

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, September 18th, 2015

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 at Sophie Station Suites, 1717 University Avenue South, beginning at 9:22 a.m. The meeting was held at the Board Meeting Room in Fairbanks, Alaska.

Board Members Present, constituting a quorum:

James Heston, Doctor of Chiropractic
Daniel Holt, Doctor of Chiropractic
Walter Campbell, Doctor of Chiropractic
Edward Barrington, Doctor of Chiropractic
Christine Hill, Public Member

Attending from the Division of Corporations, Business and Professional Licensing were:

Laura Carrillo, Licensing Examiner
Brian Howes, Investigator *(via telephone)*
Charles Ward, Paralegal *(via telephone)*

Agenda Item 2 Oral Interviews

Time: 9:22 a.m.

Chair, James Heston prompted the Board to prepare for oral interviews with the exam candidates.

The first exam candidate was Margaret Strickland, an applicant who was applying to reinstate her previous Alaska license. Dr. Strickland, however, was unsure as to why she needed to take the examination again, and therefore did not take the exam during the scheduled time

period. Dr. Heston informed Dr. Strickland that she needed to take the examination for reinstatement required per 12 AAC 16.390(4). Dr. Strickland responded that she had already taken the exam at the time she initially applied in Alaska. Dr. Strickland commented that the regulations were not clear on this, and that paying more fees relative to first time applicants is unfair. Dr. Holt explained to Dr. Strickland that in preparation for the exam, the statutes and regulations booklet is the only resource applicants can refer to. Ms. Carrillo added that the statutes and regulations were online, to which Ms. Strickland responded they were not. Dr. Strickland volunteered her time to go through the statutes and regulations and identify those that are problematic. Ms. Carrillo informed Dr. Strickland that the examination just administered had changed since she took the exam at the time of her initial license. The Board reiterated Dr. Barrington's earlier suggestion that she could take the next scheduled exam in January, and Dr. Heston suggested to Dr. Strickland to put all her concerns in writing. Dr. Strickland inquired if there were additional steps she needed to take aside from sitting for the exam, to which Ms. Carrillo stated that since her continuing education credits were only approved in Minnesota, the Board would need to discuss how her continuing education could be approved for reinstatement requirements.

Tara Koeckritz entered the room for her interview with the Board. Dr. Koeckritz is from Eagle River, Alaska and attended Palmer College. When asked what started her interest in chiropractic, Dr. Koeckritz responded that she had managed a clinic for six years and fell in love with the profession. She added that both chiropractors and patients encouraged her to pursue chiropractic. Dr. Koeckritz stated that she intends on practicing at Chiropractic Associates of Eagle River with an emphasis on upper cervical techniques. The Board informed her that she passed the examination and encouraged her to become involved with the ACS.

Dana-August Manelick entered the room for his interview with the Board. Dr. Manelick is from Palmer, Alaska and attended Palmer College. Dr. Manelick stated that he would be practicing at Ireland Chiropractic with Dr. Trevor Ireland, which has been the location of practice under his temporary permit. Dr. Manelick also stated that he intends on practicing Gonstead, diversified, and flexion-distraction techniques. The Board informed him that he passed the examination and encouraged him to become involved with the ACS.

Dr. Margaret Strickland entered the room again to ask the Board if she could take the examination now, to which Dr. Heston stated that Ms. Carrillo would be occupied with the meeting. Dr. Strickland commented that Ms. Carrillo had misguided her and given her misinformation. Dr. Strickland asked the Board if Ms. Carrillo could stay after the meeting to proctor the examination, to which Ms. Carrillo stated that her flight departure is shortly after the adjournment of the meeting. Ms. Carrillo asked Dr. Strickland to put those

concerns in writing, and to explain how she was misguided. The Board ultimately decided to allow Christine Hill to proctor the examination under Agenda Item #16.

Erin Cavanaugh entered the room for her interview with the Board. Dr. Cavanaugh is from Dallas, Texas and attended Parker University. Dr. Cavanaugh stated she will be practicing with Dr. Zamzow in Sitka. The Board informed her that she passed the examination.

Jason Hunt entered the room for his interview with the Board. Dr. Hunt stated he would be practicing with his father, who is also a chiropractor. The Board informed him the he passed the examination.

April Hudson entered the room for her interview with the Board. Dr. Hudson is from Dallas, Texas and attended Parker University. Dr. Hudson received a temporary permit and stated she would continue practicing in Eagle River with Dr. Schweigert. The Board informed her that the she passed the examination.

