

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

MINUTES OF MEETING

Date: September 11, 2024

Time: 10:00 a.m.

In-Person Meeting Location: King Kalakaua Conference Room
HRH King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Present: James Pleiss, D.C., D.A.B.C.O., Chair
Rachel M. Klein, N.D.D.C., Vice Chair
Alice H. Ogawa, D.C., Member
Jeanne-Marie Coloma, Public Member
Rochelle Araki, Executive Officer (“EO”)
Christopher Fernandez, Executive Officer (“EO”)
Andrew I. Kim, Deputy Attorney General (“DAG”)
Cortnie Tanaka, Secretary

Guests: Rebecca Yonashiro, RICO
Priscilla Campbell, RICO
Tesia Chang, RICO
Seth Corpuz-Lahne, RICO
Malia Eversole, RICO
Haili Hopkins, RICO
Liza Canady, RICO
Terri Wong, RICO
Dina Takahashi, RICO
Aaries Oda D.C.
Michael Green, Attorney for Aaries Oda
Lani Nakamura, Attorney for Aaries Oda

Agenda: The agenda for this meeting was posted to the State electronic calendar as required by Hawaii Revised Statutes (“HRS”) section 92-7(b).

Call to Order: The meeting was called to order at 10:01 a.m., at which time quorum was established.

Chair Pleiss called the meeting to order with a roll call of the Board members. All Board members confirmed that they were present.

Chair’s Announcement: Welcome to New Board Member: Jeanne-Marie Coloma, Public Member
Chair Pleiss announced that new Board member has been appointed and confirmed to the Board – Jeanne-Marie Coloma, Public Member.

The Chair welcomed Ms. Coloma to the Board.

Approval of
Meeting Minutes:

Chair Pleiss asked if there was any questions or comments on the May 8, 2024, open session meeting minutes.

There was none.

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, and carried unanimously to approve the open meeting minutes of the May 8, 2024, meeting as is.

Chapter 91, HRS,
Adjudicatory Matter:

Chair Pleiss called for a recess from the Board's meeting at 10:07 a.m. to discuss and deliberate on the following adjudicatory matters pursuant to HRS chapter 91.

Following the Board's review and deliberation on these matters pursuant to Chapter 91, HRS, Chair Pleiss announced that the Board reconvenes to its Chapter 92, HRS, meeting at 12:35 p.m.

- a. In the Matter of the License to Practice Chiropractic of Dustin R. Craft, D.C.; Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

Chair Pleiss informed the public that the Board would be holding oral arguments regarding agenda item 4.A., In the Matter of the License to Practice Chiropractic of Dustin R. Craft, D.C.; Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

Rebecca C. Yonashiro with the Regulated Industries Complaints Office ("RICO") was present. There was no one present for Respondent Dustin Craft.

Chair Pleiss informed the members and parties that Ms. Yonashiro would be first to present oral arguments. Each party is allowed 15 minutes of argument.

Rebecca Yonashiro from the Regulated Industries Complaints Office noted that the State stands on its affidavit and Exhibits 1 to 3, which attests to Respondent's failure to fully and timely comply with the Settlement Agreement Prior to Filing a Petition for Disciplinary Action and the Board's Final Order, approved on March 11, 2024 and filed on March 13, 2024. According to the Board's Final Order, the Respondent was required to complete 20 credit hours of CE. There were three terms that Respondent was required to complete: (1) within thirty days of March 11, 2024, notify RICO and the board of the approved CE courses he intended to enroll in to satisfy 20 CE credit hours, (2) within ninety days of March 11, 2024, complete the 20 CE credit hours, and (3) within thirty days of completion of the last course, provide the board and RICO the certificates of completion of the 20 CE credit hours. Under paragraph C.2. of the Settlement Agreement, Respondent represented that he freely, knowingly and

voluntarily agreed to the terms of the Settlement Agreement. Paragraph D.4 and D.5. of the Settlement Agreement provided Respondent adequate notice of the consequences for failing to fully and timely comply with the Settlement Agreement and Board's Final Order. Upon Respondent's failure to comply with all three terms of the Settlement Agreement, RICO filed and served a filed copy of the Affidavit and Exhibits 1 to 3 on Respondent. The Board had also served Respondent a letter on July 25, 2024, and both were "return to sender" as undeliverable. RICO and the Board subsequently emailed the documents to Respondent.

