

Florida Board of Chiropractic Medicine

February 2021 Conference Call Draft Meeting Minutes

February 26, 2021 at 8:30 A.M. ET

<https://global.gotomeeting.com/join/282563701>



Christopher Fox, D.C.
Chair

Mindy Weingarten, D.C.
Vice Chair

Anthony B. Spivey, DrBA
Executive Director

**Florida Board of Chiropractic Medicine Meeting Draft Minutes
February 26, 2021**

Participants in this public meeting should be aware that these proceedings are being recorded. An audio file of the meeting will be posted on the Florida Board of Optometry website.

Board Members:

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

Board Staff:

Anthony B. Spivey, DrBA
Dontavia Wilson, Regulatory Supervisor Consultant

Board Counsel:

Lawrence Harris, Assistant Attorney General

Court Reporter:

For the Record – (850) 222-5491

Call to Order

Dr. Spivey called the meeting to order at 8:30 a.m. Dr. Spivey announced that there will be periodic roll calls throughout the meeting for licensees attempting to receive continuing education credit for today's meeting.

Roll Call

Board Members:

Mindy Weingarten, D.C.- Vice Chair (Acting Chair)
Julie Hunt, DC, FCCJP, DICCP
Kevin Fogarty, D.C.
Danita Heagy, D.C.
Gretchen Saunders, Consumer

Dr. Weingarten chaired the meeting.

Absences for both Christopher Fox and Ellen Ostman were excused by the Acting Chair.

Attorneys:

Lawrence Harris, Assistant Attorney General
Kimberly Marshall, Assistant General Counsel
Zachary Bell, Assistant General Counsel
Andrew Pietrylo, Assistant General Counsel

Board Staff:

Anthony B. Spivey, DrBA - Executive Director
Dontavia Wilson, Program Operations Administrator

Dr. Spivey led the Board in the Pledge of Allegiance. Dr. Fogarty gave an invocation. The Board members introduced themselves.

Approval of Minutes

August 7, 2020- Page 5 line 96, Mr. Harris is described as giving legal advice, which is not accurate. Page 6 line 10, incorrect apostrophe over doctor. Page 7 line 80, the word “pace” should be in all caps it’s an acronym. Same on page 81. Page 8 line 36 and 37 “where” is repeated and needs to be deleted. Page 10 a space should be added. Page 12 line 45, “is” should be it. Dr. Fogarty made a motion to approve the minutes with those edits. Dr. Heagy seconded the motion and it passed unanimously.

November 6, 2020- Page 3 line 140 is unclear Dr. Weingarten was affirmative or against, line 53 Dr. Weingarten was opposed wasn’t clear. Page 7 line 348 SERC, page 8, SERC, line 387, 388, 395, & 396 should be SERC, page 9 line 447, “her” should be she. Dr. Heagy Made a motion to approve with corrections. Dr. Fogarty made a correction for page 9 line 424, honoring chiropractors, not boards. Motion seconded by Dr. Fogarty and it passed unanimously.

Mr. Harris explained the disciplinary process.

Board Review/Settlement Agreement

Recused: Julie Hunt

Adam Zuckerman, D.C., Case No.: 2019-08462- Present. Mr. Bell presented the case.

Dr. Fogarty made a motion to reject the settlement agreement and counter with a letter of concern, a \$2,500 fine, costs in the amount of \$2,500, and correction of any advertising. Dr. Heagy seconded the motion. Dr. Fogarty asked for 10 days to accept or reject the counteroffer and 60 days to pay the costs and fines. The motion passed unanimously.

Informal Hearings

Olivio O. Blanco, Jr., D.C., Case No.: 2019-32776- Present with Attorney Paul Drake. Ms. Marshal presented the case.

Dr. Fogarty made a motion that the respondent was properly served. Dr. Heagy seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to accept the materials into evidence for today’s proceedings. Dr. Heagy seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to adopt the findings of facts as set forth in the administrative complaint. Dr. Heagy seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to adopt the conclusions of law as set forth in the administrative complaint. Ms. Saunders seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to impose 6 hours of laws and rules to be completed within 1 year, costs in the amount of \$363.13 to be paid within 60 days, a \$1,000 fine to be paid within 60 days, and suspension of the license until the costs and fines from the previous case have been paid. Ms. Saunders seconded the motion and it passed unanimously.

Recused: Mindy Weingarten (*Dr. Heagy chaired this case.*)

Hamed Kian, D.C, Case No: 2019-20499- Present. Ms. Marshal presented the case.

