

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, May 2, 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
Ris   Doi, Executive Officer ("EO")
Daniel Jacob, Deputy Attorney General ("DAG")
Susan A. Reyes, Secretary

Excused: None.

Guest: None.

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

Approval of Minutes of the March 7, 2019 Board Meeting

Meeting Minutes:

It was moved by Dr. Pleiss, seconded by Dr. Redmond, and unanimously carried to approve the minutes as circulated.

Chapter 91, HRS. None.

Adjudicatory Matters:

Licensing: A. Application(s):

None.

B. Ratification of Issued License(s)

1. Moore, Amanda
2. Rim, Adrian
3. Kakugawa, Joshua
4. Bailey, Brianne
5. Motley, Christopher

It was moved by Dr. Pleiss, 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 19-111 – HI 19-112
Index No. HI 19-116 – HI 19-118
Index No. HI 19-120
Index No. HI 19-122 – HI 19-128
Index No. NI 19-130 – HI 19-132

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 19-113, 14 hours out of 15 hours
Index No. HI 19-114, 14 hours out of 15 hours
Index No. HI 19-115, 15 hours out of 16.5 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 19-119, 50 hours offered/20 hours may be
earned out of 50 hours requested
Index No. HI 19-129, 34 hours offered/23 hours may be
earned out of 34 hours requested

It was moved by Dr. Pleiss, seconded by Dr. Redmond and unanimously carried to deny the following CE course as it is not within the scope of practice.

Index No. HI 19-121

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 18-187 R19

Executive Officer's Report:

- A. New Board Member Appointments: The following appointments were confirmed: Dr. Rachel Klein, Dr. Alice Ogawa, Gerald Simmons (public member), and Pat Holt (public member)

EO Doi stated to the Board that the above appointments were confirmed.

New Business:

- A. Rule change relating to continuing education courses: The Board will discuss the possibility of using PACE, a program that reviews and approves continuing education courses.

Chairperson Klein briefed the Board that this was discussed at the last meeting and now information has been provided by several sources.

Chairperson Klein stated that there are three different topics that are involved without making any kind of rule change:

1. The total number of hours required;
2. Whether some of these hours should be specified in certain subject areas, such as the pharmacist ethics requirement in California; and finally;
3. If there should be any sort of limitation or restriction on how many hours or what percentage of hour can be obtained by distance learning.

Dr. Pleiss shared information that he gathered from:

1. Attorney Thomas R. Daly's opinion on HAR § 16-76-42 as it may apply to online continuing educational seminars.

Dr. Pleiss said that the letter from attorney Thomas R. Daly stated:

“...the requirements in HAR 16-76-42 (last revised in 2001) are in his opinion, do not envision conventional online continuing educational seminars. It requires full time monitoring and absence in the room cannot exceed more than 10 minutes. Courts generally assume that the words of a statute or regulation mean what an “ordinary” or “reasonable” person would understand them to mean. In this case the “plain meaning” of the operational words “full time monitoring” and “absence from the room” should lead a court to find that conventional online programs, which do not provide full time and constant monitoring of an individual’s attendance and identity, fail to meet the requirements of HAR § 16-76-42. It is not to say that the Board may not at some time be presented with an online program which has the technology to ensure such full time and constant monitoring of seminar attendance. The Board would have the discretion under HRS § 489E-18...”

2. Steve Forman, D.C. – Partner – MylCourse

Dr. Pleiss said that this is an online course that the Hawaii State Chiropractic Association sponsors. Dr. Forman went through different accountabilities for learning:

- The participant must attend the whole hour. If the participant is gone for more than ten minutes, it will time-out and it will not allow the participant to go any further. It also keeps track of the minutes that the participant has been on and what the minutes require.
- It does not allow the participant to jump to the end of the course.
- The participant cannot open multiple courses at the same time with two different computers.
- It requires the participant to take a test at the end of the course.

Chairperson Klein pointed out a few parts of a letter received from Dr. Paul D. Powers, D.C. of OnlineCE ChiroCredit to the Board as follows:

- Dr. Gary Saito from Hawaii State Chiropractic Association (“HSCA”), described that there is no way to monitor attendance and any fraud or cheating that happens with attendance is no more likely with the online

courses than it is with the in-person courses.

Chairperson Klein stated that when checking in for an in-person course, the participant does not present an ID.

- Another issue is with Dr. Saito's characterization of an online course at the lowest level of learning. Dr. Powers' contention is that the online courses are superior.
- There is a system for monitoring the actual attendance interaction with a person who is online. A daily internal audit of people's attendance is done. Less than 1% of the courses taken do not meet the criteria for internal audit. Basically, 99% of the licensees taking these courses are taking them as they are supposed to. The CE provider is able to detect who are the 1% and able to deny credit to people who appear not to take them properly.
- There are 51 states that requires continuing education and the average number of hours required is slightly less than 19 hours. 46 of the states allows Distance Based Learning.

Chairperson Klein also read the following from Dr. Powers' letter:

*"...The limitation is **not** consistent with the current status of education as offered by Institutions of Higher Education as well as other primary care physicians' ability to obtain continuing education. Institutions of Higher Learning have embraced the use of Distance Based Learning, evidenced by the fact that one may now obtain a BS, MS and even a PhD by Distance Based Learning. Medical Doctors may obtain all of their continuing education requirements via Distance Based Learning in every single jurisdiction that requires continuing education, including Hawaii. Thus, how can the public be protected by having a rule that is in direct opposition to the current status of higher/continuing education?..."*

Chairperson Klein then pointed out parts of a letter from Guy Annunziata, D.C, B.C.N. from DCHOURS Online Chiropractic CE as follows:

- There are high quality courses.
- It is designed to track the total amount of time the learner has been in the course. Credit will not be received for a course until the learner has been logged in for the appropriate amount of time.
- Tracking the viewer to see if they are actively engaged in the course material.

