

Board Members present: President Mickey E. Frame, D.C., Vice-President Kelly Roush, D.C., Rebecca J. Ault, D.C., Johnathan R. Haggerty, D.C. and Jessica Voltolini.

Others present: Kelly A. Caudill, Executive Director; Elizabeth Moore, Executive Assistant, LaTawnda Moore, AAG and Kimberly Stein, Investigator.

Members excused: None.

The Board's mission is...

to proactively protect the health and welfare of Ohio's citizens and to regulate the chiropractic profession with vision by setting high standards through examination of new doctors, annual license renewal, clinic inspections and timely investigation and disciplinary action when indicated.

CALL TO ORDER

President Dr. Frame called the four hundred and thirty-fourth Board meeting to order at 9:00 a.m. at the Vern Riffe Center for Government and the Arts; 77 South High Street, 16th Floor, Columbus, Ohio.

ADDITIONS/CORRECTIONS TO AGENDA

Director Caudill added the review of a Modification of Consent Agreement, Case No. 2018 CHR 025, to the agenda.

OATH OF OFFICE

President Dr. Frame introduced and welcomed newly appointed Board member Dr. Johnathan R. Haggerty and administered the Oath of Office.

REVIEW OF MINUTES

Ms. Voltolini moved and Vice-President Dr. Roush seconded a motion to approve the minutes of the December 6, 2018 Board meeting. Motion passed unanimously.

RATIFICATION OF CHIROPRACTIC LICENSES

Ms. Voltolini moved and Dr. Ault seconded a motion to ratify approval of the chiropractic licenses issued to Jonathan Claar, Caleb Miller, Elise Grasse, Timothy Godek, Stacey Brehm, Steven Gulla, Sara Dennison, Gabrielle Goldach, Derek Billing, Cory Sieniawski, Brandon Krueger, Andrew Ingram, Rebecca Russell, Tessa LaRue, Ryan Tropf and Mariejosse Vargas-Torres. Motion passed unanimously.

RATIFICATION OF PRECEPTORSHIPS

Dr. Ault moved and Vice-President Dr. Roush seconded a motion to ratify approval of the preceptorships for Isaac Banks with Dr. Nicholas Curry and Joshua Eversman with Dr. Johnathan Oliver. Motion passed unanimously.

PERTINENT CORRESPONDENCE

Director Caudill presented a letter from Dr. Adam Reed requesting the Board to consider waiving 22 hours of chiropractic CE required to renew his license based on the fact he solely treats indigent and uninsured persons as a volunteer for Caring Partners International.

The Board reviewed and discussed the matter and instructed Director Caudill to advise Dr. Reed that the Board commends him for his service to indigent and uninsured persons, but it is important

that he maintain his clinical competency and for this reason his request is denied.

EXECUTIVE DIRECTOR'S REPORT

Director Caudill reviewed the Executive Director's report with the Board which included the Board Docket, Legislative Matters, Administrative Rules, Budget, Investigative Statistics and miscellaneous matters.

Director Caudill reported that the FCLB Annual Meeting is scheduled for May 1-5, 2019 in Mission Bay, CA and the Board needs to vote today on attendance and voting delegates.

Director Caudill reported that Keiser University, College of Chiropractic Medicine, was awarded initial accreditation by the CCE in January 2019 and the first cohort will graduate in December 2019. Director Caudill stated she communicated with Keiser and advised of the Board's approval requirements so that their graduates may apply for Ohio licensure.

Director Caudill reported that per the Board's request at the December meeting, a draft policy to address licensees and stem cell therapy will be reviewed today.

Director Caudill reminded the Board members that their Annual Financial Disclosure Statements must be filed with the Ohio Ethics Commission on or before May 15, 2019 and annual ethics training must be completed by December 31, 2019.

Dr. Ault moved and Dr. Haggerty seconded a motion to accept the Director's Report as presented. Motion passed unanimously.

Vice-President Dr. Roush moved and Ms. Voltolini seconded a motion to approve the attendance of President Dr. Frame, Ms. Caudill and Ms. Moore at the FCLB Annual Meeting scheduled for May 1-5, 2019 in Mission Bay, CA. Motion passed unanimously.

Dr. Haggerty moved and Vice-President Dr. Roush seconded a motion to designate Dr. Frame as FCLB and NBCE voting delegate. Motion passed unanimously.

Vice-President Dr. Roush moved and Ms. Voltolini seconded a motion to approve Dr. Ault's participation in the NBCE Part IV Testing scheduled for May 17-19, 2019. Motion passed unanimously.

