

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, July 11, 2019

Time: 10:00 a.m.

Place: Princess Likelike Conference Room
King Kalakaua Building
335 Merchant Street, 3rd Floor
Honolulu, Hawaii 96813

Present: Lawrence A. Redmond, D.C., Member
Rachel M. Klein, N.D.D.C., Member
Alice H. Ogawa, D.C., Member
Pat Holt, Member
Gerald C. Simmons, Member
Risé Doi, Executive Officer ("EO")
Daniel Jacob, Deputy Attorney General ("DAG")
Susan A. Reyes, Secretary

Excused: None.

Guest: Kelly Webb, Federation of Chiropractic Licensing Boards ("FCLB")
Gary Saito, Hawaii State Chiropractic Association ("HSCA")

Call to Order: There being a quorum present, the meeting was called to order by Dr. Redmond at 10:18 a.m.

Election of Officers: The floor was open for nominations for the office of Chairperson and Vice Chairperson. Ms. Holt nominated Dr. Redmond and Dr. Klein. Dr. Klein nominated Dr. Redmond for Chairperson and herself for Vice Chairperson. The nomination was seconded by Ms. Holt and unanimously carried by Mr. Simmons to elect Dr. Redmond as Chairperson and Dr. Klein as Vice Chairperson by acclamation.

Approval of Meeting Minutes: Minutes of the May 2, 2019 Board Meeting

It was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to approve the minutes as circulated.

Chapter 91, HRS, None.
Adjudicatory Matters:

Executive Session: At 10:24 a.m., it was moved by Mr. Simmons, seconded by Dr. Ogawa, and unanimously carried to enter into Executive Session pursuant to HRS §92-4 and 92-5(a)(1) and (4), to consider and evaluate personal information relating to individuals applying for licensure and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Guests were excused from the meeting room.

At 11:10 a.m., it was moved by Vice Chairperson Klein, seconded by Ms. Holt, and unanimously carried to return to open session. The room was reopened to the public.

Applications for
Licensing:

A. Applications

1. Rodney West

After due consideration of the information received, it was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to defer the application of Rodney West, D.C., pending submission of additional information.

Dr. Ogawa left the meeting at 11:15 a.m.

EO Doi suggested taking the following agenda item out of order.

New Business: A. Phone-in from Providers of Approved Continuing Education ("PACE"): Kelly Webb from the Federation of Chiropractic Licensing Boards ("FCLB") will call in to answer Board questions regarding PACE, a program that reviews and approves continuing education courses.

Ms. Webb called in at 11:16 a.m. and gave a quick overview on what PACE does:

- Streamline and standardize the process of CE recognition and approve re-licensure.
- PACE would receive applications from vendors, colleges and associations for PACE recognition.
- PACE have an in-depth application that would look at attendance verification processes, admissions

statement and how they vest their instructions to determine CE hours.

- A review team is made up of chiropractic educators and regulators. Many questions are asked before a recommendation is made to a Board of Directors.
- The Board will make the final decision if the CE is approved for recognition.
- If approved, courses are submitted and are considered approved only if it is within the scope parameters. PACE does not allow marketing or practice management courses. Courses need to be clinical or related to chiropractic practice.
- Random audits are conducted on the materials, such as the CV of the instructors and the course outline. This is kept on record for the Board's review, if needed. PACE will also have their regulators take a course and report back to them on how it complies with the criteria.

Chairperson Redmond said that not everyone submitting CEs will go through PACE, but CE sponsors could go through the current application procedure.

Ms. Webb said that PACE is not cost effective for everyone. If the CE sponsors are offering courses just for Hawaii, it would be easier to apply in Hawaii than to go through the PACE process.

Ms. Holt had asked if PACE only offers online courses.

Ms. Webb said PACE offers online and live courses. They have in-depth criteria that online courses need to adhere to, in terms of verifying that the person getting credit is actually interacting with the course and not just turning on the course and walking away.

Ms. Holt asked how an online course is monitored.

Ms. Webb said that if there is no activity for ten minutes, then the course would just time-out. There are periodic quizzes or checks for interaction. There is one provider who will ask security questions and periodically these questions will be asked. These are questions that if someone else is taking the test will not be able to answer.

