

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

FLORIDA | Board of Chiropractic Medicine

MEETING MINUTES
April 10, 2015

Orlando Marriott Lake Mary
1501 International Parkway
Lake Mary, FL 32746



Kevin Fogarty, D.C., F.I.C.A. (hon)
Chair

Danita Heagy, D.C.
Vice-Chair

Adrienne Rodgers, BSN, JD
Interim Executive Director

1 **General Board Business started: 8:30 a.m.**

- 2
3 **I.** The meeting was called to order by Dr. Fogarty, Chair. Those present for all or part of the meeting
4 included the following:

5
6 **MEMBERS PRESENT:**

7 Kevin Fogarty, D.C., F.I.C.A. (hon), Chair
8 Director
9 Danita Heagy, D.C., Vice-Chair
10 Christopher Fox, D.C.
11 Julie Hunt, D.C., DICCP
12 Kenneth Dougherty, D.C.
13 David Colter
14 Ruth Pelaez

STAFF PRESENT:

Adrienne Rodgers, BSN, JD, Interim Executive
Joseph Lesho, Program Operations Administrator
Michele Jackson, Regulatory Supervisor
Towanda Burnett, Compliance Officer

15
16 **BOARD COUNSEL:**

17 Deborah Loucks, Assistant Attorney General
18 Office of Attorney General

19
20 **PROSECUTION COUNSEL:**

21 Jennifer Fortenberry, Assistant General Counsel
22 Sharmin Hibbert, Assistant General Counsel
23 Christopher Dierlam, Assistant General Counsel
24 Octavio Simoes-Ponce, Assistant General Counsel

25
26 **COURT REPORTER:**

27 American Court Reporting
28 (407) 896-1813

29
30 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline.*
31 *AUDIO from this meeting can be found online: [http://floridaschiropracticmedicine.gov/meeting-information/past-](http://floridaschiropracticmedicine.gov/meeting-information/past-meetings)*
32 *[meetings](http://floridaschiropracticmedicine.gov/meeting-information/past-meetings)*

33
34 Dr. Fogarty recognized Tari Rossitto-Van Winkle, Esq., the former board prosecutor, and thanked her for
35 her service.

36
37 Dr. Anthony Spivey was then introduced as the new Executive Director of the Board, effective April 17,
38 2015. In addition, Adrienne Rodgers, BSN, JD was recognized for her service as Executive Director of the
39 Board, and congratulated for her promotion to Bureau Chief of the Bureau of Health Care Practitioner
40 Regulation.

41
42 **Section II began: 8:36 a.m.**

43
44 **II. APPROVAL OF MINUTES:**

45
46 **a. January 9, 2015**

47 Minutes of the January 9, 2015 Full Board Meeting were reviewed.

48
49 **Action:** Motion to accept the minutes was made by Dr. Heagy. Seconded by Dr. Dougherty.

50 Vote: 7 yeas / 0 opposed; motion carried

51
52 **b. March 11, 2015**

53 Minutes of the March 11, 2015 Full Board Meeting were reviewed.

54
55 Mr. Lesho noted the incorrect spelling of “Dr. Bahrayni” throughout the minutes, and stated that the
56 correction will be made.

1
2 **Action:** Motion to accept the minutes as amended was made by Ms. Pelaez. Seconded by Dr. Heagy.
3 Vote: 7 yeas / 0 opposed; motion carried
4

5 **c. Correction to August 22, 2014 Minutes (line 37)**

6 Minutes of the August 22, 2014 Full Board Meeting were reviewed.
7

8 **Action:** Motion to accept the minutes as amended was made by Dr. Dougherty. Seconded by Dr.
9 Heagy.

10 Vote: 7 yeas / 0 opposed; motion carried

11 Before moving to the next section, Dr. Fogarty asked for guidance on granting extensions for licensees who
12 could not attend a board meeting within their first year of licensure. He stated that he has seen an increasing
13 number of extension requests from licensees who fail to meet this requirement, and that in the past,
14 licensees who did not meet the requirement were referred to Consumer Services, the matter was
15 investigated and then sent to Prosecution Services, which would then require them to attend the next
16 meeting and would recommend a Letter of Guidance to the Probable Cause Panel. Ms. Loucks
17 recommended that in lieu of sending the matter directly for discipline, the licensee be directed to file a
18 formal Petition for Waiver/Variance, and not receive credit for attending the meeting in which their petition
19 is heard, which, if the petition is granted, would essentially require them to attend two meetings.
20

21 Dr. Fogarty asked board staff to direct licensees who wish to have an extension to the one-year requirement
22 to file a Petition for Waiver/Variance and be placed on the next agenda to appear before the Board.
23

24 **Section II concluded: 8:43 a.m.**

25 **Section III began: 8:43 a.m.**
26

27 **III. FINAL ORDER ACTION:**

28
29 **I. Hearing – No Disputed Material Facts:**

30
31 **i. Feghens Delva, C.C.P.A. – Case Numbers 2014-01486; 2014-01541**

32 Dr. Dougherty was recused due to participation on the probable cause panel.
33

34 Respondent was present and was represented by counsel, Josh Bloom, Esq.
35

36 A two count Administrative Complaint was filed on October 29, 2014 alleging violations of ss.
37 456.072(1)(c) and (II), F.S., for being arrested and convicted for one count of organized scheme to
38 defraud insurance companies by billing or attempting to bill for services that were not rendered, or
39 rendered for automobile accidents that were considered staged. Respondent entered a plea of
40 guilty and was adjudicated guilty on or about May 23, 2014. An Election of Rights form was sent
41 to Respondent, on which he requested a formal hearing, but the request was denied because the
42 Department determined there were no issues of material fact in dispute.
43

44 **Discussion:**

45 **Action:** Motion to find that Respondent was present and properly served was made by Ms. Pelaez.
46 Seconded by Dr. Fox.

47 Vote: 6 yeas / 0 opposed; motion carried
48

49 **Action:** Motion to find that there are no issues of material fact in dispute, and that pursuant to
50 Chapter 120, Florida Statutes, the Department was not required to grant the request for a formal
51 hearing and can proceed with an informal hearing made by Dr. Hunt. Seconded by Dr. Heagy.

