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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF CHIROPRACTIC
VIA VIDEOCONFERENCE**

TIME: 10:30 A.M.

January 28, 2021

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State Board of Chiropractic
January 28, 2021

BOARD MEMBERS:

- Joseph G. Halloran, D.C.
- K. Kalonji Johnson, Commissioner of Professional and Occupational Affairs
- William Aukerman, D.C.
- Kelsie Coats, Consumer Protection Member
- John E. McCarrin, D.C., Acting Chair
- Michael Swank, D.C.
- Miriam Merry Woods, Public Member

BUREAU PERSONNEL:

- Nicole VanOrder, Esquire, Board Counsel
- Peter Kovach, Esquire, Board Prosecution Liaison
- Michelle Roberts, Acting Board Administrator
- Marc Farrell, Deputy Policy Director, Department of State
- Carolyn A. DeLaurentis, Deputy Chief Counsel, Prosecution Division

ALSO PRESENT:

- Kerry E. Maloney, Esquire, Post & Schell
- Edward L. Nielsen, MHS, Executive Vice President, Pennsylvania Chiropractic Association (PCA)
- Keith Miller, D.C., Vice President, Pennsylvania Chiropractic Association (PCA)
- Justin Miller, D.C.

1 ***

2 State Board of Chiropractic

3 January 28, 2021

4 ***

5 The regularly scheduled meeting of the State Board
6 of Chiropractic was held on Thursday, January 28,
7 2021.

8 ***

9 Official Call to Order

10 [Acting Chair McCarrin officially called the meeting
11 to order.]

12 ***

13 [Pursuant to Section 708(a)(5) of the Sunshine Act,
14 the Board entered into Executive Session with Nicole
15 VanOrder, Esquire, Board Counsel, for the purpose of
16 conducting quasi-judicial deliberations. The Board
17 returned to open session at 10:30 a.m.]

18 ***

19 MS. VANORDER:

20 I believe the Board would entertain a
21 motion, is that correct, in regard to
22 Item Number three.

23 DR. AUKERMAN:

24 William Aukerman. I want to make a
25 motion to Deem Facts Admitted, Case No.

1 20-43-001775 and instruct the Board to
2 draft and Adjudication and Order
3 consistent with Executive Session
4 discussion.

5 DR. HALLORAN:

6 I second that.

7 ACTING CHAIR MCCARRIN:

8 Let's take a vote.

9

10 McCarrin, aye; Woods, aye; Halloran, aye;
11 Coats, aye; Swank, aye; and Aukerman,
12 aye.

13 [The motion carried unanimously.]

14

15 MS. VANORDER:

16 Is there a motion in regards to Item
17 Number Six on the agenda?

18 DR. HALLORAN:

19 This is Dr. Halloran. I make a motion to
20 deny the request to rescind the Order to
21 refer case No. 18-43-011786 to a Hearing
22 Examiner. The Board believes that this
23 case should be referred to a Hearing
24 Examiner and that's the motion I'm
25 making.

1 MS. VANORDER:

2 If there are any additional questions, I
3 do note that counsel for Respondent is on
4 the phone.

5 DR. AUKERMAN:

6 I'd like to second the motion. William
7 Aukerman.

8 [Kerry E. Maloney, Esquire, Post & Schell, Counsel for
9 Respondent, discussed the matter. He stressed the
10 importance of Board members being able to see
11 demonstrations of techniques and procedures rather
12 than reading them in a transcript.

13 Dr. Halloran noted the limited amount of time to
14 gather evidence and spend time in Zoom meetings. He
15 suggested it would be best to present the matter to a
16 Hearing Examiner first.

17 Attorney Maloney suggested scheduling the hearing
18 in May or June when an in-person hearing may be
19 possible.]

20 ACTING CHAIR MCCARRIN:

21 Do we have anyone who wants to make a
22 motion on this issue?

23 DR. HALLORAN:

24 I made a motion already that we do not
25 accept the request to rescind the Hearing

1 Examiner.

2 ACTING CHAIR MCCARRIN:

3 Who was the second again?

4 DR. AUKERMAN:

5 William Aukerman.

6 ACTING CHAIR MCCARRIN:

7 All in favor of Dr. Halloran's motion?

8 Swank, aye; Woods, aye; Aukerman, aye;

9 Halloran, aye; Coats, aye; McCarrin, aye;

10 [The motion carried unanimously.]

