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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 TELECONFERENCE**

TIME: 10:31 A.M.

PENNSYLVANIA DEPARTMENT OF STATE

October 1, 2020

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State Board of Chiropractic

October 1, 2020

BOARD MEMBERS:

John E. McCarrin, D.C., Acting Chair
Theodore Stauffer, Executive Secretary, Bureau of
Professional and Occupational Affairs, on behalf of
K. Kalonji Johnson, Commissioner, Bureau of
Professional and Occupational Affairs
Kelsie Coats, Consumer Protection Member
Miriam Merry Woods, Public Member

BUREAU PERSONNEL:

Nicole L. VanOrder, Esquire, Board Counsel
Kimberly A. Adams, Esquire, Board Prosecution Liaison
David N. Smith, Esquire, Board Prosecutor
Paul J. Jarabeck, Esquire, Board Prosecutor
Peter D. Kovach, Esquire, Board Prosecutor
Michelle Roberts, Acting Board Administrator
Andrew LaFratte, MPA, Policy Office, Department of
State
Carole Clarke Smith, Esquire, Senior Counsel in
Charge, Office of Chief Counsel
Jen Smeltz, Executive Director, Senate Consumer
Protection and Professional Licensure Committee

ALSO PRESENT:

Edward L. Nielsen, MHS, Executive Vice President,
Pennsylvania Chiropractic Association
William D. Aukerman, D.C.
Keith Miller, D.C., Vice President, Pennsylvania
Chiropractic Association
Ted Mowatt, CAE, Vice President, Wanner Associates, on
behalf of the Chiropractic Fellowship of
Pennsylvania

1 ***

2 State Board of Chiropractic

3 October 1, 2020

4 ***

5 [Pursuant to Section 708(a)(5) of the Sunshine Act,
6 prior to the meeting, the Board entered into Executive
7 Session with Nicole L. VanOrder, Esquire, Board
8 Counsel, to have attorney-client consultations and for
9 the purpose of conducting quasi-judicial
10 deliberations. The Board returned to open session at
11 10:31 a.m.]

12 ***

13 The regularly scheduled meeting of the State
14 Board of Chiropractic was held on Thursday, October 1,
15 2020.

16 ***

17 [Theodore Stauffer, Executive Secretary, Bureau of
18 Professional and Occupational Affairs, noted the
19 meeting was being recorded, and those who remained on
20 the line were giving their consent to being recorded.]

21 ***

22 Official Call to Order

23 [John E. McCarrin, D.C., Acting Chair, called the
24 meeting to order at 10:31 a.m.]

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Roll Call/Introduction of Public Members

[John E. McCarrin, D.C., Acting Chair, requested a roll call and introduction of public members]

Approval of minutes of the July 30, 2020 meeting

ACTING CHAIR MCCARRIN:

I ask the Board to take a look at the daily minutes from July 30, 2020.

Please take some time to review that and then we will need a motion from someone to approve those minutes if they are fine with them.

I need a motion. Miriam, do you want to make a motion to approve the minutes from July 30, 2020?

MS. WOODS:

I make a motion to accept and approve the minutes of the July 30 meeting of the State Board of Chiropractic.

ACTING CHAIR MCCARRIN:

I second that motion. Could we take a roll call for ayes and nays? All in favor?

1 Nicole, aye; Miriam, aye; John, aye;
2 Ted, aye; Kelsie, aye.

3 [The motion carried unanimously.]

4 ***

5 Report of Commissioner - No Report

6 ***

7 Report of Board Counsel

8 MS. VANORDER:

9 Pursuant to Section 708(a)(5) of the
10 Sunshine Act, the Board entered into
11 executive session with Board counsel to
12 have attorney-client consultations and
13 for the purpose of conducting
14 quasi-judicial deliberations regarding
15 items 2, 3, and 4 on the agenda prior to
16 this public session.

17 I believe the Board will entertain
18 a motion for the Board to adopt and
19 issue as its final determination the
20 proposed Adjudication and Order issued
21 by the hearing examiner and instruct
22 Board counsel to draft and issue an
23 order to that effect in the following
24 matters: Maria McElwee, D.C., Case No.
25 17-43-11885; Daniel David Pompa, D.C.,

1 Case No. 20-43-000989; Chris Chianese,
2 D.C., Case No. 19-43-007211.

3 Would anyone like to make that
4 motion?

5 ACTING CHAIR MCCARRIN:

6 I would like to make the motion that
7 Board counsel proceed forward with the
8 recommendations.

9 We need a second.

10 MR. STAUFFER:

11 I'll second that.

12 ACTING CHAIR MCCARRIN:

13 John, aye; Stauffer, aye; Miriam, aye;
14 Kelsie, aye.

15 [The motion carried unanimously.]

