions accredited by another accrediting agency or from graduates of institutions that may not be accredited by any of these agencies and said we want, because you did this at our request, and they said they wanted these students to be able to sit for their exam, you would not permit them to sit for the exam or would you respond to that?

I guess I'm trying to figure again who your client is. My sense is you are commissioned-- I think the students are the customers, but I think your clients, the clients are the States, the licensing boards that commissioned your exam to be examined, and I was trying to see how you would turn to your clients if they said we want different criteria because ultimately the criteria is not controlled by the accrediting body; it's controlled by the State licensure board. If the State licensure board were to change its licensure criteria, it seems to me that they would have to find some way to assess whether people sitting for their license met their criteria as opposed to the accrediting body's criteria, and the assessment instrument that they would use, be it yours or somebody else's, would have to measure that.

So I guess I'm trying to follow up and get the understanding of the relationship between you as an assessment body or a testing body and the licensure standards that are set by the States as opposed to the accreditation standards that are set by the accrediting body. And that's what I'm trying to clarify.

DR. TEMPLE: Okay. And I think I can answer that in two parts. One, yes, we have to take State licensing boards' input into consideration. And if there was a secondary organization, we would assess that if it makes them viable to sit the examination, or if State licensing boards had to have that necessity, that would be another consideration. We haven't dealt with that because we only have one accrediting body. I think the second one is just because they come and say there's another accrediting agency doesn't change the way we give the test and it doesn't change the test questions because our test questions come from a Delphi study and from a job analysis. The Delphi studies of Part I and II go to all of the chiropractic colleges and is basically, as you probably know, a document that circulates throughout the colleges until all of the colleges agree that this is the information that is taught in chiropractic education. So that is somewhat reflective of CCE's standards, but all of the colleges agree with that and that is where the weight of the questions comes in one and two.

Parts III and Part IV which are more practical comes from the job analysis that I spoke about, and that is a randomized survey that the National Board does every five years of the chiropractic profession and it is a reflection of what chiropractors see, treat and hear in practice, and that is the weight and consideration to the questions for III and IV. For us to adequately do

our job we need to document what questions need to be asked and what weight should be on any given question or subject matter. So we don't change the questions based upon what State licensing boards want; they've already agreed that globally this is the education that chiropractors get, this is what needs to be tested on, and this is what protects the public.

DR. PRUITT: Thank you.

CHAIRPERSON D'AMICO: Dr. Malandra, do you have a question?

DR. MALANDRA: I want to make sure that I heard something right earlier. The relationship between the National Board of Chiropractic Examiners and CCE has to do with implementation of standards and accreditation of the colleges. Is there any kind of cross-cutting membership of the boards at all between your board that governs you and the CCE Board?

DR. TEMPLE: No, we are--

DR. MALANDRA: Any kind of cross-cutting membership at all?

DR. TEMPLE: We are separate entities. I said that we have a common goal and that's to standardize education which allows us to standardize testing.

DR. MALANDRA: I'm trying to get below the common goal to -are there individuals who have roles in both organizations?

DR. TEMPLE: There is no individual relationship between the boards.

CHAIRPERSON D'AMICO: Where are you incorporated? You're not-for-profit. Where's your incorporation, what State?

DR. TEMPLE: We're a not-for-profit corporation. Our headquarters is in Greeley, Colorado. I believe we're incorporated in Texas, which is where it was in 1963.

CHAIRPERSON D'AMICO: And your board is made up of who now?

DR. TEMPLE: The board is made up of 11 Board of Directors, five which come from the five districts throughout the United States and are elected by the State licensing board delegates. Two come from the Federation of Chiropractic Licensing Boards, which represent State licensing boards again, and then four are at-large positions which are elected within the board themselves.

CHAIRPERSON D'AMICO: Mr. Blumenthal.

MR. BLUMENTHAL: So the survey that you just mentioned that you do every five years for Parts III and IV, and which you survey I think you said chiropractic practitioners?

DR. TEMPLE: Correct.

MR. BLUMENTHAL: And do you survey them regardless of their affiliations with these myriad associations that we've heard from today?

DR. TEMPLE: Our psychometrician, Dr. Mark Christianson, guarantees me that it is a randomized survey with no prejudice whatsoever within any philosophical difference of chiropractic.

MR. BLUMENTHAL: Thank you.

CHAIRPERSON D'AMICO: If a person comes in from another country and wants to take the U.S. exam and they have not graduated from a CCE school, what happens to them?

DR. TEMPLE: We give National Board exams in other countries so they can successfully sit or they can sit the examination and take the examination process. As to whether they're licensed, that is an individual State decision and that's out of our purview. I will give you an example of the State of Vermont as past President is that we had a certain criteria that they had to meet. They had to pass the exams and then the State did a review of their educational standards outside of the U.S. and to see if they were similar to the standards in the U.S., and if so, we licensed them at that point. But that is an individual State job and that is not within our responsibility.

CHAIRPERSON D'AMICO: When Dr. Noone was asking you a question, did I interpret your answer as basically a no?

DR. TEMPLE: And what was the question?

CHAIRPERSON D'AMICO: The question was if another agency were to be recognized in accreditation of these programs, would you change your requirements that they not exclusively be CCE and I was trying to discern whether you said yes or no, and--

DR. TEMPLE: Well, a no would seem pretty draconian. So my answer would be yes, we would have to revisit that. We have not visited that because there is no other organization at this time.

CHAIRPERSON D'AMICO: Right. It was a hypothetical, but I just--

DR. TEMPLE: Hypothetically we would have to take that into consideration and reevaluate

our criteria for examination, yes.

DR. DeNARDIS: What does that mean?

DR. TEMPLE: The CCE issue is only one part of the criteria to sit the examination. What it allows us to do is to know that they've graduated from a program that has, is a standardized education. If another organization came up, the Vern Temple Accrediting Organization, with no governmental backing whatsoever, then the National Board, I think, would look at that precariously and say that that is not an acceptable criteria. Should there be an organization recognized by the U.S. government as an institution that can accredit chiropractic programs, then I think it's quite an easy decision that the National Board says this is just another accrediting agency that may look at educational standards different and we would allow them to sit. What we wouldn't do is change the content of the examination because that is based upon the job analysis and the Delphi studies.

DR. DeNARDIS: Well, I think that was the question that was previously asked and to which—by my colleague—to which you gave, to which you gave a rather vague answer. This is a little bit more specific. Thank you.

