

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 5, 2020

Time: 9:00 a.m.

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

Present: Rachel M. Klein, N.D.D.C., Vice Chair
Alicé 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: Lawrence A. Redmond, D.C., Chair

Guest: Dr. Gary Saito, Public
Dean Shivvers, Hawaii State Chiropractic Association (“HSCA”)

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 five (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 Vice Chair Klein at 9:14 a.m.

Approval of Meeting Minutes: Minutes of the January 23, 2020 Board Meeting

It was moved by Dr. Ogawa, seconded by Mr. Simmons, and unanimously carried to approve the minutes as circulated.

Chapter 91, HRS. None.

Adjudicatory Matters: None.

Applications for Licensing:

A. Applications

None.

Applications for Licensing:

B. Ratification of Issued License(s)

1. Koreyasu, Jessica
2. Fuyuki, Ken
3. Fano, Robert
4. Polski, Peter
5. Dertinger, Ryan

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

The following agenda item was taken out of order:

D. Ethics Commission Advisory Opinion No. 2020-1

Dr. Saito stated that because he was a named subject in the investigation, he feels that it has targeted some members of the board without exploring the relationships that other members of the board also have in their personal and professional lives. It seems to him that Mr. Simmons, Ms. Holt and Dr. Ogawa were subjects of the inquiry because they all had a connection with him. Dr. Saito does not know if there is a suspicion that he had stacked the board, but noted that the people who were the subjects of the inquiry were part of his influence to get on the board. He encouraged all of the Board members, including Chair Redmond, to get on the Board because of their experience/knowledge and/or having the profession of being on a board. He added that there was a second person seeking a seat on the board that had many more years of experience and knowledge of all aspects of Chiropractic. Dr. Saito had asked the individual to withdraw his name so that there was an unobstructed path to the seats the new Board members currently hold now. Dr. Saito stated that he was instrumental in talking to people in considering taking positions in the Hawaii Board of Chiropractic and HSCA Board. He also mentioned past board members that he talked to, had no conflicts or problems while they were on the board. He concluded that the chiropractic profession is small and there are only 385 doctors and out of this, of these there are only 85 HSCA members, and if we can task people

with multiple skills to serve the profession in their multiple ways, it would be a benefit.

Ms. Holt had asked Vice Chair Klein why she was not investigated since she is in business together with her dad.

Vice Chair Klein responded that she does not know the answer. Her impression from reading the Ethics Commission advisory opinion was that there was a complaint made and she was not sure who made the complaint.

Ms. Holt stated that she wanted to address the questions to EO Doi, since she made the complaint.

EO Doi stated that she did not make the complaint, she received a complaint and she had forwarded it to the Ethics Commission, which is the appropriate state agency.

Ms. Holt expressed that this situation was unfair and that EO Doi or DAG Jacob should have been aware and should have handled it. She also asked Dr. Ogawa if her husband is a physician and on a board.

Dr. Ogawa responded, no and never has been.

Ms. Holt did not know why she was singled out and expressed concern that this complaint will affect her real estate profession. In all her years in real estate, she has not had any inquiries from the Ethics Commission.

Mr. Simmons asked EO Doi before she had sent the complaint to the ethics commission, why she did not check the rest of the people on the board that had similar situations.

DAG Jacob stated that it is his opinion that it is not the EO's job to investigate the members of the board, but to facilitate the board's duties.

Dr. Ogawa wanted to comment that when she applied to be on the board, she had brought up the fact that she was an Island director for the HSCA Board and wanted to know if it would be a conflict of interest and where would she put this information on her application. Whoever she spoke to said that it would not be a conflict of interest. Therefore, she was surprised when she received the letter from the Ethics Commission.

Mr. Simmons commented that he felt he was being targeted for his sexuality, when there were other circumstances with other board members that had the same marital relationship as he did.

Executive Session: At 9:40 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 9:56 a.m., it was moved by Dr. Ogawa, seconded by Ms. Holt, and unanimously carried to return to open session. The room was reopened to the public.

Mr. Simmons said he has concerns with other Board members maybe having the same concerns that they should be very careful about.

Vice Chair asked Mr. Simmons if he wanted to discuss it in detail.