DAG Jacob said that there are rules in place regarding what qualifies for CEs and what licensees must submit to show compliance with CEs. He wanted to know in the states that

have adopted their system, if it required for their rule or statutory changes to be made.

Ms. Webb said that it varies, there are some states that have had to change their statutes and other states that are able to accept PACE through a board vote or motion. With the state licensing boards, the rules and regulations of that state will supercede anything that PACE has. For example, Tennessee does not allow philosophy courses, although PACE does allow for those courses.

DAG Jacob had asked if it would be appropriate for the Board to send a copy of the statutes and rules pertaining to CEs and ask if they have recommendations on how this Board could change them.

Ms. Webb said that when looking at the Board's rules, it looks like the Board has discretion to delegate some of the approval process to PACE, that can be made on the Board level, but she said that she is not a legal advisor. She also said that in the rules under HAR §16-76-41(a), it states that sponsors shall provide the board with a program sponsor agreement, which may create an issue. An alternative option for PACE is available called PACE Precheck, where Boards should be able to meet their criteria. However, individual sponsors do need to complete a streamline application process. Basically, it is a one sheet breakdown of demographic information regarding the course and this is kept on file with the FCLB.

EO Doi asked Ms. Webb if she wanted to share anything else with the Board regarding PACE.

Ms. Webb said that the people that have seen the greatest change in what they have been offering are the executive directors and the Board members who are reviewing CE courses.

Ms. Holt asked Ms. Webb how PACE is paid.

Ms. Webb said they are paid by the CE providers. The for-profit providers will pay an annual fee, and on top of that they report attendance to them and maintain records for licensees. They are charged a fee when they report the attendance.

Ms. Holt asked about the fee.

Ms. Webb said that for-profit providers it is \$2,000 annually for recognition and then there is a record fee of \$1.00 per credit per DC, not to exceed \$10.00 per DC per course.

Vice Chairperson Klein asked if PACE only reviews chiropractic courses.

Ms. Webb said that they only approve for chiropractic boards, but they do allow courses on nutrition, things that are relevant to chiropractor, but are not strictly clinically chiropractic. They also have records keeping courses, ethics and boundaries courses, and then it is the Board's discretion if they will accept that subject matter for approval within their state.

Ms. Holt asked how many states accept PACE.

Ms. Webb said they have 30 states that accept PACE and 7 states that use their precheck program.

Vice Chairperson Klein asked if PACE manages individual applications.

Ms. Webb said they do the entire vendor application and then they will submit courses individually to their system. These they do not prescreen, they audit randomly for compliance.

Ms. Holt asked if they have any Hawaii presenters.

Ms. Webb said that Western States offers a December course in Hawaii and they usually register with PACE. She was looking at some approved courses and many of the providers that are offering them are PACE providers such as National, Logan and Western States.

EO Doi thanked Ms. Webb for taking the time to answer the Board's questions.

Vice Chairperson Klein asked if the Board can discuss further and whether a decision needed to be made today.

DAG Jacob said that the Optometry Board has been looking to use a similar type of organization and it has been problematic because of the rules. Right now, upon completion of an approved program, the sponsor shall issue a written evidence. He is reluctant to think it will not require a rule change. Rule changes usually take about 1-1/2 years

and it is a long process. If the Board wanted to move forward with this, he will check further and get back to the Board.

EO Doi and Chairperson Redmond said that it would be worthwhile in pursuing this for the future.

Dr. Saito of Hawaii State Chiropractic Association (“HSCA”), said that everyone is familiar with PACE. He does not have anything negative to say about PACE and believes that PACE is trying their best effort to try to bring courses into standardization to make it easier to manage. He also said other organizations are trying to do the same thing. The Board should be looking at other resources besides PACE.

Vice Chairperson Klein said that her understanding is that if the Board decides to accept PACE approved courses, they are not excluded from accepting another organization that is also good and doing the same type of work.

DAG Jacob said that there is a qualification for continuing education credit in the rules, but it does not provide that a program is recognized by an entity.

