

IDAHO BOARD OF CHIROPRACTIC PHYSICIANS
Bureau of Occupational Licenses
700 West State Street, P.O. Box 83720
Boise, ID 83720-0063

Board Meeting Minutes of 11/20/2015

BOARD MEMBERS PRESENT: Mary J White, DC - Chair
Herbert W Oliver, DC
Charles H Coiner
John Downey, DC

BOARD MEMBERS ABSENT: Kathleen J McKay, DC

BUREAU STAFF: Tana Cory, Bureau Chief
Dawn Hall, Administrative Support Manager
Maurie Ellsworth, General Counsel
Roger Hales, Naylor & Hales
Debbie Toncray, Technical Records Specialist I

OTHERS PRESENT: Ryan Fitzgerald, Idaho Association of
Chiropractic Physicians
Dr. Joe Betz, Idaho Association of
Chiropractic Physicians
Kris Ellis, Eiguren & Ellis
Dr. James Hollingsworth
Gerald A. Brookshire
Joseph Iaccino
Dennis Stevenson, Rules Coordinator,
Dept. of Administration,
Office of Administrative Rules
Dr. Shannon Ewing
Dr. James W. Kranz
Dr. Jon M. Harmon
Other individuals were present but did not sign in.

The meeting was called to order at 1:30 PM MST by Mary J White, DC.

Dr. White asked the audience to sign in.

APPROVAL OF MINUTES

Dr. Downey made a motion to approve the minutes of 10/1/2015. It was seconded by Dr. Oliver. Motion carried. Dr. Oliver made a motion to approve the minutes of 11/6/2015. It was seconded by Dr. Downey. Motion carried.

NEW BUSINESS

DISCUSSION WITH ASSOCIATION ON IDAHO CHIROPRACTIC PHYSICIAN ASSOCIATION'S (IACP) PROPOSED LAW CHANGE

Dr. White recognized Dr. Betz and Mr. Fitzgerald as they presented IACP's proposed law change. The Board discussed the proposal with Mr. Fitzgerald and Dr. Betz. Mr. Fitzgerald asked the Board to include the language provided in IACP's proposed law with the law that the Board will be submitting to the Legislature. Mr. Coiner said that it is the responsibility of the IACP to continue working on and submitting its proposed law change to the Legislature. Mr. Coiner said that the rules cannot go beyond the scope of the statute or expand the scope of practice.

TIMELINE FOR PROPOSED LAW AND RULE CHANGES

Dr. White reviewed the timeline regarding the proposed law and proposed rule change with the Board. Mr. Coiner asked if the timeline would be part of the minutes. Ms. Cory said it could be in the minutes or added as a link on the website. Dr. White and Mr. Coiner said it should be both in the minutes and on the website as a link (timeline attached below).

REVIEW COMMENTS ON PROPOSED LAW AND RULE CHANGES

Dr. White and Ms. Cory reviewed the process the Board took in order to submit the proposed rule change. Ms. Cory requested that Mr. Stevenson from the Department of Administration, Office of Administrative Rules, assist in explaining the process. Ms. Cory reviewed the steps the Board directed the Bureau to take in order to inform licensees of the proposed law and rule change. Mr. Hales reviewed the general themes of the comments that were received by the Board regarding the law and rule change. Dr. White said that if the Board does not make this change, there is a high probability that a concurrent resolution rejecting Rule 020 would be passed by Legislature.

EXECUTIVE SESSION

Mr. Ellsworth recommended the Board go into Executive Session to consider a threat of litigation.

Dr. Downey made a motion that the Board enter executive session to discuss the threat of litigation with counsel per Idaho Code § 74-206(1)(f). The purpose of the executive session will be to discuss the letter received by the Board which threatened litigation regarding Rule 020. It was seconded by Dr. Oliver. The vote was: Dr. White, aye; Dr. Downey, aye; Dr. Oliver, aye; and Mr. Coiner, aye. Motion carried.

Mr. Coiner made a motion to come out of executive session. It was seconded by Dr. Downey. The vote was: Dr. White, aye; Dr. Downey, aye; Dr. Oliver, aye; and Mr. Coiner, aye. Motion carried.

