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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

TIME: 9:08 A.M.

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

November 8, 2018

1 ***

2 State Board of Chiropractic

3 November 8, 2018

4 ***

5 The regularly scheduled meeting of the State
6 Board of Chiropractic was held on Thursday, November
7 8, 2018.

8 ***

9 Official Call to Order

10 [J. Gerard Halloran, D.C., Chair, called the meeting
11 to order at 9:08 a.m.]

12 ***

13 Approval of Minutes of the July 19, 2018 meeting

14 CHAIR HALLORAN:

15 Are there any corrections that anybody
16 needs to change or ask questions about
17 the minutes of the last Board meeting?

18 Could I have a motion to accept the
19 Board minutes?

20 DR. AUKERMAN:

21 I'll make a motion to approve the
22 minutes of July 19.

23 CHAIR HALLORAN:

24 Do I have a second?

25 MS. WOODS:

1 Second.

2 CHAIR HALLORAN:

3 Everyone in favor, say aye. These Board
4 minutes have been approved for the last
5 Board meeting.

6 [The motion carried unanimously.]

7 ***

8 Report of Board Prosecutor

9 [Paul J. Jarabeck, Esquire, Board Prosecution Liaison,
10 introduced himself to the Board but had no report from
11 the Prosecutorial Division.]

12 ***

13 Report of Commissioner - No Report

14 ***

15 Report of Board Counsel

16 [Kerry E. Maloney, Esquire, Board Counsel, noted no
17 cases on the agenda for review.

18 Mr. Maloney stated once all comments are received
19 regarding the Assistance of Unlicensed Supportive
20 Personnel exposure draft that the Board would forward
21 the exposure draft without any changes.

22 Mr. Maloney noted a petition for change in the
23 regulations to allow for the practice of animal
24 chiropractic for discussion later in the meeting.]

25 ***

1 Report of Board Chairman

2 [J. Gerard Halloran, D.C., Chair, and Dr. Khoury
3 attended the Federation of Chiropractic Licensing
4 Boards District III Meeting in September.

5 Chair Halloran noted discussion concerning the
6 Chiropractic Board's responsibility to inform state
7 medical agencies on chiropractic assistance with the
8 opioid crisis.

9 Chair Halloran noted veterinary and chiropractic
10 cooperation in chiropractic states becoming stricter
11 with criminal background checks when licensing
12 chiropractors, reciprocity of more licenses between
13 states, and online continuing education.

14 Chair Halloran addressed temporary treatment
15 licenses for chiropractors and their own medical staff
16 traveling from city to city.

17 Chair Halloran noted a concern for the regulatory
18 medical-legal and ethical problems occurring in
19 chiropractic multidisciplinary clinics that the Board
20 will be considering in the future.

21 Chair Halloran stated the delegation of
22 chiropractic duties should be defined by the Board,
23 noting that Drs. McConnell and McCullough attempted to
24 have the Chiropractic Board define the practices to be
25 delegated by a chiropractor in 2007. He noted that

1 the Superior Court ruling does not just affect
2 chiropractors but may affect other professions as
3 well.

4 Chair Halloran noted that Dr. Swank would be
5 attending the American Veterinary Chiropractic
6 Convention to gather information on the coordination
7 between chiropractic and veterinary professions. He
8 stated the Chiropractic Board was in the process of
9 obtaining information on the similar practices of
10 other states, as well as their difficulties and
11 solutions.

12 Chair Halloran commented that the Board intends
13 to send Ms. Woods to the opioid conference in
14 Baltimore so that the Board can continue to be
15 educated on the opioid crisis. It was noted that
16 Board members placed on the Pennsylvania State Opioid
17 Committee over a year ago had not yet been contacted.

18 Chair Halloran noted the importance of helping
19 fellow chiropractors with licensing issues but also
20 noted the need to preserve the integrity of the
21 Chiropractic Board.

22 Chair Halloran stated that associations should
23 nominate a slate of Board members from the eastern,
24 central, and western parts of the state so that a
25 Board representation balance can be maintained.

1 the recent Superior Court Decision.