Ms. Yonashiro noted that Respondent submitted a written response and 9 certificates of course completion totaling 20 CE credits on August 21, 2024. The certificates established Respondent failed to complete any CE credit hours between the agreed upon dates of March 11, 2024 and June 9, 2024. The CE certificates for courses taken and provided by Respondent were obtained as follows: 4 CE hours in December 26, 2023, 3 CE hours in August 16, 2024, and 13 CE hours in August 18, 2024. The 20 CE credits obtained were not taken between March 11, 2024 and June 9, 2024. She further added that Respondent demonstrated that the prior sanctions were not sufficient in addressing the violations and deter Respondent from repeating the same conduct. Respondent has also failed to inform RICO and the Board of his current circumstances, including his current address as required by HAR section 16-76-24.

The Petitioner, RICO, respectfully request that the Board enforce the Settlement Agreement by revoking Respondent's license.

Chair Pleiss called for a recess at 10:35 am to discuss and deliberate on the following adjudicatory matter pursuant to Ch 91, HRS.

Following the Board's review, discussion, and deliberation, it was moved by Chair Pleiss, seconded by Dr. Ogawa, and motion carried by majority to revoke the Chiropractic license for Dustin, R, Craft, D.C.

- b. In the Matter of the License to Practice Chiropractic of Aaries Oda, D.C.; CHI 2020-5-L Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

Chair Pleiss informed the public that the Board would be holding oral arguments regarding agenda item 4.B., In the Matter of the License to Practice Chiropractic of Aaries Oda, D.C; CHI 2020-5-L; Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order.

Liza O. Canady with the Regulated Industries Complaints Office ("RICO"), and Michael J. Green, Attorney for Aaries Oda, were present.

Chair Pleiss informed the members and parties that Ms. Canady would be first to present oral arguments. Each party is allowed 15 minutes of argument.

Liza Canady from the Regulated Industries' Complaints Office introduced herself.

Attorney Michael Green on behalf of Respondent, Dr. Aaries Oda, with Attorney Nakamura advised the Board that there's a stipulation that all of the exhibits provided to the Board: the settlement agreement, the declaration of counsel for RICO, the exhibits, the checks that were written, the ads, are true and accurate. It's not an issue of foundation, whether it was his client, that wrote the checks, whether it was his business that the checks were written for the ads. The ads were his.

Ms. Canady clarified that it is the admissibility, Mr. Green has no problem with what RICO has submitted.

Mr. Green added that RICO will object to the two exhibits that were submitted on September 3, 2024.

Liza Canady, staff attorney with the Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office, stated that the State has an issue with respect to the exhibits submitted by the opposing counsel in accordance with Board's rules Hawaii Administrative Rule ("HAR") section 16-76-62(6). The State respectfully requests that the Board not accept Respondent's letter dated September 03, 2024, along with the 2 exhibits: Exhibit A & B pursuant to HAR section 16-76-62(b) as there are some evidentiary, foundational and authenticity problems with the items. For Exhibit B, "pic collage" is noted on the bottom. Pic collage is a photo collage app that anyone can download on their phone to create graphics. For the above reasons, the State request for the Board to not accept and not consider Respondent's letter and exhibits dated September 3, 2024.

Ms. Canady stated Respondent had six settlement agreements that address Respondent's deceptive advertisements: 2017-1-L, 2020-4-L, 2020-7-L, 2020-14-L, 2021-1-L, and 2020-5-L; all signed by Respondent and approved by the Board. She added that there are 12 cases addressing Respondent's advertisements, 3 of which are pending. The case at hand before the Board, CHI 2020-5-L was approved on June 6, 2022, and within the Settlement Agreement Term C.3., page 4, requires Respondent to "refrain from making false, fraudulent, deceptive, statements and or running advertisements containing misrepresentations or untruthful or deceptive statements in violation of HRS §§ 442-9(a)(5) and (6) and HAR §§ 16-76-56(a)(27) and (28)." Term C.5. required the automatic revocation of license: "If Respondent fails to fully and timely comply with the terms of this Settlement..." by making false, fraudulent, deceptive, statements and or running advertisements containing misrepresentations or untruthful or deceptive statements." Settlement Agreement 2020-5-L was based upon deceptive advertisements ran by Respondent in Kauai's Garden Island Newspaper (first ran ad on June 25, 2020), and Oahu's Honolulu Star Advertiser (first ran ad on July 1, 2020), with multiple statements and images suggesting false fraudulent and deceptive statement: "reverse diabetes, reverse diabetes and heart disease with no diet or exercise."

