

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, December 12, 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., Chair
Rachel M. Klein, N.D.D.C., Vice Chair
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.

Guests: Dr. Gary Saito
Dr. Paul Powers, Online Continuing Education, LLC
Lei Ana Green – Executive Officer, DCCA - PVL

Individuals wishing to provide public comment may do so at the beginning of each agenda item. Pursuant to HAR §16-76-62(a)(5), the Board will limit an individual's public comments to (5) minutes for each agenda item. Public comment on issues not on the agenda may be considered by the Board at a subsequent meeting. The Board is precluded from discussion or acting on items raised by public comment that are not already on the agenda.

Call to Order: There being a quorum present, the meeting was called to order by Dr. Redmond at 10:06 a.m.

DAG Jacob asked Chairperson Redmond to amend the agenda to include a quick discussion on what was heard from Dr. Paul Powers at our November 7, 2019 meeting. Although this meeting was cancelled due to not having a quorum, Dr. Powers was allowed to present testimony to the Board members who were present.

It was moved by Chairperson Redmond, seconded by Vice Chairperson Klein, and unanimously carried to hear a quick summary on the testimony presented by Dr. Paul Powers.

Vice Chairperson Klein stated that Dr. Powers gave a presentation on the organization that he works does with online continuing education, the methods that they use and the history on how long they have been doing this and how effective it has been. He also gave detailed information and presented a handout.

Chairperson Redmond further stated that Dr. Powers noted that online continuing education is just as effective as brick and mortar courses, and in some instances, even more effective. Dr. Powers covered some of the aspects on what various organizations do to prevent cheating and to add accountability, noting that there are methods with online courses to ensure that the individuals requiring the credits are the ones taking the courses.

Dr. Powers said that he has been involved with continuing education with chiropractors for almost 30 years. He has also been involved in internet or online learning both synchronous and asynchronous learning for over 18 years. He explained that he is considered as a general expert in the area, and has appeared before over 40 licensing boards, chiropractic or otherwise, particularly in continuing education by both live and distance-based. He would like to be a resource for the Board, if needed.

Ms. Holt asked Chairperson Redmond, what is the core issue with continuing education.

Chairperson Redmond responded that the rules do not state or confirm whether continuing education courses must be in a brick and mortar school type of setting or in an online setting. Back when the rules were written, the internet was new. However, now it is common practice to take online courses. The rules are not specific on whether online courses are acceptable, and the Board wants to clarify these issues. At the same time, the Board should look at the overall picture and revise the number of hours to be taken and whether to mandate a certain type of course to be taken every 2 years. Dr. Redmond explained that the Board formed a Permitted Interaction Group ("PIG") to take a comprehensive look at the rule and clarify some of the issues.

Ms. Holt expressed that the Board should focus on changing the rules first and questioned whether the Board is allowed to continue to accept the online CE courses.

DAG Jacob stated that the statutes give the Board authority to pass rules regarding continuing education. He explained that there will be a draft of the rules and the Board will adopt the draft. It will be a year and half long process that includes director review, public comment, governor review and promulgation.

Mr. Simmons wanted to thank Dr. Powers for presenting information regarding online continuing education for the Board to consider as a guideline in changing the rules.

Dr. Redmond stated that Dr. Powers has extensive experience on dealing with issues from other state boards concerning online continuing education and he has helped most of the state boards on his own time.

Dr. Powers said he runs a distance learning platform that is sponsored by the University of Bridgeport College of Chiropractic, a DCA accredited college and is also a Federation of Chiropractic Licensing Board ("FCLB") a Provider of Approved Continuing Education ("PACE"). He is the authorized representative and has worked with the University of Bridgeport for almost 20 years.

Ms. Holt asked Dr. Powers if he has any financial gain in presenting his point of view.

Dr. Powers answered yes, and that every association, provider or university that provides continuing education runs a business producing financial revenue and his source is shared with the University of Bridgeport.

Vice Chairperson Klein wanted to know if other professionals can take their courses online, such as medical doctors.

Dr. Powers commented that all chiropractors, medical doctors, and doctors of osteopathic medicine in all jurisdictions have been able to get all their hours online for over 20 years. This includes the very prestigious Physicians Recognition Award ("PRA") that requires 150 hours per cycle of continuous education. There are no limitations.

Approval of
Meeting Minutes:

Minutes of the September 5, 2019 Board Meeting

EO Doi stated that Dr. Saito submitted testimony regarding the September 5, 2019 minutes for the Board's review and decision to include them.

