

1 The Florida Board of Chiropractic Medicine held a meeting on Friday, August 25, 2017,  
2 commencing at 8:30 a.m. This meeting was held at the Hyatt Regency Orlando, 9801  
3 International Drive, Orlando, Florida 32891, (407) 345-4522, to which all persons were invited  
4 to attend. Participants in this public meeting were made aware that these proceedings were  
5 being recorded and that an audio file of the meeting will be posted to the board’s website.

6  
7 AGENDA

8 **Section I began: 8:40 a.m.**

9  
10 **I. CALL TO ORDER (Roll Call):**

11 **Board Members Present:**

- 12 Kevin Fogarty, D.C., F.I.C.A. (Hon), Chair
- 13 Danita Heagy, D.C., Vice-Chair
- 14 Christopher Fox, D.C., ATC(L)
- 15 Julie Hunt, D.C., DICCP
- 16 Kenneth Dougherty, D.C.
- 17 David Colter
- 18 Ruth Pelaez

19  
20 **Board Staff Present:**

- 21 Dr. Anthony Spivey, DBA, Executive Director
- 22 Gail Curry, Program Operations Administrator
- 23 Kellee Crowson, Regulatory Specialist II

24  
25 **Board Counsel:**

- 26 Diane Guillemette, Assistant Attorney General
- 27 Office of the Attorney General

28  
29 **Prosecution Counsel:**

- 30 Lisa Ungerbuehler, Assistant General Counsel
- 31 Peter Delia, Assistant General Counsel

32  
33 **Court Reporter:**

- 34 American Court Reporting
- 35 (407)896-1813

36  
37 **Audio/Visual:**

- 38 Vanguard Audio Visual
- 39 (941) 448-3183

40  
41 **Section I ended: 8:43 a.m.**

42 **Section II began: 8:43 a.m.**

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

45  
46 May 12, 2017

48 **Action:** Motion to approve with corrections made by Dr. Heagy. Second by Dr.  
49 Dougherty with corrections.

50  
51 Corrections to the minutes:

52  
53 Dr. Dougherty made the following corrections:

54 On page 2, corrections to the case Ayhem Sabry, D.C., contained a motion to reject the  
55 settlement at the end of the paragraph; it should have occurred earlier than it was placed.

56 Dr. Fox is recused on PCP could possibly be a second line. There was a motion for  
57 the amended settlement offer but there was no motion or who seconded the vote was  
58 missing. The settlement agreement for David Adamson should add the statement Dr.  
59 Dougherty was recused.

60  
61 Dr. Heagy made the following corrections: on line 159, insert the word “do.” Dr.  
62 Ehrlich’s case beginning on line 379 needed more detail. On line 485-486, correct Dr.  
63 Fox will be attending on behalf of Dr. Heagy; he will not be attending on her behalf but  
64 will attend. Line 526: The sentence did not make sense. More detail is needed.

65  
66 Ms. Pelaez made the following corrections: Page 3, line 121, the last name Pelaez. Line  
67 159 on page 4 is incorrect.

68  
69 **Vote:** 7 yeas / 0 opposed. Motion carried.

70  
71 **Section II ended: 8:50 a.m.**

72 **Section III began: 8:50 a.m.**

73  
74 **III. FINAL ORDER ACTION:**

75  
76 **a. SETTLEMENT AGREEMENTS:**

77  
78 **i. David Adamson, D.C., Case No. 2016-13360**

79  
80 Present. Represented by counsel, Kenneth Scaz, Esq. The settlement agreement  
81 negotiated between the two parties are the following: a reprimand, a fine of \$1,500.00,  
82 reimbursement of costs not to exceed \$1,000.00, laws and rules examination, one-year  
83 probation with terms, and compliance with the terms of the plea agreement in the  
84 criminal case.

85  
86 **Action:** Motion to approve the terms of the settlement agreement made by Dr. Fox.  
87 Second by Dr. Hunt.

88  
89 **Vote:** 3 yeas / 3 opposed. Motion did not carry.