DISCUSSION ON PROPOSED LAW/PENDING RULE ADOPTION

Dr. White asked Ms. Cory to review the timeline on the proposed law and pending rule adoption and the Board's options moving forward. Ms. Cory said the Board has until November 27, 2015 to submit the pending rule to the Office of Administrative Rules. The pending rule would then be published in the January 6, 2016 bulletin. Ms. Cory said the deadline to submit the proposed law is December 4, 2015. Mr. Coiner made a motion to proceed with the proposed statute change. It was seconded by Dr. Oliver. The Board discussed the legislative process regarding proposed laws and rules. Ms. Cory provided more information regarding the timeline for submission of proposed laws. The motion carried; Dr. Oliver voted no.

Dr. White said the Board has reviewed all the comments that were provided on Rule 020. Ms. Cory reviewed the Legislative process from this point forward. She said that the proposed rule would be reviewed by the Senate and House Health & Welfare Committees in the 2016 Legislative session. Dr. Downey made a motion to move forward with the pending rule change. It was seconded by Mr. Coiner. The motion carried; Dr. Oliver voted no.

FCLB UPDATE

Dr. White said the Board was well represented at the recent FCLB District meeting. She reviewed the issues that were discussed at that meeting.

COMMUNICATION WITH LICENSEES

Dr. White said this was added to the agenda in order to be open with the licensees. She asked that Ms. Cory address the Board regarding the process. Ms. Cory reviewed the steps already taken by the Board and suggested sending a letter updating the licensees on the process, the proposals, the IACP's presentation to the Board, and letting them know the timeline and background material is on the Board's website. Mr. Coiner made a motion to draft a letter to the licensees and authorize the Chair to sign for the Board. It was seconded by Dr. Oliver. Motion carried.

APPLICATIONS

Dr. Oliver made a motion to approve the following for licensure:

CHIA-1697 Steven Thiele

It was seconded by Dr. Downey. Motion carried.

ADJOURNMENT

Mr. Coiner made a motion to adjourn the meeting at 4:00PM MST. It was seconded by Dr. Oliver. Motion carried.

Mary J White, DC, Chair

Kathleen J McKay, DC

Herbert W Oliver, DC

Charles H Coiner

John Downey, DC

Tana Cory, Bureau Chief

Introduction

The Idaho Chiropractic Practice Act regulates the practice of chiropractic in Idaho. The Board of Chiropractic Physicians is part of the executive branch of government and was created by statute to enforce and administer the Idaho Chiropractic Practice Act. As a governmental entity the Board's sole purpose is to protect the public health, safety, and welfare.

One of the Board's powers to carry out its charge is to establish administrative rules as necessary to implement the provisions of the Idaho Chiropractic Physicians Act. These rules are subordinate to the laws that comprise the Idaho Chiropractic Physicians Act, and they cannot expand beyond what the law authorizes.

Every agency that has rulemaking authority has to follow specific timeframes, processes, and procedures. These include review by the governor's office, publishing of notices in the Idaho Administrative Bulletin, and an ultimate review by the legislature.

Background to Previously Proposed Law Change to the Scope of Practice

May 2, 2014 – Public Meeting of the Board

The Board was advised by legal counsel from the Idaho Attorney General's Office about a conflict between the interpretation of Rule 020 and the scope of practice established in the statutes. Specifically, there was concern that Rule 020 went beyond the limits of a chiropractor's scope of practice set forth in Idaho Code § 54-704(2). It was recommended that any change to the Chiropractic scope of practice be done through the legislative process to change Idaho Code § 54-704(2). The Board was advised that ideally changes to the scope of practice are brought by the profession's association because those issues are driven by the industry.

The Board decided to invite the Idaho Association of Chiropractic Physicians (IACP) to the next meeting to discuss a joint effort to change the law and review Rule 020. The Board subsequently created a subcommittee to work on a proposal.

May 30, 2014-September 11, 2014 – Subcommittee and Board meetings on Legislative Proposal for Scope of Practice relating to Clinical Nutritional Methods

Subcommittee meetings and Board meetings were held to craft a legislative proposal to amend the statutory scope of practice as it related to use of clinical nutritional methods.

