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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.

PENNSYLVANIA DEPARTMENT OF STATE

March 11, 2021

1 State Board of Chiropractic

2
3 March 11, 2021
4

5
6 BOARD MEMBERS:
7

8 Joseph Gerard Halloran, D.C., Chair
9 Theodore Stauffer, Executive Secretary, Bureau of
10 Professional and Occupational Affairs, on behalf of
11 K. Kalonji Johnson, Commissioner, Bureau of
12 Professional and Occupational Affairs
13 William D. Aukerman, D.C.
14 Kelsie Coats, Consumer Protection Member
15 John E. McCarrin, D.C.
16 Michael S. Swank, D.C.
17 Miriam Merry Woods, Public Member
18

19
20 BUREAU PERSONNEL:
21

22 Nicole L. VanOrder, Esquire, Board Counsel
23 Peter D. Kovach, Esquire, Board Prosecution Liaison
24 Heather J. McCarthy, Esquire, Senior Prosecutor
25 David N. Smith, Esquire, Board Prosecutor
26 Nathan C. Giunta, Esquire, Board Prosecutor
27 Paul J. Jarabeck, Esquire, Board Prosecutor
28 Carolyn A. DeLaurentis, Deputy Chief Counsel,
29 Prosecution Division
30 Colby B. Widdowson, Esquire, Board Prosecutor
31 Michelle Roberts, Acting Board Administrator
32 Marc Farrell, Deputy Policy Director, Department of
33 State
34 Kimberly Adams, Chief of Fiscal Management, Bureau of
35 Finance and Operations, Department of State
36 Amanda Richards, Fiscal Management Specialist 2,
37 Bureau of Finance and Operations
38 Shannon Boop, Fiscal Management Specialist 1, Bureau
39 of Finance and Operations
40

41
42 ALSO PRESENT:
43

44 Edward Nielsen, MHS, Executive Vice President,
45 Pennsylvania Chiropractic Association
46 Nicole Sidle, Majority Committee Executive Director,
47 House Professional Licensure Committee
48 Justin Miller, D.C., Miller Sports Family
49 Chiropractic LLC
50 Thomas Alan Kriczky, D.C., Gwynedd Chiropractic

1 ***

2 State Board of Chiropractic

3 March 11, 2021

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, for the purpose of conducting quasi-judicial
9 deliberations. The Board returned to open session at
10 10:30 a.m.]

11 ***

12 [Theodore Stauffer, Executive Secretary, Bureau of
13 Professional and Occupational Affairs, reminded
14 everyone that the meeting was being recorded, and
15 those who remained on the line were giving their
16 consent to being recorded.]

17 ***

18 The regularly scheduled meeting of the State
19 Board of Chiropractic was held on Thursday, March 11,
20 2021.

21 ***

22 Official Call to Order

23 [Joseph Gerard Halloran, D.C., Chair, called the
24 meeting to order at 10:30 a.m.]

25 ***

1 [Nicole L. VanOrder, Esquire, Board Counsel, noted the
2 Board met in executive session prior to the public
3 meeting to discuss items 2, 3, and 4 on the agenda.]

4 ***

5 [Introduction of Board Members/Attendees]

6 ***

7 Approval of minutes of the January 28, 2021 meeting

8 CHAIR HALLORAN:

9 I reviewed the minutes. Has anybody
10 else had an occasion to review the
11 minutes and want to make any
12 alterations?

13 Anybody want to make a motion to
14 accept the minutes of January 28, 2021?

15 DR. SWANK:

16 I make a motion to accept the draft
17 minutes of January 28, 2021.

18 DR. AUKERMAN:

19 I'll second it.

20 CHAIR HALLORAN:

21 We could do it by acclamation. All in
22 favor of accepting the minutes as is for
23 the January 28, 2021 meeting, say aye.

24 [The motion carried unanimously.]

25 ***

1

2

3 [Joseph Gerard Halloran, D.C., Chair, exited the
4 meeting at 10:36 a.m.]

5

6 Report of Prosecution

7 [David N. Smith, Esquire, Board Prosecutor, presented
8 the Consent Agreement for Case No. 19-43-009749.]