PRESENTATION: J.T. WAKLEY, Sr. AAG, Regulatory Board Unit Coordinator

Mr. Wakley gave a brief presentation regarding administrative hearings held in accordance with Ohio Revised Code (ORC) Chapter 119, concentrating on procedures, deliberations and orders.

JEFFREY R. SHOPE, D.C., ADJUDICATION HEARING, CASE NO. 2019 CHR 034

At 10:30 a.m. the matter of Jeffrey R. Shope, D.C. came for hearing in accordance with ORC Chapter 119 and Ohio Administrative Code (OAC) Chapter 4734, before the members of the Board: Jessica Voltolini, Esq. (Presiding); Vice-President Kelly J. Roush, D.C.; Rebecca J. Ault, D.C. and Johnathan R. Haggerty, D.C. As Board Designate, President Mickey E. Frame, D.C. was recused from active participation in the hearing and the deliberation process. The Board was represented by LaTawnda N. Moore, Esq., Associate Assistant Attorney General. Dr. Shope was represented by Todd W. Newkirk, Esq. Armstrong and Oakey, Inc. made a stenographic record of the proceedings at the Board's expense.

Ms. Voltolini was excused and departed the meeting at the conclusion of the hearing.

ADJOURN – 12:00 p.m.

Dr. Haggerty moved and Vice-President Dr. Roush seconded a motion to adjourn the meeting for the purpose of engaging as a quasi-judicial body for deliberations regarding the matter of Jeffrey R. Shope, D.C. Motion passed.

President Dr. Frame did not participate in the deliberations. The Board meeting was called back to order at the conclusion of the deliberations at 1:05 p.m.

Dr. Ault moved and Vice-President Dr. Roush seconded a motion to issue the following Adjudication Order to Jeffrey R. Shope, D.C.:

FINDINGS OF FACT

1. On or about November 15, 2018, **JEFFREY R. SHOPE, D.C.** filed an application for restoration of his chiropractic license.
2. On or about December 6, 2018, the Board issued a Notice of Proposed Refusal of License Restoration and Opportunity for Hearing (“Notice”) to **DR. SHOPE**.
3. On or about December 18, 2018, **DR. SHOPE** timely requested a hearing on this matter through his attorney in accordance with ORC § 119.07.
4. On or about December 20, 2018, the Board issued a Hearing Scheduling Notice setting **DR. SHOPE’S** adjudication hearing for February 14, 2019.
5. **DR. SHOPE** has two prior disciplinary actions with the Board, to wit: On or about October 27, 2017, the Board voted to Revoke **DR. SHOPE’S** license after finding that he had been convicted of one count of Health Care Fraud, in violation of Title 18, United States Code, Sections 1347 and 2; and, on or about June 30, 1998, **DR. SHOPE** entered into a Consent Agreement with the Board admitting to fraud, professional connection to false advertising, and pattern of fraudulent conduct to which he agreed to a Stayed Permanent Revocation of his license, one (1) year suspension, and indefinite probation which required **DR. SHOPE** to practice under a compliance monitor/mentor.
6. The preponderance of evidence establishes that, as alleged in Count 1 of the December 6, 2018 Notice, on or about February 8, 2016, in the United States District Court for the Southern District of Ohio, Case No. 2:15-cr-189, **DR. SHOPE** pled guilty to, and was convicted of, one count of Health Care Fraud, in violation of Title 18, United States Code, Sections 1347 and 2. These acts constitute acts or actions that demonstrate **DR. SHOPE** does not possess the character and fitness to practice chiropractic in the State of Ohio.

CONCLUSIONS OF LAW

1. Pursuant to ORC Chapter 4734, respondent **JEFFREY R. SHOPE, D.C.** is subject to the jurisdiction of the Board in actions taken in regard to the application for license restoration he submitted on or about November 15, 2018.
2. Pursuant to ORC Chapter 4734, the Board is authorized to take action with respect to **DR. SHOPE’S** application upon sufficient cause to believe he does not meet the requirements

