

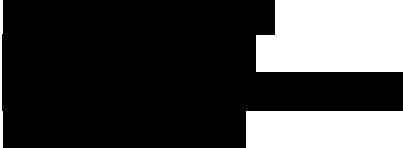
State of Alaska
Board of Chiropractic
Examiners
December 23, 2019
Board Packet

State Office Building
333 Willoughby Avenue,
9th Floor
Conference Room A
Teleconference
Juneau, Alaska

Roll Call

Alaska Board of Chiropractic Examiners

Board Roster (As of 03/01/2018)

Board Member	Appointed	Reappointed	Term Expires
Brian Larson, <i>Chiropractor Chair</i> 	03/01/2017		03/01/2021
Jeffrey Reinhardt, <i>Chiropractor Vice Chair</i> 	03/01/2016		03/01/2020
Jonathan Vito, <i>Chiropractor Secretary</i> 	03/01/2017		03/01/2021
James Morris, <i>Chiropractor</i> 	03/01/2018		03/01/2022
John Aderhold, <i>Public Member</i> 	03/01/2016		03/01/2020

Meeting Name: Alaska Board of Chiropractic Examiners
Meeting Start Time: 1:00 PM Alaskan Standard Time
Meeting Start Date: 12/23/2019
Meeting Location: Video Conference Originating from Juneau

State Office Building
333 Willoughby Avenue
9th Floor
Conference Room C

Agenda:

1. 1:00 p.m. - Call to Order/Roll Call
2. 1:02 p.m. - Review/Approve Agenda
3. 1:05 p.m. - Review/Approve Meeting Minutes
 - A. Board Meeting: November 22, 2019
4. 1:10 p.m. - Board Business
 - A. Ethics Reporting
 - B. Goals & Objectives
 - i. Acupuncture
 - ii. AS 08.01.050(d)
 - iii. Injectable Nutrients
 - iv. Prescription Drugs
5. 1:45 p.m. - Correspondence
 - A. Dr. Vanessa Wilczak - Chiropractic Neurology Diplomate
6. 2:00 p.m. - Adjourn

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing

BOARD OF CHIROPRACTIC EXAMINERS

MINUTES OF THE MEETING
Friday, November 22nd, 2019

These are DRAFT minutes prepared by the staff of the Division of Corporations, Business and Professional Licensing. These minutes have not been reviewed or approved by the Board.

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Board of Chiropractic Examiners was held in Conference Room A in the State Office Building, 333 Willoughby Avenue, 9th Floor, Juneau, Alaska.

Friday, November 22nd, 2019

Agenda Item 1

Call to Order/Roll Call

Time: 10:07 a.m.

The meeting was called to order by Chairman, Brian Larson, at 10:07 a.m.

Board Members present, constituting a quorum:

Brian Larson, Doctor of Chiropractic (*Via Videoconference*)
Jeffrey Reinhardt, Doctor of Chiropractic (*Via Videoconference*)
Jonathan Vito, Doctor of Chiropractic (*Via Videoconference*)
James Morris, Doctor of Chiropractic (*Via Videoconference*)
John Wayne Aderhold, Public Member (*Via Videoconference*)

Division Staff present were:

Thomas Bay, Licensing Examiner
Christianne Carrillo, Licensing Examiner
Jean Bennett, Licensing Examiner
Renee Hoffard, Records and Licensing Supervisor
Marilyn Zimmerman, Paralegal
Melissa Dumas, Administrative Officer
Sonia Lipker, Senior Investigator (*Via Videoconference*)

Present from the Public:

Sheri Ryan, Chief Operating Officer, Alaska Chiropractic Society (*Via Videoconference*)

Agenda Item 2**Review/Approve0 Agenda**

Time: 10:12 a.m.

After the roll call, chair, Dr. Larson asked the board to review the agenda.

On a motion duly made by John Wayne Aderhold, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to approve the agenda as written.

Agenda Item 3**Review/Approve Meeting Minutes**

Time: 10:13 a.m.

The board reviewed the meeting minutes from August 23rd, 2019.

On a motion duly made by John Wayne Aderhold, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to approve the meeting minutes for August 23rd, 2019, as written.

Mr. Bay asked the chair, Dr. Larson, to sign a copy of both minutes and send them in the mail to the Division of Corporations, Business and Professional Licensing, so they could finalize the meeting minutes.

Agenda Item 4**Board Business**

Time: 10:13 a.m.

Ethics Report

Dr. Larson addressed ethics reporting. There were no ethical violations to report.

Review Goals and Objectives

With no ethical issues to report, Dr. Larson began conversation with the board on their goals and objectives. Mr. Bay reminded the board that their objective #1, under Goal #7, is to pursue inclusion into AS 08.01.050(d), for the purpose of providing licensed chiropractors the resources needed to address abuse of alcohol, drugs, or other substances. He informed the board that they needed to write a letter to the Alaska Advisory Board on Alcoholism and Drug Abuse, asking who the board needs to talk to for inclusion into the statute. Dr. Larson provided an overview of the goal, citing that many professions are included in the statute, but not the chiropractic profession, and that he believed there was an oversight when the statute was created. The board agreed to have Dr. Larson write the letter.

On a motion duly made by Jonathan Vito, seconded by John Wayne Aderhold, and approved unanimously by a roll call, it was

RESOLVED to have Dr. Larson write a letter to the Alaska Advisory Board on Alcoholism and Drug abuse regarding inclusion of chiropractors into AS 08.01.050(d).

The board began discussion on objective #2, which is to pursue authority under AS 08.20 to create an advanced practitioner status for chiropractic physicians who pursue advanced training and certifications to utilize non-narcotic drugs, ancillary therapies, and procedures beyond chiropractic core methodology and commonly used by other Alaskan health care professionals and specialists. Mr. Bay informed the board that he had spoken to his supervisor, and she had told him that an advanced practitioner status would require a statute change, and doing so would open up their statutes, meaning that anything else in their statutes could be removed or added without the board's consent. The board discussed in detail the possibility of opening up their statutes, specifically the possible positive and negative outcomes that would come with doing it. Dr. Reinhardt cautioned the board on opening up

their statutes before doing research into the negative effects it would have on what they are currently allowed to do. The board talked about the possibility of doing an electronic survey regarding an advanced practitioner status and opening up their statute, and sending it out to all licensed chiropractors in Alaska.

Thomas Bay, Licensing Examiner, left the meeting at 10:51 a.m.

Renee Hoffard, Records and Licensing Supervisor, joined the meeting at 10:51 a.m.

Dr. Larson welcomed Renee Hoffard to the board meeting, and asked her if it is within the purview of the board to send out the electronic survey. She said it is within the board's purview, and that they would need to make a motion if they wanted to send out the survey.

Thomas Bay, Licensing Examiner, joined the meeting at 10:55 a.m.

Dr. Reinhardt suggested the board reach out to get some opinions on this topic before they send out an official survey. Dr. Morris asked Ms. Hoffard if it would be possible if the board reached out to chiropractic school presidents and/or the National Board of Chiropractic Examiners (NBCE) to get their opinions on the topic. Ms. Hoffard recommended the board designate someone to write a letter that could be distributed to chiropractic schools, through Mr. Bay, asking their opinions on the topic as it relates to the chiropractic profession and the education they teach. Dr. Larson asked if it would be appropriate to send out the same letter to specialty boards that offer diplomates, to see if they would be interested in offering certain advanced training. Ms. Hoffard suggested a letter to the specialty boards would be a better focus group than the chiropractic schools. Dr. Reinhardt did not think that a letter to the schools would be beneficial. Dr. Vito asked if it would be appropriate to reach out to other state boards to see if they have dealt with an advanced practitioner status and, if so, what the outcome was. Mr. Bay suggested the board utilize the Federation of Chiropractic Licensing Boards (FCLB) to do a PowerPoll, which is a survey of other state licensing boards, to get some feedback on how they may or may not have dealt with this topic in the past. The board agreed to poll the FCLB and chiropractic specialty boards regarding their input on allowing chiropractors to practice in full for their specialized training.

On a motion duly made by Jonathan Vito, seconded by Jeffrey Reinhardt, and approved unanimously by a roll call, it was

RESOLVED to poll other state boards, through the FCLB, and chiropractic specialty boards for their input on allowing chiropractors to practice in full for their specialized training.