Kyle Hanford entered the room for his interview with Board. Dr. Hanford is from northern Wisconsin and attended Palmer College. Dr. Hanford stated he would be practicing with Dr. Curzie in Anchorage, and that he is excited to begin treating patients. The Board informed him that he passed the examination and encouraged him to become involved with the ACS.

Linda Nam entered the room for her interview for the Board. Dr. Nam attended Cleveland Chiropractic in California, and practices upper cervical techniques. Dr. Nam stated that she will be practicing in Kodiak. The Board informed her that she passed the examination and encouraged her to become involved with the ACS.

John Lloyd entered the room for his interview with the Board. Dr. Lloyd is from Denver, Colorado and attended Logan College. Dr. Lloyd added that he has been practicing for 18 years and will be seeking out a clinic in Anchorage. The Board informed him that he passed the examination, and encouraged him to become involved with the ACS. Dr. Lloyd thanked the Board for taking their Friday off. Dr. Barrington referred Dr. Lloyd to Dr. Atkins in Anchorage.

Agenda Item 3 Call to Order/Roll Call

Time: 10:10 a.m.

The meeting was called to order by Chair, James Heston at 10:10 a.m.

Agenda Item 4 Review Agenda

Time: 10:11 a.m.

Board Chair, Dr. Heston addressed the agenda and informed the Board that a few amendments were to be made; under Agenda Item #6, Board Business, two chiropractors were going to present a testimony around 11:00 a.m. regarding a device called Iovera, for which Dr. Heston permitted a maximum testimony length of 15 minutes; under Agenda Item #13, Public Comment, Board Chair of the Alaska Board of Massage Therapy, Amanda Unser would join telephonically for discussion regarding chiropractic assistants doing massage therapy.

On a motion duly made by Christine Hill, seconded Edward Barrington, and approved unanimously, it was

RESOLVED to accept the agenda as amended.

Agenda Item 5 Review Minutes

Time: 10:12 a.m.

The Board reviewed the minutes from the May 15th, 2015 meeting. Dr. Heston inquired to Ms. Carrillo if the jurisprudence score guide was amended to include the cumulative score, to which Ms. Carrillo responded that she had. Dr. Barrington advised that he would address position statements later in the meeting.

On a motion duly made by Dr. Walter Campbell, seconded Christine Hill, and approved unanimously, it was

RESOLVED to approve the minutes of May 15th, 2015 meeting.

Agenda Item 6 Board Business

Time: 10:13 a.m.

Ethics Report

Chair, Dr. Heston addressed ethics reporting. There were no ethics violations to report at this time.

Ratify Licenses

Dr. Heston moved to address the ratification of licensees for applicants who sat for the May 15th, 2015 examination. Ms. Carrillo informed the Board that Christopher Fierro had not yet been issued a license.

On a motion duly made by Daniel Holt, seconded by Christine Hill, and approved unanimously, it was

RESOLVED to ratify the licenses for **David Baldrige, Adam Bellendier, Adam Hawkins, Robert Kuchel, Bryan Luke, Jillian Petersen, Jennifer Reed, Adam Whalen, and Vanessa Wilczak.**

Review Goals and Objectives

Dr. Heston addressed adding a Goal 7 with objectives 1 and 2, with which the intent is to add the Board of Chiropractic Examiners to be added to centralized statute, AS 08.01.050(d), which reads:

“At the request of one of the following boards, the department may contract with public agencies and private professional organizations to provide assistance and treatment to persons licensed by the board who abuse alcohol, other drugs, or other substances...”

The Board would also like Goal 7 to include Board utilization of a national background check. The Board discussed adding these to Senate Bill 69.

Goal 1: Carry out assigned duties of the board:

- Objective 1:* Conduct a minimum of three board meetings a year and rotate the location of the meetings between different regions of the state.
- Objective 2:* Continue licensing chiropractic physicians and processing applications in a timely manner.
- Objective 3:* Review 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 requests for continuing education credit approval in a timely manner.
- Objective 6:* Continue to administer the jurisprudence exam concurrent with Board meetings and to include candidate interviews as part of the examination.

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

- Objective 1:* Inform all licensees of any pending regulation changes in the customary manner.
- Objective 2:* Provide a public comment period at each meeting.
- 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.

