FLORIDA | Board of Chiropractic Medicine

OFFICIAL MINUTES
June 28, 2019

Omni Orlando
1500 Masters Boulevard
Championsgate, Florida 33896

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, June 28, 2019, commencing at 8:30 a.m. This meeting was held at the Omni Orlando, 1500 Masters Boulevard, Championsgate, Florida 33896, (407) 390-6664, 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

Meeting delayed from 8:30 to 9:10 a.m.
Section I began: 9:10 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 (Absence excused)

Board Staff Present:

Anthony Spivey, DBA, Executive Director
Kelly Woodard, Regulatory Supervisor
Carla Raby, Regulatory Supervisor

Board Counsel:

Marlene Stern, Assistant Attorney General
Lawrence Harris, Assistant Attorney General

Prosecution Services

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

Court Reporter:

American Court Reporting
407-896-1813

Section I ended: 9:13 a.m.
Section II began: 9:13 a.m.
II. APPROVAL OF MINUTES:

a. April 26, 2019

Dr. Fogarty requested correction to Line 531 from “maintenance” to “to maintain the.”

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

Vote: 5 yeas/0 opposed. Motion Carried.

Section II ended: 9:14 a.m.
Section III began: 9:14 a.m.

III. FINAL ORDER ACTION:

a. SETTLEMENT AGREEMENTS:

   i. Matthew N. Parris, D.C. Case No: 2017-23007

Present. Represented by counsel, Dan Bachi, Esq. Chad Dunn presented case details and proposed settlement agreement.

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

Vote: 4 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to issue letter of guidance made by Dr. Fogarty. Second made by Dr. Fox.

Vote: 4 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to withdraw previous motion made by Dr. Fogarty. Second made by Dr. Fox.

Vote: 4 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

Action: Motion to dismiss the case made by Dr. Fox. Second made by Dr. Fogarty.

Vote: 4 yeas/0 opposed. Motion Carried. Dr. Weingarten recused.

   ii. Craig S. Aderholdt, D.C. Case No.: 2016-09336

   iii. Craig S. Aderholdt, D.C., Case No.: 2016-25789

Present. Represented by counsel, Kenneth Scaz, Esq. John Wilson presented case details and a proposed settlement agreement.
Refer to Subsection (c. Recommended Order). The Board’s proposal was to resolve the 2016 cases with no additional penalty and that each party would bear its own fees and costs for both 2016 and 2014 cases.

**Action:** Motion to reject settlement agreement and offer counter settlement made by Dr. Fox. Second made by Dr. Hunt.

**Vote:** 3 yeas/1 opposed. Motion Carried. Dr. Weingarten recused.

**iv. Jonathan F. Berns, D.C., Case No.: 2015-23138**

Present. Represented by Edwin Bayo, Esq. Chad Dunn presented case details and proposed settlement agreement.

**Action:** Motion to accept settlement agreement made by Dr. Weingarten.

**Vote:** 0 yeas/0 opposed. Motion Failed.

**Action:** Motion to reject settlement agreement and impose the penalty of a reprimand, $8,000 fine to be paid within one year; 50 hours of community service within one year; passage of the NCBE ethics and boundaries exam within one year; PRN (Professional Resource Network) evaluation and comply with recommendations made by Dr. Fogarty. Second made by Dr. Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.

**Break 11:08 – 11:28 a.m.**

**b. DETERMINATION OF WAIVER**

**i. Leonie Dareus, RCA Case No.: 2017-14908**

Not present, nor represented by counsel. Rose Garrison presented case details and recommended penalty.

**Action:** Motion to find that respondent was properly served and has waived the right to an informal hearing made by Dr. Fogarty. Second made by Dr. Hunt

**Vote:** 5 yeas/0 opposed. Motion Carried.

**Action:** Motion to accept the investigative report and all exhibits into evidence for the purposes of imposing penalty made by Dr. Fogarty. Second made by Dr. Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.
Action: Motion to adopt the findings of fact as set forth in the administrative complaint made by Dr. Hunt. Second made by Dr. Fogarty.

Vote: 5 yeas/0 opposed. Motion Carried.

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.

Action: Motion to impose penalty of placing license on probation until student loan is paid in full; fine of $802.20; and administrative costs of $532.12 (not including legal costs) made by Dr. Hunt. Second made by Dr. Fogarty.

Vote: 5 yeas/0 opposed. Motion Carried.

c. RECOMMENDED ORDERS

i. Craig S. Aderholdt, D.C.  Case No.: 2014-02800

ii. Craig S. Aderholdt, D.C.  Case No.: 2014-04393

iii. Craig S. Aderholdt, D.C.  Case No.: 2014-04395

iv. Craig S. Aderholdt, D.C.  Case No. 2014-05653


Action: Motion to accept the judge’s recommended order made by Dr. Fogarty. Second made by Dr. Weingarten.

Vote: 5 yeas/0 opposed. Motion Carried.

Action: Motion to adopt the administrative law judge’s (ALJ) findings of fact and conclusions of law as found in the recommended order made by Dr. Heagy. Second made by Dr. Weingarten.

