

KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS
REGULAR MEETING MINUTES
September 10, 2021

A regular meeting of the Kentucky Board Chiropractic Examiners was held at the Department of Professional Licensing located at 500 Mero Street, Frankfort, KY 40601 and via Zoom on September 10, 2021.

MEMBERS PRESENT

Dr. Kelly Cooper-Henson
Dr. James England
Dr. Chad Henderson
Dr. Shannon Johnson
Dr. Jeffery Smith

DEPARTMENT OF PROFESSIONAL LICENSING

Kevin Winstead, Commissioner
Tasha Stewart, Board Administrator

OTHERS

Leah Boggs, Public Protection Cabinet
Office of Legal Services, General Counsel
August Pozgay, Public Protection Cabinet
Office of Legal Services, Board Counsel

GUESTS

Dr. Rachel Wendt, KAC
Dr. Chip Salyers
Dr. Dennis Short

CALL TO ORDER

Dr. Smith called the meeting to order at 12:02 p.m.

MINUTES

A motion was made by Dr. Johnson to approve the minutes from the June 9, 2021 board meeting. Motion seconded by Dr. Cooper-Henson, carried.

FINANCIAL STATEMENT

The board reviewed the July and August 2021 financial statements. No action taken.

DPL UPDATE

Commissioner Winstead updated the board on the Legislative Special Session. Currently, the state of emergency will be extended January 15, 2022. DPL will continue to monitor the ongoing SOE.

Hybrid meetings will continue, giving board members and the public the option to attend meeting remotely or in-person. Masks are required for those attending in-person.

DPL staff continues to follow a hybrid work schedule with a maximum of three days allotted for work from home.

LEGAL COUNSEL

The board discussed an immunization and masking memorandum as drafted at the direction of Dr. Smith and presented by Mr. Pozgay. The board drafted a statement for Ms. Stewart to use when responding to inquiries to the board regarding immunization and masking issues. Dr. Henderson made a motion to amend the statement as follows: "We are looking into this issue. Until we have a final decision, we encourage you to refrain from signing immunization waivers, reach out to your own legal team, and contact your local health department for clarification."

Motion seconded by Dr. Johnson, carried.

Dr. Johnson made a motion to postpone the immunization and masking discussion until the next board meeting, have Dr. Smith reach out to Dr. Stack for clarification on waiver inconsistencies across health departments, and to allow Ms. Stewart to respond to immunization and masking inquiries with the above statement. Motion seconded by Henderson, carried.

Mr. Pozgay advised that no public comments were received concerning the board's proposed regulation amendments. The regulations will be heard at the October Legislative Research Committee meeting.

The board reviewed LRC-staff suggested amendments to 201 KAR 21:054 and 201 KAR 21:035. Dr. Johnson made a motion to accept the changes as presented. Motion seconded by Dr. England, carried.

Mr. Pozgay researched the peer review fee cap as instructed by the board and found no fee cap in regulations or statutes.

Mr. Pozgay reviewed *Com. v. Barlow*, 454 S.W.3d 862 (Ky. Ct. App. 2014), as instructed by the board, and found that regulation 803 KAR 25:190 is consistent with the lawsuit and does not cause conflict. Further, that regulation was amended by the Office of Workers' Claims to clarify that when the treatment under appeal is chiropractic treatment, the medical director shall seek the assistance of a qualified chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

Dr. Johnson made a motion to accept the draft FAQ statements as presented and post those to the board's website. Motion seconded by Dr. Cooper-Henson, carried.

OLD BUSINESS

Dr. Johnson made a motion to accept the continuing education audit process as presented, for it to take place four times per year, for the applications committee to appoint a lead and backup auditor, and for the auditor to ensure the course as presented matches the CE application. Motion seconded by Dr. Smith, carried.

NEW BUSINESS

Dr. Short updated the board on Campbellsville School of Chiropractic's progress. Currently, the building is complete and all equipment has arrived. Classes are slated to begin January 2022 and will be in-person. The school has a goal of 25 students for the first semester. Currently, 15 are in the application process and three of six professors have been hired. The school will have a ribbon cutting ceremony on October 15.

The board was advised that Dr. Smith and Dr. Johnson's travel requests to serve as NBCE Part IV exam proctors in November was approved. No action taken.

The board reviewed a scope of practice question and asked Ms. Stewart reach out with further questions.

Dr. England made a motion for Mr. Pozgay to draft a response to Pfizer's vaccination question, send to Dr. Smith for final approval, and then release to Pfizer. Motion seconded by Dr. Johnson, carried.

Dr. Henderson made a motion for Mr. Pozgay to draft a response to a fee processing question, send to Dr. Smith for final approval, and then release the response. Motion seconded by Dr. Johnson, carried.

APPLICATIONS COMMITTEE

The applications committee stated they have been busy reviewing an influx of application, but all is going smoothly.