- Objective 6:* Continue to address the reporting requirements for domestic violence and sexual assault.
- Objective 7:* Support efforts to educate the public regarding the benefit of chiropractic care as a health care form.
- Objective 8:* Raise awareness regarding public health, emergency training, hazardous materials 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.

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

- Objective 1:* Encourage regular Alaska Chiropractic Society (ACS) participation at Board meetings.
- Objective 2:* Support the Alaska Chiropractic Society (ACS) in its efforts to provide information to the profession and the public.
- Objective 3:* Support the Alaska Chiropractic Society (ACS) in its efforts in pursuing statutory changes relevant to the profession and public safety.
- Objective 4:* Support the Alaska Chiropractic Society (ACS) in pursuing statutory authority for licensing chiropractic assistants, technicians and interns/preceptors.
- Objective 5:* Support the Alaska Chiropractic Society (ACS) in its efforts in pursuing a statutory change to allow for animal chiropractic in cooperation with the Veterinary Board.

Goal 4: Access and evaluate regulations.

- Objective 1:* Continue to assess and evaluate continuing education requirements.
- Objective 2:* Continue to assess and evaluate radiological safety, professional ethics and boundaries, public health and emergency training.
- Objective 3:* Proactively make recommendations through regulations to anticipate changes in the health industry.

Goal 5: Assess and evaluate the review process available through the Peer Review Committee.

- Objective 1:* Refine procedures for committee review of cases and the reporting process; consider establishing criteria (guidelines) for utilization review under 12 AAC 16.430.
- Objective 2:* Direct review inquiries to the committee.
- Objective 3:* Keep the committee roster fully staffed with three chiropractors and one public member at all times.

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 Associations of

Regulatory Boards (FARB):

- Objective 1:* Promote attendance of Board members and staff at district and annual meetings of the FCLB and NBCE in order to provide input and obtain information at both national and state levels regarding matters impacting Alaska Chiropractors.
- Objective 2:* Work with the FCLB on maintaining a listing of Alaskan Chiropractors on the National Database (CIN-BAD).
- Objective 3:* Promote attendance of Board members at 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.
- Objective 4:* Promote attendance of the Licensing Examiner at the annual meetings of the ACBA and FCLB to provide input and obtain information at both national and state levels regarding matters impacting the regulation and licensure of Alaskan Chiropractors.
- Objective 5:* Promote attendance by Board members and staff at the annual CLEAR and/or FARB conferences.

Review Annual Report

Hearing nothing further on Goals and Objectives, Dr. Heston moved to discussion on the annual report. Dr. Heston commented that “Summary of FY15 fiscal requests” needs to be changed to “Summary of FY16 fiscal requests”.

On a motion duly made by Christine Hill, seconded by Walter Campbell, and approved unanimously, it was

RESOLVED to approve the annual report as amended.

Review Specialty Designation Application

Dr. Heston moved to discussion on a specialty designation application submitted by Dr. Wilczak. Dr. Wilczak requested approval for Board recognition as a Chiropractic Neurologist, from which she completed a specialty program with the International Academy of Chiropractic Neurology. Ms. Carrillo noted that her application had been previously denied via e-mail ballot, which warranted the application to be tabled for further discussion at the upcoming in-person meeting. Ms. Carrillo provided the Board with the regulatory reference, 12 AAC 16.048 on page 11 of the statutes and regulations. Since the entity is not listed under the said regulation, the Board discussed the entity applying for approval via a written request.

On a motion duly made by Edward Barrington, seconded by James Heston, and approved unanimously, it was

RESOLVED to invite the International Academy of Chiropractic Neurology to submit a written request for board approval.

TASK:

Ms. Carrillo will contact the International Academy of Chiropractic Neurology to inform them that they can submit a written request to be added to 12 AAC 16.047 per 12 AAC 16.048(8)(c).

Groupon

Hearing nothing further on specialty designation applications, Dr. Heston moved to discussion on Groupon, an advertising service that offers coupons for discounted services. Dr. Heston noted that few states address fee-splitting, and pointed to a print-out provided by Ms. Carrillo regarding the Department of Health and Human Resources' Office of the Inspector General's opinion on Groupon in relation to fee-splitting. Ms. Carrillo addressed page 2 of the article, which reads:

“...the Oregon Board of Chiropractic Examiners issued a statement on July 25th, 2011, unequivocally advising its members that ‘Groupon-type fee splitting arrangements are prohibited for chiropractic physicians’”.