- Protect against the viewer turning on the course and walking away from the computer, there are several ways of this being accomplished.
 1. Set up the software in such a way that the learner is logged off if there are no activity on the mouse or the keyboard for more than ten minutes;
 2. Periodically the learner must interact in some way, such as answer quiz questions or poll etc.;
 3. Testing components, and;
 4. Dated and Time-stamped

With these four elements together, it requires that the learner must be logged on to the course for the full amount of time, actively watching the course, understanding the material, and not taking more than one course at a time.

Chairperson Klein said that Dr. Annunziata is claiming high quality and compliance with attendance.

Ms. Kang-Kaulupali asked Chairperson Klein if OnlineCE ChiroCredit and DCHOURS Online Chiropractic CE submits CE course applications for the Board's approval.

Chairperson Klein answered yes, that both have submitted CE courses for approval with the Board.

DAG Jacob said that the biggest concern is with HAR §16-76-39(f) where it states:

"...Continuing education credit shall be given for whole hours only, with a minimum of fifty minutes constituting one class hour..."

DAG Jacob said that it would arguably be inappropriate to sign off on the CE where someone could get through it, click a bunch of buttons, pass the course in fifty minutes. It would be a much more difficult time upholding the approval of the CE course than if you had some kind of indication from the web provider that it will take fifty minutes to be completed.

DAG Jacob said that the rules were written in 2001 and this can all be addressed by changing the rules. The rules do not say that this Board shall take away the person's continuing education, it says that it may. He suggested to the Board to create a Permitted Interaction Group ("PIG") for further discussion outside of the regular Board meeting.

Dr. Pleiss asked in moving forward for the next Board, should they make a motion to reiterate what Dr. Annunziata said to guide the new Board.

DAG Jacob said if the new Board were to ask him, he will reiterate his advice.

After a brief discussion, Chairperson Klein said that the Board is not ready to make the decision on this today because it is not only about the distance learning credits, it is also about the total number of hours, and if you want to designate a minimum amount of hours to, such as jurisprudence, ethics or any other specific subject area that has to be included. Many states have this type of requirement.

Dr. Pleiss said that this would be a problem as he has not seen any ethics courses offered in Hawaii. The course would need to be completed online.

Chairperson Klein responded by saying that if the course was required, HSCA would probably arrange for such course to be presented.

Ms. Kang-Kaulupali asked how to proceed.

Chairperson Klein said that the Board should leave this for future meetings as a topic to be discussed. The idea of creating a PIG to present some initial draft of the rules to the Board and let the Board discuss and modify would be sensible.

- B. Providers of Approved Continuing Education ("PACE"): the board will discuss the possibility of using PACE, a program that reviews and approves continuing education courses. PACE offered to call-in to the next Board meeting on July 11 to answer any questions.

Chairperson Klein clarified that this is a free service that is available to us as a member board of the federation of chiropractic licensing boards. Basically, what PACE does for 37 different states is that a continuing education provider applies to PACE and provides the same type of materials like what we look at here, and PACE evaluates them. PACE has a full-time staff that will evaluate and comply according to each States Rules. A report would be submitted to the Board suggesting approval for each course and it will be up to the Board to ratify or modify it.

EO Doi said that a call-in from PACE will be set up for the July 11, 2019 meeting.

Chairperson Klein feels that this would be a win-win situation. The Board does not have to accept anything that the Board does not want, unless the Board asks them to evaluate courses. It gives the Board the opportunity to lighten the load for our administrative staff and Board members.

DAG Jacob said that the Board could write a provision in the rules as PACE being an approved provider.

Chairperson Klein said that Board has seen fit to be a member of the Federation of Chiropractic Licensing Board ("FCLB"). There is only one such organization. PACE is a service provided through the organization.

DAG Jacob said that he will check if designating only PACE will have any ramifications and will present it to the next meeting.

Ms. Kang-Kaulupali asked if anyone had spoken to any of the other 37 states that participates.

Chairperson Klein said that he has not spoken to anyone. He did attend the FCLB meeting last year. Many of the states attended this meeting, and this is where he first heard of it and brought back information about this to the Board.

- C. Federation of Chiropractic Licensing Boards ("FCLB") voting delegate: As four of the five Board members' terms expire on June 30, 2019, the Chair appointed the Executive Officer to be a FCLB voting delegate.

Chairperson Klein said that there was a time constraint and a voting delegate had to be designated. He further stated that he authorized EO Doi to be appointed as the Boards delegate for 2019.

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.

The following agenda item was taken out of order:

New Business: A. Ms. Kang-Kaulupali wanted to share an email as an example of how the California Board of Pharmacy has their website. There are two programs that licensees are required to take for licenses expiring on or after July 1, 2019, which is participating in a one hour of ethics and one hour of law webinars. The licensee is required take these by signing on to the Board's website. It depends on how many ethics and law issues come up within the membership, and as to whether the State sees that it is required. The courses are free and it is just an example if the Board would like to designate how Hawaii could do it. This could be shared with the next Board to consider.

Next Meeting: Thursday, July 11, 2019
10:00 a.m.
King Kalakaua Conference Room
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Adjournment: As there was no further business to discuss, the meeting adjourned at 11:25 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

05/31/19

(X) Minutes approved as is.
() Minutes approved with changes; see minutes of _____.