Mr. Simmons responded that he does not, and that everyone can vote as they want.

E. Revision of the Board's CE sponsor and re-registration form

Dr. Saito said he has a problem with the attachment to the application form. On paragraph two: §16-76-38 Basic requirements for renewal, (a) For the license renewal period covering the 1986-87 biennium, the licensee shall file, together with the biennial renewal application, on or before December 31, 1985. He said we are including guidelines that predates the 2001 guidelines that are in the HAR. This has been going on since the 1980's and these guidelines should be coordinated and reflective of the current and a change should be made. He concluded that he wanted to submit a proposal to bring it up to date that reflects what the HAR currently states. He recommended that we no longer put a year date, and it should be changed to December 31, on the odd numbered year.

Vice Chair Klein asked Dr. Saito to send his proposal to EO Doi and suggested to add this item to the next agenda to vote on. She also wanted to change the front of the

application to add to the "FOR OFFICE USE ONLY" another line to show what hours were approved. She also thought that it would be helpful if the schedule was on a standard form that would show the different tracks presented at the same time so that the reviewer can see that as a whole and not have to search for it.

Mr. Simmons says that because he is not allowed to come in while the applications are being reviewed, he does not know how to vote on these continuing education courses.

Dr. Ogawa responded that when they are reviewing, there may be a total of 40 hours, but only 20 hours will be possible. This means that there are several courses going on at the same time, but the participant can only go to one.

Ms. Holt requested Vice Chair Klein and Dr. Ogawa to put in their ideas or suggestions in how to standardize the way the providers format the scheduling of the courses, and they should do it before the next meeting.

DAG Jacob reminded the Board that one of the public members could meet with one of the licensed members to meet and discuss what the reviewers do when looking over the applications.

EO Doi stated to the Board that she does an initial review of all the applications prior to the Board meeting. She also makes a note of items that are not within the scope of practice.

Vice Chair Klein stated that this agenda item will be put back on the agenda for further discussion.

Continuing
Education ("CE"):

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

Dr. Saito said that part of the problem with the Ethics Commission's inquiry is that now that the advisory has been written and it delineates and defines relationships among people. One of the considerations on the inquiry was the question about Mr. Simmons' marriage with him would prevent him from voting on the courses.

Vice Chair Klein announced to Dr. Saito that the Board is not on that topic, which was already discussed in executive session.

Dr. Saito insisted that it is on the topic and he will explain. He proceeded and said that the question was that Mr. Simmons had abstained from voting because the Ethics Commission inquiry had just been concluded where Mr. Simmons found out that he could have voted since he (Dr. Saito) had resigned from his position as President of HSCA. However, as the Ethics Commission did not investigate the other members of the Board with same/similar relationships with the HSCA, then the question becomes, is their vote valid.

Vice Chair Klein stated again that this is not on the topic that the Board is discussing.

DAG Jacob stated that he agrees with Vice Chair Klein that it is not on the topic that the Board is on now, and the Board is not going to answer those questions. DAG Jacob further stated to Dr. Saito that if he feels that there is something that he has to address regarding the conflict of interest, then he recommended Dr. Saito take it to the Ethics Commission. The Board or he will not opine whether people have conflicts of interest.

Dr. Saito asked EO Doi to initiate another ethics inquiry.

DAG Jacob stated that EO Doi did not initiate the complaint, she only forwarded what she had received.

Vice Chair Klein stated to Dr. Saito that he is free to go to the Ethics Commission and not within this meeting.

It was moved by Dr. Ogawa, seconded by Vice Chair Klein, to ratify the list of CE courses for approval. Mr. Simmons and Ms. Holt abstained, therefore all CE courses will be deferred until the next meeting.

Mr. Simmons asked, in light of finding out that rules in the application were outdated, how can the Board be sure if the courses are following the rules? He asked whether the Board should consider possibly holding off on approving courses until the correction is made, so that the Board is sure that providers are following the rules.

Vice Chair Klein stated that in her opinion, the Board should not be holding off, because doctors are taking these courses and they need to know whether the courses are approved or not.

Mr. Simmons said that the course may not be compliant with the rules.

