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FLORIDA | Board of Chiropractic Medicine

DRAFT MINUTES
August 21, 2015

Rosen Plaza Hotel
9700 International Drive
Orlando, FL 32819



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

Danita Heagy, D.C.
Vice-Chair

Anthony B. Spivey, D.B.A.
Executive Director

1 **General Board Business started: 8:32 a.m.**

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

4
5 **MEMBERS PRESENT:**

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

5 **STAFF PRESENT:**

6 Anthony B. Spivey, D.B.A., Executive Director
7 Joseph Lesho, Program Operations Administrator
8 Michele Jackson, Regulatory Supervisor
9 Towanda Burnett, Compliance Officer

13
14 **BOARD COUNSEL:**

15 Deborah Loucks, Assistant Attorney General
16 Office of Attorney General

17
18 **PROSECUTION COUNSEL:**

19 Jennifer Fortenberry, Assistant General Counsel
20 Christopher Dierlam, Assistant General Counsel

21
22 **COURT REPORTER:**

23 American Court Reporting
24 Cindy Green
25 (407) 896-1813

26
27 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from this*
28 *meeting can be found online: <http://floridaschiropracticmedicine.gov/meeting-information/past-meetings>*
29

30 **Section II began: 8:35 a.m.**

31
32 **II. APPROVAL OF MINUTES:**

33
34 **a. June 5, 2015 – Board Meeting**

35 Minutes of the June 5, 2015 Full Board Meeting were reviewed.

36
37 Mr. Colter noted that the meeting location on the cover page was incorrect.

38
39 Dr. Heagy asked Ms. Loucks to verify whether or not the correct name was written on page 7, line 25. Ms. Loucks
40 confirmed that “Dr. Heagy” should be changed to “Dr. Hunt.”

41
42 Dr. Hunt noted that on page 7, line 32 the word “hose” should be changed to “host.”

43
44 **Action:** Motion to accept the minutes with the noted corrections was made by Dr. Dougherty. Seconded by Dr. Heagy.
45 Vote: 7 yeas / 0 opposed; motion carried

46
47 **b. July 2, 2015 – Legislative Task Force Meeting**

48 Minutes of the July 2, 2015 Full Board Meeting were reviewed.

49
50 **Action:** Motion to accept the minutes as written was made by Dr. Heagy. Seconded by Dr. Hunt.
51 Vote: 7 yeas / 0 opposed; motion carried

52
53 Lucas Matlock, D.C., representing the Florida Chiropractic Society, asked why minutes of the June 5, 2015 Legislative
54 Committee meeting were not included in the agenda. Mr. Lesho explained that in lieu of meeting minutes, a full transcript of
55 the meeting was ordered and posted to the board’s website.

56
57 **Section II concluded: 8:38 a.m.**

58 **Section III began: 8:38 a.m.**

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III. FINAL ORDER ACTION:

a. Determination of Waiver:

i. Joshua Lee Otiniano, D.C. – Case No. 2015-07945

A request to table this case until the November meeting was submitted by Dr. Otiniano’s attorney, Kenneth Scaz, Esq. Dr. Fogarty granted the request to table on July 24, 2015.

ii. Donald Warren Lowry, D.C. – Case Nos. 2013-12626 and 2013-16982

Respondent was present and was not represented by counsel.

Dr. Fox was recused due to participation on the Probable Cause Panel.

A one-count Amended Administrative Complaint was filed on June 25, 2015 alleging violation of s. 460.413(1)(ff), F.S., for violating any provision of Chapter 460, F.S., by violating s. 460.411(1)(b), F.S. The violation of s. 460.411(1)(b), F.S., occurred on or about December 10, 2012, and continued until on or about August 9, 2013, a period during which Respondent was alleged to have been practicing while his license was in suspended status due to non-payment of child support. A copy of the Administrative Complaint, Explanation of Rights, and Election of Rights form was sent via certified mail and delivered on December 19, 2014. Respondent has not filed an Election of Rights form with the board or department.

Discussion:

Ms. Loucks asked Dr. Lowry if he received the Amended Administrative Complaint. Dr. Lowry stated yes. Ms. Loucks then asked Dr. Lowry if he filed an Election of Rights upon receipt of the Amended Administrative Complaint. Dr. Lowry explained that his employer withheld the Election of Rights paperwork from him for 23 days, so he was unable to file the Election of Rights within the required 21 days.

Action: Motion to find that Respondent was properly served and has waived the right to a formal hearing was made by Mr. Colter. Seconded by Dr. Dougherty.

Vote: 6 yeas / 0 opposed; motion carried

Action: Motion to adopt the findings of fact as set forth in the administrative complaint was made by Dr. Dougherty. Seconded by Dr. Heagy.

Vote: 6 yeas / 0 opposed; motion carried

Dr. Lowry stated that he paid over \$50,000 of child support payment that was not reported to the Department of Revenue, which is what lead to the suspension. He stated that he did not know license his was suspended, claiming that his ex-wife took and withheld his mail from him.

Dr. Dougherty asked if the notice of suspension of his license was sent via certified mail. Ms. Fortenberry stated that it was sent via regular mail—not certified—and that the department cannot prove whether or not the notification was received.

