

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

Tuesday, February 11th, 2020

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 via teleconference on February 11th, 2020.

Tuesday, February 11th, 2020

Agenda Item 1

Call to Order/Roll Call

Time: 10:05 a.m.

The meeting was called to order by Chairman, Brian Larson, at 10:05 a.m.

Board members present, constituting a quorum:

Brian Larson, Doctor of Chiropractic
Jeffrey Reinhardt, Doctor of Chiropractic (arrived at 10:08 a.m.)
Jonathan Vito, Doctor of Chiropractic
James Morris, Doctor of Chiropractic
John Wayne Aderhold, Public Member

Division staff present were:

Thomas Bay, Occupational Licensing Examiner
Andy Khmelev, Acting Records and Licensing Supervisor

Present from the public were:

John Shannon, Doctor of Chiropractic
Edward Barrington, Doctor of Chiropractic
Richard Woolley, Doctor of Chiropractic (arrived at 10:19 a.m.)
Sheri Ryan, Chief Operating Officer, Alaska Chiropractic Society
Brian Yelverton, President, Alaska Acupuncture Association (arrived at 10:18 a.m.)
Signe Pignalberi, Practice Manager, Natural Health Center
Sean Logue, Office Director, Advanced Chiropractic

The Board of Chiropractic Examiners (BOCE) welcomed members of the public who were in attendance. Chairman Larson informed them that the board would need to address some board business before addressing the main topics of the teleconference, dry needling and needle EMG.

Agenda Item 2**Review/Approve Agenda**

Time: 10:11 a.m.

After the roll call, 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: 10:12 a.m.

The board reviewed the meeting minutes from December 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 December 23rd, 2019, as written.

Agenda Item 4**Board Business**

Time: 10:13 a.m.

Ethics Report

Dr. Larson addressed ethics reporting. There were no ethical violations to report. Wayne Aderhold mentioned that, although he did not have any ethical violations to report, he wanted to remind the board that when they talked about their scope of practice that he was not a chiropractor and wanted to make sure that the board wanted him to vote on the matter. Chairman Larson thanked Mr. Aderhold for asking but reminded him that he was the public member of the board, that his opinion was valued, and that he would be called for his vote at the time of voting. Dr. Larson asked the board's examiner, Thomas Bay, to move on to the next agenda item.

Voting Delegate for FCLB/NBCE

Mr. Bay informed the board that they needed to vote on a voting delegate to represent the board at the upcoming Federation of Chiropractic Licensing Boards (FCLB)/National Board of Chiropractic Examiners (NBCE) annual conference. Dr. Larson reminded the board that this conference will be held in Denver, Colorado, towards the end of April 2020. Mr. Bay reminded the board that two of them would no longer be on the board at the time of the conference. He informed them that he had reached out to the other three members to see if they would be available and that only Dr. Larson would be. At this time a member of the public joined the meeting. Dr. Larson asked who was present from the public. Brian Yelverton introduced himself as the president of the Alaska Acupuncture Association.

Brian Yelverton, President, Alaska Acupuncture Association, arrived at 10:18 a.m.

The board continued their conversation. Dr. Larson asked the board if they had any opinions on a voting delegate, to which they did not. He suggested that it would be helpful if they could get Mr. Bay to the conference so he could get more affiliated and work closer with the FCLB/NBCE. At this time a member of the public joined the meeting. Signe Pignalberi introduced Dr. Richard Woolley, who was on the conference line with her.

Richard Woolley, Doctor of Chiropractic, arrived at 10:19 a.m.

The board welcomed Dr. Woolley and continued their conversation. Dr. James Morris informed the board that he thought it would be a great opportunity for the board to get Dr. Larson and Mr. Bay to the conference. Dr. Larson and Mr. Bay agreed to attend the conference.

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

RESOLVED to have Dr. Brian Larson attend the FCLB/NBCE conference and represent the Board of Chiropractic Examiners as a voting delegate.

