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

Others present: Kelly Caudill, Executive Director; Elizabeth Moore, Executive Assistant; Kendra Lindsey, Paralegal; Kim Stein, Investigator; and LaTawnda N. Moore, Associate AAG. James T. Wakley, Senior Assistant AAG was present from 1:00 p.m. to 2:00 p.m. Ashley Wunderle, D.C. was present from 12:00 p.m. to 12:45 p.m.

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 forty-sixth Board meeting to order at 12:00 p.m. via Microsoft Teams.

REVIEW OF MINUTES
Vice-President Dr. Ault moved and Dr. Haggerty seconded a motion to approve the minutes of the December 3, 2020 Board meeting. Motion passed unanimously.

Dr. Rich moved and Ms. Voltolini seconded a motion to approve the minutes of the January 14, 2021 Board meeting. Motion passed unanimously.

RATIFICATION OF CHIROPRACTIC LICENSES
Dr. Haggerty moved and Ms. Voltolini seconded a motion to ratify approval of the chiropractic licenses issued to Lydia Cook, George Nobles, Ashley Rice, Kellee Leonard, Ryan Funke, Michael Scarton, Michael Krestsoulas, Tyler Kemp, Elisha Jones, Kaitlin Bronk, Joanna Consiglio, Adam Maple, Tanner Stoffer, Michael Hozan, Derek Ketchum, Logan Jones, Tyler Kaye, Mark Cooper, Dean Patrick, Austin Voigt, Erene Mihalas, Stephen Racanelli, Daniel Martin, Andrew Keith, Alexis Williams, Mark Boynton, Emily Butler, Heather Baker, Wendy Reick, Jordan Rozich, Danielle Mangas, Chelsea York, David Crawford, Richard Miller II, Ethan Brunet, Katelyn Thomas, Henry Laux, Shawn Richey, Benjamin LaGard, Brandon Brooks, Troy Bubanic and Michael Abood. Motion passed unanimously.

RATIFICATION OF ACUPUNCTURE CERTIFICATE
Vice-President Dr. Ault moved and Ms. Voltolini seconded a motion to ratify approval of the acupuncture certificate issued to Drs. Roger McMillen, John Herrmann and Brenden Roger Hales. Motion passed unanimously.

RATIFICATION OF PRECEPTORSHIPS
Vice-President Dr. Ault moved and Ms. Voltolini seconded a motion to ratify approval of the preceptorships for Thomas Murtaugh with Dr. Timothy Keyes; Brian Faust with Dr. Douglas Darr II; Joshua Reel with Dr. Douglas Darr II; Sky Shelby II with Dr. Mark Spears; Shelby
Forrester with Dr. Megan Parks and Thaddaeus Schrickel with Dr. Douglas Hosey. Motion passed unanimously.

EXECUTIVE DIRECTOR’S REPORT
Director Caudill reviewed the Executive Director’s report with the Board which included the Board Docket, Legislative Matters, Administrative Rules, Investigative Statistics and miscellaneous matters, specifically:

Associate AAG Moore updated the Board on the complaint for Declaratory and Injunctive Relief filed August 30, 2019 in the US District Court, Northern District, against the Attorney General, the General Assembly and the Board regarding the telemarketing ban enacted in Am, Sub, H.B. 166.

Director Caudill reported that she testified in the House Finance Health and Human Services Committee on the Board’s 2022/2023 budget request on February 17, 2021.

Director Caudill reported that HB 263 passed and will become effective April 12, 2021. This bill revises the initial occupational licensing restrictions applicable to applicants convicted of criminal offenses. The Board will be required to begin annually filing information regarding convictions disclosed on applications and abide by provision regarding applicants convicted of certain crimes.

Director Caudill reported that several inquiries have been received regarding vitamin injection and she has responded that it is not within the scope of practice at this time.

Important upcoming dates including the FCLB Annual meeting being held virtually on May 1, 2021; NBCE Part IV Exam scheduled for May 22-23 and November 12-14; and the NBCE Part IV Test Committee meeting scheduled for June 11-12.

Director Caudill reported that the FCLB and NBCE voting delegate and alternate delegate need to be designated as well as those Board members interested in participating in the NBCE May Part IV Exam and/or the June Test Committee meeting.