DR. TEMPLE: Okay. I want to be very, I don't want to be vague about any of my answers. I thought the question was have we considered other organizations? That would have been no. Would we consider it? Absolutely, because whether there is one or two accrediting agencies isn't our responsibility whatsoever. We're just trying to find the criteria that allows the individuals that sit for examination to be competent to do so because that's what we answer to the State licensing boards; that is we can't let everybody sit the exam because when they have passed the examinations, they can be licensed. So that is the one criteria we use as to what program they have come through.

DR. DeNARDIS: But recognition by this body would go a long way toward an affirmative decision on your behalf; yes or no?

DR. TEMPLE: Yes.

CHAIRPERSON D'AMICO: Dr. Pruitt.

DR. PRUITT: Yes, because I want to follow up on that because I think that's the question that Larry and Laura and I are both trying to get to because my sense is, and you tell me if I'm wrong, you're commissioned by the State licensing boards. I mean the reason that you're there is because the States, not the accrediting body, but the States said because of their authority

to provide licenses, they wanted a standard, an assessment technique to certify so that when they grant a license, they'd have some assurance that there would be some valid reliable instrument to measure the competencies of people that they were going to unleash on the public of their States pursuant to the license that they were going to grant. So in response to the State licensing boards, you were commissioned to develop an exam. To get the standards, professional standards, to commission that exam, you looked to the other accrediting body that accredited the colleges and universities that produced the graduates that were going to be sitting for this exam? Am I right so far?

DR. TEMPLE: Yes.

DR. PRUITT: Okay. So I think it would be fair to say that--I'm trying to think--I've forgotten my populations, but I think if I said California and New York, Florida and Texas, I think I'd be getting the five, five biggest States, four biggest States? Would that be right? All right. I think if those States got together and said we are going to allow students that graduate from other kinds of institutions to sit for our State licensing exam and we have the choice of you or ETS or ACT or some other test provider to create an examination for us that our students could sit for, you'd be interested in competing for that contract?

DR. TEMPLE: Yes, I mean I think you're correct in saying that we answer to the State Licensing Boards.

DR. PRUITT: Right, that's the point I'm trying to get at, that you're answering to the State licensing board, so the issue is not so much--I think another accrediting body that was acknowledged by the Secretary would give that accrediting body pretty good leverage to go to a State and say we are an alternative reliable authority and, State, you ought to allow our graduates to sit for the exam, and if the State said we concur, and then turned to you and said we want the graduates of this other group of institutions that we acknowledge because of their accreditation status, and we want them to be able to sit for the exams, you're not going to say no, we won't let the students from these schools do that because we only are going to allow those students from this accrediting body to sit for our exams.

DR. TEMPLE: That's correct. I could see us opening up the eligibility. What we can't do is change the examination content because there's two different groups because when you have all four parts of the National Board exam, you have access directly to 48 States and indirectly to the other two. So the testing material stays the same. Whether they have come from a CCE accredited institution or some other type, that we would

reconsider and probably allow, yes.

DR. PRUITT: I get that. To have a valid or reliable exam, you've got to calibrate to a common standard.

DR. TEMPLE: Right.

DR. PRUITT: Got it. Thank you.

DR. TEMPLE: And what we have done is we've got 50 States to agree on what a minimal level of competency is.

DR. PRUITT: Got it. Thank you.

CHAIRPERSON D'AMICO: Other questions? Thank you.

DR. TEMPLE: Thank you.

CHAIRPERSON D'AMICO: Daniel Desmedt, graduate, Palmer College of Chiropractic. Not here. Ben DeSpain, Director, Ph.D. Program in Leadership, Prairie View A&M University

DR. DeSPAIN: Good afternoon. Thank you very much. I am Ben DeSpain. I'm a professor outside the arena of chiropractic, and I came here today all the way from another country, Texas. [Laughter.]

DR. DeSPAIN: I am a consumer of chiropractic having been a patient now in excess of 50 years. I'm vitally interested because I want this organization and its members around another 50 to treat me as I grow old ever so gracefully for another 50 years. I'm the husband of a chiropractor to be who will graduate later this year, and I'm a student of the activity of accreditation. I have a deep respect for it. I applaud you for the time you spend in meetings like this. This afternoon we've heard much about what is and what is not right or wrong and all the problems and so forth, and I want to offer some comments outside what I had planned to say because much of what I had planned to say has already been covered. But I am concerned that it is necessary to have debates as we have heard this afternoon. What does concern me is that we must come out of these kinds of debates and discussions stronger and better and improved. My greatest fear is that we won't, but I think there are some things that can be done to assure that that has a greater chance of succeeding, and I believe this body and DOE has the license to do that, to put in motion what needs to be done in an effort to make this day worthwhile.

I read carefully the summary of the findings prepared by the staff. I had only one quarrel with it and that's the use of the word "proactive." I don't believe you're proactive when

somebody has to tell you to do something. I think that was reactive. But aside from that, you did an excellent job. You did a great job, in fact, pointing out all the symptoms as others have this afternoon. Dr. Stephen Welsh got close to getting the diagnosis right when he talked about an organization being devoted to control, and I think that is, in fact, very close. I want to say it a little differently. In my country boy philosophy and vocabulary out of the hills of Missouri, what I would say is put it in very simple terms, CCE is analogous to a "good ole boys" club with a few girls, firmly under the control of a group representing about 30 to 40 percent of the chiropractic world and about a similar number of those who now students in the colleges preparing to be chiropractors. This group has established an autocracy doing as it pleases by crafting rules governing elections to the Board of Directors, the Commission on Accreditation, the selection of Board Examiners, and even the selection of site team members. You heard one individual this afternoon describe himself as president of a college of chiropractic, former president or current president --I forget-- Commission on Accreditation, the Board of Directors, a member of the site team, and so forth. This organization is small and sadly it's getting smaller in terms of membership. It's really dedicated and devoted to dealing with issues straight up and straight forward. I believe it's necessary to have some serious effort applied to making certain that there will not be a continuation of the incestuous relationship that now exists between those various entities that comprise this accreditation body. I know that's a problem in all small numbers inside accrediting institutions, and I believe this organization today has under the authority and under the power of the Department of Education the necessary strength, power, the capacity to insist that there be careful scrutiny.

MR. BLUMENTHAL: One minute.