Ms. Pelaez then asked if the notification of suspension was sent to his place of employment in addition to his home address. Ms. Fortenberry explained that the notification was not sent out by prosecution, therefore they could not verify to which addresses the notification was sent.

Additional discussion ensued, including a question of whether or not Dr. Lowry was up to date on his child support payments, to which Dr. Lowry explained that he is up to date with the current payments, while the past due amount was still not up to date.

Action: Motion to adopt the conclusions of law as set forth in the administrative complaint and find by clear and convincing evidence that they constitute a violation of the Chiropractic Medicine Practice Act was made by Dr. Heagy. Seconded by Dr. Dougherty.

Vote: 6 yeas / 0 opposed; motion carried

1 **Action:** Motion to accept the investigative report into evidence for the purposes of imposing penalty was made by
2 Dr. Dougherty. Seconded by Dr. Heagy.
3 Vote: 6 yeas / 0 opposed; motion carried
4

5 Ms. Fortenberry explained that the board's disciplinary guidelines recommend permanent revocation for a violation
6 of s. 460.411(1)(b), F.S.; however, citing certain mitigating factors, the department recommended the following:
7

- 8 • Letter of Concern
- 9 • Costs
- 10 • Two years' probation with the following terms:
 - 11 ○ Quarterly reports detailing why Respondent is on probation, where Respondent is employed, and
 - 12 documenting compliance with all court orders/child support obligations
 - 13 ○ Appearance at the board meeting just prior to completion of his probation term
 - 14

15 Ms. Fortenberry listed the mitigating factors that lead to the department's recommendation, which were:

- 16 • Respondent posed no danger to the public
- 17 • Patients sustained no damage as a result of Respondent's practicing while on suspended status
- 18 • Respondent has been licensed since 2000 and has had no other disciplinary actions taken against his license
- 19 • Lack of evidence to prove that Respondent was knowingly practicing with a suspended license
- 20 • The Court reinstated Respondent's chiropractic license and driver's license upon considering the relevant
- 21 facts and Respondent's need to regain his ability to earn a substantial income
- 22 • Respondent entered into a repayment plan to become current with his child support payments
- 23 • Permanent revocation of Respondent's license would result in the inability to pay his child support
- 24
- 25

26 **Action:** Motion to impose the department's recommended discipline was made by Dr. Heagy. Seconded by Dr.
27 Dougherty.

28 Vote: 6 yeas / 0 opposed; motion carried
29

30 Mr. Colter spoke in opposition of the departments Motion for Costs, stating that the costs would not have been
31 incurred had the department followed the proper noticing procedures upon suspension of the license. After a brief
32 discussion, a motion was made.
33

34 **Action:** Motion to deny the department's Motion for Costs was made by Dr. Dougherty. Seconded by Mr. Colter.
35 Vote: 6 yeas / 0 opposed; motion carried
36

37 **Section III concluded: 9:00 a.m.**

38 **Section IV began: 9:00 a.m.**
39

40 **IV. COMPLIANCE:**

41 **a. Extension Request –**

42 **i. Carl H. Blot, D.C.**

43 Dr. Blot was not present and was not represented by counsel.
44

45 Dr. Blot submitted a petition to request an extension/payment plan of fines in the amount of \$3,000 and costs in the
46 amount of \$6,285.83 as a result of Final Orders filed in Case Nos. 2007-03435 and 2012-06539. Still owes
47 \$4199.67. Completed everything except for payments. Last payment 9/11/14
48

49 **Discussion:**

50 Ms. Burnette confirmed that Dr. Blot still had an outstanding balance of \$4199.67, and that no payments had been
51 received since September 2014; however, all other terms of the Final Order had been fulfilled. Dr. Fogarty stated
52 that Dr. Blot should have made some type of payment—even \$1—as a sign of good faith.
53

54 After additional discussion, a motion was made.
55

56 **Action:** Motion to deny the request for extension/payment plan was made by Dr. Hunt. Seconded by Dr. Fox.
57
58

1 Vote: 7 yeas / 0 opposed; motion carried

2
3 Dr. Fogarty asked if the board could request that additional penalties be imposed. The department explained that an
4 additional complaint would be filed upon filing of the Final Order.

5
6 **Section IV concluded: 9:07 a.m.**

7 **Section V began: 9:07 a.m.**

8
9 **V. PETITIONS:**

10
11 **a. Benjamin S. Dunevitz, D.C.**

12 Dr. Dunevitz was not present and was not represented by counsel.

13
14 At the April 10, 2015 full board meeting, Dr. Dunevitz submitted a request for extension to allow him until March 2016
15 to complete his HIV/AIDS continuing education requirement. The request was denied by the board. On June 16, 2015, a
16 Petition for Waiver/Variance submitted by Dr. Dunevitz was filed, requesting a variance/waiver from the HIV/AIDS
17 requirement as set forth by Rule 64B2-13.0045, F.A.C.

18
19 **Discussion:**

20 Ms. Loucks explained that the HIV/AIDS course mandated by statute and cannot be waived.

21
22 Dr. Fogarty pointed out that the board had already granted an extension of this requirement in March 2014, and the
23 requirement was not fulfilled despite the extra amount of time granted.

24
25 **Action:** Motion to deny the Petition for Waiver/Variance because the statutory requirement cannot be waived was made
26 by Dr. Heagy. Seconded by Mr. Colter.