- for licensure as outlined in ORC § 4734.31 and § 4734.34.
3. Pursuant to ORC § 4734.31(A), the Board may refuse to restore a license to practice chiropractic to an applicant upon sufficient proof that the applicant has violated or attempted to violate any provision of ORC Chapter 4734.
 4. Pursuant to ORC § 4734.34, the Board shall consider the moral character and the activities of the applicant since the Board's action was taken, in accordance with the standards for issuance of a license, as established under ORC § 4734.20.
 5. Pursuant to ORC § 4734.20, the burden of proof is on the applicant to the Board to prove, by clear and convincing evidence, that the applicant meets the conditions for receipt of the license.
 6. Pursuant to Ohio Administrative Code (OAC) § 4734-4-09, the Board may take administrative notice of its own records. **DR. SHOPE** has a prior disciplinary record with the Board in Case Nos. 2013 CHR 008 and 97 OBCE 121.
 7. The conduct described in Finding of Fact No. 6 constitutes acts or actions that demonstrate that **DR. SHOPE** does not possess the character and fitness to practice chiropractic in the state of Ohio, pursuant to ORC Section 4734.31 and 4734.34 and OAC § 4734-6-09.
 8. The Board finds that the aggravating factors set forth in OAC § 4734-6-09 outweigh the mitigating factors outlined in the rule. The Board finds that the following factors are present in this case and mitigate against granting **DR. SHOPE** restoration of his license: (C)(1) Conviction of a crime; (C)(6) a pattern of disregard of the laws of this state; (C)(9) acts involving dishonesty, fraud, deceit, or misrepresentation; (C)(10) abuse of the health care system; (C)(11) neglect of financial responsibilities; (C)(12) neglect of professional obligations; (C)(15) disciplinary action by a chiropractic disciplinary agency. The Board also found that, pursuant to OAC 4734-6-09 (D) the above should be given strong weight due to the relative recency of **DR. SHOPE'S** criminal conviction, the seriousness of the conduct that led to that conviction, and that public confidence in the chiropractic profession may be damaged if **DR. SHOPE** is licensed. The Board also found that the following facts were mitigating: **DR. SHOPE** hired a compliance officer and served his community by coaching. The Board finds that **DR. SHOPE** did not demonstrate that he possesses the necessary character and fitness to practice chiropractic in the state of Ohio. The Board is authorized to refuse to restore **DR. SHOPE'S** license pursuant to ORC § 4734. 31 and § 4734.34 and OAC § 4734-6-09, as alleged in Count 1 of the December 6, 2018 Notice.

ORDER

On the basis of the above Findings of Fact and Conclusions of Law, the Board hereby **ORDERS**:

The application of **JEFFREY R. SHOPE, D.C.** for restoration of his license to practice chiropractic in the State of Ohio is hereby **REFUSED**.

Voting Aye: Vice-President Dr. Roush, Dr. Ault and Dr. Haggerty. Voting Nay: None. Abstaining: President Dr. Frame. Motion passed.

FIVE YEAR RULE REVIEW

The following rules are up for five year rule review: 4734-5-02, 5-03, 6-01, 6-02, 6-04, 6-08, 8-

01, 8-04, 8-07, 9-02, 9-07 and 11-01. Director Caudill advised that the rules were sent out for early stakeholder input on January 11, 2019 to all licensees, chiropractic colleges, and those on the early stakeholder notification list.

The Board reviewed the following comments received in response to the early stakeholder request for input:

4734-5-02

No stakeholder comment received.

4734-5-03

No stakeholder comment received.

4734-6-01

No stakeholder comment received.

Director Caudill recommended minor changes to the rule to update requirements to align with online eLicense applications.

4734-6-02

No stakeholder comment received.

Director Caudill recommended minor changes to the rule to update requirements to align with online eLicense applications.

4734-6-04

No stakeholder comment received.

Director Caudill recommended minor changes to the rule to update requirements to align with online eLicense applications.

4734-6-08

No stakeholder comment received.

4734-8-01

Dr. Chris Mabry recommended removing the language requiring the chiropractor provide emergency treatment for up to thirty days from the date the letter dismissing the patient from care is mailed. Dr. Mabry also recommended removing the language requiring the chiropractor offer to transfer records to a new chiropractor upon receipt of a signed authorization.

4734-8-04

No stakeholder comment received.

4734-8-07

Dr. Chris Mabry recommended reducing the notification requirements to patients who received chiropractic services within the past two years to six months.

4734-9-02

Dr. Preston Kruse recommended the rules be changed because they are not currently being enforced. Dr. Michael McIntyre recommended the Board require that only chiropractors own chiropractic clinics since unlicensed owners who telemarket are not regulated by the Board or held accountable for bad telemarketing.

