

Board of Chiropractic Medicine

November 2020 Conference Call Draft Meeting Minutes

November 6, 2020 at 8:30 A.M. ET
<https://global.gotomeeting.com/join/883825845>



Danita Heagy, D.C.
Chair

Christopher Fox, D.C.
Vice Chair

Anthony B. Spivey, DrBA
Executive Director

**Florida Board of Chiropractic Medicine Meeting Draft Minutes
November 6, 2020**

Participants in these public meetings were made aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

Board Members:

Danita Heagy, D.C. – Chair
Christopher Fox, D.C. – Vice Chair
Julie Hunt, D.C., FCCJP, DICCP
Kevin Fogarty, D.C.
Mindy Weingarten, D.C.
Gretchen Saunders, Consumer
Ellen Ostman, Esquire, Consumer

Attorneys:

Lawrence Harris, Assistant Attorney General

Board Staff:

Anthony B. Spivey, DrBA - Executive Director
Gail Curry, Regulatory Supervisor Consultant
Dontavia Wilson, Program Operations Administrator

Court Reporter:

For the Record – (850) 222-5491

Call to Order

The meeting was called to order by the Executive Director at 8:30 a.m.

Roll Call

Board Members:

Danita Heagy, D.C. – Chair
Christopher Fox, D.C. – Vice Chair
Julie Hunt, D.C., FCCJP, DICCP
Kevin Fogarty, D.C.
Mindy Weingarten, D.C.
Gretchen Saunders, Consumer
Ellen Ostman, Esquire, Consumer

Attorneys:

Lawrence Harris, Assistant Attorney General
Rose Garrison, Assistant General Counsel
Kimberly Marshal, Assistant General Counsel
Zachary Bell, Assistant General Counsel
Chad Dunn, Assistant General Counsel

Board Staff:

Anthony B. Spivey, DrBA - Executive Director
Gail Curry, Regulatory Supervisor Consultant
Dontavia Wilson, Program Operations Administrator

Dr. Fogarty gave an invocation. Dr. Heagy recited the Pledge of Allegiance and thanked veterans for their service.

Motion to Stay Final Order / Modifying Final Order / Disposition of Appeal

Tige Buchanan, D.C.- Dr. Tige was not present. Mr. Michael Lowe was in attendance representing Dr. Buchanan. An appeal has been filed and they are requesting a stay through the appeal. Mr. Harris recommended that the Board grant the stay. A motion was made by Dr. Fogarty to grant the stay through the appeal. The motion was seconded by Dr. Weingarten and passed unanimously.

Approval of Minutes

September 4, 2020- A motion was made by Dr. Fox to approve the minutes. Board members provided feedback on the minutes listing areas they felt needed updating including the following: line 118 Mr. Harris's name is spelled wrong (Hartis), line 143 a Dr. needs to be added to before Fox (not r. Fox), line 185 and 188 correct the spelling of penalties (penitilies), line 159 the minutes say motion failed, but it passed, and line 208 the exam should be the EBAS exam. The motion to approve with corrections passed unanimously.

August 7, 2020- Dr. Heagy recommended not approving the minutes and to send the minutes back to board staff for additional work, due to spelling errors and missing information. She had two pages of corrections and did not want to waste the Board's and audiences time to provide those corrections. She asked Board members to provide any corrections they had to board staff and to re-agenda the August minutes with corrections for the February meeting. Dr. Spivey asked that the corrections be sent to him and the new Program Operations Administrator, Dontavia Wilson.

Final Order Action

Susan Bonham, D.C.
Christopher Catalfo, D.C.
Leonie Dareus, RCA
Jeffrey Dinofor, D.C.
Patrick Downer, D.C.
Michael J. Green, D.C.
Geoffrey C. Guy, D.C.
Steven J. Hasley, D.C.
Michael A. Hochberg, D.C.
Harriet A. Kazakowitz, D.C.
Howard S. Klein, D.C.
Nancy E. Levenson, D.C.
Robert N. Moses, D.C.
Rosa A. Pfaff, D.C.
Bruce K. Robinson, D.C.
Robert J. Russell, D.C.
Donald E. Sanders, D.C.
Scot Sloan, D.C.
Louis J. Solok, D.C.
Bruce L. Thomas, D.C.