9

10 MS. VANORDER:

11 I believe the Board would entertain a
12 motion in regard to Item No. 2 on the
13 agenda.

14 DR. AUKERMAN:

15 I want to make a motion to approve the
16 Consent Agreement at Case No. 19-43-
17 009749.

18 DR. SWANK:

19 I would like to second that motion.

20 MS. VANORDER:

21 Is there a roll call vote?

22

23 William Aukerman, aye; Dr. Swank, aye;
24 John McCarrin, aye; Miriam Woods, Kelsie
25 Coats, aye; Ted Stauffer, aye.

1 [The motion carried. Dr. Halloran recused himself
2 from deliberations and voting on the motion. The
3 Respondent's name is John Swade, D.C.]

4 ***

5 [Joseph Gerard Halloran, D.C., Chair, reentered the
6 meeting at 10:41 a.m.]

7

8 ***

9 Report of Board Counsel

10 CHAIR HALLORAN:

11 The second motion is for Case No. 18-43-
12 01433, Robert C. Wise II, D.C. to
13 approve and issue the Final Adjudication
14 and Order as drafted.

15 Could I have a second on that?

16 DR. AUKERMAN:

17 I'll second on the Adjudication and
18 Order at Case No. 18-43-01433.

19 CHAIR HALLORAN:

20 We are going to have to make this a
21 voice vote.

22

23 Dr. Halloran, aye; William Aukerman,
24 aye; Dr. Swank, aye; John McCarrin, aye;
25 Miriam Woods, aye; Kelsie Coats, aye;

1 Ted Stauffer, aye.

2 MS. VANORDER:

3 To be clear, that was a motion to adopt
4 the Adjudication and Order as presented
5 by Board counsel and issue the Final
6 Order.

7 [The motion carried unanimously.]

8 ***

9 CHAIR HALLORAN:

10 Now we have Case No. 19-43-005059. I
11 think Dr. McCarrin would like to make a
12 motion on that, please.

13 DR. MCCARRIN:

14 I move to grant the petition to modify
15 the May 22 Consent Order and accept the
16 revised Consent Agreement and Order at
17 Case No. 19-43-005059.

18 CHAIR HALLORAN:

19 Could I have that seconded?

20 DR. SWANK:

21 I second that motion.

22 CHAIR HALLORAN:

23 We will have to do a voice vote on this.

24

25 Dr. Halloran, aye; Dr. Aukerman, aye;

1 Dr. Swank, aye; Dr. McCarrin, aye;
2 Miriam Woods, aye; Kelsie Coats, aye;
3 Ted Stauffer, aye.

4 [The motion carried unanimously. The Respondent's
5 name is Steven James Grygier, D.C.]

6 ***

7 Report of Prosecution Division

8 [Peter D. Kovach, Esquire, Board Prosecutor, announced
9 the Bureau of Professional and Occupational Affairs
10 (BPOA) finalized an agreement with Dauphin County to
11 provide free services over the next year through the
12 prosecution office to help victims and witnesses.

13 Chair Halloran requested further information
14 regarding Board procedures when requesting a victim
15 advocate.

16 Carolyn A. DeLaurentis, Esquire, Deputy Chief
17 Counsel, Prosecution Division, explained that
18 prosecutors submit a request when there is a case
19 where an advocate may benefit a victim or witness.
20 She also mentioned the Bureau of Enforcement and
21 Investigation (BEI) could do that as well.

22 Mr. Kovach announced prosecution reassignments,
23 noting he would be keeping a few of the chiropractic
24 files, but the remainder of the cases and new
25 chiropractic assignments would be given to attorneys

1 on a team headed by Heather McCarthy. He also
2 announced Colby Widdowson as the new prosecution
3 liaison for the Board.

4 Mr. Widdowson introduced himself, noting his
5 eagerness to work with the Board. He also identified
6 a few other prosecuting attorneys, who may appear
7 before the Board to present hearings or consent
8 agreements.

9 Mr. Jarabeck thanked the Board for the
10 opportunity work with them regarding presentation of
11 cases. He commented the Board would be in great hands
12 with Ms. McCarthy's team and Mr. Widdowson as their
13 liaison.