52 Vote: 6 yeas / 0 opposed; motion carried
53

54 Mr. Bloom stated that Respondent had no objections to an informal hearing.
55

1 **Action:** Motion to accept the findings of fact as stated in the Administrative Complaint was made
2 by Dr. Hunt. Seconded by Dr. Fox.
3 Vote: 6 yeas / 0 opposed; motion carried
4

5 **Action:** Motion to adopt the conclusions of law as stated in the Administrative Complaint made
6 by Dr. Heagy. Seconded by Dr. Fox.
7 Vote: 6 yeas / 0 opposed; motion carried
8

9 **Action:** Motion that the Board accept into evidence the investigative file, and find that the
10 materials do in fact constitute a violation of the practice act made by Dr. Hunt. Seconded by Dr.
11 Fox
12 Vote: 6 yeas / 0 opposed; motion carried
13

14 Mr. Bloom stated that Respondent cannot dispute the plea of guilty, but that Mr. Delva would like
15 to present additional factors to the Board.
16

17 Mr. Delva explained that the investigation for fraud occurred in 2009, but at the time he was the
18 manager of the office and was not the treating physician, as he was only in the office on Thursdays
19 and Fridays. He said that he accepted the blame as the office manager and plead guilty, but that
20 did not mean that he was responsible for what happened.
21

22 Mr. Bloom asked the Board to consider certain mitigating factors. He explained that Mr. Delva
23 had been chiropractic assistant for about 9 years, had been in the country for 22 years with no
24 other issues with law enforcement, and had no other complaints before board. He said Mr. Delva
25 will accept discipline, acknowledge that the incidents happened on his watch, and he understands
26 the Board's role in the matter. He then asked that they grant him a second chance and not revoke
27 his license.
28

29 Dr. Fogarty asked Mr. Delva what role he played in the corporation's ownership.
30

31 Mr. Delva explained that the doctor was the owner, and he was manager. He said he was an
32 official of the corporation, but not an owner.
33

34 Dr. Fogarty then asked if Mr. Delva was paid salary, or if he received a percentage based on the
35 number of patients seen. Mr. Delva said that he was paid salary, and had no other vested interest.
36

37 Dr. Fogarty then pointed out that the investigative report named Mr. Delva as one of the
38 individuals who was recruiting patients for the staged accidents, which Mr. Delva denied.
39

40 Dr. Heagy wanted clarification on the fact that Mr. Delva was responsible for the staff, but was
41 unaware that they were staging car accidents. Mr. Delva confirmed that that was correct.
42

43 Ms. Hibbert stated that the Department and the Legislature consider this type of violation to be
44 one of the most egregious, which is why they passed s. 456.0635, F.S., which allows the
45 Department to deny licensure renewal in cases such as this. In addition, she explained that the only
46 available remedy according to the disciplinary guidelines for this offense was permanent
47 revocation; therefore, the Department asked for revocation of the license, and an assessment of
48 costs in the amount of \$915.18.
49

50 Dr. Heagy asked if there would also be a fine imposed, to which Ms. Hibbert stated no because
51 fines are difficult to collect in cases of revocation.
52

53 **Action:** Motion for revocation of the license made by Dr. Heagy. Seconded by Dr. Hunt.
54 Vote: 6 yeas / 0 opposed; motion carried
55

1 Ms. Loucks pointed out that in the past, the Board has not assessed costs in cases of revocation for
2 the same reasons that the Department declined to impose a fine.
3

4 **Action:** Motion to assess costs in the amount of \$915.18 made by Dr. Heagy. Seconded by Dr.
5 Fox.

6 Vote: 6 yeas / 0 opposed; motion carried
7

8 Ms. Loucks clarified that the assessed costs would be due within 30 days of the filing of the Final
9 Order.
10

11 **II. Voluntary Relinquishment:**

12 **i. David Louis Hirschenson, D.C. – Case Number 2013-14667**

13 Respondent was not present and was not represented by counsel.
14

15 Ms. Hibbert asked that the Board accept the Voluntary Relinquishment.
16

17 Ms. Loucks pointed out that the Voluntary Relinquishment includes language stating that
18 Respondent will never re-apply for licensure.
19

20 **Discussion:**

21 **Action:** Motion to accept the Voluntary Relinquishment made by Dr. Hunt. Seconded by Ms.
22 Pelaez.

23 Vote: 7 yeas / 0 opposed; motion carried
24

25 **III. Settlement Agreement:**

26 **i. Louis E. Miller, D.C. – Case Number 2012-02881**

27 Dr. Fox was recused due to participation on the probable cause panel.
28

29 Respondent was present and was represented by counsel, Dan Bachi, Esq.
30

31 A two count Administrative Complaint was filed on December 12, 2014 alleging violations of ss.
32 460.413(1)(m) and (t), F.S., for failing to keep legibly written chiropractic medical records, and
33 for practicing or offering to practice beyond the scope permitted by law. Respondent began
34 treating the patient in or around 2008. The patient had significant disabilities, but the claims to
35 insurance were not typical of treatment and could be seen as exorbitant. The Department's expert
36 opined that the treatment was not in line with the routine practice of chiropractic medicine, and
37 was beyond the permissible scope. The Department's expert believes that Dr. Miller pushed the
38 boundary of patient care and advocacy, but does not believe that Dr. Miller's actions were an
39 attempt to defraud.
40

41 Ms. Hibbert advised the board that the settlement agreement contained the following provisions:
42

- 43 • Reprimand
- 44 • Dismissal of Count 1 – Record Keeping
- 45 • Fine in the amount of \$500 payable within 30 days
- 46 • Costs capped at \$9,057.74 payable within 2 years
- 47 • Continuing Education consisting of 6 hours in the area of record keeping, documentations and
48 coding within 18 months
- 49 • Risk Management – Laws and Rules Continuing Education consisting of 3 hours of risk
50 management of which 2 of the 3 hours specifically relate to laws and rules within 18 months
- 51 • National Ethics and Boundaries Examination to be taken and passed within 18 months
52