On a subsidiary motion duly made by Brian Larson, seconded by James Morris, and approved unanimously by a roll call, it was

RESOLVED to have Dr. Larson and Dr. Reinhardt prepare the poll that will be sent to other state boards, through the FCLB, and chiropractic specialty boards.

The board discussed their objective #3, which is to pursue authority under AS 08.20 to create a Clinical Chiropractic Nutritionist practitioner status. Dr. Larson informed the board that if the board wanted to include the word "nutritionist" they would need to get approved for an exemption from the Dietitians & Nutritionists program, and would require a statute change. He acknowledged that the board already recognizes a diplomate in nutrition and that a Clinical Chiropractic Nutritionist practitioner status is probably not needed. The board agreed that the diplomate currently recognized by the board is adequate for advanced nutrition. The board decided to move ahead in the agenda to discuss injectable nutrients.

On a motion duly made by Jonathan Vito, seconded by John Wayne Aderhold, and approved unanimously by a roll call, it was

RESOLVED to amend the agenda by moving ahead to agenda item #4D regarding injectable nutrients.

Injectable Nutrients

Dr. Larson asked Ms. Hoffard to provide the board with her thoughts, concerns, and direction regarding injectable nutrients. Ms. Hoffard explained to the board that they need to begin the regulations project they spoke about at their last board meeting, regarding amending the definitions of “prescription drugs” and “surgery,” and fully get through the regulations process to allow for injectable nutrients, because the current definitions do not allow for it. Ms. Hoffard reminded the board that the recommendation from the Department of Law is that they are probably outside their scope of practice with injections of any kind, and the best resolution is to amend the aforementioned definitions in regulation before the board tells anyone they are allowed to perform injections. Dr. Larson mentioned that it was his understanding that the board had already begun the regulations project for amending those definitions. Mr. Bay reminded the board that, at their last board meeting, they spoke about the definitions at great length, but never officially started a regulations project. He let them know that it was not an issue, and that all the board needed to do was make a motion to start it.

Mr. Bay reminded the board that they are currently in contact with Dr. Rich Woolley, regarding the possible usage of prolotherapy, and that, since it is an injection based procedure, they may want to address the situation after learning that injections of any kind are likely outside their scope of practice. The board agreed that it would be appropriate to let Dr. Woolley know that, at this time, injections of any kind are not within the current scope of practice for chiropractors, that the board has already begun a regulations project to address the situation, and that they will let him know when it is signed into effect. The board tasked Mr. Bay to respond to Dr. Woolley.

Dr. Reinhardt asked the board if they thought it would be appropriate for a chiropractor to take courses on, or similar to, prolozone, and to be able to utilize the courses for continuing education. The board agreed that someone taking such a course should submit an application for continuing education approval, and to make sure that they provide all of the required information asked for on the application. Ms. Hoffard let the board know that she was leaving the meeting and that she would be available if they needed her. The board thanked her for her time.

Renee Hoffard, Records and Licensing Supervisor, left the meeting at 11:46 a.m.

Ratify New Licenses

Dr. Larson asked Mr. Bay where they were at on the agenda. He let them know that they were still on board business, but that they only needed to ratify the new licenses from those who passed the last jurisprudence examination. Dr. Larson entertained a motion to address the ratification of licensees for applicants who sat for the August 23rd, 2019, examination.

On a motion duly made by Jonathan Vito, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to ratify the licenses for James Harris, Tami Hedges, Scott Maystrovich, and Kenneth Nutter.

TASK:

Dr. Larson will write a letter to the Alaska Advisory Board on Alcoholism and Drug abuse regarding inclusion of chiropractors into AS 08.01.050(d).

TASK:

Dr. Larson and Dr. Reinhardt will prepare a poll that will be sent to other state boards and chiropractic specialty boards for their input on allowing chiropractors to practice in full for their specialized training.

TASK:

Mr. Bay will relay the board's message to Dr. Rich Woolley regarding his inquiry into prolotherapy.

Agenda Item 5

Statutes and Regulations

Time: 11:47 a.m.

SB 69 Regulations Project Update

Mr. Bay explained that there were no written comments received during the written comment period when the SB 69 regulations project went out for public notice. He informed the board that they can propose to adopt the amended regulations as publicly noticed or they can talk about the regulations and change anything, but that, if they did, it would require the regulations to go back out for public notice. Dr. Larson asked the board if any of them had anything specific that they wanted to add or remove that would require an amendment to the regulations project, to which the board did not. Dr. Larson entertained a motion to accept the regulations project as publicly noticed.

On a motion duly made by Jonathan Vito, seconded by James Morris, and approved unanimously by a roll call, it was

RESOLVED to adopt the proposed regulation changes, 12 AAC 16.030 through 12 AAC 16.990, relating to licensure requirements, examinations, specialty programs, continuing education requirements, scope of practice for chiropractic preceptors, interns, and clinical assistants, patient examinations for school and sports activities, peer review, courtesy license, definitions, and to implement changes made in Chapter 8, SLA 2016 (SB 69), as written and publicly noticed. No comments were received, and the board considered the cost to private persons of the regulatory actions being taken.

Statute Projects

Dr. Larson asked Mr. Bay what was next on the agenda. Mr. Bay informed the board that their next agenda items covered projects that require statute changes. The first project is for inclusion into being able to do acupuncture and the second is for the creation of a postgraduate preceptorship while recently graduated chiropractors wait for their board exam scores.

Acupuncture

Mr. Bay informed the board of the process that would need to take place in order for them to be allowed to perform acupuncture. Mr. Bay reminded the board that they would need to get statutes amended with both the acupuncture program and their own. He explained that the board would first need to write a letter to Director Sara Chambers, requesting inclusion into AS 08.06.080, which is an exemption list that currently includes Medicine and Dentistry. If that exemption was granted, after going through the legislation process, the chiropractic statutes would have to be opened and “needle acupuncture” would need to be removed from the list of things that are not incorporated into the definition of “chiropractic core methodology,” as is defined in AS 08.20.900(6). Dr. Larson asked the board what their thoughts were on opening up their statutes for trying to incorporate acupuncture. The board agreed that they did not have any concerns about opening up their statute to include acupuncture.

On a motion duly made by Jonathan Vito, seconded by John Wayne Aderhold, and approved unanimously by a roll call, it was

RESOLVED to have Dr. Larson and Dr. Reinhardt write a letter to the division regarding inclusion into the acupuncture exemptions.

Postgraduate Preceptorships While Waiting for Board Exam Scores

Dr. Larson reminded the board of past conversations about possibly creating a postgraduate preceptorship for recently graduated chiropractors who are still waiting for board exam scores. Mr. Bay informed the board that NBCE board scores will be available approximately every month and a half moving forward, instead of the three months it has been in the past. The board agreed that a month and a half was ample time to wait for board scores, and that it did not merit a new license for a postgraduate preceptorship.

TASK:

Dr. Larson and Dr. Reinhardt will write a letter to the division regarding inclusion into the acupuncture exemptions.

Dr. Larson called recess for lunch at 12:08 p.m.

Off Record at 12:08 p.m.

On Record at 1:01 p.m.

Dr. Larson acknowledged that Dr. Reinhardt was not yet back from lunch, but that every other board member was in attendance, constituting a quorum. The board decided to jump ahead in the schedule and talk about the FCLB/NBCE/CCE update.

On a motion duly made by John Wayne Aderhold, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to amend the agenda by moving agenda item #5C to a later time in the day.

Agenda Item 7

FCLB/NBCE/CCE Update

Time: 1:01 p.m.

Mr. Bay reminded the board that he and Dr. Larson had attended the FCLB District Meeting that was held October 3rd, 2019, through October 6th, 2019, in Coeur d'Alene, Idaho. He informed the board that a lot of topics were discussed at the district meeting, and that he and Dr. Larson came out of it with two topics that the board may want to address. The first topic was the Ethics and Boundaries Assessment Services (EBAS) essay exam, which is owned and operated in whole by the National Board of Chiropractic Examiners (NBCE). Dr. Larson explained that the EBAS exam is an essay formatted examination designated for candidates who have disciplinary actions regarding fraud, sexual misconduct, boundary issues, etc. There are different categories of essay exams and they are specific to the type of disciplinary action. He explained that the exam is meant to educate the candidate and assess the candidate's understanding and commitment to maintain appropriate boundaries in their practice. He reminded the board that there are multiple testing centers located in Alaska, and that the exam itself currently costs \$1500 to the applicant.