DR. DeSPAIN: And I believe that can best be done by your not extending them five years, but rather putting them on a very short leash and insisting that they come back with some specific things put in place to assure that this body will become a more inclusive body representing all philosophies inside the world of chiropractic. Yes, it would be tragic to have happen again what happened over the last four years to students, to faculty and to the chiropractic world in general. There must develop a sense of respect for the differences. That decision and how that goes about, plays out, is something you can have a major impact on. I would encourage you, give them a short leash, insist they clean up and open up, put some fresh eyes in the process of an appeal and thereby make a major contribution to the chiropractic world. Thank you.

CHAIRPERSON D'AMICO: Thank you. I do have a clarifying question. When you said, quote, your quote, "incestuous bodies," what entities, "incestual entities," what ones were you talking about?

DR. DeSPAIN: The membership on the Board of Directors. The membership you've had described earlier this afternoon about five and seven and 13 and so forth, the membership on the Board of Directors, the membership on the Council on Accreditation, membership of site teams and the visitors, and those who actually, the body of examiners, and those who actually go on site visits. And then in an appeal process, often you see people from the same institutions who are involved in the appeals process because of the smallness of the organization. It needs to be opened up. It must go beyond itself.

CHAIRPERSON D'AMICO: Are there questions from the committee? Thank you for coming in. Did Daniel Desmedt come in the room? Allen Botnick, graduate, Life University College of Chiropractic. Good afternoon.

DR. BOTNICK: Good afternoon. I'm an another graduate of Life University. Let me know if I'm talking too loud. Let's see. I graduated from Life in 1996, magna cum laud. And I would basically I feel like a lot of people here are trying to spin this issue, this whole, and you're not really getting a very realistic view of what's going on with the different political factions in the profession and the Council on Chiropractic Education. My own personal involvement in this has been as a complainant. I filed a complaint against Life University which Life University basically didn't respond to my complaint in a productive manner, so I complained then to the Council on Chiropractic Education, which stonewalled it for nine months, and then finally I was forced to file to the Department of Education

If you read the staff notes, they say that they've amended their process and they won't do that again. But they sort of have a history of not being very transparent with people who are making complaints. So, let's see, so anyway I wanted to explain, give you a better understanding of what's going on in the profession, and just help you by providing information that you otherwise might not be exposed to. Let's see. Your staff report states that the Council on Chiropractic Education has been responsive to correcting areas of noncompliance. I have an issue with this. In particular, it has to do with my complaint against the Council on Chiropractic Education's handling of my complaint against Life University. That complaint is open. It concerns two major areas: ethics violations and a lack of instruction in the subject of differential diagnosis. A lot of the people who spoke before me are trying to paint this as a picture of philosophical differences of

opinion about how patients should be treated, but actually that's a mischaracterization of what's going on. I'd like to read a couple of quotations from the former president of Life University. His name is Sid Williams, and he's in the room today actually, but he isn't speaking, and in particular Dr. Williams explained his modus operandi about these treatment systems and what's really going on. This isn't new information. It was all included in my complaint against the Life University, but I feel I do need to bring it to your attention. Dr. Williams states, let's see, well, to give you a little bit of an overview on this--I know my time is brief--basically what's going on, people--the chiropractors here--are trying to paint this as an issue of philosophical differences of opinion, but actually it's ethics. Dr. Williams stated: "I saw a diagnostic paper last night on the subject of adjusting a severe strain or sprain with the medical ethics on top of you. You people who are not writing down the subluxation as the basic problem in a whiplash personal injury case, do you know what the medical standard of care says? No manipulative procedures for six weeks." So basically this is a case of trying to get around the standard of care by creating your own, by, you know, legislative force. I want to continue to read some quotes from him because I think they are important.

The next quote is: "So chiropractors observed deviations from the normal. That doesn't mean we refer every patient who has these deviations from the normal. What do you think? What do you think as a chiropractor who left to subluxate a person whose subluxation might in all probability have been directly involved in a primal sense with their appendicitis? Is it your primary responsibility to accept that patient if they have a vertebral subluxation, even though the deviation from the normal observations are there that would indicate a referral?" Dr. Williams goes on to state that he says: "If you are selling chiropractic, you don't have to understand chiropractic, you just have to start believing it whether it's right or wrong." My final quote from Dr. Williams is: "I'm asking you what do you want, what do you really want to do? Do you want to be afraid every time you adjust a patient because you don't know what's wrong with him?"

MR. BLUMENTHAL: One minute.

DR. BOTNICK: "What kind of disease does he have? They've all got diseases. I notice a lot of my friends. They keep disappearing. Do you know what I'm saying?" So, basically, let's see, in my complaint there are two major areas: false advertising and the failure to integrate the differential diagnosis coursework into the curriculums of the chiropractic colleges. I can't practice chiropractic and was forced to surrender my licenses because I do not know how to do a differential diagnosis of patient complaints.

Therefore, in 12 States across the United States, I will be held liable for malpractice because I can't tell what is causing a person's neck pain, what is causing their appendicitis. This is a vital area. Now I'm held liable for these student loans as a result of that college. And this accreditor, I feel that their actions were actually just when they revoked the accreditation of this school.

MR. BLUMENTHAL: Thank you. Your time is up.

DR. BOTNICK: Does anyone have questions? [Laughter.]

DR. BOTNICK: It's a lot of material.

CHAIRPERSON D'AMICO: A lot of that was lost on me. I'm just trying to keep my posture well, and I just now got the joke about needing adjustment. [Laughter.]

CHAIRPERSON D'AMICO: I'm not an expert in this area.

DR. BOTNICK: Please fire away though. I'm here to answer questions.

CHAIRPERSON D'AMICO: Thank you for coming today. Are there questions? Thank you very much for your testimony.

CHAIRPERSON D'AMICO: Okay. The agency has an opportunity to respond. Is it before the Department or after or does it matter? The agency. If the agency would like to respond, the committee might have some questions for the agency based on the testimony that we have heard.

DR. BRIMHALL: I don't think we have any general response, but be happy to try to respond to questions.

CHAIRPERSON D'AMICO: Thank you. Dr. Keiser.

DR. KEISER: Did the board change its bylaws in 2002?

DR. BRIMHALL: The board actually changed its structure in 1999 and there were some other changes in 2002, also bylaws changes, and then again recently in late 2004, early 2005, there was another bylaws change.

DR. KEISER: And those bylaw changes, was it accurately represented that you went from a fully elected board and commission to one now that was, there was a lot group appointed by the elected members?

DR. BRIMHALL: It's actually the other way. It used to be several appointed positions,

and then all of the college presidents served on the Council, and CCE in the late '90s decided that it wanted to become more independent, so all of the positions now are elected. The commission is separate from the board. The majority of the board members are elected by the accredited programs and then there are some public members that are elected by the board itself and practicing DCs.

