

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, November 5, 2020
Time: 9:00 a.m.
Place: Virtual Videoconference Meeting – Zoom Webinar

Present: James Pleiss, D.C., D.A.B.C.O., Chair
Rachel M. Klein, N.D.D.C., Vice Chair
Alicé H. Ogawa, D.C., Member
Risé Doi, Executive Officer (“EO”)
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 Uchida Takeuchi

Excused: Gerald Simmons, Member

Guests: Dean Shivvers
Skyler Meineke

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 9:39 a.m.

Approval of Meeting Minutes: Minutes of the September 2, 2020 Board Meeting

Chair Pleiss 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.

Chair Pleiss asked the Board if there were any comments or changes to the minutes. He stated that he has a comment on:

Page 8, B, paragraph 3, the second to the last sentence:

“She would like to respond back that this is allowed.”

Chair Pleiss said this should be clarified.

EO Doi said that it could be clearer by changing it to:

“**She clarified** that this is allowed.”

Vice Chair Klein moved and Dr. Ogawa seconded to accept the minutes to include this amendment. The motion was unanimously carried.

Chapter 91, HRS,
Adjudicatory Matters: None.

Applications for
Licensing:

A. Application(s): Meineke, Skyler

Chair Pleiss asked if there are any members of the public who would like to provide oral testimony on this agenda item, to which Skyler Meineke raised his hand.

Mr. Meineke proceeded to explain his conviction and he was interrupted by EO Doi.

EO Doi stated that it would be up to him if he wanted to proceed in public or wait and see if the Board has any questions when they go into executive session.

Mr. Meineke said that he provided all the information to the Board and wanted to be present to represent himself.

Vice Chair Klein asked what his age was at the time of his conviction.

Mr. Meineke responded that he was 18 years old and he is now 28 years old.

Executive Session: At 9:47 a.m. it was moved by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to enter into Executive Session pursuant to HRS § 92-5(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 10:03 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. Ogawa, and unanimously carried to approve the application of Skyler Meineke.

Chair Pleiss 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.

B. Ratification of Issued License(s)

1. Green, Michelle N.
2. Sabate, Rhema N.Y.
3. Mroczek, Kyle J.
4. Rebo, Andrew E.
5. Wechsler, Samuel
6. Latona, Nicholas A.

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

Chair Pleiss 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.

Continuing
Education ("CE"):

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

See attached list(s).

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

- Index No. HI 20-224 – HI 20-243
- Index No. HI 20-246 – HI 20-257
- Index No. HI 20-260 – HI 20-272
- Index No. HI 20-274 – HI 20-280
- Index No. HI 18-079 R20
- Index No. HI 18-080 R20
- Index No. HI 18-081 R20
- Index No. HI 18-073 R20
- Index No. HI 18-214 R20
- Index No. HI 18-243 R20

It was moved by Vice Chair Klein, seconded by Chair Pleiss, 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 20-258, 29 hours, out of 28 hours offered/17.5 hours may be earned requested

Index No. HI 20-273, 11 hours out of 12 hours requested

It was moved by Vice Chair Klein, seconded by Chair Pleiss, 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 20-244, 20 hours, out of 22 hours requested

Index No. HI 20-259, 92 hours offered/29 hours may be earned, out of 92 hours requested

Chair Pleiss 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 Officer's Report:

A. Introduction of New Executive Officer

EO Doi introduced Relley Araceley as the new executive officer that will be assisting this Board.

B. Future topics for discussion

The Board will consider presentations from the Ethics Commission and Office of Information Practices ("OIP") to answer Board members' questions regarding the applicable laws, rules and policies.

EO Doi asked the Board if they would like to have the Ethics Commission and OIP attend a future board meeting so they can answer any questions.

Chair Pleiss said that there were some ethics issues last year and thought that it would be a good idea to have the Ethics Commission attend a future meeting to discuss.

EO Doi and Araceley will reach out to have them attend a future meeting for the Board to ask any questions.

EO Araceley stated that he would like to have OIP also attend a future meeting since he is a new EO for this Board.

Chair Pleiss 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.

New Business:

A. Potential change of Board meeting day

The Board will consider the frequency of its meetings and changing the board meeting day from the first Thursday of every month.

