

FLORIDA | Board of Chiropractic Medicine

OFFICIAL MINUTES

February 14, 2020

Rosen Plaza
9700 International Drive
Orlando, Florida 32819



Danita Heagy, D.C., *Chair*
Chris Fox, D.C., *Vice-Chair*
Anthony Spivey, DBA, *Executive Director*

The Florida Board of Chiropractic Medicine held a meeting Friday, February 14, 2020, commencing at 8:30 a.m. This meeting was held at the Rosen Plaza Hotel 9700 International Drive, Orlando, Florida 32819 (407) 996-9700, 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: 8:45 a.m.

I. CALL TO ORDER (Roll Call):

- 1 Danita Heagy, D.C., Chair
- 2 Julie Hunt, D.C., FCCJP, DICCP
- 3 Christopher Fox, D.C., ATC(L) Vice Chair
- 4 Kevin Fogarty, D.C., F.I.C.A.
- 5 Mindy Weingarten, D.C.
- 6 Paul Licata

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Board Staff Present:

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- 10 Dr. Anthony Spivey, DBA, Executive Director
- 11 Gail Curry, Program Operations Administrator
- 12 Kelly Woodard, Regulatory Supervisor

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Board Counsel

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- 16 Lawrence Harris, Assistant Attorney General

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Prosecution Services:

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- 20 Chad Dunn, Assistant General Counsel
- 21 Rose Garrison, Assistant General Counsel

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Court Reporter:

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- 25 Magnolia Court Reporter
- 26 407-896-1813

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28 **Section I ended: 8:52 a.m.**

29 **Section II began: 8:52 a.m.**

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II. APPROVAL OF MINUTES:

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- 33 a. **November 8, 2019**

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Dr. Heagy noted a correction on the dissenting vote for Dawn Teufel.

Action: Motion to approve the meeting minutes with corrections made by Dr. Hunt.
Second made by Dr. Weingarten.

Vote: 6 yeas/0 opposed. Motion Carried.

Section II ended: 8:54 a.m.

Section III began: 8:54 a.m.

III. FINAL ORDER ACTION

a. SETTLEMENT AGREEMENTS:

i. Brian Kenneth Allard, D.C., Case #2017-22815

Present with counsel Bruce Lamb, Esq. Chad Dunn presented the case details.

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

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

Action: Motion to amend settlement agreement to impose \$100 fine; two hours of board approved laws/rules continuing education within one year; national ethics and boundaries examination; and administrative costs of \$2,920.86 made by Dr. Fogarty.
Second made
by Mr. Licata.

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

The parties accepted the Counter-settlement.

ii. Janea Rather, D.C., Case # 2018-21731

Not present. Represented by counsel, Kenneth Scaz, Esq. Rose Garrison presented case details. Dr. Rather's attendance was waived.

Action: Motion to accept settlement agreement made by Dr. Hunt. Second made by Dr. Heagy.

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

iii. Humberto Gutierrez, D.C., case #2017—03434

Present. Represented by Richard Brooderson, Esq. Chad Dunn presented case details.

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

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

Action: Motion to amend settlement agreement to impose national ethics and Boundaries examination within one year; twelve hours of record-keeping and documentation, six hours of ethics, three hours of billing, and two hours of laws/rules continuing education; \$17,500 fine to be paid within two years; and probation with monitoring for two years; ten days to accept or reject settlement agreement made by Dr. Fox. Second made by Dr. Fogarty.

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

iv. Jonathan Frederick Berns, D.C., (AG) Case # 2015-23138

Present. Represented by Edwin Bayo, Esq.

Action: Motion to accept settlement agreement made by Dr. Weingarten. Second made By Dr. Fogarty.

Vote: 6 yeas/0 opposed. Motion Carried.

Break 10:00 to 10:15 a.m.

b. INFORMAL HEARING

i. Troy Webster Godsey, D.C. Case # 2019-37765

Present. Represented by Edwin Bayo, Esq. Chad Dunn presented case details.

Action: Motion to accept the investigative report into evidence; find that the respondent was properly served and has requested an informal hearing; and adopt the findings of fact as set forth in the complaint made by Dr. Fox. Second made by Dr. Hunt.

Vote: 5 yeas/0 opposed. Motion Carried. Mr. Licata recused.

Action: Motion to impose penalty of \$500 fine and administrative costs of \$61.04 to be paid within 30 days of final order made by Dr. Fox. Second made by Dr. Fogarty.

Vote: 5 yeas/0 opposed. Motion Carried. Mr. Licata recused.

c. VOLUNTARY RELINQUISHMENT

i. Olga Spivak, D.C., Case # 2017-18013

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Not present, nor represented by counsel.

