

FLORIDA | Board of Chiropractic Medicine

OFFICIAL MINUTES

October 19, 2018

Omni Orlando
1500 Master Boulevard
Championsgate, Florida 33896



Kevin Fogarty D.C., F.I.C.A. *Chair*
Danita Heagy, D.C., *Vice-Chair*
Anthony Spivey, DBA, *Executive Director*

The Florida Board of Chiropractic Medicine held a meeting on Friday, October 19, 2018, commencing at 8:30 a.m. This meeting was held at the Omni Orlando, 1500 Master Boulevard, Championsgate, Florida 33896, (407) 238-6551, to which all persons were invited to attend. Participants in this public meeting were made aware that these proceedings were being recorded and that an audio file of the meeting will be posted to the board’s website.

AGENDA

Section I began: 8:30 a.m.

1 **I. CALL TO ORDER (Roll Call):**

- 2
- 3 Kevin Fogarty, D.C., F.I.C.A. (Hon), Chair
- 4 Danita Heagy, D.C., Vice-Chair
- 5 Christopher Fox, D.C., ATC (L) (Absence Excused)
- 6 Mindy Weingarten, D.C.
- 7 Julie Hunt, D.C.
- 8 David Colter
- 9 Paul Licata

10

11 **Board Staff Present:**

- 12
- 13 Anthony Spivey, DBA, Executive Director
- 14 Gail Curry, Program Operations Administrator
- 15 Kelly Woodard, Regulatory Supervisor

16

17 **Board Counsel:**

- 18
- 19 Lawrence Harris, Assistant Attorney General

20

21 **Prosecution Services**

- 22
- 23 John Wilson, Assistant General Counsel
- 24 Rose Garrison, Assistant General Counsel

25

26 **Court Reporter:**

- 27
- 28 American Court Reporting
- 29 407-896-1813

30

31 **Section I ended: 8:35 a.m.**

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

33

34 **II. APPROVAL OF MINUTES:**

35

36 **a. August 24, 2018**

37
38 **Action:** Motion to approve the minutes made by Dr. Weingarten. Second made by Dr.
39 Heagy.

40
41 **Vote:** 6 yeas/0 opposed. Motion Carried.

42
43 **Section II ended: 8:37 a.m.**

44 **Section III began: 8:37 a.m.**

45
46 **III. FINAL ORDER ACTION:**

47
48 Mr. Harris explained the process for disciplinary proceedings.

49
50 **a. SETTLEMENT AGREEMENT:**

51
52 **i. Olga Spivak, D.C., Case No. 2017-18013**

53
54 Not present. Represented by counsel, Abe Spivak, Esq.

55
56 Assistant General Counsel, John Wilson presented the facts related to the case as well as
57 the proposed settlement agreement. Mr. Colter was opposed to revoking the license.

58
59 **Action:** Motion to reject the settlement agreement and permanently revoke Dr. Spivak's
60 license made by Dr. Fogarty. Second made by Dr. Heagy.

61
62 **Vote:** 5 yeas/1 opposed. Motion Carried.

63
64 **ii. Linda D. Varisco, D.C. Case No. 2017-18004**

65
66 Not present, nor represented by counsel.

67
68 Assistant General Counsel, Rose Garrison presented the facts related to the case as well as
69 the proposed settlement agreement.

70
71 **Action:** Motion to reject the settlement agreement and permanently revoke Dr. Varisco's
72 license made by Dr. Weingarten. Second made by Mr. Licata.

73
74 **Vote:** 4 yeas/0 opposed. Dr. Weingarten and Mr. Colter recused. Motion Carried.

75
76 **b. INFORMAL HEARING:**

77
78 **i. Howard R. Van Nostrand, D.C., Case No. 2017-10587**

79
80 Present. Represented by counsel, Edwin Bayo, Esq. Mr. Wilson presented case details.