53 Ms. Hibbert explained that the Department asked for dismissal of Count 1 because Dr. Miller had
54 already entered into an agreement to receive guidance and monitoring for record keeping as a
55

1 result of a previous order during the same time period, and because the Department's expert did
2 not believe that Dr. Miller's actions were an attempt to defraud.
3

4 **Discussion:**

5 Mr. Bachi explained that this was a very difficult patient who had an ongoing relationship with the
6 carrier's representative, who told Dr. Miller that if he needed anything, ask for it and the carrier
7 will review it. He stated that ultimately it was the carrier's decision to allow for the items in
8 question to be purchased. He reiterated that Dr. Miller has completed the two-year probation with
9 the monitoring of his records, and said that he has had a dramatic improvement in his record
10 keeping. He then asked that the Board accept the Settlement Agreement.
11

12 Dr. Fogarty explained that he was disturbed by this case, and listed off all of the items purchased
13 for the patient that were found in the Administrative Complaint. He explained to Dr. Miller that a
14 chiropractor cannot let patients have carte blanche, no matter how cantankerous they may be. He
15 stated that there were \$189,000 worth of charges over a two year period. He also pointed out that
16 this treatment overlapped with the period in which Dr. Miller's records were being monitored, but
17 this patient's chart was not corrected, and also questioned Dr. Miller's clinical competency
18 because he believed that some of the items purchased were not appropriate for the treatment of the
19 patient's injuries.
20

21 Dr. Dougherty agreed there are serious questions about the treatment. He explained that though the
22 expert did not believe the actions by Dr. Miller were for financial gain, he questioned the fact that
23 the patient was seen two to three times per week for long period of time.
24

25 Dr. Heagy expressed her concerns as well, saying that the physician is in charge of the treatment,
26 not the patient. She said that though a home may be needed, it is not within the parameters of
27 chiropractic care.
28

29 Ms. Pelaez then asked for clarification on why a laptop computer would be necessary for
30 treatment. Mr. Bachi explained that the laptop was purchased so that the patient could conduct his
31 treatment exercises from wherever he might be, as opposed to paying \$120/hour at gym. He said
32 that purchasing the laptop eliminated that expense.
33

34 Ms. Pelaez then questioned who was monitoring the patient while he did his exercises, and also
35 asked why the patient had been to so many different gyms. Mr. Bachi then explained that the
36 patient was kicked out of various gyms because his injuries caused him to be combative with
37 people, so Dr. Miller offered him ways to do his exercises on his own.
38

39 Dr. Fogarty asked if it would be ok for Dr. Miller to speak for himself, rather than through
40 counsel. Dr. Miller obliged. Dr. Fogarty then asked Dr. Miller for his rationale behind purchasing
41 a scooter for a patient with a brain injury. Dr. Miller explained that the patient had no car, but he
42 was required to see a variety of providers on a consistent basis. The carrier suggested that the
43 patient obtain some type of car service with a personal driver, but Dr. Miller stated that the patient
44 could not afford that, and decided that the scooter was the most economical option.
45

46 Dr. Fogarty then asked why a \$17,000 treadmill was necessary. Dr. Miller explained that the
47 patient had surgeries in both knees, was morbidly obese, and said that this particular treadmill
48 worked for him, as it was easier for his body. He explained that he spent 10 hours researching the
49 issue, did not ask for any additional compensation, and that his only incentive was to bring down
50 the suffering of the patient. Dr. Fogarty stated that because rebates and split commission can be
51 offered by the salesperson with purchases like this treadmill, the appearance of the situation was
52 not good.
53

54 Ms. Pelaez asked for clarification on the prior discipline, and Ms. Loucks explained that the prior
55 discipline was a result of issues with record keeping. Dr. Miller then explained that his work with
56 the monitor changed his practice completely. He said he followed all of the monitor's

1 recommendations, and it was one of the healthiest things he's done for his practice. He noted that
2 most of the notes related to this patient pre-date the monitoring.
3

4 Dr. Fogarty asked Dr. Miller if he maintained his testimony about the inappropriate e-mails that
5 were included in the case materials. Dr. Miller stated that the e-mails were not sent from him. Dr.
6 Fogarty then asked if it were true that he allowed the patient to access the computer in the office,
7 and Dr. Miller said that the computer in question was not work-related, and contained no files
8 related to work.
9

10 Mr. Colter said that he felt if Dr. Miller weren't the one helping to advocate for the patient in this
11 manner, then it could have potentially been any other doctor. He also said he did not see how the
12 facts of the case relate to record keeping. Dr. Fogarty explained that the doctor's recommendations
13 must have a basis documented in the records.
14

15 Mr. Colter then stated that he understands advocating for a patient, but that the items purchased in
16 this case seem excessive.
17

18 Dr. Hunt stated that the terms of the Settlement Agreement were more than reasonable, and made
19 a motion to accept, which was seconded by Dr. Dougherty.
20

21 Before a vote was taken on the motion, Mr. Colter asked Dr. Miller what he has learned from the
22 experience. Dr. Miller said that he will never see a patient this troubled again, and does not want
23 to be in a situation like this again. He said that he learned that boundaries need to be set, and that
24 he was unprepared to handle a patient like this. Mr. Colter then asked how he felt about the items
25 purchased on the patient's behalf. Dr. Miller responded that he believed some items had merit, but
26 some items should have been scrutinized a bit more.
27

28 Dr. Fogarty then spoke out against the motion to accept the Settlement, and suggested that Dr.
29 Miller be required to take the Special Purposes Examination for Chiropractic (SPEC) to test his
30 clinical competency. Dr. Dougherty agreed. Dr. Hunt rescinded her original motion and made a
31 new motion to add the SPEC requirement, which was seconded by Dr. Dougherty.
32

33 **Action:** Motion to reject the Settlement Agreement made by Dr. Hunt. Seconded by Dr.
34 Dougherty.

35 Vote: 6 yeas / 0 opposed; motion carried
36

37 **Action:** Motion to add the requirement to take and pass the SPEC within 18 months of the filing
38 of the Final Order to the terms of the original Settlement Agreement made by Dr. Hunt. Seconded
39 by Dr. Dougherty.

