

HAWAII BOARD OF CHIROPRACTIC
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: September 1, 2021

Time: 12:00 p.m.

Place: Virtual Videoconference Meeting – Zoom Webinar
(use link below)
<https://dcca-hawaii-gov.zoom.us/j/98741331539>

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
Kedin C. Kleinhans, Executive Officer (“EO”)
Daniel K. Jacob, Deputy Attorney General (“DAG”)
Susan A. Reyes, Secretary
Erin Emerson, Technical Support

Guests: Lei S. Fukumura, Special Deputy Attorney General (“SDAG”)
Jason O. Jaeger, D.C.
Cassandra Peterson
S. Vlaminck
Peter Darvas

Individuals wishing to provide public comment may do so at the beginning of each agenda item. Pursuant to Hawaii Administrative Rules (“HAR”) Section 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 Vice Chair Klein at 12:10 p.m., as Chair Pleiss was out-of-state and was only available by phone.

Approval of Meeting Minutes: Minutes of the June 30, 2021 Board Meeting
Vice Chair Klein asked if there were 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 Chair Pleiss, seconded by Dr. Ogawa, to accept the minutes. The motion was unanimously carried by roll call vote.

New Business:

A. Presentation from Jason O. Jaeger, DC
National Board of Chiropractic Examiners ("NBCE") District 4
Director

Dr. Jaeger presented information on the Special Purposes Examination for Chiropractic (SPEC), and the Ethics and Boundaries Assessment Services (EBAS).

Dr. Jaeger stated that the mission of the NBCE is to ensure clinical competency through examinations.

- SPEC Examination: Dr. Jaeger stated that the SPEC examination is primarily administered to chiropractors licensed in a different jurisdiction from the jurisdiction they plan to apply for licensure. Boards may use the examination to assess clinical competency and is only available by request. The examination is offered six times per year, covers nine different areas of clinical competency, and is available for review on the NBCE website.

Chair Pleiss indicate that we have granted licenses for people that have used the SPEC examination and had good experiences in the past.

- Jurisprudence Examination: Dr. Jaeger stated that currently Hawaii does not require a Jurisprudence examination and asked the Board if they would like to revisit jurisprudence. He added that NBCE would develop the examination for Hawaii and handle its administration.

Chair Pleiss expressed interest.

Dr. Jaeger responded that NBCE would do the bulk of heavy lifting to create a psychometrically sound examination, and the Board will have full control and approval of the examination content. He wanted to open a dialogue for further discussion.

EO Kleinhans will further discuss this matter with Dr. Jaeger.

- EBAS Examination: Dr. Jaeger explained that the EBAS is an ethics examination in essay format

assembled by a combination of board members which include chiropractors, licensees in other medical fields, attorneys and public members.

Chair Pleiss asked if there is a charge for the Jurisprudence examination.

Dr. Jaeger responded that an attempt is \$50.00.

Chair Pleiss reported that the Board will be revising its administrative rules and will discuss these examinations.

Dr. Jaeger concluded that their annual District IV meeting will be between October 8-10, 2021 and hoped the Hawaii Board will delegate an attendee. He thanked the Board for their time.

The Board recessed at 12:32 p.m. and reconvened at 12:43 p.m.

Chapter 91, HRS.

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

- A. Mark S. Kemenosh, D.C., CHI-2020-27-L

It was moved by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to approve the settlement agreement for Mark S. Kemenosh.

Applications for

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

- A. Application(s) for License
 - 1. Caleb Craig (Deferred from Last Meeting)
 - 2. Peter Darvas
 - 3. Stephen Offenburger

Executive Session: At 12:44 p.m., it was moved by Chair Pleiss, 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", and HRS §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 1:34 p.m., it was moved by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to exit Executive Session and reconvene to the Board's regular order of business.

Vice Chair Klein did a roll call, all board members were present.