Ms. Canady asked, is Respondent still running the same or similar ads that he agreed not to run when he signed settlement agreement, 2020-5-L? Ms. Canady read and described the advertisement for Honolulu Star Advertiser and MidWeek that was provided as RICO's Exhibits 5 and 6, which the Respondent paid for, citing similarities in

the images and words used as the previous ads from 2020. Ms. Canady emphasized that Respondent submitted and paid for the ads, a total of 10 times from June 2022 to December 2022.

Pursuant to the Settlement Agreement and Board's Final Order, CHI 2020-5-L, paragraph C.5., Ms. Canady asked for the Board to revoke Respondent's license for failing to comply with the terms of the Settlement Agreement by making false, fraudulent, deceptive statements, and/or running advertisements containing misrepresentations or untruthful or deceptive statements. Additionally, pursuant to HRS section 442-9(d), Ms. Canady asked for the Board to impose a fine on the Respondent.

Mr. Green for the Respondent explained that Ms. Canady did not present the entire ad which clearly shows they are not the same. The ad in question says no guarantees, results vary depending on the patient. RICO alleges that in 2020 and 2021 Respondent ran advertisements, under the clinic's name, for his services that promised to reverse diabetes and heart disease, with no diet or exercise. Mr. Green stated that they agreed and abides with term C.3. of the Settlement Agreement and Board's Final Order, CHI 2020-5-L. The ads Respondent ran is not the same/similar, not false, not fraudulent, not deceptive as what he agreed to in the Settlement Agreement and Board's Final Order, CHI 2020-5-L.

Mr. Green asked the Board to look at the ads in front of them that the Respondent did not comply with term C.3. He referred to the ad on page 27 in which Ms. Canady failed to disclose the text "RESULTS MAY VARY DEPENDING ON THE PATIENT". There is no guarantee or a promise, the results vary. The ad also provides on the bottom, which is cut off, "THERE ARE NO GAURANTEES." This is not fraudulent, that's not a promise, that's not a guarantee. He argued that Ms. Canady stated these ads are the same or similar; they are not the same and they are not similar because there's no guarantee. He pointed out to the texts in the other ads that states, "RESULTS MAY VARY DEPENDING ON PATIENT" and "NO GUARANTEES ON SERVICES BASED ON THIS AD."

Mr. Green referenced other ads which also stated, "no guarantees," in small print. He added that it was in small print, but this was not a case of the print size. He restated that ads in question were changed to make sure it complied with the terms of the Settlement Agreement and Board's Final Order. Additionally, Mr. Green advised the Board that the Exhibits provided by a patient under HIPAA on September 3, 2024, indicated that the laser treatment worked for that individual. But as the ads clearly state, this is not for everybody.

Mr. Green stated that the Board should not revoke Respondent's license because he did not violate the terms of the Settlement Agreement and Board's Final Order, CHI 2020-5-L. He added that the Board does not have to like the ads, but the ads were not false, not deceptive, not fraudulent and did not guarantee. There are no promises, results vary depending on patient.

Mr. Green asked the Board if they had any questions.

Ms. Coloma asked which category the Respondents "Hawaii's Best" award was for.

Mr. Green answered that it is not what the Respondent is being charged with.

Ms. Coloma stated that it's on the Settlement Agreement and Board's Final Order.

Mr. Green replied that those awards can be purchased. The issue on hand was for number 4 stating the ad is a lie, a guarantee, and fraudulent.

Vice Chair Klein acknowledged the lack of guarantee was added but asked "are you arguing that these ads are not similar?"