Vote: 5 yeas/0 opposed. Motion Carried.

Action: Motion to adopt the ALJ’s proposed penalty and discuss; and set appropriate conditions of probation and continuing education requirements made by Dr. Fogarty. Second made by Dr. Weingarten.

Vote: 5 yeas/0 opposed. Motion Carried.

Action: Motion to impose penalty of a fine of $3,000 to be paid within 30 days of final order; 20 hours of continuing education (in addition to required CE for renewal) within one year of final
order; place the license on probation for three years following final order; 10% of patient records
must be monitored by an approved monitor every other month and if accurate, move to quarterly
monitoring; required appearance at the end of the probationary period made by Dr. Fogarty.
Second made by Dr. Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.

**Action:** Motion to bifurcate administrative costs made by Dr. Hunt. Second made by Dr.
Fogarty.

**Vote:** 5 yeas/0 opposed. Motion Carried.

**Section III ended:** 11:31 a.m.
**Section IV began:** 11:31 a.m.

IV. **PROSECUTION REPORT:**

i. **Prosecution Report**

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

Cases older than 1 year continued for prosecution: 85

**Action:** Motion to continue prosecution on cases older than one year made by Dr. Fox. Second
made by Dr. Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.

**Section IV ended:** 11:33 a.m.
**Section V began:** 11:33 a.m.

V. **APPLICATIONS PRESENTED FOR BOARD REVIEW:**

a. Wanda Perez, RCA

Present. Not represented by counsel.

**Action:** Motion to approve the application for licensure made by Dr. Fox. Second made by Dr.
Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.

b. Michael T. Sherman, D.C.
Present with counsel, Edwin Bayo, Esq. Mr. Bayo requested that Dr. Sherman receive credit for his first-year attendance in which the board permitted.

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

**Vote:** 5 yeas/0 opposed. Motion Carried.

c. Kirt W. Repp, D.C.

Present. Not represented by counsel.

**Action:** Motion to approve the application for licensure made by Dr. Fox. Second made by Dr. Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.

d. Mikkel Bahamondes, D.C.

Present. Not represented by counsel, but by PRN (Professional Resource Network) representative, Dr. Martha Brown.

**Action:** Dr. Bahamondes was given the option to withdraw his application. Withdrawal was accepted.

**Vote:** 5 yeas/0 opposed. Motion Carried.

e. John K. Lenihan, D.C.

Present with counsel, Edwin Bayo, Esq.

**Action:** Motion to approve the application for licensure contingent upon passing Florida Laws/Rules, Physiotherapy, and Part IV of the NBCE examination (National Board of Chiropractic Examiners) within one year made by Dr. Heagy. Second made by Dr. Weingarten.

**Vote:** 5 yeas/0 opposed. Motion Carried.

Section V ended: 12:08 p.m.
Break 12:08 p.m. – 1:26 p.m.
Section VI began: 1:30 p.m.

VI. PETITION FOR RULE AMENDMENT

i. Rule Amendment (64B2-13.004)
Dr. Fogarty recused himself from discussion.

Dr. Albert R. Warner presented his petition to initiate rulemaking. Dr. Warner asked the board to remove language from the rule which would allow doctors to have a choice of completing the 40-hour requirements online.

Fellow colleagues and those in favor of the petition provided commentary.

**Steven Warfield, DC** – Dr. Warfield provided information of course experiences he has encountered.

**Michael Kenemuth, DC** – Dr. Kenemuth expressed that physicians should have a choice and provided examples of course experiences that he has encountered.

**Rick Hodish, DC** – Dr. Hodish asked that the board consider the request and expressed the advantages and disadvantages of online courses.

**Ron Watson, Lobbyist for Florida Chiropractic Physician Association** – Mr. Watson discussed statutory authority and legislation.

**Kim Driggers, Counsel for Florida Chiropractic Association** – Ms. Driggers advised that the FCA was opposed to the petition and requested for the board to deny the petition. Ms. Driggers provided research results and statistics.

Dr. Weingarten expressed that the board would not be in favor of the revision due to the fact that providers continue to have difficulty complying with the requirements of the 10 hours that are currently allowed online.

**Action:** Motion to deny the petition made by Dr. Weingarten. Second made by Dr. Hunt.

**Vote:** 5 yeas/0 opposed. Motion Carried.

**Section VI ended:** 2:17 p.m.

**Section VII began:** 2:17 p.m.

**VII. RATIFICATIONS:**

a. **Licensure**

   i. **Chiropractic Physician**

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

**Vote:** 5 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. Weingarten.

**Vote:** 5 yeas/0 opposed. Motion Carried.

iii. **Certified Chiropractic Physician Assistant**

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

**Vote:** 5 yeas/0 opposed. Motion Carried.

b. **Continuing Education**

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

**Action:** Motion to approve the ratification of providers and courses made by Dr. Weingarten. Second made by Dr. Fox.

**Vote:** 5 yeas/0 opposed. Motion Carried.

Section VII ended: 2:19 p.m.
Section VIII began: 2:19 p.m.