DR. KEISER: And the board function is?

DR. BRIMHALL: The board sets policy and writes the standards and elects the commission. The commission does the work, actually does the accreditation work.

DR. KEISER: So the board elects the commission?

DR. BRIMHALL: Yes.

DR. KEISER: Not the members?

DR. BRIMHALL: No, the members elect the board.

DR. KEISER: Not the community at large?

DR. BRIMHALL: No, the commission is elected by the board.

DR. DILLON: Just to follow up. You said that the board elected a couple of the--you didn't give a number--the public members for the board. How many?

DR. BRIMHALL: There are two public members on the board.

DR. DILLON: Thank you.

CHAIRPERSON D'AMICO: Yes, Mr. Blumenthal.

MR. BLUMENTHAL: So as I'm sitting here thinking about this, there were 16 people who spoke. Four of them, possibly five, were reasonably supportive of CCE, and the rest of them were highly critical. What is it that you think has caused this phenomenon to occur? This is pretty unusual for the agencies that we've at least seen in the last several years that I've been on NACIQI. So I'm wondering, what do you think, what do you see as going on? What's behind this?

DR. BRIMHALL: Well, first of all, in spite of the number of individuals that responded, we're not exactly sure what percentage of the profession is actually being represented. We've repeatedly asked for even names of the executive committees, let alone memberships, and those have been refused. So as far as the numbers, we

may be dealing with a small vocal minority. For example, the American Chiropractic Association is the largest association. They openly disclose who their membership is, who their leadership is, and it looks to us like the majority of the profession is in support of CCE. CCE had to take a very difficult decision four years ago. The commission revoked accreditation of a well-respected institution, and with those type of decisions comes criticism. I don't know any other way to respond to that.

DR. DeNARDIS: Can you tell us what the crux of the issue was with Life University and why the reinstatement?

DR. BRIMHALL: Well, I would love to be able to respond to that, and actually I will defer that question.

MS. GERE: Good afternoon. My name is Elizabeth Sarah Gere and I'm counsel for CCE. At the time of the Life litigation and its resolution, the settlement, the reasons for the settlement and all the documents related to the settlement remain under court protection and they are not able to be disclosed nor the details to be discussed.

CHAIRPERSON D'AMICO: Is it accurate to say that a judge--it was not clear at what level--the judge reversed the decision? Someone said the judge reversed the decision.

DR. DeNARDIS: And if I might help with you that. I made the note that Judge Moye issued a temporary injunction for Life University. Can you discuss that?

MS. GERE: The fact of the issuance of the temporary injunction, which is an initial legal proceeding, was what Judge Moye, a lower level Federal court judge.

DR. DeNARDIS: A Federal judge?

MS. GERE: Yes, that's correct.

CHAIRPERSON D'AMICO: What district?

MS. GERE: In Atlanta, Georgia.

CHAIRPERSON D'AMICO: But somebody made the statement he reversed the decision. Is that an accurate statement?

MS. GERE: Well, Judge Moye did not allow the decision of CCE to be implemented. He put a temporary stay on it, and at that point, it was then appealed to the 11th Circuit and it's from that point forward that there was a resolution through court process, and those materials, as I say, remain under court protection.

CHAIRPERSON D'AMICO: And the

resolution was between you and the court, you and the school?

MS. GERE: The resolution was between the parties to the case, Life University that had originally filed the suit, CCE, and certain named individuals who were members of, representatives of CCE.

DR. DeNARDIS: And the resolution led to reinstatement?

MS. GERE: The resolution led to a process and that process now has been completed and Life has been accredited, yes.

DR. GALLIGAN: If I could address that? My name is Kathleen Galligan. I'm the Chair of the Commission. And the resolution did lead to a process. It's the very same process that any program would go through in becoming accredited with the CCE, and Life went through that process before the Commission, and met, eventually met all of the criteria necessary to become accredited and was granted accreditation. It was the same process that any program goes through.

DR. DeNARDIS: But they wouldn't have had to go through that process quite so soon had it not been for the actions which preceded it?

DR. GALLIGAN: That's true.

CHAIRPERSON D'AMICO: Dr. Pruitt, did you have something? Oh, yes, Mr. Blumenthal.

MR. BLUMENTHAL: So the statement was made that you refused to reveal the organizational affiliation of your decision-making bodies; is that correct?

DR. BRIMHALL: That information has been released and is available on the Website.

DR. GALLIGAN: On October 14, 2005, the most current Board of Directors, Commission on Accreditation, Executive Office Staff Information, was sent to CNGC, and then after reviewing the comments of the USDE in a March 6, then the information was also sent that gave them the staffing information for 2003.

MR. BLUMENTHAL: Okay.

CHAIRPERSON D'AMICO: Other questions?

DR. BOWYER: Could you describe the time period of this, the negative action, the court process, and then the reinstatement, or were they applied again and were reinstated or were accredited?

DR. BRIMHALL: The initial decision not to reaffirm was in June of 2002, and I believe that the decision to reenact their accreditation by CCE occurred last year, November of last year.

DR. GALLIGAN: November of 2005.

CHAIRPERSON D'AMICO: You can't discuss the specifics but did you make changes in procedure based on that experience?

DR. O'CONNOR: We did review our appeal procedure and made some changes in that. We also had during the process of preparing our documentation for USDE found some areas, which is why the word "proactive" was used by the analyst, that we found we needed to change, and so we began to do that immediately and identified them in the report. But, yes, there was a change in the appeals procedure as a result of that.

CHAIRPERSON D'AMICO: Any other changes in makeup of committees, application of the standards, criteria?

DR. BRIMHALL: We've had changes since that time, but they were not as a result of that. They're just the changes that we go through in the evolution of the agency.

CHAIRPERSON D'AMICO: I guess I'd be a little bit less cherry than you, Mr. Blumenthal, or you, Dr. DeNardis, that sort of summarized the presenters. At best, I guess the testimony in favor was pretty lukewarm. I'd say pretty tepid. What's your reaction to that? I didn't see anybody here enthusiastically endorsing you. Maybe it's late in the day and it's the afternoon, and it's warm in here. I just wonder what your reaction was to them?

DR. BRIMHALL: My interpretation is that there was solid support of CCE. I'm not sure that the people speaking in favor had the emotional charge that the other side did, and I'm not sure that they know what the expectations were of the committee, but I believe that the evidence presented was fairly solid.