Vice Chair Klein stated that the rules listed in the application are old, it just needs to be updated to be clearer. The last time Board deferred courses, it ended up with a long list to ratify, and she does not want to see it get backed-up again.

Mr. Simmons questioned if this would put doctor's licenses in jeopardy.

Vice Chair Klein asked in what way would this put doctor's licenses in jeopardy.

Mr. Simmons responded that they are not following the current rules according to the application and asked whether these doctors can be sued.

EO Doi stated that if the Board approves these courses and when they submit the certificates of completion for Board approved courses, then there should not be any jeopardy.

Vice Chair Klein stated that she agrees that the application needs to be updated but it is not the fault of these service providers because of an old application.

Mr. Simmons questioned if a patient was disgruntled and they found that a doctor took a course based on old rules, whether that doctor's insurance carrier will be able to defend the doctor.

Vice Chair Klein answered yes, because the State Board approved that course.

Mr. Simmons stated, but it is based on something that is not on the rules and it is on the back of the application.

Ms. Holt stated that to her it sounds minor, but it could be challenged by an attorney.

DAG Jacob said that the question that the Board is asking is are the courses in compliance with the rules and not the application. The application is for guidance as to what the rules require. The question of whether these courses meet the rules/statutes for CE requirements is for the Board to determine. He suggested that the applications that do not meet the criteria of the rules/statutes the Board has the

authority to audit courses at any time to see if they are in compliance.

Vice Chair Klein suggested that there is already an item on the agenda to discuss the auditing of CE courses and it can be discussed then.

Executive Officer's Report:

EO Doi did not have anything to report. DAG Jacob stated that he was fortunate to receive a \$2,500 scholarship from the Federation of Chiropractic Licensing Boards ("FCLB") and that he will be attending the conference in Denver. There are particular courses at this meeting that are designated for Board's attorneys and he is looking forward to getting more experience to serve the Board, and to help him to spot legal issues that may be presented with the issues that are facing the profession of chiropractic medicine. He is looking forward to going to this conference and will be happy to give a report on what he learns.

New Business:

- A. Email Inquiry from Gavin LeFever – Inquiry regarding a scope of practice and mobile chiropractic services:

It was moved by Ms. Holt, seconded by Mr. Simmons, and unanimously carried to have EO Doi respond back to Mr. LeFever with the following answers:

Although it is within the scope of practice that chiropractors in the state of Hawaii can treat extremity conditions it is up to the insurance companies if they will reimburse for it.

Regarding whether chiropractors can delegate care such as therapeutic activities to an assistant, the Board advised him to consult an attorney and review our statutes.

Regarding traveling or mobile practices in Hawaii, the Board advised him to consult an attorney and review our statutes.

In accordance with Hawaii Administrative Rules §16-201-90, the above interpretation is for informational and explanatory purposes only. It is not an official opinion or decision, and therefore not binding on the Board or Department of Commerce and Consumer Affairs.

- B. Email inquiry from Dr. Richard Corcilius – Can a licensed chiropractor with a class one medical device approved under the direction of a licensed physician have staff apply the modality?

It was moved by Dr. Ogawa, seconded by Mr. Simmons, and unanimously carried to have EO Doi respond back to Dr. Corcilus that the Board is unable to answer his question and to advise him to direct his question to the Hawaii Medical Board or consult with an attorney.

In accordance with Hawaii Administrative Rules §16-201-90, the above interpretation is for informational and explanatory purposes only. It is not an official opinion or decision and is therefore not to be viewed as binding on the Board or Department of Commerce and Consumer Affairs.

- C. National Board of Chiropractic Examiners (“NBCE”) Part IV Practical Examination Program – The Board may nominate one or two licensed chiropractic board members to attend NBCE’s program May 15-17, 2020

It was moved by Mr. Simmons, seconded by Ms. Holt, and unanimously carried to nominate Vice Chair Klein to attend the NBCE’s program on May 15-17, 2020, with Dr. Ogawa as a back-up.

Ms. Holt asked about the content of the NBCE review course and who monitors the examiners. EO Doi said she will find out.