Vice Chairperson Klein stated that the Board should be able to change the rule to say that the Board has the discretion to have an approved entity list that can be reviewed periodically.

DAG Jacob said that the problem is that guidelines are needed, because anytime someone is denied, it will end up in circuit court. With the circuit court, one of the grounds that could overturn the decision is arbitrary and capricious. Unless there are standards, it will be hard to determine what is arbitrary and capricious. He also stated that if the Board does not have standards, it will be difficult to defend why the decision was made to deny in the first place. He was reluctant to tell the Board that a rule can be passed and granted at any given meeting with acceptance or not.

Vice Chairperson Klein suggested instead of putting the name “PACE” on the rules and instead putting “entity.”

DAG Jacob said that other licensing boards that have an approved entity, any course approved by this entity shall be recognized for continuing education credit, those entities are in the rules.

EO Doi asked if the rules needed to be changed each time the entity is changed.

DAG Jacob said potentially it will need to be changed. He is reluctant to say it can be written in a way where you can blanket and not put the entities in the rules.

Chairperson Redmond said that a Permitted Interaction Group ("PIG") needs to be formed for discussion.

EO Doi said that instead of the PIG, this issue can also be a standing item on the agenda for the Board to discuss. She asked the Board to hold off on further discussion regarding rule change relating to continued education courses, as it is on today's agenda under unfinished business.

Vice Chairperson Klein said she did not understand why PACE could not be viewed as the sponsor.

DAG Jacob referred Vice Chairperson Klein to HAR §16-76-41(a):

...Sponsors seeking the board's approval for continuing educational seminars for license renewal in this State shall provide the board with a program sponsor agreement for continuing education and all documentary information required by the board, and an application fee as required by chapter 16-53, forty-five days prior to the date of **the** seminar...

DAG Jacob said that this is a potential problem because this is asking a sponsor who is going to put on one seminar and not recognize a series or platform or whole array of courses. He went on to say that in HAR §16-76-41(b):

...If a program meets the criteria of the board, the sponsor shall be so notified that approval has been granted. An index number of approval shall be provided at that time...

DAG Jacob said that index numbers are issued for specific courses and not for approving the entities.

Vice Chairperson Klein stated the Board could view PACE as a sponsor, but the issue is that the rule is written for one course at a time.

DAG Jacob said it is arguable. He stated that Ms. Webb's offer to review our rules and make some recommendations

is a good one and the Board could ask EO Doi to reach out and make the request.

Vice Chairperson Klein motioned to have EO Doi get recommendations on how PACE can comply with our rules from Ms. Webb.

Dr. Saito intervened saying that a decision regarding rules review should be made first, so that PACE will be reviewing the actual rules that will apply to them.

Vice Chairperson Klein responded that the Board would need to know what the problems are before changes are made to the rules. She again motioned to have EO Doi get recommendations on how PACE can comply with our rules from Ms. Webb, seconded by Dr. Redmond.

Dr. Saito said that the Board should also ask the American Chiropractic Association (“ACA”) to look into this, as they have jurisdiction over the entire country. He wondered why the Board was picking only PACE to decide whether our rules are adequate for them, as other organizations also review CE courses. He would like a to hear a motion that the Board can consult with other entities who have oversight over such things as credits relating to licensure.

Vice Chairperson Klein said that nothing is keeping the Board from contacting other entities, she is specifically asking this question as a follow-up to the phone call from Ms. Webb. The recommendations that the Board receives from Ms. Webb will apply to any large entity to determine if there are issues with our rules.

EO Doi said that there is already a motion by Vice Chairperson Klein. Chairperson Redmond seconded the motion. The motion passed 3-1 (Aye: Klein, Redmond, Simmons; No: Holt).

EO Doi will ask Ms. Webb for recommendations regarding the rules as they stand now.

The following agenda item was taken out of order.

