

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: Wednesday, September 2, 2020
Time: 9:00 a.m.
Place: Virtual Videoconference Meeting – Zoom Webinar

Present: Rachel M. Klein, N.D.D.C., Vice Chair
Alicé H. Ogawa, D.C., Member
James Pleiss, Member
Risé Doi, Executive Officer (“EO”)
Ahlani Quiogue, Executive Officer
Relley Araceley, Executive Officer
Daniel Jacob, Deputy Attorney General (“DAG”)
Susan A. Reyes, Secretary
Karyn Takahashi, Secretary to DCCA Director Catherine P. Awakuni Colón
Terry Akasaka-Toyama, Secretary to DCCA Deputy Director JoAnn M. Uchida Takeuchi
Kelly Wei, DCCA staff

Excused: Gerald Simmons, Member

Guests: Chelsea Fukunaga, Executive Officer
Dr. Paul Powers, Online Continuing Education, LLC
Tanner Underdahl
Donald Taylor
A.Q.

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.

A brief video explained meeting procedures and information on how members of the public can participate during the meeting.

Call to Order: There being a quorum present, the meeting was called to order by Dr. Klein at 9:35 a.m.

Election of Chair
and Vice Chair:

Vice Chair Klein opened the floor for nomination of a new chair. She nominated Dr. Pleiss, seconded by Dr. Ogawa, and it was unanimously carried to elect Dr. Pleiss as the new Chair.

Vice Chair Klein opened the floor for nomination of a new Vice Chair. Dr. Pleiss nominated Dr. Klein to continue as the Vice Chair, seconded by Dr. Ogawa, and it was unanimously carried to elect Dr. Klein to continue as the Vice Chair.

Approval of
Meeting Minutes:

Minutes of the March 5, 2020 Board Meeting

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

Vice Chair Klein asked the Board if there were any comments or changes to the minutes. She stated that she has a comment on:

Page 3, paragraph 6, the last sentence and paragraph 7:

“She also asked Dr. Ogawa if her husband is a physician and on a board.”

“Dr. Ogawa responded, no and never has been.”

Vice Chair Klein said this should be clarified, and asked Dr. Ogawa for a response.

Dr. Ogawa responded: She does not recall if Ms. Holt had asked if her husband was a physician, but she does recall her asking if he was on a board. She concluded that he is a chiropractor and has never been a member of the Hawaii Board of Chiropractic. However, he has been a past member as the Treasurer for HSTA.

Vice Chair Klein motioned to accept the minutes to include this amendment. It was seconded by Dr. Ogawa and unanimously carried.

Chapter 91, HRS,
Adjudicatory Matters: None.

Applications for
Licensing:

A. Application(s): Sabate, Rhema

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

Executive Session: At 9:44 a.m. it was moved by Vice Chair Klein, seconded by Dr. Pleiss, and unanimously carried to enter into Executive Session pursuant to HRS § 92-5(a)(1), "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both".

At 9:50 a.m., it was moved by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to return to open session.

It was moved by Vice Chair Klein, seconded by Dr. Pleiss, and unanimously carried to approve the application of Rhema Sabate.

B. Ratification of Issued License(s)

1. Pineiro, Gonzalo
2. Kim, Namjoong
3. Foster, Jesse
4. Vieselmeyer, Skylar
5. Thiel, Machesney
6. Davis, Nathaniel
7. Pacada, Mischa
8. Sheldon, Cole
9. Banks, Gregory

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, 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).

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which Dr. Paul Powers raised his hand.

Dr. Paul Powers from the University of Bridgeport College of Chiropractic asked if these CEs will be approved retroactively or only be approved as of today.

Vice Chair Klein responded: The approval will be for the courses and not when it was taken.

EO Doi clarified that some of these courses were discussed at the March 2020 meeting but deferred due to not having enough votes to approve them. She concluded that there are also newer courses that were submitted for approval since the last meeting.

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to ratify the approval of the following CE courses:

Index No. HI 20-139 – HI 20-150
Index No. HI 20-156 – HI 20-157
Index No. HI 20-159 – HI 20-160
Index No. HI 20-163 – HI 20-165
Index No. HI 20-167 – HI 20-170
Index No. HI 20-173 – HI 20-182
Index No. HI 20-186 – HI 20-190
Index No. HI 20-192 – HI 20-197
Index No. HI 20-199
Index No. HI 20-201
Index No. HI 20-203 – HI 20-210
Index No. HI 20-212 – HI 20-217
Index No. HI 20-219 – HI 20-221
Index No. HI 18-111 R20
Index No. HI 18-112 R20
Index No. HI 18-254 R20
Index No. HI 17-043 R20