Dr. Barrington commented that he had contacted the Alabama Board—which does not have any specific state ruling against fee-splitting—and who are advising its chiropractors that this has become a federal issue, and discourages engaging in such advertisements as it may interfere with the ability to treat patients in federally-funded programs. Dr. Barrington added that Groupon advertising has decreased as a result of Alabama's notices.

TASK:

Dr. Barrington will continue to work on the position statement for advertising of free services.

Senate Bill 69

Hearing nothing further on Groupon, Dr. Barrington addressed SB69 and informed the Board that the past legislative session didn't yield a decision on the proposed changes. Dr. Barrington added that he would be following up with the Alaska Chiropractic Society in regards to inclusion into AS 08.01.050(d), as well as Board utilization of the national background check. The Board then discussed the fiscal note in the bill, which includes a \$700 estimated fee for chiropractic assistants. Dr. Heston also addressed the FY16 analysis, which gives a figure of \$57,000 in personal expenses. The Board was unsure of the implications or rationality behind these figures.

TASK:

Dr. Barrington will contact the Alaska Chiropractic Society for further information on the fiscal note included in SB69.

Honorariums

Dr. Heston moved to discussion on honorariums, which the Board understood they could receive for participating in proctoring and developing of exams for the National Board of Chiropractic Examiners. Dr. Heston addressed a previous opinion from 2012, which stated that receiving honorariums is not considered an ethics violation. More recently, however, a travel policy, AAM 60.230, seems to supersede the previous opinion, which states that:

“The traveler is only entitled to reimbursement for travel expenses, per diem or other expense allowances...The travelers may not accept honorariums as long as they are traveling for and representing the state”.

It was clarified that this policy applies to both State employees and Board members, as the Board represents the State on travel. Dr. Heston stated that he would continue to seek further discussion on honorariums.

Iovera

Dr. Bill McAfee, D.C., Dr. John Shannon, D.C., and company (Karen McAfee, Amy Welch, Esq, and another individual) joined the room at 10:15 a.m.

Dr. Bill McAfee, D.C., Dr. John Shannon, D.C., and company (Karen McAfee, Amy Welch, Esq, and another individual) left the room at 11:40 a.m.

Hearing nothing further on honorariums, Dr. Heston moved to discussion on Iovera, for which Drs. McAfee and Shannon joined the meeting to present a testimony in favor of utilizing the device. Chair, Dr. Heston reiterated that the testimony should last 15-minutes, and asserted that the Board would not be engaging in dialogue regarding this matter.

Testimony:

Dr. McAfee introduced himself and stated his credentials, which includes a B.A. in physical education, minor in education, B.A. in general science, M.S. in exercise physiology, M.S. in sports medicine, D.C., Certified advanced practice chiropractic physician, and a certified provider of manipulation under anesthesia. He also added that he is currently participating in a fellowship with the American Academy of Clinical Electrodiagnosis. Dr. McAfee then declared that the Board of Chiropractic Examiners had wronged him.

Dr. McAfee stated that he had invested hundreds of hours in education and training with Myoscience in order to administer their new technology, a cryotherapy device called Iovera.

Dr. McAfee explained that through the application of cold, Iovera facilitates Wallerian degeneration of peripheral nerves that are responsible for the transmission of pain. He added that it is an FDA-approved procedure, which lasts 10-15 minutes and provides chronic pain sufferers with the hope of pain relief. In regards to communication between Myoscience and the Board via Ms. Carrillo, Dr. McAfee stated that after Myoscience had contacted Ms. Carrillo regarding whether the device was within the scope of his chiropractic practice, Ms. Carrillo informed Myoscience that Iovera would be brought to discussion at the Board's next meeting (September 18th). Ms. Carrillo later informed Myoscience that administering the device was not within the scope. Dr. McAfee alleged that Ms. Carrillo's response to Myoscience destroyed a relationship that took thousands of dollars and thousands of miles in travel to cultivate. Dr. McAfee further stated that Ms. Carrillo made him look like a liar and a fool, which in doing so, resulted in Myoscience withdrawing their potential business arrangement with him. Dr. McAfee added that in subsequent e-mails, he had inquired whether the decision was based on puncturing of the skin, the use of cold, or lidocaine, to which Ms. Carrillo responded that the determining factor was the use of lidocaine. Dr. McAfee then informed the board that he had clarified that he does not use anesthetics, and that the procedure neither requires it. He then stated that he informed Ms. Carrillo that his business opportunity could be salvaged if she contacted Myoscience with a statement that the device is within the scope. Dr. McAfee stated that Ms. Carrillo did not respond, consequently sealing her destruction of his business plan.

