

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
57
58
59
60

FLORIDA | Board of Chiropractic Medicine

MEETING MINUTES
November 4, 2016
Marriott Ft. Lauderdale North
6650 N. Andrews Avenue
Ft. Lauderdale, FL 33309
954-771-0446

Kevin Fogarty, D.C., F.I.C.A.
Chair

Danita Heagy, D.C.
Vice-Chair

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

1 The Florida Board of Chiropractic Medicine did hold a meeting on Friday, November 4, 2016, commencing
2 at 8:30 a.m., or shortly thereafter. This meeting was held at the Marriott Ft. Lauderdale North, 6650 N.
3 Andrews Avenue, Ft. Lauderdale, FL 33309, (954)771-0446, to which all persons were invited to attend.
4 Participants in this public meeting should be aware that these proceedings are being recorded and that an
5 audio file of the meeting will be posted to the board's website. <http://floridaschiropracticmedicine.gov/>

6
7 **AGENDA**

8
9 **General Board Business started: 8:34 a.m.**

10
11 **I. CALL TO ORDER (Roll Call):**

12 The meeting was called to order by Dr. Fogarty, chair. Those present for all or part of the meeting included the following:

13
14 **BOARD MEMBERS:**

15 Kevin Fogarty, D.C., F.I.C.A., Chair
16 Danita Heagy, D.C., Vice-Chair
17 Christopher Fox, D.C., ATC
18 Julie Hunt, D.C., DICCP
19 Kenneth Dougherty, D.C.
20 David Colter
21 Ruth Pelaez

22
23 **STAFF PRESENT:**

24 Anthony Spivey, Board Executive Director
25 Gail Curry, CPM, Program Operations Administrator
26 Savada Knight, Regulatory Supervisor/Consultant
27 Towanda Burnett, Compliance Office

28
29 **BOARD COUNSEL:**

30 LeeAnn Gustafson, Assistant Attorney General
31 Office of Attorney General

32
33 **PROSECUTION COUNSEL:**

34 Octavio Simoes-Ponce, Assistant General Counsel

35
36 **AUDIO/VISUAL:**

37 Vanguard Audio Visual
38 (941)334-3183
39 Patrick Langan

40
41 **COURT REPORTER:**

42 Apex Recording
43 Daisy Amador
44 (954)467-8204

45 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the*
46 *agenda outline. AUDIO from this meeting can be found online:*

47 <http://floridaschiropracticmedicine.gov/meeting-information/past-meetings/>

1 **II. APPROVAL OF MINUTES:**

2
3 **Action:** Motion to accept the minutes with correction was made by Dr. Dougherty. Second by Dr. Heagy.
4 Vote: 7 yeas / 0 opposed; motion carried

5
6 Page 10, line 38 – 40 was repeated on line 47 - 49

7
8 **III. FINAL ORDER ACTION:**

9
10 **a. Recommended Order**

11
12 **1. Steven C. Read, D.C.**

13 Case No.: 2014-08886

14 Applicant was present and was not represented by counsel.

15 The purpose of this proceeding is to determine whether the Respondent violated section
16 460.413(1) (i), Florida Statute (2013), by committing sexual misconduct, as alleged in the
17 Administrative Complaint.

18
19 **Discussion:** Dr. Read spoke on his own behalf and asked that the Board Members take into
20 consideration the ALJ's recommended order.

21
22 **Action:** Motion to adopt the ALJ's findings of the case was made by Dr. Dougherty.

23 Second by Mr. Colter.

24 Dr. Hunt is recused due to being on the PCP.

25 Vote: 5 yeas / 1 opposed; motion carried

26
27 **Action:** Motion to dismiss the case was made by Dr. Dougherty.

28 Second by Mr. Colter.

29 Dr. Hunt is recused due to being on the PCP.

30 Vote: 5 yeas / 1 opposed; motion carried

31
32 **b. Settlement Agreement**

33
34 **1. Adam M. Strouse, D.C.**

35 Applicant was present and was represented by counsel, Anthony Batalli, Esq.

36 Case No.: 2015-19518

37 Violated 460.4131(c). Pled nolo contender to two counts of running an unlicensed clinic.

38 Case and terms were presented by Octavio Simoes-Ponce.

39
40 **Discussion:** Mr. Batalli clarified that this case was not a fraud case or a false claim case. Went on
41 detail his opinion of the case and the agreement. He asked the Board to accept the settlement
42 agreement.