11 ***

12 BPOA CE Carryovers

13 [Ms. VanOrder noted that the recent Act 116 of 2020
14 allows for carryover of continuing education credits
15 into the next biennial term. She stressed it was not
16 mandated. She noted there were benefits to having the
17 carryover, but also some administrative difficulties.

18 Ms. Roberts noted that allowing carryover of CEs
19 affects audits in that it requires auditing multiple
20 cycles.

21 Dr. Halloran noted there was a year and a half
22 left in the current cycle for chiropractors to obtain
23 CEs without being affected by the pandemic emergency.
24 He opined there was plenty of time to get to the next
25 cycle and carryover was unnecessary.

1 Commissioner Johnson clarified that the CE
2 carryover was not a response to the pandemic, rather
3 it was designed to promote and encourage continuing
4 education.

5 The Board discussed limits to the length of
6 carryover.

7 Commissioner Johnson encouraged the Board to
8 consider the benefits of carryover versus the
9 administrative challenges.

10 Edward L. Nielsen, MHS, Executive Vice President,
11 Pennsylvania Chiropractic Association Mr. Nielsen,
12 (PCA), noted the organization would appreciate
13 information from the Board on their eventual decision.
14 He noted PCA would be happy to work with the Board,
15 including polling members for their opinions.

16 The Board agreed to table the discussion until the
17 next meeting.]

18 ***

19 [Nicole L. VanOrder, Esquire, Board Counsel, noted the
20 status of regulations for the Board' review in the
21 areas of Act 41, volunteer licenses, child abuse
22 requirements, employee liability coverage, sexual
23 misconduct, and licensure by endorsement.

24 Mr. McCarrin expressed interest in reviewing the
25 delegation to exercise personnel. He noted the field

1 had lost many kinesiologists and exercise
2 physiologists due to past changes.

3 Ms. VanOrder offered to gather information to
4 assist further discussion by the Board.

5 Mr. Nielsen offered input and insight from PCA.
6 He noted regulations from the state board would be
7 ideal, followed by the regulatory process and IRRC.

8 Ms. VanOrder asked Commissioner Johnson for
9 recommendation in terms of further conversation on the
10 topic with Governor's policy office or others.

11 Commissioner Johnson suggested framing the issue
12 and having a discussion with policy staff.

13 Marc Farrell, Deputy Policy Director, Department
14 of State noted the Department would be happy to take
15 the issue under consideration.]

16 ***

17 [Mr. Nielsen requested clarification on mandatory
18 masking versus guidelines and recommendations. He
19 suggested it be sent out to licensees. Mr. Nielsen
20 noted debate going on within the chiropractic
21 community about what is really required.

22 Dr. McCarrin noted the requirements come from the
23 Governor's office, rather than the state board. He
24 noted the Board could repost the Governor's
25 recommendations on their web page.

1 Keith Miller, D.C., Vice President, Pennsylvania
2 Chiropractic Association (PCA) noted it would be
3 helpful for a post that the Board stands by the
4 decision of the Governor's office.

5 Commissioner Johnson pointed out if consumers are
6 concerned about the practices of a licensee there are
7 avenues to report those concerns.

8 Dr. McCarrin noted the Governor put out orders
9 and the Board's job is to enforce that if someone
10 files a complaint. He stated the most the Board could
11 do is restate the policy on the web page.]

12 ***

13 Report of Commissioner

14 [K. Kalonji Johnson, Commissioner, Bureau of
15 Professional and Occupational Affairs, wished everyone
16 a Happy New Year and welcomed Dr. Swank back to the
17 Board.]

