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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: 10:30 A.M.

Held at

PENNSYLVANIA DEPARTMENT OF STATE

2525 North 7th Street

CoPA HUB, Eaton Conference Room

Harrisburg, Pennsylvania 17110

as well as

VIA MICROSOFT TEAMS

February 8, 2024

State Board of Chiropractic
February 8, 2024

BOARD MEMBERS:

William D. Aukerman, D.C., Chairperson
Arion R. Claggett, Acting Commissioner, Bureau of
Professional and Occupational Affairs - Absent
Jonathan W. McCullough Jr., D.C., Secretary
Ann R. Johnston, Senior Deputy Attorney General,
Office of Attorney General, Consumer Protection
Member
Michael S. Swank, D.C.
Brian Moreland, D.C.

BUREAU PERSONNEL:

Carole Clarke Smith, Esquire, Senior Board Counsel
Shana M. Walter, Esquire, Senior Board Counsel
Tyasha C. Miley, Esquire, Board Counsel
Shawn J. Jayman, Esquire, Board Counsel
Thomas M. Davis, Esquire, Regulatory Board Counsel
William A. Newport, Esquire, Board Prosecution
Liaison
Adrienne McClendon, Esquire, Board Prosecutor
Julius Zeitlinger, Esquire, Board Prosecutor
Shakeena Chappelle, Board Administrator
Carlton Smith, Deputy Chief Counsel, Prosecution
Division
Deena Parmelee, Legal Office Administrator 1,
Department of State
Brian, Extern, Department of State

ALSO PRESENT:

Chris Young, D.C., Secretary, Pennsylvania
Chiropractic Association
Doug Babin, CPCU, AIC, CIFI, FCLS, State Farm
Insurance Companies Special Investigative Unit
President- Pennsylvania Auto Crime Investigator's
Association
George E. Khoury, D.C., District III Director,
Federation of Chiropractic Licensing Boards
Jake Newman
Keith Miller, D.C., President, Pennsylvania
Chiropractic Association

State Board of Chiropractic
February 8, 2024

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ALSO PRESENT: (cont.)

Ted Mowatt, CAE, Vice President, Wanner Associates,
on behalf of the of the Chiropractor Fellowship of
Pennsylvania
Andrew Antonellis, OtterPilot
Justin Miller, D.C., Miller Sports Family
Chiropractic LLC
Mike Barba, Executive Director, Pennsylvania
Chiropractic Association
Daniel Lovette, D.C., Westmoreland Chiropractic &
Rehabilitation Associates
Daniel Schatzberg, D.C., P.C., Chiropractic
Orthopedist
Linda Hoffman, Continuing Education & Convention
Coordinator, Pennsylvania Chiropractic Association
Victoria Lantz

1 ***

2 State Board of Chiropractic

3 February 8, 2024

4 ***

5 [Pursuant to Section 708(a)(5) of the Sunshine Act,
6 at 9:30 a.m. the Board entered into Executive Session
7 with Tyesha C. Miley, Esquire, Board Counsel, and
8 Shawn J. Jayman, Esquire, Board Counsel, for the
9 purpose of conducting quasi-judicial deliberations
10 and to receive the advice of counsel. The Board
11 returned to open session at 10:00 a.m.]

12 ***

13 Official Call to Order

14 [William D. Aukerman, D.C., Chairperson, called the
15 meeting of the State Board of Chiropractic to order
16 at 10:30 a.m.]

17 ***

18 Introduction of Board Members and Attendees

19 [William D. Aukerman, D.C., requested an introduction
20 of Board members and attendees.]

21 ***

22 [Tyesha C. Miley, Esquire, Board Counsel, informed
23 everyone that the meeting was being recorded, and
24 those who continued to participate were giving their
25 consent to be recorded.]

1 Ms. Miley stated the meeting was being held
2 virtually pursuant to Act 100 of 2021, which allows
3 meetings to be held in a hybrid format and to
4 establish a quorum to effectuate the business of the
5 Board.