90  
91 Dr. Fogarty proposed the following: add the laws and rules and the ethics exam. The  
92 respondent will have to write an article about his story. There was talk of raising the  
93 fine, however, the criminal case could cost around \$300,000.00. The respondent’s  
94 counsel requested the current fine stay at \$1,500.00. The respondent is currently doing

95 community service. Dr. Adamson needs to submit the article to trade journals and to the  
96 compliance unit.

97  
98 **Action:** Motion to accept the counter settlement agreement made by Dr. Fogarty. Second  
99 by Dr. Heagy.

100  
101 **Vote:** 6 yeas / 0 opposed. Motion carried.

102  
103 Dr. Dougherty was recused.

104  
105 Ms. Guillemette had the prosecution explain the costs. The cost for the complaint itself is  
106 \$129.77 and the investigative costs are \$1,308.26. The \$1,000.00 has already been  
107 accepted by the respondent and the Prosecution Services Unit. Ms. Guillemette will put  
108 the actual costs of \$1,503.10 in the final order but the settlement agreement caps this  
109 amount at \$1,000.00.

110  
111 **ii. Herbert A. Marvin, D.C., Case No. 2015-19522**

112  
113 Present. Represented by counsel, Patrick McKamey, Esq. Mr. Delia presented the case.  
114 The respondent submitted an exemption for licensure as a healthcare clinic to The  
115 Agency for Healthcare Administration (AHCA). Dr. Marvin claimed to have one hundred  
116 percent ownership but knowingly did not. The department will issue the following: a  
117 letter of concern, a fine of \$3,500.00, reimbursement costs not to exceed \$1,500.00, a  
118 Laws and Rules exam, a permanent restriction on the respondent serving as the medical  
119 director for any non-physician owned clinic for as long as the license remains active in  
120 chiropractic medicine, and 1-year probation with terms. Dr. Marvin read a letter of  
121 apology asking the board to accept the settlement agreement. Dr. Fogarty spoke to Dr.  
122 Marvin about some statements he had made on record with regards to his having known  
123 about the scheme all along. Dr. Marvin is not interested in relinquishing his license.

124  
125 **Action:** Motion to accept the settlement agreement made by Mr. Colter. Second by Dr.  
126 Fox.

127  
128 **Vote:** 3 yeas / 3 opposed. Motion does not carry.

129  
130 The board discussed a counter-offer. The counter settlement offer will contain the  
131 following: The fine is increased to \$5,000.00 to be paid within 2 years. There will be one-  
132 year of probation, a letter of concern, a permanent restriction from being a medical  
133 director, laws and rules examination within one year, probation for one year, and take and  
134 pass the ethics exam within one year. This meeting today will be Dr. Marvin's required  
135 appearance.

136  
137 **Action:** Motion to counter offer another settlement agreement made by Dr. Fogarty.  
138 Second by Dr. Heagy.

139  
140 **Vote:** 6 yeas / 1 opposed. Motion carried.

142 The current administrative costs are \$ 2, 269.97.

143 **Action:** Motion to accept the costs as so stated made by Dr. Fogarty. Second by Dr.  
144 Heagy.

145  
146 **Vote:** 7 yeas / 0 opposed. Motion carried.

147  
148 While Dr. Marvin is on probation, the board agreed the administrative costs can be paid  
149 over the course of 2 years. Mr. McKamey spoke on behalf of Dr. Marvin who  
150 decided to accept the board's counter offer.

151  
152 Prosecution Services agreed to accept the counter offer made by the board as a resolution  
153 to this case.

154  
155 **b. DETERMINATION OF WAIVER**

156  
157 i. William N. Rivera, D.C., Case No. 2016-23944

158  
159 The notice for this meeting was not properly served. Ms. Guillemette requested to  
160 continue this case over to next scheduled board meeting.

161  
162 **Action:** Motion to continue at the next scheduled board meeting made by Ms. Pelaez.  
163 Second by Dr. Dougherty.

164  
165 **Vote:** 7 yeas / 0 opposed. Motion carried.

166  
167 **c. VOLUNTARY RELINQUISHMENTS:**

168  
169 i. Kaila Wieland, R.C.A., Case No. 2017-03727

170  
171 Not present. Not represented by counsel. Ms. Ungerbuehler presented the case.  
172 Respondent has multiple convictions not reported on her application.