40 Vote: 6 yeas / 0 opposed; motion carried
41

42 Ms. Loucks asked Mr. Bachi if his client would like to accept the counter settlement, or if they
43 would like to take the allowed 10 days to respond. Mr. Bachi initially asked for the 10 days, but
44 later came back before the board to accept the counter settlement.
45

46 **ii. John W. Jennings, D.C. – Case Number 2014-00650**

47 Dr. Fox was recused due to participation on the probable cause panel.
48

49 Respondent was present and was represented by counsel, Kenneth Scaz, Esq.
50

51 A two count Administrative Complaint was filed on December 12, 2014 alleging multiple
52 violations of s. 460.413(1)(v), F.S., for violating a lawful order of the board. The Final Order in
53 case number 2011-15689 required Respondent to take and pass the National Ethics and
54 Boundaries Examination and the Florida Laws and Rules Examination, which Respondent
55 allegedly failed to do. After the Administrative Complaint was filed, Respondent provided proof

1 to the Department that the Laws and Rules Examination was taken and passed; however, he still
2 cannot provide proof that he has passed the Ethics and Boundaries Examination.

3
4 Ms. Hibbert advised the board that the settlement agreement contained the following provisions:

- 5
6
- 7 • Reprimand
 - 8 • Fine in the amount of \$1,000.00 payable within 6 months
 - 9 • Costs capped at \$1,000.00 payable within 6 months
 - 10 • Continuing Education consisting of 10 hours in Ethics and Boundaries within 12 months

11 Based on discussions between the Department and Respondent's Counsel, the Department feels
12 that though Dr. Jennings has been unable to pass the Ethics and Boundaries Examination, he has
13 retained enough information to be able to safely practice.

14
15 **Discussion:**

16 Mr. Scaz explained to the Board that Dr. Jennings has complied with all terms of the Final Order
17 except for the Ethics and Boundries examination. He explained that he has received no complaints
18 from patients in 50 years of practice, but he is experiencing difficulty in completing this
19 examination due to technological issues, as he has very little experience with computers. He asked
20 that the Board accept the Settlement Agreement so that Dr. Jennings can take the Ethics and
21 Boundaries course in lieu of the examination.

22
23 Dr. Fogarty asked how many times Dr. Jennings has attempted the examination. Dr. Jennings said
24 he has taken it once, and he paid to take it a second time, but did not take it due to the
25 technological concerns, which is why he and his counsel contacted the Department to discuss the
26 course in lieu of the examination.

27
28 **Action:** Motion to reject the Settlement Agreement made by Dr. Hunt. Seconded by Mr. Colter.
29 Vote: 6 yeas / 0 opposed; motion carried

30
31 Dr. Hunt then made a motion to reduce the fine from \$1000 to \$500. Dr. Dougherty seconded the
32 motion, and more discussion ensued.

33
34 Dr. Dougherty asked why Dr. Jennings was having trouble, and asked if the issue was because Dr.
35 Jennings cannot type on a keyboard. Dr. Jennings confirmed that the typing was indeed the issue,
36 and explained that he has very little experience with computers.

37
38 Dr. Dougherty asked if Dr. Jennings could apply to have his examination responses dictated. Mr.
39 Scaz explained that they explored that option, and found that it was not permissible.

40
41 Dr. Heagy stated that because Dr. Jennings has been practicing for so long without issue, she was
42 comfortable with allowing the 10 hour course in lieu of the examination.

43
44 **Action:** Motion to counter with Settlement Agreement as-is, but reduce fine from \$1000 to \$500
45 made by Dr. Hunt. Seconded by Dr. Dougherty.

46 Vote: 4 yeas / 2 opposed (Dr. Fogarty, Ms. Pelaez); motion carried

47
48 Respondent accepted the counter settlement.

49
50 **Section III concluded: 10:05 a.m.**

51
52 **The Board took a 15-minute recess**

53
54 **Section IV began: 10:20 a.m.**

55
56 **IV. PROSECUTION REPORT:**

1
2 Ms. Hibbert introduced Jennifer Fortenberry, Esq. as the new prosecution team lead. She then explained
3 that the caseload for chiropractic medicine is on a downturn, but did note that there are a small number of
4 fraud cases that they are preparing for prosecution.
5

6 **Section IV concluded: 10:22 a.m.**

7 **Section VI began: 10:22 a.m.**
8

9 **VI. APPLICANTS PRESENTED FOR BOARD REVIEW:**

10
11 **c. Certified Chiropractic Physician Assistants:**

12
13 **i. Myrleine Paul**

14 Applicant was present and was represented by counsel, Coretta Anthony-Smith, Esq.
15

16 Ms. Paul submitted an Application to Modify Supervision for Certified Chiropractic Physician
17 Assistant on August 14, 2014, which was reviewed by the Board at the October 31, 2014 meeting.
18 A Notice of Intent to Deny was filed on December 8, 2014 on the grounds that Ms. Paul violated
19 s. 460.413(1)(k), F.S., by being evasive about her former employer. On January 5, 2015, the Board
20 office received a Request for Reconsideration from Ms. Paul in response to the Notice of Intent to
21 Deny. The request was received after the 21 days allowed for a response; however, Ms. Loucks
22 instructed the Board office staff to place the petition on the agenda for Board review.
23

24 **Discussion:**

25 Motion to accept the request for reconsideration made by Mr. Colter. Seconded by Dr. Dougherty.
26 Vote: 7 yeas / 0 opposed; motion carried
27

28 Ms. Anthony-Smith explained that Ms. Paul felt that her previous statements that were seen as
29 evasive may have been due to the language barrier that exists, as her native language is Haitian
30 Creole. She also clarified her relationship with Dr. McKenzie, her previous supervisor.
31

32 Dr. Dougherty, who conducted the initial interview with Ms. Paul, stated that he did not feel there
33 was a language barrier, and reiterated that he felt the answers were evasive. He then asked Ms.
34 Paul if she was the one that hired Dr. McKenzie. Ms. Paul stated that she did not.
35

36 Dr. Dougherty then asked Ms. Paul who her boss was during her employment at the clinic. She
37 stated that her boss was the clinic owner.
38