Jeffrey Reinhardt, Doctor of Chiropractic, joined the meeting at 1:10 p.m.

The board acknowledged that this exam would be a useful tool that provides an educated unbiased opinion on whether the chiropractic candidate can safely return to treating patients. Mr. Bay informed the board that if they wanted to move forward with trying to implement the EBAS exam, they would need to provide a detailed description of the exam to the Investigations Unit because they must approve it before the board can use it. The board decided to move ahead with the EBAS exam and provide the needed information to the Investigations Unit.

On a motion duly made by John Wayne Aderhold, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to submit the EBAS exam to the Investigation Unit for their evaluation as a possible disciplinary tool.

TASK:

Mr. Bay will submit a detailed description of the EBAS exam to the Investigations Unit for their evaluation as a possible disciplinary tool.

Sonia Lipker, Senior Investigator, joined the meeting at 1:16 p.m.

Mr. Bay informed the board it was time to address their investigative report, and Sonia Lipker was in attendance to provide it. Dr. Larson entertained a motion to amend the agenda so they could go back to the FCLB/NBCE/CCE Update and address the state jurisprudence examination at a later time in the day.

On a motion duly made by Jonathan Vito, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to amend the agenda by moving agenda item #7B to a later time in the day.

Agenda Item 8

Investigative Report

Time: 1:17 p.m.

Sonia Lipker introduced herself, and let the board know that she would be providing Jasmin Bautista's investigative report, who could not be in attendance. She began the investigative report by informing the board that between August 10th, 2019, and November 7th, 2019, two matters remained ongoing. She acknowledged that not a lot had happened since their last board meeting. Dr. Larson asked if Ms. Lipker had anything else for the board, to which she did not. Ms. Lipker left the meeting. Having finished with the investigative report early, the board decided to go back to agenda item #7B, to talk about the state jurisprudence examination.

Sonia Lipker, Senior Investigator, left the meeting at 1:19 p.m.

Agenda Item 7

FCLB/NBCE/CCE Update

Time: 1:19 p.m.

Dr. Larson began discussion on the state jurisprudence examination, which was the second topic that he and Mr. Bay wanted to address with the board. This topic had been discussed at previous board meetings. Dr Larson reminded the board that the NBCE offers a service where they write state jurisprudence examinations unique to each state, using state board materials, and that it is at no cost to the boards. The costs, instead, are paid by the applicant. Dr. Larson explained that the costs for a non-proctored exam is \$55 and a proctored exam is \$90, and that any fees larger than the aforementioned fees, to the applicant, would go to the board. He also reminded the board that one of the main reasons the board began discussion on this topic is because it is offered nationally, and is a more cost-effective

route for applicants taking the examination who, normally, would have to purchase a plane ticket to fly in from another state. Dr. Vito asked how many other states were currently using the NBCE to proctor their state examinations. Mr. Bay acknowledged that he did not know the exact number at this time, but that he was aware multiple states use it. Dr. Vito asked if the process would be the same, or if this process would open up licensure year-round, as opposed to the current system that is only quarterly. Mr. Bay explained that it would be possible to hold the jurisprudence examination more year-round, but that it would likely require a regulations project to amend regulations that currently require a 45-day deadline for complete applications ahead of the next scheduled examination, as well as additional public notices. Dr. Vito asked if it would work better if they just offered the exam at the testing centers on the same day as the normally scheduled exams that are offered in Alaska. Mr. Bay agreed that offering the exam on the same day as the normally scheduled exams would work better. He explained that this route would likely not require a regulations project, and also would not create additional public notices. The problem, Mr. Bay explained, is the examination fee, which is appropriated by the division. He informed the board that he was unsure if the board could split fees with the NBCE and/or require an examination fee if it was entirely done by a 3rd party organization. The board tasked Mr. Bay with finding out the steps it would take to implement national testing of the state jurisprudence examination, including the appropriate of examination fees

TASK:

Mr. Bay will find out the steps it would take to implement national testing of the state jurisprudence examination, including the appropriation of examination fees.

Dr. Larson called for a break.

*Off Record at 1:32 p.m.
On Record at 1:39 p.m.*

Agenda Item 9

ACS Update

Time: 1:39 p.m.

Sheri Ryan, COO, Alaska Chiropractic Society, joined the meeting at 1:39 p.m.

The board welcomed Sheri Ryan to the meeting and asked her to begin the ACS update. Ms. Ryan informed the board that Premera Blue Cross recently sent out information that eviCore healthcare will be gone and that they are going with another company called Evolent Health. She explained that, effective January 1st, 2020, eviCore is gone for preauthorization for all massage and physical therapy services for their plans, and, effective February 21st, 2020, Evolent Health is in. Ms. Ryan said that she just received this information and has not had the chance to go over it in detail. She explained that, at first glance, Evolent Health's parameters will move from preauthorization to retrospective review, which seems to be a change in terminology to get around some state's statutes in regard to preauthorization review. Ms. Ryan voiced her concern with this change, citing that preauthorization guarantees payment, whereas retrospective review could deem already provided services as something "not medically necessary" and not be able to balance bill the patient. She said that she would get more information out to chiropractors in the state once she was able to speak with Premera.

Ms. Ryan informed the board that the Alaska Chiropractic Society (ACS) met with the State of Alaska regarding Alaska Care and Aetna. She also informed the board that the State of Alaska is directing Aetna to automatically reprocess all of the outstanding claims that were denied, and subsequently denied upon appeal, based on a Cotiviti edit, and that this should help with many denied claims that offices have been sitting on.

Ms. Ryan informed the board that the State of Alaska is changing the parameters for retirees. She explained that Aetna currently has a policy for retirees, that on their 26th chiropractic visit they go into a "medically necessary" review. She went on to say that the State of Alaska has determined, through negotiations with the retiree board, and a lot of analysis, as of January 1st, 2020, they are going to be resetting the diagnosis treatment maximum every year so that it equates to retirees having access to

chiropractic care while not having to go into the “medically necessary” review. She explained that the State of Alaska is also extending their hotline email address, which was due to expire on November 15th, 2019, and are extending it until the end of February 2020, which will help keep a careful monitoring on Aetna’s processing of chiropractic claims. Ms. Ryan summed it up by saying that chiropractic as a whole is making advancements with its largest payers in Alaska, as far as chiropractic claims are concerned.

Ms. Ryan asked if the board had heard back from the Department of Law regarding a position statement request in regard to discount services, such as Groupon, to see if there were any violations chiropractors were committing by using them in the State of Alaska. Mr. Bay acknowledged that he thought he had already talked to his supervisor and reached out to Ms. Ryan regarding discount services. Having thought this discussion had already taken place, Mr. Bay told Ms. Ryan that he would need to speak with his supervisor before he could address the topic.

Ms. Ryan asked about the status of the SB 69 regulations project, after it had returned from public comment. Mr. Bay updated her, informing her that there were no public comments and that the board had already motioned to adopt the proposed regulation changes as written and publicly noticed. Ms. Ryan, a subcommittee member on the SB 69 regulations project, expressed relief that everything worked out well and that the regulations project is in its finishing stages.

Ms. Ryan finished the ACS update by informing the board that ACS has signed their contract with the Captain Cook hotel in Anchorage, for the ACS Convention 2020, and that they were looking for speakers. She asked the board that if they had any recommendations please contact her for availability on the docket.

Dr. Larson asked Mr. Bay if there was a decision on whether or not a chiropractor could use osteopathic manipulative treatment codes. Mr. Bay informed the board that he thought this topic was addressed at the same time as the discount services issue, and that he needed to speak with his supervisor before addressing it.

Dr. Larson asked Ms. Ryan if she had anything further for the board. She asked the board if there were any plans to make the state jurisprudence examination more widely available, outside their current quarterly system. Dr. Vito informed her that they are currently looking into making the state jurisprudence examination available through the NBCE, which would make the exam available nationally. Mr. Bay informed her that he will be looking into the logistics of expanding the exam, so that the board could make an educated decision on how they would like to proceed. Having nothing left to discuss, Ms. Ryan left the meeting.