6 Ms. Miley also noted the Board met in Executive
7 Session to have attorney-client consultation and for
8 the purpose of conducting quasi-judicial
9 deliberations.]

10

11 Approval of minutes of the December 14, 2023 meeting

12 CHAIR AUKERMAN:

13 Next on the agenda is approval of the
14 draft minutes from the December 14,
15 2023 meeting.

16 [The Board discussed corrections to the minutes.]

17 CHAIR AUKERMAN:

18 I appreciate the corrections. Do we
19 have a motion to approve?

20 DR. MCCULLOUGH:

21 Other than that, I would make a motion
22 to accept the minutes.

23 CHAIR AUKERMAN:

24 The corrections have been published.
25 Dr. McCullough approves them. Do we

1 have a second?

2 DR. SWANK:

3 Second.

4 CHAIR AUKERMAN:

5 Any discussion?

6

7 Dr. Aukerman, aye; Dr. McCullough, aye;
8 Ann Johnston, aye; Dr. Swank, aye; Dr.
9 Moreland, aye.

10 [The motion carried unanimously.]

11 ***

12 Report of Prosecution - No Report

13 ***

14 Report of Acting Commissioner

15 [Shakeena L. Chappelle, Board Administrator, on
16 behalf of Arion R. Claggett, Acting Commissioner,
17 Bureau of Professional and Occupational Affairs,
18 noted the continuing education courses for the
19 Chiropractic Board have been moved to the online
20 Pennsylvania Licensing System (PALS) platform.

21 Ms. Chappelle noted the receipt of paper
22 applications, but paper applications received after
23 February 9 will be returned to the applicant with
24 instructions on how to apply online. She encouraged
25 everyone to reach out to her if they have any

1 questions.]

2

3 Report of Board Counsel - Sunshine Act and Recusal
4 Guidelines

5 [Tyesha C. Miley, Esquire, Board Counsel, provided
6 the annual review of the Sunshine Act, Recusal
7 Guidelines, and Conflicts of Interest. She explained
8 that the purpose of the Sunshine Act is the right of
9 the public to be present at all meetings of agencies
10 and to witness the deliberations, policy formulation,
11 and decision-making because it is vital to the
12 enhancement and proper functioning of the democratic
13 process.

14 Ms. Miley stated meetings must be open to the
15 public after public notice when deliberations or
16 official action takes place. She provided the
17 definition of agency, deliberation, and official
18 action.

19 Ms. Miley addressed public notice, including
20 publication of the place, date, and time.

21 Ms. Miley discussed the recording of votes and
22 requirement of minutes for all open meetings. She
23 mentioned that the only applicable exceptions to open
24 meeting requirements are Executive Sessions and
25 conferences.

1 Ms. Miley explained that legal challenges under
2 the Sunshine Act must be filed within 30 days of the
3 date of the meeting or within 30 days of the
4 discovery of any action in which the Sunshine Act was
5 violated and discussed penalties for violating the
6 Sunshine Act.

7 Ms. Miley stated all Board business,
8 deliberations, and official actions should be
9 conducted in an open meeting; and Board members
10 should not discuss agency business, especially
11 Executive Session matters, outside of an official
12 Board meeting.

13 Ms. Miley noted committee meetings discussing
14 regulations and policies should take place in an open
15 meeting with appropriate public notice. She
16 mentioned that administrative functions and
17 prosecutorial functions are not subject to open
18 meeting requirements.

19 Ms. Miley addressed mandatory recusals, where a
20 Board member may have a prosecutorial role or direct
21 personal or financial interest in the outcome of the
22 matter. She addressed strongly suggested recusals,
23 where there is a personal affection or outside
24 knowledge and someone cannot make a fair and unbiased
25 determination.