27 Vote: 7 yeas / 0 opposed; motion carried

28
29 **b. Bruce Kesten, D.C.**

30 Dr. Kesten was not present and was not represented by counsel.

31
32 Dr. Kesten submitted a Petition of Waiver/Variance from Rule 64B2-13.004, F.A.C. requesting that the board allow a
33 13-hour continuing education course pertaining to nutrition offered by a non-approved provider to be applied towards his
34 biennial renewal continuing education requirements.

35
36 **Discussion:**

37 Dr. Dougherty stated that he was not happy with the information provided because there was no information about who
38 the speakers were, and the course provider was not an approved provider. He then asked for clarification as to which
39 biennium these credits would apply. Ms. Loucks stated that they would be for the current biennium. Dr. Dougherty then
40 stated that if denied, Dr. Kesten would still have enough time to complete this requirement.

41
42 Dr. Heagy stated that without being able to review the course information, the board cannot determine whether or not Dr.
43 Kesten received the education that he needs.

44
45 Mr. Colter stated that it is the doctor's responsibility to ensure that the course is approved before taking it. Dr. Dougherty
46 agreed.

47
48 **Action:** Motion to deny the Petition for Waiver/Variance because granting the petition would not meet the purpose of the
49 underlying statute and because application of the rule would not create a substantial hardship was made by Dr. Hunt.

50 Seconded by Dr. Heagy.

51 Vote: 7 yeas / 0 opposed; motion carried

52
53 **c. Robert L. Wertz, D.C.**

54 Dr. Wertz was not present and was not represented by counsel.

55
56 Dr. Wertz submitted a Petition for Waiver/Variance from Rule 64B2-13.004(2), F.A.C. requesting that the board allow
57 courses taken from a non-approved continuing education provider to be applied towards his biennial renewal continuing
58 education requirements.

1
2 **Discussion:**

3 Dr. Dougherty stated that this petition was essentially the same as the one heard prior.
4

5 **Action:** Motion to deny the Petition for Waiver/Variance because granting the petition would not meet the purpose of the
6 underlying statute and because application of the rule would not create a substantial hardship was made by Dr. Fox.
7 Seconded by Dr. Hunt.

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

10 **Section V concluded: 9:16 a.m.**

11 **Section VI began: 9:16 a.m.**

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

14
15 **a. Chiropractic Physicians:**

16
17 **i. Michael Irwin O’Daniel, D.C. – Tabled from previous meeting**

18 Dr. O’Daniel was present and was not represented by counsel.
19

20 Dr. O’Daniel was originally scheduled to appear before the board at the June 5, 2015 meeting; however, on
21 June 2, 2015, Dr. O’Daniel e-mailed the board office to explain that he would not be able to attend this meeting
22 due to prior obligations. He agreed to waive the 90-day application processing requirement in the event that the
23 board wished to table his application. Dr. O’Daniel’s application was referred to the board due to criminal
24 history, and due to the nature of the criminal history, the board agreed to table the application to allow for the
25 opportunity to question him.
26

27 **Discussion:**

28 The board questioned Dr. O’Daniel about his criminal history, which stemmed from tax evasion charges. Dr.
29 Heagy asked about the other reported charges, and Dr. O’Daniel responded that they were added as part of his
30 plea agreement. Dr. Heagy then brought up the 1972 drug charges, and ask Dr. O’Daniel whether or not he still
31 uses illegal substances, and whether or not he currently pays his taxes. Dr. O’Daniel said he no longer uses
32 illegal substances, and does pay his taxes.
33

34 After discussion regarding his current means of work and his other state licenses, a motion was made.
35

36 **Action:** Motion to approve the application for Chiropractic Physician licensure made by Dr. Heagy. Seconded
37 by Dr. Fox.

38 Vote: 7 yeas / 0 opposed; motion carried
39

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

42 **i. Kenneth Wayne Newberry –**

43 Mr. Newberry was not present and was not represented by counsel.
44

45 Mr. Newberry submitted an application for licensure as a Registered Chiropractic Assistant on April 28, 2015.
46 A review of the application showed that Mr. Newberry had responded “yes” to certain health history questions.
47 For that reason, the application and supporting documentation were presented to the Board for review.
48

49 **Discussion:**

50 Dr. Heagy noted that Mr. Newberry’s supervising physician may be related to him, and questioned whether or
51 not that was relevant, but did state that it may be helpful due to the nature of the health history.
52

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

55 Vote: 7 yeas / 0 opposed; motion carried
56

57 **a. Chiropractic Physicians:**
58

- 1 iii. **Michael Daniel Thom, D.C. –**
2 Dr. Thom was not present and was not represented by counsel.
3

4 Dr. Thom submitted an application for licensure as a Chiropractic Physician on June 20, 2015. The application
5 and supporting documentation were referred to the board due to the applicant’s health history. Dr. Thom has
6 submitted documentation regarding his health history, including reports from his treating physician.
7

8 **Discussion:**

9 Dr. Heagy stated that Dr. Thom’s health history was more of a physical impairment as opposed to a mental or
10 psychological impairment, and stated that she believed he did not pose a danger to the public.
11

12 **Action:** Motion to approve the application for Chiropractic Physician licensure was made by Dr. Heagy.
13 Seconded by Dr. Fox.