43
44 **Action:** Motion to accept the settlement agreement was made by Dr. Heagy.

45 Second by Mr. Colter.

46 Dr. Dougherty is recused due to being on the PCP.

47 Vote: 6 yeas / 0 opposed; motion carried

48
49 **c. Determination of Waiver**

1 **1. Carlos M. Gonzalez, D.C.**

2 Case No.: 2014-17065

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

4

5 Octavio Simoes-Ponce gave the details of the Determination of Waiver.

6 Respondent violated a lawful order of the Board. Copies were sent to respondent at the address of record
7 with the Department of Health. Department of Health never received a response. Several other attempts
8 were made with no response.

9

10 **Action:** Motion to accept the Investigative report as evidence of this Hearing was made by Dr. Heagy.
11 Second by Dr. Colter.

12 Dr. Dougherty is recused due to being on the PCP.

13 Vote: 6 yeas / 0 opposed; motion carried

14

15 **Action:** Motion to accept the respondent was properly served as evidence of the email was made by Ms.
16 Pelaez.

17 Second by Dr. Hunt.

18 Dr. Dougherty is recused due to being on the PCP.

19 Vote: 6 yeas / 0 opposed; motion carried

20

21 **Action:** Motion to find the respondent failed to timely respond and when he did respond failed to dispute
22 the facts was made by Ms. Pelaez.

23 Second by Dr. Fox.

24 Dr. Dougherty is recused due to being on the PCP.

25 Vote: 6 yeas / 0 opposed; motion carried

26

27 **Action:** Motion to adopt the findings of fact and Conclusions of Law as set forth in the Administrative
28 Complaint and they constitute a violation of the Practice Act was made by Dr. Fox.

29 Second by Ms. Pelaez.

30 Dr. Dougherty is recused due to being on the PCP.

31 Vote: 6 yeas / 0 opposed; motion carried

32

33 **Action:** Motion to deny the recommendation by the Department was made by Dr. Colter.

34 Second by Dr. Heagy.

35 Dr. Dougherty is recused due to being on the PCP.

36 Vote: 6 yeas / 0 opposed; motion carried

37

38 **Action:** Motion to revoke the license was made by Dr. Colter.

39 Second Ms. Pelaez.

40 Dr. Dougherty is recused due to being on the PCP.

41 Vote: 6 yeas / 0 opposed; motion carried

42

43 **d. Voluntary Relinquishment**

44 **1. Ryan A. Grand, D.C.**

45 Case No.: 2014-18338

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

47

48 **Discussion:** Licensee has agreed to relinquish his license in lue of further prosecution. Department
49 recommends acceptance of this relinquishment as appropiate resolution of this matter.

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

Action: Motion to accept the Voluntary Relinquishment was made by Dr. Heagy.
Second by Dr. Hunt.
Dr. Fox is recused due to his relationship with Dr. Grand.
Vote: 6 yeas / 0 opposed; motion carried

2. Soukenya J. Douyon, RCA

Case No. 2015-19472
Applicant was not present and was not represented by counsel.

Discussion: Licensee has agreed to relinquish his license in lieu of further prosecution. Department recommends acceptance of this relinquishment as appropriate resolution of this matter.

Action: Motion to accept the Voluntary Relinquishment was made by Dr. Dougherty.
Second by Dr. Hunt.
Vote: 7 yeas / 0 opposed; motion carried

IV. COMPLIANCE

a. Extension Request for submitting article

1. Richard T. Pfaff, D.C.

Case No.: 2013-10841
Applicant was not present and was not represented by counsel.

Discussion: Article was received by Dr. Spivey on Nov. 4. He is compliant with all other terms of the Final Order.

Action: Motion to grant the extension through Nov. 4 was made by Dr. Dougherty.
Second by Dr. Colter
Vote: 7 yeas / 0 opposed; motion carried

b. Petition for Termination of Probation

1. Gustavo Acosta, D.C.

Case No.: 2006-30571, 2006-32322, 2007-10151
Applicant was present and was not represented by counsel.
Dr. Acosta is requesting termination of his probation.

Discussion: Towanda Burnett described his balance and he is current on those payments, current with monitor reports. Dr. Acosta is asking for early termination. Dr. Acosta addressed the Board and explained his situation and it is costing him more money to try to keep up with everything. He is having difficulty getting insurance because of the probation. Was asked what he learned from this. He learned how to keep better notes on patients. Dr. McGuire has helped him to make necessary changes to his practice. Dr. McGuire did write a letter for Dr. Acosta.