Dr. McAfee then addressed AS 08.20.900 to support his interpretation that Iovera is in fact within the scope of his practice. In expounding upon AS 08.20.900(9)(C), Dr. McAfee prompted the Board to assess the limitations on acceptable cryotherapy procedures within the spectrum of cold temperatures. He asked the Board where the line should be drawn, and emphasized that the decision should be made by a properly trained physician. Dr. McAfee stated that he does have the proper training, and pointed out that the Board allows laser therapy, nerve conduction therapy, needle EMG studies, disc decompression, orthotic therapy—none of which are explicitly mentioned in the chiropractic scope, yet according to Dr. McAfee, the Board is preventing a highly trained chiropractic physician from utilizing cryotherapy, which is specifically allowed in the scope. Dr. McAfee asserted that unless all of the nuances of the aforementioned modalities are explicitly defined in detail and included in the scope, chiropractors should not be able to practice any of these approaches. Dr. McAfee added that unless the Board determines that Iovera can be used, or enforces restrictions on other modalities, he and Dr. Shannon will file complaints against every chiropractor who is practicing those modalities.

Dr. McAfee then pointed out that piercing of the skin is not an issue, as one of the Board members pierces the skin daily. Dr. McAfee then referenced the March 3rd, 2015 Supreme Court case regarding the FDC versus North Carolina via the Dentistry Board, in which it

was emphasized that a Board entity can only legally intervene in a profession's trade practices in two circumstances; in the issue of public safety, and for the sovereignty of the state. Dr. McAfee asserted that neither of these are an issue in the Iovera situation. He then reference a notice put out by the FDC, which warns state agencies, Boards, attorney generals, legislators and other state staff against restricting trade practices. The notice further stated that a professional who has received the same amount of training as another professional who has been cleared to provide a service should also be able to provide that same service. Dr. McAfee reiterated that the Board had no authority to interject their personal opinions or practices on determining his scope of practice.

Dr. McAfee then informed the Board that he and Dr. Shannon are highly trained professionals who have become two of only 70 chiropractic physicians to receive a federal DEA#. Dr. McAfee then described the procedure as using the application of cold to create Wallerian degeneration, which thereby destroys tissue to allow regeneration of nerves. He further added that there is no permanent nerve damage, and that it temporarily blocks nerve pain transmission for a period between several weeks to 6 months. Dr. McAfee reiterated that the procedure has been FDA-approved and that results are experienced within 10 minutes of the procedure. He further explained that the device is about the size of an electronic toothbrush and contains nitrous oxide, which cycles through an injecting tip with three needles, creates a ball of cold ice, and initiates pain nerve degeneration. Dr. McAfee stated that the results are successful relative to systemic medication, which accomplishes the goal of preventing reliance upon prescription medication. Dr. McAfee then asserted that no anesthetic is required to administer the device, and informed the Board that many physicians are administering this device without anesthetics. Dr. McAfee then asked the Board if they had any questions, and thanked the Board for their time. In closing, he informed the board that this was a time-sensitive situation, and as he initially brought the device to Alaska—which is now being used by other physicians—he feels this opportunity can be restored if the Board opines in their favor.

Dr. Holt then inquired about the cost of the procedure, to which Dr. McAfee responded that it is about \$400-\$500 for the device, and that the procedure is about \$1,000. Dr. Shannon inquired to the Board whether further discussion would be made, to which Dr. Heston informed the party that the discussion would continue immediately, but that Drs. McAfee and Shannon could not participate as they have already given their testimony.