14 Vote: 7 yeas / 0 opposed; motion carried
15

16 **Section VI concluded: 9:25 a.m.**

17 **The board took a break at 9:25 a.m.**

18 **Section VII began: 9:37 a.m.**
19

20 **VII. RATIFICATIONS:**
21

22 **a. Licensure –**
23

24 **i. Chiropractic Physicians**
25

26 **Action:** Motion to ratify Chiropractic Physician license numbers 11515 through 11577 was made by Dr. Heagy.
27 Seconded by Dr. Dougherty.

28 Vote: 7 yeas / 0 opposed; motion carried
29

30 **ii. Registered Chiropractic Assistants**
31

32 **Action:** Motion to ratify Registered Chiropractic Assistant license numbers 14015 through 14234 was made by
33 Dr. Dougherty. Seconded by Dr. Heagy.

34 Vote: 7 yeas / 0 opposed; motion carried
35

36 **iii. Certified Chiropractic Physician Assistants**
37

38 **Action:** Motion to ratify Certified Chiropractic Physician Assistant license numbers 788 through 799 was made
39 by Dr. Fox. Seconded by Dr. Heagy.

40 Vote: 7 yeas / 0 opposed; motion carried
41

42 **iv. Chiropractic Faculty Certificate**
43

44 **Action:** Motion to ratify Chiropractic Faculty Certificate numbers 18 through 22 was made by Dr. Dougherty.
45 Seconded by Dr. Heagy.

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

48 **b. Licensure –**
49

50 **i. CE Providers and Courses Approved by Committee Chair**
51

52 **Action:** Motion to ratify CE Providers and Courses Approved by Committee Chair was made by Dr. Heagy.
53 Seconded by Dr. Fox.

54 Vote: 7 yeas / 0 opposed; motion carried
55

56 **Section VII concluded: 9:40 a.m.**

57 **Section VIII began: 9:40 a.m.**
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VIII. PROSECUTION REPORT:

Ms. Fortenberry presented the prosecution report. She informed the board that the year-old case load was down to 27 cases. She stated that there is no backload, and that prosecution is resolving cases faster than they are coming in, which is due in part to a low number of incoming complaints. She then provided a summary of the most recent Probable Cause Panel meeting.

Dr. Fox asked how to get updates on cases where the Probable Cause Panel voted to continue prosecution, in spite of the department's recommendation to dismiss. Ms. Fortenberry explained that in those cases, the department prepares the case and assigns it as soon as it's ready, regardless of which panel is scheduled to conduct the meeting. Ms. Loucks stated that she prefers that such cases be heard by the same panel to avoid too many recusals should the case be heard by the full board. She then directed the board's attention to the Probable Cause statistics report included in the agenda, and stated that updates to any case could be found there.

Action: Motion to allow continued prosecution of year-old cases was made by Dr. Heagy. Seconded by Dr. Fox.
Vote: 7 yeas / 0 opposed; motion carried

Section VIII concluded: 9:51 a.m.

Section III resumed: 9:51 a.m.

III. FINAL ORDER ACTION:

b. Settlement Agreement:

i. Yong Hyeon Kim, D.C. – Case No. 2012-17212

Respondent was present and was represented by counsel, Edwin Bayo, Esq.

Dr. Heagy was recused due to participation on the Probable Cause Panel.

A three count Administrative Complaint was filed on February 18, 2015 alleging violations of ss. 460.413(1)(j), F.S., (Count I); 460.413(1)(k), F.S. (Count II); and 456.072(1)(ff) and 460.413(1)(ff), F.S. (Count III). Count I alleged that Respondent made or filed a report which Respondent knew to be false; Count II alleged that Respondent made misleading, deceptive, untrue, or fraudulent representations in the practice of chiropractic medicine; Count III alleged that Respondent intentionally submitted claims for PIP benefits for services not rendered.

Mr. Dierlam advised the board that the Settlement Agreement contained the following provisions:

- Letter of Concern
- Fine of \$15,000
- Reimbursement of Costs not to exceed \$5,106.20
- Six hours of Continuing Education in Documentation, Coding and Record Keeping
- National Ethics and Boundaries Examination
- Two years of probation with time served

Mr. Dierlam then explained that Dr. Kim completed pre-trial intervention and has had no past discipline, and therefore asked the board to accept the proposed Settlement Agreement.

Discussion:

Mr. Bayo presented additional mitigating factors, including details regarding the pre-trial intervention. He emphasized that the courts found no evidence of intentional and systemic fraud, and that Dr. Kim was fully cooperative throughout the process. He also stated that Dr. Kim voluntarily withdrew from practice during the disciplinary process.

Dr. Dougherty asked for clarification about how the insurance companies were billed. Mr. Bayo explained that Dr. Kim attempted to bill the insurance companies for patient no-shows. Dr. Dougherty explained that patients can be charged a no-show fee, but no-show fees cannot be charged to insurance.