1 Ms. Miley noted that discretionary recusals are
2 when a Board member cannot hear and dispose of the
3 case or participate in a decision on a subject fairly
4 and without prejudice. She encouraged Board members
5 who are uncertain whether to recuse themselves to
6 discuss the matter with Board Counsel privately.

7 Ms. Miley addressed abstention versus recusal,
8 noting abstention means someone is withholding their
9 vote but does not affect quorum requirements. She
10 noted the Board member is unable to vote at all with
11 recusal and can affect the quorum requirement.

12 Ms. Miley addressed conflict of interest, where
13 no member of any professional examining and licensing
14 board shall at the same time be an officer or agent
15 of any statewide association or occupation subject to
16 the Board's actions.

17 Ms. Miley addressed additional conflicts of
18 interest for public board members, where a member of
19 a licensing board or commission designated as
20 representing the public at large shall be a private
21 citizen and not be a member of any professional
22 occupation which is regulated or licensed by the
23 board, commission, or Bureau of Professional and
24 Occupational Affairs nor be related to or part of the
25 immediate family of any member of the profession or

1 occupation to be licensed or regulated by the
2 particular board or commission.

3 Ms. Miley stated public Board members also may
4 not be affiliated in any way with the professional
5 occupation to be licensed or regulated. She noted
6 they may also not hold any other appointed or
7 elective public office or position within the
8 Commonwealth or another state or the United States
9 government during the appointed term for which they
10 serve. She mentioned that any person not meeting the
11 standards set forth herein shall be ineligible for
12 membership on the board or commission as a public
13 member.]

14 ***

15 Report of Board Counsel - Application Review

16 CHAIR AUKERMAN:

17 Number 5 on the agenda, the Application
18 Review of Hyungu Han, the Reactivation
19 Application. We want to entertain a
20 motion to approve the Reactivation
21 Application.

22 DR. MCCULLOUGH:

23 I move that we approve the Reactivation
24 Application of Hyungu Han.

25 DR. SWANK:

1 Second.

2 CHAIR AUKERMAN:

3 Any discussion? Roll call vote.

4

5 Dr. Aukerman, aye; Dr. McCullough, aye;

6 Ann Johnston, aye; Dr. Swank, aye; Dr.

7 Moreland, aye.

8 [The motion carried unanimously.]

9

10 Report of Board Counsel - Final Adjudication and

11 Order

12 CHAIR AUKERMAN:

13 We also have an Adjudication and Order

14 on number 6, Case No. 20-43-008684. We

15 need a motion to approve the Final

16 Adjudication and Order.

17 DR. MCCULLOUGH:

18 So moved that we approve the Final

19 Adjudication and Order.

20 DR. SWANK:

21 Second.

22 CHAIR AUKERMAN:

23 Any discussion? Roll call vote.

24

25 Dr. Aukerman, aye; Dr. McCullough, aye;

1 Ann Johnston, aye; Dr. Swank, aye; Dr.
2 Moreland, aye.

3 [The motion carried unanimously. The licensee's name
4 is John Kondus, Case No. 20-43-008684.]

5 ***

6 Report of Board Chair

7 CHAIR AUKERMAN:

8 We did approve the travel request to
9 attend the Federation of Chiropractic
10 Licensing Boards Meeting at the last
11 meeting for myself, Board Chair, as the
12 delegate.

13 We need a motion to approve legal
14 counsel attending the Federation of
15 Chiropractic Licensing Boards Meeting
16 in Phoenix, May 1-5.

17 DR. MCCULLOUGH:

18 So moved.

19 DR. SWANK:

20 Second.

21 CHAIR AUKERMAN:

22 Roll call vote.

23
24 Dr. Aukerman, aye; Dr. McCullough, aye;
25 Ann Johnston, aye; Dr. Swank, aye; Dr.

1 Moreland, aye.

2 [The motion carried unanimously.]

