

HAWAII BOARD OF CHIROPRACTIC
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes (HRS).

Date: Thursday, March 7, 2019

Time: 10:00 a.m.

Place: King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Present: Robert E. Klein, D.C., F.A.C.O., Chair
James A. Pleiss, D.C., D.A.B.C.O., Vice-Chair
Lawrence A. Redmond, D.C., Member
Kathleen T. Kang-Kaulupali, Pharm. D., Member
Risé Doi, Executive Officer ("EO")
Daniel Jacob, Deputy Attorney General ("DAG")
Susan A. Reyes, Secretary

Excused: None.

Guest: Gary Saito, Hawaii State Chiropractic Association ("HSCA")
Joseph Morelli, Hawaii State Chiropractic Association ("HSCA")

Call to Order: There being a quorum present, the meeting was called to order by Chair Klein at 10:00 a.m.

Approval of Meeting Minutes: Minutes of the January 3, 2019 Board Meeting
It was moved by Dr. Pleiss, seconded by Ms. Kang-Kaulupali, and unanimously carried to approve the minutes as circulated.

Chapter 91, HRS, Adjudicatory Matters: None.

Licensing: A. Application(s):
None.

B. Ratification of Issued License(s)

1. Asaoka, Yurie
2. Homer, Frances
3. Tanaka, Josuke
4. Gentile, Tate
5. Chong, Sara

It was moved by Ms. Kang-Kaulupali, seconded by Dr. Redmond, and unanimously carried to ratify the above staff approval of the licensee(s).

Continuing Education ("CE"):

A. Ratification of CE Courses – New Applications and Re-Registrations:

See attached list(s).

It was moved by Dr. Pleiss, seconded by Dr. Redmond, and unanimously carried to ratify the approval of the following CE courses:

Index No. HI 19-071 – HI 19-095
Index No. HI 19-098 – HI 19-100
Index No. HI 19-104 – HI 19-110

It was moved by Dr. Pleiss, seconded by Dr. Redmond, and unanimously carried to approve the following CE courses with adjusted hours due to recalculation of hours. HAR §16-76-39 provides that continuing education credit shall be given for whole hours only, with a minimum of fifty minutes constituting one class hour:

Index No. HI 19-096, 9 hours out of 9.25 hours
Index No. HI 19-101, 43 hours offered/19 hours may be earned out of 43.5 hours
Index No. HI 19-102, 43 hours offered/23 hours may be earned out of 43.5 hours offered/23 hours may be earned
Index No. HI 19-103, 17 hours out of 17.5 hours

It was moved by Dr. Pleiss, seconded by Dr. Redmond, and unanimously carried to approve the following CE courses with adjusted hours. The non-approved hours do not comply with the provisions of Chapter 76, subchapter 6, HAR:

Index No. HI 19-097, 70 hours offered/35 hours may be earned out of 70 hours requested

It was moved by Dr. Pleiss, seconded by Dr. Redmond, and unanimously carried to ratify the following CE re-registration pre-approved by the Executive Officer.

Index No. HI 17-165 R19

Executive Officer's Report:

- A. Board Member Appointments: The following appointments are pending confirmation:
1. GM 588 – Submitting for consideration and confirmation to the Hawai'i Board of Chiropractic, Gubernatorial Nominee, RACHEL KLEIN, for a term to expire 06-30-2023.
 2. GM 589 – Submitting for consideration and confirmation to the Hawai'i Board of Chiropractic, Gubernatorial Nominee, ALICE OGAWA, for a term to expire 06-30-2022.
 3. GM 590 – Submitting for consideration and confirmation to the Hawai'i Board of Chiropractic, Gubernatorial Nominee, GERALD SIMMONS, for a term to expire 06-30-2022.

EO Doi stated that these were the Governor's appointments that were sent to the Senate and are pending confirmation.

New Business:

- A. Letter from Hawaii State Chiropractic Association ("HSCA") Regarding Continuing Education: The Board will consider a letter from HSCA requesting recommendation of a rule change relating to continuing education.

Dr. Joseph Morelli introduced himself to the Board as the President of the Hawaii State Chiropractic Association ("HSCA"), and also introduced Dr. Gary Saito as the past President of HSCA. He wanted Dr. Saito to brief the Board about a few problems that they had discovered while looking at the laws and rules.