Sheri Ryan, COO, Alaska Chiropractic Society, left the meeting at 1:58 p.m.

TASK:

Mr. Bay will speak with his supervisor, to clear up the confusion on discount services and billing codes. He will get that information to the board and Sheri Ryan.

Agenda Item 10

Paralegal Report

Time: 1:58 p.m.

Marilyn Zimmerman, Paralegal, joined the meeting at 1:58 p.m.

Mr. Bay let the board know that Marilyn Zimmerman was in attendance for the board’s paralegal report. Mr. Bay reminded the board that they would be going into executive session regarding the paralegal report. The board motioned to go into executive session to discuss the paralegal report.

On a motion duly made by Brian Larson, seconded by John Wayne Aderhold, and approved unanimously by a roll call, it was

RESOLVED to enter into executive session in accordance with the provisions of Alaska Statute 44.62.310(c), and Alaska Constitutional Right to Privacy Provisions, for the purpose of discussing, “subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion.” Board staff members Thomas Bay, Marilyn Zimmerman, Christianne Carrillo, and Jean Bennett remained during the session.

The board entered executive session at 2:01 p.m.

The board left executive session at 2:10 p.m.

Marilyn Zimmerman, Paralegal, left the meeting at 2:10 p.m.

The board's chair, Brian Larson, entertained a motion regarding matters discussed in executive session.

On a motion duly made by Jonathan Vito, seconded by James Morris, and approved by a roll call, it was

RESOLVED to accept the consent agreement in case #2019-000707 as written.

Roll call vote:

Board Member	Approve	Deny	Recuse
Dr. Brian Larson	X		
Dr. Jeffrey Reinhardt	X		
Dr. Jonathan Vito	X		
Dr. James Morris	X		
Mr. John Wayne Aderhold	X		

Having finished with the paralegal report, the board began discussion on their next agenda item.

Agenda Item 11

Public Comment/Correspondence

Time: 2:12 p.m.

Correspondence

Mr. Bay reminded the board that public comment needed to be opened at 2:15 p.m., which was coming up shortly. Dr. Vito noticed that the only thing on the agenda for correspondence was regarding prolotherapy and Dr. Richard Woolley, a topic that was discussed earlier in the day. Mr. Bay reminded the board that he was tasked with contacting Dr. Woolley, and that he would do so soon after he got back in the office.

Mr. Bay informed the board that there was one more piece of correspondence that he had added to the agenda. He informed the board that the International Academy of Chiropractic Neurology (IACN) learned that the International Board of Chiropractic Neurology (IBCN) diplomate was being added to 12 AAC 16.048 as an approved chiropractic specialty program, and, being the owning entity of the IBCN, requested that their other board, the International Board of Electrodiagnosis (IBE) diplomate also be added as an approved chiropractic specialty program. Mr. Bay reminded the board that it was time for public comment.

Public Comment

Dr. Larson asked if there was anybody on the videoconference line, to which there was not. Dr. Larson closed public comment. Having nobody present for public comment, the board continued

their conversation regarding the IACN's request to include the IBE as an approved chiropractic specialty program

Correspondence

Mr. Bay informed the board that if they were to go through with the IACN's request, to add the IBE as an approved diplomate, they could add it to the same regulations project they planned on starting that day regarding amending/adding definitions in regulation. Dr. Larson asked Mr. Bay if it was more efficient to add regulation projects into one larger project or do separate projects. Mr. Bay said that it depended on the timeline. He asked if any of the current board members were on the board when the IBCN was accepted, and, if so, how long that process took. No current board members were on the board when the IBCN was accepted. Mr. Aderhold mentioned that he thought the only reason regulation projects should be separated is if they were controversial, and likely to take longer to get passed. Mr. Bay, after going through the board's statutes, informed the board that all specialty designations must include the term "chiropractic," as written in AS 08.02.155. The board, citing that the International Board of Electrodiagnosis does not include the term "chiropractic," tasked Mr. Bay with contacting the International Academy of Chiropractic Neurology to thank them for their interest and efforts, but at this time the International Board of Electrodiagnosis cannot be added as an approved chiropractic specialty program.

TASK:

Mr. Bay will contact the IACN to inform them that the IBE cannot be added as an approved chiropractic specialty program.

On a motion duly made by John Wayne Aderhold, seconded by Jonathan Vito, and approved unanimously by a roll call, it was

RESOLVED to amend the agenda by moving agenda item #13 in front of #12.

Agenda Item 13

Administrative Business

Time: 2:24 p.m.

Set Meeting Dates

The board proceeded to set their next meeting date. The board decided to set a hard date of February 28th, 2020, for their next meeting. They also set a tentative date for May 15th, 2020.

Agenda Item 12

Budget Report/Division Updates

Time: 2:30 p.m.

Melissa Dumas, Administrative Officer, joined the meeting at 2:30 p.m.

The board welcomed Melissa Dumas to the meeting and asked her to proceed with the budget report. Ms. Dumas began with the board's budge report from the 4th quarter of FY19. She broke down total revenue and total expenditures, which ultimately came to a surplus. She reminded the board that they will be going into a nonrenewal year, and that she expects the chiropractic board to be in a deficit at the end of FY20. She informed the board that a fee analysis will be done and ready for the board at their next meeting, with a possible fee change as a result. Ms. Dumas also explained the indirect expenses allocated to the board. She asked the board if they had any questions, to which they did not. Ms. Dumas left the meeting.

Melissa Dumas, Administrative Officer, left the meeting at 2:47 p.m.

Agenda Item 5

Statutes and Regulations

Time: 2:47 p.m.

Regulations Projects

Dr. Larson began conversation on a regulations project that would amend the definitions of "prescription drug" and "surgery," as well as add a definition of "nutrition." The board had talked about this regulations project at the prior meeting, but never officially started it. Mr. Bay reminded the

board that they still needed to make an official motion to begin the regulations project. Dr. Larson entertained a motion to begin the regulations project.

On a motion duly made by Jonathan Vito, seconded by Jeffrey Reinhardt, and approved unanimously by a roll call, it was

RESOLVED to have the Alaska Board of Chiropractic Examiners begin a regulations project to amend the definitions of “prescription drug” and “surgery” as defined in 12 AAC 16.990(b)(1) and (2), and add the definition of “nutrition” in the same regulations section.

Dr. Larson asked Mr. Bay to bring up, on the monitor, the language the board had talked about at their previous board meeting, to use as a starting point. Mr. Bay brought up the requested language and also provided the board with the current chiropractic regulations. The board addressed the following definitions in regulation:

12 AAC 16.990. DEFINITIONS. (b) In AS 08.20.900,

(1) "prescription drug" means a drug that

(A) under federal law, before being dispensed or delivered, is required to be labeled with either of the following statements:

(i) "Caution: Federal law prohibits dispensing without prescription";

(ii) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or

(B) is required by an applicable federal or state law or regulation to be dispensed only under a prescription drug order or is restricted to use by practitioners only;

(2) "surgery"

(A) means the use of a scalpel, sharp cutting instrument, laser, electrical current, or other device to incise or remove living tissue;

(B) does not include venipuncture or the removal of foreign objects from external tissue.

Dr. Larson first addressed the current definition of “surgery,” and reminded the board that the reason injections are not permitted is because it includes a device “to incise or remove living tissue.” Dr. Larson also reminded the board that, at their last board meeting, they suggested using a definition of “surgery” similar to the State of Virginia’s. After looking over Virginia’s definition, the board agreed to amend the definition of “surgery”, as defined in 12 AAC 16.990(b)(2), to read as follows:

- “surgery” means the structural alteration of the human body by the incision of or cutting into the tissue for the purpose of diagnostic or therapeutic treatment causing localized alteration of human tissue, but does not include the following: procedures for the removal of superficial foreign bodies from the human body, punctures, suturing, injections, venipuncture, dry needling, acupuncture, or removal of dead tissue.

The board began discussion on amending the current definition of “prescription drug.” Dr. Larson reminded the board that his biggest concern with the current definition is that it does not allow a chiropractor to carry supplements that have a label that says, “is restricted to use by practitioners only.” He explained, to which the board agreed, that a lot of substances that chiropractors carry are nutrition based, and include vitamins and minerals, but still require that label even though they are not prescription drugs, as defined on the federal level by the Drug Enforcement Agency (DEA).