Dr. Fogarty made a motion that the respondent was properly served and requested an informal hearing. Dr. Hunt seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to accept the materials into evidence for today's proceedings. Ms. Saunders seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to adopt the findings of facts as set forth in the administrative complaint. Dr. Hunt seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to adopt the conclusions of law as set forth in the administrative complaint. Ms. Saunders seconded the motion and it passed unanimously.

Dr. Fogarty made a motion to impose that Dr. Kian be required to enter into a contract with Professional Resources Network within five working days or that his license will be suspended until he is complaint, pay costs in the amount of \$859.65, and pay a fine of \$1,000. Costs and fines must be paid within 60 days. Ms. Saunders seconded the motion and it passed unanimously.

Settlement Agreements

Recused: Mindy Weingarten (*Dr. Heagy chaired this case.*)

Timothy Gober, D.C., Case No.: 2020-23724- Present with attorney Edwin Bayó. Ms. Marshal presented the case.

Dr. Fogarty made a motion to accept the settlement agreement with costs in the amount of \$800. Ms. Saunders seconded the motion and it passed unanimously.

Recused: Julie Hunt

Justin K. Boylan, CCPA, Case No: 2019-17555- Present with attorney Edwin Bayó. Ms. Marshall presented the case.

Dr. Heagy made a motion to accept the settlement agreement with costs in the amount of \$1,000. Ms. Saunders seconded the motion. Discussion ensued. Dr. Heagy withdrew her motion and Dr. Saunders withdrew her second.

Dr. Heagy made a motion to reject the settlement agreement and offer a counteroffer of a letter of concern, \$2,000 fine, \$3,000 in costs, 3 hours of laws and rules, 3 hours of ethics, and 2 years of probation. Costs and fines to be paid within two years. Dr. Fogarty seconded the motion and it passed with Ms. Saunders in opposition. The Board gave the respondent 10 days to accept or reject the counteroffer.

The Board requested that Ms. Marshal have the respondent's supervisors investigated. Ms. Marshal indicated that the Department will investigate.

Teegan D. Fielder, D.C., Case No: 2019-28123- Present with attorney E. Dylan Rivers. Mr. Bell presented the case.

Dr. Fogarty made a motion to reject the settlement agreement and offer a counteroffer of a letter of guidance, a \$500 fine, costs in the amount of \$2,879.03, and 2 hours of laws and rules. Costs and fines must be paid with 60 days. The Board gave the respondent 10 days to accept or reject the counteroffer. Dr. Hunt seconded the motion and it passed with Dr. Heagy in opposition.

Voluntary Relinquishment

Kent E. Klonek, D.C., Case No.: 2020-15392- Dr. Heagy made a motion to accept the voluntary relinquishment. Ms. Saunders seconded the motion and it passed unanimously.

Petition for Early Termination

Donald G. Brown, CH5223- Attorney Edwin Bayó was present to represent Mr. Brown.

Dr. Heagy made a motion to accept the early termination of probation. Dr. Hunt seconded the motion and it passed unanimously.

Prosecutor's Report

Ms. Marshal introduced the new Allied Health Manager Mr. Andrew Pietrylo.

Ms. Marshal gave the Prosecutor's Report. Dr. Hunt made a motion to allow the Department to continue to prosecute cases that are a year old or older. Dr. Fogarty seconded the motion and it passed unanimously.

Dr. Heagy asked that Prosecution Services Unit provide the number of dismissed probable cause cases and the number of continuing education cases for all future Board meetings. Discussion ensued. PSU said that they would work to make Dr. Heagy's requests were included in future Prosecutor's Reports.

Mr. Harris explained the Board's role in application review and approval.

Applications Presented for Review

Aleksandr Mostovoy, D.C., 501/15045- Present. Dr. Fogarty made a motion to deny the application based on answering "No" to having a license in another state on the application. Ms. Heagy seconded the motion and it passed unanimously.

Benjamin Hardwick, D.C., 501/15184- Present. Dr. Heagy made a motion to approve the application. Dr. Fogarty seconded the motion and it passed it unanimously.

Michael Wald, D.C., 501/13467- Present. Dr. Hunt made a motion to approve the application. Dr. Heagy seconded the motion and it passed unanimously.

Michael David Young, D.C., 501/15191- Present. Dr. Fogarty made a motion to approve the application. Dr. Heagy seconded the motion and passed unanimously.