173  
174 **Action:** Motion to accept the voluntary relinquishment made by Dr. Heagy. Second  
175 by Dr. Dougherty.

176  
177 **Vote:** 7 yeas / 0 opposed. Motion carried.

178  
179 ii. Stephen J. Somerville, D.C., Case No. 2016-09671

180  
181 Not present. Not represented by counsel. Ms. Ungerbuehler presented the case.  
182 The respondent was convicted of three counts of felony sexual battery on a child by a  
183 person in familial custody and failed to report the conviction to the department within 30  
184 days as required by statute. The respondent can never reapply to the State of Florida for  
185 a license in chiropractic medicine.

186  
187 **Action:** Motion to accept the voluntary relinquishment made by Dr. Dougherty. Second  
188 by Ms. Pelaez.

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**Vote:** 7 yeas / 0 opposed. Motion carried.

**Section III ended: 9:43 a.m.**  
**Section IV began: 9:43 a.m.**

**IV. PETITION FOR WAIVER AND VARIANCE:**

**a. Paul Powers, D.C.**

Dr. Powers was present and sworn-in. He was not represented by counsel. Ms. Guillemette advised the board that the petition had no standing. Ms. Guillemette explained Dr. Powers would need to be licensed in Florida in order for this petition to be valid. Board counsel explained Dr. Powers is trying to change the rule, not requesting a variance. Ms. Guillemette requested the board to dismiss this petition.

**Action:** Motion to deny the petition made by Dr. Fogarty. Second made by Dr. Dougherty.

**Vote:** 7 yeas/ 0 opposed. Motion carried.

**b. Stacey Kisting De Barrientos**

Not present. Not represented by counsel. There is no rule cited on this petition. It is not possible to waive a statute. Dr. De Barrientos' application is currently pending due to not having a bachelor's degree. The applicant can be approved contingently if she can produce the bachelor's degree. The applicant must appear at the next board meeting. The 90-day deemer clause will be tolled due to a required appearance.

**Action:** Motion to approve the application contingent upon receiving a bachelor's degree made by Dr. Dougherty. Second made by Dr. Hunt.

**Vote:** 7 yeas/ 0 opposed.

**Action:** Motion to deny the waiver made by Dr. Fogarty. Second made by Dr. Fox.

**Vote:** 7 yeas/ 0 opposed. Motion carried.

**Section IV break began: 10:04 a.m.**  
**Section IV began again at: 10:23 a.m.**

**c. Jason Rutkauskas**

Not present. Not represented by counsel. Dr. Rutkauskas is currently located in Singapore and is having a difficult time locating continuing education credits. The language in the statute allows for a variance in the rule. Many practitioners live

235 abroad and can achieve continuing education credits in Singapore. The syllabus and  
236 the curriculum vitae of the instructors must be submitted in order to receive credit.

237  
238 **Action:** Motion to grant the waiver to allow the acceptance of CE provided in  
239 Singapore and give an extension of one year made by Dr. Heagy. Second made by Dr.  
240 Dougherty.

241  
242 **Vote:** 7 yeas/ 0 opposed. Motion carried.

243  
244 **Section IV ended: 10:40 a.m.**  
245 **Section V began: 10:40 a.m.**  
246

247 **V. PROSECUTION REPORT:**

248  
249 Open Cases: **78**

250  
251 Cases under legal review: **21**

252  
253 Cases recommended for Probable Cause: **8**

254  
255 Cases older than 1 year: **43**

256  
257 Probable Cause found: **14**

258  
259 Cases before the Division of Administrative Hearings (DOAH): **1**

260  
261 **Action:** Motion to accept the prosecutor's report made by Dr. Heagy. Second made by  
262 Dr. Dougherty.

263  
264 **Vote:** 7 yeas / 0 opposed. Motion carried.

265  
266 The historical data for complaints was requested from prosecution services since the  
267 number of complaints seems to be trending downward causing some concerns.

268  
269 **Action:** Motion to continue to prosecute cases older than one year made by Dr. Hunt.  
270 Second made by Dr. Fox.