3 ***

4 Report of Board Administrator - No Report

5 ***

6 New Business

7 CHAIR AUKERMAN:

8 I'd like to entertain a motion to give
9 Board Counsel the authority to approve
10 Applications for Fictitious Names and
11 Corporate Entities.

12 DR. MCCULLOUGH:

13 So moved.

14 DR. SWANK:

15 Second.

16 CHAIR AUKERMAN:

17 Roll call vote.

18

19 Dr. Aukerman, aye; Dr. McCullough, aye;
20 Ann Johnston, aye; Dr. Swank, aye; Dr.
21 Moreland, aye.

22 [The motion carried unanimously.]

23 ***

24 Miscellaneous

25 [William D. Aukerman, D.C., Chairperson, addressed

1 the 2024 committee assignments for Board members. He
2 noted Dr. Swank and Dr. Moreland wanted to be on the
3 Education Committee, and Dr. McCullough agreed to
4 Chair the Opioid Committee. He also noted Ann
5 Johnston is a member of the Probable Cause Screening
6 Committee and would like to have Dr. McCullough as an
7 alternate. He offered to Chair the Communications
8 Committee and Dr. McCullough agreed to help.]

9

10 Report of Regulatory Board Counsel

11 [Thomas M. Davis, Esquire, Regulatory Board Counsel,
12 referred to 16A-4335 regarding the proposed fee
13 regulation. He noted prior Board discussion with him
14 on October 12 and December 14, 2023. He mentioned
15 the Board received several comments from the
16 Pennsylvania Chiropractic Association (PCA), the
17 American Chiropractic Association (ACA), and the
18 Independent Regulatory Review Commission (IRRC),
19 noting the commission itself more or less parroted
20 the comments from PCA and ACA.

21 Mr. Davis reminded everyone that the comments
22 were specifically about the fee related to the
23 application for continuing education course approval
24 that is supposed to increase from \$30 to \$100,
25 followed by \$110 and \$120. He noted PCA and ACA were

1 concerned with that and suggested possibly doing it
2 in a tiered model. He also noted ACA felt it was
3 essentially being cost prohibitive. He mentioned
4 discussing utilizing a preapproved model, such as
5 Colorado, Delaware, and Illinois.

6 Mr. Davis stated the point of the final-form
7 regulation preamble that he provided the Board
8 earlier this week was that it discusses all of the
9 possibilities and why it is not tenable to do it that
10 way in his opinion.

11 Mr. Davis explained that the Colorado, Delaware,
12 and Illinois boards have more collaboration with
13 continuing education, whereas the Board's act
14 specifies that every provider of continuing education
15 will apply biennially.

16 Mr. Davis stated it is a bureau-wide effort to
17 actually increase the application fees to reflect the
18 costs to the bureau to process the applications. He
19 reported the bureau was losing money at the \$30 fee
20 every time it processes an application and was
21 something that could not continue.

22 Mr. Davis stated there was no change on the
23 final-form regulation from the proposed regulation
24 that was sent out on August 5, 2023.

25 Mr. Davis informed Board members that he could

1 get the process started if the Board approved it, and
2 then it will be published as final in the
3 *Pennsylvania Bulletin* in the next few months. He
4 explained, September 1, the renewal fees will take
5 effect, but other fees, like application, would
6 become effective upon publication, which should be
7 within the next few months.]

8 MR. DAVIS:

9 Based on the Board's discussions in
10 open session, I believe the chair would
11 accept a motion to approve the final-
12 form rulemaking 16A-4335 as presented
13 this date by regulatory counsel and to
14 direct regulatory counsel to promulgate
15 the final-form rulemaking via
16 publication in the *PA Bulletin*.

17 DR. MCCULLOUGH:

18 So moved.

19 CHAIR AUKERMAN:

20 Could we have a second?

21 DR. SWANK:

22 Second.

23 CHAIR AUKERMAN:

24 Any discussion? Roll call vote.
25

1 Dr. Aukerman, aye; Dr. McCullough, aye;
2 Ann Johnston, aye; Dr. Swank, aye; Dr.
3 Moreland, aye.

4 [The motion carried unanimously.]