Sean Bennington, D.C., 501/15138- Present. Dr. Fogarty made a motion to approve the application contingent upon a PRN Evaluation with a safe to practice determination. Dr. Hunt seconded the motion and it passed unanimously.

Mark Awento, D.C., 501/ 14992- Not present. Dr. Heagy made a motion to approve the application. Dr. Hunt seconded the motion and it passed unanimously.

Applicants Requiring Appearance

Jeffrey Bivins, D.C, 501/14808- Present. Dr. Bivens requested to withdraw his application. Dr. Heagy made a motion to accept the withdrawal. Dr. Weingarten seconded the motion and it passed unanimously.

Raymond Doner, D.C., 501/14977- Present. Dr. Fogarty made a motion to approve the application. Ms. Saunders seconded the motion and it passed unanimously.

Zachary Scott, D.C., 501/14782- Present. Dr. Weingarten made a motion to approve the application. Ms. Saunders seconded the motion. The motion failed with Fogarty, Heagy, and Hunt in opposition. Dr. Scott requested to withdraw his application. Dr. Weingarten made a motion to approve the withdrawal and it passed unanimously.

Emil Nardone, D.C., 501/14930- Present. Dr. Fogarty made a motion to approve the application with the condition of his passing a Special Purposes Examination for Chiropractic (SPEC) exam. Dr. Heagy seconded the motion and it passed unanimously.

Stephen Nothnagle, D.C. 501/13560- Present. Dr. Fogarty made a motion to give Dr. Nothnagle until the next board meeting to have an evaluation with PRN. Ms. Saunders seconded the motion and it passed unanimously.

Mr. Harris explained what a Declaratory Statement is and the Board's role with Declaratory Statements.

Declaratory Statement

Complete Care Centers, LLC- Marc Ott, D.C, and Brett Scheuplein, D.C. were present with attorneys Michael Lowe and Brian Evander to represent Complete Care Centers, LLC.

Mr. Lowe addressed why the current litigation does not affect the Board's decision. Mr. Harris advised the Board to decline to make a statement, in abundance of caution. Dr. Weingarten made a motion to decline respond to the declaratory statement. The motion passed unanimously. Attorney Paul Lambert was present to represent the Florida Chiropractic Association.

ICA Council on Upper Cervical Care- Doctor Hunt discussed the need to vote today that this certification is a specialty. Discussion ensued. Dr. Hunt wanted those with this certification to be able to list their certification online. The Board voted to direct the Department of Health to update the profiling/credentialing portal allow for the CCU CC accreditation diplomat to become a chiropractic specialty that would be available as an option when the chiropractor is credentialed or updating their profile. Dr. Weingarten made the motion. Dr. Hunt seconded the motion.

Ratifications

Chiropractic Physician- Dr. Fogarty made a motion to ratify Chiropractic licenses 13267-13420. Dr. Heagy seconded the motion and it passed unanimously.

Certified Chiropractic Physician Assistant- Dr. Fogarty made a motion to ratify Certified Chiropractic Physicians Assistant licenses 1030-1042. Dr. Hunt seconded the motion and it passed unanimously.

Continuing Education

Primary Spine Care 1

Primary Spine Care 2

Educating the Lawyer

Chiropractic- Legal Ethics

Continuing Education Providers/Courses- After discussion by the Board, Dr. Heagy made a motion to ratify the list except for Educating the Lawyer and Chiropractic- Legal Ethics. Dr. Fogarty seconded the motion and it passed unanimously.

Dr. Heagy asked Dr. Spivey to have his staff notify the company that Educating the Lawyer and Chiropractic- Legal Ethics were not approved.

Dr. Fogarty made a motion to ask Prosecution Services to prosecute all DC's licenses along with CCPA's who do not have their human trafficking that was due 1/1/2021. Have the department provide to prosecution services for them to prosecute all licensees that are delinquent on their extended biennium that ended for continuing education on 1/1/2021. All 6,682 DC's and 346 CCPA's licenses. Dr. Hunt seconded the motion. Motion passed unanimously.

Dr. Heagy made a motion to refer first year licensees who have not completed the requirement of attending a board meeting to PSU. Dr. Weingarten seconded the motion. The motion passed unanimously.

Board Counsel Report

Rules Report for February- Mr. Harris gave a brief synopsis of the report.