CHAIRPERSON D'AMICO: Thank you.

DR. KEISER: Taking the Life experience out of the process, there seems to be a concern by many of the presenters that within the schism that seems to be in the chiropractic community, that CCE is representing one side of the story. Can you respond to that? Is the board made up of folks that are from one side of the debate and a majority of the board represents that?

DR. RIEKEMAN: Well, I am the newest member of the board and I am the President of Life University. I think that certainly that issue

has been the core question of this agency for a long time. I think Dr. Clum summed it up best when he said that there is concerted effort with the Executive Director and the people at CCE today to rectify that. I think there are some questions about the structures that have been brought up before relative to the election process, et cetera, but I think that there is an interest today to having that conservative voice. We'll have to see, and I think there's great hope that that voice can be present in CCE and it appears that there are steps moving in that direction. So we're happy to participate in that process. Again, it's one of those things about being on the inside or the outside. There are a lot of us that feel that these changes and this input is open and welcome and it's better to be on the inside making those changes.

CHAIRPERSON D'AMICO: I'm sorry. I was asking a procedural question. I apologize. Are there other questions for the agency? Thank you. Thank you for coming in. Department staff, Ms. Luken, do you have anything to add to this at this time?

MS. LUKEN: I'd like to bring to light two points of clarification. One was a remark made by one of the third-party presenters about the appeal panel, and my analysis from the agency's bylaws and policies indicate that that is a three-person panel, and it's made up of non-involved members. So I just wanted to bring that clarification. I don't think there is--what I was saying is that the appeals panel is a three-person panel made up of non-involved members or uninvolved members rather. So I think there was some sort of allegation that there might be a little closeness involved.

MR. BLUMENTHAL: I think the word was incest.

MS. LUKEN: Thank you. You're correct.

DR. KEISER: Members of what? When you say they were non-involved members, members of what?

MS. LUKEN: In the appeal process.

DR. KEISER: Members-- the three members of the appeal panel would be members of what?

MS. LUKEN: I believe that is--

DR. KEISER: Are they members of the Commission or are they just independent community people?

MS. LUKEN: I don't have the answer to that. I believe that--it might be the board, but let's get clarification from the agency.

DR. KEISER: If it is the board, then it would be pretty close, too.

MS. LUKEN: Correct, but it may not be the same member institutions, so I think that gives a little arm's distance, but we can get clarification on that. So perhaps we need more clarification than what I'm providing.

MR. JOHNSON: COA Exhibit 9.

MS. LUKEN: COA.

CHAIRPERSON D'AMICO: Dr. Dillon.

MS. LUKEN: Oh, thanks.

DR. DILLON: Kristine, a number of things have been said about a situation in 2002 concerning governance that I find very disturbing if true. And yet there is nothing, as far as I can see in the report, about governance questions and issues, and they're very important, it seems to me. I just wonder has there been a thorough look at those questions? Those who are dissenting aren't arguing I think that CCE not be recognized, but that they be granted a shorter period so some of these things can be looked at. And I want to know whether that's been already done or whether that's appropriate to do?

MS. LUKEN: I think based on behalf of the Department, based on our analysis of the agency, I believe there were shortcomings. I believe as one of the third-party presenters indicated, that the agency has been in transition. Even as I indicated in my analysis, I think the agency has taken more seriously the allegations and have, prior to this committee meeting, have made changes and have adopted policies, corrected inconsistencies, and I believe now that they are on the path to full compliance, and I don't have any further concerns with the agency and their ability to meet all of our criteria.

One other thing, by the way, I wanted to clarify, as well, with respect to the Commission—I think it might have been you, Mr. Keiser--the board indeed does elect the commissioners, but one point that was not brought out was that the agency has a Nominating Committee and the Nominating Committee is made up by three board members. They do accept nominees from the chiropractic education community so that bring another dimension that it isn't just the board making its decision apart from the community itself. Nominees are provided to this Nominating Committee. So I hope that brings some sort of clarification.

CHAIRPERSON D'AMICO: Art, did you get your question answered on the appeals yet?

DR. KEISER: No. I think it's still an

overriding question I have on governance, and I think you hit it right on the head. As far as I can see, and I've been looking at the groups, you have a Board of Directors, the Board of Directors then has a Nominating Committee made up of members of the Board of Directors. They nominate members of the Commission, and then the Commission operates independently, but it's still controlled by the appointment of the board. It's not an at-large process. It's not a very democratic process. Whether that's wrong or not, I'm not sure. But it certainly in an environment as charged as this, it seems the appearance doesn't provide a lot of comfort. And if the appeals panel is made up of three members of the board or the Commission, one of those two bodies, then that further aggravates the lack of independence, at least the perception of independence, which is potentially problematic.

CHAIRPERSON D'AMICO: Mr. Blumenthal and Dr. DeNardis.

MR. BLUMENTHAL: John, how different is this process than other agencies in terms of the Board of Directors essentially electing the commissioners?

MR. BARTH: It's not particularly common in accreditation and we did review this particular construct because of concerns that it potentially violated our conflict of interest procedures. However, upon reviewing the Articles of Incorporation of the CCE, we determined that the CCE existed solely for two purposes: accreditation and education about chiropractic, and it was our determination that because the board had no functions beyond that this arrangement did not violate our conflict of interest policies.

MR. BLUMENTHAL: I see. How many board members are there?

PARTICIPANT: Thirteen.

MR. BLUMENTHAL: And how many commissioners?

PARTICIPANT: Eleven.

MR. BLUMENTHAL: And is there overlap between those two?

MS. LUKEN: No.

MR. BLUMENTHAL: So they're completely separate?

MS. LUKEN: Yes.

MR. BLUMENTHAL: And what's the term of the commissioners? Three years?

MS. LUKEN: I think it's three. I don't know if I expressed this clearly, but let me read directly so there is no confusion. With regard to the Commission, five individuals from the member DCPs are elected from a group of nominees submitted to the Nominating Committee by members of the chiropractic, academic, and professional communities. So again there is input from the community with regard to member DCPs being on the commission. Yes, it indeed goes through board approval, but there is that input process.

MR. BLUMENTHAL: The input is advisory and not formal; is that right?

MS. LUKEN: Correct. I mean the Commission, I mean the board has to approve those nominees.

CHAIRPERSON D'AMICO: Dr. DeNardis.