18 ***

19 Approval of Minutes of November 19, 2020 meeting.

20 ACTING CHAIR MCCARRIN:

21 I need someone to make a motion.

22 DR. AUKERMAN:

23 I'll make a motion to approve the minutes
24 of November 19, 2020. William Aukerman.

25 ACTING CHAIR MCCARRIN:

1 Can I get a second on that?

2 DR. HALLORAN:

3 This is Dr. Halloran. I'll second.

4 ACTING CHAIR MCCARRIN:

5 Let's take a vote on that.

6 Woods, aye; Swank, aye; Halloran, aye;

7 Coats, aye; McCarrin, aye.

8 [The motion carried unanimously.]

9

10 Appointment - Prosecution Division

11 [Carolyn DeLaurentis, Esquire, Deputy Chief of
12 Prosecution Division, reviewed some highlights of
13 2020. She noted Prosecution Department staff has
14 successfully handled the challenges of telework and
15 virtual hearings. She noted Board prosecutors made
16 efforts to monitor restrictions, waivers, policies and
17 new procedures.

18 Ms. DeLaurentis reported that 117 cases were
19 opened in 2020 for the Chiropractic Board and 119
20 cases were closed. She noted, as of January 1, 2021,
21 the Crane Board had 105 cases open. She thanked
22 Attorney Tim Smith for working the New Year's weekend
23 to pull the numbers.

24 Ms. DeLaurentis noted the Chiropractic Board's
25 enforcement and disciplinary actions. She stated

1 there were 20 cases which resulted in discipline, 9
2 warning letters, 4 cases resulting in fines, 2 cases
3 resulting in Act 40 citation fines, 7 cases resulting
4 in suspension, 1 case resulting in automatic
5 suspension, 6 cases resulting in reprimands, 6 cases
6 resulting in revocation or voluntary surrenders and 5
7 cases resulting in probation.

8 Ms. DeLaurentis presented overall Prosecution
9 Division information. She noted 44 immediate
10 temporary license suspensions in 2020.

11 Ms. DeLaurentis presented COVID-19 complaints.
12 She noted 1,223 COVID-19 cases were opened in 2020, 32
13 of which were for the Chiropractic Board. Ms.
14 DeLaurentis pointed out that the Department are trying
15 to make sure information is available for licensees.
16 She stated that current open cases as of January 1 for
17 the entire office was 12,250. Total cases opened in
18 2020 was 13,394 with total cases closed of 13,274.

19 Dr. Halloran inquired about the nature of the
20 violations.

21 Ms. DeLaurentis noted the allegations vary and can
22 include violations of the Governor's orders, Secretary
23 of Health orders, and board guidance violations.]

24 ***

25 Election of Officers

1 MS. VANORDER:

2 Are there any nominations for Chair?

3 DR. MCCARRIN:

4 I would like to nominate Jerry Halloran
5 for Chair.

6 DR. AUKERMAN:

7 I'll second. William Aukerman.

8 DR. MCCARRIN:

9 I believe now we have to take a vote.
10 Swank, aye; Woods, aye; McCarrin, aye;
11 Coats, aye; Aukerman, aye; Halloran, aye.

12 [The motion carried unanimously.]

13 ***

14 MS. VANORDER:

15 Are there any nominations for Secretary?

16 DR. HALLORAN:

17 This is Dr. Halloran. I make a motion
18 that John McCarrin be Secretary.

19 [The Board held a discussion regarding the changed to
20 the nomination for Secretary.]

21 DR. HALLORAN:

22 I will amend my motion. I'm nominating
23 Bill Aukerman to be Secretary.

24 DR. MCCARRIN:

25 I'll second that motion.

1 MS. VANORDER:

2 Is there a vote?

3 Woods, aye; Swank, aye; McCarrin, aye;

4 Coats, aye; Halloran, aye; Aukerman, aye.

5 [The motion carried unanimously.]

6 ***

7 [Michelle Roberts, Board Administrator, noted 2021

8 meeting dates.

9 Dr. McCarrin inquired regarding appointing another
10 member to the Board.

11 Ms. Roberts noted the matter had to go through the
12 Governor's office.

13 Commissioner Johnson noted the Department was
14 working to fill board vacancies.]

15 ***

16 Old Business

17 [Dr. Halloran noted an order on the website issued by

18 Dr. Rachel Levine on April 15, 2020, which outlines

19 directives by the Governor and the Department of

20 Health to wear masks, mitigate businesses with

21 sanitation and make sure patients coming in wear

22 masks. He stated the information was readily

23 available on every state practice website.]