Revisions to Disciplinary Guidelines Rule 64B2-16.003, F.A.C.- Dr. Weingarten made a motion to accept this as the final rule. Board members had some questions. Dr. Heagy made a motion to accept the rule language as provided. Dr. Fogarty seconded the motion and it passed unanimously.

Mr. Harris asked, "Will the proposed Rule amendments have an adverse impact on small business?" The Board answered, no.

Mr. Harris asked, "Will the proposed rule amendments be likely to directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000.00 in the aggregate in Florida within one year after implementation?" The Board answered, no.

Mr. Harris asked, "If the rules could be resolved through a warning notice of non-compliance?" The Board answered, no.

Mr. Harris asked, "Should the rule have automatic sunseting of the rules?" The Board answered, no.

Rule 64B2-17.002, F.A.C.- Dr. Weingarten suggested that board members review the draft and provide Mr. Harris with feedback. Dr. Heagy asked about breasts being included in the rule, as they are not in the pelvic region. The Acting Chair wants comments to be submitted to Mr. Harris by March 19, 2021.

Chiropractic Medical Facility Certificate, Physician Initial Licensure, Chiropractic Acupuncture Certification Applications- Dr. Hunt made a motion to approve the applications. Dr. Heagy seconded the motion and it passed unanimously.

Mr. Harris asked, "Will the proposed Rule amendments have an adverse impact on small business?" The Board answered, no.

Mr. Harris asked, "Will the proposed rule amendments be likely to directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000.00 in the aggregate in Florida within one year after implementation?" The Board answered, no.

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SERC for Chiropractic Online CE Rule

CE Discussion August 7, 2020 Meeting- SERC- Dr. Fogarty is recused. The Board did not have a quorum and could not vote on the SERC. Dr. Heagy expressed her displeasure with the SERC.

Compliance Chair Discussion

Dr. Fogarty spoke about the issues with the terms of probation. Mr. Harris spoke about non-rule policy. Mr. Harris stated that an attorney requested the location of the Board's probation forms in rule. Mr. Harris recommended that the Board add language into rule regarding probation. The Chair asked that her and Dr. Fogarty work with Mr. Harris on the language to present to the Board. Mr. Fogarty made a motion to initiate rule making on probation. Dr. Weingarten seconded the motion and it passed unanimously.

Foreign Chiropractic Graduates

Dr. Weingarten suggested seeing the language again and trying to make a more concentrated effort to push it through to the Department of Health. Dr. Heagy seconded the motion and it passed unanimously. Discussion ensued.

Economic and Geographic Mobility

This item was not discussed.

Fee Reduction Review

Dr. Weingarten asked the Department to provide a \$50 fee reduction budget forecast for a permanent licensure fee reduction.

Chair/Vice Chair Report

None

Executive Director Report

Delegates and Alternates Designation- Dr. Spivey indicated that Dr. Fox had already given the names of Dr. Fogarty and Dr. Hunt as alternates. Dr. Hunt asked that Dr. Spivey exchange her name as the alternate for Dr. Heagy's name for the Federation of Chiropractic Licensing Board (FCLB)..

Dr. Spivey spoke about current bills in the legislative process.

Dr. Spivey informed the Board that this was his last meeting with the Board as he will be retiring next month.

Old Business

None

New Business

None

Committee Reports

Budget- Ms. Saunders-. Dr. Spivey presented it since Ms. Saunders was no longer in attendance.

Continuing Education- Dr. Heagy said there has been an influx of applications and support is needed from the Board office. She says that they are about 30 days behind.

Compliance- Dr. Fogarty asked for a list of all examiners and for an updated monitors list.

Public Comment

Individuals asked about getting credit for their attendance for the Board meeting. The Acting Chair explained the process.

Florida Chiropractic Society- Aracelly Martinez, Executive Director, asked if Continuing Education courses are still done the same until the next meeting. Dr. Weingarten responded, yes, they can continue as they've been doing.

Steven Miller with GLM asked a similar question about CE. Mr. Harris said since the Emergency Rule had expired that the Rule is now back to Live CE requirements, with up to 10 hours of online.

Discussion ensued about having a special meeting to discuss the SERC when the Board has a quorum. Dr. Fogarty asked that Dr. Spivey inform CE Broker about the change that Mr. Harris had indicated. The proposed date for the special meeting is March 12, 2021.

Next Meeting Date

May 21, 2021

Adjournment

Dr. Heagy made a motion to adjourn. The motion was seconded by Dr. Weingarten and passed unanimously. The meeting adjourned at 5:48 pm.