Action: Motion to accept the Termination of Probation was made by Dr. Dougherty.

1 Second by Dr. Heagy.
2 Vote: 7 yeas / 0 opposed; motion carried

3

4 **V. PETITION WITHOUT APPLICATION**

5 **a. Robert Manestar**

6 Applicant was present and was not represented by counsel.

7 LeeAnne Gustafson stated Dr. Manestar has filed a document that he calls a petition for waiver
8 of Florida Statute 120.542. She has reviewed the document and says it is not a petition for
9 waiver it is a complaint for decultery judgment. Ms. Gustafson recommends that the Board
10 dismiss the petition.

11

12 **Discussion:** Dr. Manestar gave a lengthy description of his credentials and his experience and
13 licensure in Acupuncture in another state. Also touched on the qualifications for Acupuncture,
14 rules and statutes. Ms. Gustafson again related to the Board that this is not a petition. He is
15 asking for a Statutory Construction not a Waiver of Rules. Board cannot waive a Florida Statute.
16 If he wants a Petition for Decolatory Statement he needs to file one.

17

18 **Action:** Motion to dismiss petition was made by Dr. Heagy.

19 Second by Dr. Dougherty.

20 Vote: 7 yeas / 0 opposed; motion carried

21

22 **VI. PROSECUTION REPORT**

23 Octavio Simoes-Ponce gave the Prosecution Report.

24 68 open cases in PSU.

25 3 of these are in the Emergency Action Unit.

26 20 are in a Review status

27 16 have a Probable Cause recommendation

28 20 where Probable Cause has been found

29 1 case pending at DOA

30 36 cases are older than 1 year.

31

32 Case intake has been down so this will allow more time to work on the older cases.

33

34 **Action:** Motion to accept Prosecution Report was made by Dr. Dougherty.

35 Second by Dr. Hunt.

36 Vote: 7 yeas / 0 opposed; motion carried

37

38 **BREAK @ 9:33**

39 **Meeting Resumed @ 9:59**

40

41 **VII. LETTER FROM DIAGNOSTIC IMAGING CONSULTANTS**

42 a. Radiology CME Letter

43 This is a letter regarding CE for Chiropractic physicians that are practicing Radiology and they

1 can't get enough CE to meet certification requirements. They want to know if they can use CME
2 for Radiology to meet the CE requirements. Chair advised they can under the rules submit
3 courses on a case by case basis to get approval. Dr. Spivey will respond to the letter and tell
4 them they
5 can submit those for meet their continuing education requirements.

6
7 b. Syllabus Outline 2015 MSK Imaging in Clinical Practice

8 **X. APPLICATIONS PRESENTED FOR BOARD REVIEW**

9 **a. Licensure**

10 **1. Dr. Michael Schill, Jr.**

11 Applicant was present and was not represented by counsel.
12 Dr. Schill answered yes the Health History questions.

13

14 **Discussion:** He has provided information to the Board for review. The Board has no questions for
15 the applicant.

16

17 **Action:** Motion to approve application was made by Dr. Heagy.
18 Second by Dr. Fox.

19 Vote: 7 yeas / 0 opposed; motion carried

20

21 **2. James R. Claeys**

22 Applicant was present and was not represented by counsel.
23 Mr. Claeys answered yes to the Criminal History questions.

24

25 **Discussion:** Mr. Claeys said it was a mistake on the form. He gave his background. Chair
26 addressed the audience about filling out the application correctly.

27

28 **Action:** Motion to approve application was made by Dr. Fox.
29 Second by Dr. Dougherty.

30 Vote: 7 yeas / 0 opposed; motion carried

31

32 **XI. RATIFICATION**

33 **a. Licensure**

34 **1. Registered Chiropractic Assistant**

35 License number 15534 – 15558

36 **Action:** Motion to ratify issuance of Registered Chiropractic Assistant license numbers 15534 through
37 15558 was made by Dr. Heagy. Second by Dr. Hunt.

38 Vote: 7 yeas / 0 opposed; motion carried

39

40 **2. Chiropractic Physician**

1 License number 11902 – 11924

2 **Action:** Motion to ratify issuance of Chiropractic Physicians license numbers 11902 through 11924 was
3 made by Dr. Heagy. Second by Ms. Pelaez.

4 Vote: 7 yeas / 0 opposed; motion carried

5

6 3. Certified Chiropractic Physician

7 License number 819 – 825

8 **Action:** Motion to ratify issuance of Certified Chiropractic Physician license numbers 819 through 825
9 was made by Dr. Dougherty. Second by Dr. Fox.