DR. DeNARDIS: Madam Chair, we've heard charges and countercharges from I trust a wide, fairly wide spectrum of the chiropractic profession. At least that's the way it seems to me. Battles over turf, battles over philosophy, maybe battles over personal ambition, but divisions of every kind. And some of this, maybe most of it, is a consequence of, at least as I see it, a monopoly control of a profession which has led to the establishment of a virtual cartel, not unusual. There are several other professions that we deal with that have a virtual cartel control of the profession. We can't change that, but we can consider measures that will try to send a message to the prevailing control group that they should try to be more inclusive rather than less inclusive and I suggest that we try to figure out what is within our range of alternatives to do that. Because I believe if we simply hear it, discuss it, anguish over it, and then give them five years of recognition, that we haven't been the impetus for any corrective action for the profession and I worry about the profession.

CHAIRPERSON D'AMICO: Dr. Pruitt and then Dr. Keiser.

DR. PRUITT: Yes, I was going to wait until we were ready to have--I guess we're having the discussion now among the committee. I was waiting.

CHAIRPERSON D'AMICO: Are there any more questions for Ms. Luken before? Let's hold that thought.

DR. KEISER: And again I'm not sure of the connection between the Commission and the board, but isn't it true that the President, your Vice President is the Vice Chair of the Commission. That's what it says on your list?

No? It says Western States Chiropractic, the President, that's you, Mr. Brimhall, and on the Commission, Lester Lamb, Western States Chiropractic, the Vice President is the Vice Chairman of the Commission?

PARTICIPANT: That's an older list. His term --

DR. KEISER: Okay. I'm sorry. That's what I have.

MS. LUKEN: My apologies. It must not have been uploaded correctly.

MR. BLUMENTHAL: But is this right, there's no reason not to have that?

DR. KEISER: I don't know.

MR. BLUMENTHAL: Yes. That's the question.

MS. LUKEN: Right. They're not the same individual. They may be from the same, representative of the same institution, but not the same individual, which is consistent with their bylaws.

DR. KEISER: Well, that's getting pretty conflict --

MR. BLUMENTHAL: Do their bylaws preclude the same individuals from serving on the board and the Commission?

MS. LUKEN: Yes.

DR. KEISER: But you have the President of the Board who was at the same time from the same institution as the Vice Chair of the Commission?

DR. BRIMHALL: Yes, yes.

DR. KEISER: That seems pretty close to me.

MR. BLUMENTHAL: But there are only 15 schools.

DR. BRIMHALL: We've had times in the past when the president of the--

CHAIRPERSON D'AMICO: Excuse me. If you've been asked a direct question, you need to come up here and use the microphone.

DR. BRIMHALL: We've had times in the past where the President of the Board and the Chairman of the Commission were from the same institution. It doesn't happen very often, but it has happened because we are such a smaller profession.

DR. KEISER: But that doesn't lead to a perception of conflict? I mean to me there's a perception in my mind that one institution has pretty much a good deal of control over both the policymaking process, which is the board, and the accreditation function which could cause some of the problems that we're hearing today. I don't know. I'm just looking at this.

CHAIRPERSON D'AMICO: If you'd like to respond, you have a couple seconds to do that.

DR. BRIMHALL: I don't disagree with that. That's a perceptual issue and we have taken pretty significant steps to separate that. But right now, that is a potential because of how small our organization or our profession is.

CHAIRPERSON D'AMICO: I'd like to ask the committee, do you have any factual questions for the Department or for the agency at this time? Thank you both. Dr. DeNardis started the discussion of the committee and Dr. Pruitt, you were going to weigh.

DR. DeNARDIS: I yield to Dr. Pruitt.

CHAIRPERSON D'AMICO: Okay.

DR. PRUITT: Yes, thank you. This is not an unusual matter for this agency. This, we have Romeo and Juliet without the Romeo and Juliet but with their families. This is a doctrinal dispute that has been going on since this profession split into two branches and these two branches have struggled over the domination of the field, over accreditation within the field, and over the professional community and the licensure community. And the conclusion that I have drawn, and I don't want to--but my personal view is that it will be very difficult for these two groups to reconcile these differences. They are very fundamental and very passionately felt. The fact of the matter is that accrediting bodies by their nature are doctrinal. I mean that's by definition what they are. They're a group of professionals that come together that define their profession and then they make judgments, and they're good and bad judgments. They make distinctions about what's right and wrong, what's good practice, what's not good practice, and when you have a profession that is split about, one, even how the profession is defined, it's very difficult to reconcile those. There are winners and losers in doctrinal battles. It doesn't mean that the losers are wrong, but it tends to work that way.

What the criteria permits is that where there are irreconcilable differences, irreconcilable doctrinal differences within a profession, that the groups have the ability to set up different organizations that are consistent and true with their doctrinal differences. Part of the challenge with this group is that there's a fairly large

numerical imbalance between the practitioners of the groups. One is much larger than the other, which gives them greater influence, both in the profession and in the accrediting arena. It is not unusual for institutions that lose their accreditation to seek court redress. In fact, it's fairly common. In fact, it's not very often that accrediting bodies revoke accreditation, but when it happens, it's not unusual for the institution that loses it to seek redress to defend itself in court. We heard from Southern Association a case about Edward Waters. I think we had a discussion about some earlier circumstances where I recall the experience where an accrediting body tried to withdraw accreditation from an institution that by all acknowledgement was engaged in fairly fraudulent practice, and the court held—the institution declared bankruptcy and the judge held that accreditation was an asset and protected the asset even while there were proceedings, foreclosure proceedings, and even other kinds of efforts. So I guess the point I want to make is that if you go into the history, the fact that a judge was involved is not uncommon. It's fairly common. In fact, accrediting bodies are almost expected to be litigated when they do this. Also, I want to point out that the consequences for students when accreditation is withdrawn are horrible and I have great sympathy for students that are caught up in this. The ultimate victims of a failure of the system either way, either an agency or institutions that don't do the right thing but stay open and retain their accreditation, the victims are the students that are graduating, going to those institutions. When the accreditation is withdrawn, again, the victims are the students. That's a pretty bad difficult thing to happen. That's why it shouldn't be done lightly. That's why our work is so important, too. I mean we consider agencies; recognition is not only for an institution, it's for a whole group of institutions. So when we take the step to withhold or to withdraw our recognition, the potential impact is much broader than the individual student. What I have concluded while watching this over the years, I think the staff has done a good job at looking at the allegations and the complaints, and again, the complaints are voluminous. I mean there's a lot of material here. The staff understood fully well the nature of this hearing today, and I think they did a very thorough job, and they have concluded that the complaints that were used were either without merit or the agency has satisfactorily responded to. I have looked fairly carefully at the evidence and the materials in there, and I can find nothing, at least in my judgment, that would contradict the staff conclusion as well. The governance questions, in my judgment, they have a variety of patterns of governance. But my question, the governance, the issue, what's being sought in terms of fair and equitable representation is not in the sense of democratic representation; it's in the sense of doctrinal representation. How do you get