Dr. Ogawa said she was fine with the current schedule, however, she does not see patients on Mondays, Wednesdays, and Fridays. She noted that Thursday afternoon would also work better with her schedule.

Chair Pleiss said he also does not see patients Mondays, Wednesdays and Fridays. He generally sees his patients from 8:00 a.m. to 6:30 p.m., so choosing another day would work well with his schedule.

Vice Chair Klein said that she works every day, with Tuesdays and Thursdays as her half days. She only sees her patients up until 11:00 a.m.

EO Doi and Araceley both stated that if DCCA resumes in-person meetings, there may be times that other boards will meet at the same time in other conference rooms, which will make it difficult to reschedule a meeting. Additionally, both EO Doi and Araceley, the secretary, and deputy attorney general are assigned to other Boards and would need to check to make sure that there are no scheduling conflicts.

Vice Chair Klein said that when in-person meetings resume, Dr. Ogawa will need to get back in time to see her patients. Vice Chair Klein said that if she needs to travel, then the end of the week would be better for her. If meetings are held virtually, then it does not matter to her.

Dr. Ogawa stated that it would be better if the meeting was in the middle of the week when it would be less busy at the airport. She said that we could think about this until the next meeting.

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

Unfinished
Business:

A. Request for retroactive approval of continuing education (CE)

The National University of Health Sciences conducted an online CE course "Radiology in Sports" for 8 CE hours, which started on January 28, 2019.

EO Doi stated that this was added to agenda from the last meeting because DAG Jacob was to gather information to present to the Board today. This CE course sponsor requested retroactive approval because a licensee had been audited and the licensee had contacted the CE provider asking them to apply for retroactive approval so that the licensee can meet the 20 hours of CE requirements for renewal. The licensee had already taken the course within the renewal period, but later found that it was not Board approved. The licensee will potentially be short 8 hours.

DAG Jacob referred the Board to HAR § 16-76-39 Qualifications for continuing education credit. There is nothing in the statutes regarding continuing education other than to give full authority to the Board.

EO Doi said that it should be referred to 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.

DAG Jacob apologized, because his understanding was that someone did not take the course and now is taking this course.

EO Doi said that the licensee took the course, not knowing that it was not Board approved. The licensee asked the provider to apply for retroactive approval.

Chair Pleiss had asked if there is something in the rules that the Board could make an exception for.

DAG Jacob responded that it is the applicant's duty to complete the CE, which is separate from the providers requirements to be afforded CE credit for that course.

Chair Pleiss said that in 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 only the provider can request for approval of CE. The licensee cannot request it. The provider requested approval, but it was not submitted 45 days prior to the course date. Now the applicant has failed to meet the statutory CE requirement. For the purposes of continuing the license, knowing it is deficient and because the course taken was not previously Board approved, it is the Board's prerogative to determine if it is good cause. RICO will need to be involved. DAG Jacob mentioned he is not sure how RICO can prosecute under the Board's discretion under the exemption number 3, if the Board thought this was good cause and there is reason to understand that he/she is deficient.

EO Doi asked for clarification whether the Board can approve the course retroactively.

DAG Jacob said that the provider's request cannot be granted, which leaves a licensee that is deficient with their CEs. This would be a RICO issue.

Vice Chair Klein asked if there is way for the Board to change the rules to give the Board the authority to be able to retroactively approve.

DAG Jacob said that the HAR §16-76-41 Requirements for approved programs will need to be changed.

Vice Chair Klein asked how the Board can start the process of this rule change.

DAG Jacob suggested that it should go on the agenda for discussion.

Chair Pleiss said that it is the next item on the agenda.

EO Doi said that the Board will need to vote whether to deny this request.

Dr. Ogawa asked, why do would we deny this if it is not up to the Board.

DAG Jacob said that the provider is requesting for approval, and Board is denying it because it was not submitted 45 days prior to the course date.

Chair Pleiss said that for years members would attend the National Board of Chiropractic Examiners Part IV Exam and submit the request for CE approval after the exam.

DAG Jacob said that this may be inappropriate.

EO Doi said that a request for CE could be made prior to going to the exam.

Chair Pleiss said that a letter is sent to them that they attended. Therefore, the Board members should request NBCE to send a syllabus to show what the members are doing before they can get approval for the CEs.