Ms. Rose Garrison presented information about the requests for Motion to Vacate the final orders. She indicated that the orders were previously issued due to default on student loans and that due to the change in section 456.0635, Florida Statutes, student loans were no longer grounds for disciplinary action.

Dr. Fogarty voiced his concerns about having cases that were 15 and 16 years old that were issued the same discipline and about creating a precedent for when laws change, requiring the Board having to change their discipline. He also indicated that failure to repay student loans is still a federal issue. He indicated that his not in favor of vacating these final orders. Dr. Weingarten asked if there were other cases or were these the only cases.

Ms. Garrison indicated that to the best of the Prosecution Services Unit knowledge that all the cases related to student loans were on this agenda. She also opined that this statutory change did not just remove the provisions for student loans, but specifically stated that defaulting on student loans cannot be the basis for discipline. Mr. Garrison indicated that the decision to request motions to vacate on these types of cases was discussed and made by the higher-ups in the Department of Health. She provided her legal opinion that she did not believe that vacating these cases was opening the Board to a slippery slope for other types of cases coming back when legislative changes happen.

Discussion ensued. Dr. Heagy asked Mr. Harris if the Board had ever done anything like this. Mr. Harris provided his legal opinion. He indicated that when other licensees have come back and requested a change to their final orders, he asks the board “was there a substantial change in circumstances” and “was there a public interest change” (fairness issue). He also said that the Board had modified final orders based on the responses to those questions. Mr. Harris indicated that this is a policy decision.

Dr. Hunt stated that she looked up the status of all the licenses and that the majority were in “Null & Void” or “Revoked” statuses and only a few were active. Dr. Fogarty stated, that as Mr. Harris said, this is a policy decision.

Dr. Fogarty made a motion to deny the request to vacate the final order on all of the cases. Dr. Weingarten seconded the motion. Ms. Garrison informed the Board that this same request is being made to all the department professions and let them know that the reason they have done this is that the legislature has made it clear that is what they are requesting. The motion passed unanimously.

Hearings - No Disputed Material Facts

Jennifer J. Norbits, D.C.- Not present. Rose Garrison presented the case. A motion was made by Dr. Fogarty that the respondent was properly served and has requested a formal hearing. The motion was seconded by Dr. Fox and passed unanimously. A motion was made by Dr. Fogarty to accept the materials into evidence for these proceedings. The motion was seconded by Dr. Fox and passed unanimously. A motion was made by Dr. Fogarty to adopt the findings of fact as set forth in the administrative complaint. The motion was seconded by Dr. Weingarten and passed unanimously. A motion was made by Dr. Fox to adopt the conclusions of law as set forth in the administrative complaint and find that this constitutes a violation of Florida Statutes. The motion was seconded by Dr. Weingarten and passed unanimously. Dr. Fogarty made a motion to impose of a letter of concern, a 2-hour continuing education course in Florida laws and rules, a \$1,000.00 fine, and costs; to be completed within one year. Motion was seconded by fox and passed with Dr. Weingarten and two in opposition.

Sharon M. Loggins, D.C.- Not present. Kimberly Marshal presented the case. A motion was made by Dr. Fox that the respondent was properly served and has requested a formal hearing. The motion was seconded by Dr. Fogarty and passed unanimously. A motion was made by Dr. Fox to accept the materials into evidence for these proceedings. The motion was seconded by Dr. Fogarty and passed unanimously. A motion was made by Dr. Fogarty to adopt the findings of fact as set forth in the administrative complaint. The motion was seconded by Dr. Weingarten and passed unanimously. A motion was made by Dr. Fox to adopt the conclusions of law as set forth in the administrative complaint and find that this constitutes a violation of Florida Statutes. The motion was seconded by Dr. Weingarten and passed unanimously. A motion was made by Dr. Fox to impose a letter of concern, a \$500.00 fine, 2-hour continuing education course in Florida laws and rules, and costs in the amount of \$51.03; to be completed within one year. Ms. Saunders seconded the motion and it passed with Dr. Weingarten in opposition.