Wayne Aderhold informed the board that one of his concerns regarding nutritional or dietary supplements and the Department of Law, is that they sometimes get stuck on one word. He explained that there are two grades of dietary/nutritional supplements under the Food and Drug Administration (FDA) of Good Manufacturing Practices (GMPs), and they are food and pharmaceutical grade. He

went on to say that a lot of companies that make the supplements voluntarily meet pharmaceutical grade standards to manufacture their supplements, which actually makes them safer, but the word “pharmaceutical” can scare someone into thinking they should only be used by doctors. His concern is that companies that make good products might be restricted because they decided to meet pharmaceutical grade standards rather than food grade standards. Dr. Larson agreed with Mr. Aderhold, and said that defining the word “nutrition” should help alleviate the problem while also helping keep costs down for the public. Dr. Larson continued the discussion on amending the current definition of “prescription drug.”

Dr. Larson proposed that the board describe “prescription drug” exactly how the DEA defines it, as a drug listed on the federal DEA schedule 1 through schedule 5. The board talked about the different schedules, and agreed to propose to amend the definition of “prescription drug,” as defined in 12 AAC 16.990(b)(1), to read as follows:

- “prescription drug” means a substance that is defined by the DEA as schedule 1 through schedule 5.

The board began discussion on creating a definition for “nutrition,” and adding it to 12 AAC 16.990. They discussed different types of nutrition and what constitutes a “nutritional substance.” Dr. Larson provided the board with a definition of “nutrition” that he had previously drawn up and shared it with the board. The board went over it thoroughly, and after amending it, agreed to propose to create a definition of “nutrition” and “nutritional substance,” to be defined in 12 AAC 16.990(c), to read as follows:

12 AAC 16.990. DEFINITIONS. (c) “Nutrition” or a “nutritional substance” is a vitamin, mineral, plant or extract, herb or extract, homeopathic, glandular or whole tissue extract, natural or nutritional substance, sugar, amino acid product, enzyme supplement, and saline, intended for use in the diagnosis, treatment, or prevention of disease in humans. Nutritional include food grade and pharmaceutical grade substances that can be purchased by professionals without a DEA license.

(1) Chiropractic physicians may administer nutritional substances that are intended for oral, topical or transdermal use;

(2) Chiropractic physicians with board approved post-graduate training may administer all nutritional substances by oral, topical, transdermal, injections, or IV drip.

On a motion duly made by Jonathan Vito, requesting unanimous consent, and approved unanimously without any objections, it was

RESOLVED to provide the Department of Law with the amended definitions as discussed.

Agenda Item 14

Adjourn

Time: 4:32 p.m.

Having nothing left to address, the Alaska Board of Chiropractic Examiners’ Chair, Brian Larson, adjourned the meeting at 4:32 p.m.

Respectfully Submitted by:

Thomas Bay
Licensing Examiner

Date

Approved by:

Dr. Brian Larson
Alaska State Board of Chiropractic Examiners

Date

DRAFT

State of Alaska
DEPARTMENT OF LAW

ETHICS ACT PROCEDURES FOR BOARDS & COMMISSIONS

All board and commission members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below.

Who Is My Designated Ethics Supervisor (DES)?

Every board or commission subject to the Ethics Act¹ has several ethics supervisors designated by statute.

- The chair serves as DES for board or commission members.
- The chair serves as DES for the executive director.
- The executive director serves as DES for the staff.
- The governor is the DES for a chair.²

What Do I Have To Disclose?

The Ethics Act requires members of boards and commissions to disclose:

- Any matter that is a potential conflict of interest with actions that the member may take when serving on the board or commission.
- Any circumstance that may result in a violation of the Ethics Act.
- Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board or commission.
- The receipt of certain gifts.

The executive director of the board or commission and its staff, as state employees, must also disclose:

- Compensated outside employment or services.
- Volunteer service, if any compensation, including travel and meals, is paid or there is a potential conflict with state duties.

- For more information regarding the types of matters that may result in violations of the Ethics Act, board or commission members should refer to the guide, "*Ethics Information for Members of Boards and Commissions*." The executive director and staff should refer to the guide, *Ethics Information for Public Employees*." Both guides and disclosure forms may be found on the [Department of Law's ethics website](#).

How Do I Avoid Violations of the Ethics Act?

- Make timely disclosures!
- Follow required procedures!
- Provide all information necessary to a correct evaluation of the matter!³
- When in doubt, disclose and seek advice!
- Follow the advice of your DES!

What Are The Disclosure Procedures for Board and Commission Members?

The procedural requirements for disclosures by members are set out in AS 39.52.220 and 9 AAC 52.120. One goal of these provisions is to help members avoid violations of the Ethics Act. The procedures provide the opportunity for members to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act.

Procedure for declaring actual or potential conflicts.

Members must declare potential conflicts and other matters that may violate the Ethics Act **on the public record and in writing to the chair**.

Disclosure on the public record. Members must identify actual and potential conflicts orally at the board or commission's public meeting **in advance** of participating in deliberations or taking any official action on the matter.

- A member must always declare a conflict and may choose to refrain from voting, deliberations or other participation regarding a matter.⁴
- If a member is uncertain whether participation would result in a violation of the Act, the member should disclose the circumstances and seek a determination from the chair.

Disclosure in writing at a public meeting. In addition to an oral disclosure at a board or commission meeting, members' disclosures must be made in writing.

- If the meeting is recorded, a tape or transcript of the meeting is preserved **and** there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.
- Alternatively, the member must note the disclosure on the Notice of Potential Violation disclosure form and the chair must record the determination.

Confidential disclosure in advance of public meeting. Potential conflicts may be partially addressed in advance of a board or commission's public meeting based on the published meeting agenda or other board or commission activity.

- A member identifying a conflict or potential conflict submits a Notice of Potential Violation to the chair, as DES, in advance of the public meeting.
- This written disclosure is considered confidential.
- The chair may seek advice from the Attorney General.
- The chair makes a written determination, also confidential, whether the disclosed matter represents a conflict that will result in a violation of the Ethics Act if the member participates in official action addressing the matter.⁵
- If so, the chair directs the member to refrain from participating in the matter that is the subject of the disclosure.
- An oral report of the notice of potential violation and the determination that the member must refrain from participating is put on the record at a public meeting.⁶

Determinations at the public meeting. When a potential conflict is declared by a member for the public record, the following procedure must be followed:

- The chair states his or her determination regarding whether the member may participate.
- Any member may then object to the chair's determination.
- If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter.
- *Exception:* A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If the chair, or the members by majority vote, determines that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter.⁷

If the chair identifies a potential conflict, the same procedures are followed. If possible, the chair should forward a confidential written notice of potential violation to the Office of the Governor for a determination in advance of the board or commission meeting. If the declaration is first

made at the public meeting during which the matter will be addressed, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter. A written disclosure or copy of the public record regarding the oral disclosure should be forwarded to the Office of the Governor for review by the chair's DES.

Procedures for Other Member Disclosures

A member's interest in a state grant, contract, lease or loan and receipt of gifts are disclosed by filling out the appropriate disclosure form and submitting the form to the chair for approval. The disclosure forms are found on the [Department of Law's ethics website](#).

What Are The Disclosure Procedures for Executive Directors and Staff?

Ethics disclosures of the executive director or staff are made in writing to the appropriate DES (chair for the executive director and the executive director for staff).

- Disclosure forms are found on the ethics website, noted above.

Notices of Potential Violations. Following receipt of a written notice of potential violation, the DES investigates, if necessary, and makes a written determination whether a violation of the Ethics Act could exist or will occur. A DES may seek advice from the Attorney General. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

- These disclosures are not required to be made part of the public record.
- A copy of a determination is provided to the employee.
- Both the notice and determination are confidential.

Other Disclosures. The DES also reviews other ethics disclosures and either approves them or determines what action must be taken to avoid a violation of the Act. In addition to the disclosures of certain gifts and interests in the listed state matters, state employees must disclose all outside employment or services for compensation.

- The DES must provide a copy of an approved disclosure or other determination the employee.

How Are Third Party Reports of Potential Violations or Complaints Handled?

