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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

July 15, 2021

1 ***

2 State Board of Chiropractic

3 July 15, 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 Ehrhart, Esquire, Board Counsel,
8 for the purpose of conducting quasi-judicial
9 deliberations. The Board returned to open session at
10 10:30 a.m.]

11 ***

12 Meeting Instructions/Introduction of Attendees

13 [Michelle Roberts, Acting Board Administrator,
14 provided virtual instructions to be followed during
15 the meeting.]

16 She informed everyone that the meeting was being
17 recorded, and those who continued to participate were
18 giving their consent to be recorded.]

19 ***

20 [Nicole Ehrhart, Esquire, Board Counsel, noted the
21 Board met in Executive Session with Board counsel
22 prior to public session to discuss items 2 through 7
23 and 9 on the agenda.]

24 ***

25 Introduction of Board Members/Attendees

1 [Chair Halloran requested an introduction of Board
2 members and attendees. A quorum was noted to be
3 present.]

4 ***
5 [Michelle Roberts, Acting Board Administrator,
6 announced Sarah McNeill has taken the position of
7 Board administrator and will be carrying out those
8 duties at the next meeting.]

9 ***
10 The regularly scheduled meeting of the State
11 Board of Chiropractic was held on Thursday, July 15,
12 2021.

13 ***
14 Official Call to Order
15 [Joseph Gerard Halloran, D.C., Chair, called the
16 meeting to order at 10:30 a.m.]

17 K. Kalonji Johnson, Commissioner, Bureau of
18 Professional and Occupational Affairs, was not present
19 during commencement of the meeting.]

20 ***
21 Approval of minutes of the May 6, 2021 meeting

22 CHAIR HALLORAN:

23 The first order of business would be
24 approval of the minutes. Have the Board
25 members had a chance to review the

1 minutes, and are there any corrections?

2 CHAIR HALLORAN:

3 Could I have a motion to accept the
4 Board minutes of May 6, 2021?

5 DR. SWANK:

6 Motion to approve the minutes from May
7 6, 2021.

8 CHAIR HALLORAN:

9 Do I have a second for that?

10 DR. MCCARRIN:

11 Second.

12 CHAIR HALLORAN:

13 We could do this by acclamation. All in
14 favor of accepting the Board minutes
15 from May 6, 2021, say aye.

16 [The motion carried unanimously.]

17 ***

18 Report of Prosecution

19 CHAIR HALLORAN:

20 Item 2 at Case No. 20-43-002985. I
21 believe Dr. Aukerman wants to make a
22 motion.

23 DR. AUKERMAN:

24 I'd like to make a motion to accept the
25 Consent Agreement and Order at Case No.

1 20-43-002985.

2 CHAIR HALLORAN:

3 Do I have a second?

4 DR. SWANK:

5 I second that motion.

6 CHAIR HALLORAN:

7 There is a motion on the floor to accept
8 the Consent Agreement and Order for Case
9 No. 20-43-002985. We will have to make
10 a voice vote on this.

11

12 Dr. Halloran, aye; Dr. Aukerman, aye;
13 Dr. Swank, aye; Dr. McCarrin, aye; Merry
14 Woods, aye; Kelsie Coats, aye.

15 [The motion carried unanimously. The Respondent's
16 name in Case No. 20-43-002985 is Richard Guy Visone,
17 D.C.]

18

19 CHAIR HALLORAN:

20 Item 3 at Case No. 19-43-008035. I
21 believe Dr. McCarrin wanted to make a
22 motion on that.

23 DR. MCCARRIN:

24 I'd like to make a motion to accept the
25 Consent Agreement and Order at Case No.

1 19-43-008035.

2 CHAIR HALLORAN:

3 Do we have a second on that?

4 DR. AUKERMAN:

5 I'll second it.

6 CHAIR HALLORAN:

7 There is a motion on the floor to accept
8 the Consent Agreement and Order for Case
9 No. 19-43-008035. We will have to do a
10 voice vote.

11

12 Dr. Halloran, aye; Dr. Aukerman, aye;
13 Dr. Swank, aye; Dr. McCarrin, aye; Merry
14 Woods, aye; Kelsie Coats, aye.

15 [The motion carried unanimously. The Respondent's
16 name in Case No. 19-43-008035 is John J. DeMatte IV,
17 D.C.]

18

19 CHAIR HALLORAN:

20 Item 4 Case No. 18-43-007577
21 hasbeentabled until the next meeting.

22

23

24 CHAIR HALLORAN:

25 Item 5 is Case No. 19-43-001162. Miriam

1 Woods, would you like to make a motion
2 on that?

3 MS. WOODS:

4 I make a motion to accept the Consent
5 Agreement and Order regarding Case No.
6 19-43-001162.

7 CHAIR HALLORAN:

8 A second on that?

9 DR. SWANK:

10 I second that motion.

11 CHAIR HALLORAN:

12 We have a motion on the floor to accept
13 the Consent Agreement and Order for Case
14 No. 19-43-001162. We will have to do a
15 voice vote on this.

16

17 Dr. Halloran, aye; Dr. Aukerman, aye;
18 Dr. Swank, aye; Dr. McCarrin, aye; Merry
19 Woods, aye; Kelsie Coats, aye.

20 [The motion carried unanimously. The Respondent's
21 name in Case No. 19-43-001162 is James Edward Moylan,
22 D.C.]

23

24 Report of Board Counsel

25 CHAIR HALLORAN:

1 I make a motion to accept the Final
2 Adjudication and Order in the matter of
3 John S. Kondus, D.C. Case No. 20-43-
4 001775.

5 I would like a second on that
6 motion.

7 DR. MCCARRIN:

8 Second.

9 CHAIR HALLORAN:

10 The motion has been made and seconded.
11 We will need a voice vote on that.

12
13 Dr. Halloran, aye; Dr. Aukerman, aye;
14 Dr. Swank, aye; Dr. McCarrin, aye; Merry
15 Woods, aye; Kelsie Coats, aye.