81 Mr. Bayo presented the undisputed facts. Dr. Van Nostrand explained the circumstances
82 surrounding his case. Dr. Heagy requested additional information of Dr. Van Nostrand's
83 Alaska application. Discussion occurred amongst board members and counsel.
84

85 Mr. Wilson requested that the board grant a few motions on behalf of the
86 Department of Health.
87

88 **Action:** Motion to find that the respondent was properly served and has requested an
89 informal hearing made by Mr. Colter. Second made by Dr. Heagy.
90

91 **Vote:** 6 yeas/0 opposed. Motion Carried.
92

93 **Action:** Motion to convene an informal hearing and adopt the materials into evidence in
94 this proceeding made by Dr. Hunt. Second made by Mr. Licata.
95

96 **Vote:** 6 yeas/0 opposed. Motion Carried.
97

98 **Action:** Motion to adopt the findings of fact as set forth in the administrative
99 complaint made by Mr. Licata. Second made by Dr. Hunt.
100

101 **Vote:** 6 yeas/0 opposed. Motion Carried.
102

103 **Action:** Motion to adopt the conclusions of law set forth in the administrative complaint
104 and allow the respondent to address the board made by Mr. Colter. Second by Dr. Heagy.
105

106 **Vote:** 6 yeas/0 opposed. Motion Carried.
107

108 **Action:** Motion to dismiss the case made by Mr. Colter. Second made by Dr. Weingarten.
109

110 **Vote:** 6 yeas/0 opposed. Motion Carried.
111

112 **ii. Mark W. Ashley, D.C. Case No.: 2016-09428**
113

114 Present. Represented by counsel, Edwin Bayo, Esq. Ms. Garrison presented case details.
115 Mr. Bayo presented the undisputed facts. Dr. Ashley explained the circumstances
116 surrounding his case.
117

118 Ms. Garrison requested that the board grant a few motions on behalf of the
119 Department of Health.
120

121 **Action:** Motion to find that the respondent was properly served and has requested an
122 informal hearing made by Dr. Hunt. Second made by Mr. Colter.
123

124 **Vote:** 6 yeas/0 opposed. Motion Carried.
125

126 **Action:** Motion to adopt the materials into evidence in this proceeding made by Dr. Hunt.

127 Second made by Mr. Colter.

128

129 **Vote:** 6 yeas/0 opposed. Motion Carried.

130

131 **Action:** Motion to adopt the findings of fact as set forth in the administrative complaint
132 made by Mr. Colter. Second made by Mr. Licata.

133

134 **Vote:** 6 yeas/0 opposed. Motion Carried.

135

136 **Case tabled until after break from 9:55 a.m. to 10:12 a.m.**

137 **Section III (Cont) at 10:12 a.m.**

138

139 **Action:** Motion to adopt the conclusions of law set forth in the administrative complaint
140 for both counts and find that it constitutes violation of Florida statute made by Dr. Hunt.
141 Second made by Dr. Weingarten.

142

143 **Vote:** 6 yeas/0 opposed. Motion Carried.

144

145 Ms. Garrison presented the proposed settlement agreement. Mr. Bayo suggested a lesser
146 penalty and revisions to the settlement agreement.

147

148 **Action:** Motion to require two years of supervised probation by an approved monitor with
149 stipulations and completion of six hours of continuing education in the area of
150 documentation and record keeping within one year of final order made by Dr. Weingarten.
151 Second made by Dr. Heagy.

152

153 **Vote:** 6 yeas/0 opposed. Motion Carried.

154

155 **Action:** Motion to impose \$2,000 administrative fine and costs of \$2,144.39 associated
156 with department investigation to be paid within one year of final order made by Dr.
157 Weingarten. Second made by Mr. Licata.

158

159 **Vote:** 6 yeas/0 opposed. Motion Carried.

160

161 **Section III ended: 10:53 a.m.**

162 **Section IV began: 10:53 a.m.**

163

164 **IV. PROSECUTION REPORT:**

165

166 **i. Prosecution Report**

167

168 Assistant General Counsel, Mr. Wilson presented the statistics regarding prosecution cases
169 currently open in the department.