Board discussion:

Dr. Heston informed the Board that he had been in correspondence with Myoscience, and referenced a letter from the Director of Product Development, Jessica Preciado, who stated to Dr. Heston that anesthetic is used as part of the treatment to ensure the comfort of the patient, and of which the amount and type of anesthetic is up to the discretion of the

physician. Dr. Heston added that he had seen the videos of Iovera, and have reviewed the type of anesthetic recommended for the procedure. In reiterating the principal scientist's assertion that anesthetic is part of the procedure, Dr. Heston commented that the information given by Myoscience is in contradiction to the testimony given by Dr. McAfee in regards to analgesics. Dr. Heston also commented on the fact that Dr. McAfee and Dr. Shannon have DEA#'s, which no other Alaska-licensed chiropractor has in this state, and questioned why a chiropractor would need to have dispensing authority in order to practice. Dr. Campbell inquired what the violation would be if a chiropractor would not be injecting anesthetics, to which the Board discussed piercing of the skin. There was some disagreement as to whether piercing of the skin is a violation of the chiropractic scope of practice, as it is not explicitly stated in the statutes and regulations. The Board reviewed the statutes and regulations, particularly AS 08.20.900.

Christine Hill left the room at 10:48 a.m.

Christine Hill joined the room at 10:52 a.m.

Dr. Barrington commented that he had went before the Board in 1991 to present his favor of incorporating needle EMG's, which ultimately was approved because the Board had determined that it was not intended for therapeutic purposes. In addition, Dr. Barrington stated that the statutes and regulations changed in 1988 to prohibit acupuncture, and as such, the Board's interpretation has been that if a procedure is not intended for therapeutic purposes—but for diagnostic purposes—a procedure was acceptable. Dr. Barrington then stated that permitting certain procedures can be based on merit of previous Board decisions, but that changing the scope of practice can be difficult in legislation.

Dr. Holt then addressed DEA#'s, to which Dr. Barrington commented that DEA#'s are received by participating in an advanced chiropractic practitioner credentialing in New Mexico. Dr. Heston commented that DEA#'s are advantageous in New Mexico, not Alaska. Dr. Heston further added that DEA#'s are not required to practice as a chiropractic physician in Alaska, under which the scope of practice doesn't necessitate being granted prescriptive authority; there are no other Alaska-licensed chiropractic physicians with DEA#'s, nor are there any advanced chiropractic practitioners. The Board then discussed the contention between the acupuncture board and the physical therapy board, as the former doesn't condone physical therapists' use of therapeutic needles. The Board continued to discuss needles in relation to scope of practice.

Dr. Campbell then disclosed that he had purchased 5% of Dr. McAfee's clinic about a year and a half ago, and that he would be recusing himself from voting on Iovera. Dr. Campbell further added that in his interpretation, administering Iovera—if used without lidocaine—does not seem to fall outside the scope. Dr. Heston responded that the correspondence

between himself and the principal scientist asserted that lidocaine is part of the procedure, and noted that, similarly, in the initial correspondence between Myoscience representative, Erin Miller asked Ms. Carrillo if it was within the scope of practice to inject lidocaine. Christine Hill commented on the evolution of the chiropractic industry, and that chiropractors should be able to utilize and explore a variety of modalities such as acupuncture and physical therapy for the benefit of the public. Dr. Heston commented that piercing the skin with a needle is considered by law a type of surgical procedure, and is not permitted under 08.20.900(5). Dr. Barrington also added that injections can be billed under surgery. Dr. Heston inquired to the Board whether they believe cosmetic injections are in the scope of chiropractic practice. The Board continued to deliberate on surgery, injecting and piercing the skin.

Legal counsel, Amy Welch shared with the Board some correspondence from Myoscience Sales Manager, Erin Miller and dated August 5th, 2015, who asked Drs. McAfee and Shannon if they would like to administer Iovera without the use of lidocaine. Dr. Heston noted that this was in contrast to what was he had been told, and reiterated that he had spoken with the principal scientist who stated that lidocaine is part of the procedure.

Walter Campbell left the room at 11:20 a.m.

Walter Campbell joined the room at 11:25 a.m.

Dr. Heston and Dr. Barrington discussed analgesics, and asked Dr. McAfee how he would administer Iovera without the use of lidocaine, to which he responded that he would use cold spray. Dr. Holt inquired to Dr. McAfee where the injection site would be for treating a patient with a headache, to which Dr. McAfee stated that he would inject in the suboccipital ridge. Dr. Heston prompted the Board to begin voting.

Dr. Barrington initiated a motion to approve Iovera, which was seconded by Christine Hill, however, Dr. Heston voted to deny, and Drs. Holt and Campbell recused. The Board tabled voting on Iovera until their next teleconference.

Task:

Dr. Heston will contact Myoscience for clarification on whether lidocaine is *required* for administering Iovera, and if cold spray can be used.

Agenda Item 7 Investigative Report

Time: 11:35 a.m.