Attorney Keith Karr provided comment and requested the rule remain unchanged on behalf of Drs. Alexander Ribble, Brett Blitzstein, Thomas Hall, Mike Adamets, Robert Whetstone, Ty Dahodwala, Roy Korth, Stephen Getzik, Kevin Jenkins, Deidra Brumfield, Todd Graves, Patrick O'Bryan, Timothy Dooley, Dan Lara, Chad Lemmink, Rick Tangerman, Timothy Moore, Justin Wirick, Jennifer Ross, David Copp, Bi Nguyen and Thomas Gudaitis recommended leaving the rules unchanged. Attorney Karr also provided verbal comment reiterating the request that the rule remain unchanged. Dr. Brian House provided verbal comment stating that something needs fixed because the rule is not being followed.

4734-9-07

Dr. David Kauffman recommended that the Board define the percentage of discount for time of service discounts and the Board should amend the rule to permit write offs of co-pay or deductible balances of \$5 to \$10. Drs. Chris Mabry, Megan DeTray Parks and Brian Fall recommended removing the \$75 limit on promotion items.

4734-11-01

Director Caudill recommended minor changes to the rule to update requirements to align with online eLicense applications.

Upon review of the rules and stakeholder comments, Vice-President Dr. Roush moved and Dr. Ault seconded a motion to propose the following:

No amendment to rules 4734-5-02, 5-03, 6-08, 8-04, 9-02 and 9-07.

Amend rules 4734-6-01, 6-02, 6-04 and 11-01 to update requirements to align with online eLicense application; amend rule 4734-8-01 to eliminate notification requirements to patients, or patient representatives, who display threatening or disruptive behavior towards their chiropractor, staff or other patients; and, amend rule 4734-8-07 to reduce the notification to patients who received chiropractic services within the past two years to six months.

Motion passed unanimously.

Director Caudill advised she will prepare the rules as directed, along with a Business Impact Analysis Form, and send the documents to stakeholders requesting review and comments to the Common Sense Initiative Office and the Board.

LEGAL ACTIVITIES

VOLUNTARY PERMANENT SURRENDER OF LICENSE TO PRACTICE CHIROPRACTIC IN THE STATE OF OHIO, CASE NO. 2018 CHR 053

Vice-President Dr. Roush moved and Dr. Haggerty seconded a motion to accept the proposed Voluntary Permanent Surrender of License to Practice Chiropractic in the State of Ohio as presented. Voting Aye: Vice-President Dr. Roush, Dr. Ault and Dr. Haggerty. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

MODIFICATION OF CONSENT AGREEMENT, CASE NO. 2018 CHR 016

Dr. Ault moved and Dr. Haggerty seconded a motion to accept the proposed Modification of Consent Agreement as presented. Voting Aye: Vice-President Dr. Roush, Dr. Ault and Dr. Haggerty. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

NOTICE OF OPPORTUNITY FOR HEARING, CASE NO. 2019 CHR 044

Dr. Ault moved and Dr. Haggerty seconded a motion to accept the proposed Notice of Opportunity for Hearing as presented. Voting Aye: Vice-President Dr. Roush, Dr. Ault, and Dr. Haggerty. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

NOTICE OF OPPORTUNITY FOR HEARING, CASE NO. 2019 CHR 033

Vice-President Dr. Roush moved and Dr. Haggerty seconded a motion to accept the proposed Notice of Opportunity for Hearing as presented. Voting Aye: Vice-President Dr. Roush, Dr. Ault, and Dr. Haggerty. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

CONSENT AGREEMENT, CASE NO. 2019 CHR 004

Vice-President Dr. Roush moved and Dr. Ault seconded a motion to accept the proposed Consent Agreement as presented. Voting Aye: Vice-President Dr. Roush, Dr. Ault and Dr. Haggerty. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

MODIFICATION OF CONSENT AGREEMENT, CASE NO. 2018 CHR 025

Dr. Haggerty moved and Dr. Roush seconded a motion to accept the proposed Modification of Consent Agreement as presented. Voting Aye: Vice-President Dr. Roush, Dr. Ault and Dr. Haggerty. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

OLD/NEW BUSINESS

Director Caudill presented a draft in response to the Board’s request at the December Board meeting for guidance to offer licensees marketing for stem cell therapy services. Director Caudill’s draft guidance addresses marketing for any service performed at integrated practices for which a chiropractic physician conducts marketing, presentations, seminars, etc. The Board members requested the guidance be emailed to them for further review and if no concerns are brought forth to Director Caudill, to publish the guidance.

Dr. Haggerty moved and Dr. Ault seconded a motion to adjourn the meeting. Motion passed unanimously.

With no further business to be brought before the Board, President Dr. Frame adjourned the meeting at 3:15 p.m.

Approved By Majority of Board:

Attested By Its Secretary:

Mickey E. Frame, D.C.
President

Kelly A. Caudill
Executive Director

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