Ms. Stewart reported 1130 inactive and active licensees. As of the report run time, 34 chiropractic and 12 peer review licensees have not completed their 2020 renewal. 948 licensees have completed their 2021 renewal.

STATUTES AND REGULATIONS COMMITTEE

The statutes and regulations committee provided an update to the ownership complaint. Dr. Johnson made a motion for the committee and Mr. Pozgay to draft regulation amendments to address this issue. Motion seconded by Dr. Henderson, carried.

The committee is working on the remaining docket items and will update the board soon.

COMPLAINTS COMMITTEE

The Complaints Committee presented the following recommendations for board vote:

2019KBCE0003 – ongoing

2019KBCE00005 – reject respondent’s counteroffer and counsel to propose the board’s original agreed order terms again. If an agreement cannot be reached, proceed to KRS Chapter 13B Hearing.

2020KBCE00001 – ongoing

2020KBCE00005 – dismiss and leave a permanent audit on the license

2020KBCE00007 – recommend agreed order with the following terms: continuing education on doctor-patient relations, pay the investigation fees, and two-year probation on condition of no new offenses. If an agreement cannot be reached, proceed to KRS Chapter 13B hearing

2020KBCE00011 – ongoing

2020KBCE00014 – ongoing

2021KBCE00001 – ongoing

2021KBCE00004 – ongoing

2021KBCE00008 – proceed to a KRS Chapter 13B hearing

2021KBCE00009 – proceed to a KRS Chapter 13B hearing

2021KBCE00010 – proceed to a KRS Chapter 13B hearing

2021KBCE00012 – ongoing

2021KBCE00013 – Board Administrator to request licensee provide proof of closing business with the Kentucky Secretary of State, and give licensee 20 days to respond; if proof received, board to dismiss

2021KBCE00014 – proceed to a KRS Chapter 13B hearing

2021KBCE00015 – proceed to a KRS Chapter 13B hearing

2021KBCE00016 – see 2021KBCE00025, propose agreed order to address both complaints

2021KBCE00017 – board counsel to refer to Kentucky Board of Barbering for potential joint investigation, refer to local law enforcement, and put KBCE investigators on hold

2021KBCE00019 – ongoing

2021KBCE00020 – send letter giving respondent 20 days to submit court documents to the board, postpone consideration pending receipt of court documents

2021KBCE00021 – board counsel to contact the complainant to gauge their willingness to be a witness, board to authorize board counsel to evaluate and assign to the investigative team if needed.

2021KBCE00022 – ongoing

2021KBCE00024 – ongoing

2021KBCE00025 – propose agreed order to include terms to complete SOS, with \$1000 fine, in 2021KBCE00016, and send medical records to complainant within 20 days of signing agreed order, with proofs; if not agreed, proceed to 13B hearing.

2021KBCE00026 - ongoing

ABC Complaint – provide investigators with letter drafted by board counsel for Dr. Smith to sign, to confirm investigators are working for the KBCE.

Massachusetts Complaints – ongoing

Crude Email - ongoing

Investigation (S.H.) – ongoing

Mask Complaint – Open complaint, ongoing

Active Agreed Orders – send reminder letters regarding noncompliance with agreed orders and if no response in 20 days, send to 13B hearing on grounds of noncompliance with agreed orders.

A motion was made by Dr. England to accept the above-listed complaint committee recommendations as presented for affirmative vote. Motion seconded by Dr. Johnson, carried.

TRAVEL AND PER DIEM

A motion was made by Dr. Johnson to approve the following per diem:


- Drs. Cooper-Henson, England, Henderson, Johnson, and Smith – September 10, 2021 meeting
- Dr. Cooper-Henson – July 11, 2021 (3 hours – applications review), July 18, 2021 (3 hours – applications review), July 25, 2021 (3 hours – applications review), August 2, 2021 (3 hours – applications review), and August 23, 2021 (3 hours – applications review).
- Dr. England – September 3, 2021 (3 hours –meeting preparation), September 8, 2021 (3 hours – complaints review and meeting preparation), and September 9, 2021 (3 hours – complaints review and meeting).
- Dr. Johnson – August 2, 2021 (3 hours – regulations and complaints review), August 12, 2021 (1 hour – meeting preparation), and August 23, 2021 (3 hours –meeting preparation).
- Dr. Smith – August 12, 2021 (3 hours – correspondence), and August 23, 2021 (1 hour – correspondence).

Motion seconded by Dr. Cooper-Henson, carried.

Dr. England made a motion to cancel the November 11 complaints committee meeting and the November 12 regular board meeting and schedule a special-called complaints meeting for November 18 and a special-called board meeting for November 19. Motion seconded by Dr. Johnson, carried.

ADJOURN

A motion was made by Dr. Johnson to adjourn the meeting at 2:46 p.m. Motion seconded by Dr. Smith, carried.



Dr. Jeffery Smith, Chair