the points of view? How do you get power-sharing arrangements within a community that has two very different worlds of what the community ought to look like? They've tried it. They tried it once before and that really wasn't much of a negotiation. My own sense of that was that there were winners and losers in that. I mean they ended up with one accrediting body because I don't frankly think the other group could have sustained an accrediting body. It's a small agency. We've had agencies, I think we've still got agencies that have three or four schools, very small agencies. So, you know, if you look at whether those groups have, you know, they're all from the same institutions because the numbers are so small. This is a small agency. There are going to be overlapping institutions.

I think at the end of the day where I come out is that we cannot reconcile or resolve the doctrinal disputes within this profession; we can't even referee them. That would be extraordinarily presumptuous on our part. This is going to have to work itself out within that community, and there may be winners and losers. But so be it. That's the nature of the structure. That's the nature of the marketplace. There are the opportunities structurally in terms of our process for people who cannot find justice as they see it within this context to create their own context. And I don't see--while it's a tough one, but I think it is doable. But I'll shut up now, but where I come now on this is that I think the staff analysis is accurate. I think the staff did a great job during a very difficult situation. I can assure this committee that no matter what this committee does, and I'm going to support--I defer to my colleague in terms of this motion--but I'm certainly going to support the staff recommendation, but I can tell you with fairly reasonable assurance, and I'm prepared to back that up with a modest wager, that if you accept the staff report, this particular scenario possibly with same faces, possibly with different faces, is going to come back five years from now.

The reason that everyone knew when this one came up that we were going to have this debate before is not that we were particularly insightful or intuitive, because it happened five years ago, and it happened ten years ago, and it happened 15 years ago, and it will happen five years from now. Having said all of that, I'm prepared when my colleague, assuming I'm reading my colleague correctly, but I am prepared to support the staff recommendation because again I think the staff did a good job sorting through all of this. They weren't deluded by this; they had ample knowledge. They knew what they were doing. There was extraordinary due diligence by the staff in trying to sort through all of this. They reached a conclusion. I have spent a lot of time going over the materials available to me and I understand the conclusion that the staff reached. I see nothing to contra--or I've heard nothing that

would contradict the conclusions that the staff reached, and I'm prepared to support the staff recommendation.

CHAIRPERSON D'AMICO: Other thoughts before a motion is made? Dr. DeNardis.

DR. DeNARDIS: I have enormous respect and regard for Dr. Pruitt. His knowledge of this process is unequal, but I beg to differ in this way. Doctrinal battles clearly are deep, deep in fact, deeply held, but not irreconcilable. Nothing is. I'm not suggesting that we overturn the staff. I think the staff has done a fine job, and I don't quarrel with the essential recommendation. But I am intrigued by the idea of trying to play a role in breaching this doctrinal battle in the profession so that future students are not harmed as some obviously were in the last few years, and that's why I suggested a shorter period of recognition so that it cannot be said by the prevailing group, look, we went, we conquered and we still prevail.

CHAIRPERSON D'AMICO: Mr. Blumenthal and then Dr. Dillon.

MR. BLUMENTHAL: I'm sort of torn on this, but I think at the end of the day I would tend to agree with Dr. Pruitt. I do think that there were students who were harmed, but it's unclear whether that harm was a result of the school or the accrediting agency, and since the case is apparently sealed and not available to us to make a judgment on, I don't think that we ought to place the agency in a position of taking responsibility for that. I do think that this sounds to me like a fight that's been going on for 30 years, and while I much prefer George's analogy of Romeo and Juliet to the one about Nazis, which seemed to me to be entirely inappropriate, I'm inclined to come down on the side of the staff recommendation.

CHAIRPERSON D'AMICO: Dr. Dillon and then Dr. Keiser.

DR. DILLON: Well, this is very interesting. Two of the wisest and most experienced members of our committee are split on this one. Dr. Pruitt is arguing that, if I get him rightly, that no amount of manipulation on our part is going to straighten this one out, and Dr. DeNardis says, well, wait, it's not time for surgery yet. And I'm confused. I'm not sure what to do except I am bothered by the governance question because I see there the potential for abuse and intimidation. Now, I guess the staff--maybe I can ask you this, John, are you saying, as far as you can see, they are in complete compliance with regard to governance issues?

MR. BARTH: As best we can determine, we believe they comply with the requirements of the criteria on these matters.

DR. DILLON: Okay. I still think I like the idea of the shorter period to make sure that those things are taken care and the other issues are taken care in some way, though, again, I think the staff has done a great job and I have great respect for Dr. Pruitt, as I think he knows.

CHAIRPERSON D'AMICO: Dr. Keiser.

DR. KEISER: Well, when I walked in after reading the material, I fully supported the staff position. However, I am concerned and especially in the area on conflict of interest, and understanding why a separate policy board was created and then a separate commission, and when the president, at least at one time in history, because that's all I have is in here, but the president and the treasurer of the association, of the board, had subordinates or fellow members of the organization, one from Texas Chiropractic College and one from Western States, who were on both sides of this equation. That gives me a little discomfort. I'm not sure it's a conflict, but it's certainly something I would think that it would be worthwhile looking into, especially to ensure that there is fair decision-making.

Frankly, the Life University thing does not bother me. The Commission made a decision and that does affect students horribly, and I have been there, and it's a tragedy. But it is the process working rather than the process not working. So that I cannot blame this accrediting commission for. I do have concerns that maybe instead of opening the process and allowing all parties to be heard, they may have gone the other way and circled the wagons and that's what my little concern is. And it's not necessarily correct. It's just the concern that I would like a little further information on.

CHAIRPERSON D'AMICO: I think the fact that even the supporters did not support the five years is kind of bugging me a little bit. There was somebody else after that. No? Dr. Noone.