Dr. Saito said that HSCA is a member association of the national organization called the Congress of Chiropractic State Association ("COCSA").

Dr. Saito further stated 53 chiropractic association state member organizations belong to COCSA and he attends the annual meetings.

Part of the program discussion was about continuing education credit ("CEC"). It was understood that every state handles CEC differently.

When Dr. Saito checked the rules for Hawaii, he said that the online chiropractic credit units do not comply, because it does not conform with the requirements of the Hawaii Administrative Rule ("HAR") §16-76-39. At the last HSCA Board meeting, Dr. Saito brought this to their attention, and noted that the HAR clearly does not allow for online credit units to be acceptable. It must be clarified or fixed by making a change to the HAR. Dr. Saito recommend that the Board not do anything to jeopardize the way that continuing education online credits have been handled until the HAR is corrected.

Dr. Morelli stated that HSCA would like to have a revised rule effective for the next biennium period, so it does not affect the current licensees and current renewal process.

DAG Jacob stated that pursuant to §16-76-39(f):

"...Continuing education credit shall be given for whole hours only, with a minimum of fifty minutes constituting one class hour. No credit for continuing education shall be allowed for time expended for study outside of the classroom..."

DAG Jacob said that the HAR does not discuss online courses. It only states that credit for a CE course can be given for full hours only.

Chair Klein responded all applications that are reviewed by the Board do have time frames involved, and only complete hours are accepted.

Dr. Saito asked about HAR §16-76-42(b):

"...Each director or person in charge of an approved course in continuing education shall be responsible for maintaining full-time monitoring of the seminar attendance. If absence from the room exceeds ten minutes during any one-hour period, credit for that hour shall be forfeited. Failure to maintain proper monitoring procedures, as prescribed, may be grounds for withdrawal of program approval or future consideration for program approval..."

DAG Jacob noted that it only says:

“...Failure to maintain proper monitoring procedures, as prescribed, **may be** grounds for withdrawal of program approval or future consideration for program approval...”

DAG Jacob believes that if the Board received evidence of an online course that was approved, and the syllabus shows that it would take an hour, but actually takes only ten minutes, then the Board could consider removing the approval of the course.

DAG Jacob explained there is nothing in the HAR stating that continuing education courses cannot be completed online, but that continuing education credit shall be given for whole hours only.

Dr. Saito said that he provided input to the HAR at the time this rule was created. It was stipulated in the HAR that a continuing education course:

- has to be a classroom situation
- has to be a person-to-person delivery
- the person must be in the classroom for the full hour

Dr. Saito cited, HAR §16-76-39(f):

“...Continuing education credit shall be given for whole hours only, with a minimum of fifty minutes constituting one class hour. **No credit for continuing education shall be allowed for time expended for study outside of the classroom...**”

Dr. Saito said that the rule already defines the venue for which the seminar is presented.

DAG Jacob said that the rules do not prohibit the Board from approving online courses. If the Board was able to find out something subsequently, it may be grounds to remove the authorization for CEC. DAG Jacob explained that “classroom” was not defined as a physical location, and it could potentially be argued that there is ambiguity in the word “classroom” as courses are now offered online.

Dr. Saito stated that the Board must consider the rule was passed in 2001. At that time, a classroom was a physical location and online courses were not offered. Dr. Saito

recommended that if the Board is going to accommodate online learning, then it should be clarified in the HAR.

Dr. Saito explained more information that he learned from the conference. Dr. Saito raised a concern that there is no way to monitor the participant taking an online course. He noted that he had heard that doctors are having their staff take the test/seminar. Dr. Saito noted that the provider of that CEC cannot know whether the doctor is the person that attended the seminar. Dr. Saito is not opposed to allowing online CEC, but it needs to be strengthened with monitoring qualifications.

Dr. Morelli further stated many of the courses are pre-recorded and downloadable. The participant can get credit when the course is purchased. Then, after a week a certificate is mailed showing that the course has been successfully completed, even if the participant has not taken the course yet. Dr. Morelli considered this as cheating and noted that chiropractors should complete continuing education to learn about the current standards of the profession and to protect the public.