Dr. Saito said that according to the Office of Information Practices ("OIP") the minutes of board meetings should be as accurate as

possible. He further stated that he wrote down comments he felt were absent and he wanted them to be included in the minutes.

EO Doi stated that she wanted to clarify that the minutes are not required to be verbatim by the sunshine law, but should have an accurate reflection on the discussion. EO Doi asked DAG Jacob to comment.

DAG Jacob stated that EO Doi is correct that it does not require a transcript, but it should reflect that someone spoke in favor and it should reflect generally the opinion of the board members that individually spoke.

Dr. Saito said that it should reflect the contributions of public members attending the meeting.

DAG Jacob reminded the public that they are given an opportunity to comment at the beginning of each agenda item. Once the Board starts discussion, the public is not allowed to make any comments.

Dr. Saito said that at the September 5, 2019 meeting he wrote down comments as correctly as he heard them and when he noticed that they were not part of the minutes he asked the EO to have them added as a contribution from a public member.

Vice Chairperson Klein stated that there were several quotes from her on Dr. Saito's clarification of the minutes was incorrect:

1. "Precedent should allow us to continue. (approving online courses for credit.)"

Vice Chairperson Klein referred the Board to the September 5, 2019 minutes, on page 4, last paragraph regarding the discussion on online courses. She stated that she said she felt that there was precedent to accept these online courses as it is a gray area, and it was the board's opinion that these courses were acceptable, noting that online courses have been accepted for a number of years. She explained that her comment was not actually the above quote.

2. "Online courses create no more likelihood of preventing cheating."

Vice Chairperson Klein said she definitely did not say this, and it was not the intention of any of her statements.

3. This was not a direct quote:

“Vice Chair Klein said that our Deputy Attorney General, Daniel Jacob, has advised the board that their action of approving online courses for credit is permissible and that, since we have the opinion of our DAG, we don’t need to consider any other opinions.”

Vice Chairperson Klein said it was neither something she said nor her intention of anything she said. She does remember this discussion very clearly, and what she said is that the Board has the DAG opinion and the chiropractic profession may have other attorney opinions. But the opinion of the attorney that the Board is responsible for deferring to and listening to is the DAG.

Vice Chairperson Klein was concerned about Dr. Saito’s memo to be added to the Board’s September 5, 2019 minutes because the memo states these notes are very close to verbatim. She noted that there are multiple quotes that are not direct quotes and in quotation marks. She did not feel that the intent of the remarks were preserved in some things that she said. She said, therefore, it would not be fair to her to be interpreted this way and reflected.

Ms. Holt asked if the minutes are recorded to preserve what was said.

EO Doi responded no, but notes are taken.

DAG Jacob stated that we are not required to record it, we can if we choose to, but it will be destroyed once the minutes are created.

Chairperson Redmond commented that the Board has a mechanism in place currently, which is why the Board is reviewing the minutes at this point. He also has an issue with Dr. Saito’s memo as follows:

“Regarding the legitimacy of approving online CE courses for credit, Chair Redmond said, “The rule doesn’t say we can’t, so it’s OK.”

Chairperson Redmond said that the rule also does not say that we can, and the Board is trying to resolve the issue. He further stated that if things are recorded, it would unduly slow down the meeting.

He understands recording from an accuracy standpoint, but the Board has a mechanism in place for changing the minutes.

Ms. Holt asked what is the mechanism?

Chairperson Redmond said that the minutes are sent to the Board members prior to the Board meeting for the members to review to see if there are any changes that needs to be done, and it is corrected at the Board meeting.

It was motioned by Vice Chairperson Klein to amend the minutes on page 4, the last sentence on the bottom, to reflect also that based on precedent, that the Board has been accepting them and should continue to accept them, until a rule change is made. It was seconded by Mr. Simmons, and unanimously carried to amend the minutes.

It was moved by Vice Chairperson Klein, seconded by Chairperson Redmond, and unanimously carried to approve the minutes as amended.

Chapter 91, HRS. None.
Adjudicatory Matters:

The following agenda item was taken out of order:

Applications for
Licensing:

B. Ratification of Issued License(s)

1. Deane, Lily
2. Esguerra, Jasmine
3. Luke, Wyland
4. West, Rodney
5. Lebowitz, Noah
6. Walther, Denise
7. Huey, Aubrey
8. Bertolero, Alan
9. Ignatavicius, Aras

It was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to ratify the above staff approval of the licensee(s).