2 Marc Belitsky, D.C., Broomall Total Health,
3 addressed the recent ruling by Judge G. Michael Green
4 of Delaware County regarding a case between an
5 insurance company and a single chiropractor,
6 interpreting the state law and Chiropractic Practice
7 Act and changing the scope and way chiropractic care
8 would be rendered in the Commonwealth.

9 Dr. Belitsky stated that chiropractors have been
10 treating patients with the ability to delegate
11 therapeutic exercise since Practice Act 188 in 1986.
12 He commented that, if the judge's opinion overrides
13 the Practice Act, it will negatively change the course
14 of chiropractic and limit the ability of chiropractors
15 to practice and help patients. He discussed being
16 restricted to a one-on-one doctor-patient encounter
17 without staff assistance causing a reduction in the
18 number of patients to be evaluated.

19 Dr. Belitsky contacted legislators, state
20 senators, and state representatives, who expressed
21 confusion on how this happened. He requested that the
22 Board expedite the exposure draft on behalf of
23 thousands of chiropractors, patients, and chiropractic
24 employees who do not want to lose their jobs.

25 Mr. Maloney explained that the regulatory process

1 would take longer than a few months. He commented
2 that the new draft was detailed and has a better
3 chance of moving forward than the one from 2007-2008.

4 Mr. Belitsky stated this was causing confusion
5 with practicing professionally, ethically, and within
6 the scope of practice.

7 Mr. Maloney commented on the Board's opportunity
8 to expand and/or clarify the Act and the regulations.

9 Chair Halloran suggested continuing to send
10 letters to congressmen and senators, noting that this
11 type of urgency would make a difference.

12 Chair Halloran questioned whether the
13 Pennsylvania Chiropractic Association had their legal
14 counsel working on proper practice under this law.
15 Mr. Nielsen stated that General Counsel had taken a
16 position, given how aggressive State Farm was in their
17 prosecution of this issue, informing the Board of
18 PCA's recommendation of not delegating to unlicensed
19 personnel.

20 Jason Lazaroff, D.C., Maxcare Chiropractic LLC,
21 addressed chiropractic acute care and the ability to
22 keep patients off of narcotics. He discussed current
23 restrictions causing patients to leave his practice
24 and return to medications.

25 David Nadler, D.C., David W. Nadler & Associates,

1 is the team chiropractor for World Team Tennis with
2 Billie Jean King and has been working as the team
3 doctor/chiropractor for the Philadelphia Wings the
4 last 17 seasons. Dr. Nadler stated the delegation
5 issue has been problematic and concerning with only
6 being able to be with one player at a time.

7 Dr. Nadler mentioned being a chiropractor for the
8 Women's World Cup in 2003 and the Men's Gold Cup in
9 2010 as an integral part of the medical staff. He
10 stated his counterparts in the allopathic and
11 osteopathic profession have free reign in terms of
12 delegation.

13 Michael Bennese, D.C., Synchrony ChiroCare, noted
14 his concern for being vulnerable in the future to
15 other issues when one judge can singlehandedly change
16 the practice of chiropractic.

17 Brian M. Epp, D.C., Performance Chiropractic &
18 Rehabilitation, explained he is a chiropractor with a
19 background in physical therapy and athletic training,
20 along with performing neurological testing for many
21 years. He also practiced acupuncture under his state
22 license in Colorado. Dr. Epp returned to Pennsylvania
23 in 2009 and expressed his concern upon learning of the
24 ensuing limited scope of practice for chiropractors.
25 He commented that chiropractors are being devalued to

1 the point of being considered no better than a
2 licensed massage therapist. He expressed his
3 dissatisfaction with the chiropractic profession just
4 taking the position to sit back and wait until the
5 profession becomes further eroded just because of one
6 loss with State Farm.

7 Patrick Borja, D.C., The Spine & Wellness Center,
8 discussed financial loss, stating that 50 percent of
9 new patients are referred by medical doctors.
10 Referrals will be decreased with the possibility of
11 reduction in staff.

12 Chair Halloran noted difficulties with dealing
13 with multiple levels of regulatory commissions and
14 agencies but noted that the Board will go forward on
15 this issue with a regulatory solution. He commented
16 that the more chiropractors who come forward into a
17 venue like this the better.