14 Chair Halloran thanked them for their work and
15 professionalism and looked forward to a good
16 relationship with the new team.]

17

18 Appointment - Bureau of Finance and Operations Annual
19 Budget Presentation

20 [Shannon Boop, Fiscal Management Specialist 1, Bureau
21 of Finance and Operations, Department of State,
22 addressed licensee population from a revenue
23 standpoint. She noted 3,839 licenses at the time of
24 the report, which increased to 3,861 as of this
25 morning. She noted from 2016 to 2018 licenses

1 decreased by 88 with another decrease of 120 from 2018
2 to 2020.

3 Ms. Boop noted revenue by source. She noted the
4 biennial total. She stated 96% of revenue was coming
5 from renewals and applications.

6 Chair Halloran requested information concerning
7 the fine total.

8 Kimberly Adams, Chief of Fiscal Management, Bureau
9 of Finance and Operations, Department of State,
10 explained that fines are based on citations and civil
11 penalties.

12 Ms. Boop provided a categorical breakdown of
13 expenses. She noted expenses incur through direct
14 cost, timesheet-based cost, and licensee-based fees.
15 She noted expenses for FY 2018-2019 and FY 2019-2020
16 with a current budget for FY 2020-2021 and expenses as
17 of February 24, 2021. She noted the current expenses.
18 She stated the current budget should be adequate.

19 Ms. Boop reviewed revenues and expenses for FY
20 2020-2021, showing the budgeted figure. She stated
21 the Board has a steady decrease in the remaining
22 budget going forward. She informed the Board that it
23 had been 25 years since their fees were raised and
24 would have spent \$183,000 more than the Board received
25 over the last biennial period. She noted an

1 estimation of \$300,000 over budget in the next renewal
2 cycle.

3 Ms. Boop recommended the Board consider an
4 application fee increase to negate the need for a
5 large renewal fee increase and see what type of
6 additional revenue that will bring in. She requested
7 returning to an upcoming meeting to present a fee
8 increase package.

9 Chair Halloran stated the Board voted and
10 approved a fee increase 2 years ago that was
11 administratively taken away and wanted to ensure that
12 does not happen again.

13 Ms. Adams explained that expenses started going
14 down, and the fee increase was tabled to avoid a huge
15 surplus. She noted they could not foresee the
16 licensee population going down also. She stated the
17 earliest anything would go into effect based on
18 renewals is 2024. She would like to look at the whole
19 package and revisit with the Board.

20 Chair Halloran agreed to further discussion after
21 a new package is presented at the next Board meeting
22 on May 6, 2021.

23 Ms. Boop reviewed a breakdown of Board member
24 expenses, noting FY 2018-2019, FY 2019-2020, and the
25 FY 2020-2021 budget and expenses as of February 24,

1 2021. She noted the budget to be adequate, which was
2 carried over to FY 2021-2022.

3 Ms. Boop noted that any excess revenue goes back
4 into the restricted account for the Board's use.]

5 ***

6 Report of Board Counsel - Regulations

7 [Joseph Gerard Halloran, D.C., Chair, addressed Act
8 116 of 2020 regarding carryover of continuing
9 education. He stated Act 116 provides carryover of
10 continuing education credits in excess of the number
11 required for biennial renewal and valid for one
12 biennial renewal period.

13 Ms. VanOrder noted that other boards requested
14 additional information, and the Commissioner's Office
15 and Office of Chief Counsel will be working together
16 to answer questions from the boards regarding the
17 auditing process and the cost of outside vendors. She
18 questioned whether the Board wanted to review the
19 report before making any decisions.

20 Chair Halloran suggested tabling the carryover
21 decision for further discussion at the next Board
22 meeting after reviewing the Commissioner's report.]

23 CHAIR HALLORAN:

24 I make a motion that we table Act 116
25 after review of the report and would

1 like this to be put on the May 6, 2021
2 agenda after we had a chance to review
3 the Commissioner's report on this act,
4 so we can then consider what we should
5 do for our Board.