39 Dr. Dougherty then asked if there were any issues with Dr. McKenzie during the time in which
40 Ms. Paul worked with her, to which Ms. Paul responded no.
41

42 Dr. Dougherty then asked what Ms. Paul has been doing since 2007. Ms. Paul explained that she
43 began working the front desk at another chiropractic office in 2008.
44

45 After additional questions from Dr. Dougherty regarding the setup of Ms. Paul's new office of
46 employment, Dr. Dougherty stated that he was satisfied with the responses.
47

48 **Action:** Motion to vacate the Notice of Intent to Deny and approve the Application to Modify
49 Supervision for Certified Chiropractic Physician Assistant made by Dr. Dougherty. Seconded by
50 Dr. Fox.
51

52 Vote: 7 yeas / 0 opposed; motion carried

53 **Section VI concluded: 10:33 a.m.**

54 **Section XIII began: 10:33 a.m.**
55

56 **e. Disciplinary Compliance – Dr. Fogarty**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

i. **Termination of Probation:**

1. **Octavio P. Fernandez, D.C. – Case Numbers 2010-24153, 2010-24154, 2010-18950**

Respondent was present and was represented by counsel, Karen Barnet-Backer, Esq.

Ms. Barnet-Backer explained that in addition to the Request for Early Termination of Probation, Respondent would like to discuss a request for forbearance of payments order due to a financial hardship.

Dr. Fogarty asked which terms of the Final Orders have been met, and which have not.

Ms. Burnett explained the following:

- In Case No. 2009-20698, there is an outstanding fine of \$1876.80, and outstanding costs of \$54.25
- In Case No. 2009-23333, there is an outstanding fine of \$5000.00, and outstanding costs of \$597.78
- In Case No. 2009-00715, there is an outstanding fine of \$40,000, and outstanding costs of \$6212.27
- In Case No. 2012-24153, there are outstanding costs of \$5136.53
- The required courses are complete
- All monitor reports are current

She explained that Dr. Fernandez was required to make quarterly payments of \$1690.01, and was \$10,140.06 behind at the time of the meeting; the last payment received was on October 21, 2013, and the total outstanding balance at the time of the meeting was \$58,877.63.

After discussion regarding Dr. Fernandez’s financial hardship and correspondences with the Department, the Board agreed to modify the forbearance with the following terms:

- Monthly payments of \$333.33 for two years beginning 30 days from the filing of the Final Order
- After two years from the first payment, the monthly payment will raise to \$500
- Dr. Fernandez must provide to the Department certified tax returns for his total income at the end of each year
- Any change to the monthly payments would require a formal petition to the Board
- Failure to make any payments will be referred for a complaint
- The prior missed payments will be forborne until the end of the payment schedule

Action: Motion to approve the request to modify the forbearance of payments made by Dr. Fogarty. Seconded by Mr. Colter.

Vote: 7 yeas / 0 opposed; motion carried

Ms. Barnet-Backer then asked for the Board to consider the Request for Early Termination of Probation.

Action: Motion to deny the Request for Early Termination of Probation made by Dr. Fogarty. Seconded by Dr. Dougherty.

Vote: 7 yeas / 0 opposed; motion carried

Ms. Barnet-Backer asked that more discussion be had on the record regarding the Request for Early Termination of Probation because it is a separate issue from the request to modify the forbearance.

1 After additional discussion, a motion was made to revisit the Request for Early Termination
2 of Probation.

3
4 **Action:** Motion to reconsider the prior vote and revisit the Request for Early Termination
5 of Probation made by Mr. Colter. Seconded by Dr. Dougherty.

6 Vote: 6 yeas / 1 opposed (Ms. Pelaez); motion carried
7

8 Ms. Barnet-Backer presented the Request for Early Termination of Probation, noting that
9 his monitor, Dr. Maguire, has recommended termination, and asked that the Board approve
10 the request.

11
12 Dr. Heagy asked if there would be any merit to the people of the state of Florida in
13 continuing the probation.

14
15 Dr. Fogarty stated that based on the past charges, it would be helpful to continue the
16 probation for the duration, and that if Dr. Maguire is not comfortable continuing as monitor,
17 then the Board can appoint a new monitor.
18

19 After additional discussion, Dr. Fogarty asked for a motion.
20

21 **Action:** Motion to continue the probation made by Dr. Dougherty. Seconded by Ms.
22 Pelaez.

23 Vote: 6 yeas / 1 opposed (Mr. Colter); motion carried
24

25 **ii. Request for Extension:**
26

27 **1. Richard Thomas Pfaff, D.C. – Case Number 2013-10836:**

28 Respondent was present and was represented by Ed Bayo, Esq., who was representing Dr.
29 Pfaff on behalf of the attorney of record, Kenneth Metzger, Esq.
30

31 Mr. Bayo presented the Request for Extension, explaining that Dr. Pfaff was involved in an
32 automobile accident with an uninsured driver, which has hindered his ability to make timely
33 payments.
34

35 Ms. Burnett explained that Dr. Pfaff was current with monitor reports and payments as of
36 the time of the meeting, and had an outstanding balance of \$8,348.84
37

38 Mr. Bayo stated that Respondent is asking for an extra year for payment completion.
39

40 Dr. Fogarty asked if this would involve a reduction of payment, to which Mr. Bayo
41 responded yes.
42

43 Dr. Fogarty then asked for the amount of the current monthly payment. Ms. Burnett stated
44 that it was \$463.83 per month.
45

46 Dr. Fogarty then asked what amount Respondent is proposing. Dr. Pfaff asked for
47 something around \$250 per month.
48

49 Dr. Fogarty proposed \$263.83 per month, and Dr. Pfaff agreed.
50

51 **Action:** Motion to approve the Request for Extension and reduce the monthly payment to
52 \$263.83 per month made by Dr. Fox. Seconded by Dr. Dougherty.

53 Vote: 7 yeas / 0 opposed; motion carried
54

55 Mr. Bayo then asked that Dr. Pfaff be granted an additional year to take the Ethics and
56 Boundaries examination, which was part of the original Request for Extension.