DR. PALMER NOONE: Well, as one of the two primary readers on this, I too when I walked in the room was ready to fully support the staff recommendation, and I'm not absolutely certain I'm going to give that up just yet. But I do think it's important for everybody to understand how I think George and I have both agonized over the documentation in this, and I am deeply concerned at the level of concern expressed by the opposition. I was struck by the fact that with the exception of one third-party reviewer, none of them asked for withdrawal of recognition, only asked for a shorter time period. And the thing that I am grappling with as I sit here, and perhaps my learned colleagues could assist me in this, is would there be any disadvantage to us erring on the side of caution and only giving a three-year time frame with the progress report, especially vis-a-vis the

students that are in these accredited institutions and for the licensing exam purposes. But at this point, I am deeply concerned. Although I do not believe that there has been any documentation specifically of failure to meet the Secretary's criteria, I am concerned about the level of concern expressed by the third-party presenters.

CHAIRPERSON D'AMICO: Dr. Pruitt and then Dr. Bowyer.

DR. PRUITT: Madam Chairman, I would differ a little bit in your count in terms of who you put in the supporter camp and the non-supporter camp, but by my count--

CHAIRPERSON D'AMICO: I was losing track there a little bit.

DR. PRUITT: --the people that supported it did support a five-year renewal. I said I would differ a little bit with who you put in the column, the count for or agin' it. But I think the people that were for it were for the five years; the people that were against it were for some shorter period.

CHAIRPERSON D'AMICO: Five for the five year.

MR. BLUMENTHAL: I think he's saying that the third-party presenters who spoke in favor of CCE were in favor of the five years.

CHAIRPERSON D'AMICO: And the opponents were in favor of a shorter period of time.

MR. BLUMENTHAL: Right.

CHAIRPERSON D'AMICO: Okay. Thank you.

MR. BLUMENTHAL: Some of them actually asked for a deferment, not for a shorter period of time.

CHAIRPERSON D'AMICO: Thank you for straightening me out on that. Dr. Pruitt.

DR. PRUITT: But the other point I would make is if we conclude that we want a shorter period of recognition or that we're troubled, give them more time, then for us to do that, we've got to also conclude that they have not met the standard, and so if we are troubled by the governance process because we would like to give them time to work through that, then we've got to find that the governance process they currently have does not meet the standard. And the staff concluded that the current governance does meet the standard; I concur that it does meet the standard. And so, you know, we've got a little bit of a challenge here. I'm not; I'm certainly in sympathy with Larry's point. I mean we don't

really disagree on that and I don't want to be too harsh about it. I mean I'm always hopeful about the ability of the human heart to reconcile differences. I've just seen this one go a very long time.

But I think our challenge here is given what's been presented to us, what are the tools we have to engage in this, and what's our appropriate role and involvement with this, and I always, and I think the right thing for us to do is when in doubt retreat to the criteria because, at the end of the day, that's our job and our role, and I don't find that the governance is out of compliance with the criteria and nor did the staff, and that's why I don't know what the basis on which providing a shorter period would be unless we want to finding—in fact, I think we would be required to find if we did that, they would be out of compliance.

CHAIRPERSON D'AMICO: Dr. Bowyer and then Dr. Keiser.

DR. BOWYER: I agree with Dr. Pruitt. I mean John has said that they're in compliance with the governance criterion, and I guess in terms of conflict of interest, that was looked at also. So I don't know what the difference would be. I mean three years from now, they present the same sort of information, I mean we're going to have to say they're in compliance or if it's five years from now. So it seems to me we should support the staff recommendation that they do meet the criteria except for the four issues, I guess, that were outlined.

CHAIRPERSON D'AMICO: Dr. Keiser, did you have something? Oh, I thought I saw a hand over here. Oh, Dr. Dillon.

DR. DILLON: Yes. I think that Dr. Pruitt is saying we don't have to agree with the staff's finding, but we have to have our own independent finding that there's some--we have to have some evidence that there's a problem with governance. I understand that point. That's a good point.

CHAIRPERSON D'AMICO: Is that legally the case?

MS. WANNER: I think the length of recognition is sort of a discretionary matter. I think there, I mean you'd have to take a very broad view of the criteria to say that the kind of testimony that we've heard today goes to any of them.

For example, you could say possibly the problem with governance goes to whether or not, or the degree of dissent goes to their degree of acceptance. If you are persuaded by the idea that there's conspiracy and shutting out others, and, you know, in manipulating the bylaws, you could question whether really their accrediting policies and decisions are based on their public published

criteria. It's a very broad reading. But I don't think you necessarily have to have a specific criterion if you think they merit a shorter period of time because it's never been that closely calibrated.

CHAIRPERSON D'AMICO: I think that's an important point. And Dr. DeNardis, I don't know if you hate cartels and monopolies more than me. I think it would be a real contest. So I am sympathetic to your notion of can we send a message about cartels and monopolies and inclusion and the answer I am hearing is yes.

DR. PRUITT: I'd like to clarify one point with Tom though. We certainly have the ability and the right and in some cases the obligation to differ with staff. If we hear the materials and the evidence and reach a different conclusion from the staff, we should take a different action. The point I was trying to make is that the staff looked at it and concluded they were in compliance. I looked at what the staff provided me and what the agency provided me, and I couldn't see anything--I agreed with the staff, and I couldn't see anything nor have I heard anything to contradict the staff. But if I had, and if members of this committee view that given what they've seen and what they've read, that they draw a different conclusion, they should certainly feel free to take that--

DR. DILLON: I understood that, George. Yes, thank you very much.

DR. PRUITT: Thanks.

CHAIRPERSON D'AMICO: Are you ready to make a motion or not?

DR. PALMER NOONE: Yes.

CHAIRPERSON D'AMICO: No matter which ways this goes, I hope that people understand that we gave everyone fair consideration and I think the discussion has been obvious about that. So with that, Dr. Noone.

DR. PALMER NOONE: I'm prepared to make a motion that we recommend to the Secretary that we renew recognition for a period of five years and request an interim report by June 7, 2007 on the issues identified in the staff analysis.

DR. PRUITT: I'd like to second that. [Motion made and seconded.]

DR. PALMER NOONE: Further discussion? All those in favor of the motion signify by raising your right hand. [Show of hands.]

CHAIRPERSON D'AMICO: One, two, three, four, five, six, seven. Opposed? [Show of

hands.]

CHAIRPERSON D'AMICO: Two. Motion carries.

DR. PRUITT: Madam Chairman, for the record, I'd like to tell you I have a long and distinguished record of also hating cartels as well. So I'd like to associate myself with that point of view.

CHAIRPERSON D'AMICO: A club I'll gladly let you in. Let's take a ten minute break and regroup. [Whereupon, a short break was taken.]