6 Does anybody want to second that
7 motion?

8 DR. SWANK:

9 Second.

10 CHAIR HALLORAN:

11 Dr. Swank seconded that. We will have
12 to voice vote this.

13

14 Dr. Halloran, aye; Dr. Aukerman, aye;
15 Dr. Swank, aye; Dr. McCarrin, aye;
16 Miriam Woods, aye; Kelsie Coats, aye;
17 Ted Stauffer, aye.

18 [The motion carried unanimously.]

19

20 Report of Commissioner

21 [Theodore Stauffer, Executive Secretary, Bureau of
22 Professional and Occupational Affairs, on behalf of K.
23 Kalonji Johnson, Commissioner, noted outdated
24 information on the websites should now be current
25 after the assistance of Ms. VanOrder and Board

1 administration.

2 Mr. Stauffer stated digital providers are
3 currently being considered that would be able to track
4 continuing education for audits of all 29 BPOA
5 boards.]

6 ***

7 Report of Board Counsel (cont.)

8 [Nicole L. VanOrder, Esquire, Board Counsel, noted she
9 will provide a status of regulations report at the
10 next meeting.

11 Ms. VanOrder provided updated information
12 regarding revision of the delegation regulatory
13 package and unlicensed supportive personnel. She
14 referred to the State Farm v. Cavuto case. She stated
15 the Pennsylvania Chiropractic Association (PCA) has
16 generously offered to provide input on their thoughts.

17 Ms. VanOrder noted reviewing previous Board
18 counsel's notes, where the initial unlicensed
19 supportive personnel package did not make it through
20 the process, and a court case that came out in July
21 2017 raised concerns. She stated the Delaware County
22 court case specifically dealt with whether certain
23 procedures performed by unlicensed supportive
24 personnel were allowed to be performed by unlicensed
25 supportive personnel, specifically looking at the

1 Chiropractic Practice Act Section 601.

2 Ms. VanOrder questioned whether the Board had any
3 interest in licensing supportive personnel to attempt
4 to address the delegation of therapeutic exercises.
5 She mentioned language was used to include delegation,
6 including therapeutic exercises. She will continue to
7 gather research and look at other states.

8 Chair Halloran commented that chiropractors were
9 already told they already have the authority to
10 delegate and makes no sense to add this. He provided
11 information from the Chiropractic Practice Act Section
12 601. He commented that regulatory agencies may be
13 finding it unnecessary for the addition of referral of
14 exercise therapy in the chiropractic office to
15 unlicensed personnel because the Chiropractic Practice
16 Act gives chiropractors the right to delegate
17 adjunctive procedures including exercise.

18 Chair Halloran referred to the Chiropractic
19 Practice Act Section 102, where it defines adjunctive
20 procedures. He stated exercise is about increasing
21 strength, endurance, and mobility through mobilization
22 exercises, and the term mobilization already includes
23 exercise delegation in the practice act. He noted
24 mobility technique, which exercise is a part of, is
25 already listed as procedures chiropractors can use and

1 delegate to unlicensed personnel.

2 Chair Halloran questioned how the appellate court
3 ruled and whether it ruled that exercise is so special
4 that chiropractors cannot delegate this action and
5 only a chiropractor could do it, or did the appellate
6 court rule that chiropractors cannot specifically do
7 that. He stated, if mobilization is in there and
8 exercise is a mobilization technique that
9 chiropractors are already, in the statute by the
10 intent of the legislature, able to delegate exercise.

11 Ms. VanOrder addressed the issues in the Cavuto
12 case, where rulemaking did not have clarity regarding
13 the duties of the unlicensed supportive personnel to
14 perform, and some of the activities listed able to be
15 delegated exceeded the scope of practice of a
16 chiropractor and therapeutic exercises was not well
17 defined. She stated many of the duties listed
18 required the knowledge, education, or training of a
19 chiropractor and that was the issue in Cavuto.

20 Ms. VanOrder also addressed issues with
21 delegation of adjunctive procedures, where even
22 licensed chiropractors are required to obtain
23 certification to perform them, and the regulation does
24 not specify the level of competency required by an
25 unlicensed supportive personnel to perform the

1 activity.