Subcommittee members included:

Dr. Henze, D.C. (Board member); Dr. Gaertner-Ewing D.C.; Dr. West D.C.; Ryan Fitzgerald, IACP; Molly Steckel, Idaho Medical Association; Representative from Board of Medicine; Representative from Board of Pharmacy; Reed Phillips, D.C., PhD.

Board meetings held in 2014: May 30, June 27, July 11, Aug. 1, Aug. 22, Sept. 5, Sept. 11.

Minutes available through the Board website at:

<http://ibol.idaho.gov/IBOL/BoardAdditional.aspx?Bureau=CHI&BureauLinkID=70>

September 15, 2014 – Final draft of proposal sent to Governor's Office.

Deadline to submit final legislative proposal to Governor's Office for review.

September 15, 2014-October 2014 - Final draft of proposal sent to industry and regulatory entities.

Final draft of legislative proposal sent to Board of Veterinary Medicine, the Board of Pharmacy, the Board of Medicine, the Idaho Medical Association, and the Idaho Association of Chiropractic Physicians.

November 11, 2014 – Disapproval by the Governor's Office

Legislative proposal disapproved by the Division of Financial Management in Office of the Governor.

January 30, 2015 – Public Meeting of Board

The Board was informed that its proposed law regarding the scope of practice was not approved by the Governor's Office and returned to the Board. The Board was advised by the Governor's Office that as a scope of practice issue, the legislation needed to be brought by the industry association rather than the Board.

Dr. Henze, a Board member, reported that Ryan Fitzgerald, Executive of the Idaho Association of Chiropractic Physicians called him and reported that the Idaho Chiropractic Association had drafted a Bill and would be presenting it for the 2015 Legislation Session.

Minutes available through the Board website at:

http://ibol.idaho.gov/IBOL/CHI/Minutes/CHI_MINUTES_2015-01-30.pdf

**Timeline and Background for Board of Chiropractic Physicians
Rulemaking – Docket No. 24-0301-1501**

Wednesday, March 18, 2015 – Hearing of House Health and Welfare Committee

Representative Fred Wood, Chairman of the House Health and Welfare Committee, introduced RS 23876 (which became HCR 20) rejecting IDAPA 24.03.01.020 stating that the Board was being given notice and an opportunity to work on an amendment before the 2016 legislative session to resolve concerns that the language of Rule 020 was inconsistent with the legislative intent.

Interested Parties in Attendance: Ryan Fitzgerald, IACP

[March 18, 2015 Amended Agenda & Minutes of the House Health & Welfare*](#)
[HCR 20 Bill Text & Statement of Purpose](#)

**Representative Wood stated in committee that he had discussed the issue with the Board, but he actually discussed the issue with the IACP.*

Tuesday, March 24, 2015 – Public Meeting of the Board

The Board discussed HCR 20 with Representative Wood. The Board directed the Chair to work with the Bureau on developing a plan to work to address these issues and bring a report to the May 1, 2015 Board meeting.

Interested Parties in Attendance: none

March 24, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

March 24, 2015 Minutes of the Board of Chiropractic Physicians

Friday, May 1, 2015 – Public Meeting of the Board

The Board discussed the concerns about Rule 020 and Idaho Code § 54-704. It was discussed that the administrative rules may not exceed what the laws allow. The Board decided to work on modernizing Idaho Code § 54-704 and revisions to Rule 020 to bring it in line with the statute.

Interested Parties in Attendance: Kris Ellis and Tony Smith, Eiguren, Fisher & Ellis.

May 1, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

May 1, 2015 Minutes of the Board of Chiropractic Physicians

Friday, June 12, 2015 – Public Meeting of the Board

The Board reviewed proposed changes to Idaho Code § 54-704(2)(b) and proposed changes in Rule 020. The specific language updating the definition in the law regarding the prohibition on the use of legend and prescriptive drugs was discussed. Additionally, the Board reviewed the proposed revisions to Rule 020.

The Board recognized Ryan Fitzgerald of the IACP who informed the Board that the IACP had been discussing the law and rule changes with Representative Wood. He reported that the IACP would be providing education to chiropractors regarding the issue. He also informed the Board that the IACP was working on draft legislation that was broader in scope.