Mr. Green stated that they are similar because Respondent is a Doctor of Chiropractic and the service he provides. But the term in question is regarding false statements, fraud, making guarantees or promises of results. Similar makes no difference unless it's a violation of the agreement.

Vice Chair Klein asked, "the verbiage hasn't changed other than there being the addition of the words, no guarantees?"

Mr. Green confirmed "it is exactly what the Settlement Agreement didn't want". The verbiage is the same, but there are no guarantees or promise of results.

Vice Chair Klein asked if Mr. Green "feels that any of the language could be considered deceptive, because it says no guarantees in very small print?"

Mr. Green asked if the small print is what she doesn't like.

Vice Chair Klein asked to clarify that in his opinion because there were no guarantees and results vary between patients the rest of the ad could not be considered deceptive.

Mr. Green asked what about it is deceptive.

Vice Chair Klein answered the statement lose 1 to 2 inches on the first session without diet or exercise.

Mr. Green replied, it doesn't happen for every patient, that's why it varies with each patient.

Vice Chair Klein asked, there is no asterisk on the ad.

Mr. Green clarified the verbiage is right under the picture results vary depending on the patient.

Vice Chair Klein asked to clarify that "the argument is that the rest of the ad is not deceptive because it has that statement on it?"

Mr. Green reiterated the accusation is about deception because there were promises and guarantees. He added that there are no promising guarantees in any of the ads

Respondent has been running pursuant to the Settlement Agreement.

Mr. Green thanked the Board for hearing his argument.

Ms. Canady provided a rebuttal to Mr. Green. She asked the Board to compare the ad that he was asked not to run, but still ran repeatedly. The same language was used in every ad after the Settlement Agreement was signed. The opposing counsel's belief that sizes is not the issue but even he had difficulties reading it. It must be a fair warning to the consumers.

Ms. Canady referenced cases that people were hurt, of the 12 cases, 5 victims have come forward.

Mr. Green objected to Ms. Canady's rebuttal of including the victims.

DAG Kim asked Ms. Canady to keep it to the matters of the licensee's argument.

Ms. Canady concluded and asked the Board to compare the arguments.

Ms. Canady thanked the Board.

Vice Chair Klein asked, "who's providing services that are being advertised?" She wanted to clarify since because there were multiple people in the image of the clinic. Is the Respondent providing the services or are other people or licenses involved?

Ms. Canady and Mr. Green agreed the Respondent is the one providing the services.

Vice Chair Klein and Chair Pleiss thanked Ms. Canady and Mr. Green.

Chair Pleiss called for a recess at 11:55 am to discuss and deliberate on the following adjudicatory matter pursuant to Ch 91, HRS.

Chair Pleiss advised that the letter and exhibits from the Respondent dated September 3, 2024, were reviewed and went to the weight of the evidence. The board also excluded Ms. Canady's statement from the rebuttal regarding victims in the Board's decision.

Following the Board's review, discussion, and deliberation, it was moved by Chair Pleiss, seconded by Vice Chair Klein, and motion carried by majority to revoke the Chiropractic license for Aaries T. Oda, D.C.

Executive Session:

At 12:36 p.m., it was moved by Chair Pleiss, seconded by Vice Chair Klein and unanimously carried to enter into executive session pursuant to HRS section 92-5(a)(1) to consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in HRS section 26-9, and to consult with Andrew Kim, Deputy Attorney General, on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities pursuant to HRS section

92-5(a)(4).

At 12:55 p.m., it was moved by Chair Pleiss, seconded by Vice Chair Klein, and unanimously carried to move out of executive session and to reconvene to the Board's regular order of business.

Applications:

Ratification of issued License(s)

DC-1597-0	Lisa J Bell
DC-1598-0	Kathleen Denise Lobenberg
DC-1599-0	Gabriela Mori
DC-1600-0	Roberto Diaz
DC-1601-0	Ryan M Gloeckner
DC-1602-0	Phillip R Hersh
DC-1603-0	Eliorgie Rodriguez
DC-1604-0	Jasmine N Beard
DC-1605-0	Jeremy R Buckner
DC-1606-0	Nolan M Hirota
DC-1607-0	Haley N Surface
DC-1608-0	Suzanne H Gudakunst
DC-1609-0	Richard A Oberleitner
DC-1610-0	Ward W Overton
DC-1611-0	Suttipong Luesukprasert

Chair Pleiss stated that the first five licenses listed were ratified at the last meeting.

