FLORIDA Board of Chiropractic Medicine

OFFICIAL MINUTES
April 26, 2019

Rosen Plaza
9700 International Drive
Orlando, Florida 32819

Danita Heagy, D.C., Chair
Julie Hunt, D.C., Vice-Chair
Anthony Spivey, DBA, Executive Director
The Florida Board of Chiropractic Medicine held a meeting on Friday, April 26, 2019, commencing at 8:30 a.m. This meeting was held at the Rosen Plaza, 9700 International Drive, Orlando, Florida 32819, (407) 996-1931, 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 at 8:30 a.m.

I. CALL TO ORDER (Roll Call):

Danita Heagy, D.C., Chair
Julie Hunt, D.C., Vice Chair
Christopher Fox, D.C., ATC(L)
Kevin Fogarty, D.C., F.I.C.A.
Mindy Weingarten, D.C.
Paul Licata

Board Staff Present:

Anthony Spivey, DBA, Executive Director
Gail Curry, Program Operations Administrator
Kelly Woodard, Regulatory Supervisor

Board Counsel:

Marlene Stern, Assistant Attorney General

Prosecution Services

Chad Dunn, Assistant General Counsel
Kimberly Marshall, Assistant General Counsel
Rose Garrison, Assistant General Counsel
John Wilson, Assistant General Counsel

Court Reporter:

American Court Reporting
407-896-1813

Section I ended at 8:31 a.m.
Section II began at 8:31 a.m.
II. APPROVAL OF MINUTES:

a. February 26, 2019

Action: Motion to approve the minutes made by Dr. Fogarty. Second made by Mr. Licata.

Vote: 6 yeas/0 opposed. Motion Carried.

b. January 25, 2019

Dr. Heagy requested correction to page 14, Line 527 (fake earth to fake birth tissues); page 15, Line 587 to define EEDS; and Line 591 (From CCE to CE speaker).

Action: Motion to approve the minutes with corrections made by Dr. Fogarty. Second made by Dr. Fox.

Vote: 6 yeas/0 opposed. Motion Carried.

Ms. Stern explained the disciplinary process to the audience.

Section II ended at 8:35 a.m.

Section III began at 8:35 a.m.

III. FINAL ORDER ACTION:

a. SETTLEMENT AGREEMENTS:

i. Douglas Swinson, II., D.C. Case No: 2017-17429

Present. Represented by counsel, Albert Myer, Esq.

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

Action: Motion to reject the settlement agreement made by Dr. Fogarty. Second made by Dr. Fox.

Vote: 4 yeas/1 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to require Letter of concern; $1,000 fine and administrative costs to be paid within two years; 6 hours of Record Keeping and 3 hours Risk Management continuing education; and keep the remaining terms of the settlement agreements made by Fogarty. Second made by Fox.

Vote: 4 yeas/1 opposed. Motion Carried. Dr. Weingarten recused.
The Respondent accepted the revised settlement agreement.

**ii. Nathalie Blum, D.C. Case No.: 2017-15058**

Present. Represented by counsel, Kevin Mercer, Esq.

Assistant General Counsel, Chad Dunn presented the facts related to the case as well as the proposed settlement agreement.

**Action:** Motion to reject settlement agreement made by Mr. Licata. Second made by Dr. Fogarty

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

**Action:** Motion to remove suspension; require the licensee to complete the EBAS (Ethics and Boundaries Assessment Services) test; and keep the remaining terms of the settlement agreement made by Dr. Fox. Second made by Dr. Fogarty.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

The Respondent accepted the revised settlement agreement.

**iii. Kyle Studley, D.C., Case No.: 2017-13717**

Present. Represented by counsel Fred Kahle, Esq.

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

**Action:** Motion to accept the settlement agreement made by Dr. Fogarty. Second made by Dr. Fox.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused

**iv. Jason Robbins, D.C., Case No.: 2017-12904**

Present. Represented by Zachary Trapp, Esq.

Assistant General Counsel, Kimberly Marshall presented the facts related to the case as well as the proposed settlement agreement.

**Action:** Motion to reject the settlement agreement made by Dr. Fogarty. Second made by Dr. Fox

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.
**Action:** Motion to require appearance before the board; letter of concern; 3 hours of Risk Management, 6 hours of Record Keeping, 3 hours of Risk Management and 5 hours of Acupuncture continuing education (in addition to what is required for renewal); Administrative costs of $2,000 to be paid within 180 days; and a fine of $2,500 to be paid within 3 years made by Dr. Fogarty. Second made by Mr. Licata.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused

The Respondent accepted the revised settlement agreement.