271  
272 **Vote:** 7 yeas / 0 opposed. Motion carried.

273  
274 **Section V ended: 10:45 a.m.**  
275 **Section VI began: 10:45 a.m.**  
276

277 **VI. APPLICATIONS PRESENTED FOR BOARD REVIEW:**

278  
279 a. Frank Tarquini, D.C.

280

281 Present. Not represented by counsel. PRN was present. Dr. Tarquini has two prior  
282 alcohol-related disciplines from another state. Dr. Tarquini is under a 5 year PRN  
283 monitoring contract and still has four more years to complete.

284  
285 **Action:** Motion to approve application with conditions contingent upon continual  
286 monitoring by PRN made by Dr. Heagy. Second made by Ms. Pelaez.

287  
288 **Vote:** 7 yeas / 0 opposed. Motion carried.

289  
290 b. Sanford L. Geisser, D.C.

291  
292 Not present. Not represented by counsel. Dr. Geisser was disciplined in 1999 in the State  
293 of Alabama. Dr. Geisser has no other known discipline and only a previous small  
294 settlement.

295  
296 **Action:** Motion to approve the application made by Dr. Dougherty. Second made by Dr.  
297 Fox.

298  
299 **Vote:** 7 yeas / 0 opposed. Motion carried.

300  
301 c. Braheem Z. Tolbert, D.C.

302  
303 Not present. Not represented by counsel. The applicant had discipline in the State of  
304 Virginia but the Final Order was vacated.

305  
306 **Action:** Motion to approve the application with conditions contingent upon PRN  
307 evaluation made by Dr. Heagy. Second made by Dr. Dougherty.

308  
309 **Vote:** 7 yeas / 0 opposed. Motion carried.

310  
311 **Section VI ended: 11:08 a.m.**  
312 **Section VII began: 11:08 a.m.**

313  
314 **VII. OPIOID USE**

315  
316 a. Jay H. Schwartz, D.C.

317  
318 This was a letter from Dr. Schwartz to Governor Scott and forwarded to the Board of  
319 Chiropractic Medicine. Dr. Spivey responded on behalf of the department and the letter was  
320 attached in the materials.

321  
322 **Section VII ended: 11:10 a.m.**  
323 **Section VIII began: 11:10 a.m.**

324  
325 **VIII. RATIFICATIONS:**

326  
327 a. Licensure  
328

329 i. Chiropractic Physician  
330  
331 License numbers 12166-12270 for a total of 105 licenses.  
332  
333 **Action:** Motion to approve the license numbers 12166-12270 made by Dr.  
334 Dougherty. Second by Ms. Pelaez.  
335  
336 **Vote:** 7 yeas / 0 opposed. Motion carried.  
337  
338 ii. Registered Chiropractic Assistant  
339  
340 License numbers 16590-16953 for a total of 364 licenses presented to the Board.  
341  
342 **Action:** Motion to approve the license numbers 16590-16953 made by Ms. Pelaez. Second by  
343 Dr. Heagy.  
344  
345 **Vote:** 7 yeas / 0 opposed. Motion carried.  
346  
347 iii. Certified Chiropractic Physician Assistant  
348  
349 License numbers 850-859 for a total of ten licenses for the Board’s review.  
350  
351 **Action:** Motion to approve the license numbers 850-859 made by Dr. Dougherty. Second  
352 by Dr. Fox.  
353  
354 **Vote:** 7 yeas / 0 opposed. Motion carried.  
355  
356 b. CE Providers and Courses approved by Committee Chair  
357  
358 Nothing to report.  
359  
360 **Section VIII ended: 11:12 a.m.**  
361 **Section IX began: 11:12 a.m.**  
362  
363 **IX. CHAIR/VICE-CHAIR REPORT:**  
364  
365 Dr. Heagy is planning to attend the Chair/Vice-Chair meeting.  
366  
367 **Section IX ended: 11:14 a.m.**  
368 **Section X began: 11:14 a.m.**  
369  
370 **X. EXECUTIVE DIRECTOR’S REPORT:**  
371  
372 There will be a meeting held on November 3, 2017 in Orlando to discuss opioid use. The Board  
373 of Chiropractic Medicine’s full board meeting is on the same day. Dr. Fogarty will be  
374 requesting a former board member to attend on the board’s behalf. There will be a new  
375 automated travel program coming out in November that the board members can access. Forty-  
376 three variance and waivers have been received in the board office, so a special meeting will be  
377 held on September 25, 2017 at 12:15 p.m.  
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379 **Section X ended: 11:17 a.m.**  
380 **Section VII began: 11:17 a.m.**