5 ***

6 Appointment - Annual Prosecution Division

7 Presentation

8 [Carlton Smith, Esquire, Deputy Chief Counsel,
9 Prosecution Division, informed Board members that he
10 assumed his role in March 2023 when Carolyn
11 DeLaurentis was promoted to the Executive Deputy
12 Chief Counsel position and provided a brief summary
13 of his professional background.

14 Mr. Smith reported a decrease in the number of
15 Bureau of Professional and Occupational Affairs
16 (BPOA) complaints for all boards from around 22,000
17 in 2022 to roughly 19,000 in 2023.

18 Mr. Smith presented the Prosecution Division's
19 Annual Report for the State Board of Chiropractic.
20 He reported around 9,000 licensees in 2023. He noted
21 88 cases were opened in 2023, which was close to what
22 was opened in 2022. He also reported 94 current open
23 cases and 103 cases closed. He informed Board
24 members that prosecution's gold standard is to be
25 able to dispose of a case within a year across all

1 boards.

2 Mr. Smith addressed discipline, noting 2
3 citations, 11 suspensions, and 3 probations in 2023.
4 He reported 37 prosecution not warranted cases and 27
5 warning letters. He noted that prosecution looks at
6 the seriousness of the allegations, licensee
7 discipline history, and strength of the evidence when
8 issuing a warning letter.

9 Mr. Smith addressed prosecution not warranted,
10 noting prosecution considers the seriousness of the
11 allegations and disciplinary history but also
12 considers an expert's opinion in terms of standard of
13 care and their confidence of a violation.

14 Chair Aukerman stated the Board was under the
15 assumption there were 4,500 doctor of chiropractic
16 licenses in the state and asked how he came up with
17 9,100 licensees.

18 Mr. Smith noted the number was similar to last
19 year's number at 8,139.

20 Chair Aukerman explained the requirement for an
21 adjunctive procedures license to perform therapy in
22 their office with a doctor of chiropractic (DC)
23 licensee present, so there are different types of
24 licenses. He asked whether Mr. Smith could delineate
25 the DC licensees.

1 Mr. Smith stated the 9,100 number should be all
2 of the designation types on their licensees combined.

3 Keith Miller, D.C., President, Pennsylvania
4 Chiropractic Association, informed Mr. Smith that it
5 was addressed last year during a similar meeting that
6 the statistics and numbers should be revised but were
7 never revised. He noted they purchase the state
8 license list as an Excel CSV file every year to
9 identify new people coming into the state.

10 Dr. Miller mentioned that it is PCA's
11 understanding that they are nowhere near 4,500 but
12 are closer to 4,000 on the Excel file. He also noted
13 being aware of the fact that not all of those 4,000
14 people have an adjunct license. He stated the 9,000
15 number is concerning and requested that be fixed. He
16 suggested data and statistics in future years be
17 based on DC licenses because it does skew the data
18 when those numbers do not match.

19 Mr. Smith offered to provide the Pennsylvania
20 Chiropractic Association specific breakdowns of any
21 data and statistics.

22 Chair Aukerman thanked Mr. Smith for the
23 presentation.]

24 ***

25 Public Comment

1 [Keith Miller, D.C., President, Pennsylvania
2 Chiropractic Association, reported to the Board
3 members on seeing more problems with students coming
4 into the state only getting their main license and
5 not getting their adjunct, then receiving their
6 adjunct weeks, months, or years later. He stated it
7 is creating hardship on new licensees.

8 Dr. Miller mentioned that a practitioner was
9 almost three years in practice and was notified that
10 Highmark was coming after her therapies because she
11 did not have an adjunct and never knew it existed.
12 He referred to the jurisprudence exam, noting that
13 100% of doctors back in the day knew about the
14 adjunct.