EO Doi said that this should be the safe way.

Dr. Ogawa asked that the CE credits that have been approved retroactively only with the NBCE Part IV Exam Board because the Board has been discussing to automatically approve CEs as a rule change.

EO Doi said that everything submitted by CE course sponsors is subject to Board review. Most of the time, the requested hours are approved.

Chair Pleiss asked the Board members for a motion.

Vice Chair Klein asked if the Board can make a motion to deny the application and inform the course sponsor that it is beyond the Board's jurisdiction to approve it.

EO Doi said that if the course is denied, she will inform the course sponsor that it did not meet the rule requirement of 16-76-41(a).

Chair Pleiss motioned to deny the application pursuant to 16-76-41(a), seconded by Dr. Ogawa.

Vice Chair Klein requested to abstain.

DAG Jacob said that if there is no full vote to approve or deny, it will amount to a denial as well.

Dr. Ogawa said that she will change her vote to abstain.

Chair Pleiss said that the motion does not carry.

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

B. Potential rule changes relating to continuing education

The Board will continue its discussion on possible rule changes relating to continuing education.

Chair Pleiss said that Board members should read the rules and come up with recommendations on what needs to be changed. The Board needs to address approving courses that have already been taken if all information is provided by the course sponsor for approval. The Board should also be thinking about putting certain courses from certain entities that should automatically have approval. He asked DAG Jacob that once the Board has the language for the rules, how does it move forward.

DAG Jacob said that rule changes can be discussed as an agenda item. He suggested forming a Permitted Interaction Group ("PIG") to be formed, noting that only two members can discuss the topic.

EO Doi said that the PIG would report at the next meeting with no action to be taken. The subsequent meeting will be when the Board can discuss and take action.

DAG Jacob said that for instance, the PIG could meet, and he could be invited. The members would work out the wording as to what specifically in the rules will be changed and report at the next Board meeting, then discuss and take action at the third meeting. Once he receives some clear ideas on the changes, he will be able to work on the wording.

EO Araceley said that the PIG is the recommended way to allow the Board to discuss and outline the specific changes to the rules. EO Araceley noted that it takes time to change the rules.

Vice Chair Klein said that creating a PIG is a waste of time, noting one was created before and it went nowhere.

Vice Chair Klein said that the issues need to be clarified with all Board members or discuss during the meeting before drafting any changes in the language. Previously, it was broken down to the following:

- Do we want to change the total amount of hours;
- Do we want to make an in-person requirement;
- Do we want to have certain topics required;
- Do we want to accept half hour or 15 minutes increments instead of whole hour increments;
- Changing the language on the number of days for the application to be submitted

She said the Board will need to discuss these topics, then a board member or two will meet with DAG Jacob to discuss the language and then come back to the Board meeting without it formally being a FIG. Additionally, she noted that the previous FIG consisted of content experts that were not on the Board, which was a broad range of recommendations.

Chair Pleiss suggested that the Board keep this as a standing agenda item and for the Board to review chapter 16-76.

Vice Chair Klein asked about the possibility of specific topic areas. She wanted the members' opinions.

Dr. Ogawa said that it would be a good idea to have a minimum of 4 hours of jurisprudence and documentation.

Chair Pleiss asked whether the Board would want to have an ongoing requirement specific to a certain topic that licensees have to take every year.

Dr. Ogawa said that due to the current situation with COVID-19, allowing virtual education is the future. It should not be a requirement for a licensee to attend in person.

Vice Chair Klein agreed, noting that it is unknown when the pandemic will end or whether another pandemic will occur in the future. There are many in-person programs that were converted to online courses due to the pandemic.

Dr. Ogawa said there should be an option that the required courses can be completed virtually.

Chair Pleiss agreed with both Vice Chair Klein and Dr. Ogawa.

Next Meeting: Thursday, January 7, 2021
9:30 a.m.
Virtual Videoconference Meeting – Zoom Webinar

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

Reviewed and approved by:

Taken and recorded by:

/s/ Risé Doi
Risé Doi, Executive Officer

/s/ Susan A. Reyes
Susan A. Reyes, Secretary

RD:sar

12/2/20

- () Minutes approved as is.
(X) Minutes approved with changes; see minutes of 2/1/21.