170

171 Cases older than 1 year continued for prosecution: 42

172

173 **Action:** Motion to continue prosecution on cases older than one year made by Dr. Heagy.
174 Second made by Mr. Colter.

175
176 **Vote:** 6 yeas/0 opposed. Motion Carried.

177
178 **Section IV ended: 10:58 a.m.**
179 **Section V began: 10:58 a.m.**

180
181 **V. PETITION FOR VARIANCE OR WAIVER**

182
183 **i. Lyle W. Grenz, D.C.**

184
185 Not present, not represented by counsel.

186
187 **Action:** Motion to deny the petition due to lack of information made by Dr. Hunt. Second
188 made by Dr. Weingarten.

189
190 **Vote:** 6 yeas/0 opposed. Motion Carried.

191
192 **Section V ended: 11:08 a.m.**
193 **Section VI began: 11:08 a.m.**

194
195 **VI. APPLICATIONS PRESENTED FOR BOARD REVIEW:**

196
197 **a. Joshua Widjaja**

198
199 Not present, nor represented by counsel.

200
201 **Action:** Motion to deny applicant's request for withdrawal of application made by Dr. Hunt.
202 Second made by Dr. Heagy.

203
204 **Vote:** 5 yeas/1 opposed. Motion Carried.

205
206 **b. David J. Fleck**

207
208 Present. Not represented by counsel.

209
210 **Action:** Motion to approve application with the condition that Dr. Fleck passes the SPEC
211 examination within one year of final order made by Mr. Colter. Second made by Dr. Hunt.

212
213 **Vote:** 6 yeas/0 opposed. Motion Carried.

214
215 **c. Christian A. Knechtel**

216
217 Present. Represented by Thomas Sommerville, Esq.

218 **Action:** Motion to approve the application made by Dr. Heagy. Second made by Dr.
219 Hunt.

220
221 **Vote:** 6 yeas/0 opposed. Motion Carried.

222
223 **Section VI ended: 11:29 a.m.**
224 **Section VII and VIII began: 11:29 a.m.**

225
226 **VII. COMPLIANCE**

227
228 **a. Jeremiah Joseph Appearance Memorandum**

229 **b. Jeremiah Joseph Final Order**

230
231 Present. Not represented by counsel. In attendance with Dr. Joseph was Dr. Jason Harre. Dr.
232 Harre explained his experience. Dr. Joseph requested that the board consider approving Dr.
233 Harre to be a monitor. The request was in lieu of a previously board ordered settlement
234 agreement.

235
236 **Action:** Motion to approve Dr. Harre as a monitor made by Mr. Colter. Second made
237 by Mr. Licata.

238
239 **Vote:** 5 yeas/1 opposed. Motion Carried.

240
241 **c. David Kidd, D.C.**

242
243 Present. Not represented by counsel. In attendance with Dr. Kidd was his monitor, Dr. Brett
244 Weinstein. Dr. Kidd was advised by prior final order to appear before the board to determine
245 approval of his monitor of choice.

246
247 **Action:** Motion to approve Dr. Weinstein as a monitor made by Dr. Fogarty. Second made
248 by Dr. Hunt.

249
250 **Vote:** 6 yeas/0 opposed. Motion Carried.

251
252 **VIII. RATIFICATIONS:**

253
254 **a. Licensure**

255
256 **i. Chiropractic Physician**

257
258 **Action:** Motion to ratify the approval of licensees made by Dr. Hunt. Second made by Dr.
259 Heagy.

260
261 **Vote:** 6 yeas/0 opposed. Motion Carried.

262
263 **ii. Registered Chiropractic Assistant**

264 **Action:** Motion to ratify the approval of licensees made by Dr. Hunt. Second made by Dr.
265 Heagy.

266
267 **Vote:** 6 yeas/0 opposed. Motion Carried.