1
2 Dr. Pfaff explained that he had not yet been able to take the examination due to the issues
3 with the automobile accident, but that he intends to take it within the next year.

4
5 **Action:** Motion to approve the Request for Extension and allow an additional one year to
6 take the Ethics and Boundaries examination made by Dr. Dougherty. Seconded by Dr.
7 Heagy.

8 Vote: 7 yeas / 0 opposed; motion carried
9

10 **i. Termination of Probation:**

11
12 **2. Johnny Granone, D.C. – Case Number 2010-00223**

13 Respondent was present and was represented by counsel, Ed Bayo, Esq.

14
15 Ms. Burnett explained that Dr. Granone had an outstanding balance of \$4825.97, minus a
16 payment of \$536.23, which posted after her report was run. She explained that as of the
17 time of the meeting, Dr. Granone was current on his monthly payments.

18
19 Dr. Granone stated that in the time that he has been working with his monitor, he has made
20 corrections to the way that he takes his notes.

21
22 **Action:** Motion to approve the Request for Termination of Probation made by Mr. Colter.
23 Seconded by Dr. Heagy.

24 Vote: 7 yeas / 0 opposed; motion carried
25

26 **Section XIII concluded: 11:45 a.m.**

27 **Section V began: 11:45 a.m.**
28

29 **V. PETITION FOR WAIVER/VARIANCE:**

30
31 **a. Lisa Verna, D.C.**

32 Petitioner was not present and was not represented by counsel
33

34 Lisa Verna, D.C. submitted a Petition for Variance from Rule 64B2-13.0049, F.A.C., which was filed
35 March 9, 2015. Dr. Verna is requesting that the Board allow her 20 hours of Continuing Education
36 completed in Minnesota in December 2014 to apply towards the 40 hours required in Florida to change
37 her license status from inactive to active.

38
39 **Discussion:**

40 Dr. Dougherty stated that the hours in Minnesota don't qualify in Florida, as the course providers did
41 not apply to be accepted in the state of Florida, and the courses were conducted via teleconference, as
42 opposed to in-person. Does not think they should accept the hours, but thinks they can extend
43

44 **Action:** Motion to deny the Petition for Variance from Rule 64B2-13.0049, F.A.C., made by Dr.
45 Dougherty. Seconded by Dr. Hunt.

46 Vote: 7 yeas / 0 opposed; motion carried
47

48 **b. Raffaella Maria Amanda Villella, D.C.**

49 Petitioner was not present and was not represented by counsel.
50

51 Raffaella Maria Amanda Villella, D.C. submitted a Petition for Variance from Rule 64B2-13.004,
52 F.A.C., which was filed March 3, 2015. Dr. Villella is requesting that the Board grant an extension
53 through March 2016 to complete the 11 missing Continuing Education hours required for reactivation
54 of her license.

55
56 **Discussion:**

1
2 **Action:** Motion to grant the Petition for Variance from Rule 64B2-13.004, F.A.C., made by Dr.
3 Heagy. Seconded by Dr. Hunt.
4 Vote: 7 yeas / 0 opposed; motion carried
5

6 **Section V concluded: 11:48 a.m.**

7
8 **The Board took a 15-minute recess**
9

10 **Section VI resumed: 12:07 p.m.**

11
12 **VI. APPLICANTS PRESENTED FOR BOARD REVIEW:**

13
14 **a. Chiropractic Physicians:**

15
16 **i. Patricia Chelenyak, D.C.**

17 Applicant was present and was not represented by counsel.
18 Dr. Heagy noted that she knows Dr. Chelenyak personally, but can be impartial.
19

20 Dr. Chelenyak submitted an application for Chiropractic Physician licensure on June 24, 2013;
21 however, Dr. Chelenyak has not completed Parts III, IV, and Physiotherapy of the NBCE
22 examination. Dr. Chelenyak submitted a letter to the Board requesting that they waive those
23 requirements and grant her a license by endorsement.
24

25 **Discussion:**

26 Ms. Loucks explained that the Board does not have the authority to waive a statute, and the statute
27 does not currently offer an avenue for licensure by endorsement.
28

29 Dr. Chelenyak told the Board that she has previously served on the Michigan Board of
30 Chiropractic, and though she is aware that Florida does not offer licensure by reciprocity or
31 endorsement, she has practiced for 32 years, holds licenses in Georgia and South Carolina, and has
32 previously completed Part I of the examination.
33

34 Dr. Fogarty stated that he feels a statutory change is needed. He opined that she is safe to practice,
35 and that denying her a license is not fair to her or the people of Florida, but due to statutory
36 limitations, the Board cannot grant the license.
37

38 The Board allowed Dr. Chelenyak to withdraw the application so that a denial will not show on
39 her record.
40

41 **Action:** Motion to accept the withdrawal of the application made by Dr. Dougherty. Seconded by
42 Dr. Heagy.
43 Vote: 7 yeas / 0 opposed; motion carried
44

45 **ii. Kevin K. Granger, D.C.**

46 Applicant was not present and was not represented by counsel.
47

48 Dr. Granger submitted an application for Chiropractic Physician licensure on January 6, 2015. The
49 application is being presented before the Board due to medical malpractice history and a “yes”
50 answer to a health history question. The application is incomplete pending proof of completion of
51 medical errors.
52

53 **Discussion:**

54 Mr. Colter noted that Dr. Granger holds an active license in Ohio with no discipline.
55

1 Dr. Dougherty noted that there is no documentation regarding the health history, aside from a
2 letter from the treating physician.

3
4 Dr. Heagy stated that she was curious about the details of the malpractice case.

5
6 Ms. Loucks explained the details of the case, but stated that because the case is older than 10
7 years, Dr. Granger was not required to report it.