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		

The board moved onto the next agenda item.

Agenda Item 5

Old Business

Time: 10:22 a.m.

Scope of Practice – Dry Needling/Needle EMG

Dr. Larson began discussion on the topic of dry needling and needle EMG. He explained that for many years the board and chiropractors in the state have been dealing with scope of practice issues such as injectable nutrients and dry needling, in addition to several others. He also explained that current and past boards have opined that, with appropriate training and education, it is within the scope of practice of chiropractors to perform procedures other than spinal manipulation, such as dry needling and injections of various nutrients. He went on to say that the Department of Law (LAW) has consistently opined that these procedures are not within a chiropractor's scope of practice, particularly because these techniques or protocols require the use of needles.

Thomas Bay interjected and informed everybody in attendance that no direct names should be discussed in the meeting, and that if direct names were discussed the board would be required to go into Executive Session, which would also require public members to leave the meeting during that time. The board continued their discussion.

Dr. Larson explained that LAW had based their opinions on the board's current definition of surgery, as defined in 12 AAC 16.990(b)(2):

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

(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 further explained that LAW has opined that the use of a hypodermic needle incises living tissue, as stated in 12 AAC 16.990(b)(2)(A), and, therefore, performing dry needling or injecting a nutrient constitutes a surgical procedure. He went on to say that in the very next section, 12 AAC 16.990(b)(2)(B), it clearly states that surgery does not include venipuncture, which is the use of a hypodermic needle for puncturing the skin to enter a vain for the purpose of administering medications, taking laboratory samples, or administering contrast media for imaging studies. Dr. Larson explained that this has led to a direct conflict of what constitutes surgery. He also explained that LAW had pointed out that the board does have the authority to review and amend their definitions in regulation as needed. He further explained that the board received a directive from the Governor's Office that ordered all professional boards to review their statutes and regulations in an attempt to clean them up and bring them up to modern times, specifically looking at areas that would benefit the public and the professions. Dr. Larson informed everybody in attendance that the ABOCE had already begun a regulations project to amend the definition of surgery, specifically to redefine the definition of surgery to look similar to the State of Virginia's, which would clearly state that certain procedures such as acupuncture, dry needling, injectable nutrients, suturing, etc. do not constitute surgery, thus clearing up the issue of using a needle. At this time Dr. Larson, as Chair, invited Dr. John Shannon to speak for five minutes on dry needling/needle EMG, and informed others from the public that if they wanted to, they could speak after Dr. Shannon was finished.

Dr. Shannon thanked the board for allowing him to speak. He began by saying that the Attorney General's Office's opinion that dry needling/needle EMG constitutes surgery was absurd. He used other professions and their scope of practice to explain his reasoning. He explained that the scope of practice for acupuncturists explicitly excludes surgery, yet they use needles on a daily basis. He went on to say that physical therapists use dry needling, but that there is nothing in their statutes that allow for puncturing of the skin or dry needling. He asked why is it that these professions can do dry needling and it does not constitute surgery, but that when chiropractors do it, it does. He explained that even medical assistants, who earn a one-year technical degree, can give injections. He further explained that phlebotomists, who receive a several month-long certification, can use needles to draw living tissue out of the human body. He stated that chiropractors are allowed to do venipuncture in their scope of practice and that it requires a needle, which contradicts LAW's interpretation that using a needle constitutes surgery. He went on to say that chiropractors have statutory authority to do trigger point therapy, which, according to nearly all national definitions, includes massage, myotherapy, dry needling, and/or injections. He stated that, with all do respect, LAW's interpretation was meaningless and cited Director Sara Chambers' memorandum to the board from their December 23rd, 2019, board meeting, where she informed the board that neither the division or the Department of Law determine the scope of practice for any state licensed profession. He informed the board that he was dealing with a Worker's Comp case and that an attorney general argued that the procedures he does are not within a chiropractor's scope of practice, but that it was just an opinion and that it carried no legal weight. Dr. Shannon reminded the board that they had previously approved dry needling two years ago, but that they were going back on their decision based off of the December 23rd, 2019, meeting minutes. He informed the board that past chiropractic boards have approved needle EMG since 1992 or 1993. He expressed his frustration with the board's ruling because past boards have approved both dry needling and needle EMG for the better part of a quarter century and all of a sudden they are not allowed to perform them. He ended by stating that the Board of Chiropractic Examiners has the sole authority to make these determinations and requested that the comments in the December 23rd, 2019, meeting minutes be rescinded because it will dramatically affect businesses and the treatment of their patients, and that if something happens with dry needling or needle EMG in a chiropractic office malpractice insurance will not cover it. Dr. Larson thanked Dr. Shannon and asked Mr. Bay to explain the issue with the December 23rd, 2019, meeting minutes.