268
269 **iii. Certified Chiropractic Physician Assistant**

270
271 **Action:** Motion to ratify the approval of licensees made by Dr. Heagy. Second made by
272 Dr. Hunt.

273
274 **Vote:** 6 yeas/0 opposed. Motion Carried.

275
276 **b. Continuing Education**

277
278 **i. CE Providers and Courses approved by CE Committee Chairs**

279
280 **Action:** Motion to ratify the approval of continuing education courses made by Dr. Heagy.
281 Second made by Dr. Hunt.

282
283 **Vote:** 6 yeas/0 opposed. Motion Carried.

284
285 **Section VII and VIII ended: 11:50 a.m.**
286 **Break 11:50 a.m. to 12:09 p.m.**
287 **Section XI addressed out of order at 12:09 p.m.**
288 **Section IX began: 1:03 p.m.**

289
290 **IX. UNLICENSED ACTIVITY BRIEFING**

291
292 Department Liaison for Unlicensed Activity, Mr. Sidronio Casas informed the audience of
293 the statistics of unlicensed activity followed by a PowerPoint presentation.

294
295 **Section IX ended: 1:18 p.m.**
296 **Section X began: 1:18 p.m.**

297
298 **X. CHAIR/VICE-CHAIR REPORT:**

299
300 None

301
302 **Section X ended: 1:18 p.m.**
303 **Section XI began: 12:09 p.m.**

304
305 **XI. EXECUTIVE DIRECTOR'S REPORT:**

306
307 **a. PACE (Providers of Approved Continuing Education)**

308

309 Executive Director of the Federation of Chiropractic Licensing Boards, Dr. Jon
310 Schwartzbauer presented information about the continuing education resources, audits,
311 tracking and reviews provided by PACE. Dr. Schwartzbauer explained that the purpose of
312 their services is to prevent the board members and board staff from carrying the extra
313 workload of reviewing continuing education for approval and allow professionals in the
314 field to make determination. Mr. Harris explained that the board would need to determine
315 that PACE is compliant with Florida Statutes and form an understanding of their criteria
316 and standards for approval. Mr. Harris also explained that it would create a reduction in the
317 amount of courses submitted for Florida approval. Dr. Fogarty requested that only online
318 courses (10 hours) be reviewed by PACE. Mr. Harris advised that by law, the board
319 requires oversight of continuing education. Dr. Heagy presented a rubric for the approval of
320 continuing education.

321

322 Proposed rubric for CE committee:

- 323 • Submitted 60 days in advance
- 324 • Submit an application and fee for being a provider for two years
- 325 • Has a chiropractic school sponsor
- 326 • Hour-by-hour syllabus: academic rigor, scope, relevance (64B2-13.004(5)(c)2)
- 327 • CV for the instructor: do they have additional education that qualifies them for
328 teaching post graduate level courses?
- 329 • How will attendance and student identity be verified? Must include photo ID or
330 equivalent.
- 331 • Additionally, for online courses:
 - 332 ○ challenge questions submitted for hourly attendance verification and for post
333 test
 - 334 ○ online credentials for committee members to view course material
 - 335 ○ are instructors available for response to questions in a timely way?
 - 336 ○ Must explain the level of technology required to participate in their course and
337 have technical assistance available if necessary

338

339 **Action:** Motion to move forward with incorporating discussion at the next meeting related
340 to proposed rule change made by Dr. Hunt. Second made by Dr. Heagy.

341

342 **Vote:** 6 yeas/0 opposed. Motion Carried.

343

344 **b. Annual Delegation of Authority**

345

346 **Action:** Motion to approve the annual delegation of authority made by Dr. Heagy. Second
347 made by Dr. Hunt.

348

349 **Vote:** 6 yeas/0 opposed. Motion Carried.

350

351 **c. Spotlight on ULA**

352

353 Dr. Spivey advised of the quarterly publications made by the department to combat

354 unlicensed activity.