Dr. Saito said the purpose of requiring continuing education courses was to assure the public that their doctor is at least continually learning the aspects of the profession for the betterment of this practice.

Dr. Saito said that he queried the other states as to what they do with the CECs and was shocked to discover that of the states that responded, Hawaii requires the lowest number of CECs for two years. For example:

- Hawaii – 20
- Alaska – 32
- Colorado – 30
- Florida – 40
- Illinois – 100
- Georgia – 40
- Indiana – 24
- Iowa – 40
- Maine – 48
- Missouri – 48
- Nevada – 36
- New York – 36
- Ohio – 36
- Rhode Island – 40

Dr. Saito raised a concern that Hawaii's CE requirement standards are far below required national standards. Dr. Saito reiterated that when the HAR was written in 2001 it clearly intended classroom as a physical classroom, where there had to be direct monitoring and the doctor had to physically be present. Dr. Saito noted that the CE requirement may not be achieving the goals of increasing knowledge and having the excellence of practice if there is no way to monitor the chiropractor taking the online course.

Chair Klein said that the classroom can be defined in different ways but noted that monitoring and verifying that the licensee is taking the course is his main concern. Chair Klein recommended changing the rules to set a total number of hours and a maximum percentage of online CE course hours.

Dr. Morelli stated HSCA is not against online courses. He noted that adding an additional requirement for a minimal percentage of the CE hours be done face-to-face to ensure that the licensee completed the course would be a practical way in monitoring the courses.

Dr. Saito further stated that some states allow a hybrid of accepting completion of in-person CE courses and online CE courses. However, some states characterize online courses as the lowest level of learning as there is no monitoring and very little feedback, with no opportunity for a participant to ask questions.

Chair Klein motioned to have the Board investigate this matter and try to decide what suitable changes may be appropriate to the HAR.

DAG Jacob said no motion is required. The only motion required is if more than two board members wanted to meet outside of this meeting, then a permitted interaction group ("PIG") may be formed. As there are only four board members, a PIG is not recommended. One person may be designated to research this matter and come back and present the findings at the next Board meeting.

Ms. Kang-Kaulupali said that the Board will be losing three members at the end of June 2019 and only one current member will be remaining on the Board. She noted this is a very good discussion that should be continued.

DAG Jacob suggested keeping the item on the agenda. He stated that the Board members can individually research, or two board members can get together and bring their ideas back to discuss it at the next board meeting. The only thing that cannot be done is communicating amongst all Board members.

Dr. Saito noted that the new board members should be updated and informed about revising the HAR rule. He raised a concern that the new Board may not be able to resolve the issue until the next biennium. Dr. Saito noted that rules and regulations should be followed and that the revised rules should accommodate both classroom and online continuing education courses.

Chair Klein suggested that Dr. Redmond confer with either Dr. Pleiss or himself before the next Board meeting.

Dr. Morelli and Dr. Saito offered their assistance in researching and gathering information on what is happening with the rest of the country and try to bring Hawaii in conformity on what most states require.

Ms. Kang-Kaulupali asked Dr. Saito if they could put a spreadsheet together for each state, the number of units and if they specify online vs. classroom and the third, if they define so many hours for law. She wanted to know if he could have it ready for the next board meeting.

Dr. Saito said he will do a second query and see if he can have it ready for the next Board meeting.

Chair Klein also requested any information on the monitoring procedures that CE providers use for their online courses.

Dr. Morelli said that they will get the information and hopefully have it by the next Board meeting.

Ms. Kang-Kaulupali asked if the other boards have online criteria defining what online is, for example, electronic, software or CE definitions for it. She noted an online definition may be necessary.

DAG Jacob said that one of his boards has a requirement where one half of continuing education needs to be online and the other half in-person. He noted all boards and professions have different CE requirements.

- B. Providers of Approved Continuing Education (“PACE”): The Board will consider information provided by PACE, a program that reviews and approves continuing education courses.

EO Doi emailed PACE and asked them to provide the Board with materials so that the Board can make an informal decision on this program. PACE also provided recommended language for a statute and rule and asked DAG Jacob to explain it.