18 Chair Halloran commented that the current
19 exposure draft is more sophisticated and more targeted
20 than the one in 2006-2007 and is targeted to the point
21 where it will help chiropractors in need right now
22 with delegation issues. He stated the language in the
23 regulations is streamlined to clarify this point and
24 protect chiropractors to practice the way our law
25 intended.]

1 ***

2 [The Board recessed from 9:58 a.m. until 10:19 a.m.]

3 ***

4 Report of Board Chairman (Continued)

5 [J. Gerard Halloran, D.C., tabled discussion until the
6 next meeting regarding Act 31 of 2014 Child Abuse
7 Recognition and Reporting Continuing Education so that
8 Dr. Swank, who is at the American Veterinary
9 Chiropractic Association Conference in Dallas, may
10 participate in the discussion.]

11 ***

12 Report of Regulatory Counsel

13 [Kerry E. Maloney, Esquire, Regulatory Counsel,
14 announced that he will be taking over all of the
15 Board's regulations. He stated a report will be
16 available at the next meeting to updated the Board on
17 its regulations and movement of the Assistance of
18 Unlicensed Supportive Personnel.

19 Mr. Maloney suggested discussion regarding the
20 amendment to the act that essentially allows
21 chiropractic students to have hands-on work under the
22 supervision of the chiropractor.

23 Dr. McCarrin questioned the oversight of students
24 working in each facility. Mr. Maloney explained that
25 the oversight would be under the school's curriculum,

1 so the school would set up the supervising
2 chiropractor and the facility in which the oversight
3 occurs.

4 Dr. McCarrin questioned whether students would be
5 able to perform exercise. Mr. Maloney suggested
6 looking at the intern question further in making a
7 decision on the matter.

8 Chair Halloran questioned whether the school or
9 doctor covers the student regarding medical-legal
10 issues, such as malpractice, and noted the need to
11 have that information from the school.]

12 ***

13 Report of Board Administrator - No Report

14 ***

15 Review of Applications - No Report

16 ***

17 Appointment - David Smolensky, D.C. and Charles Artz,
18 Esquire, Petition for Amendment of Regulations

19 Regarding Animal Chiropractic

20 [Charles Artz, Esquire, Counsel for Dr. Smolensky,
21 addressed the Board with regard to a Petition that he
22 filed on Dr. Smolensky's behalf to make changes in the
23 regulations concerning animal chiropractic.

24 He referred to a legal memo written by John
25 Henderson, who was Chief Counsel in the Governor's

1 Office of General Counsel back in 2002, which human
2 and animal chiropractic were two subsets of
3 chiropractic. He asked members to review the Exhibit
4 A attachment included in his letter to the Board with
5 regard to the Petitioner's Request to Amend the State
6 Board of Chiropractic's Regulations at 49 Pa. Code,
7 Section 5.1. Mr. Artz and Dr. Smolensky offered to
8 come back before the Board with regard to the matter.

9 Crystal LaClair presented before the Board in
10 support of Dr. Smolensky. She referred to her letter
11 previously sent to the Board for further discussion of
12 Dr. Smolensky's dedication and compassion with regard
13 to the chiropractic care provided to her cat.

14 David Smolensky, D.C., presented before the Board
15 in support of his Petition. He provided a summary of
16 his professional and educational background, including
17 being certified by the Animal Chiropractic
18 Certification Commission.

19 Dr. Smolensky stated the objective of the
20 American Veterinary Chiropractic Association (AVCA)
21 program is to cross train human chiropractors and
22 veterinarians in locating, analyzing and adjusting
23 vertebral subluxation. He provided examples of some
24 of the animal chiropractic care he has provided.

25 He answered questions from Board members with

1 regard to CE credits, referrals, and the Options for
2 Animals program started by Dr. Sharon Willoughby in
3 1989.

4 Chair Halloran noted the Board was in the process
5 of gathering information pertaining to the matter and
6 stated the input of Dr. Smolensky was considered as
7 very valuable.]