Interested Parties in Attendance: Ryan Fitzgerald, IACP; Tony Smith, Eiguren, Fisher & Ellis

June 12, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

June 12, 2015 Minutes of the Board of Chiropractic Physicians

Friday, July 17, 2015 – Public Meeting of the Board

The Board reviewed in detail the specific proposed language changes to Idaho Code § 54-704(2)(b) and Rule 020. The Board passed a motion to submit the proposed language for the law and rule changes to the Governor's Office.

Ryan Fitzgerald of the IACP addressed the Board and stated that the IACP had met with Representative Wood about the law and rule changes. The IACP was also researching curriculum regarding the use of prescriptive drugs in chiropractic; however, the IACP did not have a presentation at that time.

Interested Parties in Attendance: Ryan Fitzgerald, IACP; Tony Smith, Eiguren, Fisher, Ellis
July 17, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians
July 17, 2015 Minutes of the Board of Chiropractic Physicians

Tuesday, September 1, 2015 – Proposed Rule approved by Governor's Office

Division of Financial Management of the Office of the Governor notifies the Bureau of final approval for proposed rule change.

Thursday, October 1, 2015 – Public Meeting of the Board

The Bureau reported that the draft language for the law change had been submitted to the Governor's Office and the proposed rule change had been submitted for publication in the October 7, 2015 Administrative Bulletin. It was noted that the proposed law and rule changes would be linked to the Board's website, and notifications sent to interested parties.

The Board reviewed and approved a letter that would be reviewed by the Governor's Office and then sent to all licensees regarding the proposed law and rule changes.

Interested Parties in Attendance: none

Oct. 1, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

Oct. 1, 2015 Draft Minutes of the Board of Chiropractic Physicians

Proposed Law & Rule section of Board's website

Wednesday, October 7, 2015 – Notice of Rulemaking published in Administrative Bulletin

Idaho Administrative Bulletin, October 7, 2015, Vol. 15-10, pp. 416-417

Friday, October 9, 2015

Bureau notifies IACP that the law and rule changes are available on the Board's website.

Wednesday, October 14, 2015 – Letter sent to all licensees regarding law and rule changes

Letter to all licensees from the Chair of the Board with notice and information of law and rule changes.

Friday, October 16, 2015 – Notice to legislative advisors of availability of law and rule changes

Bureau notifies legislative advisors that commonly work with Boards served by the Bureau that the proposed law and rule changes for each Board are available on their respective websites.

Friday, October 23, 2015 - Notice of Public Hearing posted; notification to IACP

Notice of Public Hearing published on Board website, and Bureau personally notifies Ryan Fitzgerald, Executive of IACP, of Public Hearing.

Notice of Public Hearing added to Proposed Law & Rule section of Board's website

Notice of Public Hearing

Tuesday, October 27, 2015 – Notification sent to interested parties regarding Public Hearing

Email to all individuals requesting a public hearing on the rulemaking providing them with notification of Public Hearing.

Wednesday, October 28, 2015 – Postcard sent to all licenses regarding Public Hearing

Board mails a postcard to all licensees providing them with notification of Public Hearing.

Wednesday, November 4, 2015 – Notice of Public Hearing published in Administrative Bulletin

Publication of Notice of Public Hearing in Administrative Bulletin

Friday, November 6, 2015 – Public Meeting of the Board

The Bureau reviewed the timeline of the law and rules changes and that enough comments on the proposed rule had been received to hold a public hearing, which had been scheduled for November 10, 2015. The process for the hearing was also reviewed. The Board also reviewed the proposed law change and the letter that was sent by the Board to all licensees.

The Board also reviewed an email request from Ryan Fitzgerald, Executive of the IACP, for the Board to review a conceptual piece of legislation. The Board decided to invite Mr. Fitzgerald and the IACP to the next meeting of the Board and requested that the Board be allowed to review the proposed legislation or concept prior to that date.

Nov. 6, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians

Nov. 6, 2015 Draft Minutes of the Board of Chiropractic Physicians

Tuesday, November 10, 2015 – Public Hearing on Rulemaking

Public Hearing on rulemaking.

Friday, November 20, 2015 – Public Meeting of the Board

Nov. 20, 2015 Agenda for the Meeting of the Board of Chiropractic Physicians