**b. HEARING NO DISPUTED MATERIAL FACTS**

**i. Sham Mohammed, D.C. Case No.: 2016-07314**

Present. Not represented by counsel.

Kimberly Marshall presented the facts related to the case as well as the department’s recommendation.

**Action:** Motion to find that respondent was properly served and has requested an informal hearing made by Dr. Fogarty. Second made by Dr. Fox.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused

**Action:** Motion to adopt findings of fact as set forth within the administrative complaint made by Dr. Fogarty. Second made by Dr. Fox.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused

**Action:** Motion to adopt materials and any addendum materials into evidence for the proceeding made by Dr. Hunt. Second made by Dr. Fogarty.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused

**Action:** Motion to adopt conclusions of law set forth in the administrative complaint and find that it constitutes a violation of the board’s practice act made by Dr. Hunt. Second made by Dr. Fogarty.

**Vote:** 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused

**Action:** Motion to require letter of concern; $1,000 fine to be paid within one year; 5 hours of Record Keeping continuing education within one year; Laws/Rules exam within 6 months; Administrative Costs of $945.09; Probation by indirect supervision for 2 years beginning with regular monitoring and moving toward quarterly monitoring; reappearance before the board after 2 years made by Dr. Fogarty. Second made by Dr. Fox.
Vote: 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

c. DETERMINATION OF WAIVER

i. Rosa Pfaff, CCPA Case No.: 2017-19545

Not present, nor represented by counsel.

Kimberly Marshall presented the facts related to the case as well as the department’s recommendation.

Action: Motion to find that respondent was properly served and has waived the right to a formal hearing made by Dr. Hunt. Second made by Dr. Fox.

Vote: 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to accept the investigation into evidence for the purposes of imposing penalty made by Dr. Hunt. Second made by Dr. Fogarty.

Vote: 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to adopt findings of fact as set forth within the administrative complaint made by Dr. Fox. Second made by Dr. Hunt.

Vote: 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to adopt conclusions of law set forth in the administrative complaint and find that it constitutes a violation of the board’s practice act made by Mr. Licata. Second made by Dr. Hunt

Vote: 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Upon further investigation, it was determined that Ms. Pfaff had come into compliance With beginning to pay her student loan obligation.

Action: Motion to accept the recommended penalty made by Dr. Fogarty. Second made by Dr. Fox.

Vote: 5 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Break 9:45 to 10:05 a.m.

d. RECOMMENDED ORDERS

i. Enrique Rodriguez, D.C. Case No.: 2016-18518
Present. Was represented by counsel, but counsel not present due to conflict.

Kimberly Marshall presented facts as well as the department’s recommendation.

**Department’s Exception 1:** Paragraph 41 of the conclusion of law to eliminate the sentence “respondent also believed patient DH invited his misconduct. Although not in defense this provides slight mitigation”.

**Action:** Motion to accept the department’s exception made by Dr. Fogarty. Second made by Weingarten.

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

**Exception 1 Action:** Motion to deny the exception made by Dr. Fogarty. Second made by Dr. Fox.

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

Department prosecutors requested rejection to all 12 of respondent’s exceptions

**Exception 2 Action:** Motion to deny the exception made by Dr. Weingarten. Second made by Dr. Fogarty.

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

**Action:** Motion to amend motion on Exception 1-2 by adding basis of denial made by Dr. Fogarty. Second by Dr. Hunt.

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

**Exception 3 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Fogarty. Second made by Dr. Hunt.

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

**Exception 4 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Fogarty. Second made by Dr. Weingarten.

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

**Exception 5 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Fogarty. Second made by Mr. Licata.

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

**Exception 6 Action:** Motion to deny the exception on the basis there is competent
substantial evidence in the record made by Dr. Weingarten. Second made by Dr. Hunt.

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

**Exception 7 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Weingarten. Second made by Dr. Fox.

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

**Exception 8 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Weingarten. Second made by Mr. Licata.

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

**Exception 9 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Fogarty. Second made by Dr. Fox.

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

**Exception 10 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Weingarten. Second made by Dr. Hunt.

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

**Exception 11 Action:** Motion to deny the exception on the basis there is competent substantial evidence in the record made by Dr. Fogarty. Second made by Dr. Hunt.