16 [The motion carried unanimously. The Respondent's
17 name is John S. Kondus, D.C.]

18 ***

19 CHAIR HALLORAN:

20 In the matter of Samuel Joseph, D.C. 20-
21 43-009659 I make a motion to grant the
22 Motion to Enter Default and Deem Facts
23 Admitted consistent with the discussion
24 in our Executive Session.

25 I would like a second on that

1 motion.

2 DR. SWANK:

3 Second.

4 CHAIR HALLORAN:

5 We have a motion on the floor to grant
6 the Motion to Enter Default and Deem
7 Facts Admitted consistent with the
8 discussion in our Executive Session. We
9 will do this by a voice vote.

10

11 Dr. Halloran, aye; Dr. Aukerman, aye;
12 Dr. Swank, aye; Dr. McCarrin, aye; Merry
13 Woods, aye; Kelsie Coats, aye.

14 [The motion carried unanimously. The Respondent's
15 name is Samuel Joseph, D.C.]

16

17 CHAIR HALLORAN:

18 In the matter of Larry Sabel, D.C., Case
19 No. 18-43-011786, I make a motion to
20 deny Respondent's Petition to Supplement
21 the Record from the hearing on March 3,
22 2021. .

23 Do I have a second on that motion?

24 MS. COATS:

25 I second the motion.

1 CHAIR HALLORAN:

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

3

4 Dr. Halloran, aye; Dr. Aukerman, aye;

5 Dr. Swank, aye; Dr. McCarrin, aye; Merry

6 Woods, aye; Kelsie Coats, aye.

7 [The motion carried unanimously.]

8

9 Appointment - Bureau of Finance and Operations Fee

10 Increase Discussion

11 [Kimberly Adams, Chief of Fiscal Management, Bureau of

12 Finance and Operations, Department of State, presented

13 to the Board requesting approval of the fee increase

14 package discussed at the last meeting. She provided

15 an update of the licensee count, noting an increase of

16 37 licensees as of this morning. She mentioned actual

17 expenses for FY 2019-2020 closed out at \$581,536.81

18 and actual revenue at \$854,455.90.

19 Ms. Adams provided the surrounding states

20 application and renewal fees that had been requested

21 at the last meeting.

22 Chair Halloran commented that the two main areas

23 of concern were what the Board needed to break even

24 and the deficit by FY 2027-2028, noting it would be

25 better for the Board to make a fee increase now at a

1 moderate rate.

2 Ms. Ehrhart offered to draft a regulatory package
3 increasing the Board fees as recommended by the Bureau
4 of Finance, stating a motion today would be
5 appropriate to ensure the regulation is done before
6 the next cycle because the regulatory process takes
7 time.]

8 CHAIR HALLORAN:

9 I make a motion to direct Board counsel
10 to draft a regulatory package increasing
11 the board fees consistent with the
12 recommendations from the Bureau of
13 Finance.

14 DR. SWANK:

15 Second.

16 CHAIR HALLORAN:

17 We are going to have to take a voice
18 vote on that.

19

20 Dr. Halloran, aye; Dr. Aukerman, aye;
21 Dr. Swank, aye; Dr. McCarrin, aye; Merry
22 Woods, aye; Kelsie Coats, aye.

23 [The motion carried unanimously.]

24

25 Report of Board Counsel (cont.)

1 [Nicole Ehrhart, Esquire, Board Counsel, provided an
2 update regarding the assistance of unlicensed
3 supportive personnel regulation. She noted it had
4 been previously raised in 2018, where it was decided
5 the regulation could not go forward. Since that time,
6 she also noted the *Cavoto* case, a Superior Court
7 decision from 2018. The Superior Court held that
8 chiropractors may not delegate active modalities and
9 therapeutic exercises further limiting delegation to
10 unlicensed personnel.

11 Ms. Ehrhart reported on an internal meeting with
12 the Governor's Office of Policy at the end of May
13 where the possibility of again moving forward with a
14 regulation to delegate to unlicensed supportive
15 personnel was discussed. This was a result of the
16 Board's request to revisit the matter. Ms.
17 Ehrhart provided the Board with feedback from the
18 meeting. Specifically, any regulation that delegates
19 any specific performance of any activity that requires
20 chiropractic knowledge, an adjunctive certification,
21 or requires another type of license would not get
22 support from the Governor's Office.

23 Ms. Ehrhart stated the way the regulation had
24 previously been drafted outlined delegation of the
25 performance of certain chiropractic activities, and

1 any of that type of language would have to be
2 stricken.

3 Ms. Ehrhart provided three proposals including
4 one that would direct her to streamline the previous
5 version of the annex for the regulation, where the
6 text of the proposed regulation will be extremely
7 limited. She commented that it is not going to get
8 through the regulatory process if it is too broad in
9 its delegation authority.

10 Ms. Ehrhart provided another option where the
11 Board could consider licensure of assistants but this
12 option would need a legislative initiative.

13 Ms. Ehrhart also mentioned the Board could leave
14 things as they are and not do anything with regards to
15 a regulation at this time.

16 Dr. McCarrin commented that the Board tried the
17 regulation route probably close to three times but it
18 never happens. He stated the Board discussed the
19 possibility of licensing or certifying assistants but
20 were told that it would overwhelm the division, where
21 there would not be enough people to process
22 everything.

23 Chair Halloran read a statement into the record
24 taken from a portion of his report that is germane to
25 the discussion, where the Pennsylvania State Board of

1 Chiropractic is charged with protecting the health and
2 safety of the public using its powers derived from our
3 own statues governing Pennsylvania's chiropractic law
4 to promulgate regulations in line with our
5 chiropractic law.