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, 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 20-138, 52 hours offered/21 hours may be earned, out of 52.5 hours offered/23 hours may be earned requested
Index No. HI 20-191, 18 hours out of 18.75 hours requested
Index No. HI 20-198, 9 hours out of 9.5 hours requested
Index No. HI 20-200, 17 hours out of 17.25 hours requested

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, 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 20-152,	39 hours offered/19 hours may be earned, out of 46 hours requested
Index No. HI 20-158,	23 hours, out of 24 hours requested
Index No. HI 20-161,	26 hours offered/13 hours may be earned, out of 27 hours requested
Index No. HI 20-162,	37 hours offered/27 hours may be earned, out of 39.5 hours requested
Index No. HI 20-166,	23 hours offered/16 hours may be earned, out of 23 hours requested
Index No. HI 20-171,	17 hours, out of 14 hours requested
Index No. HI 20-172,	86 hours offered/30 hours may be earned, out of 86 hours requested
Index No. HI 20-183,	36 hours offered/24 hours may be earned, out of 24.5 hours requested
Index No. HI 20-184,	70 hours offered/25 hours may be earned, out of 70 hours requested
Index No. HI 20-202,	292 hours offered/37 hours may be earned, out of 292 hours requested
Index No. HI 20-211,	24 hours offered/13 hours may be earned, out of 24 hours requested
Index No. HI 20-218,	87 hours offered/22 hours may be earned, out of 87 hours requested
Index No. HI 20-222,	140 hours offered/29 hours may be earned, out of 140 hours requested

- B. Request for retroactive CE approval – National University of Health Sciences conducted CE course online, Radiology in Sports for 8 CE hours, started in January 28, 2019. Licensee completed course on December 13, 2019. Sponsor and licensee are asking whether this course will count towards the 2019 renewal.

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

EO Doi directed DAG Jacob to look at:

HAR §16-76-41 Requirements for approved programs. (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.

She stated that the request was not submitted within this 45-day period and asked would this need to be considered prior to the Board's approval.

DAG Jacob responded: It specifically states that everything needs to be submitted within the 45-days, which it was not. Therefore, the rule does not allow the Board to accept this request.

Vice Chair Klein asked why the school would apply for Hawaii credit, not knowing that anyone from Hawaii would take the course. There should be some kind of avenue to accept this course.

EO Doi said that this is a two-part question:

1. Can the Board approve the CE credit, if not
2. Is there any other way for the Board to review this case individually and approve the course or for the licensee to meet the CE renewal requirement.

Vice Chair Klein asked EO Doi if people write in to the Board to approve CE credits on an individual basis.

EO Doi said she has not received any. There were requests for CE approval in the past for being on the National Board of Chiropractic Examiners ("NBCE") Part IV Test Committee Exam Board.

Dr. Pleiss asked if these NBCE Part IV requests were similar since these are submitted a few months after for approval.

EO Doi referred to:

HAR §16-76-44 Exceptions. The board may renew a license to practice to any licensee who has not fully complied with the continuing education requirements

in cases where failure by the applicant to fulfill the requirements has been caused by reason of: (3) Other good and valid causes, as determined and approved by the board.

DAG Jacob said that he will need to have time to research before giving an answer.

EO Doi said the licensee is short 8 credits but took additional courses that were not approved.

EO Quiogue asked if the Board would like to go into executive session since they are discussing specifics to a particular case.

Executive Session: At 10:22 a.m., it was moved by Vice Chair Klein, seconded by Dr. Pleiss, 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.

At: 11:07 a.m., it was moved by Dr. Pleiss, seconded by Vice Chair Klein, and unanimously carried to return to open session.

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to defer this agenda item until the next meeting.

Executive Officer's Report:

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

EO Doi stated that the Board will likely have virtual board meetings through the end of 2020.

DAG Jacob wanted to inform the Board that he has been invited online to the conference for the Federation of Chiropractic Licensing Boards ("FCLB") sometime in October.

New Business: A. National Board of Chiropractic Examiners ("NBCE") Part IV Practical Examination – The Board may nominate one or two licensed chiropractic board members to attend NBCE's program November 13-15, 2020.

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

Vice Chair Klein and Dr. Ogawa offered to be delegates and Dr. Pleiss as a backup.

- B. Email inquiry from Elliot Feldman – Can a licensed chiropractor retail and recommend cannabidiol (CBD) oil to patients?

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

Vice Chair Klein stated that it is her understanding that chiropractors of Hawaii can retail and recommend CBD over-the-counter products, as the November 2018 pharmacology bill made it federally legal. She would like to respond back that this is allowed. She asked if anyone else has a comment on this.

Dr. Pleiss said that in the past, when specific questions regarding what the Board can or cannot do, the response would be to refer them to seek an attorney's opinion, and that it will not be binding on the Board.

DAG Jacob agreed with Dr. Pleiss. His advice is for the Board to answer it as they see fit and it is not binding.