1 Dr. Fogarty clarified that the insurance companies were billed because patients were asked to sign blank forms, and
2 were charged for services not rendered. He then asked what Dr. Kim had been doing during his 3-year voluntary
3 withdrawal period. Dr. Kim explained that he still held ownership in his practice during the period. Dr. Fogarty
4 asked if he was still profiting off of the practice during the suspension period, to which Dr. Kim responded yes.
5

6 Ms. Loucks asked Mr. Dierlam for the actual cost figure. Mr. Dierlam did not have the exact number, but stated that
7 it was approximately \$4300.
8

9 After additional discussion regarding the monitor mandated by the Settlement Agreement, Dr. Dougherty suggested
10 the board issue a reprimand instead of the letter of concern due to the seriousness of the allegations.
11

12 Ms. Pelaez asked Dr. Kim what has changed within his office to prevent future problems. Dr. Kim stated that his
13 billing processes have changed, and that he accepts the responsibility for the errors of his staff.
14

15 **Action:** Motion to accept the Settlement Agreement made by Mr. Colter. Seconded by Dr. Hunt.
16 Vote: 2 yeas (Colter, Hunt) / 4 opposed (Fogarty, Dougherty, Fox, Pelaez); motion failed
17

18 Dr. Dougherty suggested requiring Dr. Kim to take the SPEC exam, in addition to changing the letter of concern to a
19 reprimand.
20

21 **Action:** Motion to reject the Settlement Agreement made by Dr. Dougherty. Seconded by Ms. Pelaez.
22 Vote: 6 yeas / 0 opposed; motion carried
23

24 Dr. Dougherty made a motion to amend the Settlement Agreement to change the letter of concern to a reprimand,
25 and require that the SPEC examination be completed within one year.
26

27 Ms. Loucks asked for clarification of the costs, which the board determined to be \$4300.
28

29 Dr. Fogarty asked if the requirement for review of 25% of active files pertained only to Dr. Kim, or if the review
30 would be done for 25% of all files in the clinic. Mr. Dierlam said the review would only be for Dr. Kim's files. Dr.
31 Fogarty stated that he would like to amend the stipulation to include a review of 25% of all files within the clinic.
32

33 Mr. Colter suggested reducing the fine to \$10,000 since they will be requiring the SPEC examination. Dr. Dougherty
34 said that the SPEC only costs \$1000, so a \$5000 reduction was too much, and he would be comfortable leaving it at
35 \$15,000.
36

37 **Action:** Motion to amend the Settlement Agreement to change the letter of concern to a reprimand, require that the
38 SPEC examination be taken and passed within one year, set costs at \$4300, and require that the file review include
39 25% of all files within the clinic was made by Dr. Dougherty. Seconded by Ms. Pelaez.
40 Vote: 5 yeas / 1 opposed (Colter); motion carried
41

42 Dr. Kim accepted the Amended Settlement Agreement.
43

44 **Section III concluded: 10:19 a.m.**

45 **Section VI Resumed: 10:19 a.m.**
46

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

48 **a. Chiropractic Physicians:**

49 **ii. Samuel Evenstein, D.C.**

50 Dr. Evenstein was present and was represented by counsel, Edwin Bayo, Esq.
51

52 Dr. Evenstein submitted an application for licensure as a Chiropractic Physician on June 24, 2015. The application
53 and supporting documentation were referred to the board due to the applicant's criminal history and discipline in
54 other jurisdictions. A detailed explanation of the criminal offense was submitted by Dr. Evenstein, as well as
55 documentation from the Superior Court of New Jersey stating that there are no open criminal cases pending against
56 Dr. Evenstein in the State of New Jersey. Dr. Evenstein had previously held a Certified Chiropractic Physician
57
58

1 Assistant license in the State of Florida, which was voluntarily relinquished in 2006, and has a license to practice in
2 the State of New Jersey.
3

4 **Discussion:**

5 Mr. Bayo explained that Dr. Evenstein completed pre-trial intervention in 2006, and that the tax evasion case was
6 dismissed; therefore, Dr. Evenstein had no criminal record. He stated that the discipline in New Jersey was due to
7 the case that was eventually dismissed, and all obligations related to the New Jersey discipline were fulfilled. Mr.
8 Bayo then explained that in 2006, Dr. Evenstein Voluntarily Relinquished his Florida Certified Chiropractic
9 Physician Assistant license (obtained in 2004) per a Final Order due to indicating that he had no prior discipline in
10 another jurisdiction. Mr. Bayo told the board that Dr. Evenstein indicated “no” because his lawyer in New Jersey
11 advised him to do so.
12

13 Dr. Dougherty stated that he was concerned about submitting misleading information on the application, regardless
14 of whether or not his attorney advised him to do so. Mr. Bayo stated that Dr. Evenstein fully disclosed all
15 information to the Florida Board of Massage Therapy, and was granted a license.
16

17 Dr. Fogarty questioned Dr. Evenstein about his practice. Dr. Evenstein stated that his practice saw all kinds of
18 patients, from children to the elderly, and that he accepted both cash and insurance.
19

20 Dr. Dougherty questioned Dr. Evenstein about the tax evasion. Dr. Evenstein stated that the charges came about
21 because his office manager had stolen his checkbook and was writing checks without his knowledge. He explained
22 that the State of New Jersey was aware of the situation and still granted him a license, and that the office manager
23 was sentenced to prison. Dr. Dougherty still expressed concerned over the amount of money owed and the length of
24 time that it occurred.
25

26 Dr. Heagy asked Dr. Evenstein to confirm that he is paying back the \$75,000 owed in monthly \$200 payments, to
27 which he responded in the affirmative.
28

29 After discussion regarding how Dr. Evenstein intends to practice if issued a license, a motion was made.
30

31 **Action:** Motion to approve the application for Chiropractic Physician licensure was made by Dr. Heagy. Seconded
32 by Mr. Colter.