DAG Jacob stated that what they are proposing is fine. He read from the Hawaii Administrative Rules (“HAR”) Drafting Manual, Chapter 00-4-6 Incorporation by reference:

“...an agency may incorporate into its own rules other materials, such as maps, forms, exhibits, attachments, or tables, as well as third party standards or codes published by the United States government or private organizations. To do so, the agency shall adopt a specified addition of the items or third party standards, or incorporate them as they existed on a specified date. An agency adopting rules are the same as the rules of the federal agency shall incorporate the federal rules as they existed on a specified date. The agency shall not adopt future amendments to third party standards by attempting to incorporate them and adopting the rules through the use of the terms such as “as may be amended” or “as amended”...”

DAG Jacob stated that there is nothing restricting the Board designating PACE as the arbiter of the continued education.

Chair Klein stated that he went to the district meeting of the Federation of Chiropractic Licensing Boards (“FCLB”) several months ago. He brought back some information on the PACE program and stated that it would be an effective program for the Board. Chair Klein noted program is provided to the Board at no cost. Based on the rules the Board provides PACE, PACE will review the applications according to the Board’s criteria and will make their recommendations for what hours should be approved. For example, the Board does not approve hours for acupuncture or for legal matters pertaining to other states than Hawaii. These hours will be taken out and then the Board is told how many hours meet the criteria. The Board staff will not have to go through all of the materials, as the Board will know these hours are suitable and approve them. However, the Board can still make changes if they choose.

Chair Klein further stated that EO Doi received an offer from PACE to call into the next Board meeting for a teleconference. Chair Klein asked her not to set one up yet until the Board has prepared questions and concerns. He said that reviewing applications has been burdensome as two Board members need to come in an hour before the regular Board meeting. This program will be advantageous to the Board and is being used by many other states already.

Dr. Saito explained that if a group that wants to put on a program nationwide, it can apply through PACE and PACE will disseminate it to their state organization and then prescreen the content of the course. It will still be up to the individual state whether to accept the course. It does not preclude those individual programs who apply directly with the State.

Chair Klein noted if the Board accepts PACE, a certain percentage of applications will still likely come to the State directly.

Dr. Pleiss suggested putting this on the agenda for the next meeting to discuss further.

Ms. Kang-Kaulupali described a similar service offered for pharmacy continuing education providers. She stated that the Board can continue to approve CE courses, however, PACE is an additional service that offers a set standard for the profession. Ms. Kang-Kaulupali noted that PACE would be a helpful service.

C. Legislation: Although the following bills were not scheduled for a hearing this legislative session, the Executive Officer would like the Board's position in case similar bills are introduced in the future:

1. S.B. 202 – Relating to Professional and Vocational Regulatory Programs

Establishes repeal dates for all professional and vocational regulatory programs under the professional and vocational licensing division of the department of commerce and consumer affairs. Requires the auditor to perform an evaluation of each program prior to repeal.

Chair Klein asked the Board if they wanted to discuss this.

EO Doi said that this bill is dead for the current legislative session. However, she wanted to know what the Board's position is in case a similar bill is introduced in the future.

Dr. Pleiss stated that in the past, they would schedule their first meeting in January on the third week to address any bills before the hearings.

Chair Klein does not understand the purpose of this bill or what it would accomplish.

Dr. Saito said that it was introduced by Senator Gilbert Keith-Agaran and it was introduced by request. He was not sure who requested the bill, however, he is interested in the motive and why Senator Keith-Agaran agreed to introduce it.

2. H.B. 88 – Relating to Workers' Compensation

Amends requirements for medical examinations in workers' compensation claims by requiring that the examining physician be mutually selected by the employer and employee or appointed by the Director of Labor. Provides for document distribution, cost allocation, and physician requirements.

Dr. Saito noted the intent of the bill is to standardize the price of an exam. Dr. Pleiss noted that there is no standard length of an exam and explained that many physicians charge by the hour.

Chair Klein recommended deferring any action on this item.

Open Forum: Public comment on issues not on the agenda may be considered by the Board at a subsequent meeting.

No comments from the public were made.

Next Meeting: Thursday, May 2, 2019
10:00 a.m.
King Kalakaua Conference Room
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 11:15 a.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Risé Doi
Risé Doi, Executive Officer

/s/ Susan A. Reyes
Susan A. Reyes, Secretary

RD:sar
04/19

- Minutes approved as is.
- Minutes approved with changes; see minutes of _____.