It was moved by Vice Chair Klein, seconded by Dr. Ogawa, and unanimously carried to accept the above issued licenses.

New Business:

Scope of Practice: Clarification on use of Cranial Facial Release Technique

Chair Pleiss asked the Board members if cranial facial release is within the scope of their practice.

Dr. Ogawa and Vice Chair Klein answered yes.

Vice Chair Klein asked if everyone knows what cranial facial release is.

Ms. Coloma answered the technique is done with a balloon.

Vice Chair Klein agreed.

Vice Chair Klein explained that it is a procedure where a small balloon is connected to a pump and it is placed inside the sinuses, air is then blown into the pump which opens the balloon inside the nose. This procedure adjusts the nasal septum and is also called nasal specific technique or cranial restructuring.

Dr. Ogawa asked if Vice Chair Klein thinks it is cranial adjusting.

Vice Chair Klein answered yes, it is adjusting an osseous structure. The only objection she would have to this is that it is not standardly taught in the chiropractic curriculum at all schools. It should be within their scope of practice, but an individual should have the appropriate training.

It was moved by Chair Pleiss, seconded by Vice Chair Klein, and unanimously carried to provide an informal response that cranial facial release techniques can be performed with proper training by a licensed chiropractor in the state of Hawaii.

Email re:Washing hands from Ms. Naito

EO Araki stated that the email was addressed to the Board and with DAG Kim's advise it was added to the agenda.

DAG Kim stated that there is nothing within the Chiropractic laws and rules that is specific to hygiene. He asked if the Board would be able to suggest where a chiropractor can find guidance.

Vice Chair Klein suggested OSHA. She asked if there was specific thing to point out or could the Board just respond?

DAG Kim answered that the Board could respond that there is nothing in the chiropractic rules and statutes regarding hygiene.

Vice Chair Klein suggested responding with "it is not standard within the profession for it to be written in the rules, but it is encouraged by the Board and expected under professional conduct".

DAG Kim responded that is a good response.

It was moved by Vice Chair Klein, seconded by Chair Pleiss, and unanimously carried to approve the response to Ms. Naito's email: while there are no specific rules it is expected that a chiropractic licensee practice proper hygiene. If there is a specific chiropractor of concern, it may be reported to the Board and the appropriate action can be taken.

Executive Session:

At 1:03 p.m., it was moved by Chair Pleiss, seconded by Vice Chair Klein and unanimously carried to enter into executive session pursuant to HRS section 92-5(a)(1) to consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in HRS section 26-9, and to consult with Andrew Kim, Deputy Attorney General, on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities pursuant to HRS section 92-5(a)(4).

At 1:22 p.m., it was moved by Chair Pleiss, seconded by Vice Chair Klein, and unanimously carried to move out of executive session and to reconvene to the Board's regular order of business.

- Applications: Joseph Hans, D.C.
It was moved by Chair Pleiss, seconded by Dr. Ogawa, and carried unanimously to approve the application for Joseph Hans, D.C.
- Continuing Education ("CE"): Ratification of CE Courses – New Applications and Re-Registrations (See attached list)
It was moved by Chair Pleiss, seconded by Dr. Ogawa, and unanimously carried to ratify the approval of the attached CE course list.
- Hawaii Administrative Rules ("HAR") Chapter 76: Draft Rule Amendments
The board deferred this agenda item till the next meeting.
- Chairperson's Report: Chair Pleiss had no report to share. There was no further discussion by the Board.
- Next Meeting: November 6, 2024
10:00 a.m.
King Kalakaua Conference Room
- Adjournment: As there was no further business to discuss, the meeting adjourned at 1:27 p.m.

Reviewed and approved by:

Taken and recorded by:

/s/Rochelle Araki
Rochelle Araki, Executive Officer

/s/ Cortnie Tanaka
Cortnie Tanaka, Secretary

RA:ct

6/13/24

- () Minutes approved as is.
(X) Minutes approved with changes; see minutes of 11/6/2024