24 ***

25 Public Comment

1 [Justin Miller, D.C., inquired as to minutes not being
2 updated on website since July 2019.

3 Ms. VanOrder noted there had been technical
4 difficulties with the posting the minutes.

5 Ms. Roberts noted there were physical copies of
6 minutes with corrections in the previous
7 administrator's office. She will obtain the minutes
8 and post them as soon as she was able to physically go
9 into the office.

10 Dr. Miller asked about a letter submitted by the
11 PCA on his behalf in July 2019 regarding the PIAA. He
12 noted the organization is hindering the scope of
13 chiropractic practice in regard to returning athletes
14 to play. Dr. Miller inquired if there had been any
15 further dialogue.

16 Dr. Halloran noted the PIAA was struggling to try
17 to keep programs going and chiropractic issues low on
18 their list of priorities. He advised there would
19 likely be no action until a break in Covid issues.

20 Dr. Miller asked if the Board had a plan on how to
21 handle the issue.

22 Dr. Halloran stated there had been conversations
23 with Board Counsel and Commissioner Johnson. He noted
24 the Board can weigh in on the issue, but cannot take a
25 leadership role.

1 Ms. VanOrder stressed that the Board needed to be
2 careful to stay within their jurisdiction.

3 Mr. Nielsen remarked that PIAA was not just
4 limiting the scope of practice, but completely
5 restricting it.

6 Ms. VanOrder suggested PCA has the option to file
7 a complaint and have the issue evaluated on the
8 investigative/prosecutorial side.

9 Mr. Nielsen noted the organization will regroup
10 and put together a complaint.]

11 ***

12 Delegation Orders

13 [Ms. VanOrder commented that the Chiropractic Board
14 does not have a standing delegation order. She noted
15 many of the health boards have such an order in place
16 to delegate certain cases to a Hearing Examiner.

17 She offered copies of delegation orders from other
18 boards for the Chiropractic Board to review. Ms.
19 VanOrder noted the Board could decide how broad they
20 would like the order to be. She stated the delegation
21 order would eliminate the need to bring every case
22 before the Board, which would allow cases to move
23 faster.

24 Ms. VanOrder explained the Board would still have
25 the opportunity to review the proposed report of the

1 Hearing Examiner to decide what final decision is to
2 be made.

3 She noted the Board could opt to have a delegation
4 order in place just for the length of the pandemic.

5 Dr. Halloran noted that in prior discussions the
6 Board had decided to hear everything and then decide
7 whether to delegate to a hearing examiner.

8 Dr. Swank and Dr. McCarrin agreed to keep the
9 current arrangement.

10 Ms. VanOrder inquired if there was interest in
11 having a short-term general delegation order for the
12 duration of the pandemic.

13 Dr. Halloran noted that the Board is having
14 regular meetings and that he felt it was not
15 necessary.

16 Ms. VanOrder clarified her suggestion for the PCA
17 to file a complaint against the PIAA, noting she was
18 not implying that PIAA falls within jurisdiction of
19 the agency.

20 ***

21 [The Board discussed a correction to date of next
22 meeting on the agenda, noting it should be March 11,
23 2021.]

24 ***

25 ACTING CHAIR MCCARRIN:

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We need a motion to adjourn.

DR. AUKERMAN:

William Aukerman. I'll make a motion to adjourn the meeting.

DR. SWANK:

Mike Swank, second.

[There being no further business, the State Board of Chiropractic Meeting adjourned at 12:15 p.m.]

CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Chiropractic meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Chiropractic meeting.



Morgan McKendrick,
Minute Clerk
Sargent's Court Reporting
Service, Inc.

STATE BOARD OF CHIROPRACTIC
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TIME	AGENDA
10:30	Official Call to Order
10:31	Report of Regulatory Counsel
11:22	Adoption of Minutes
11:22	Report of Commissioner
11:24	Appointment - Prosecution Division
11:45	Report of Board Administrator
	Motions
11:50	Public Session
12:15	Adjournment