2 Ms. VanOrder mentioned that prior Board counsel
3 began working on a draft that included the definition
4 of therapeutic exercise. She noted the Board could
5 either revise the existing annex that had been drafted
6 and include the definition or reconsider licensing
7 supportive personnel. She mentioned that gathering
8 information from other states would be helpful.

9 Ms. VanOrder noted a conflict as to how the judge
10 interpreted the law versus how it had historically
11 been interpreted, which was unlicensed supportive
12 personnel were able to be used for therapeutic
13 exercise. She believed the Board was not interested
14 in licensure but would rather provide greater
15 clarification through the regulatory process.

16 Chair Halloran commented that the Board is trying
17 to regulate a practice already in the regulations and
18 suggested just simply stating that exercise is part of
19 the regulation, which specifically states mobilization
20 and that is exercise.

21 Ms. VanOrder stated the existing law has
22 always included that language; however, this one
23 court interpreted it differently. She also mentioned
24 the regulatory process is lengthy and onerous and
25 questioned whether the Board wants to invest time and

1 money if it is not going to be pass through the
2 regulatory process.

3 Marc Farrell, Deputy Policy Director, Department
4 of State, suggested presenting the issue to the policy
5 office and regulatory counsel.

6 Dr. McCarrin expressed concern with seeing less
7 chiropractors licensed in Pennsylvania, noting other
8 states still allow chiropractors to delegate exercise.
9 He noted delegating exercise to also be a large source
10 of income for chiropractors and beneficial to everyone
11 involved.

12

13 Ms. VanOrder informed the Board that no comments
14 were received after the Act 41 exposure draft was sent
15 out for comment on February 22, 2021, and any comments
16 received will be discussed at the next Board meeting.]

17

18 Report of Board Chair

19 [Joseph Gerard Halloran, D.C., Chair, addressed Act 67
20 of 2018, formerly Senate Bill 892, which was approved
21 and signed into law regarding preceptorship.

22 Chair Halloran mentioned prior discussion during
23 Board meetings reviewing proper procedures for
24 chiropractic preceptorships. He stated he spent many
25 hours talking to chiropractic university

1 administrators about their interest in Pennsylvania
2 after being informed of the new law allowing
3 preceptorship.

4 Chair Halloran again noted Act 116 of 2020 would
5 be tabled for further discussion after receiving
6 information from Commissioner Johnson.

7 Chair Halloran addressed criminal background
8 checks and FBI fingerprinting regulations for
9 chiropractors and provided information regarding a
10 state-by-state comparison of licensing boards that
11 border Pennsylvania.

12 Chair Halloran noted that the Pennsylvania
13 Chiropractic Association asked the Board to give an
14 opinion on problems with the Pennsylvania
15 Interscholastic Athletic Association (PIAA). He
16 commented that the state Board cannot give an
17 advisory opinion.

18 Chair Halloran addressed Providers of Approved
19 Continuing Education (PACE) and the Federation of
20 Chiropractic Licensing Boards.

21 Ms. VanOrder stated the information updated on
22 the website was to put the new act on to address the
23 preceptorship issues. She mentioned CE review is not
24 something that can just be delegated to outside agency
25 as the statute states that the Board will review CE.

1 She noted BPOA is looking at new systems of how to
2 deal with CE and CE audits to a third party.

3 Chair Halloran mentioned the Board voted to
4 include PACE if required information is submitted to
5 the Continuing Education Committee for a specific
6 Board approval number, meaning if the course is
7 legally acceptable after Board review.

8 Dr. Swank explained that any active education
9 that needs to be approved by the Board has to file an
10 application stating what they are going to be
11 teaching, credit amount approved, topics, and names of
12 teachers. He mentioned that many providers are
13 submitting their applications to the Board and
14 including the number that verifies approval from PACE
15 and makes the process of approving that class a lot
16 easier.

17 Dr. Swank recommended the PACE number be included
18 on the application. He noted that it does not
19 guarantee approval by the state but will help verify
20 they have gone through an approval process in the
21 past.

22 Ms. Roberts commented that it would be a matter
23 of editing the paper application by adding a line to
24 modify the form and having that posted on the website.