355

356 **d. Unlicensed Activity Briefing (Chilo Casas)**

357

358 Department Liaison for Unlicensed Activity, Mr. Sidronio Casas informed the audience of
359 the statistics of unlicensed activity followed by a PowerPoint presentation.

360

361 **e. Workgroup Controlled Substances (Means)**

362

363 Dr. Spivey presented a report received by Mr. Means from the controlled substance and
364 opioid workgroup meeting held in November 2017.

365

366 **f. Health History Questions**

367

368 Dr. Spivey explained that the department determined that some of the health history
369 questions appear to be too invasive and will be replaced with additional questions to allow
370 applicants to answer accurately. In addition, Dr. Spivey advised that the applications
371 request completion of 2 hours of medical errors which is no longer required for licensure
372 and should be removed.

373

374 **Action:** Motion to remove the 2 hour medical errors requirement from the application and
375 allow Mr. Harris to revise the licensure applications by creating a notice of rule change
376 made by Dr. Heagy. Second made by Dr. Hunt.

377

378 **Vote:** 6 yeas/0 opposed. Motion Carried.

379

380 Dr. Spivey advised that he does not foresee any board appointments in the near future due
381 to transitioning to a new governor.

382

383 **g. Region V FCLB meeting**

384

385 **Action:** Motion to approve Dr. Spivey and two board members to attend the FCLB meeting
386 in May 2019 made by Dr. Fogarty. Second made by Dr. Hunt.

387

388 **Vote:** 6 yeas/0 opposed. Motion Carried.

389

390 Dr. Spivey provided information of the upcoming annual meeting and advised that the
391 meeting will be more interactive for Chairs and Vice Chair participation.

392

393 **h. Florida Laws & Rules Exam**

394

395 Dr. Heagy advised that Dr. Michael Schreeve and Dr. Kenneth Dougherty will be assisting
396 her in the creation of new questions.

397

398 **Action:** Motion to approve the increase of the number of questions in the Laws & Rules
399 examination made by Dr. Hunt. Second made by Dr. Weingarten.

400
401 **Vote:** 6 yeas/0 opposed. Motion Carried.

402
403 **Section XI ended: 1:03 p.m.**
404 **Section XII began: 1:31 p.m.**

405
406 **XII. BOARD COUNSEL'S REPORT:**

- 407
408 **a. September Rules Report**
409 **b. October Rules Report**
410 **c. Consideration of Fee Reduction Rule Language**

411 Mr. Harris presented drafted language related to a onetime renewal fee reduction of \$100.
412 Mr. Harris advised that under Chapter 456, Florida Statutes states that an inactive and
413 delinquency status fees may be set by rule of the board, but cannot exceed the active status
414 fee. In addition, if the board decided to reduce the active status fee, it would require
415 reduction of the inactive and delinquency status fee.

416 **Action:** Motion to approve drafted language for Rule Chapter 64B2-12.005 and 64B2-
417 12.008 made by Dr. Heagy. Second made by Dr. Hunt

418 **Vote:** 6 yeas/0 opposed. Motion Carried.

419 Mr. Harris asked whether the proposed rules would have adverse impacts on small business
420 and whether regulatory costs would exceed two hundred thousand dollars within one year of
421 implementation. The board agreed there would be no adverse impact or increase of costs.

422
423 Mr. Harris asked whether the proposed rules would have adverse impacts on small business
424 and whether regulatory costs would exceed one million dollars within five years of
425 implementation. The board agreed there would be no adverse impact or increase of costs.

426
427 Mr. Harris asked whether the proposed rules would be subject to a minor violation. Minor
428 violation means that it will not directly affect the public health, safety, or welfare and is able
429 to be resolved with citation or notice of non-compliance. The board agreed there would be
430 no minor violations.

431
432 **Vote:** 6 yeas/0 opposed. Motion Carried.