Action: Motion to accept made by Dr. Weingarten. Second made by Dr. Hunt.

Vote: 5 yeas/1 opposed. Motion Carried.

ii. Kyle M.G. Studley, D.C., Case # 2019-31347

Not present, nor represented by counsel.

Action: Motion to accept made by Dr. Fogarty. Second made by Dr. Hunt.

Vote: 5 yeas/1 opposed. Motion Carried.

Section III ended: 10:40 a.m.

Section IV began: 10:40 a.m.

IV. PROSECUTION REPORT

i. Prosecution Report

Chad Dunn presented the Department's prosecution report.

Action: Motion to continue prosecuting cases older than one year made by Dr. Fox. Second made by Dr. Weingarten.

Vote: 6 yeas/0 opposed. Motion Carried.

Section IV ended: 10:43 a.m.

Section V began: 10:43 a.m.

V. PETITIONS

i. Keith Pyne, D.C.

Not present, nor represented by counsel.

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

Vote: 6 yeas/0 opposed. Motion Carried.

ii. Amber Roman, DC

Not present, nor represented by counsel.

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

Vote: 6 yeas/0 opposed. Motion Carried.

iii. Deborah Ann Morris, CCPA

Not present, nor represented by counsel.

Action: Motion to grant extension until the next biennium (February 2022) made by Dr. Hunt. Second made by Dr. Fogarty.

Vote: 6 yeas/0 opposed. Motion Carried.

iv. Jose R. Cadavedo, DC

Not present, nor represented by counsel.

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

Vote: 6 yeas/0 opposed. Motion Carried.

v. Nayda M. Nunez, DC

Not present, nor represented by counsel.

Action: Motion to deny the petition made by Dr. Hunt. Second made by Mr. Licata.

Vote: 6 yeas/0 opposed. Motion Carried.

Break 10:55 to 10:57 a.m.

Upon return from the break, the board received correspondence from Dr. Michael Nathanson regarding request for extension of continuing education.

Action: Motion to grant extension until the next biennium (February 2022) made by Dr. Fogarty. Second made by Dr. Hunt.

Vote: 6 yeas/0 opposed. Motion Carried.

Section V ended: 11:00 a.m.

Section VI began: 11:00 a.m.

VI. REQUEST FOR CE EXTENSION – DR. GRUEN

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i. Harold Gruen, D.C.

Not present, nor represented by counsel.

Action: Motion to grant extension until the next biennium (February 2022) made by Dr. Fogarty. Second made by Dr. Hunt.

Vote: 6 yeas/0 opposed. Motion Carried.

Section VI ended: 11:04 a.m.

Section VII began: 11:04 a.m.

VII. REQUEST FOR EARLY TERMINATION

i. Kenneth Finger, D.C.

Present. Not represented by counsel. Dr. Finger was accompanied by his monitor, Dr. David Rouse.

Action: Motion to grant early termination and require Dr. Finger to submit monitor reports and quarterly reports for September 2019 and December 2019 made by Dr. Hunt. Second made by Dr. Weingarten.

Vote: 6 yeas/0 opposed. Motion Carried.

Section VII ended: 11:24 a.m.

Section VIII began: 11:24 a.m.

VIII. APPLICATIONS PRESENTED FOR BOARD REVIEW

i. Samuel Saib Scott, D.C.

Present. Not represented by counsel.

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

Vote: 6 yeas/0 opposed. Motion Carried.

ii. Keyana Boston, D.C.

Not present, nor represented by counsel.

Action: Motion to require attendance at one of the next two board meetings made by

263 Dr. Fox. Second made by Dr. Hunt.

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

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267 **iii. Brian Patrick Milligan, D.C.**

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269 Present. Not represented by counsel.

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

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

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276 **Section VIII ended: 11:37 a.m.**

277 **Section IX began: 11:37 a.m.**

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279 **IX. RATIFICATIONS**

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281 **a. Licensure**

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283 **i. Chiropractic Physician**

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

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

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290 **ii. Registered Chiropractic Assistant**

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292 **Action:** Motion to ratify the approval of licensees made by Dr. Weingarten. Second
293 made by Mr. Licata.

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

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297 **iii. Certified Chiropractic Physician Assistant**

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

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

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304 **b. Continuing Education**

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306 **i. Continuing Education Committee's Recommendation**

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308 **Action:** Motion to ratify the approval of courses made by Dr. Hunt. Second made by
309 Dr. Weingarten

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

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313 **Section IX ended: 11:39 a.m.**

314 **Skipped to Section XII**

315 **Section X began: 11:39 a.m.**

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317 **X. CONTINUING EDUCATION COURSES**

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319 **i. New York Chiropractic College**

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321 **Action:** Motion to approve the course made by Dr. Weingarten. Second made by Dr.
322 Hunt.