6 Chair Halloran noted prior discussion at the last
7 Board meeting, where regulatory agencies may be
8 finding it unnecessary for them to add referral of
9 exercise therapy in a chiropractic office to
10 unlicensed personnel into their regulations since the
11 Chiropractic Practice Act appears to allow them to
12 specifically delegate mobilization techniques to
13 unlicensed personnel in their chiropractic offices.
14 He emphasized that therapeutic exercise is a
15 mobilization therapy.

16 Chair Halloran stated legislative efforts to
17 define the therapeutic exercise in chiropractic
18 offices could be interpreted by regulating agencies as
19 a redundancy, which could lead one or more agencies to
20 rule against a regulation fix to the problem if they
21 perceive a legislative fix to the problem is at hand.

22 Chair Halloran read the chiropractic law into the
23 record, where Section 102 in the Chiropractic Practice
24 Act defines adjunctive procedures as physical measures
25 such as mechanical stimulation, heat, cold, light,

1 air, water, electricity, sound, massage and
2 mobilization. He noted mobilization is a term that
3 encompasses several techniques, including exercise.

4 Chair Halloran noted that it could be argued
5 successfully that chiropractors already have the power
6 to delegate to unlicensed personnel therapeutic
7 exercise since mobilization is specifically mentioned
8 in the Chiropractic Practice Act, and the Chiropractic
9 Practice Act states that chiropractors can give
10 unlicensed personnel a direction under their
11 supervision to do these techniques.

12 Chair Halloran provided a review of how
13 therapeutic exercise instruction is handled by
14 chiropractic laws in surrounding states. He mentioned
15 that all neighboring states allow chiropractors to
16 delegate and perform therapeutic exercises without any
17 extra licensure.

18 Chair Halloran commented that Pennsylvania is
19 unique; in that, chiropractors who have an adjunctive
20 procedures license are authorized by the Act of
21 December 16, 1986, to perform and delegate adjunctive
22 procedures, where therapeutic exercise is an
23 adjunctive procedure covered under that separate
24 license.

25 Chair Halloran addressed the undue burden on

1 chiropractors who took the extra training to qualify
2 for that license to be told that they cannot delegate
3 therapeutic exercise supervision to their health care
4 employees unless that employee is licensed. He
5 reported chiropractic licensure rates in Pennsylvania
6 are reducing with only 37 new candidates, while other
7 states are getting 200 to 300 and not having the same
8 rights and privileges as other chiropractors in other
9 states makes Pennsylvania much less attractive.

10 Chair Halloran addressed Act 41, which makes it
11 easier to attract health care personnel in general to
12 the state and did not understand why the profession of
13 chiropractic was given that extra burden when
14 mobilization was in their law and questioned, as the
15 Chairman of the State Board of Chiropractic, why a
16 regulation would be needed to delegate and get paid
17 for it.

18 Chair Halloran commented that Pennsylvania is the
19 only state in the area that has an adjunctive
20 procedures license for chiropractors that requires
21 extra training. He noted some chiropractors just
22 manipulate the spine only and do not provide any other
23 adjunctive procedures.

24 Dr. Swank addressed requirements for obtaining an
25 adjunctive procedures license. He noted a grandfather

1 clause, where an individual had to graduate by a
2 certain time and was automatically grandfathered in.
3 He noted an individual had to have an additional 120
4 hours in adjunctive procedures, pass the exam, and
5 were awarded the adjunctive procedures license. He
6 also noted the requirement of passing the physical
7 therapy part of the National Board of Chiropractic
8 Examiners Examination.

9 Chair Halloran stated an act back in 1986
10 required chiropractors to demonstrate that they were
11 qualified to do the procedures but now being denied
12 that right. He emphasized that mobilization is in
13 their law and exercise is a mobilization technique,
14 where they should be able to delegate therapeutic
15 exercise in their offices and get paid for it and not
16 be discriminated against.

17 Marc Farrell, Regulatory Specialist, Department
18 of State, questioned whether things chiropractors can
19 do themselves to things chiropractors can delegate to
20 unlicensed personnel are two separate issues.

21 Chair Halloran explained that it is specifically
22 in the chiropractic law that chiropractors can
23 delegate to unlicensed personnel and questioned why
24 chiropractors are being denied the ability to delegate
25 therapeutic exercise to unlicensed personnel and get

1 paid.

2 Mr. Farrell commented that the state is required
3 to abide by the court case.

4 Dr. McCarrin mentioned speaking with the Governor
5 about the case, where he actually questioned how a
6 court case could change the act and said it needed to
7 be looked into but never went any further.

8 Ms. Ehrhart stated the act specifically provides
9 under § 625.601 regarding supportive personnel that
10 nothing in this act shall prohibit a licensed
11 chiropractor from utilizing the assistance of
12 unlicensed supportive personnel performing under the
13 direct on-premises supervision of a licensed
14 chiropractor, provided that a chiropractor may not
15 delegate any activity or duty to such unlicensed
16 individuals which requires formal education or
17 training in the practice of chiropractic or the
18 knowledge and skill of a licensed chiropractor.

19 Chair Halloran explained that chiropractors had
20 trouble getting reimbursed and applied for the
21 adjunctive procedures license, which was supposed to
22 take care of that problem. He mentioned sending a
23 copy of his adjunctive procedures license to several
24 payment entities for reimbursement of adjunctive
25 procedures way back when. He questioned how a legal

1 panel identifies and says that chiropractors or a
2 licensed individual has to perform the procedure.

3 Chair Halloran noted that Dr. McCarrin and many
4 other chiropractors employ exercise kinesiologists and
5 physiologists out of college with degrees, where all
6 of their college courses were about exercise therapy
7 and now have to tell them that because they are not
8 licensed that they are not qualified to do therapeutic
9 exercise.

10 Dr. McCarrin noted employing an individual who
11 has a kinesiology degree but did not do any
12 kinesiology in his office because of the current
13 statute. He mentioned that between 8,000 to 10,000
14 people a year graduate with kinesiology degrees in the
15 state of Pennsylvania and now cannot have employment
16 working for a chiropractor and will work in a health
17 club or switch their degrees to physical therapy.