16 ***

17 [Nicole L. VanOrder, Esquire, Board Counsel, noted the
18 status of regulations report for the Board's review.]

19 ***

20 Report of Board Chair

21 [John E. McCarrin, D.C., Acting Chair, informed
22 everyone that he will be the Acting Board Chair until
23 the remainder of the Board members are sworn back in.
24 He expressed his concern with members of the public
25 not understanding that Board members are discouraged

1 from taking phone calls at their private practices and
2 offices to address agenda issues, which could actually
3 complicate a situation and cause a Board member to
4 abstain from an agenda issue.

5 Acting Chair McCarrin recommended everyone attend
6 the public forum to address their concerns.]

7

8 Report of Regulatory Counsel

9 [Nicole L. VanOrder, Esquire, Board Counsel, referred
10 to Act 53 of 2020. She also provided a draft list of
11 crimes for the Board's approval. She noted meeting
12 with prosecution to review Title 18 regarding acts and
13 statutes and a number of previous decisions to
14 determine what the Board had previously been
15 disciplining.

16 Ms. VanOrder stated the commissioner has
17 scheduled a consultation with the Board at the
18 November 19 meeting but noted the date may change due
19 to a conflict with another Board.

20 Ms. VanOrder addressed Act 53 of 2020, where
21 legislation passed an order for criminal history to
22 not have any artificial barriers to individuals who
23 have a criminal history once they paid their debts to
24 society. She stated the law provides clear
25 instruction to develop a specific list of offenses,

1 including enumerated felonies that would impact
2 somebody's suitability to licensure, and that the
3 Board is tasked with issuing this list by December 27,
4 2020.

5 Ms. VanOrder provided a definition of "directly
6 relates." She mentioned provisions for the issuance
7 of a restricted license for certain occupations,
8 noting that would not affect the Board unless the
9 Pennsylvania Department of Corrections or any county
10 correctional facility would offer training in the
11 occupation.

12 Ms. VanOrder referred to § 3113, where boards can
13 no longer consider good moral character, crimes of
14 moral turpitude, ethical or dishonest practice, or
15 § 9124 of the Criminal History Record Information Act
16 (CHRIA) or similar statutory provisions that
17 disqualifies someone from holding a license.

18 Ms. VanOrder referred to § 3113 regarding the
19 two-stage analysis, where there is a determination of
20 whether the criminal conviction directly relates to
21 the application and where the list comes into play.
22 She explained that a crime on the list creates a
23 rebuttable presumption that the licensure of the
24 individual would pose a substantial risk to the health
25 and safety of the individual's patients, clients, or

1 public.

2 Ms. VanOrder commented that if a crime is on the
3 list, there is an individualized assessment that
4 includes 11 factors and any other factors deemed
5 relevant by the Board, which creates a rebuttable
6 presumption that can be overcome. She stated the
7 individual could still present evidence to be
8 considered to allow for an individualized assessment,
9 including a hearing. She stated a provisional denial
10 letter would be issued and the person would have the
11 opportunity to provide additional evidence and have a
12 hearing.

13 Ms. VanOrder addressed exemptions from the
14 analysis, including sexual offenses and crimes of
15 violence. She noted sexual offenses as a permanent
16 bar to licensure. She stated crimes of violence are
17 defined as specific crimes, which have further
18 consideration.

19 Ms. VanOrder noted existing provisions related to
20 a felony drug conviction, such as automatic
21 suspension, only now apply to individuals who are
22 convicted of a drug trafficking offense.

23 Ms. VanOrder referred to § 3114, where juvenile
24 adjudications may not be considered.

25 Ms. VanOrder referred to § 3115 regarding

1 preliminary determination, where an individual would
2 know if the crime they committed would keep them from
3 becoming a chiropractor before they invest all of the
4 time, money, and effort. She mentioned an individual
5 could petition the Board and pay a filing fee set at
6 \$45.

7 Ms. VanOrder noted a provision called in forma
8 pauperis status, which waives the fee for those who do
9 not have financial means. She noted an individual
10 would receive a preliminary determination within 45
11 days of whether the criminal history falls within the
12 list of convictions the Board previously determined to
13 be directly related to the profession.

14 Ms. VanOrder referred to § 3116, where a best
15 practices guide will be issued within 180 days
16 summarizing the content of most of the sections
17 discussed in both English and Spanish, which will be
18 available on the website and copy upon request.

19 Ms. VanOrder stated the list of crimes needs to
20 be completed in 180 days, and the commissioner will
21 promulgate that list as a regulation within 2 years.
22 She noted the list shall be used by boards in making
23 the preliminary determination on applications and
24 imposing discipline on a licensee. She also noted
25 some reporting requirements have been imposed and the

1 codifying of Act 48.