10 Vote: 7 yeas / 0 opposed; motion carried

11

12 **b. CE Providers and Courses Approved by Committee Chair**

13 **Action:** Motion to ratify CE Providers and courses was made by Dr. Heagy. Second by Dr. Hunt.

14 Vote: 7 yeas / 0 opposed; motion carried

15

16 Some clarification was made to the term “HOMECOMING” for CE hours.

17

18 **XII. CHAIR/VICE-CHAIR REPORT**

19 a. Vice Chair Report

20 Dr. Heagy talked about the frustration of Board members travel reimbursements. This was
21 universal throughout all Boards. Board Compensation was also talked about as far as only being
22 paid for 1 day instead of 2. Dr. Spivey explained the reason for the reduction in the payment.

23 Spoke about the State Park’s joining with DOH to help the citizens of Florida become the
24 Healthiest State in the nation.

25 **IX. FEDERATION OF CHIROPRACTIC LICENSING BOARDS (FCLB)**

26 Dr. Heagy said FCLB was a productive meeting in Nashville. There was great collaboration and a
27 lot of information was received. Medical marijuana was a hot topic. CCE was also a topic that
28 was addressed. Next FCLB meeting will be held at the Hyatt in Orlando on May 3-7, 2017.

29 **XIII. EXECUTIVE DIRECTOR’S REPORT**

30 a. American Veterinary Chiropractic Association

31 FYI- Nov 11-13, 2015, In Orlando a conference will be held for live demonstrations of animal
32 chiropractic.

33 Dr. Dougherty asked if Dr. Spivey could address the letter with the definitions for Chiropractic
34 and Veterinary so that they understand in Florida a chiropractor can work on an animal only
35 under veterinary prescription.

36

1 It was asked that there be a letter drafted by staff for board review concerning the veterinary
2 course, Dr. Spivey drafted a letter and sent it to Dr. Dougherty.

3 **XIV. BOARD COUNSEL'S REPORT**

4 a. Rules Report September 2016

5 b. Rules Report October 2016

6 Rule on CE 64B2-13.005 was adopted in September. There are a number of Rules that are tolled
7 because of JAPC concerns.

8

9 c. 64B2-12.019

10 Duplicate license certificate fee was discussed with JAPC suggestion of including language that in
11 order to receive a wall certificate they must have been licensed prior to July 1, 1998. Ms.
12 Gustafson advised this is the same language that is in the statute.

13

14 **Action:** Motion to not include the language was made by Dr. Hunt. Second by Dr. Heagy.

15 Vote: 7 yeas / 0 opposed; motion carried

16

17 d. Rule Reduction

18 Gov. Scott wants to have Rules reduced by 5%. Please let Board Council know if you have any
19 reductions that can be made. Please email these to LeeAnn Gustafson.

20

21 **XV. COMMITTEE REPORTS**

22 a. Budget – Colter

23 Mr. Colter attended the Budget meeting in Oct. in Tallahassee. He gave the balance and what
24 it means to a possible sweep in the future. Looking at a way to reduce the intake of funds.

25 There was discussion on staff being cut from attending meetings due to the budget. Board
26 Members want Towanda Burnett's attendance in the Board meetings for her knowledge.

27

28 b. CCPA – Dr. Dougherty

29 Nothing to report at this time.

30

31 c. Continuing Education – Drs. Heagy/Hunt

32 Previously addressed in the meeting.

33

34 d. Disciplinary Compliance – Dr. Fogarty

35 Sending reports and reviewing reports are being handled. Towanda expressed that a
36 monitor for Compliance was having trouble with a licensee so this is being looked at to switch
37 the monitor out. Everyone else is good.

38

39 e. Examination – Dr. Heagy

40 Might not able to go to the National Exam Part IV. No notice has been received at this time.

1 Dr. Heagy may not attend this year. Staff to contact Board of Examinater's to see what staff is
2 needed for next year. Dr. Hunt will now be going in Dr. Heagy's place.

3

4 f. Healthiest Weight – Dr. Heagy

5 Report is in the materials. Feels like they are on the right track to making this the Healthiest
6 State in the Nation.

7

8 g. Legislation – Dr. Heagy/Mr. Colter

9 There was some discussion during the Chair/Vice Chair meeting about the Legislation agendas
10 and how to get Chiropractor's moving forward. Include the language in the next agenda to
11 review and see what pieces to move forward with.