18 Chair Halloran addressed the obligation of
19 supervising and making sure an individual is trained
20 in particular activities, stating it would make no
21 sense for a chiropractor to not train somebody in
22 something that could potentially be a legal problem
23 for them in the future.

24 Chair Halloran stated the court decided that an
25 unlicensed individual in a chiropractor's office could

1 not do this and questioned how a kinesiologist is not
2 qualified.

3 Ms. Ehrhart commented that the practice act
4 specifically says that you may not delegate an
5 activity or a duty to such unlicensed individuals
6 which requires formal education or training in the
7 practice of chiropractic or the knowledge and skill of
8 a licensed chiropractor.

9 Mr. Farrell commented that he did not think the
10 Board is going to get where they need to go the way
11 the law is currently written, and there may be a need
12 for a legislative fix.

13 Dr. McCarrin explained that since the *Cavoto* case
14 came out, chiropractors in general and the largest
15 state association have gone that route, and it always
16 gets block by the insurance lobbyists and gets tied up
17 in the committee until it fades away.

18 Edward L. Nielsen, MHS, Executive Vice President,
19 Pennsylvania Chiropractic Association, reiterated what
20 Dr. McCarrin said, where there has not even been so
21 much as an informational hearing on the delegation
22 issue in the House Professional Licensure Committee.
23 He noted going above and beyond in trying to get this
24 discussion going.

25 Mr. Nielsen mentioned that there is currently

1 draft legislation with Representative John Lawrence
2 and they are awaiting movement there, but this would
3 be the third or fourth time of getting this moving and
4 resolved.

5 Chair Halloran stated mobilization was in their
6 law and questioned why they cannot perform therapeutic
7 exercise since it is one of the several different
8 types of mobilization techniques. He also questioned
9 why they have been discriminated against because of a
10 court order.

11 Chair Halloran commented that the State Board of
12 Chiropractic is there to ensure safety of the public
13 and would not promote anything that would not be safe.
14 He questioned why the Board has to go through
15 regulations to fix a problem they do not have, noting
16 one of the regulatory agencies told the Board they are
17 not going to do an extra regulation because the Board
18 already has it.

19 Chair Halloran also noted being told
20 chiropractors are already doing a legislative thing
21 and they are not wasting their time. He noted that
22 the Board does not think it is unsafe for
23 chiropractors to delegate therapeutic exercise to
24 personnel, particularly personnel that they have
25 specifically hired to have expertise in but just

1 happen to not be in a licensed professional. He
2 questioned why chiropractors do not have that ability
3 and why that court case counts.

4 Chair Halloran expressed concern with not being
5 invited to meetings and no one fixing the problem or
6 giving any ideas. He commented that going back to a
7 regulatory or legislative fix is not going to happen
8 and questioned whether the Board could simply state
9 that it is in the law.

10 Ms. Ehrhart reiterated that the law says
11 chiropractors cannot delegate anything that requires
12 formal education or training in the practice of
13 chiropractic, which includes adjunctive procedure
14 certification. She also noted chiropractors are bound
15 by the *Cavoto* decision until someone challenges it.
16 She also noted the legislative initiative to be the
17 best route.

18 Chair Halloran addressed the possible fix through
19 the Governor's Office. He noted providing Mr. Farrell
20 with information from other states but noted
21 frustration with not one chiropractor on the Board
22 being asked to participate in the policy meeting.

23 Chair Halloran informed everyone that
24 chiropractic offices have lost thousands of dollars
25 after being well-trained, making investments in

1 equipment and in people who know what to do with that
2 equipment but are being told they have to do it a
3 certain way and no other profession seems bound by
4 that.

5 Mr. Farrell appreciated the research sent by
6 Chair Halloran and assured him that all of his views
7 have been shared with the right people in the
8 Governor's Office. He commented that the research
9 shows neighboring states and what their chiropractors
10 can do but did not really speak to the delegation of
11 therapeutic exercise.

12 Chair Halloran stated chiropractors delegate
13 exercise and get paid for it in every state that
14 surrounds Pennsylvania but do not require a special
15 adjunctive procedures license. He questioned why the
16 Board is in this situation if the state of
17 Pennsylvania asked chiropractors to show they are
18 qualified to do the procedures, have staff members
19 work procedures with them, receive the education to
20 the state's satisfaction, and have an adjunctive
21 procedures license in addition to their chiropractic
22 license.

23 Chair Halloran questioned why the Board cannot
24 simply say it is in their law that they can do that.
25 He questioned whether the Board has the ability to

1 look at the law in a different way other than the
2 judge's orders. He mentioned the importance of taking
3 care of the public and requested a clear pathway on
4 what the Board needs to do.

5 Mr. Nielsen supported Chair Halloran's comments,
6 noting it to be a compelling issue that needed fixed
7 and resolved. He also noted having a conversation a
8 couple of years ago with the Governor. He noted
9 receiving concerns and complaints at PCA in terms of
10 the remedy, where it sounds like there is a passing of
11 the buck and rationalizing but no action being taken.

12 Ms. VanOrder provided information received from
13 the Governor's policy office, where unless the option
14 of the regulatory process or a sublicense class route
15 is chosen, it is not going to move forward.

16 Dr. McCarrin stated the Board was told that it
17 would not be able to financially support or have
18 enough personpower to have certification of a
19 chiropractic assistant, which is why that was dropped.
20 He mentioned the frustration is that the same three
21 options come up each time with no resolution. Ms.
22 VanOrder commented that having a certified
23 chiropractic assistant may not have been fully
24 explored, and there may be a way to get the support
25 that would be needed. She referred to a process that

1 involves a sunrise meeting but did not know if that
2 was required for a sublicensee or just a new cost of
3 licensees.