Applications for
Licensing:

B. Ratification of Issued License(s)

1. Rose, Jessica
2. Gentilini, Gina
3. Powell, Chad
4. Gentile, Katherine
5. Okouchi, Mikel

It was moved by Vice Chairperson Klein, seconded by Mr. Simmons, 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 Vice Chairperson Klein, seconded by Ms. Holt, and unanimously carried to ratify the approval of the following CE courses:

Index No. HI 19-134
Index No. HI 19-137 – HI 19-145
Index No. HI 19-147
Index No. NI 19-149 – HI 19-156

It was moved by Vice Chairperson Klein, seconded by Ms. Holt, 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 19-146, 63 hours out of 64 hours
Index No. HI 19-148, 6 hours out of 8 hours

It was moved by Vice Chairperson Klein, seconded by Ms. Holt, 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 19-133, 98 hours offered/30 hours may be earned out of 100 hours requested
Index No. HI 19-135, 89 hours offered/26 hours may be earned out of 93 hours requested
Index No. HI 19-136, 283 hours offered/21 hours may be earned out of 305 hours requested

It was moved by Vice Chairperson Klein, seconded by Ms. Holt and unanimously carried to ratify the following CE re-registration pre-approved by the Executive Officer.

Index No. HI 18-212 R19

B. Other CE Courses:

1. To correct Index Number HI 19-102 for Lyceum 2019 from 43 hours offered/23 hours may be earned to 44 hours offered/23 hours may be earned.

It was moved by Vice Chairperson Klein, seconded by Chairperson Redmond, and carried by majority, to correct the hours to 44 hours offered/23 hours may be earned.

Executive Officer's None.

Board Member
Orientation:

Deputy Attorney General Daniel Jacob delivered a presentation on sunshine law.

DAG Jacob said that the Board is required by law to comply with chapter 92. The Office of Information Practices ("OIP") is the police officer of the sunshine law. He told the Board that Board business is not allowed to be discussed outside of this meeting with more than one other board member. The moment a third board member is involved, it would be a serial communication contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings. He clarified that emails constitute as communication. However, the Board members may discuss with any other non-board member.

DAG Jacob also briefed the new Board members about what a Permitted Interaction Group ("PIG") is. This is a committee that is formed at a meeting that allows for less than a quorum but more than two members to get together outside of a meeting and discuss whatever they have been assigned to examine. The PIG will then at the next scheduled board meeting, report to the Board what was decided or discussed, but there cannot be any discussion about this report. At the third meeting, the entire Board can discuss and take action.

DAG Jacob then referred the Board to HAR §92F-13 regarding executive session. This is what the Board would go into for

purposes to discuss applications and to consult with attorneys regarding legal matters. This should not be disclosed to the public.

New Business:

- B. Email Inquiry from Leanne Wilhelm CHC: Is a chiropractor allowed to write a prescription for durable medical equipment (TENS, fraction, orthotics, etc.)?

DAG Jacob stated that under Title 16, Chapter 201, DCCA has administrative rules for how Boards would answer these types of questions. He instructed the Board that their response should be an informal opinion of the Board that is not binding. If an official declaration is requested, they would need to file a petition for declaratory action.

Vice Chairperson Klein moved, and Ms. Holt seconded, that writing a prescription for durable medical equipment is within the scope of practice for chiropractic, however, it is up to the insurance company to reimburse. The motion was carried unanimously.

This is an informal interpretation for informational and explanatory purposes only and is not an official opinion or decision and therefore is not to be viewed as binding on the Board or the Department of Commerce and Consumer Affairs.

Unfinished Business: A.

- Rule change relating to continuing education courses: The Board will discuss the possibility of a rule change relating to the approval of continuing education courses. A permitted interaction group may be formed to examine this topic.

EO Doi said she received letters from Dr. Robert Klein and Dr. James Pleiss to offer their services as a PIG member if the Board chooses to form one.

Dr. Saito said he went to the Chiropractic State Association (COCSA) annual meeting in November 2018. One of the topics were about CE credits. There were some states that did not allow online credits, and it was required for all of the credits to be from sitting in a classroom. There are other states that would allow 100% of their online credits to be honored for re-licensure. Most of the states had a hybrid of some kind, a percentage or a certain number of the total number of authorized CE credits could be online credits, but only that number. He had the opportunity to ask different states why they were different in their approach to online. It was clear that the issue was about monitoring the attendance of the doctor. Most online courses do not have a

mechanism to assure any board that the doctor who had opened the program is the doctor that:

- registered for the program
- sat through the whole program or walked away and came back at the end
- answered the questions or someone else answering for the doctor

Dr. Saito stated that the purpose of continuing education is to protect the public and to give doctors the chance to learn more and improve on their skills.