8
9 **Action:** Motion to approve the application for Chiropractic Physician licensure made by Dr. Fox.
10 Seconded by Mr. Colter.
11 Vote: 7 yeas / 0 opposed; motion carried

12
13 **iii. Brennan Matthew McLaughlin, D.C.**

14 This case was withdrawn from the agenda prior to the start of the meeting.

15
16 **iv. Hal Stein, D.C.**

17 Applicant was not present and was not represented by counsel.

18
19 Dr. Stein submitted an application for Chiropractic Physician licensure on September 9, 2014.
20 Upon review of the application, Board staff discovered medical malpractice history. For that
21 reason, the application and supporting documentation were presented to the Board for review;
22 however, Ms. Loucks noted that the medical malpractice case was more than 10 years old. The
23 application was deemed completed on January 20, 2015.

24
25 **Action:** Motion to approve the application for Chiropractic Physician licensure made by Dr.
26 Heagy. Seconded by Dr. Dougherty.
27 Vote: 7 yeas / 0 opposed; motion carried

28
29 **v. Joseph Vistitsky, D.C.**

30 Applicant was present and was not represented by counsel.

31
32 Dr. Vistitsky submitted an application for Chiropractic Physician licensure on December 3, 2014.
33 A review of the application revealed medical malpractice history older than 10 years, as well as
34 discipline against his license in the state of Illinois for failure to repay student loans; a matter
35 which has since been resolved. The application was deemed complete on February 23, 2015.

36
37 **Action:** Motion to approve the application for Chiropractic Physician licensure made by Dr.
38 Dougherty. Seconded by Dr. Fox.
39 Vote: 7 yeas / 0 opposed; motion carried

40
41 **b. Registered Chiropractic Assistants:**

42
43 **i. Brittany Nicole Dehler**

44 Applicant was not present and was not represented by counsel.

45
46 Ms. Dehler submitted an application for licensure as a Registered Chiropractic Assistant on
47 December 1, 2014. A review of the application showed that Ms. Dehler had responded “yes” to
48 certain health history questions. For that reason, the application and supporting documentation
49 were presented to the Board for review. The application has been deemed complete.

50
51 **Discussion:**

52 After a brief discussion of the health history, a motion was made to approve the application.

53
54 **Action:** Motion to approve the application for licensure as a Registered Chiropractic Assistant
55 made by Mr. Colter. Seconded by Dr. Heagy.

56 Vote: 5 yeas / 2 opposed (Dr. Dougherty, Dr. Hunt); motion carried

1
2 **ii. Lindsay Cristina Lev**

3 Applicant was not present and was not represented by counsel.
4

5 Ms. Lev submitted an application for licensure as a Registered Chiropractic Assistant on January
6 7, 2015. A review of the application showed that Ms. Lev had responded “yes” to a health history
7 question. For that reason, the application and supporting documentation were presented to the
8 Board for review. The application has been deemed complete.
9

10 **Action:** Motion to approve the application for licensure as a Registered Chiropractic Assistant
11 made by Ms. Pelaez. Seconded by Mr. Colter.
12 **Vote:** 7 yeas / 0 opposed; motion carried
13

14 **Section VI concluded: 12:25 p.m.**

15 **Section VII began: 12:25 p.m.**
16

17 **VII. RATIFICATION OF LICENSURE:**

18
19 **a. Chiropractic Physicians**

20 **Action:** Motion to ratify Chiropractic Physician license numbers 11360 through 11471 made by Dr.
21 Dougherty. Seconded by Dr. Fox.
22 **Vote:** 7 yeas / 0 opposed; motion carried
23

24 **b. Registered Chiropractic Assistants**

25 **Action:** Motion to ratify Registered Chiropractic Assistant license numbers 13558 through 13886
26 made by Dr. Dougherty. Seconded by Ms. Pelaez.
27 **Vote:** 7 yeas / 0 opposed; motion carried
28

29
30 **c. Certified Chiropractic Physician Assistants**

31 **Action:** Motion to ratify Chiropractic Physician license numbers 782 through 785 made by Dr. Heagy.
32 Seconded by Dr. Fox.
33 **Vote:** 7 yeas / 0 opposed; motion carried
34

35 **Section VII concluded: 12:26 p.m.**

36 **Section VIII began: 12:26 p.m.**
37

38 **VIII. CHAIR/VICE-CHAIR REPORT:**

39
40 **a. Future Agenda Items**

41 Dr. Heagy had nothing to report.
42

43 Dr. Fogarty stated that the Federation of Chiropractic Licensing Boards will meet in May, and he will
44 be attending and will provide a report at the next Board meeting.
45

46 **Section VIII concluded: 12:27 p.m.**

47 **Section IX began: 12:27 p.m.**
48

49 **IX. EXECUTIVE DIRECTOR’S REPORT:**

50 Ms. Rodgers had nothing to report
51
52

53 **Section IX concluded: 12:27 p.m.**

54 **Section XI began: 12:27 p.m.**
55

56 **XI. NEW BUSINESS:**

1
2 **a. Michael St. Louis, D.C.**

3 Dr. St. Louis was not present and was not represented by counsel. Dr. Martha Brown present on behalf
4 of PRN.
5

6 Dr. St. Louis submitted an application for licensure, which was acted upon at the June 6, 2014 meeting.
7 At that meeting, Dr. St. Louis's application was approved pending a PRN evaluation. The Board office
8 received correspondence from Dr. St. Louis expressing some concerns he had with PRN, which was
9 presented before the board for discussion.
10

11 **Discussion:**

12 Dr. Brown stated that Dr. St. Louis is in compliance with PRN.
13

14 **Section IX concluded: 12:30 p.m.**

15 **Section X began: 12:30 p.m.**
16

17 **X. BOARD COUNSEL'S REPORT:**

18
19 **a. Rules Status Report:**

20 Ms. Loucks explained that the only rule that the Board had pending was Rule 64B2-13.004, F.A.C.,
21 which was scheduled to be discussed later on the agenda.
22

23 **b. North Carolina State Board of Dental Examiners v. FTC**

24 Ms. Loucks explained the issue and the reason why the FTC took action against the North Carolina
25 State Board of Dental Examiners. She stated that she does not believe that the Florida health care
26 regulatory boards have an issue due to the structure and processes of the boards.
27

28 **Section X concluded: 12:36 p.m.**

29 **Section XIII resumed: 12:36 p.m.**
30

31 **XIII. COMMITTEE REPORTS:**

32
33 **c. Continuing Education – Drs. Heagy/Hunt**

34 **i. Extension Request:**

35
36 **1. Benjamin Dunevitz, D.C.: 12:36 p.m.**

37 Respondent was not present and was not represented by counsel.
38

39 In 2014, Dr. Dunevitz was granted an extension through March 2015 to complete his HIV/AIDS
40 requirement. He is now requesting an additional extension through March 2016.
41

42 **Discussion:**

43 Dr. Dougherty noted that he believes there is a seminar in New York every year for Florida
44 licensees in located in New York, which has been approved to fulfill the requirement.
45

46 Dr. Heagy stated that since he was already granted an additional year, a second additional year
47 should not be granted. Dr. Fogarty agreed.
48

49 **Action:** Motion to deny the Request for Extension made by Dr. Fox. Seconded by Dr. Hunt.