433 **d. Proposed Rule 64B2-18.002**

434 Mr. Harris advised that Rule 64B2-18.002 needs discussion and presented drafted language
435 to be placed on the Certified Chiropractic Assistant application. The new language would

436 incorporate a sworn statement relating to felony convictions and revocation or denial of a
437 license follow by a notarized signature.

438 **Action:** Motion to authorize a notice of change to be in compliance with the statutory
439 requirements for CCPA applications made by Dr. Weingarten. Second made by Dr. Hunt.

440 **Vote:** 6 yeas/0 opposed. Motion Carried.

441 Mr. Harris asked whether the proposed rules would have adverse impacts on small business
442 and whether regulatory costs would exceed two hundred thousand dollars within one year of
443 implementation. The board agreed there would be no adverse impact or increase of costs.
444

445 Mr. Harris asked whether the proposed rules would have adverse impacts on small business
446 and whether regulatory costs would exceed one million dollars within five years of
447 implementation. The board agreed there would be no adverse impact or increase of costs.
448

449 Mr. Harris asked whether the proposed rules would be subject to a minor violation. Minor
450 violation means that it will not directly affect the public health, safety, or welfare and is able
451 to be resolved with citation or notice of non-compliance. The board agreed there would be
452 no minor violations.
453

454 **Section XII ended: 1:43 p.m.**

455 **Section XIII began: 1:43 p.m.**

456

457 **XIII. COMMITTEE REPORTS**

458

459 **a. Budget – Mr. Colter**

460

461 Nothing to report

462

463 **b. CCPA – Dr. Hunt**

464

465 Dr. Hunt reported that everything is going smoothly.

466

467 **c. Continuing Education – Drs. Heagy/Weingarten**

468

469 Nothing to report

470

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

472

473 Dr. Fogarty reported that everything is going well.

474

475 **e. Examination – Dr. Heagy**

476

477 Addressed earlier in agenda

478 **f. Legislation – Dr. Heagy/Mr. Colter**

479
480 Nothing to report

481
482 **g. Probable Cause – Drs. Weingarten/Fox**

483
484 Nothing to report

485
486 **h. Rules – Dr. Weingarten**

487
488 Nothing to report

489
490 **i. Unlicensed Activity – Mr. Licata**

491
492 Nothing to report

493
494 **j. Outstanding Service Award – Dr. Fox**

495 Nothing to report

496
497 **Section XIII ended: 1:45 p.m.**

498 **Section XIV began: 1:45 p.m.**

499
500 **XIV. OLD BUSINESS:**

501
502 None

503
504 **Section XIV ended: 1:45 p.m.**

505 **Section XV began: 1:45 p.m.**

506
507 **XV. NEW BUSINESS:**

508
509 Dr. Heagy asked whether PRP injections were within the scope of chiropractic medicine. Dr.
510 Fogarty advised that it is within the scope of an ARNP.

511
512 **Section XV ended: 1:45 p.m.**

513 **Section XVI began: 1:46 p.m.**

514
515 **XVI. NEXT MEETING DATE**

516
517 January 25, 2019

518
519 **Section XVI ended: 1:46 p.m.**

520 **Section XVII began: 1:46 p.m.**

521
522 **XVII. PUBLIC COMMENT**

523 None

524

525 **Section XVII ended: 1:46 p.m.**

526 **Section XVIII began: 1:46 p.m.**

527

528 **XVIII. ELECTION OF OFFICERS**

529

530 **Action:** Motion to nominate Dr. Heagy as board Chair made by Dr. Fogarty. Second made
531 by Dr. Hunt.

532

533 **Action:** Motion to nominate Dr. Hunt as board Vice-Chair made by Dr. Heagy. Second
534 made by Dr. Weingarten.

535

536 **Section XVIII ended: 1:48 p.m.**

537 **Section XIX began: 1:48 p.m.**

538

539 **XIX. ADJOURNMENT:**

540

541 Motion to adjourn at 1:48 p.m. made by Dr. Heagy/ Second made by Dr. Weingarten.

542

543

544

545