Settlement Agreements

Thomas A. Giammatteo, D.C.- Present with attorney Ed Bayó. Rose Garrison presented the case. Terms of the settlement agreement are the respondent being present, a letter of concern, a fine of \$1,000.00 to be paid within 30 days of the final order, reimbursement of costs of \$900.00 within 30 days of the final order, and effective on the date of the final order probation to run concurrent with the probation in Connecticut, set to expire within 18 months. A motion was made Dr. Weingarten to accept the settlement agreement. The motion

was seconded by Ms. Ostman. Discussion ensued. A motion was made by Dr. Fogarty to accept the settlement agreement with an addition of 10 hours in Diagnostics, 3 hours in risk management, and the EBAS exam. The motion was seconded by Dr. Weingarten and passed unanimously.

After a brief break Dr. Spivey called roll on a few people for proof of being present for continuing education credit for attending the meeting.

Adam D. Zuckerman, D.C.- Present. Zachary Bell presented the case. Ms. Rose Garrison asked that the case be tabled. Dr. Heagy tabled the case and asked Dr. Spivey to put him at the beginning of the February agenda.

Voluntary Relinquishment

Kenneth Z. Finger, D.C.- Not present. The case was presented by Kimberly Marshal. A motion was made by Dr. Fogarty to accept the voluntary relinquishment. The motion was seconded by Dr. Weingarten and passed unanimously.

A request was made to send the case file over to the State's Attorney Office.

Motion to Assess Cost

Jeremiah L. Wright, D.C.- tabled until after the appeal is concluded.

Petition for Declaratory Statement

New York Chiropractic College (NYCC)- Mr. Harris provided information about the Florida Chiropractic Association's (FCA) Petition to Intervene and what a declaratory statement is (binding opinion). Paul Lambert and Kimberly Driggers were present to represent the FCA. Ms. Driggers stated that the NYCC is replicating the FCA's online procedures for the photograph identification requirement and therefore felt they have a substantial interest. Ms. Driggers indicated that the FCA did not ally with NYCC. Mr. Lambert added that they wanted to make sure that if NYCC is not approved that they are not adversely affected. A motion was made by Dr. Fogarty to grant intervention to the FCA (allowing them to participate as a party) in the Petition for Declaratory Statement. The motion was seconded by Dr. Weingarten and passed unanimously.

Dr. Owen Papuga from NYCC, said that they are looking for a statement about the rule, clarifying any ambiguity. Dr. Fogarty indicated that the rule was intentionally ambiguous and that the board feels the burden of proof is on the provider who wants to provide the course. Discussion ensued. Dr. Fogarty made a motion to issue the statement. Dr. Fox seconded the motion. Discussion ensued. Motion passed with Dr. Weingarten and Ms. Ostman in opposition.

Prosecution Report

Ms. Rose Garrison informed the Board that she will be transferring to be the team leader for the Dentistry Team and that Kimberly Marshal will be taking over as the team leader for the Chiropractic Team. Dr. Heagy let Ms. Garrison know that she will be missed.

Ms. Kimberly Marshal gave the Prosecution Report. Dr. Heagy welcomed her. There was discussion about the lower number of cases. A motion was made by Dr. Fox to accept the report. The motion was seconded by Dr. Fogarty and passed unanimously.

Dr. Fogarty asked about the appeal of Lee K. Wright case. Mr. Chad Dunn informed the Board that it was under appeal and they were unable to talk about it.

Petition for Reactivation

Aaron Alford, D.C.- Present. He explained that he took the remaining 8 hours online after the Board approved all online classes. Dr. Fogarty made a motion to approve the petition. The motion was seconded by Dr. Fox and passed unanimously.

Applications Presented for Review

Dwayne Medina, CCPA.- Present. Section 456.0635(2), F.S., precludes him from licensure. A request was made by Mr. Medina to withdraw his application.

Emil R. Nardone, D.C.- Not present. Dr. Fox made a motion to require him to appear at one of the next two meetings. The motion was seconded by Dr. Fogarty and passed unanimously.

Jorge Campos, D.C.- Present. A motion was made by Dr. Fogarty to approve. The motion was seconded by Dr. Hunt and passed unanimously.