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

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326 **ii. Palmer College of Chiropractic**

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328 **Action:** Motion to approve the course made by Dr. Hunt. Second made by Dr. Fox.

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

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332 **Section X ended: 11:42 a.m.**

333 **Section XI taken out of order: 1:05 p.m.**

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335 **XI. PETITION FOR RULE AMENDMENT**

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337 **i. Rick Warner, D.C.**

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

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

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343 **Section XI ended: 1:20 p.m.**

344 **The board moved to Sections XVII thru XX:**

345 **Section XII taken out of order: 11:42 a.m.**

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347 **XII. PUBLIC HEARING**

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349 **i. Public Hearing**

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351 Mr. Harris addressed the board's disciplinary guidelines 64B2-16.003 and past

352 changes to Rule 64B2-16.0075, Florida Administrative Code. Mr. Harris presented the
353 proposed rule amendments for public hearing and the concerns of the Joint
354 Administrative Procedure (JAPC) for each of the rules. Mr. Harris explained that the
355 board voted on the rule amendment to 64B2-16.0075; however, the amendment was
356 never filed for adoption. The board confirmed that there were no recommended
357 changes to 64B2-16.0075. Discussion ensued regarding the disciplinary guidelines and
358 range of penalties.

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360 **Action:** Motion to accept the proposed amendment to Rule 64B-16.003 made by Dr.
361 Fogarty. Second made by Dr. Fox.

362
363 **Vote:** 6 yeas/0 opposed. Motion Carried.

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365 Mr. Harris asked whether the proposed rules would have adverse impacts on small
366 business and whether regulatory costs would exceed two hundred thousand dollars
367 within one year of implementation. The board members agreed that there would not be
368 adverse impacts or excess costs.

369
370 Mr. Harris asked whether the proposed rules would have adverse impacts on small
371 business and whether regulatory costs would exceed one million dollars within five
372 years of implementation. The board agreed that there would not be adverse impacts or
373 excess costs.

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375 Mr. Harris asked whether the proposed rules would be subject to a minor violation.
376 Minor violation means that it will not directly affect the public health, safety, or
377 welfare and is able to be resolved with citation or notice of non-compliance. The board
378 agreed that the proposed rules are not subject to minor violation.

379
380 Mr. Harris presented two (2) versions of the directives made by Governor Desantis
381 regarding the sunset provision. Mr. Harris advised that it is a policy choice and the
382 board is not required to add the sunset provision to their rules.

383
384 **Break 12:08-12:26**

385
386 The board continued discussion on the sunset provision.

387
388 **Action:** Motion to adopt version one (1) made by Dr. Weingarten. Second made by
389 Dr. Fox.

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

392
393 Dr. Brian Milligan (Applicant) asked the board for consideration in awarding him
394 credit for his first-year attendance.

395
396 The board granted Dr. Milligan's request.

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398 **Section XII ended: 12:29 p.m.**

399 **Section XIII began: 12:43 p.m.**

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401 **XIII. CHAIR/VICE CHAIR REPORT**

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403 Dr. Heagy addressed the expectations regarding dress code at board meetings.

404

405 **Section XIII ended: 12:44 p.m.**

406 **Section XIV began: 12:44 p.m.**

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408 **XIV. EXECUTIVE DIRECTOR'S REPORT**

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410 **i. FCLB Delegates**

411

412 Dr. Spivey advised that the delegates' names have been confirmed and announced his
413 attendance. Dr. Fogarty requested inclusion of the national board.

414

415 Dr. Spivey discussed continuing education procedures within the office of the staff
416 and requested for the board's feedback. Dr. Heagy advised for the continuing
417 education providers to check the links prior to submission of a course. Dr.

418 Weingarten requested clarification of online courses as it relates to postgrad teaching.

419 Dr. Heagy advised that it is similar to the requirements of live courses and that the

420 teacher must list themselves as a postgrad or adjunct faculty on their CV.