Mr. Bay explained that the board, during their December 23rd, 2019, meeting, used LAW's interpretation of dry needling and needle EMG constituting surgery to decide that they could not approve of them at that time because they were a questionable portion of practice. Mr. Bay explained that, although the board came to that decision, they never made a motion on the record to change their previous opinion, so their previous opinion was still in effect. Dr. Larson assured Dr. Shannon that the board's previous opinion had not been rescinded and reminded him that the board is working on a regulations project to clear up the confusion of what constitutes surgery. Dr. Larson asked if there was anybody else that would like to speak, to which Brian Yelverton said yes. Dr. Larson invited Mr. Yelverton to speak.

Brian Yelverton introduced himself as a currently licensed acupuncturist in Alaska and the president of the Alaska Acupuncture Association (AKAA). He explained that it is the AKAA's purpose to protect the health, welfare, and public interest of Alaskans in regard to their access to acupuncture in Alaska. He informed the board that the AKAA, National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), and the American Medical Association all share the very clear position that dry needling, myofascial trigger point needling and/or intramuscular stimulation should not be performed by anyone other than a licensed acupuncturist and/or medical doctor with a certification in medical acupuncture. Mr. Yelverton informed the board that he had recently found out that the BOCE wanted to add acupuncture into the chiropractic scope of practice. He expressed concern for the profession of acupuncture as well as the health and safety of Alaskans, stating that allowing all chiropractors to practice acupuncture without nationally recognized education in the field is both inappropriate and irresponsible. He also stated that dry needling is acupuncture and falls into the same category of unsafe and unregulated practice. He ended by saying that he values working collaboratively with both professions and does not wish to create an adversarial situation moving forward, but instead would appreciate the opportunity to work together in advocating for public safety and appropriate regulation. Dr. Larson thanked Mr. Yelverton and asked him to get any paperwork that he would like the board to see to Mr. Bay so they could address it at another time. He also asked Mr. Yelverton if he thought the AKAA would be amenable to allowing chiropractors to receive the same acupuncture training that is currently allowable for medical doctors. Mr. Yelverton said that he could not speak for the association, but that he thought it would be rational and appropriate. Dr. Larson and Mr. Yelverton agreed that there needs to be a standard set before acupuncture is introduced into chiropractic. Dr. Larson asked if there was anybody else that would like to speak, to which Sheri Ryan said yes. Dr. Larson invited Ms. Ryan to speak.

Sheri Ryan, Chief Operating Officer for the Alaska Chiropractic Society (ACS), asked if the BOCE's position statement on dry needling would be reposted to the board's website. The board assured her it would. Ms. Ryan informed the board that ACS will put out a message that they were in error regarding the practice alert that was sent out regarding the rescinded opinion of dry needling. Ms. Ryan asked how this information coincides with the December 23rd, 2019, meeting minutes where Mr. Bay was tasked with contacting a chiropractor to explain the board's decision on using needle EMG and dry needling. The board replied that they will stand by their previous opinion, that both procedures are allowable. Ms. Ryan suggested that the board amend their December 23rd, 2019, meeting minutes because it clearly stated that the board discussed the procedures and could not condone them. She expressed concern that chiropractors would have a hard time if the minutes were not amended. The board discussed Ms. Ryan's concern. Dr. James Morris asked if the board would need to come up with minimums if they amended the minutes. Dr. Jeffrey Reinhardt said that he did not think they needed to come up with minimums at that time, only that they needed to reestablish on the record that the board has supported these procedures for a very long time and that it was a mistake to change their opinion. He also said that the function of this meeting was not to come up with minimums, but to fix the mistake that was made. Wayne Aderhold agreed with Ms. Ryan, that the minutes should be