Any person may report a potential violation of the Ethics Act by a board or commission member or its staff to the appropriate DES or file a complaint alleging actual violations with the Attorney General.

- Notices of potential violations and complaints must be submitted **in writing and under oath**.
- Notices of potential violations are investigated by the appropriate DES who makes a written determination whether a violation may exist.⁸
- Complaints are addressed by the Attorney General under separate procedures outlined in the Ethics Act.
- **These matters are confidential**, unless the subject waives confidentiality or the matter results in a public accusation.

What Are The Procedures for Quarterly Reports?

Designated ethics supervisors must submit copies of notices of potential violations received and the corresponding determinations to the Attorney General for review by the state ethics attorney as part of the quarterly report required by the Ethics Act.

- Reports are due in April, July, October and January for the preceding quarter.
- A sample report may be found on the Department of Law's ethics website.
- An executive director may file a quarterly report on behalf of the chair and combine it with his or her own report.
- If a board or commission does not meet during a quarter and there is no other reportable activity, the DES advises the Department of Law Ethics Attorney by e-mail at ethicsreporting@alaska.gov and no other report is required.

If the state ethics attorney disagrees with a reported determination, the attorney will advise the DES of that finding. If the ethics attorney finds that there was a violation, the member who committed the violation is not liable if he or she fully disclosed all relevant facts reasonably necessary to the ethics supervisor's or commission's determination and acted consistent with the determination.

How Does A DES or Board or Commission Get Ethics Advice?

A DES or board or commission may make a **written request** to the Attorney General for an opinion regarding the application of the Ethics Act. In practice, the Attorney General, through the state ethics attorney, also provides **advice by phone or e-mail** to designated ethics supervisors, especially when time constraints prevent the preparation of timely written opinions.

- A request for advice and the advisory opinion are confidential.
- The ethics attorney endeavors to provide prompt assistance, although that may not always be possible.
- The DES must make his or her determination addressing the potential violation based on the opinion provided.

It is the obligation of each board or commission member, as well as the staff, to ensure that the public's business is conducted in a manner that is consistent with the standards set out in the Ethics Act. We hope this summary assists you in ensuring that your obligations are met.

¹ The Act covers a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch of state government.

² The governor has delegated the DES responsibility to Guy Bell, Administrative Director of the Office of the Governor.

³ You may supplement the disclosure form with other written explanation as necessary. Your signature on a disclosure certifies that, to the best of your knowledge, the statements made are true, correct and complete. False statements are punishable.

⁴ In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with respect to a significant direct personal or financial interest in a state grant, contract, lease or loan because the Ethics Act prohibition applies whether or not the public officer actually takes official action.

⁵ The chair must give a copy of the written determination to the disclosing member. There is a determination form available on the Department of Law's ethics web page. The ethics supervisor may also write a separate memorandum.

⁶ In this manner, a member's detailed personal and financial information may be protected from public disclosure.

⁷ When a matter of particular sensitivity is raised and the ramifications of continuing without an advisory opinion from the Attorney General may affect the validity of the board or commission's action, the members should consider tabling the matter so that an opinion may be obtained.

⁸ The DES provides a copy of the notice to the employee who is the subject of the notice and may seek input from the employee, his or her supervisor and others. The DES may seek advice from the Attorney General. A copy of the DES' written determination is provided to the subject employee and the complaining party. The DES submits a copy of both the notice and the determination to the Attorney General for review as part of the DES' quarterly report. If feasible,

the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

6/14

The Attorney General and Department of Law staff may not provide legal advice to private citizens or organizations. Please contact an attorney if you need legal advice. The [Alaska Lawyer Referral Service](#) or your local bar association may be able to assist you in locating a lawyer.

Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501
attorney.general@alaska.gov
Phone: (907) 269-5100 | Fax: (907) 276-3697
TTY: 907-258-9161

COPYRIGHT © [STATE OF ALASKA](#) · [DEPARTMENT OF LAW](#) · [EMAIL THE WEBMASTER](#)

Ethics Disclosure Form

CONFIDENTIAL REQUEST FOR ETHICS DETERMINATION

TO: _____, Designated Ethics Supervisor

(Identify Your Department, Agency, Public Corporation, Board, Commission)

I request advice regarding the application of the Executive Branch Ethics Act (AS 39.52.010 - .960) to my situation. The situation involves the following:

- I have provided additional information in the attached document(s).

I believe the following provisions of the Ethics Act may apply to my situation:

- AS 39.52.120, Misuse of Official Position
- AS 39.52.130, Improper Gifts
- AS 39.52.140, Improper Use or Disclosure of Information
- AS 39.52.150, Improper Influence in State Grants, Contracts, Leases or Loans
- AS 39.52.160, Improper Representation
- AS 39.52.170, Outside Employment Restricted
- AS 39.52.180, Restrictions on Employment after Leaving State Service
- AS 39.52.190, Aiding a Violation Prohibited

I understand that I should refrain from taking any official action relating to this matter until I receive your advice. If the circumstances I described above may result in a violation of AS 39.52.110 - .190, I intend that this request serve as my disclosure of the matter in accordance with AS 39.52.210 or AS 39.52.220.

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

(Signature)

(Date)

(Printed Name)

(Division, Board, Commission)

(Position Title)

(Location)

Designated Ethics Supervisor: Provide a copy of your written determination to the employee advising whether action is necessary under AS 39.52.210 or AS 39.52.220, and send a copy of the determination and disclosure to the attorney general with your quarterly report.

Ethics Disclosure Form

Receipt of Gift

TO: _____, Designated Ethics Supervisor,

(*Agency, Public Corporation, Board,
Commission or Council*)

This disclosure reports receipt of a gift with value in excess of \$150.00 by me or my immediate family member, as required by AS 39.52.130(b) or (f).

1. Is the gift connected to my position as a state officer, employee or member of a state board or commission?

Yes No

2. Can I take or withhold official action that may affect the person or entity that gave me the gift?

Yes No

(If you answer "No" to both questions, you do not need to report this gift. If the answer to either question is "Yes," or if you are not sure, you must complete this form and provide it to your designated ethics supervisor.)

The gift is _____

Identify gift giver by full name, title, and organization or relationship, if any:

Describe event or occasion when gift was received or other circumstance explaining the reason for the gift:

My estimate of its value is \$ _____ The date of receipt was _____

The gift was received by a member of my family. Who? _____

If you checked "Yes" to question 2 above, explain the official action you may take that affects the giver (attach additional page, if necessary):

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

(Signature)

(Date)

(Printed Name)

(Division)

(Position Title)

(Location)

Ethics Supervisor Determination: Approve Disapproved

*Designated Ethics Supervisor**

(Date)

**Designated Ethics Supervisor: Provide a copy of the approval or disapproval to the employee. If action is necessary under AS 39.52.210 or AS 39.52.220, attach a determination stating the reasons and send a copy of the determination and disclosure to the attorney general with your quarterly report.*

Revised 2012



THE STATE
of ALASKA

Department of Commerce, Community, and Economic Development

DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

Juneau Office

P.O. Box 110806
Juneau, Alaska 99811-0806
Main: 907.465.2550
Fax: 907.465.2974

MEMORANDUM

TO: Board of Chiropractic Examiners DATE: December 17, 2019
FROM: Sara Chambers, Division Director RE: Scope of practice

The division has received many questions from licensees and other interested parties regarding the scope of practice of Alaska chiropractors. The board has also wrestled with this topic for several years, requesting advice from the Department of Law and deliberating on the relevant statutes and regulations...and how they may not be keeping up with the leading edge of chiropractic education and practice in other jurisdictions.

AUTHORITY

The scope of practice of chiropractic is determined by the Alaska State Legislature in AS 08.20.900. The board – which itself is created by statute – is authorized to adopt regulations necessary to affect the provisions of the statute. (AS 08.20.055) The Department of Law assists the board as it does all state agencies with issues that arise relating to the interpretation and implementation of governing statute, drafting regulations, and myriad issues that come up in the course of managing a profession in the best interests of the public. Neither the division nor the Department of Law determine the scope of practice for any state licensed profession.

INJECTIONS AND PRESCRIPTION DRUGS

Over the past several years, the Board of Chiropractic Examiners has asked the Department of Law to advise on interpreting the statutory provisions defining the scope of practice. This issue came up first in the context of Lovera administration and continues today as the board considers the practice of injecting substances including nutrients and prescription drugs.

