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

FINAL MINUTES

MEETING OF:

STATE BOARD OF CHIROPRACTIC

TIME: 9:03 A.M.

PENNSYLVANIA DEPARTMENT OF STATE
Board Room B
One Penn Center
2601 North Third Street
Harrisburg, Pennsylvania 17110

July 19, 2018
State Board of Chiropractic
July 19, 2018

BOARD MEMBERS:

J. Gerard Halloran, D.C., Chair
Ian J. Harlow, Commissioner of Professional and Occupational Affairs
John E. McCarrin, D.C., Secretary
William D. Aukerman, D.C.
George E. Khoury, D.C.
Michael S. Swank, D.C.
Nikole Brock, Deputy Attorney General, Consumer Protection
Miriam Merry Woods, Public Member

BUREAU PERSONNEL:

Thomas A. Blackburn, Esquire, Senior Counsel-in-Charge
Anita P. Shekletski, Esquire, Board Prosecution Liaison
Elizabeth Wecker, Board Administrator

ALSO PRESENT:

Ted Mowatt, Chiropractic Fellowship of PA
Kiersten Baumgardner, Wanner Associates, Association for Professional Acupuncture
Edward Nielsen, MHS, Executive Vice President, Pennsylvania Chiropractic Association
The regularly scheduled meeting of the State Board of Chiropractic was held on Thursday, July 19, 2018.

Official Call to Order

[J. Gerard Halloran, D.C., Chair, called the meeting to order at 9:03 a.m.]

Approval of Minutes of the May 17, 2018 meeting

CHAIR HALLORAN:

Did everybody look at the minutes for the May meeting? Are there any questions on that, any corrections that need to be done?

All right. Could I have a motion from the floor to accept the minutes of the May 17, 2018 meeting?

DR. AUKERMAN:

I make a motion to accept the minutes of the meeting of May 17, 2018.

CHAIR HALLORAN:
Okay. Do I have a second?

DR. SWANK:

I’ll second that.

CHAIR HALLORAN:

Dr. Swank seconds. All who approve, please signify by saying aye. The minutes of May 17, 2018, have been approved.

[The motion carried unanimously.]

***

Report of Board Prosecutor – No Report

***

Report of Commissioner

[Ian J. Harlow, Commissioner of Professional and Occupational Affairs, updated the Board on the Pennsylvania Licensing System (PALS), noting the need to utilize technical resources longer than anticipated. Commissioner Harlow stated the cost of the project was approximately $4.5 million over the last three years.

Commissioner Harlow mentioned staffing challenges with 20 vacancies out of 130, also noting constraints due to civil service and union rules.

Commissioner Harlow discussed Executive Order 2017-03. He encouraged the Board to review the]
research available on the website and requested feedback from the Board. Commissioner Harlow noted a $425,000 grant from the Department of Labor to continue the work nationally.

Commissioner Harlow discussed the 10-year bar from licensure and automatic suspension if convicted of a felony under the drug act. He stated Governor Wolf was working to introduce legislation to repeal these rigid bars affecting the Chiropractic Board, as well as 12 other licensing Boards impacted by them.

Commissioner Harlow discussed the reallocation of staff to customer service roles. He stated one of the objectives of PALS was to automate a manual process in order to eliminate dependence on contract employees and to enhance reporting capabilities. He recognized the help desk and additional employees to provide adequate customer service and support for staff and licensees.]

***

Report of Board Counsel

[Thomas A. Blackburn, Esquire, Board Counsel, on behalf of Kerry E. Maloney, noted matters for deliberation by the Board in Executive Session.

Mr. Blackburn stated Senate Bill 892, amending the Chiropractic Practice Act to exempt from the
licensure requirement chiropractic students under the direct immediate and personal supervision of a licensee, passed the General Assembly and was signed by Governor Wolf as Act 67 of 2018. He noted the proposed rulemaking, 16A-4312 - Chiropractic Specialties, published in the Pennsylvania Bulletin for discussion later in the meeting.

Mr. Blackburn noted the anticipated rulemaking for limited delegation to unlicensed supportive personnel, reporting that Mr. Maloney said he will provide additional information at a future meeting after receiving comments on the exposure draft.]

***

Report of Board Chair

[J. Gerard Halloran, D.C., Chair, informed the Board of the requirement to enter a new password every 60 days, offering the help desk number at 717-783-1087 for assistance.