Stephen Nothnagle, D.C.- Present. A motion was made by Dr. Fox to approve with the condition of an evaluation prior to approval. Motion was seconded by Dr. Heagy. Dr. Nothnagle asked to table his application until the February meeting. Dr. Heagy asked Dr. Spivey to make sure Dr. Nothnagle is on the February agenda. Dr. Fox withdrew his motion.

Jeffrey Bivins, D.C. – Not Present. A motion was made by Dr. Weingarten to require a personal appearance at one of the next two meetings. Ms. Ostman seconded the motion and it passed unanimously.

Raymond Doner, D.C. – Not Present. A motion was made by Dr. Weingarten to require a personal appearance at one of the next two meetings. Ms. Ostman seconded the motion and it passed unanimously.

Zachary Scott, D.C.- Not Present. A motion was made by Dr. Weingarten to require a personal appearance at one of the next two meetings. Ms. Ostman seconded the motion and it passed unanimously.

Petition for Hearing

Oleg Gozenpud, D.C.- Present with counsel Ed Bayó. A motion was made by Dr. Fox to grant reconsideration to vacate the notice of “Intent to Deny” and approve the application based on the condition that proof of his undergraduate degree is provided within 6 months. The motion was seconded by Dr. Hunt and passed unanimously.

After a brief break Ms. Curry called some of the names of the attendees attending for continuing education credit.

Termination of Probation

Donald Lowery, D.C.- Present. A motion was made by Dr. Fogarty to lift the probation. Dr. Weingarten seconded the motion and it passed unanimously.

Discussion ensued about the Compliance Unit not being on top of its cases.

Request for Extension

David Kidd, D.C.- Present. Dr. Weingarten made a motion to extend the time for payment to one year from the time he was supposed to have completed the final order, June 23, 2021. The motion failed for lack of a second. Discussion ensued. Dr. Weingarten made a motion to extend the time to pay his fines for payment to one year from the time he was supposed to have completed the final order (June 23, 2021) and the respondent fails to pay by that time his license will be suspended. Motion was seconded by Dr. Fogarty. Motion passed with Ms. Saunders in opposition.

Request for Board Review and Approval

NBCE Test Committee Syllabus

June Test Committee CE Letter - A motion was made by Dr. Fogarty to grant Dr. Hunt credit for this course. The motion was seconded by Dr. Weingarten and passed unanimously.

Allan Keller, D.C.- Dr. Keller has passed away at this point. A motion was made by Dr. Weingarten to dismiss the case. Motion was seconded by Ms. Ostman and passed unanimously.

Petition for Hearing

FCLB 2020 District Book (Informational)

Ratifications

Chiropractic Licenses 13209-13254- A motion was made by Dr. Fox to ratify Chiropractic licenses 13209-13254. The motion was seconded by Dr. Weingarten and passed unanimously.

Certified Chiropractic Physician Assistant (CCPA) Licenses 1019-1027- A motion was made Dr. Weingarten to ratify CCPA licenses 1019-1027. The motion was seconded by Dr. Hunt and passed unanimously.

Continuing Education- Dr. Heagy informed Dr. Spivey that providers must be in the record in order for the Board to ratify them. Dr. Fox indicated that there were two courses that he informed Ms. Kilgore required review by the full board. Dr. Heagy asked that the courses be added to the February agenda.

Board Counsel Report

October Rules Report- Mr. Harris indicated that the rules report was in the agenda. He said that Rule 64B2-14.007, F.A.C., should be filed on Monday and effective December 1, 2020. He Mr. Harris stated that he was in the process of getting the adoption package completed for Rule 64B2-16.007, F.A.C.

Smile Direct Club- Mr. Harris provided information about the antitrust case for Smile Direct Club, immunity, anti-competition, and active supervision. He indicated that it is his job to advise the Board and to keep the Board out of these types of situations.

Chapter Law Report (Informational)

SB 1084- Mr. Harris talked about the implementation of SB 1084 and a how a healthcare practitioner who falsely certifies support animals is subject to discipline. Mr. Harris asked if the Board wanted to implement a specific penalty for falsely certifying a support animal. The Board stated that they did not think it was necessary.