Vice Chair Klein stated that the Pharmacology bill does make the CBD oil legal as long as the THC content is 0.3 or less. She wanted to know if the answer could be a general response, such as chiropractors are free to recommend over-the-counter products to patients.

DAG Jacob said this response is better.

Dr. Ogawa said that her concern is that the writer is also asking about recommending and retailing. Dr. Ogawa said that chiropractors can recommend taking over the counter pills like Advil or Tylenol, but she is not sure whether chiropractors can retail it.

Vice Chair Klein stated that chiropractors retail other nutraceutical products.

Dr. Pleiss said that he can see Dr. Ogawa's point, if a chiropractor recommends Advil over-the-counter to someone and they take it inappropriately, get an ulcer and then want to sue the chiropractor for recommending it. According to HRS §442-8, chiropractors cannot recommend things in the materia medica.

Vice Chair Klein said chiropractors can recommend to someone to take Tylenol within the bottled recommended use. However, chiropractors cannot tell someone to take four Tylenol because it would be the same strength as the prescription pills.

Dr. Ogawa responded that chiropractors do not retail Tylenol.

Vice Chair Klein responded that chiropractors cannot retail prescription strength Tylenol but can retail over-the-counter Tylenol. It would be the same as retailing Vitamin C.

Dr. Pleiss said the board should see if it fits in with the materia medica.

DAG Jacob stated HRS Chapter 442:

§442-8 License form, authority under. One form of license shall be issued which shall be designated "License to Practice Chiropractic" and which shall authorize the holder thereof to practice chiropractic as defined in section 442-1 and also to use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, **but shall not authorize the administration of drugs or medicine now or hereafter included in materia medica**, or the performance of any surgical operation or the practice of osteopathy, dentistry, or optometry; provided that a holder of a license which has been limited, restricted, or placed under probation may practice chiropractic only within the limitation, restriction, or terms of probation.

He said that the statute does not speak to recommendation. A recommendation of a drug for use is probably more of a standard of care question. There could be civil liability on the chiropractor, or it would violate as a gross negligence.

Vice Chair Klein made a motion to have EO Doi respond back advising that chiropractors can recommend retail over-

the-counter products, if they choose to. More information can be found in HRS §442-8. It was seconded by Dr. Pleiss and unanimously carried.

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. Email inquiry from Samika Mazyck – Can a licensed chiropractor order prescription devices?

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

After a brief discussion, it was moved by Dr. Pleiss, seconded by Vice Chair Klein, and unanimously carried for EO Doi to respond that chiropractors can recommend devices that fall within their scope of practice as defined HRS §442 and HAR §16-76.

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.

D. Email inquiry from Jill Michaelis – Are there any limitations on activities (remote or online) that count toward clinical hours?

Vice Chair Klein asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which there were none.

Dr. Pleiss said that in the past, chiropractors have taken on interns in Hawaii as long as they do not treat the patients. They can do examinations, take x-rays, etc., but the doctor will have to be present. This is a broad question and the Board would need more specifics.

EO Doi referred the Board to HAR Chapter 76:

§16-76-20 License required to practice chiropractic, either as an individual or under supervision, or in employment of a licensed chiropractor. Any person

who is found practicing chiropractic before receiving a license from the board may be denied licensure.

DAG Jacob said it should be more specific and referred the Board to HAR Chapter 76:

§16-76-8 Educational requirements.

(3) The chiropractic program shall require its doctor of chiropractic degree candidates, as conditions of graduation, to have met the following quantitative clinic requirements: (A) Performed, in the clinical setting, at least twenty-five examinations with case history for the purpose of developing a diagnostic or clinical impression of the status of the patient relative to chiropractic care; (B) Performed and interpreted, ordered and interpreted, or interpreted, in the clinical setting, at least twenty-five area radiographic (diagnostic imaging) examinations with written reports of findings; (C) Interpreted, while in the degree program, clinical laboratory tests to include at least twenty-five urinalysis, twenty hematology procedures such as complete blood counts, and ten clinical chemistry, microbiology or immunology procedures or profiles on human blood and other body fluids;

Dr. Pleiss moved for EO Doi to respond that the Board recognizes that to the extent there are limitations on what an educational course shall be made up of and to refer to HAR §16-76-8. It was seconded by Dr. Ogawa, and unanimously carried.

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.

Executive Session: At 11:27 a.m., it was moved by Vice Chair Klein, seconded by Dr. Ogawa, 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.

At 11:34 a.m., it was moved by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to return to open session.

It was motioned by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to accept the executive session minutes for March 5, 2020 as circulated.

Next Meeting: To be determined

Adjournment: As there was no further business to discuss, the meeting adjourned at 11:35 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

09/18/20

- () Minutes approved as is.
(X) Minutes approved with changes; see minutes of 11/5/20.