25 Chair Halloran stated PACE courses must be

1 independently approved by the Pennsylvania Continuing
2 Education Committee and have a Pennsylvania Board
3 approval number, which could be added to the website
4 too. He will contact Dr. Khoury for the best way to
5 accomplish that and report back to the Board.

6 Chair Halloran reminded everyone to follow all of
7 the COVID-19 guidelines of the Governor's Office and
8 the Pennsylvania Department of Health as outlined
9 while engaging in chiropractic treatment.]

10 ***

11 Report of Board Administrator

12 [Michelle Roberts, Acting Board Administrator, noted
13 remaining 2020 meeting dates.]

14 ***

15 New Business

16 [J. Gerard Halloran, D.C., Chair, again mentioned he
17 and Dr. Swank will provide the correct way to allow
18 the Federation of Chiropractic Licensing Boards (FCLB)
19 know the Board will accept PACE courses if the
20 providers of the courses do the extra step.

21 Chair Halloran will also double check their
22 website to make sure it is updated to accept
23 preceptorship.]

24 ***

25 Miscellaneous

1 [J. Gerard Halloran, D.C., Chair, noted the next Board
2 meeting scheduled for May 6, 2021.]

3 ***

4 Public Comment

5 [Justin Miller, D.C., Miller Sports Family
6 Chiropractic LLC, requested Chair Halloran review the
7 Pennsylvania Interscholastic Athletic Association
8 comments again because his microphone cut out.

9 Dr. Miller also questioned when the Board meeting
10 minutes would be updated on the website.

11 Ms. Roberts explained that access to the office
12 where the minutes are kept is limited, and she was
13 having difficulty with the equipment. She will post
14 the minutes as soon as possible.

15 Chair Halloran also commented that it was still
16 very much a COVID environment, and most of the
17 employees were picking up information from the office
18 but working remotely.

19 Chair Halloran addressed the PIAA issue again,
20 stating that the Board cannot provide an opinion on
21 that issue after receiving advice from the
22 Commissioner's Office. He mentioned there are outside
23 agencies that will help at the appropriate time and
24 having personal contacts at PIAA that have assured him
25 this is not the time.

1 Edward L. Nielsen, MHS, Executive Vice President,
2 Pennsylvania Chiropractic Association, commented that
3 there is a history of PIAA avoiding everything having
4 to do with chiropractic and sports regardless of COVID
5 for at least 5 years.

6 Mr. Nielsen commented that PIAA was
7 discriminating against chiropractors and questioned
8 whether that falls under the Board's jurisdiction.

9 Ms. VanOrder suggested addressing that with a
10 private attorney, again noting the Board cannot offer
11 an advisory opinion or get involved.]

12 ***

13 Adjournment

14 CHAIR HALLORAN:

15 Motion to adjourn?

16 MR. STAUFFER:

17 I'll make that motion.

18 DR. AUKERMAN:

19 I'll second it.

20 CHAIR HALLORAN:

21 All in favor of adjourning the meeting
22 by acclamation, say aye.

23 [The motion carried unanimously.]

24 ***

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

1 Chiropractic Meeting adjourned at 12:21 p.m.]

2

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4

CERTIFICATE

5

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

11

12

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14

Evan Bingaman,

15

Minute Clerk

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Sargent's Court Reporting

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Service, Inc.

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STATE BOARD OF CHIROPRACTIC
REFERENCE INDEX

March 11, 2021

TIME	AGENDA
	Executive Session
10:30	Return to Open Session
10:30	Official Call to Order
10:31	Introduction of Board Members/Attendees
10:35	Approval of Minutes
10:36	Report of Prosecution
10:38	Report of Board Counsel
10:45	Report of Prosecution
10:56	Appointment - Bureau of Finance and Operations Annual Budget Presentation
11:07	Report of Board Counsel (cont.)
11:18	Report of Commissioner
11:19	Report of Board Counsel (cont.)
11:25	Report of Board Chair
12:02	Report of Board Administrator
12:03	New Business
12:05	Miscellaneous
12:06	Public Comment
12:21	Adjournment