2020-31 LOF- Mr. Harris talked about 2020-31 LOF, that requires informed consent for Pelvic Examinations. He indicated that the law prevents a health care practitioner from performing a pelvic examination without written consent that is specific to and expressly identifies the pelvic examination. Mr. Harris and Dr. Spivey wanted to make sure the profession was aware of this new statute. Mr. Harris asked the Board if they wanted to implement a specific penalty for violating section 456.51, F.S. Discussion ensued. Mr. Harris suggested to agenda this for the next meeting for discussion. Discussion ensued. Dr. Heagy asked that Dr. Weingarten work with Mr. Harris and bring something to the next meeting.

Mr. Harris explained that there is now a specific disciplinary penalty for intentional implementation of a human embryo. He also explained that for a healthcare practitioner to use their own reproductive tissue with a patient is now considered a crime of reproductive battery and that a practitioner's license can be disciplined for doing this. He asked the Board if they thought they needed to a specific penalty for reproductive battery. The Board agreed that they did not believe a specific rule or penalty were necessary.

JAPC Letter 08/13/2020- Mr. Harris informed the board that all boards are required to have a penalty guideline (range of penalty for range of offenses) for discipline and that JAPC wrote a letter informing him that they believed that the Board of Chiropractic Medicine's penalties were too broad. The Board agreed to look at all the penalties and rewrite the penalty range. Mr. Harris made an initial draft and he received feedback from Dr. Weingarten, Ms. Saunders, and Dr. Fox. The Board member feedback was provided for the rest of the Board

for review. Dr. Weingarten wanted to increase the amount of education, probation, and suspension, and reduce the amount of revocations and fines. Ms. Saunders wanted to increase penalties.

Mr. Harris reminded the Board that they were trying to move forward with updating disciplinary guidelines for modern practice, and that the guidelines are just a suggested range excluding aggravating and mitigating factors. If the Board finds mitigating factors they can go below the guidelines, if they find aggravating factors they can go above the guidelines. Without aggravating or mitigating factors the Board would be required to impose discipline within the guidelines. Mr. Harris and the JAPC attorney do not agree on how sexual misconduct should be handled, but ultimately it is the Board's rule and policy. Dr. Heagy asked Board members to explain their viewpoint on these rules. Discussion ensued. Both Dr. Weingarten and Dr. Fox indicated that the Board frequently add more education to cases that Prosecution Services present.

After a brief break Ms. Curry called some of the names of the attendees attending for continuing education credit. Board members discussed the reason for and the importance of paying attention to the Board meeting to receive continuing education credit.

Dr. Heagy asked that Mr. Harris make a consolidated rule chart. She acknowledged that some of the fines Ms. Saunders indicated are above the amount statutory authority provides and asked that those be replaced with the max of \$10,000.00. She asked Mr. Harris to have it ready for their February meeting.

Executive Director Report

CE on Human Trafficking- Dr. Spivey reminded everyone that this course is required by January 1, 2021.

Human Trafficking- Dr. Spivey reminded everyone of the sign requirements.

Annual Delegation of Authority- Dr. Fogarty made a motion to leave the Delegation of Authority as is and approve it. The motion was seconded by Dr. Fox and passed unanimously.

National Chiropractic Health for the Month of October by Governor DeSantis- Dr. Spivey indicated that he is working with the Governor's office to get copies of the written document for the Board members.

64B2ER20-30- Dr. Spivey has been working on the Cirque based on the responses that they have received.

Chair/Vice Chair Report

None

Old Business

None

Committee Reports

Budget- Ms. Saunders referred to the budget report for the fiscal year. Dr. Heagy said that she asked different people at the state about the budget being swept and was informed based on the COVID it was pretty much guaranteed.

CCPA- Dr. Hunt stated that she had two to three CCPAs every week.

Continuing Education- Dr. Fox stated that Continuing Education is going as well as it can. He also referenced not being able to find either of the two cases that were supposed to be on the agenda. Dr. Heagy asked that Dr. Spivey address that with Ms. Kilgore.

Compliance- Dr. Fogarty talked about the fact that they have gone through various compliance officers, that the newest one is Rebecca Lily. He also stated that cases are falling through the cracks. He referred to a case

that has been open since 2012. He requested that compliance staff do an audit on all the cases to make sure that they are all up to date.