4 Keith Miller, D.C., Vice President/Legislative
5 Chair, Pennsylvania Chiropractic Association, stated
6 PCA understands there is a simple regulatory change if
7 the legislature passed a new law, and PCA had been
8 supporting this for years. He questioned whether PCA
9 could get the Governor's Office involved to try to
10 help the certified chiropractic assistant bill move
11 ahead to get a hearing.

12 Mr. Nielsen reported that the health insurance
13 industry is consistently blocking the bill and is why
14 the Governor needed to make it an issue because it is
15 going nowhere. He commented that all of this should
16 also be considered regarding the opioid situation,
17 where pain management is incredibly effective without
18 pharmaceuticals with chiropractic care for many, many
19 patients.

20 Chair Halloran commented that Board counsel noted
21 that the Board cannot simply state that the law is
22 that chiropractors can do it because the three-judge
23 panel overrules them and questioned whether that is
24 how it works.

25 Ms. Ehrhart explained that the law is the *Cavoto*

1 case as well as § 625.601 of the practice Act
2 regarding supportive personnel.

3 Chair Halloran noted that the practice act states
4 that the chiropractor has to reserve their duties and
5 responsibilities that only he or she can perform, not
6 that the chiropractor cannot ever delegate
7 responsibilities to unlicensed personnel.

8 Chair Halloran stated it is a further burden to
9 chiropractors in the state and discriminatory since
10 they are the only ones that I know of that has it
11 specifically in the law and that it is up to the
12 chiropractor to decide through his or her reasonable
13 intelligence what can and cannot be delegated in their
14 office provided they are on premises and can
15 immediately be brought in to make a decision on a
16 procedure being done.

17 Chair Halloran referred to Senate Bill 596, where
18 senators are saying specifically that a health carrier
19 may not pay a chiropractor less for services and
20 procedures identified under a particular physical
21 medicine and rehabilitation code, evaluation
22 management code, or spinal manipulatives than it pays
23 any other licensed provider under the same or
24 substantially similar code. He questioned whether
25 that changes things if that gets passed. He received

1 a "no" response.

2 Chair Halloran suggested placing the issue on the
3 agenda again for the next meeting, where all parties
4 get together, including the people from the Governor's
5 Office. He noted it to be a discriminatory finding
6 that only involves chiropractors, stating that the
7 three-judge panel said any providers and not just
8 chiropractors. That seems to me to go against
9 everything the Governor has preached on us about being
10 fair professionally.

11 Chair Halloran stated the Board was told there
12 was a possible fix through the Governor's Office to
13 break up the deadlock and questioned whether there is
14 a fix through the Governor's Office or not.

15 Mr. Farrell stated it would be a regulatory
16 change but have offered an alternative with the
17 chiropractic assistant route that will take a couple
18 of years to get in place and probably not be
19 satisfactory. He noted they could go to the
20 legislature again, but the Governor could only do so
21 much there and would run into the insurance industry.

22

23 Mr. Farrell will relay the comments from the
24 meeting to the Governor's Office in detail.

25 Chair Halloran stated not one chiropractor on

1 this Board, not one Board member on this Board, not
2 one person associated with this Board feels that the
3 Governor is being discriminatory toward us and
4 retracted and apologized if he specifically mentioned
5 the Governor's Office.

6 Ms. VanOrder addressed the meeting with the
7 policy office regarding Board options, noting she
8 passionately explained the Board's position. She
9 explained where the Board is today, stating that what
10 was drafted before was not going to work because if it
11 was going to proceed in the regulatory process past
12 the Governor's Office, the list would have to be very
13 limited in what could be delegated, so there is
14 nothing active.

15 Ms. VanOrder addressed the other option that was
16 discussed regarding a certified chiropractic
17 assistant, which was the preference of the Governor's
18 Office, and would probably need a legislative fix.
19 She mentioned that something may be drafted for the
20 chiropractic assistants without a regulatory fix but
21 would have to look at everything again. She noted
22 everyone is trying to present the candid options that
23 are legally available.

24 Mr. Nielsen mentioned that the *Associated Press*
25 this morning reported a 16 percent increase in

1 Pennsylvania in drug overdoses. He provided his own
2 comments, stating it would be great to have the
3 Governor take the bully pulpit and actually talk about
4 these kinds of issues and the importance of getting
5 alternatives to the traditional approach of drugging
6 people for pain management.

7 Mr. Nielsen noted it would be great to have a
8 meeting with the Governor and a statement in public to
9 talk about the importance of advancing physical
10 medicine in general, chiropractic in particular.

11 Chair Halloran expressed concern with the three-
12 judge appeals panel and that being the law. He
13 commented that the opinion was specifically about
14 chiropractic practice and did not include any other
15 practitioners that do have some overlap and is where
16 they are worried about where discrimination is and why
17 chiropractors feel there was an injustice done.

18 Chair Halloran suggested tabling the discussion
19 until the next Board meeting and questioned whether
20 Ms. Ehrhart should be directed to do a regulatory
21 package.

22 Dr. McCarrin recommended not doing a regulatory
23 package because it will be more restrictive.

24 Dr. Swank commented that his knowledge of how to
25 help patients is being cut off by the regulations in

1 Pennsylvania being so restrictive, noting that other
2 states can do things Pennsylvania cannot do at all
3 regarding treating neurology problems or patients who
4 have had tumors removed.

5 Dr. Aukerman also noted that Pennsylvania is
6 restrictive compared to neighboring states. He
7 mentioned that practice acts in other states, where
8 exercise science or rehabilitation was not even
9 brought up, because it is a given and should be part
10 of the practice of every chiropractor in the state.
11 He stated patients were not able to get it properly
12 because of the current court case.

13 Dr. Aukerman noted exercise for rehabilitation
14 was not spelled out in the act, because it was a given
15 and had been performed for the treatment of thousands
16 and thousands of patients over the years.]

17 ***

18 [K. Kalonji Johnson, Commissioner, Bureau of
19 Professional and Occupational Affairs, entered the
20 meeting.]