8 ***

9 Miscellaneous - Board Meeting Dates

10 [J. Gerard Halloran, D.C., Chair, noted proposed 2020
11 meeting dates for the Board's review.]

12 ***

13 Miscellaneous - Election of Officers

14 DR. AUKERMAN:

15 I'll make a motion to have Gerry
16 Halloran the Chair for 2019.

17 MS. BROCK:

18 I'll second that.

19 CHAIR HALLORAN:

20 All in favor?

21 [The motion carried unanimously.]

22 ***

23 DR. AUKERKAN:

24 I'll make a motion to have John as Board
25 Secretary.

1 MS. BROCK:

2 I'll second that motion.

3 CHAIR HALLORAN:

4 All in favor?

5 [The motion carried unanimously.]

6 ***

7 Miscellaneous - Committee Assignments

8 [J. Gerard Halloran, D.C., Chair, tabled committee
9 assignments until Dr. Swank's return.

10 Mr. Maloney suggested reducing the Probable Cause
11 Screening Committee to one person.]

12 ***

13 DR. AUKERKAN:

14 I'll nominate Nikole Brock to be the
15 only person from the Board on the
16 Probable Cause Screening Committee.

17 DR. MCCARRIN:

18 I'll second that nomination.

19 CHAIR HALLORAN:

20 All in favor?

21 [The motion carried unanimously.]

22 ***

23 CHAIR HALLORAN:

24 I would nominate Mary as being the
25 alternate probable cause.

1 MS. BROCK:

2 I'll second that motion.

3 CHAIR HALLORAN:

4 All in favor?

5 [The motion carried unanimously.]

6 ***

7 Miscellaneous - Opioid Committee

8 [J. Gerard Halloran, D.C., Chair, stated that no one
9 has been contacted regarding the opioid committee ever
10 since Dr. Levine asked the Board to be part of the
11 committee but wants the Board to stay involved in that
12 issue.]

13 ***

14 CHAIR HALLORAN:

15 I want to make a proposal that we send
16 Ms. Woods to the opioid conference in
17 Baltimore on December 5, 2018.

18 DR. AUKERMAN:

19 I'll second Mary Woods to attend the
20 Baltimore Opioid Summit in December.

21

22 CHAIR HALLORAN:

23 All in favor?

24 [The motion carried unanimously.]

25 ***

1 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
2 11:09 a.m. the Board entered into Executive Session
3 with Kerry E. Maloney, Esquire, Board Counsel, for
4 receipt of legal advice and the purpose of conducting
5 quasi-judicial deliberations. The Board returned to
6 open session at 11:59 a.m.]

7 ***

8 [J. Gerard Halloran, D.C., Chair, stated that no
9 actual business came out of Executive Session, noting
10 it to be an informational session.

11 Chair Halloran suggested waiting for the reports
12 from Dr. Khoury's work with the FCLB and Dr. Swank
13 from the American Veterinary Chiropractic Association
14 Convention for discussion on veterinary chiropractic
15 issues.]

16 ***

17 Adjournment

18 CHAIR HALLORAN:

19 Could we entertain a motion for adjourn?

20 DR. AUKERMAN:

21 I'll make a motion to adjourn this
22 meeting.

23 CHAIR HALLORAN:

24 Anybody second it?

25 MS. WOODS:

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Second.

CHAIR HALLORAN:

All in favor?

[The motion carried unanimously.]

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

CERTIFICATE

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



Amber Garbinski,
Minute Clerk
Sargent's Court Reporting
Service, Inc.

STATE BOARD OF CHIROPRACTIC
REFERENCE INDEX

November 8, 2018

TIME	AGENDA
9:08	Official Call to Order
9:12	Approval of Minutes
9:12	Report of Prosecutorial Division
9:13	Report Board Counsel
9:14	Report of Board Chairman
9:22	Appointment - Pennsylvania Chiropractic Association
9:58	Recess
10:19	Return to Open Session
10:19	Report of Board Chairman (Continued)
10:26	Appointment - Petition for Amendment of Regulations Regarding Animal Chiropractic
11:00	
11:01	Miscellaneous
11:09	Executive Session
11:59	Return to Open Session
12:00	Adjournment