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**XI. BOARD COUNSEL’S REPORT:**

May Rules Report  
June Rules Report  
July Rules Report  
No rules are presently being presented. The Annual Regulatory Plans are due on October 1<sup>st</sup> of each year. The board chair can be delegated to sign off and approve the Annual Regulatory Plan.

**Action:** Motion to delegate signature authority to Dr. Fogarty made by Dr. Dougherty.  
Second made by Dr. Heagy.

**Vote:** 7 yeas / 0 opposed. Motion carried.

The continuing education rule needs some clarification. The rule will be opened for development. It will be on the next agenda.

**Section XI ended: 11:22 a.m.**  
**Section XII began: 11:22 a.m.**

**XII. COMMITTEE REPORTS**

**a. Budget – Mr. Colter**

There will be a budget sweep of \$450,000 dollars. The license renewal fee was discussed. It will be on the next agenda. The next biennium ends March 31, 2018.

**b. Certified Chiropractic Physicians Assistants – Dr. Dougherty**

Nothing to report.

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

Nothing to report.

**d. Disciplinary Compliance – Dr. Fogarty**

Nothing to report.

**e. Examination – Dr. Heagy**

Nothing to report.

**f. Healthiest Weight – Dr. Hunt**

Nothing to report.

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

Mr. Harris sent Dr. Heagy some draft language to review. The statute needs to be updated to reflect foreign graduates. This will be part of the next agenda at a regularly scheduled meeting.

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

Dr. LaRusso will be coming off of the Probable Cause Panel. Dr. Vogel will be taking Dr. LaRusso’s place.

**i. Rules – Dr. Hunt**

Nothing to report.

**j. Unlicensed Activity – Ms. Pelaez**

Nothing to report.

**k. Outstanding Service Award – Dr. Heagy**

This is a recognition for chiropractors who volunteer on behalf of chiropractic medicine.

**Section XII ended: 11:35 a.m.**  
**Section X began: 11:35 a.m.**

**X. OLD BUSINESS:**

The Department of Financial Services has placed stringent requirements on travel for all of the state agencies. No travel was approved by the state to attend the FCLB convention in Canada.

**Section XII ended: 11:36 a.m.**  
**Section XIV began: 11:36 a.m.**

**NEW BUSINESS:**

**a. Renewal Fees (Fogarty)**

This will be discussed at the next full board meeting on November 3, 2017.

**b. Update for Florida Laws & Rules**

The national board is considering increasing their fee from \$55.00 to \$95.00. Dr. Spivey agreed to write a “letter of displeasure” due to the fee increase.

**c. Letter from Federation of Chiropractic Licensing Boards (FYI)**

477 This was a letter presented from the FCLB to Governor Scott's Office to make known  
478 this meeting was attended and of the services this board provides throughout the state.

479 **d. Consideration of Statutory Amendments for Licensure by Endorsement**  
480

481 This will be part of the legislative discussion at the upcoming meeting.  
482 Dr. Mark Loving addressed the board. Dr. Loving discussed the benefits of online  
483 continuing education credits for maintaining his physical therapy license and is  
484 interested in the Chiropractic Medicine Board allowing the same privileges.  
485

486 **XI. NEXT MEETING DATE**

- 487 a. November 3, 2017  
488

489 **XII. ADJOURNMENT:**

490 **Action:** Motion to adjourn made by Dr. Heagy. Second made by Dr. Dougherty.  
491

492 **Vote:** 7 yeas / 0 opposed. Motion carried.  
493

494 Adjourned at 12:01 p.m.  
495  
496