Chair Halloran reminded Board members to submit tax exemption certificates for reimbursement. He suggested using ADTRAV for room reservations and travel at 866-530-8899, noting the need for an employee number.

Chair Halloran referred to the PALS instruction packet sent by Ms. Wecker via email. He thanked Dr.
McCarrin and Dr. Khoury with their assistance with PALS.

Chair Halloran thanked Dr. Aukerman and Dr. Khoury for participating in the opioid conference in Pittsburgh.

Chair Halloran discussed animal chiropractic, stating that it is too soon to draft a policy on this matter. He discussed looking for a consensus on the legal and ethical ramifications of animal-related chiropractic practice.

Chair Halloran discussed the importance of a new committee with a Board representative dedicated to the Federation of Chiropractic Licensing Boards (FCLB) and National Board of Chiropractic Examiners (NBCE). He stated Dr. Swank was assisting with the inquiry regarding Board members' participation in the National Board of Chiropractic Examiners' (NBCE) testing and meetings while conforming to the state ethics laws.

Chair Halloran noted the approval of Providers of Approved Continuing Education (PACE). He suggested developing a better method to communicate with chiropractors regarding approved regulatory changes.

Chair Halloran noted the need for discussion regarding Dr. Khoury’s replacement in the future.

Commissioner Harlow presented Dr. Khoury with a
certificate recognizing his service to the Board and the citizens of Pennsylvania. Dr. Khoury, as the alternate director for District III of the Federation of Chiropractic Licensing Boards, will be working on the Board's behalf at a national level.]

***

Report of Regulatory Counsel

[Thomas A. Blackburn, Esquire, Regulatory Counsel, on behalf of Kerry E. Maloney, discussed proposed rulemaking, 16A-4312 - Chiropractic Specialties, published in February, noting a number of comments by the Independent Regulatory Review Commission (IRRC) and members of the public.

Chair Halloran suggested compromising on the regulation to achieve a consensus. The Board discussed the meaning of the word political with regard to the American Chiropractic Association (ACA) and the International Chiropractic Association (ICA), as well as the scope of spinal and chiropractic subluxation treatment.

Chair Halloran noted a dichotomy of thought regarding the expansive and/or restrictive scope of practice of chiropractic. He referred to scientific advancements and studies demonstrating that chiropractic has not only efficacy but cost-saving
benefits. Many organizations, some in existence for 80-100 years, had different political and philosophical roots and are beginning to collaborate more often.

Dr. McCarrin added politically motivated is more financially motivated to satisfy membership. He noted the financial gain from offering classes.

Dr. Swank explained that the ACA and ICA offer a subspecialty granting status within their organizations for doctors who take 150- to 300-hour postgraduate courses. He stated some of the specialties, such as the diplomate in rehab, not necessarily the letter received from the IACN, but the other neurology program; the diplomate of Chiropractic Neurology Board, which is under the ACA, have gone beyond the trade organizations and referred to the National Organization for Competency Assurance (NOCA), which is a separate entity that grants those specialty Boards additional recognition on a national basis.

Dr. Swank suggested reviewing criteria requiring diplomats to stay current. He mentioned an ad in the Pittsburgh paper regarding a free seminar to become a board certified diplomate in chronic intractable pain and neuropathy, which allows an individual to advertise for neuropathy. Chair Halloran stated the
Board has no authority on the matter until regulations are quantified and passed.

Chair Halloran commented that ICA should be included, not just ACA, because ICA has been just as diligent as ACA in making sure that coursework and diplomates have rigorous training and rigorous testing.

Dr. Khoury referred to the Florida Chiropractic Board of Medicine Regulation, Section 456.062, noting that chiropractic specialties recognized by the Board are those recognized by the various Councils of ACA, ICA, or IACN. He added that each specialty requires a minimum of 300 hours of postgraduate credit hours and passage of a written and oral examination approved by the ACA, ICA, or IACN.

Chair Halloran noted that ACA was included in the regulation and ICA was excluded. He questioned whether any other chiropractic educational organization was as rigorous as ICA or ACA.

Dr. Swank discussed electrodiagnostic classes in the schools.

Chair Halloran suggested including ICA on the list regarding the regulation. He reviewed the differences between being board certified and having a certification for advertisement. He suggested the
Board identify established agencies or accredited chiropractic colleges for certification of the professors teaching the courses, as well as obtaining records of the candidates' testing.

***

[Ian J. Harlow, Commissioner of Professional and Occupational Affairs, exited the meeting at 9:57 a.m.]