The Board's investigator, Brian Howes joined the room to present his investigative report, which included activity from 04/14/2015 to 09/03/2015. There were 3 open actions, 1

under investigation, 1 monitor, and 1 complaint regarding sexual harassment. There had been three matters closed since the last investigative review period.

The Board discussed temporary licenses, to which Ms. Carrillo clarified that temporary licenses are valid until the date of the exam, and permanent licenses are not only contingent on passing the exam, but also whether the applicant has paid the license fee. It was also clarified that a licensee doesn't have to receive their physical license in the mail in order to practice, so long as they are practicing within their issue date. Mr. Howes then addressed sexual harassment, which can be a common complaint due to the physical nature of chiropractic.

Task:

Dr. Barrington will draft a position statement on sexual harassment.

Agenda Item 8 Budget Report/Division Update Time: 11:42 a.m.

Dr. Heston noted to the Board that there was no new financial information to discuss.

Agenda Item 9 Lunch Time: 11:43 a.m.

Dr. Heston motioned for lunch at 11:43 a.m.

Off Record at 11:43 a.m.

On Record at 12:58 p.m.

Agenda Item 10 ACS Update Time: 11:58 a.m.

Debbie and Sheri Ryan joined the room telephonically to discuss matters involving the Alaska Chiropractic Society. A concern regarding the worker's compensation fee schedule was brought to the attention of the Board, of which the Worker's Compensation Board approved. Debbie noted that the discussion is still ongoing and that feedback is expected within the 30-day public comment period. Debbie also added that the publication date of the fee schedule is not known, but that the ACS will keep the chiropractic profession updated on this issue. The Board briefly discussed the Medicaid expansion.

Sheri then addressed the ACS convention for 2016, which is scheduled for October 6th through October 9th and will offer at least 32 continuing education credits required for license renewal, including ethics, coding and documentation, as well as CPR. Sheri informed the Board that the ACS was in correspondence with the Dr. Antonucci from the Carrick Institute, who may potentially be instructing a course at the convention. It was also noted that the Carrick Institute and the I.C.P.A may be coming to Alaska to offer a diplomate of

neurology training and pediatric diplomate program, respectively. Other speakers will include instructors from Florida Chiropractic. Sheri added that the following course was approved:

- CCSP Management of the Extremities - Part 2 on Jan 15th – January 17th, 2016

Sheri also informed the Board that she had been in contact with the Alaska Physical Therapy Board, which intends on pursuing title protection of “physiotherapy” under their practice act.

Agenda Item 11 FCLB/NBCE Update

Time: 1:20 p.m.

Hearing nothing further on ACS updates, the Board moved to discussion on FCLB updates. Dr. Holt will be participating in administering the NBCE Part IV Exam on from November 13th-15th, 2015. Dr. Heston will be traveling to Coeur d’Alene, Idaho to participate in the FCLB district meeting on October 2-4th, 2015. Dr. Heston informed the Board that he had been tasked by the FCLB to present a discussion of different states and their statutes/regulations that do not permit prescription drugs and surgery within the profession, however, he expressed that he may not be presenting as this is currently a contentious topic in Alaska.

Dr. Heston also addressed Certified Clinical Chiropractic Assistants (CCCA), who stated that he was under the impression that other states were beginning to regulate assistants. According to Dr. Heston, only 3 states responded to their involvement with the CCA program; North Dakota does not have regulations set in place, but intends on accepting the program; Oklahoma recognizes the program; South Dakota accepts the program.

Ms. Carrillo asked for clarification on PACE approved courses. The Board clarified that PACE-approved courses, rather than any course provided by a PACE-approved provider should be accepted in regards to continuing education.

Agenda Item 12 Peer Review Committee

Time: 1:25 p.m.

The Board reviewed the Peer Review Committee roster. It was noted that three of the four members’ terms were ending on October 4th, 2015. Dr. Holt informed the Board that he had sent a welcome letter to Dr. Evan Frisk for his appointment to the committee. There were no peer review matters to review.

TASK:

Ms. Carrillo will send letters to the Peer Review members whose terms are ending to see if they would like to be reappointed.

Agenda Item 13 Public Comment

Time: 1:30 p.m.