33 Vote: 7 yeas / 0 opposed; motion carried
34

35 **Section VI concluded: 10:30 a.m.**

36 **Section IX began: 10:31 a.m.**
37

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

39 **Untimed Item:** Dr. Heagy discussed an e-mail she received regarding chiropractic physicians being instructed to use the
40 title “Doctor of Chiropractic Medicine (DCM).” She expressed concern because no such degree exists in the United
41 States, therefore she believes the title is inappropriate.
42

43 Ms. Loucks confirmed that DCM is not a recognized term, and that use of the term may constitute an advertising
44 violation.
45

46 Dr. Fogarty expressed concern over Continuing Education providers that are instructing physicians to use the term, and
47 claiming the board allows for the use of the term. He emphasized that the board never stated that use of the term was
48 allowed. He then stated that the board should make a determination as to whether or not the term is acceptable. Dr.
49 Heagy agreed and stated that the use of the term should not be allowed, as it is misleading to the public.
50

51 Ms. Loucks explained to the board that they cannot issue general statements, and can only issue a determination on the
52 matter by promulgating a rule or in response to a Declaratory Statement. Dr. Fogarty asked Ms. Loucks if the board
53 could direct PSU to prosecute practitioners using the term. Ms. Loucks replied saying that if a complaint were to be filed,
54 it would be investigated in the same manner as any other complaint.
55

56 Dr. Dougherty pointed out that though the terms “practice of chiropractic” and “practice of chiropractic medicine” are
57 synonymous, use of the DCM title is different because DCM is not a degree that is issued in the United States.
58

1
2 After additional discussion, Dr. Heagy read the e-mail into the record, and asked if the board should draft a new rule or
3 amend the existing advertising rule.
4

5 Additional discussion ensued and the board agreed to promulgate a rule, and then address those using the term upon its
6 adoption.
7

8 **Untimed Item:** Dr. Heagy then addressed an issue that was first discussed at the June 5, 2015 board meeting.
9

10 At that meeting, a letter from Dr. Stu Hoffman of ChiroSecure was presented to the board expressing concern over the
11 processes in Florida regarding malpractice insurance as it relates to a physician's license to practice. The root of the issue
12 is that a licensure applicant cannot be issued a license without first providing proof of malpractice insurance in the State
13 of Florida; however, many insurance carriers cannot issue an insurance policy unless an individual is licensed to practice.
14

15 After discussing possible solutions, Ms. Loucks informed the board that the requirement is set by Chapter 456, Florida
16 Statutes, so the issue must be directed to the department.
17

18 The board then directed Dr. Spivey to research the issue and find out how other affected professions handle the matter,
19 and then present the information at the next board meeting.
20

- 21 a. **FYI – Letter to Dr. Berko:** Dr. Fogarty presented this letter as an FYI, and stated that no additional discussion would
22 be necessary, as the issue has been rectified.
23
- 24 b. **Future Agenda Items:** The board discussed the upcoming FCLB meetings, and asked Dr. Spivey to find out how many
25 board members could attend, and what would be needed to justify sending more than one member. The board also
26 expressed interest in send Dr. Spivey to the meeting as the board's Executive Director. Dr. Spivey agreed to look into the
27 matter.
28

29 **Section IX concluded: 11:05 a.m.**

30 **Section X began: 11:05 a.m.**
31

32 **X. EXECUTIVE DIRECTOR'S REPORT:**

33
34 a. **Chair/Vice-Chair Meeting – September 24, 2015**

35 Dr. Spivey announced that the department will hold a Healthiest Weight Liaison meeting on September 23, 2015, and the
36 annual Chair/Vice-Chair meeting will be held the following day. He then explained in detail the purpose of Chair/Vice-
37 Chair meeting.
38

39 Before moving to the next section, Dr. Fogarty asked Mr. Lesho if the department has changed its policy regarding proof
40 of completion of the required HIV/AIDS course. Mr. Lesho stated that there has been no policy change.
41

42 **Section X concluded: 11:09 a.m.**

43
44 **The board took a break at 11:09 a.m.**

45
46 **Section XI began: 11:32 a.m.**
47

48 **XI. BOARD COUNSEL'S REPORT:**

49 a. **Rules Status Report – July 2015**

50 Ms. Loucks explained that she received a letter from the Joint Administrative Procedures Committee regarding the
51 proposed changes to Rules 64B2-11.001 and 13.008, F.A.C., expressing concern over the requirement of the Laws &
52 Rules examination that is now administered by the National Board of Chiropractic Examiners. She stated that the
53 concerns have been addressed and the issue has been resolved, and the rules should be taking effect soon.
54
55

56 b. **Review of Suggested Rules for Repeal**

57 Ms. Loucks suggested that the board repeal Rules 64B2-11.0012, 11.0013, 11.0015, 12.016, and 16.009, F.A.C.
58

1 Dr. Dougherty stated that Rule 64B2-16.009, F.A.C. should not be repealed. The board agreed.
2
3

4 **Action:** Motion to repeal Rule 64B2-12.106, F.A.C. was made by Dr. Dougherty. Seconded by Dr. Hunt.
5 Vote: 7 yeas / 0 opposed; motion carried
6