Examination- Dr. Fox discussed that he was at Palmer East four weeks ago and the exam was handled very well considering COVID and some technical issues within the school. He and Dr. Weingarten are scheduled at Palmer East next week for another examination.

Legislation- None

Probable Cause- Dr. Weingarten discussed that the last meeting went well. Dr. Hunt said that she had the materials for her upcoming meeting.

Rules- Dr. Weingarten indicated that she had worked with Mr. Harris.

64B2ER20-30- Mr. Harris talked about the emergency rule approved by the Board at their August meeting, where the Board made the decision to allow licenses to obtain all of their continuing education for the current biennium by any means and have redefined "live." He reminded the Board that Emergency Rules are only valid for 90 days and that after the 90 days the Board complied with the law and initiated the rule making process. He said it was determined that a Cirque would be necessary and that the intent was to have the Cirque done by November 6, 2020. Mr. Harris said because the Cirque was not ready due to the low response rate, the Emergency Rule will expire at the end of November and without a special meeting it will be February before the Board can set a rule about it. He stated that meant there will be a gap between the expiration of the Emergency Rule and the Rule amendments which would create two problems. He said presumably there are licensees who intend to obtain continuing education over the next four or five months and all of the CE Providers stated that it was going to cost them money to implement these rule changes. Mr. Harris believes a lot of the CE providers have already began implementing the changes, but that it could cost providers money. He informed them that the Cirque is not ready, that he did not know when Dr. Spivey would be able to finish the Cirque, and that when it is ready the Board will have to go through regular rule making process. Mr. Harris advised the Board that they may have to consider re-promulgating an emergency rule, in order to do that they have to consider what the emergency is that they are attempting to resolve.

Dr. Weingarten made a motion to implement an emergency rule (renewing the previous emergency rule) that allows the obtaining of continuing education as listed in the rule, through March 31, 2022 to take effect the day that the current rule expires. The motion was seconded by Dr. Fogarty and passed unanimously. Synchronous language and defining "live" were discussed.

Dr. Fogarty made a motion that contact classroom hours be treated the same as synchronous learning. The motion was seconded by Dr. Hunt. Discussion ensued. A member of the public asked that they have a rules workshop in order to get everyone's feedback. Dr. Fogarty indicated his concern is that there will be a gap.

Mr. Harris confessed that he made an error and that Dr. Fogarty should be recused pursuant to statutes from this discussion. Dr. Heagy asked that this subject be placed on the February meeting agenda.

New Business

Elections:

Dr. Heagy nominated Dr. Fox for the position of Chair. The motion was seconded by Ms. Saunders and motion passed unanimously.

Dr. Heagy nominated Dr. Weingarten for the Vice Chair position. The motion was seconded by Dr. Fox and passed unanimously.

Dr. Fogarty asked to discuss reducing the renewal fee. Dr. Heagy asked Dr. Spivey to provide information about the possibility of doing so from budget.

Dr. Heagy brought up honoring the boards 50 and 60 years plus active licensees. She wants to do a brief presentation at the next Board meeting. There was discussion of a plaque for those chiropractors.

Dr. Woody Brown will pick-up his plaque at our next meeting for outstanding service.

Public Comments

Dr. John Morris thanked the board for making it, so they don't have to be exposed to COVID. He said his work in public health has made him believe that we are in it for the long haul.

Discussion ensued about who will receive credit for the meeting.

Dr. Boyle said that he has been practicing for 21 years, never having had a requirement to attend a Board meeting for other state licenses, and that he found the meeting to be helpful.

Dr. Eisenhower thanked the board for all their hard work and dedication.

Dr. Hand mentioned about all the discussion about the turnover in compliance and that he had received a notification that he had not attended a meeting.

Dr. Molina apologized for being in his car and asked the Board reconsider giving him credit for the Board meeting.

Scot Sloan from the student loan cases reviewed earlier in the day provided information on why her was unable to repay her student loan due to health reasons. Discussion ensued. Dr. Sloan was informed she could appeal their decision.

Next Meeting Date

February 26, 2021

Adjournment

Dr. Fogarty made a motion to adjourn. The motion was seconded by Dr. Hunt and passed unanimously. The meeting adjourned at 3:47 pm.