50 **Vote:** 7 yeas / 0 opposed; motion carried
51

52 **Section XIII concluded: 12:38 p.m.**

53 **Section VI resumed: 12:38 p.m.**
54

55 **VI. APPLICANTS PRESENTED FOR BOARD REVIEW:**
56

1 **a. Chiropractic Physicians:**

2
3 **iv. William Denning, D.C.**

4 Respondent was not present and was not represented by counsel.

5
6 Dr. Denning submitted an application for licensure as a Chiropractic Physician on February 24,
7 2015. A review of the application and supporting documentation revealed prior discipline in the
8 state of Pennsylvania due to a minor advertising violation. The terms of the discipline have been
9 fulfilled. The application was deemed complete on March 13, 2015.

10 **Action:** Motion to approve the application for Chiropractic Physician licensure made by Dr.
11 Fogarty. Seconded by Dr. Dougherty.

12 Vote: 7 yeas / 0 opposed; motion carried

13
14
15 **Section VI concluded: 12:38 p.m.**

16 **Section XIII resumed: 12:39 p.m.**

17
18 **XIII. COMMITTEE REPORTS:**

19 **c. Continuing Education – Drs. Heagy/Hunt**

20 **ii. CE Committee Recommendation:**

21 **1. CE Provider – University of Western States**

22 **a. Myofascial Trigger Point Dry Needling #20-479528**

23 The Board discussed whether or not dry needling was within the scope of practice for a
24 chiropractic physician, and it was noted that dry needling and acupuncture are not the same.

25 Ms. Loucks advised that if the Board voted to issue a Notice of Intent to Deny, the provider
26 could contact the board office to provide more information on the procedure and ask that the
27 issue be reconsidered.

28 Motion to deny the course made by Dr. Hunt. Seconded by Dr. Heagy.

29 Vote: 6 yeas / 1 opposed (Dr. Dougherty); motion carried

30 **2. CE Provider – Postural Restoration Institute**

31 **a. Myokinematic Restoration – An integrated Approach to Treatment of Patterned**
32 **Lumbo-Pelvic-Femoral Pathomechanics #20-475646**

33 Motion to deny the course made by Dr. Heagy. Seconded by Dr. Dougherty.

34 Vote: 7 yeas / 0 opposed; motion carried

35 **iii. Providers and Courses Approved by CE Committee Chairs:**

36 Motion to ratify providers and courses approved by CE Committee Chairs made by Dr.
37 Dougherty. Seconded by Ms. Pelaez.

38 Vote: 7 yeas / 0 opposed; motion carried

39 **a. Budget – Mr. Colter:** Nothing to report

40 **b. CCPA – Dr. Dougherty:** Nothing to report

41 **d. Credentials – Dr. Fogarty:** Nothing to report

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

f. Examination – Dr. Heagy: Drs. Heagy and Fox will be in Port Orange. Dr. Hunt will be in Greeley for question development.

g. Healthiest Weight – Dr. Hunt: Nothing to report

h. Legislation

i. Chapter 460, F.S. – Updates

Dr. Heagy expressed that she believes a workshop would be necessary. The Board agreed that a workshop will be held on the afternoon of June 5, 2015.

i. Probable Cause – Drs. Dougherty/Fox/Heagy

i. Stats: Nothing to report

j. Rules – Dr. Hunt

i. Rules for Discussion

1. 64B2-11.001
2. 64B2-11.0012
3. 64B2-11.0013
4. 64B2-11.0015
5. 64B2-11.003
6. 64B2-11.004
7. 64B2-11.007
8. 64B2-11.012
9. 64B2-11.013
10. 64B2-13.004

Ms. Loucks explained that Rules 64B2-11.001 and 64B2-11.005, F.A.C., are the only ones listed that need to be changed. She also noted that while Rule 64B2-13.008, F.A.C., has not been noticed, it also needs changed because it references the Laws and Rules Examination.

Ms. Loucks then asked for guidance on how to proceed with proposed revisions for Rule 64B2-13.004, F.A.C., which changes Continuing Education requirements to allow for Risk Management credits for writing textbooks. She stated that JAPC may have concerns because Risk Management hour should be classroom hours.

After additional discussion, a motion was made.

Action: Motion to delete paragraph 15 of the proposed language for 64B2-13.004, F.A.C., and proceed with the rest intact made by Dr. Fox. Seconded by Dr. Hunt.
Vote: 7 yeas / 0 opposed; motion carried

k. Unlicensed Activity – Ms. Pelaez:

Ms. Pelaez reported that there has been only one ULA case since January. She also said that there are six new ULA investigators, which brings the total number of investigators to 18.

l. Outstanding Service Award – Dr. Heagy

Dr. Heagy directed Board staff to begin outreach to gather nomination's for this year's Outstanding Service Award. She said she would like the award to be presented at the next Board meeting, and to give potential nominators 30 days to submit nominations.

1 **Section XIII concluded: 1:10 p.m.**
2 **Section XIV began: 1:10 p.m.**
3
4 **XIV. NEXT MEETING – June 5, 2015 – FCS Meeting**
5
6 **XV. ADJOURNMENT**
7 Motion to adjourn the meeting made by Dr. Dougherty. Seconded by Dr. Hunt.
8 Vote: 7 yeas / 0 opposed; motion carried
9
10 **The meeting was adjourned at 1:10**