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

**Exception 12 Action:** Motion to deny the exception on the basis that the ALJ’s conclusion is more reasonable than that proposed by respondent made by Dr. Weingarten. Second made by Dr. Fogarty.

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

**Action:** Motion to accept findings of facts and find they are supported by substantial evidence made by Dr. Fox. Second made by Dr. Weingarten.

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

**Action:** Motion to accept conclusions of law as amended based on the departments recommendation made by Dr. Hunt. Second made by Mr. Licata.

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

**Action:** Motion to accept Administrative Law Judge’s (ALJ) recommended order made
by Dr. Weingarten. Second made by Hunt.

Vote: 6 yeas/0 opposed. Motion Carried.

Action: Motion to assess costs in the amount of $45,990.28 made by Dr. Fogarty. Second made by Dr. Hunt.

Vote: 6 yeas/0 opposed. Motion Carried.

Section III ended at 11:08 a.m.
Section IV began 11:08 a.m.

IV. PROSECUTION REPORT:

i. Prosecution Report

Assistant General Counsel, Mr. Wilson introduced Chad Dunn presented the statistics regarding prosecution cases currently open in the department.

Cases older than 1 year continued for prosecution: 45

Action: Motion to continue prosecution on cases older than one year made by Dr. Fogarty. Second made by Dr. Weingarten.

Vote: 6 yeas/0 opposed. Motion Carried.

Section IV ended at 11:12 a.m.
Break 11:12 to 11:25 a.m.
Section XV taken out of order at 11:25 a.m.
Section V began at: 12:05 p.m.

V. PETITION WITH APPLICATION

i. Fatemeh Meymand, D.C.

Present. Not represented by counsel.

Action: Motion to grant petition made by Fogarty. Second made by Fox.

Vote: 6 yeas/0 opposed. Motion Carried.

Section V ended at 12:12 p.m.
Section VI began at 12:12 p.m.

VI. EXTENSION ON CE CREDITS
i. Michael Nathanson D.C.

Not Present, nor represented by counsel.

**Action:** Motion to extend ability to obtain CE until March 2020 made by Dr. Weingarten. Second made by Dr. Hunt

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

Section VI ended at 12:15 p.m.
Section VII began: 12:15 p.m.

VII. REQUEST FOR RE-ACTIVATION

i. Barbara Woo, D.C.

Present. Not represented by counsel

**Action:** Motion to approve the reactivation made by

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

Section VII ended at 12:18 p.m.
Section VIII began at 12:18 p.m.

VIII. APPLICATIONS PRESENTED FOR BOARD REVIEW:

a. Jonathan Spages, D.C.

Present. Not represented by counsel

**Action:** Motion to approve the application made by Dr. Weingarten. Second by Dr. Hunt.

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

b. David J. Taylor, D.C.

Present. Not represented by counsel.

**Action:** Motion to approve contingent upon submitting proof that he has an active license in North Carolina within 60 days made by Dr. Weingarten. Second made by Mr. Licata.

**Vote:** 6 yeas/0 opposed. Motion Carried.
c. Michael A. Tolisano, D.C.

Not Present, nor represented by counsel.

**Action:** Application Tabled. Motion to require appearance at one of the next two board meetings made by Dr. Hunt. Second made by Dr. Weingarten

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

d. Kelly Branner, RCA

Not present, nor represented by counsel.

**Action:** Motion to approve the application made by Dr. Fogarty. Second made by Dr. Fox.

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

Section VIII ended at 12:46 p.m.
Section IX began at 12:46 p.m.

IX. RATIFICATIONS:

a. Licensure

i. Chiropractic Physician

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

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

ii. Registered Chiropractic Assistant

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

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

iii. Certified Chiropractic Physician Assistant

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

**Vote:** 6 yeas/0 opposed. Motion Carried.
b. **Continuing Education**

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

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

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

ii. **Continuing Education Committee’s Recommendation**

**Parker University**

*Action:* Motion to approve the course made by Dr. Fogarty. Second made by Dr. Weingarten.

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

Section IX ended at 12:49 p.m.

Section X began at 12:49 p.m.

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

None

Section X ended at 12:49 p.m.

Section XI began at 12:49 p.m.