***

[Dr. McCarrin emphasized the need for a policy to require random attendance in classes in Pennsylvania. Chair Halloran complemented the Pennsylvania Chiropractic Association (PCA) for requiring and maintaining a copy of photo identification.

The Pennsylvania Code, Chapter 5, §5.31 - Professional Advertising provisions were noted. Approved Chiropractic College does not denote certification through the Council on Chiropractic Education (CCE) and the US Department of Education.

Dr. Swank commented that PACE, ICA, and ACA all include colleges, which covers the CCE requirements in the law. He also noted classes under pain management are not affiliated with any chiropractic college.

Dr. Swank discussed the certifications and testing available through the PACE programs, as well as the American Academy of Pain Management.]
commended ICA and ACA for their excellent instructors in their programs and affiliation with chiropractic colleges. Chair Halloran suggested including ACA, ICA, and any certification or diplomate courses that are accredited through an accredited chiropractic college.

Ms. Brock noted consumer protection and quality of care issues. She stated this regulation would touch on both, because there is a difference between advertising as a specialist and practicing a specialty. Chair Halloran reiterated the Board’s intent to ensure efficacious education.

Ms. Shekletski offered to email prosecutors to closely investigate certifications when prosecuting a chiropractor and use it as an evidentiary issue if their certification was not rigorous course work.

DR. SWANK:

I make a motion that we direct counsel to draft the final annex for rulemaking 16A-4312 to add into the advertising of specialties that we approve ICA diplomate courses and certifications, ACA diplomate courses and certifications, and certifications or diplomates from CCE-approved accredited colleges.
chiropractic colleges as well.

CHAIR HALLORAN:

Do I have a second on the motion to
direct Counsel to draft a package for
those?

DR. MCCARRIN:

I’ll second it.

CHAIR HALLORAN:

Dr. McCarrin seconds. We’re going to
have to take a roll call on this one.

Khoury, aye; Woods, aye; McCarrin, aye;
Brock, aye; Aukerman, aye; Swank, aye;
and Halloran, aye.

[The motion carried unanimously.]

***

Report of Board Administrator

[Elizabeth Wecker, Board Administrator, noted a
CE/waiver request for discussion in Executive
Session.]

***

[Pursuant to Section 708(a)(5) of the Sunshine Act, at
10:30 a.m. the Board entered into Executive Session
with Thomas A. Blackburn, Esquire, Board Counsel, for
the purpose of conducting quasi-judicial deliberations]
and to receive advice of Counsel. The Board returned to open session at 12:11 p.m.]

***

MOTIONS

MR. BLACKBURN:

The Board was just in Executive Session. While in Executive Session, the Board conducted quasi-judicial deliberations in the matter of Howard Richard Van Nostrand, D.C., File No. 17-43-02352; the matter currently on appeal of Lawrence Charles Bennett, D.C. vs. the State Board of Chiropractic; and also concerning the request for a waiver or extension of time to complete continuing education of Richard H. Clark, D.C.

Additionally, while in Executive Session, the Board received legal advice from Counsel concerning the assistance of unlicensed supportive personnel, animal chiropractic and dry needling, as well as communications to or from licensees and the methodology for identifying potential new members of the Board for nominations.
With that, I understand that there may be some motions.

CHAIR HALLORAN:

In regard to Howard Richard Van Nostrand, D.C., Docket No. 0420-43-17, File No. 17-43-02352, I would like Dr. Aukerman to make a motion on the final Adjudication and Order.

DR. AUKERMAN:

I’d like to make a motion on the final order regarding license to practice chiropractic of Howard Richard Van Nostrand, D.C., Docket No. 0420-43-17, File No. 17-43-02352.

I make a motion to approve the final adjudication and order as presented by Counsel.

DR. KHOURY:

I’ll second that motion.

CHAIR HALLORAN:

We are going to take a roll call vote.

Khoury, aye; Woods, aye; McCarrin, aye; Brock, aye; Aukerman, aye; Swank, aye; and Halloran, aye.
[The motion carried unanimously.]

***

CHAIR HALLORAN:

In the matter of Richard H. Clark, D.C., his petition for extension or waiver of CE, I would like Miriam Woods to make that motion.

MS. WOODS:

Concerning the request from Richard H. Clark for extension or waiver of his CE, I move that the Board grant him six months to complete the CE as well as the child abuse training.