The following agenda item was taken out of order:

Applications for
Licensing:

A. Applications

1. Jeffrey Utter

Executive Session: At 10:50 a.m., it was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to enter into Executive Session pursuant to HRS §92-4 and 92-5(a)(1), to consider and evaluate personal information relating to individuals applying for licensure. Guests were excused from the meeting room.

At 11:05 a.m., it was moved by Chairperson Redmond, seconded by Dr. Ogawa, and unanimously carried to return to open session. The room was reopened to the public.

It was moved by Vice Chairperson Klein, seconded by Ms. Holt, and unanimously carried to deny the application of Jeffrey Utter pursuant to the HRS §436B-19(7), §436B-19(9), (10), (11), (12), (13), and (14) and HRS §442-9(12).

The following agenda item was taken out of order:

Continuing Education ("CE"):

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

Chairperson Redmond asked if there were any public comments regarding this item.

Dr. Powers said that he understands that the Board will contemplate rule changes on the hours, subject and clarification on distance learning online. This can be done going forward, however there is 18 years of precedent of approving online courses up to this point. The fact that online courses have been approved for 18 years with so many different board members makes a binding precedent. Judges in legal cases are obligated to make their rulings as consistently and reasonably possible with pre-decisions on the same subject. This matter regarding the accessibility of online learning in the past and going forward, based on the current rules, were covered extensively on the March 7, 2019 meeting, including when DAG Jacob explained there was nothing in the HAR stating that the continuing education courses could not be completed online and it does not state that the Board could not approve online courses. Dr. Powers would be happy to be involved in helping in way possible to strengthen the rule going forward.

Mr. Simmons said that when he reviewed the ratifications on the agenda today compared to the previous ratifications that were presented in the past, it seems it was for one year and now many of them are asking for two years.

EO Doi stated that the approval is good for two years and some of them are for re-registration.

Secretary Reyes stated that the renewal is for two years and it is usually noted on the application the date(s) they will offer the course(s) for. However, the certificates are issued for two years always ending on the odd year, no matter when they are requested. Therefore, if the sponsor offers the course(s) for one year, the certificate is still issued to expire on the odd year.

DAG Jacob asked the Board to make a recommendation to go into executive session to consult with this agenda item and the Board's liability regarding them.

Executive Session: At 11:13 a.m. it was moved by Ms. Holt, seconded by Vice Chairperson Klein, and unanimously carried to enter into Executive Session pursuant to HRS §92-4 and 92-5(a)(4), 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 11:37 a.m., it was moved by Chairperson Redmond, seconded by Vice Chairperson Klein, and unanimously carried to return to open session. The room was reopened to the public.

It was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to defer the ratification of CE Courses – New Applications and Re-Registrations until the next meeting.

Vice Chairperson Klein wanted it noted that this had to be deferred past the renewal period.

Ms. Holt wanted to comment that she does not believe that because online courses were approved for years, that it is right to continue. It should go back to what the rule is. She said she is not against online courses, but it should be clarified in the rules so that there will not be any questions in the future.

Ms. Holt said that she does not know what the future will hold with the situation that has come up with some of the board members that are in question. Although she appreciated the phone call from EO Doi and DAG Jacob, she was petrified. She stated that she is happy to be on the Board and felt that she could use her expertise in her life experiences to enrich the Board. She does not understand

why the Ethics Commission would take a recommendation from an anonymous person.

Chairperson Redmond wanted to comment regarding deferring online courses. He does not want to put the licensees' licenses in jeopardy because of a clerical issue or something the Board is trying to correct for the future. He was assured by DAG Jacob and EO Doi that this will not happen. He understands the ramifications, but he wanted it noted that he is uncomfortable with it.

Mr. Simmons asked if the providers will be notified on why their applications are not approved.

EO Doi responded that the providers will be notified that it will be deferred until the next meeting.

Secretary Reyes stated that it will be in the minutes and the minutes are posted to the public website.

Executive Session: At 11:48 a.m. it was moved by Dr. Ogawa, seconded by Vice Chairperson Klein, and unanimously carried to enter into Executive Session pursuant to HRS §92-4 and 92-5(a)(4), 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 11:55 a.m., it was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to return to open session. The room was reopened to the public.

It was moved by Vice Chairperson Klein, seconded by Ms. Holt, and unanimously carried to defer the ratification of all CE courses until the next meeting.