Dr. Saito said that he realized that after looking at our administrative rules, as they are written now, does not meet the accommodations for online courses. There were several opinions about this. One of the opinions came from Thomas R. Daly, an attorney for ACA, where he believed that the Board's rules, at this time, does not make room for online courses.

Dr. Saito mentioned that in Nevada, an auditor in that state looked at the credits of the licensed doctors. It was concluded that they could not have earned all the online courses they said they did. These doctors were stripped of all the courses offered by that one program, which made the doctors short of their credits for licensure. This was confirmed when he spoke to James Overland, the President of the Nevada Chiropractic Association ("NCA"). NCA had to make accommodations so that the doctors could get course credits that did conform to their rules.

Dr. Saito said that at the convention, he realized that Hawaii has one of the lowest numbers of required CE credits. Hawaii requires 20 CE credits for two years and most of the states are between 36 and 40 CE credits with Illinois at 150 credits for a three-year period, which comes out to 50 credits per year. Dr. Saito also learned that most states have a core of mandatory courses that all doctors are required to take, which are professional ethics and jurisprudence.

Dr. Saito concluded that if the Board is going to do an administrative rule change, he would like to suggest changing the number of required courses per biennium to conform better with the national average. He suggested that every doctor practicing, who has patients under their care, should be required to reasonable know about the laws that govern their practice and what the standards are, such as for

professional ethics and record keeping. He expressed that the Board should incorporate all of these into one rules-making proposal.

Chairperson Redmond asked Dr. Saito if Hawaii has the lowest CE credits required.

Dr. Saito said that there are other states, but we would need to look for them.

Chairperson Redmond agreed that the Board should take a comprehensive look at the rules. He noted that chiropractors in Hawaii need to consider travel costs when travelling to the mainland for these seminars. Providers are not coming to Hawaii because of the online courses. The Board should examine requiring a certain segment of those hours to be online and live and to cover certain topics.

Executive Session: At 12:50 p.m., it was moved by Vice Chairperson Klein, seconded by Mr. Simmons, and unanimously carried to enter into Executive Session pursuant to HRS §92-4 and 92-5(a)(1) and (4), to consider and evaluate personal information relating to individuals applying for licensure and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

At 12:52 p.m., it was moved by Vice Chairperson Klein, seconded by Ms. Holt, and unanimously carried to return to open session. The room was reopened to the public.

Vice Chairperson Klein moved, and Ms. Holt seconded, to form a PIG to work on examining possible rule changes relating to the approval of continuing education courses. The motion was carried unanimously.

Vice Chairperson Klein recommended nominating herself and Dr. Ogawa from the Board and the following non-members to form the PIG:

- Dr. Robert Klein
- Dr. James Pleiss

Dr. Saito asked if people can be added to the PIG.

DAG Jacob said that it is the Board's decision if they want to add these people to the PIG.

Vice Chairperson Klein asked Dr. Saito who are the people he wanted to add to the PIG.

Dr. Saito responded that he would like to be added along with:

- Dr. Joseph Morelli, President of HSCA
- Dr. Dean Shivvers, Vice President of HSCA

It was motioned by Vice Chairperson Klein, seconded by Ms. Holt, and unanimously carried to have the following names to form a PIG:

- Dr. Rachel Klein
- Dr. Alice Ogawa
- Dr. Robert Klein
- Dr. James Pleiss
- Dr. Joseph Morelli
- Dr. Dean Shivvers
- Dr. Gary Saito

Next Meeting: Thursday, September 5, 2019
10:00 a.m.
King Kalakaua Conference Room
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Adjournment: As there was no further business to discuss, the meeting adjourned at 1:05 p.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

09/18/19

- () Minutes approved as is.
(X) Minutes approved with changes; see minutes of 09/05/19.