1. Caleb Craig (Deferred from Last Meeting)

It was moved by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to deny the application of Caleb Craig pursuant to:

- **HRS §442-9(a)(12):** "Professional misconduct or gross carelessness or manifest incapability in the practice of chiropractic";
- **HRS § 436B-19(8):** "Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity";
- **HRS § 436B-19(12):** "Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license";
- **HRS § 436B-19(13):** "Revocation suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section"

2. Peter Darvas

It was moved by Dr. Ogawa, seconded by Vice Chair Klein, and by roll call vote, unanimously carried to defer the application of Peter Darvas for more information.

Dr. Darvas asked to be recognized. Vice Chair Klein recognized Dr. Darvas.

Dr. Darvas asked the reason for his application deferral.

EO Kleinhans responded that the information contained in his application is considered confidential and asked Dr.

Darvas if he wanted to discuss his application in Executive Session.

Dr. Darvas stated that he does not mind discussing his application in open session.

Dr. Ogawa asked Dr. Darvas for further information about one of his employees who provided chiropractic services without a license.

Dr. Darvas explained that he had a Nevada license since 1996 to 2005. In 2005, they had three children in two years and decided to move to Arizona and bought a practice. He was commuting between his two practices in Nevada and Arizona until he decided to either sell the Nevada practice, or have an associate who recently graduated from Life College of Chiropractic to take over once he obtained his licensed.

While commuting between the two clinics, he was allegedly not on premise, and an unlicensed employee treated a patient. As he was the supervisor and was not on the premise, he was held accountable for supervision. He was issued a fine of \$5,000.00 and community service time, which were both completed.

Dr. Darvas indicated that there were no other penalties or disciplinary actions issued against his license and continued to be licensed in Arizona for sixteen years.

Vice Chair Klein asked if he could clarify if the employee was a student or postgraduate at the time.

Dr. Darvas affirmed that the employee graduated and was waiting for board licensure. He further stated that he was not aware that the employee was treating patients. He would be in Nevada three days a week on Mondays, Tuesdays, and Fridays, and in Arizona three days a week.

Dr. Cassandra Peterson asked to be recognized. Vice Chair Klein recognized Dr. Peterson.

Dr. Peterson provided testimony for Dr. Darvas. She owns Island Family Chiropractic and Dr. Darvas will be taking over a full patient load as two doctors recently left.

Executive Session: At 1:53 p.m., it was moved by Dr. Ogawa, seconded by

Vice Chair Klein, 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", and HRS §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 1:56 p.m., it was moved by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to exit Executive Session and reconvene to the Board's regular order of business.

Vice Chair Klein did a roll call, all board members were present.

It was motioned by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to approve the application of Dr. Darvas.

Dr. Stephanie Vlaminc asked to be recognized. Vice Chair Klein recognized Dr. Vlaminc.

She stated that she is also joining Island Family Chiropractic and asked if Board ratification is required prior to treating patients.

EO Kleinhans responded that ratification is the formal process where the Board recognizes a license issued by staff. In general, upon issuance of a DC license is the licensee is authorized to practice chiropractic.

3. Stephen Offenburger

It was moved by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to defer the application of Stephen Offenburger for more information.

B. Ratification of Issued License(s)

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

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| 1. | DC-1487 | Bassem Kharb |
| 2. | DC-1488 | Austin Moon |
| 3. | DC-1489 | Glen C. Zielinski |
| 4. | DC-1490 | Alexander Rowe |
| 5. | DC-1491 | Christopher M. Brindley |
| 6. | DC-1492 | Madison K. Grzeszkowiak |
| 7. | DC-1493 | Holly D. Schonberger |

8. DC-1494 William F. Latter

It was motioned by Vice Chair Klein, seconded by Chair Pleiss, and by roll call vote, 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

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

See attached list(s).