21 ***

22 K. Kalonji Johnson, Commissioner, Bureau of
23 Professional and Occupational Affairs, noted the tenor
24 of the conversation to be that there are parties who
25 feel the judiciary interpretation of the act has

1 unfairly expanded definitions that contravene what the
2 traditional understanding of the scope of practice has
3 always been known within the profession. He noted the
4 concern here is that because the practice act has not
5 specifically addressed the inconsistency, the Board
6 still did not have the tacit authority to drive
7 through regulations that the practice act itself has
8 failed to clearly delineate was within the scope of
9 the Board's authority.

10 Commissioner Johnson mentioned the importance of
11 the individuals on the General Assembly understanding
12 why allowing courts to essentially create a policy is
13 a problem. He cautioned the Board in tabling it
14 because the discussion needed to happen. He stated
15 the benefit of having an open discussion is that a
16 record is being created and drafted for future
17 discussions with the executive directors (EDs) and
18 with committee members so there is an understanding of
19 the full context of this problem.

20 Chair Halloran stated going through the
21 regulatory process had been intensely frustrating to
22 the Board and did not want to hand off serious issues
23 to the next Board. He noted there needed to be a way
24 out, so chiropractors are not discriminated against by
25 judges with a narrow appellate ruling.

1 Chair Halloran noted the practice act states that
2 mobilization techniques can be done in a
3 chiropractor's office and part of the law states that
4 the chiropractor has to reserve to themselves things
5 that only they can do. He stated chiropractors
6 already know that and have always practiced that way,
7 but they can delegate when they have trained their
8 personnel certain duties and that is right in the act.

9 Chair Halloran noted that the appellate court
10 states that their opinion is that therapeutic exercise
11 is just one of those things that the chiropractor has
12 to do personally. He stated large chiropractic
13 rehabilitation practices that hired exercise
14 physiologists who know these exercises inside and out
15 but do not happen to have a license now economically
16 have a problem.

17 Chair Halloran mentioned that he is not asking to
18 reinterpret the law but questioned why the Board
19 cannot state this is in the law because they are Board
20 and looked at the law, noting mobilization techniques,
21 of which therapeutic exercise is one of them, is in
22 the law.

23 Commissioner Johnson stated it comes down to how
24 the law defines those practices and is where the
25 interpretation has given way. He stated this is a

1 situation where the court has stepped in and tried to
2 narrowly define based on the facts provided, but the
3 narrow interpretation creates a precedent and is how
4 policy becomes an issue because narrowly defined laws
5 are always going to be tested with subsequent
6 individuals and entities who are going to test the
7 boundaries of the judicial interpretations.

8 Commissioner Johnson explained that the source of
9 the Board's dilemma starts with the practice act and
10 clearly defining the scope of mobility and therapeutic
11 mobility based upon not just common practice but based
12 upon whether it is the clinical definition, whether it
13 is the definition that has historically adopted and
14 uniformly and consistently adopted across the
15 profession combined with the most commonly accessible
16 standards of practice.

17 Commissioner Johnson stated there should never be
18 room for questioning what a law means and is how you
19 avoid these issues. He noted it to be a struggle
20 finding the balance between providing a layer of
21 flexibility and also being unambiguous in defining the
22 core functions.

23 Chair Halloran addressed certification of
24 chiropractic assistants, noting the Board was told
25 that would overwhelm Board administrators with a lot

1 of extra work and backed off on that and questioned
2 whether Board administrators would be overwhelmed if
3 the Board takes that path.

4 Commissioner Johnson commented that
5 administrative resources and the use of administrative
6 resources should not be the number one priority with
7 regard to whether or not the public is being
8 protected.

9 Dr. McCarrin questioned whether a chiropractic
10 member of the Board would be able to attend future
11 discussions concerning regulations with policy
12 committees.

13 Commissioner Johnson explained that regulatory
14 concerns should be part of the regulatory committee's
15 thought process. He noted that an *ex parte* meeting is
16 about the subject matter, and if the subject matter
17 pertains to board business, then it should be handled
18 in committee or in public view and should not be
19 handled *ex parte*.

20 Dr. McCarrin noted regulations do not sometimes
21 go through because of a wording or communication issue
22 and believed it would be helpful to have a
23 chiropractic Board member present to answer questions.

24 Commissioner Johnson stated no one knows what the
25 questions are going to be and may not address the

1 subject matter or be within the scope of a licensee's
2 expertise. He also noted everything is articulated in
3 the preamble, which is not drafted without Board
4 review and formal approval.

5 Chair Halloran stated Ms. VanOrder is very well-
6 versed in talking about our issues, but that is not
7 necessarily the same as going in front of the
8 Independent Regulatory Review Commission (IRRC). He
9 felt that a chiropractic member of the Board should
10 have attended that policy meeting if there was any
11 need for clarifications. He noted that it would not
12 be proper for Board members to go into any of the
13 regulatory meetings because they would have to
14 separate ourselves governmentally.

15 Dr. McCarrin noted the Board was back to the same
16 resolution as the last time and the same resolution
17 the time before that and could have saved a lot of
18 time by just reverting on that avenue. He stated
19 there are not really three options and only one, which
20 is to go legislative.

21 Commissioner Johnson stated the Board is still
22 running into the same *ex parte* issues with attending
23 policy meetings. He noted it is not the exact same
24 thing as separation of government but it is related to
25 government transparency and related to violations of

1 the Sunshine Act.

2 Mr. Nielsen suggested having a briefing in terms
3 of educating all of the parties on what chiropractic
4 is, why this matters, and leaving any decision-making
5 or direction-setting out of it for the time being but
6 just getting everybody up to speed on the practicing
7 doctors' perspective on this delegation issue.

8 Dr. Miller questioned whether there was a rash of
9 injuries and complaints by the public over the last
10 two decades on people getting injured or hurt or
11 complaining or being misled by chiropractic assistants
12 (CAs) doing exercise.