- D. Regulated Industries Complaint Office’s (“RICO”) Chiropractic Advisory Committee Member – RICO is asking the Board for any possible recommendations to serve on the RICO Chiropractic Advisory Committee. Board’s recommendations will remain anonymous.

Executive Session: At 11:01 a.m., it was moved by Dr. Ogawa, seconded by Mr. Simmons, 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 or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved. Guests were excused from the meeting room.

At 11:07 a.m., it was moved by Mr. Simmons, seconded by Ms. Holt, and unanimously carried to return to open session. The room was reopened to the public.

It was motioned by Ms. Holt to approve all three names. There was no second to the motion, therefore, this motion did not pass.

It was moved by Mr. Simmons, seconded by Ms. Holt, to approve the names individually.

The Board voted below as follows:

- #1: It was moved by Mr. Simmons, seconded by Ms. Holt, and unanimously carried to accept this name.
- #2: It was moved by Ms. Holt, there was no second. This name was not approved to submit to RICO.
- #3: It was moved by Mr. Simmons, seconded by Dr. Ogawa, and unanimously carried to accept this name.

G. Clarifying procedure for auditing/monitoring of CE courses

Dr. Saito said that in the HAR there are seven requirements for CE courses, only one of these requirements is the appropriateness of course content. He said that the Board only looks at this requirement and if it is met, the course is approved. The second requirement is so far, until the rules change, that the course for credit will need to be in a classroom and there has to be a method of verification of attendees where each director in charge of the approved program shall be in charge of full-time monitoring. He said that the Board has not done any auditing of the providers to verify this.

Dr. Ogawa said that she needed to catch her flight back to Kauai, noting that she has patients to see in the afternoon. Ms. Holt noted that the Board made accommodations to start the meeting earlier and that all members should attend and stay the entire meeting. Ms. Holt said that Dr. Ogawa has other people in her office that can see patients.

Dr. Ogawa left the meeting at 11:29 a.m.

DAG Jacob referred the Board to HRS §16-76-41:

... (c) Any board member, or board designee shall have the right to inspect or audit any approved chiropractic course in progress...

Vice Chair Klein said that the Board should design a system to do a random audit on some courses to see if the providers are following the rules. She said that the Board should not

go back further than two years since the Board is only concerned with the current licensees.

Dr. Saito said that he has been in contact with Dr. Powers and Dr. Steve Foreman and they both agree that there should be data capture to help the associations know that the online courses are being taken. Hawaii should set up standards and requirements and ask the providers to comply with our standards.

Vice Chair Klein requested Dr. Saito to send his information or suggestions in to EO Doi for the Board's review.

Mr. Simmons wanted further explanation from the providers that the continuing education hours are being monitored,

Vice Chair Klein stated that the Board should discuss further in how we want to make this request.

It was motioned by Mr. Simmons, seconded by Ms. Holt, and opposed by Vice Chair Klein, to request for further explanation from the providers that the continuing education hours are being monitored. Motion was not passed.

Vice Chair Klein requested to add this agenda item to the next agenda for further discussion.

Unfinished Business:

- A. Permitted Interaction Group ("PIG") discussion on rule change relating to continuing education courses
– A report was delivered by the PIG at a previous Board meeting. The Board may now discuss the information that was given:
1. Increasing the number of CE hours required for renewal.
 2. Requiring a percentage or number of CE hours that need to be live courses
 3. Special topics to be mandatory in the CE rules
 4. Change the rules to accept credit in 15-minute increments
 5. Distance learning should have adequate safeguards to see what is acceptable

Vice Chair Klein said that Chair Redmond wanted to invite Dr. Shivvers to the Board meeting to share his thoughts and asked Dr. Shivvers to clarify if the HSCA membership or the HSCA Board were recommending changes to the CE requirements. Dr. Shivvers explained that the HSCA Board were recommending the changes. Dr. Shivvers noted that an increase in CE hour requirements is beneficial for the chiropractic profession.

Vice Chair Klein suggested to move this agenda item to the next agenda for more discussion.

Next Meeting: Thursday, May 7, 2020
9:00 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 12:05 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

03/12/2020

() Minutes approved as is.

(X) Minutes approved with changes; see minutes of 9/2/20.