Hearing nothing further on Agenda Item #12, Dr. Heston moved to discussion on public comment. Dr. Heston informed the Board that the chair of the Alaska Board of Massage Therapy, Amanda Unser would be joining telephonically to explain to the Board that massage therapists employed in chiropractic clinics are being encouraged to practice massage as chiropractic assistants. Dr. Barrington inquired to Ms. Unser whether this is also a concern for physical therapists, to which Ms. Unser stated that massage is acceptable when performed in conjunction with physical therapy. Dr. Heston commented the Chiropractic Board may write a position statement on this, and Dr. Campbell suggested to Ms. Unser to contact the Physical Therapy Board as well. Dr. Campbell also informed Ms. Unser that chiropractic adjustment is not within the massage therapy scope, and for the Massage Therapy Board to make their licensees aware of this restriction.

Task:

Dr. Barrington will write a position statement on massage therapists practicing as chiropractic assistants.

Agenda Item 14 Position Statements

Time: 1:35 p.m.

Dr. Barrington addressed position statements, and reiterated that he will be writing a position statement on sexual harassment (physical contact), advertising of free services (Groupon), and possibly a statement on massage therapy. The position statement on injectable nutrients is still tabled. Dr. Barrington addressed statute 08.20.170(8), which gives the Board discretionary power to address lewd or immoral conduct. In relation to fee-splitting, Dr. Barrington wrote a proposed definition revision for this statute, which was read as follows:

“...immoral or unprofessional conduct is defined as conduct which could violate standards of profession behavior, which through professional experiences, becomes established by consensus of the Board members as reasonably necessary for the protection of the public interest”.

Dr. Barrington commented that if defined as such, this could allow an open window for the Board to determine what circumstances are immoral or constitute unprofessional conduct, as is interpreted in the matter of Groupon-type advertising and illegal fee-splitting. The Board continued to discuss fee-splitting, and Dr. Heston commented to the Board that this would be included for discussion at the FCLB district meeting.

Dr. Heston motioned for break at 1:51 p.m.

Off Record at 1:51 p.m.

On Record at 1:57 p.m.

Agenda Item 15 Correspondence

Time: 1:57 p.m.

Ms. Carrillo distributed a hand-out from Steve Gray from the Chiropractic Digital Marketing Association. The Board determined that social media solicitation was not in line with public protection. The Board decided to refer this to the ACS.

TASK:

Ms. Carrillo will refer Steve Gray to the ACS.

Agenda Item 16 Administrative Business

Time: 2:00 p.m.

Hearing nothing further on correspondence, Dr. Heston moved to discussion on administrative business, and informed the Board that threatening letters had been received.

On a motion duly made by Dr. Barrington, and in accordance with AS 44.62.310, the Board moved to enter executive session for the purpose of discussing AS 44.62.310(4).

Off Record at 2:00 p.m.

On Record at 2:30 p.m.

The Board then moved to setting meeting dates. Ms. Carrillo advised the Board to keep in mind the financial report publication schedule when setting meeting dates, which are as follows:

1st Quarter (July – September) → Reports ready by the 15th of November

2nd Quarter (October – December) → Reports ready by end of January

3rd Quarter (January – March) → Reports ready by end of April

4th Quarter (April – June) → Reports ready by 15th of October.

The Board set subsequent meeting dates for FY16 as follows:

- October 8th, 2015 at 2:00 p.m. (*teleconference*)
- January 22nd, 2016 in Juneau
- May 20th, 2016 in Fairbanks
- October 7th, 2016 in Anchorage (*tentative*)

Task:

Ms. Carrillo will contact Boards and Commissions to correct the frequency of board meetings from 4 to 2.

The Board also acknowledged that Dr. Heston and Christine Hill's terms were ending on March 1st, 2016, and for the Board to look for a new public member.

Dr. Heston noted that Ms. Carrillo and one or two more Board delegates would attend the next FCLB/NBCE conference in Phoenix. Dr. Heston also stated to the Board that Christine Hill would be administering the jurisprudence exam to reinstatement applicant, Margaret Strickland after adjournment of the meeting.

It was noted that there were no wall certificates to be signed. The task list was briefly reviewed.

Agenda Item 17 Adjourn

Time: 2:50 p.m.

On a motion duly made by Christine Hill, seconded by Daniel Holt, and approved unanimously, it was

RESOLVED to adjourn the meeting at 2:50 p.m.

Respectfully Submitted by:

Laura Carrillo
Licensing Examiners

Approved by:

Dr. James Heston, Chair
Alaska State Board of Chiropractic Examiners