The advice provided to the board is that if the injectable substance requires a prescription, it is specifically excluded from chiropractic scope of practice by AS 08.20.900(3) and (6) and 12 AAC 16.990(b)(1). The cited statutory sections describe “chiropractic” and its “core methodology” as excluding the use of prescription drugs. The cited regulation defines prescription drug as any drug that must carry a certain label or may only be dispensed by prescription or is restricted to use by practitioners only. The board’s attorneys have advised that the board may amend its regulation defining “prescription drug,” but there are no guarantees as to whether any proposed amendment would conflict with other state or federal law—including AS 08.20.900(3).

As for injectable nutrients that do not require a prescription, chiropractic statute is not entirely clear, and there is no direct caselaw to provide a definitive answer. However, we think the reasoning of a recent Alaska Supreme Court case, Alaska Association of Naturopathic Physicians v. State, Dep’t. of Commerce, 414 P.3d 630 (2018) may not support your profession’s use of injection-based non-prescription therapies.

OPTIONS MOVING FORWARD

We understand that some chiropractic physicians have been using various injection-based therapies. However, the facts that these therapies are in use and that chiropractic physicians may have received training in these treatment methodologies does not define the scope of practice. The board's attorneys have advised that the way to change chiropractic scope of practice is to

work with the legislature to amend the definition as it appears in statute at AS 08.20.900(1), (3), and (6). This continues to be the Department of Law's advice.

Division management and the board's attorneys will continue working with the board as it drafts and considers amendments to its regulations, and we will provide advice on how to initiate a statutory amendment, as the board feels appropriate.

After discussing the board's scope of practice goals with board chair Dr. Larson, and in anticipation of the board meeting on December 23, I have drafted two motions to help frame the conversation and give the board a starting point for their deliberation:

1. I move that the Board of Chiropractic Examiners support pursuing legislation to accomplish the following goals:
 - a. Add the following activities into the chiropractic scope of practice:
 - i. Acupuncture
 - ii. Injection, dispensation, or prescription of supplements and other medications that are not controlled substances if the agent is used in a manner consistent with standards adopted by the board in regulation
 - b. Clarify that a licensee may perform chiropractic only if the services are within the scope of the licensee's education, training, and experience as established by regulations adopted by the board
 - c. Add Board of Chiropractic Examiners to AS 08.01.050(d) to allow the department to provide assistance and treatment to persons licensed by the board who abuse alcohol, other drugs, or other substances
2. I move that [board member] be designated as the spokesperson for the board and to serve as the lead in this legislation.

I plan to attend the board meeting and engage as an aide at the board's discretion and invitation. Should you have questions about any of these points, please let me know so I can ensure you are provided with appropriate and useful tools.

BOARD OF CHIROPRACTIC EXAMINERS
Fiscal Year 2019 Annual Report

Goals and Objectives

Part I

FY 2019's goals and objectives, and how they were met:

Goal 1: Carry out assigned duties of the board: The board met three times in FY 2019. The board met once by videoconference, with the board license examiner and Dr. Reinhardt in Juneau, and Drs. Larson, Vito and Morris in Anchorage. The other two meetings were by videoconference from the home locations of the board members, due to travel restrictions. The board administered jurisprudence exams, but did not conduct personal interviews with candidates, and conducted board business. The staff and board were able to review and approve applications in a generally timely manner, but distance between Alaska and chiropractic schools where most applicants are applying from always poses a logistics challenge. There was a significant uptick in investigations this year, which continue to be monitored by the board as investigations progress.

Goal 2: Provide information regarding board activities to the profession and the public: The board made time available in every meeting for public input and encourages its licensees and the public to attend scheduled meetings and provide comment. All meeting agendas and minutes were posted on the board's website to make available to the public the topics discussed, and actions taken by the board.

Goal 3: Continue affiliation with the Alaska Chiropractic Society (ACS) to work cooperatively in the best interest of the profession and the public: Regulation wording for SB69 defining practice for Certified Chiropractic Clinical Assistants, Interns and Preceptors was finalized and sent on for legal review and publication.

Goal 4: Assess and evaluate regulations: The board completed regulation work on SB69. There was an error in converting the final draft from the board into printed regulation, so the entire project was sent back to the subcommittee for complete revision/rewrite. This has been completed and will be forwarded on to the Department of Commerce for formal recognition and printing.

Goal 5: Assess and evaluate the review process available through the Utilization Review Committee: The formal name of this committee was changed from Peer Review Committee to the above. It is fully staffed and available should the need arise.

Goal 6: Continue affiliation with the Federation of Chiropractic Licensing Boards (FCLB), The National Board of Chiropractic Examiners (NBCE), the Association of Chiropractic Board Administrators (ACBA), and the Council on Chiropractic Education (CCE) as well as the Council on Licensure, Enforcement and Regulation (CLEAR) and the Federation of Association of Regulatory Boards (FARB): This board had no presence at the FCLB/NBCE Annual meeting or the NBCE Part 4 board examinations due to travel restriction. Dr. Larson did attend the FCLB District 1 meetings in Palm Springs, CA in October, where the focus was on sharing how the boards from different states in the region are dealing with issues such as interdisciplinary practice, opioid addiction, regulation projects and scope of practice, etc. This board has a strong budget. For the sake of training, continuity and efficiency, we need to have a board member and our examiner attending these meetings.

BOARD OF CHIROPRACTIC EXAMINERS
Fiscal Year 2019 Annual Report

Goals and Objectives (continued)

Part I (continued)

FY 2019's goals and objectives, and how they were met:

Goal 7: The board will endeavor, through the legislative process, to add the Board of Chiropractic Examiners to relevant centralized and non-centralized statutes that enhance the profession and administrative efficiency. The completion of the SB69 project has been a huge education for all involved and will hopefully be finalized shortly. A number of statutory and regulatory changes/additions have been recommended by this board, with the objective of successfully completing those projects within the next fiscal year. With the increased knowledge and skill base in writing statute and regulation, this should improve the ability of the board to efficiently draft new statute and regulations to meet the needs of the public for improved and broadened access to primary care, and further the goals of the chiropractic profession to increase access to care, especially as primary care physicians.

BOARD OF CHIROPRACTIC EXAMINERS
Fiscal Year 2019 Annual Report

Goals and Objectives

Part II

**FY 2020's goals and objectives, and proposed methods to achieve them.
Describe any strengths, weaknesses, opportunities, threats and required resources:**

1. Goal 1: Carry out assigned duties of the board:

Objective 1: Conduct a minimum of three board meetings this year with different regional locations in the State to allow for public attendance and meeting transparency. We will hold four regularly scheduled board meetings, three which will be telephonic, and one in person. Ideally, this "live" meeting will be in Juneau while the legislature is in session so this board may be available to elected leadership, but may be limited to Anchorage to minimize total travel. While public input sessions/times are published in advance for attendance at these telephonic meetings, the very nature of no physical presence severely impairs the transparency of this board and the overall public access to these meetings.

Objective 2: Continue timely processing of applications and licensing of chiropractic physicians.

Objective 3: Continue to monitor investigative reports, monitor disciplinary actions, and provide professional direction to Division Investigative staff regarding disciplinary actions, probation matters, criminal history record information, and chiropractic practice.

Objective 4: Utilize the National Board of Chiropractic Examiners (NBCE) Special Purposes Examination for Chiropractic (SPEC) and Ethics & Boundaries examination (E&B) in memorandum of agreements.

Objective 5: Continue to review and process continuing education credit approval in a timely manner.

Objective 6: Continue to administer the jurisprudence examination as part of licensure. Especially with the loss of the direct board interview with applicants, consider utilizing NBCE services to administer the jurisprudence examination at certified testing centers in Alaska and across the lower 48, saving time and expense for applicants, and relieving the Department of Commerce of the responsibility of hosting those tests at a state office four time per year.

2. Goal 2: Provide information regarding board activities to the profession and the public:

Objective 1: Inform licensees of any pending regulation changes in the customary manner.

Objective 2: Provide a public comment period during each meeting. This is scheduled per public meeting law for each board meeting, but difficult without face-to-face interaction required under telephonic meeting requirements.