C. Other CE Courses:

1. Request from Nicholas Opie, D.C. for approval of National Board of Chiropractic Examiners' Part IV Test Committee, May 18-20, 2018 for 24 hours of continuing education

It was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, to defer ratifying the above application until the next meeting. The motion to defer was passed, with Chairperson Redmond, Vice Chairperson Klein, Dr. Ogawa and Ms. Holt voting "yes", and Mr. Simmons voting "no".

Executive Officer's None.
Report:

The following agenda item was taken out of order for public comment:

New Business: D. Acceptability of online courses for continuing education –The Board will consider whether it will accept online continuing education courses pursuant to Hawaii Administrative Rules Title 16 Chapter 76 Subchapter 6.

Dr. Saito commented that he was testifying as an individual and stated that he is petitioning for the Board to resolve the matter of online continuing education (“CE”) courses. It is his belief that the current practice of granting current status to online courses is not in compliance with and a violation of Hawaii Administrative Rules (“HAR”), Title 16, Chapter 76, Sections 39-42 and HRS, Chapter 442-5. The HAR for CE of chiropractors stipulates the following:

- CE credit shall be given for whole hours only, with a minimum of fifty minutes constituting one class hour.
- No credit for CE shall be allowed for time expended for study outside of the classroom.
- Any board member, or board designee shall have the right to inspect or audit any approved chiropractic course.
- Each approved program in CE shall maintain a record of the persons completing the course for a period of two years thereafter.
- Each approved course in CE shall be responsible for maintaining full-time monitoring of the seminar attendance.
- Upon completion of an approved program, the sponsor shall issue written evidence of attendance.
- If absence from the room (specified as a classroom) 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.

Dr. Saito expressed that there is no provision in the existing HAR that recognizes or accommodates online/distance learning courses.

HRS 442-5 stipulates that changes to CE must be done “by rule”. Before any changes are made to CE rules, the public must be given the opportunity to provide input.

Dr. Saito further stated that in order to fulfill its obligation to assure the public that each licensed chiropractor in the state of Hawaii has attended courses of approved content and earned credit for CE as stipulated by the HAR governing CE, the Board must promulgate new rules, in accordance with HRS 442-5, to include online learning, which the current rules, as written, do not. The rule change must precede any more approvals of online courses by the Board. Overlooking, defying, or ignoring existing administrative rules and regulations is not a prudent course for the Board to take. The correct course is proposing and promulgating rules that will accommodate and recognize online or distance learning. It is recommended that the Chiropractic Board take the following actions:

1. Require that each course approved by the Board and taken by Hawaii chiropractors in the last two years submit written evidence to the Board of:
 - a) attendance verification
 - b) successful completion of the course
2. Require each approved course to use available technology:
 - a) to assure that the seminar attendee was present for at least 50 minutes of each presentation hour and that no time was earned due to absence from the presentation for more than 10 minutes of each hour.
 - b) to assure that the seminar attendee has seen the entire course content.
 - c) to assure that the seminar attendee has participated in each hour of the CE course that can be verified by the director of the course.
 - d) to prevent the seminar attendee from participating in or earning time credit in multiple courses simultaneously.
 - e) to verify that the seminar attendee has earned a certificate of course completion for each hour of CE and can provide a written report of satisfactory course completion by each course attendee at the Board’s request.

Dr. Saito concluded, that he would also like to petition the Board to establish acceptable standards and guidelines regarding online course approvals and verification reporting.

Dr. Powers expressed concerns regarding live courses, nothing that once a person checks in, there is absolutely zero accountability of learning for the rest of the time. There is no post-test and people can sleep through the event. He mentioned that when he gave his testimony on November 7, 2019, he showed the Board pictures of a seminar where there were lounge chairs with a television set up to watch football games. Dr. Powers noted on the accountability learning issue, he feels that his testimony that he submitted, stands on its own. He will stand by the Board to help strengthen the rule, but after 18 years of precedent and the fact that the world has moved more, not less, towards online education in the last 18 years, there is no reason to step back at this time.

There was no Board discussion on this agenda item.

New Business:

- A. The Chiropractic Proclamation and Declaration: The Board will review a document from the Group of Six (G6) based in the province of Quebec, Canada.

Vice Chairperson Klein stated that she is not comfortable the way it is written and will not support it.

It was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to take no action.

- B. Email inquiry from Dr. Bill Gallagher, D.C.: Is an active chiropractic license needed to perform IME's in Hawaii?

The Board authorized EO Doi to respond back to Dr. Bill Gallagher to informally opine that an active license is required to perform IME's in Hawaii.

- C. Board member conduct policies from Department of Human Resources Development

EO Doi reminded Board members to sign their acknowledgment forms and return them to the secretary.