DR. MCCARRIN:

I’ll second.

CHAIR HALLORAN:

Khoury, aye; Brock, aye; Aukerman, aye; Swank, aye; Halloran, aye; Woods, aye; and McCarrin, aye.

[The motion carried unanimously.]

***

New Business

[Chair Halloran noted Senate Bill 892, amending the Chiropractic Practice Act for Interns signed by Governor Wolf on June 28, 2018 as Act 67.]
Dr. Swank questioned whether malpractice for the intern would be under the doctor or through the college. Mr. Blackburn pointed out that the Bill requires that the students be under the direct immediate personal supervision of a chiropractor licensed by the Board and that the Chiropractic Act requires all licensees to obtain professional liability insurance.

Mr. Blackburn noted that the Bill does not require licensure for student enrollment in a chiropractic education program at a chiropractic college approved by the Board, provided that the students are conducting chiropractic activity as part of the curriculum established by the chiropractic college and that the student is under the direct, immediate, and personal supervision of a chiropractor licensed by the Board. The Bill also states that this paragraph shall not be construed to require new or additional third-party reimbursement for chiropractic activities performed by the student as authorized under this paragraph.]

***

Opioid Symposium and Conference Report

[George E. Khoury, D.C., addressed the Council for Clinical Excellence Summit regarding the opioid

Sargent's Court Reporting Service, Inc.
(814) 536-8908
epidemic. Dr. Khoury noted discussion regarding strategies for treatment, advocacy and community collaboration for clinicians, intersection of chronic pain and addiction, solutions, medications for treatment, client welfare, therapist responsibility, and legal and ethical considerations.

Dr. Khoury and Dr. Aukerman requested that Commissioner Harlow write directly to Dr. Levine regarding the assurance that chiropractic be included in all future guidelines and consider legislation to enhance chiropractic access to care legislatively. It was noted that Dr. Levine has been requested to meet with the Board.

Dr. Khoury addressed the Federal Chiropractic Licensing Board Meeting in Dallas, noting that the Foundation for Chiropractic Progress discussed the chiropractor’s role in battling the opioid epidemic, which is another foundation that has statistics and information to integrate chiropractic into that solution.

Dr. Khoury noted opioid conferences in Pittsburgh in October 2018 and June 2019.

Ms. Woods requested to be Dr. Khoury’s replacement to the conference. Chair Halloran will consider sending Dr. Aukerman and Ms. Woods to the
Federation of Chiropractic Licensing Boards Regional Conference

[Chair Halloran noted the Federation of Chiropractic Licensing Boards Regional Conference (FCLB) September 14-16, 2018. Dr. Khoury will be attending as a District III alternate.]

CHAIR HALLORAN:

I entertain a motion to send Dr. Halloran and Dr. Aukerman to the District III FCLB Meeting in September.

DR. KHOURY:

I’ll be happy to make that motion.

MS. WOODS:

Second.

CHAIR HALLORAN:

We’ll do a roll call vote on this.

Khoury, aye; Woods, aye; McCarrin, aye; Brock, aye; Aukerman, aye; Swank, aye; and Halloran, aye.

[The motion carried unanimously.]

***

[Dr. Khoury again mentioned Ms. Wecker’s eligibility]
for an administrative scholarship. He also notified Mr. Maloney of a Chiropractic Board Legal Advisors Committee (CBLAC), noting the next phone conference on September 3, 2018.

Dr. Khoury requested to be added to the agenda for future meetings in order to communicate information on developments at the federal level.]

***

National Board of Chiropractic Examiners Test Committee

[Michael S. Swank, D.C., discussed his attendance and observation of candidates at the National Board of Chiropractic Examiners testing in Georgia.

Dr. Swank stated an unlimited number of Board members can be submitted to attend but require approval from the National Board of Chiropractic Examiners for travel expenses and the hotel reimbursement. He also noted a two-person limit for the committee that rewrites questions or writes new questions in Colorado.

Dr. Khoury reviewed the conflict of writing test questions, as well as reviewing adjudication procedures for retesting by licensees where a Board member might have participated in writing the test questions.
Mr. Blackburn discussed the provision in the Administrative Code for the Board to maintain professional testing organizations to develop and administer the exam. He noted the professional testing service was the national organization.

Dr. Khoury noted the importance of attendance because of discussions regarding test examinations, including Special Purposes Examination for Chiropractic (SPEC) and Ethics and Boundaries Assessment Services, LLC (EBAS), which familiarizes Board members on testing.