2 Edward L. Nielsen, MHS, Executive Vice President,
3 Pennsylvania Chiropractic Association, expressed
4 concern of doctors being liable for documentation that
5 may not be quite adequate and wanted to make sure
6 there is an awareness of exactly how the concept of
7 related to a profession administratively is going to
8 be handled as far as clarifying what might happen.

9 Ms. VanOrder explained that the list is a draft
10 at this point and has not been through the regulatory
11 process. She noted there may be crimes on this list
12 that will not be included in the end. She also noted
13 that a crime included in the list still creates that
14 rebuttable presumption, so it is not a conclusive
15 decision that the person absolutely will not get a
16 license.

17 Keith Miller, D.C., Vice President, Pennsylvania
18 Chiropractic Association, expressed concern regarding
19 insurance carriers using the changes in the statute,
20 when it comes to intentional or being "ignorant of,"
21 to intimidate doctors into giving in on audits because
22 they are going to report them for their licenses.

23 Mr. Miller requested the state Board to make sure
24 that when it comes to items of "ignorance of,"
25 especially in regard to following contractual coding

1 changes and procedural changes, that a doctor will get
2 harassed or almost blackmailed by an insurance carrier
3 into taking an unreasonable audit just for their
4 license to be protected.

5 Ms. VanOrder stated the Board cannot give any
6 advisory opinions about what the Board will do but
7 appreciated Mr. Miller making the Board aware and
8 thanked him for the comments.]

9

10 Miscellaneous

11 [John E. McCarrin, D.C., Acting Chair, noted the
12 meetings will continue to be held virtually. He
13 requested a discussion concerning the November Board
14 meeting date.

15 Ms. Roberts will email returning Board members
16 concerning the proposed November 24 and November 30
17 dates for their input.

18 Ms. Roberts noted the proposed 2021 meeting dates
19 for the Board's review.]

20

21 Public Comment

22 [Ted Mowatt, CAE, Vice President, Wanner Associates,
23 on behalf of the Chiropractic Fellowship of
24 Pennsylvania, requested a list of crimes for the State
25 Board of Chiropractic regarding Act 53.]

1 Ms. VanOrder informed Mr. Mowatt that the list is
2 a draft and has not been publicly disseminated as of
3 yet.

4 Mr. Nielsen questioned what the intention of the
5 Board is in terms of where the profession is going
6 regarding proposed regulations and updating
7 regulations to make them more relevant to the
8 profession.

9 Acting Chair McCarrin explained that the Board
10 has not stopped working on regulations, noting a lot
11 of regulations are blocked and only a few seem to be
12 reviewed at a time when the Board does move them
13 forward.

14 Mr. Nielsen questioned whether the State Board of
15 Chiropractic had any professional member openings. He
16 noted discussion with Commissioner Johnson and sending
17 material regarding a candidate to him and the governor
18 but has not heard anything.

19 Ms. VanOrder stated reappointments are not within
20 the Board's control but noted the Commissioner's
21 Office push for the reappointments. She mentioned
22 some delays due to COVID-19 and changes in the makeup
23 of the committee in the Senate.

24 Mr. Stauffer commented on the Commissioner's
25 Office work with the Governor's Office with regard to

1 internal contacts but noted their inability to control
2 who is reappointed or appointed. He mentioned the
3 Board has five professional spots, and even if
4 everyone is reappointed, there was still one
5 professional spot.

6 Mr. Stauffer recommended reaching out to the
7 Senator sponsoring the candidate and informing them
8 the candidate is still available and there is an open
9 slot to see if they could advocate for her.

10 Mr. Nielsen commented that they have covered all
11 that ground and believed it is a complete void in the
12 response period, stating the individual had been a
13 candidate for 2+ years and predates COVID-19.]

14 ***

15 Adjournment

16 ACTING CHAIR MCCARRIN:

17 At this point, I would like to make a
18 motion to adjourn the meeting.

19 MS. WOODS:

20 Second.

21 ACTING CHAIR MCCARRIN:

22 All in favor?

23 [The motion carried unanimously.]

24 ***

25 [There being no further business, the State Board of

1 Chiropractic Meeting adjourned at 11:18 a.m.]

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CERTIFICATE

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

13

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16

Morgan McKendrick,

17

Minute Clerk

18

Sargent's Court Reporting

19

Service, Inc.

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STATE BOARD OF CHIROPRACTIC
REFERENCE INDEX

October 1, 2020

TIME

AGENDA

00:00???	Executive Session
10:31	Return to Open Session
10:31	Official Call to Order
10:31	Roll Call/Introduction of Public Members
10:34	Approval of Minutes
10:36	Report of Board Counsel
10:40	Report of Board Chair
10:41	Report of Regulatory Counsel
11:02	Miscellaneous
11:08	Public Comment
11:18	Adjournment