12

13 h. Probable Cause – Drs. Dougherty/Fox/Hunt

14 No problems with Probable Cause. Savada Knight explained the reason for the cancellation of
15 The October meeting was due to the meetings being too close together and there was
16 nothing to review at that time.

17

18 i. Rules – Dr. Hunt

19 Will be going to work on the 5% reduction.

20

21 j. Unlicensed Activity – Ms. Pelaez

22 Since last meeting in June there have been 3 cease and desist notices for practicing without a
23 license.

24

25 k. Outstanding Service Award – Dr. Heagy

26 Dr. Heagy explained what this award represents. It was presented to Dr. Jonathan Chung, D.C.

27

28 **XVI. OLD BUSINESS**

29 No old business to discuss

30 **VIII. ONLINE CONTINUING EDUCATION DISCUSSION**

31 a. Dr. Arlan W. Fuhr, D.C.

32 An Information package was handed out to all Board members. Dr. Fuhr, Chairman of Activator
33 Methods International LTD, testified on behalf of online Continuing Education. They have been
34 in business for 10 years. Gave details of how they use the online system for Continuing
35 Education.

36 Several speakers came before the Board to speak on behalf of accepting online Continuing
37 Education. These included:

38 Dr. Lucas Matlock, President of the Florida Chiropractic Society

1 Steve Miller, Technologist
2 Rick Warner, D.C.
3 Matthew McCoy, D.C.
4 Jesse Neyra, ESQ

5

6 **Lunch Break @ 11:45**

7 **Meeting Resumed @ 12.30**

8

9 Dr. Fogarty called the meeting back to order.

10 Ms. Pelaez addressed the room to say the Board of Chiropractic Medicine is for online Continuing
11 Education and wants to work with everyone on this issue in a civil manner.

12 **Action:** Motion that the Florida Board of Chiropractic Medicine is in favor of promulgating a Rule for
13 online continuing education was made by Dr. Hunt. Second by Dr. Dougherty.

14 Vote: 7 yeas / 0 opposed; motion carried

15

16 **Action:** Motion to add 10 hours of online Continuing Education to the rule per biennium was made
17 by Dr. Hunt. Second by Dr. Dougherty.

18 Vote: 7 yeas / 0 opposed; motion carried

19

20 **Discussion:** The Board discussed accepting 10% – 50% of online Continuing Education. Board
21 feels comfortable with allowing 10 hours at this time with a possible increase in the future.
22 There was some concern about JAPC disagreeing with the rule. Ms. Gustafson JAPC can file an
23 objection but she believes that the people that would file an objection would want the online
24 CE. Dr. Fox asked how difficult will it be to increase the number of hours if they choose to do so.
25 Ms. Gustafson explained it will be easy to increase but more difficult to decrease.

26

27 **Action:** Motion to include the standards that Dr. Fuhr indicated, to be accepted for online there must be
28 Competency based learning as a parameter and also have SCORM, Shareable Content Object Reference
29 Model, for security was made by Dr. Hunt. Second by Dr. Heagy.

30 Vote: 7 yeas / 0 opposed; motion carried

31

32 Some discussion was held on the Board member having access to attend any CE that has been approved.

33

34 Ms. Gustafson will draft the Rule language and bring it back to the Board for approval. She will file a
35 Notice of Rule Development. In the January meeting the Board members will vote on the rule language.
36 Once approved Ms. Gustafson will notice it as a proposed Rulemaking.

37

38 **Action:** Motion to file the Notice of Rulemaking was made by Dr. Hunt. Second by Dr. Heagy.

39 Vote: 7 yeas / 0 opposed; motion carried

40

41 **XVII. NEW BUSINESS**

42 No new business to discuss.

43 **Board Elections**

1 **Action:** Motion to keep the slate the same, Dr. Fogarty, Chair and Dr. Heagy, Vice Chair, was made by Dr.
2 Dougherty. Second by Ms. Pelaez.
3 Vote: 7 yeas / 0 opposed; motion carried

4
5 PCP Members will remain the same.
6 Committee Members will remain the same.

7
8 **XVIII. NEXT MEETING DATE –**

9 January 27, 2017

10 **XIX. ADJOURNMENT**

11 Motion to adjourn the meeting was made by Dr. Dougherty and seconded by Dr. Heagy.
12 Vote: 7 yeas / 0 opposed; motion carried

13
14 The meeting was adjourned at 12:59 p.m.
15