amended to reflect the board's opinion. He said that if they did not amend it then it would read the way it did, which was not a reflection of the board's opinion. Ms. Ryan explained that the way the minutes were written informed readers that the board could not approve of the procedures and having that in the minutes would be an issue because it basically says that the procedures are not in a chiropractor's scope of practice and would lead to malpractice insurance not covering them. Dr. Reinhardt agreed with both Ms. Ryan's and Dr. Shannon's stance, and recommended amending the minutes to reflect the board's opinion that both procedures are allowable. Dr. Morris raised his concern over the regulations project they had initiated at the last board meeting, stating that if they were to explicitly allow dry needling, they should have standards set in place so that not just anybody can do dry needling without the proper education and training. Dr. Larson suggested the board discuss standards for dry needling at their upcoming board meeting on February 28th, 2020, possibly through a regulations project. Dr. Larson asked Mr. Bay how the board would go about making a motion to amend their December 23rd, 2019, meeting minutes. Mr. Aderhold said that he did not think the board needed to amend the minutes but make a reversal of some kind because the minutes were written correctly. Ms. Ryan suggested that the board amend certain language from the minutes so that someone looking at those specific minutes would get the correct information. The board discussed possible motions to clear up the confusion in the December 23rd, 2019, meeting minutes.

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

RESOLVED to amend the meeting minutes from the December 23rd, 2019, teleconference meeting to reflect that the Board of Chiropractic Examiners does not agree with the Department of Law's stance on needle EMG and dry needling and that they are within the scope of practice for chiropractic, and also to put forward a proposal to outline the minimal education requirements at the next board meeting.

The board decided to strike language from the December 23rd, 2019, board meeting.

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

RESOLVED to strike from the December 23rd, 2019, meeting minutes the following verbiage, "The board discussed the topic and agreed, based on the interpretation from the Department of Law, that needle EMG is a questionable portion of practice, and that the board cannot approve of it at this time. The board tasked Mr. Bay with contacting Dr. Wilczak with their decision and to also let her know that they are working towards clarifying statute so that all who pursue advanced training and education can perform the things they are trained to do, and to hold off until there is a clear definition that allows for it. Mr. Bay asked the board if they wanted him to relay the same message to people who ask about dry needling, to which the board agreed," and the task for Mr. Bay to contact Dr. Wilczak.

Dr. Vito let the board know that he had to leave the meeting. The rest of the board stayed in attendance, constituting a quorum.

Jonathan Vito, Doctor of Chiropractic, left the meeting at 11:16 a.m.

Dr. Larson asked if there was anybody else that would like to speak, to which Brian Yelverton asked if he could speak again. Dr. Larson invited Mr. Yelverton to speak again.

Mr. Yelverton raised his concerns with dry needling, stating that there is no consistency with the education. He suggested the board look seriously at the amount of education and training that should be required in order to do dry needling. Dr. Richard Woolley asked if he could speak. Dr. Larson invited him into the conversation. Dr. Woolley explained that he had done dry needling for a long time and agreed with Mr. Yelverton's concerns regarding the issue of inconsistent education and training that is being offered and suggested that the board be thorough in the required education and training they intend to come up with. The board informed everybody in attendance that they intended on having competent standards, likely something similar to what a medical doctor would be required to get. Dr. Larson again asked Mr. Yelverton to submit any recommendations to Mr. Bay so he could get them to the board for review. Sean Logue, Office Director of Advanced Chiropractic, asked if he could speak. Dr. Larson invited him into the conversation. Mr. Logue mentioned that, although the board amended its previous statement and comments, the board's definition of surgery has not changed and asked if they were still subject to the malpractice issue until that definition is changed. The board assured him that they were working on a regulations project to amend that definition and were hopeful it would be completed in the near future. Mr. Bay informed everybody that the board would be addressing their regulations project at their upcoming board meeting in just over two weeks.