13 Dr. Miller stated a lot of the schools like New
14 York Chiropractic College (NYCC), which is now
15 Northeastern College of Health Sciences, requires
16 graduates about a half a year before they graduate to
17 contact people at the state at which they are planning
18 to practice to find out about the laws and regulations
19 before they start applying for licensure.

20 Dr. Miller personally interviewed several
21 students who decided not to come to Pennsylvania when
22 they find out they cannot delegate and some of the
23 other rules. He noted it is creating an
24 anticompetitive environment and scaring away future
25 doctors.

1 Dr. Miller referred to the opioid crisis and
2 noted Pennsylvania has the second largest geriatric
3 population in the nation, stating it is bad, not just
4 for chiropractors, but for the patients they treat and
5 the competitiveness of the commonwealth.

6 Chair Halloran stated chiropractic has not been
7 shown to have any more complaints than any other
8 profession providing delegated exercise services or
9 rehabilitation. He also expressed concern with
10 getting only 37 new doctors this year when there is
11 such a need for chiropractors in growing places like
12 Lancaster County and should concern the government if
13 Pennsylvania is not competitive in getting young
14 chiropractors to come to the state.

15 Dr. Miller mentioned receiving many phone calls
16 from not only students graduating but actual
17 chiropractic schools because of the confusion on
18 whether or not they were able to do internships in
19 Pennsylvania where they were able to see patients.

20 Dr. Miller stated PCA was able to get the state
21 Board to post the updated regulations on the state
22 Board website, and the State Board of Chiropractic
23 could attest to the fact that there were dozens of
24 calls and multiple chiropractic universities that
25 contacted the state Board last year that keep a very

1 tight loop of what is happening in Pennsylvania and
2 tell their students it is an anticompetitive space and
3 to think otherwise.

4 Chair Halloran addressed one of the prime
5 functions of the state Board, which is to make sure
6 the doctors coming to the state are well-qualified and
7 well-trained, but the statistics show the function is
8 becoming less and less because of the problem with
9 delegation of exercise but would be just as
10 competitive of a law as other states if not for that
11 problem.

12 Commissioner Johnson stated the Board still has
13 an opportunity to be able to use the authority it has,
14 maybe not to enact legislation, but the Board has
15 other powers. He mentioned the Board can hold a
16 hearing or create meetings for individuals to come in
17 and discuss why this specific issue affects the
18 regulated community as a whole and jeopardizes public
19 safety.

20 Commissioner Johnson offered to facilitate that
21 with the resources the bureau has when creating
22 another meeting. He stated the only issue before the
23 department is to make sure the Pennsylvania Sunshine
24 Act is followed and they handled all of the logistics
25 with regard to making sure witnesses are properly

1 notified and coming in, everything is recorded, and
2 everything is put before the public for the General
3 Assembly to have that record.

4 Commissioner Johnson explained that executive
5 directors (EDs) of the committees are active
6 participants on the calls but not subject matter
7 experts. He stated they are constitutional experts in
8 terms that they understand the process better than
9 anyone but rely on the Board and expert testimony of
10 the actual subject matter itself.

11 Commissioner Johnson noted the importance of
12 everything being done in a transparent manner and
13 debated in a public space so everyone has an
14 opportunity to weigh in and proper information on the
15 record so legislators are educated and informed. He
16 stated the General Assembly needed to be versed in the
17 specific issues to get everyone to a place of
18 compromise, so the next iteration of the Board did not
19 have to struggle with this issue.]

20 CHAIR HALLORAN:

21 I make a motion that we have a special
22 meeting of the Board and all interested
23 chiropractors and other participants of
24 the state in regard to the delegation of
25 therapeutic exercise issue in

1 chiropractic.

2 I would further make a motion that
3 Commissioner Johnson and Nicole Ehrhart,
4 our counsel, along with our Board
5 administrator get in touch with the
6 Board with available dates and a
7 decision can be made by Board members
8 what date we can have this meeting.

9 Does anybody second that?

10 COMMISSIONER JOHNSON:

11 One clarification, chairman. I would
12 just add that the purpose of the meeting
13 includes the opportunity to elicit
14 testimony with regard to the issue
15 specifically of delegation of certain
16 practices and to frame the definitions
17 around current standards of practice
18 within the regulated community.

19 CHAIR HALLORAN:

20 I agree with that. Does anybody want to
21 second that?

22 MS. COATS:

23 I'll second that.

24 CHAIR HALLORAN:

25 Let's open this up for discussion real

1 quick and see if we all agree because
2 this is the way to go to have a special
3 meeting on this and put the facts on the
4 record.

5 DR. SWANK:

6 Yes, I agree we should have a fact
7 meeting to clarify everything for the
8 legislators.

9 CHAIR HALLORAN:

10 We are going to call the question.
11 There is a motion on the Board for the
12 special meeting outlined by Dr. Halloran
13 and Commissioner Johnson and seconded by
14 Kelsie Coats and discussion with Dr.
15 Swank. He agrees on the record with
16 that. Dr. McCarrin does as well. Dr.
17 Aukerman, I assume will vote on this.

18 We are going to do this by a voice
19 vote.

20
21 Dr. Halloran, aye; Dr. Aukerman, aye;
22 Dr. McCarrin, aye; Dr. Swank, aye;
23 Commissioner Johnson, aye; Kelsie Coats,
24 aye.

25 [The motion carried unanimously.]

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Report of Board Chair

[Joseph Gerard Halloran, D.C., Chair, addressed guidelines from the Pennsylvania Department of Health, where health care activities still require masking for health care personnel and patients in a health care setting.

Chair Halloran stated source control measures of proper masking, gloves, exam and treatment room sanitation, and 6-foot physical distancing rules should still stay in effect for all health care entities who see patients in the state of Pennsylvania following the guidelines from the Centers for Disease Control and Prevention.

Chair Halloran noted the only exception is staff meetings, but everyone would still need to wear a mask if only one member of the staff is not vaccinated.