Unfinished Business:

- A. Regulated Industries Complaints Office's ("RICO") Chiropractic Advisory Committee Members and addendum language: The Board will consider RICO's Chiropractic Advisory Committee members and addendum language.

Executive Session: At 12:29 p.m. it was moved by Vice Chairperson Klein, seconded by Dr. Ogawa, and unanimously carried to enter into Executive Session pursuant to HRS §92-4 and 92-5(a)(2), to consider the hire, evaluation, dismissal, or discipline of an officer or employee, where consideration of matters affecting privacy will be involved. Guests were excused from the meeting room.

Dr. Ogawa left the meeting at 12:30 p.m.

At 12:35 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.

It was moved by Vice Chairperson Klein, seconded by Mr. Simmons, and carried unanimously to deny and request a new name from RICO for consideration.

- B. Permitted Interaction Group ("PIG") report to discuss rule change relating to continuing education courses – The PIG will deliver the results of their findings related to this topic. Please note that the Board may not make any final decisions on the PIG's research at this meeting, pursuant to HRS §92-2.5(d)(1).

Vice Chairperson Klein stated that the PIG was made up of seven chiropractors that the Board designated and had three meetings within the course of three months. There was an outreach done by some of the PIG members to get opinions from experts in the field on the changes that could be made to our CE rules. The following recommendations from the PIG are as follows:

1. Increase the hours of the CEs to 30-36 hours instead of the current 20 hours.
2. Require a certain number of those hours be in-person, which will be about 1/3 of the increased hours. Dr. Saito recommended 50% and Dr. Pleiss recommended to not have any hours in-person.
3. Special topics to be mandatory in the CE rules:
 - a. Ethics & boundaries which will include but will not be limited to gender sensitivity training
 - b. Jurisprudence which will include, but not limited to HIPA, OIG and Medicare compliance
 - c. Stark laws
 - d. Fee splitting
 - e. Documentation

- f. Risk management
- 4. Change the rules to accept credit in 15-minute increments.
- 5. Distance learning should have adequate safeguards to see what is acceptable.

Chairperson Redmond asked Vice Chairperson Klein if the PIG received input from Dr. Powers, PACE or other type of organization's submission of their expertise regarding CE.

Vice Chairperson Klein responded that they did not reach out to organizations that have already submitted their expertise to the Board. However, there were other experts that they reached out to, but she was not sure if it could be submitted for this meeting.

DAG Jacob said that the PIG has made their recommendations on multiple issues and none of this can be discussed today. He suggests the recommendations that were given today be individually itemized on the next agenda to discuss. As to the documents that could have been included on today's agenda, be included on the next agenda, provided that the PIG does not meet again and there is no further work done, that this could be discussed at the next meeting. However, if the Board wants to extend the PIG and have further discussions, this would certainly postpone any discussion or action until the following meeting thereafter.

Vice Chairperson Klein stated that the PIG has done its job and there should not be further work done from now until the next meeting because it will defer things, and she does not think that there will be more to gain discussing this topic further.

DAG Jacob said that there may be a problem with the fact that the documents were not submitted, he will look into this. However, the PIG has made their report, and the Board is aware of the recommendations. Discussion and action can be taken at the next meeting.

- C. Providers of Approved Continuing Education ("PACE") Program – The Board may discuss PACE, a program that reviews and approves continuing education courses.

EO Doi stated that FCLB was checking to see if the Board wanted any more information regarding PACE.

Dr. Powers stated that FCLB put this PACE program together to be like the ACCME for chiropractic. In the MD field, there is no other organization like the ACCME, and in chiropractic, there is no national accreditation organization other than PACE. Otherwise if a sponsor is not a PACE provider, the sponsor will have to deal with each state individually. Some states will automatically accept courses sponsored by a Council & Chiropractic Education college, which is accredited by the U.S. Department of Education. Outside of this, there is no other PACE accredited organization. Many states use PACE to avoid the mundane processing of all the applications. The sponsor needs to meet all of the PACE standards for online and live courses to be a PACE accredited provider.

Vice Chairperson said that if she understands correctly, PACE is an accrediting body and not CE provider.

Dr. Powers responded, yes, that is correct.

Next Meeting: Thursday, January 23, 2019
10:00 a.m.
Queen Liliuokalani Conference Room
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Adjournment: As there was no further business to discuss, the meeting adjourned at 1:06 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

01/13/20

() Minutes approved as is.
(X) Minutes approved with changes; see minutes of 1/23/20.