7 The board agreed that no Statement of Estimated Regulatory Cost would be required.
8

9 **Action:** Motion to repeal Rule 64B2-11.0015, F.A.C. was made by Dr. Heagy. Seconded by Dr. Fox.
10 Vote: 7 yeas / 0 opposed; motion carried
11

12 The board agreed that no Statement of Estimated Regulatory Cost would be required.
13

14 **Action:** Motion to repeal Rule 64B2-11.0013, F.A.C. was made by Dr. Heagy. Seconded by Dr. Dougherty.
15 Vote: 7 yeas / 0 opposed; motion carried
16

17 The board agreed that no Statement of Estimated Regulatory Cost would be required.
18

19 **Action:** Motion to repeal Rule 64B2-11.0012, F.A.C. was made by Dr. Fox. Seconded by Dr. Hunt.
20 Vote: 7 yeas / 0 opposed; motion carried
21

22 The board agreed that no Statement of Estimated Regulatory Cost would be required.
23

24 **Section XI concluded: 11:44 a.m.**
25

26 Before proceeding to the next section, a spot-check roll call of audience members registered to receive credit for attending the meeting
27 within the first year of licensure was conducted.
28

29 **Section XII began: 11:46 a.m.**
30

31 **XII. COMMITTEE REPORTS:**
32

33 **a. Budget – Mr. Colter:**
34

35 Mr. Colter had nothing new to report.
36

37 Dr. Fogarty asked if Mr. Colter could obtain an update on the board's current financial standing, as well as fiscal
38 projections through the end of the current biennium.
39

40 Dr. Spivey stated that he was working with Finance and Accounting to obtain such information so that it can be
41 presented to the board at each meeting.
42

43 **b. CCPA – Dr. Dougherty:** Nothing new to report.
44

45 **c. Continuing Education – Drs. Heagy/Hunt:**
46

47 Dr. Fogarty asked if the CE committee chairs had made any progress on getting providers to submit their information
48 properly and in a more consistent manner. Dr. Heagy stated that they had not yet done so. Dr. Fogarty expressed his
49 desire to see the board's approval processes be aligned with those of other entities. Ms. Loucks then stated that the
50 committee chairs have the right to recommend denial of a course or provider if the documentation isn't sufficient.
51

52 **d. Credentials – Dr. Fogarty:**
53

54 Dr. Fogarty asked Dr. Spivey if there was anything specific that he would like to see from the Credentials Committee.
55 Dr. Spivey stated that if the board feels there is no need for the Credentials Committee, then it can be abolished. Dr.
56 Fogarty recommended abolishing the committee, and there were no objections.
57

58 **e. Disciplinary Compliance – Dr. Fogarty:** Nothing to report

1
2 **f. Examination – Dr. Heagy:** Dr. Heagy had no issues to report, but mentioned that she and Dr. Fox will be assisting with
3 the national board examination in November.

4
5 **g. Healthiest Weight – Dr. Hunt:** Dr. Hunt stated that she will not be able to attend the Healthiest Weight meeting on
6 September 23, 2015, but explained that the board representative does not necessarily have to be a D.C., so one of the
7 consumer members could attend in her place if they are able.

8
9 **h. Legislation – Dr. Heagy/Mr. Colter:** Taken later in the meeting.

10
11 **i. Chapter 460, F.S. – Updates**

12
13 **i. Probable Cause – Drs. Dougherty/Fox/Heagy**

14
15 **i. Stats**

16
17 **j. Rules – Dr. Hunt:** Nothing to report.

18
19 **k. Unlicensed Activity – Ms. Pelaez:**

20
21 Ms. Pelaez informed the board that only two Cease & Desists for Unlicensed Activity (ULA) have been issued between
22 January and June 2015. She emphasized the importance of reporting ULA, noting that reporting ULA can be anonymous.
23 She also mentioned that a representative from the ULA unit could attend a future board meeting to give a ULA
24 presentation if the board would like.

25
26 **l. Outstanding Service Award – Dr. Heagy:** Nothing to report.

27
28 **h. Legislation – Dr. Heagy/Mr. Colter:**

29
30 **i. Chapter 460, F.S. – Updates**

31
32 Dr. Heagy presented additional revisions to the proposed changes to Chapter 460, F.S., which included new
33 drafts of the Licensure by Endorsement and Foreign Graduate proposals.

34
35 Dr. Dougherty said that he was comfortable with the Foreign Graduate language, but was not comfortable with
36 the Endorsement language, stating that some states have lower standards for licensure which are not comparable
37 to those of Florida. Dr. Heagy asked Dr. Dougherty if he was uncomfortable with the concept of licensure by
38 endorsement, or if he was just uncomfortable with the proposed language. He explained that he felt the
39 language needed to be strengthened, and suggested requiring proof of passing scores on Parts III and IV of the
40 national examination, in addition to the physiotherapy (PT) examination.

41
42 Dr. Heagy then suggested increasing the requirement for years of active practice.

43
44 Dr. Fogarty spoke in favor of increasing the years of active practice requirement, and suggested requiring the
45 SPEC examination for those who are inactive. He suggested increasing the active practice requirement from
46 five years to ten years.