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422 **Section XIV ended: 12:50 p.m.**

423 **Skipped to Section XVI**

424 **Section XV began: 11:49 a.m.**

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426 **XV. BOARD COUNSEL'S REPORT**

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428 **i. January Rules Report**

429 **ii. December Rules Report**

430 **iii. Amendments to Rule 64B2-16.003**

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432 **i. Draft changes to 64B2-16.003 Disciplinary Guidelines**

433 **ii. JAPC letter 010920**

434 **iii. JAPC interim response 012420**

435 **iv. JAPC supplemental response 0220**

436 **v. 16003.NPR.122419**

437

438 Mr. Harris addressed amendments under Section XII.

439

440 **iv. Consideration of Request for HCT CE**

441

442 **i. 64B2-13.004 Continuing Education**

443 **ii. 64B2-13.0045 Requirement for Continuing Education**

- iii. **Draft information for Continuing Education Human Cellular**
- iv. **Food and Drug Administration (FDA) Information on Human Cellular Tissue**

Mr. Harris presented correspondence from a licensee regarding scope of practice and mandating continuing education related to human cellular tissue. Dr. Fogarty advised the audience to remain educated and use extreme caution in considering the use of stem cell treatment.

- v. **Governor’s Directive/Rule Sunset**
 - i. **Final directive to Agencies 11.19**
 - ii. **Sunset Language December 2019 Revision**
 - iii. **OFARR Rulemaking Notification Form 2019**

- vi. **Dr. Perosino**
 - i. **Memo from Dr. Perosino**
 - ii. **Chapter 456.013 – 2019 Florida Statutes**

Mr. Harris presented Dr. Perosino’s request regarding continuing education credit for faculty instructors. Mr. Harris advised that the board may not have statutory authority.

- vii. **HB 677**

Mr. Harris presented the filed bill for the board’s review. Dr. Spivey advised that the board received correspondence from the President of the Florida Chiropractic Society, Eddie Martinez regarding concerns of the passage of the bill. Dr. Spivey directed the audience to review the correspondence presented.

Section XV ended: 12:43 p.m.
Referred back to Section XIII
Section XVI began: 12:50 p.m.

XVI. COMMITTEE REPORTS

- i. **Budget – Mr. Licata**

Mr. Licata asked about the threshold for cash sweeps. Dr. Spivey explained deficits. Dr. Heagy explained how the legislature reviews the board’s funds.

- ii. **CCPA – Dr. Hunt**

Dr. Hunt reported all is going well.

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iii. Continuing Education – Dr. Fox

Nothing to report.

iv. Disciplinary Compliance – Dr. Fogarty

Dr. Fogarty suggested that new monitors reach out to the disciplinary compliance chair in order to verify what to look for.

v. Examination – Dr. Fox

Dr. Fox reported all is well.

vi. Legislation – Dr. Heagy

Nothing to report

vii. Probable Cause – Drs. Weingarten/Hunt

Nothing to report

viii. Rules – Dr. Weingarten

Nothing to report

ix. Unlicensed Activity – Mr. Licata

Nothing to report

x. Outstanding Service Award – Dr. Fox

Dr. Fox reported that the 2019 candidate has been submitted and is awaiting approval.

Dr. Heagy requested that board staff begin planning 2021 meeting dates. Ms. Curry provided suggestions on how the meetings may be scheduled.

Dr. Heagy advised that the board needed to vote for a delegate for the NBCE test writing committee on June 12-13 in Colorado. Dr. Heagy announced that Dr. Hunt expressed interest.

Action: Motion to delegate Dr. Hunt made by Mr. Licata. Second made by Dr. Fox.

Vote: 6 yeas/0 opposed. Motion Carried.

The board referred back to Section XI

536 **Section XVII began: 1:20 p.m.**

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538 **XVII. OLD BUSINESS**

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540 None

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542 **Section XVII ended: 1:20 p.m.**

543 **Section XVIII began: 1:20 p.m.**

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545 **XVIII. NEW BUSINESS**

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547 None

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549 **Section XVIII ended: 1:20 p.m.**

550 **Section XIX began: 1:20 p.m.**

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552 **XIX. NEXT MEETING DATE:**

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554 May 8, 2020

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556 **Section XIX ended: 1:20 p.m.**

557 **Section XX began: 1:20 p.m.**

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559 **XX. PUBLIC COMMENT**

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561 A physician on behalf of Texas Chiropractic College requested the board's
562 consideration of continuing education credit for serving and teaching as an adjunct
563 professor.

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565 Dr. Timothy Kennedy encouraged the board to reconsider online continuing
566 education.

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568 Dr. Fox commented that many licensees are also in favor of Live classes and that it
569 is a choice.

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571 **Section XX ended: 1:25 p.m.**

572 **Section XXI began: 1:25 p.m.**

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574 **XXI. ADJOURNMENT**

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576 Meeting was adjourned at 1:25 p.m.

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