Objective 3: Address concerns presented by licensees and the public at each meeting.

Objective 4: Provide copies of agendas and/or minutes of the meetings to all who request them.

Objective 5: Continue to work with other licensing boards, at both the district and national level. Without the ability to travel for national and district meetings, this becomes a non-reality. This board, which operates well within its budget must have the opportunity for the volunteers who serve on the board to interact with district and national level boards to best serve the needs of the board in keeping current, obtaining training, and being alert and attentive to the commission to protect the public.

Objective 6: Continue to address the reporting requirements for domestic violence and sexual assault. This would be a great seminar sponsored by the State at the next ACS convention???

Objective 7: Seek and support efforts to educate the governor, state legislators, and the public regarding the benefit of chiropractic care as a health care option, and the particular opportunities to efficiently recover from work injuries (Workers Comp), and deal with pain without opiate prescriptions.

Objective 8: Raise awareness regarding public health, emergency training, hazardous material, and OSHA requirements.

Objective 9: Ensure current information is available on the board website through regular updates by staff and regular monitoring by board members.

BOARD OF CHIROPRACTIC EXAMINERS
Fiscal Year 2019 Annual Report

Goals and Objectives (continued)

Part II (continued)

FY 2020's goals and objectives, and proposed methods to achieve them.

Describe any strengths, weaknesses, opportunities, threats and required resources:

- 3. Goal 3: Continue affiliation with the Alaska Chiropractic Society (ACS) to work cooperatively in the best interest of the public and the profession:**

Objective 1: Encourage regular Alaska Chiropractic Society participation at board meetings.

Objective 2: Support the Alaska Chiropractic Society in its efforts to provide information to the profession and the public.

Objective 3: Support the Alaska Chiropractic Society in pursuit statutory changes or additions that expand the scope of chiropractic practice to provide better portal-of-entry service for the public, for those who wish to utilize their chiropractic physician efficiently their primary care physician.

- 4. Goal 4: Assess and evaluate regulations:**

Objective 1: Continue to assess and evaluate continuing education requirements for quality, relevance, and application of scientific chiropractic research and practice.

Objective 2: Continue to assess and evaluate radiological safety, professional ethics and boundaries, public health, and emergency training.

Objective 3: Proactively make recommendations through regulation and recommend changes to statute to anticipate changes in the health industry.

- 5. Goal 5: Assess and evaluate the review process available through the Utilization Review Committee:**

Objective 1: Direct appropriate inquiries to the committee for review and recommendations.

Objective 2: Keep the committee roster fully staffed with three chiropractic physicians and one public member at all times. This committee is fully staffed and ready to serve as may be required.

Objective 3: Maintain a list of alternate committee members to fill vacancies or recusals as needed.

- 6. Goal 6: Continue affiliation and improve interaction with the Federation of Chiropractic Licensing board (FCLB), The National Board of Chiropractic Examiners (NBCE), the Association of Chiropractic Board Administrators (ACBA), and the Council on Chiropractic Education (CCE) as well as the Council on Licensure, Enforcement, and Regulation (CLEAR) and the Federation of Association of Regulatory Boards (FARB):**

Objective 1: Provide attendance of a board member and the examiner to the district and annual meetings of the FCLB and NBCE, to provide input and obtain information at both national and state levels regarding the practice of chiropractic in Alaska. This was not accomplished due to the travel ban this year.

Objective 2: Continue working with the FCLB on maintaining a listing of Alaskan chiropractic physicians on the National Database (CIN-BAD).

Objective 3: Promote attendance of board members to the semi-annual NBCE Part IV Examinations and Part IV Examination Review Committee meetings of the NBCE to provide input and obtain information on the Exams required for chiropractic licensure in Alaska and other states. The prior governor banned the receipt of the professional honorarium offered by the NBCE to cover the personal travel and time these doctors invest without compensation from the State to participate in this testing process. We formally request the ban on personal gifts or gratuities, specifically in relation to professional honorariums for travel and time spent by volunteer professional members of boards be lifted. This represents no cost for the State of Alaska, increases the interaction of Alaska professional board members with the NBCE board and license testing process. All other states allow their professionals to receive this financial remuneration for

time and expenses directly related to the board and national testing process.

Objective 4: Promote the attendance of the licensing examiner at the annual meetings of the ACBA and the FCLB to provide input and obtain information at both national and state levels, regarding matters impacting regulation and licensure of Alaskan chiropractic physicians.

7. **Goal 7: The board will endeavor, through the legislative process, to add the Board of Chiropractic Examiners to relevant centralized and non-centralized statutes that enhance the profession and its administrative efficiency:**
Objective 1: The board will pursue inclusion in AS 08.01.050(d) for the purpose of providing licensed chiropractic physicians the resources needed to address abuse of alcohol, drugs or other substances. This request has been placed on the Recommendations for Proposed Legislation list, 2020.
Objective 2: The board will pursue authority under AS 08.20 to create an Advanced Practitioner status for chiropractic physicians who pursue advanced training and certifications to utilize non-narcotic drugs, ancillary therapies and procedures beyond chiropractic core methodology and commonly used by other Alaskan health care professionals and specialists. This request has been placed on the Recommendations for Proposed Legislation list 2020.
Objective 3: The board is pursuing authority under AS 08.20 to create a Clinical Chiropractic Nutritionist practitioner status for chiropractic physicians to specifically resolve the question of injectable nutrients as part of chiropractic practice. Additionally, an Advanced Practitioner status for chiropractic physicians who pursue post-graduate specialist status in specific areas of chiropractic. Three requests have been placed on the Recommendations for Proposed Legislation list 2020.
Objective 4: The board is requesting regulation changes to clarify definitions of chiropractic practice under 12 AAC 16.990 to modify the definitions of surgery, prescription drugs, and add a definition of nutrition or nutritional substance.

From: [REDACTED]
To: [Bay, Thomas L \(CED\)](#)
Subject: Re: Board recognition
Date: Tuesday, December 3, 2019 3:29:18 PM

Thank you for responding!

I understand that.

Is electrodiagnosis including needle EMG permitted under the chiropractic neurology diplomate? It is included in the program.

On Tue, Dec 3, 2019 at 6:55 PM Bay, Thomas L (CED) <thomas.bay@alaska.gov> wrote:

Hi Vanessa,

I did get a chance to go over the recording from the November 22nd, 2019, Alaska Board of Chiropractic Examiners' board meeting. Unfortunately, the Diplomate of the International Board of Electrodiagnosis (DIBE) cannot be included under **12 AAC 16.048 Approved Chiropractic Specialty Programs** because that regulation stems from the following statute:

Sec. 08.20.155. Professional designation. Notwithstanding the provisions of AS 08.02.010 relating to specialist designations, a person licensed under this chapter may not designate a specialty unless the person has completed a postgraduate specialty program at an accredited school approved by the board and the person has passed a certification exam for the specialty approved by the board. All specialty designations must include the term "chiropractic"

The only way for the diplomate to be approved would be to either change the name to include "chiropractic" or the board would need a statute change to be able to approve anything outside of "chiropractic." The statute change would require opening up the board's statutes, and that is highly unlikely because it would have to go through legislation. Also, there are many risks that come with opening up the board's statutes, including the taking away of things chiropractors are currently allowed to do.

I wish I had better news for you, but, at this time, the DIBE cannot be approved as a chiropractic specialty program in Alaska. Please feel free to contact me if you have any questions.

Best regards,

Thomas Bay

Occupational Licensing Examiner
Division of Corporations, Business and Professional Licensing
(907)465-2588

From: Vanessa Wilczak [REDACTED]
Sent: Monday, December 2, 2019 8:48 PM
To: Bay, Thomas L (CED) <thomas.bay@alaska.gov>
Subject: Board recognition

So what happened regarding the diplomats and certifications in the meeting?

Thanks!!! Hope you had a great thanksgiving!

--

Legal Notice: This electronic mail and its attachments are intended solely for the person(s) to whom it is addressed and contains information which is confidential or otherwise protected from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by replying to the email address set forth above to arrange for the return of the document(s).

--

Legal Notice: This electronic mail and its attachments are intended solely for the person(s) to whom it is addressed and contains information which is confidential or otherwise protected from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by replying to the email address set forth above to arrange for the return of the document(s).