15 Dr. Miller stated there is currently no good
16 data, and schools are not letting anyone know about
17 it, because Pennsylvania is the outlier in the entire
18 nation that requires a double license to do basically
19 what they were trained and educated to do. He
20 mentioned that PCA brought this up previously and
21 asked that people be made more aware of it. He noted
22 that the FAQ they have been asking about for some
23 time may be helpful.

24 Dr. Miller commented that the Board is seriously
25 jeopardizing the livelihood and financial wherewithal

1 of multiple younger doctors. He explained that some
2 of the schools list by state what the state
3 requirements. The license does not clarify the need
4 for the National Board of Chiropractic Examiners
5 Physiotherapy (NBCE PT) Exam, because it says that on
6 the adjunct and the schools do not understand it. He
7 further explained some of the schools note the
8 requirements say the PT exam is optional for
9 Pennsylvania because of this conundrum.

10 Dr. Miller reported that students are coming to
11 the state and not taking that exam and being hired as
12 an associate only to find out they have to take that
13 exam to get the adjunct license. He noted PCA
14 understands Pennsylvania is a dual-license state but
15 that something has to be done to protect the students
16 who are \$200,000 to almost \$300,000 in student loan
17 debt and have to wait four to eight months before
18 they could practice and make a living.

19 George Khoury, D.C., District III Director,
20 Federation of Chiropractic Licensing Boards, informed
21 Board members that the deadline to designate a
22 delegate and alternate delegate is March 5 for the
23 upcoming meeting in Phoenix in May. He noted they
24 also have to designate an alternate and delegate for
25 the NBCE on a separate application by March 5.

1 Dr. Khoury noted there are scholarships for Board
2 attorneys to attend future meetings if the state
3 budget is restrictive in allowing them attend.

4 Mike Barba, Executive Director, Pennsylvania
5 Chiropractic Association, thanked the Board for
6 approval of the online version of continuing
7 education (CE). He stated the online application
8 does not give the option to include multiple
9 locations, multiple dates, and seminars. He noted it
10 only allows for a start date and an end date for one
11 location.

12 Mr. Barba asked whether certifications are going
13 to go blank location or state or are they going to be
14 open ended from June 1, 2024, to August 31, 2024,
15 allowing for them to use multiple locations if taught
16 by the same doctor in various seminars.

17 Ms. Chappelle explained that the best option for
18 them is the start date and end date should be
19 whatever the start date is through the biennial
20 cycle. She noted they can put various or list a city
21 and state as the location. She mentioned that a
22 separate application was required in the past if they
23 were going to be held in multiple states, so they can
24 either do it for the biennial cycle with a various
25 location or submit separate applications.]

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Adjournment

CHAIR AUKERMAN:

We'd like to conclude the meeting of
February 8, 2024.

DR. MCCULLOUGH:

So moved.

DR. SWANK:

Second.

CHAIR AUKERMAN:

This concludes the meeting.

[There being no further business, the State Board of
Chiropractic Meeting adjourned at 11:24 a.m.]

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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.



Victoria Lantz,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF CHIROPRACTIC
REFERENCE INDEX

February 8, 2024

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8	9:30	Executive Session
9	10:00	Return to Open Session
10		
11	10:30	Official Call to Order
12		
13	10:30	Introduction of Board Members/Attendees
14		
15	10:32	Approval of Minutes
16		
17	10:34	Report of Acting Commissioner
18		
19	10:35	Report of Board Counsel
20		
21	10:49	Report of Board Chair
22		
23	10:51	New Business
24		
25	10:52	Miscellaneous
26		
27	10:53	Report of Regulatory Board Counsel
28		
29	11:00	Appointment - Carlton Smith, Deputy
30		Chief Counsel, Annual Prosecution
31		Division Report
32		
33	11:16	Public Comment
34		
35	11:24	Adjournment
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