Chair Halloran thanked Miriam Woods, on behalf of the Pennsylvania State Board of Chiropractic, for her exceptional service to the state of Pennsylvania as a public member of the Board.

Chair Halloran noted there will be one chiropractor and two public member openings to fill when Ms. Woods has finished her time on the Board.

Chair Halloran reminded everyone that animal

1 chiropractic must be performed in conjunction with a
2 licensed veterinarian in the state of Pennsylvania
3 even if someone has taken animal chiropractic courses,
4 have board certification of animal chiropractic from
5 another state, or trained in veterinary orthopedic
6 manipulation by a veterinarian.

7 Chair Halloran referred to an article in the
8 *Pittsburgh Post-Gazette* in March 2017 by Dr. Lawrence
9 Gerson outlining the legal way chiropractors and
10 veterinarians can work together to provide animal
11 chiropractic to veterinary patients. He asked fellow
12 chiropractors to refrain from doing procedures without
13 also involving a fellow veterinarian. He mentioned
14 there are many veterinarians who would be willing to
15 help but in a safe, legal way.

16 Chair Halloran noted the Federation of
17 Chiropractic Licensing Boards District III Meeting
18 will be held in Jersey City, New Jersey October 7-10,
19 2021. He questioned whether the travel ban is still
20 in place and whether he and Dr. Aukerman could attend
21 the meeting as an independent chiropractor.

22 Ms. Roberts will inquire into whether Board
23 members could attend the FCLB Meeting as an
24 independent contractor.]

25

1 Report of Commissioner

2 [K. Kalonji Johnson, Commissioner, Bureau of
3 Professional and Occupational Affairs, thanked Miriam
4 Woods for her tremendous contribution and service.

5 Commissioner Johnson addressed physical travel
6 requests, noting physical travel is considered up to
7 the pre-COVID limit of two members with the rest of
8 the Board having the option of attending virtually.
9 He encouraged everyone to submit travel requests as
10 soon as possible.

11 Commissioner Johnson thanked Chair Halloran for
12 providing information regarding animal chiropractic
13 and the law. He mentioned receiving inquiries from
14 the Pennsylvania Veterinary Medical Association (PVMA)
15 regarding requests and inquiries from their members.

16 Commissioner Johnson addressed bureau operations
17 and personnel matters, noting everyone is slowly
18 returning to work. He mentioned Board administrators
19 and program staff have been working remotely and are
20 continuing to process applications in a timely manner.

21 Commissioner Johnson discussed moving into a
22 permanent equilibrium with regard to in-person and
23 remote work, noting there will be slight changes in
24 terms of function within the physical plan. He noted
25 waivers are still in place until September 30, 2021,

1 and virtual meetings will continue.

2 Commissioner Johnson addressed working internally
3 regarding indexing data and observations concerning
4 the effects waivers had on operations, administrative
5 practices, and each of the boards. He mentioned
6 preparations are taking place to be able to support
7 the Board, whether that is back at Penn Center or
8 continuing virtually. He encouraged Board members to
9 check commonwealth emails and emails from Board
10 administration and Board counsel regarding how the
11 meeting will look this fall.

12 Chair Halloran questioned whether Commissioner
13 Johnson had any information to report concerning Act
14 116 regarding the one-time rollover of CE credits and
15 the effect on administration.

16 Commissioner Johnson addressed the request for a
17 comprehensive overview of online CE as it exists
18 across the 29 boards and commissions. He commented
19 that legal started on the request but waivers took
20 precedence. He discussed the administrative aspect,
21 where the Department of General Services will be
22 reengaging this month regarding matters of procurement
23 and contracting functions essentially frozen in March
24 2020.

25 Commissioner Johnson mentioned there are issues

1 with identifying a vendor that would be able to manage
2 the administration or maintenance of that level of CE
3 compliance across the boards and commissions. He
4 asked the boards for patience as they continue to work
5 on providing answers and information on how that will
6 affect administration.]

7 ***

8 Miscellaneous

9 [J. Gerard Halloran, D.C., Chair, noted the next Board
10 meeting date is scheduled for September 23, 2021.

11 Chair Halloran welcomed Ms. Ehrhart and Sarah
12 McNeill. He also thanked Ms. Roberts for her work.]

13 ***

14 Public Comment

15 [Edward L. Nielsen, MHS, Executive Vice President,
16 Pennsylvania Chiropractic Association, commented that
17 a lot of ground was covered and was hopeful some good
18 follow-up information would be coming very soon.]

19 ***

20 Adjournment

21 CHAIR HALLORAN:

22 Does anybody have a motion to adjourn
23 this meeting?

24 DR. AUKERMAN:

25 I'll make a motion to adjourn the

1 meeting.

2 COMMISSIONER JOHNSON:

3 Second.

4 CHAIR HALLORAN:

5 All in favor, say aye. Everybody says
6 aye by acclamation. The meeting is
7 adjourned.

8 [The motion carried unanimously.]

9 ***

10 [There being no further business, the State Board of
11 Chiropractic Meeting adjourned at 1:14 p.m.]

12 ***

13

14 CERTIFICATE

15

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

21



22

Evan Bingaman,

23

Minute Clerk

24

Sargent's Court Reporting

25

Service, Inc.

26

STATE BOARD OF CHIROPRACTIC
REFERENCE INDEX

July 15, 2021

TIME	AGENDA
9:00	Executive Session
10:30	Return to Open Session
10:30	Introduction of Board Members/Attendees
10:36	Official Call to Order
10:37	Approval of Minutes
10:37	Report of Prosecution
10:46	Report of Board Counsel
10:52	Appointment - Bureau of Finance and Operations Fee Increase Discussion
10:59	Report of Board Counsel (cont.)
12:52	Report of Board Chair
12:58	Report of Commissioner
1:10	Miscellaneous
1:12	Public Comment
1:14	Adjournment