VIII. **CONTINUING EDUCATION**

i. **Course #20-667680 Southern Chiropractic Conference hosted by TCA**

**Action:** Motion to deny the approval of the course made by Dr. Weingarten. Second made by Dr. Fox.

**Vote:** 5 yeas/0 opposed. Motion Carried.

Section VIII ended: 2:20 p.m.
Section IX began: 2:20 p.m.

IX. **PUBLIC DISCLOSURE NOTICE**

i. **Public Disclosure Notice**

Dr. Heagy advised that the disclosure was for informational purposes.

Section IX ended: 2:21 p.m.
Section X began: 2:21 p.m.

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

i. **Highlights from the Federation of Chiropractic Licensing Board**

Dr. Heagy advised that the highlights were for informational purposes. Dr. Heagy directed the board to a slide that could be found on the FCLB (Federation of Chiropractic Licensing Board) website.

Section X ended: 2:21 p.m.

Section XI began: 2:21 p.m.

XI. **EXECUTIVE DIRECTOR’S REPORT:**

i. **FCLB letter to the Governor**

Dr. Spivey announced that the FCLB council wrote a letter to Governor DeSantis thanking Dr. Heagy and Dr. Fogarty for their participation in the Chair/Vice Chair meeting. Dr. Spivey advised that the next Chair/Vice Chair meeting will be held on October 18, 2019 in Tallahassee, FL and that the format of the meetings are to be more engaging.

Section XI ended: 2:23 p.m.

Section XII began: 2:23 p.m.

XII. **BOARD COUNSEL’S REPORT:**

a. **May Rules Report**

b. **64B2-13.004**


**Action:** Motion to accept the revised language made by Dr. Hunt. Second made by Dr. Fox.

**Vote:** 4 yeas/0 opposed. Motion Carried. Dr. Fogarty recused himself.

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

**Action:** Motion to accept the board’s response made by Dr. Heagy. Second made by Dr. Fox.

**Vote:** 4 yeas/0 opposed. Motion Carried. Dr. Fogarty recused himself.
Ms. Stern asked whether the proposed rules would be subject to a minor violation. Minor violation means that it will not directly affect the public health, safety, or welfare and is able to be resolved with citation or notice of non-compliance. The board agreed there would be no minor violation.

**Action:** Motion to accept the board’s response made by Dr. Hunt. Second made by Dr. Weingarten.

**Vote:** 4 yeas/0 opposed. Motion Carried. Dr. Fogarty recused himself.

**Section XII ended:** 2:29 p.m.
**Section XIII began:** 2:29 p.m.

**XIII. COMMITTEE REPORTS**

**a. Budget – Mr. Licata**

Nothing to report. Dr. Fogarty asked the board to update the website to reflect the lower cost of upcoming renewals.

**b. CCPA – Dr. Hunt**

Dr. Hunt advised that all is going well.

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

Nothing to report

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

Dr. Fogarty advised that there has been a pushback from monitors. Dr. Fogarty suggested a taskforce to create specific criteria for monitors. Dr. Heagy asked Ms. Stern if she would be willing to serve on the taskforce to which Ms. Stern agreed.

**e. Examination – Dr. Fox**

Dr. Fox announced that Part 4 went smooth and that the next examination is on November 15th through 17th.

**f. Legislation – Dr. Heagy**

Dr. Heagy presented two bills that would impact the chiropractic profession which are HB851 (Human Trafficking Continuing Education) and HB23 (Telehealth).

**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 announced that the award will be presented at the next meeting to Dr. Scott Patton of Lutz, Fl.

Section XIII ended: 2:44 p.m.
Section XIV began: 2:44 p.m.

XIV.  OLD BUSINESS:

None

Section XIV ended: 2:44 p.m.
Section XV began: 2:44 p.m.

XV.  NEW BUSINESS

Dr. Hunt requested continuing education credit for her participation in the National Board of Chiropractic Examiners (NBCE). Dr. Heagy advised Dr. Hunt to attempt to upload the credit into CE Broker.

Dr. Fogarty requested that the Chair consider sending a representative to the FCLB’s bi-yearly meeting in Jersey City on October 3rd through the 6th. Dr. Spivey advised that he is seeking authorization for attendance.

Section XV ended: 2:46 p.m.
Section XVI began: 2:46 p.m.

XVI.  NEXT MEETING DATE:

August 23, 2019
XVII. **PUBLIC COMMENT**

Kim Driggers, Counsel for Florida Chiropractic Association – Ms. Driggers advised that she did not move the supporting case laws into record. She was unsure of whether it was procedurally required. Ms. Stern confirmed that the documents were in the record. Dr. Hunt asked Ms. Driggers about the statistics as it relates to the accuracy of such.

Andrew Cave, DC – Commented that it should not matter whether continuing education may be completed online or in person; and that it’s difficult to make time and income to attend live courses.

Paul Sorche, DC – Commented that Dr. Warner is simply requesting the providers to test on live continuing education courses.

Section XVII ended: 2:53 p.m.

Section XVIII began: 2:53 p.m.

XVIII. **ADJOURNMENT**

Motion to adjourn at 2:53 p.m. made by Dr. Hunt. Second by Dr. Fogarty.