47
48 Dr. Dougherty stated that Parts III and IV and the PT examination should be easy to pass for physicians who
49 have been actively practicing. Dr. Heagy respectfully disagreed. Dr. Fogarty stated that demonstration of a
50 substantial period of safe practice also demonstrates clinical competency.

51
52 Mr. Colter said that the Florida Laws and Rules Examination should make potential licensees aware of Florida's
53 policies and procedures, and questioned what would differentiate a new graduate applying in Florida from an
54 out-of-state licensee applying in Florida for the first time. Ms. Pelaez agreed, stating that passing the Laws and
55 Rules Examination and providing proof of safe practice with no prior discipline is what the board should be
56 looking for.
57

1 Dr. Fogarty again suggested increasing the years of active practice requirement from five years to ten years. Dr.
2 Heagy and Mr. Colter were in favor of doing so. Dr. Hunt stated that it should be increased to at least ten years,
3 and that Part IV of the national examination, the Laws and Rules Examination, and PT examination should also
4 be required. Drs. Dougherty and Fox agreed with Dr. Hunt.
5

6 Paul Lambert, Esq. of the Florida Chiropractic Association (FCA) addressed the board and presented a proposal
7 which was approved by the FCA board of directors. The proposal included a provision which required that the
8 SPEC examination be taken by any applicant who graduated from chiropractic college more than ten years prior
9 to the date of application for licensure by endorsement in Florida.
10

11 After additional discussion, Dr. Heagy made a motion.
12

13 **Action:** Motion to increase the active practice requirement to ten years, require the PT examination, and give
14 the board authority to define by rule the term “active practice” was made by Dr. Heagy. Seconded by Mr.
15 Colter.

16 **Vote:** 5 yeas / 2 opposed (Dougherty, Hunt); motion carried
17

18 Dr. Heagy then presented the proposed definition of “Board approved chiropractic college,” and made a motion
19 to approve. Dr. Dougherty seconded the motion. Mr. Colter suggested moving it to the definitions section of the
20 chapter. After discussion, Dr. Heagy amended her motion.
21

22 **Action:** Motion to approve the definition of “Board approved chiropractic college” as written and move it to s.
23 460.403, F.S. (definitions) was made by Dr. Heagy. Seconded by Dr. Dougherty.

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

26 Dr. Fogarty then asked about increasing the licensure fees for Chiropractic Faculty Certificates (CFC),
27 Registered Chiropractic Assistants (RCA), and Certified Chiropractic Physician Assistants (CCPA). Ms. Loucks
28 explained that the dollar amounts in the statutes are fee caps, and the actual fee would be set by board rule.
29

30 After discussion, Dr. Fogarty recommended increasing the fee cap for CFC to \$500. Dr. Heagy recommended
31 \$100 for RCA, and \$200 for CCPA.
32

33 **Action:** Motion to increase the fee cap for CFC to \$500, CCPA to \$200, and RCA to \$100 was made by Dr.
34 Fogarty. Seconded by Dr. Heagy.

35 **Vote:** 7 yeas / 0 opposed; motion carried
36

37 Dr. Dougherty then stated that he had other minor issues that he would like to discuss. He first asked why the
38 revised definition of “Registered Chiropractic Assistant” disallowed the direct supervision of an RCA by a
39 CCPA. After discussion, a motion was made.
40

41 **Action:** Motion to continue to allow direct supervision of an RCA by a CCPA was made by Dr. Dougherty.
42 Seconded by Dr. Fox.

43 **Vote:** 7 yeas / 0 opposed; motion carried
44

45 Dr. Dougherty then questioned the language of s. 460.406(4), F.S. of the proposed draft, stating that the words
46 “the” and “examination” should be stricken to read “An applicant for licensure may...” The board agreed.
47

48 Dr. Fogarty then asked for a motion to approve the legislative package as amended.
49

50 **Action:** Motion to approve the legislative package as amended was made by Dr. Heagy. Seconded by Mr.
51 Colter.

52 **Vote:** 7 yeas / 0 opposed; motion carried
53

54 **Section XII concluded: 1:16 p.m.**

55 **Section XIII began: 1:16 p.m.**
56

57 **XIII. OLD BUSINESS** 58

1
2 **XIV. NEW BUSINESS**
3

4
5 **XV. NEXT MEETING DATE – November 13, 2015 – Orlando**
6

7
8 **Sections XIII-XV concluded: 1:16 p.m.**

9 **Section XVI began: 1:16 p.m.**
10

11 **XVI. ADJOURNMENT**

12 Before adjourning the meeting, Dr. Heagy noted that she will be traveling to Rhode Island for the FCLB district meeting,
13 not Dr. Fogarty.
14

15 Dr. Dougherty suggested that the board try to meet in conjunction with FCA, FCS, and FCC all within one year, rather than
16 rotating between the three organizations every three years. Dr. Heagy expressed concern over the additional travel costs
17 that may be incurred by doing so. Mr. Lesho stated that if they would like to do so, they most likely would have to plan it
18 for 2017 since the 2016 location bids had already been sent out.
19

20 **Action:** Motion to adjourn the meeting was made by Dr. Heagy. Seconded by Dr. Dougherty.

21 Vote: 7 yeas / 0 opposed; motion carried
22

23 **The meeting was adjourned at 1:19 p.m.**