It was moved by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to ratify the approval of the following CE courses:

- Index No. HI 20-527 – HI 20-529
- Index No. HI 20-531
- Index No. HI 20-533 – HI 20-538
- Index No. HI 20-540 – HI 20-544
- Index No. HI 20-546 – HI 20-555
- Index No. HI 20-557 – HI 20-559

It was moved by Chair Pleiss, 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 20-524 17 hours out of 17.5 hours requested
- Index No. HI 20-532 4 hours out of 4.5 hours requested
- Index No. HI 20-539 18 hours out of 18.5 hours requested
- Index No. HI 20-556, 17 hours out of 17.5 hours requested

It was moved by Chair Pleiss, 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 20-525, 41 hours offered/33 hours may be earned out of 41 hours requested.
- Index No. HI 20-526, 85 hours offered/25 hours may be earned out of 85.5 hours requested.

Index No. HI 20-530, 76 hours offered/22 hours may be earned out of 76.5 hours requested.
Index No. HI 20-545, 33 hours offered/23 hours may be earned out of 48 hours offered/23 hours may be earned.

B. Approval of NBCE Par IV Test committee on June 11-12, 2021

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

After Board's discussion, EO Kleinhans will need to gather more information and put this on the next agenda for discussion.

Chair's Report:

Chair Pleiss said that there is an open slot for one of the Board members to attend the NBCE Part IV Test Committee in November. The deadline to submit your request is September 9, 2021.

New Business:

A. Regulated Industries Complaints Office (RICO) Chiropractic Advisory Committee and Addendum

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

EO stated that the RICO Advisory Committee and Addendum are confidential, and any discussion would be in a closed session. He explained that RICO is requesting approval of this committee to provide information and assistance with the complaints process.

Chair Pleiss does not see any problems. Vice Chair Klein agreed.

It was motioned by Chair Pleiss, seconded by Dr. Ogawa, and by roll call vote, unanimously carried to approve the Chiropractic Advisory Committee and Addendum.

B. Federation of Chiropractic Licensing Boards (FCLB) The Chiropractic Information Network/Board Action Databank (CIN-BAD)

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

EO Kleinhans reported that CIN-BAD is offered by the FCLB as a disciplinary action program for Board consideration.

Vice Chair Klein asked whether the Board may adopt or use CIN-BAD by policy.

EO Kleinhans responded that requiring a CIN-BAD report for licensure would require either a rule or statute change. For the application process, the applicant would provide the CIN-BAD report with the application. He will explore requirements for Board adoption and information on its administration to report at the next meeting.

C. The National Practitioner Data Bank (NPDB)

EO Kleinhans reported that the NPDB is similar to CIN-BAD and applicants would provide an NPDB report with the application, and the additional requirement would require a rule or statute change.

Scope of Practice: A "Seitai" Therapy

Board members discussed the practice of "seitai" therapy which may appear to fall within the practice of chiropractic but may also be within massage. Vice Chair Klein asked EO Kleinhans if he could obtain more information. EO Kleinhans affirmed.

Revisions to Hawaii
Administrative Rules
Chapter 76:

EO Kleinhans reviewed rule language from other licensing boards and reported rules relating to continuing education that the Board may consider during its rule revisions:

- Dental Rules, HAR §16-79-141(d), regarding online credits
- Accountancy Rules, HAR §16-71-36(b), regarding specific continuing education categories and number of hours
- Optometry Rules, HAR §16-92-39, regarding retroactive approval and auto-approved courses
- Medical Rules, HAR §16-85-35(a), regarding record keeping of continuing education courses

DAG Jacob indicated that the agenda does not identify specific topics or sections; and accordingly, discussion would be general.

EO Kleinhans agreed and added he will also work with DAG Jacob with rule language.

Chair Pleiss thanked EO Kleinhans for the report and indicated he will draft language DAG Jacob's review.

Next Meeting:

November 3, 2021
12:00 p.m.
Virtual Videoconference Meeting – Zoom Webinar

Adjournment:

As there was no further business to discuss, the meeting adjourned at 2:45 p.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Kedin C. Kleinhans
Kedin C. Kleinhans, Executive Officer

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

KCK:sar

9/23/21

- (X) Minutes approved as is.
() Minutes approved with changes; see minutes of _____.