XI. **EXECUTIVE DIRECTOR’S REPORT:**

a. **Confidential and Exempt from Public Records Disclosure**

Dr. Spivey explained that the department determined that some of the health history questions appear to be too invasive and most boards are replacing the history questions with alternate questions to allow applicants to answer accurately. Dr. Spivey encouraged the board to follow suit.

The board expressed that they were not in favor of the change and that it would affect patient safety.

Motion to reject the new health history questions made by Dr. Fogarty. Second made by Dr. Fox

Dr. Spivey announced that the Chair/Vice Chair Meeting moved to Fall 2019 and that he will notify the board once it has been scheduled.
XII. BOARD COUNSEL’S REPORT:

a. March Rules Report
b. JAPC letter dated March 25, 2019
c. JAPC letter dated April 8, 2019
d. Proposed Rule 64B2-13.004

Ms. Stern presented Rules report and advised that Florida Administrative Code (FAC) Rules 64B2-12.005 and 64B2-12.018 have become effective.

Ms. Stern addressed issues concerning Rule 64B2-13.004 and explained that the Joint Administrative Procedure Committee (JAPC) objects to the change. She further explained that the board cannot delegate authority to the Providers of Approved Continuing Education (PACE) to approve courses. Dr. Heagy advised Ms. Stern to meet with the Rules committee (Dr. Weingarten) to review PACE’s proposed language and/or revise language.

Section XII ended at 12:58 p.m.
Section XIII began at 12:58 p.m.

XIII. COMMITTEE REPORTS

a. Budget – Mr. Licata

Nothing to report

b. CCPA – Dr. Hunt

Dr. Hunt reported everything is going well.

c. Continuing Education – Drs. Heagy/Weingarten

Nothing to report

d. Disciplinary Compliance – Dr. Fogarty

Dr. Fogarty reported everything is going well. Dr. Fogarty advised the Chair that he usually reminds monitors to review patient records, billing practices and coding. He expressed concerns to maintain the procedure upon his departure for the board.

e. Examination – Dr. Fox
Dr. Fox reported Palmer’s participation in the Part IV exam in May 2019.

f. Legislation – Dr. Heagy

Dr. Heagy reported that we are currently in legislative session and there are a number of bills the department has been following.

g. Probable Cause – Drs. Weingarten/Fox

Nothing to report

h. Rules – Dr. Weingarten

Nothing to report

i. Unlicensed Activity – Mr. Licata

Nothing to report

j. Outstanding Service Award – Dr. Fox

Dr. Fox reported that the 2018 recipient should hopefully be named by the next meeting. Dr. Fox explained how the selection process works.

Section XIII ended at 1:05 p.m.
Section XIV began at 1:05 p.m.

XIV. OLD BUSINESS:

Dr. Heagy referred to section XV. of the January 2019 meeting minutes to address Dr. Weingarten’s statement.

Section XIV ended at
Section XV taken out of order at 11:25 a.m.

XV. NEW BUSINESS

Dr Spivey presented 2020 board meeting dates.

Action: Motion to approve proposed meeting dates made by Dr. Hunt. Second made by Weingarten

Vote: 6 yeas/0 opposed. Motion Carried.
Osteopathic Physician, James Liebert gave a PowerPoint presentation related to stem cell regulations, research, marketing, and public safety.

Section XV ended at 12:05 p.m.
Referred back to Section V. at 12:05 p.m.
Section XVI began at 1:10 p.m.

XVI. NEXT MEETING DATE:

April 26, 2019

Section XVI ended at 1:11 p.m.
Section XVII began at 1:11 p.m.

XVII. PUBLIC COMMENT

Albert Warner, D.C.

Dr. Warner was seeking a timeline of when the board would decide to allow online courses.

Todd Ciello, D.C.

Dr. Ciello expressed his concern over freedom of choice as it relates to how continuing education may be completed.

Eddie Martinez, D.C.

Dr. Martinez asked for clarification by the board regarding the approval of online courses that were previously approved; and asked if continuing education submissions have to go through the college or if it may be reported by the provider itself. Dr. Fogarty advised that the provider should follow the contract between themselves and the sponsoring college.

Section XVII ended at 1:25 p.m.
Section XVIII began at 1:25 p.m.

XVIII. ADJOURNMENT:

Motion to adjourn meeting at 1:25 p.m. made by Dr. Fogarty. Second made by Dr. Weingarten.