Dr. Larson thanked those present from the public for attending the teleconference, informed them that the board was finished speaking on dry needling and needle EMG, and would be moving on to their next agenda item.

Dr. Larson called for a break

Richard Woolley, Doctor of Chiropractic, left the meeting at 11:26 a.m.

Signe Pignalberi, Practice Manager, Natural Health Center, left the meeting at 11:26 a.m.

Off record at 11:26 a.m.

On record at 11:30 a.m.

Agenda Item 6

Correspondence

Time: 11:30 a.m.

The board began discussion on their last agenda item, correspondence from the Alaska Chiropractic Society, through Sheri Ryan. Ms. Ryan informed the board that the Alaska Physical Therapy Association was attempting to pass Senate Bill 47, which was mainly a cleanup bill, and that it included an attempt to own the title, "Physiotherapist." Ms. Ryan explained that it was ACS's concern that if they were granted the title of "Physiotherapist" it could lead to term protection and keep chiropractors from advertising physiotherapy services, which is an approved ancillary methodology of chiropractic in statute. She informed the board that the ACS Executive Board voted unanimously to write a letter in opposition of SB 47 and asked if the BOCE would do the same. Dr. Morris suggested the possibility of not being in total opposition of them adding that title into their language, but that if they did then the board should lobby to also add it into the chiropractic statutes. Dr. Larson explained that chiropractors should not be excluded from that title because it is a statutorily approved procedure in their statutes and being excluded is an infringement on their scope of practice. He also explained that other health professions are trained and allowed to do physiotherapies as well, and that it should not be an exclusive title. Ms. Ryan informed the board that the addition of the title would also result in a misdemeanor if it was used by another profession. She informed the board that the bill has had overwhelming support and no opposition. The board discussed these issues and agreed to write a letter in opposition of SB 47, specifically the addition of owning the term, "Physiotherapist." Dr. Larson volunteered to write the letter.

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

RESOLVED to have Dr. Larson write a letter in opposition to being excluded from the title, "Physiotherapist," as stated in Senate Bill 47, and to vote on it in OnBoard.

Mr. Aderhold suggested that if the bill was moving fast to make sure to track it, so their letter was sent to the correct place. Dr. Larson asked if there was anything else that the board needed to address, to which there was not. Dr. Larson thanked everybody for being in attendance and adjourned the meeting.

Agenda Item 7

Adjourn

Time: 11:49 a.m.

Having nothing left to address, the Alaska Board of Chiropractic Examiners's Chair, Brian Larson, adjourned the meeting at 11:49 a.m.

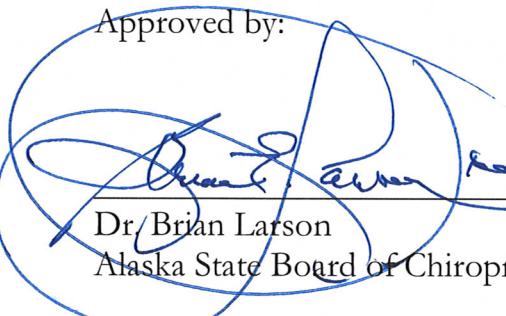
Respectfully Submitted by:



Thomas Bay
Licensing Examiner

02/28/2020
Date

Approved by:



Dr. Brian Larson
Alaska State Board of Chiropractic Examiners

2/28/2020
Date