Dr. Khoury will be participating in the National Board of Chiropractic Examiners Test Committee on August 24, 2018. He noted the National Board of Chiropractic Examiners testing locations at the university or college administering the exam in May and November.]

***

Miscellaneous - Committee Assignments
[Chair Halloran suggested creating a committee to evaluate FCLB and NBCE issues.]

CHAIR HALLORAN:

Could somebody make a motion that we will create that committee to coordinate FCLB and NBCE issues?
DR. KHOURY:

I make a motion to form a committee by state Board members to include the Federal Chiropractic Licensing Board and National Chiropractic Board of Examination to further enhance our Board member participation.

CHAIR HALLORAN:

Do I have a second?

MS. WOODS:

Second.

CHAIR HALLORAN:

Can I have a roll call vote?

Khoury, aye; Woods, aye; McCarrin, aye; Brock, aye; Aukerman, aye; Swank, aye; and Halloran, aye.

[The motion carried unanimously.]

***

Committee Assignments

[Chair Halloran noted committee assignment changes.]

CHAIR HALLORAN:

Dr. Aukerman, Dr. Halloran, and Liz on the committee. Can I get a motion for that?
MS. BROCK:

I’ll support the motion for those to be
put on the FCLB Logistics Committee.

CHAIR HALLORAN:

Do I have a second?

DR. MCCARRIN:

I’ll second.

CHAIR HALLORAN:

Roll call.

Khoury, aye; Woods, aye; McCarrin, aye;
Brock, aye; Aukerman, aye; Swank, aye;
and Halloran, aye.

[The motion carried unanimously.]

***

Probable Cause Committee Members - Ms. Brock, Ms.
Woods, and Dr. McCarrin.

***

Regulations Committee Members - Dr. Halloran, Dr.
McCarrin, and Dr. Swank.

***

Continuing Education Review Committee - Dr. Swank, Dr.
Halloran, and Dr. Aukerman.

***

Public Comment Period
[Ted Mowatt, Chiropractic Fellowship of PA, requested clarification regarding the host of the opioid conference, which was the Council for Clinical Excellence. It was noted Ms. Woods would replace Dr. Khoury on the non-cancer opioid committee.

A question was raised whether fellowship would be satisfactory with the decision to include ICA, ACA, and chiropractic colleges in the regulations. The advertising and standard care issues were reiterated.

Mr. Mowatt discussed the transmittal of communications from the Board and reports of proceedings in the public part of meetings as well. He comments as appropriate on regulations and exposure drafts and communicates with PCA to concur on the matters.]

***

Adjournment

CHAIR HALLORAN:

I entertain a motion to adjourn.

DR. KHOURY:

I’d like to make a motion to adjourn this meeting.

CHAIR HALLORAN:

Seconded by?

DR. AUERMAN:
I’ll second.

CHAIR HALLORAN:

All in favor?

[The motion carried unanimously.]

***

[There being no further business, the State Board of Chiropractic Meeting adjourned at 1:15 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.

Adam Beck,
Minute Clerk
Sargent’s Court Reporting Service, Inc.
<table>
<thead>
<tr>
<th>TIME</th>
<th>AGENDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>9:03</td>
<td>Official Call to Order</td>
</tr>
<tr>
<td>9:03</td>
<td>Approval of Minutes</td>
</tr>
<tr>
<td>9:04</td>
<td>Report of Prosecutorial Division</td>
</tr>
<tr>
<td>9:05</td>
<td>Report of Commissioner</td>
</tr>
<tr>
<td>9:19</td>
<td>Report Board Counsel</td>
</tr>
<tr>
<td>9:22</td>
<td>Report of Board Chairman</td>
</tr>
<tr>
<td>9:37</td>
<td>Report of Regulatory Counsel</td>
</tr>
<tr>
<td>10:30</td>
<td>Executive Session</td>
</tr>
<tr>
<td>12:11</td>
<td>Return to Open Session</td>
</tr>
<tr>
<td>12:11</td>
<td>Motions</td>
</tr>
<tr>
<td>12:15</td>
<td>New Business</td>
</tr>
<tr>
<td>1:03</td>
<td>Miscellaneous</td>
</tr>
<tr>
<td>1:08</td>
<td>Public Comment Period</td>
</tr>
<tr>
<td>1:15</td>
<td>Adjournment</td>
</tr>
</tbody>
</table>