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

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

2021 BOARD MEETING DATES
The Board set the following dates for the remaining meetings of 2021: June 8, August 5, October 1 and December 9.

LEGAL ACTIVITIES

CONSENT AGREEMENT MODIFICATION, CASE NO. 2020 CHR 007
Vice-President Dr. Ault moved and Dr. Haggerty seconded a motion to approve the proposed Consent Agreement Modification as presented. Voting Aye: Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.
AGREEMENT, CASE NO. 2020 CHR 016
Vice-President Dr. Ault moved and Ms. Voltolini seconded a motion to approve the proposed Agreement as presented. Voting Aye: President Dr. Frame, Vice-President Dr. Ault, Dr. Rich and Ms. Voltolini. Voting Nay: None. Abstained: Dr. Haggerty. Motion passed.

CONSENT AGREEMENT, CASE NO. 2020 CHR 042
Ms. Voltolini moved and Dr. Haggerty seconded a motion to approve the proposed Consent Agreement as presented. Voting Aye: President Dr. Frame, Dr. Haggerty, Dr. Rich and Ms. Voltolini. Voting Nay: None. Abstained: Vice-President Dr. Ault. Motion passed.

CONSENT AGREEMENT MODIFICATION, CASE NO. 2020 CHR 063
Ms. Voltolini moved and Dr. Haggerty seconded a motion to approve the proposed Consent Agreement Modification as presented. Voting Aye: Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

NOTICE OF OPPORTUNITY FOR HEARING, CASE NO. 2021 CHR 030
Dr. Rich moved and Ms. Voltolini seconded a motion to issue the proposed Notice of Opportunity for Hearing as presented. Voting Aye: Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. Voting Nay: None. Abstained: President Dr. Frame. Motion passed.

BRADLEY W. BRANHAM, D.C.; CASE NO. 2020 CHR 082
On or about October 30, 2020, the Board issued a Notice of Proposed Refusal of Application for Licensure and Opportunity for Hearing to Bradley W. Branham, D.C. Service of the Notice was perfected upon Dr. Branham. Dr. Branham failed to make a timely request for hearing in accordance with Ohio Revised Code Section 119.07.

The Board considered the charges against Dr. Branham in the October 30, 2020 Notice and evidence supporting the charges.

EXECUTIVE SESSION
Dr. Haggerty moved and Vice-President Dr. Ault seconded a motion to go into executive session for the purpose of deliberating on the matter of Bradley W. Branham, D.C., Voting Aye: Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. Voting Nay: None. Abstaining: President Dr. Frame. Motion passed.

President Dr. Frame called an executive session for the purpose of deliberating on the matter of Dr. Bradley W. Branham. James T. Wakley, Principal Assistant AG was also present for the deliberations. President Dr. Frame did not participate in the deliberations. The meeting was called back to regular session at 1:36 p.m.

Ms. Voltolini moved and Dr. Rich seconded a motion to issue the following Order to Dr. Branham:

The Board finds by a preponderance of the evidence that Dr. Branham does not demonstrate current fitness to practice chiropractic in the state of Ohio. Accordingly, the Board may refuse to issue Dr. Branham a license to practice chiropractic in Ohio, in accordance with ORC § 4734.20 and 4734.31 (C)(7) and Ohio Administrative Code Section 4734-6-01 (K) and hereby ORDERS that:
The Application of **BRADLEY W. BRANHAM, D.C.** for a License to Practice Chiropractic in the State of Ohio is hereby REFUSED.

This Order shall become effective immediately and is hereby entered upon the Journal of the Board for the 19th day of February 2021.

**Voting Aye:** Vice President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. **Voting Nay:** None. **Abstaining:** President Dr. Frame. **Motion passed.**

**DELIBERATIONS**

**JOSHUA L. HAYES, D.C.; CASE NO. 2020 CHR 045**

**RICHARD O. DUSTMAN, D.C.; CASE NO. 2020 CHR 050**

Prior to the consideration of the matters of Joshua L. Hayes, D.C. and Richard O. Dustman, D.C., Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini confirmed that they had reviewed the Hearing Officer’s Report and Recommendation, Hearing Transcript, State’s Exhibits, and Dr. Hayes’ Respondent’s Exhibits.

Dr. Haggerty moved and Dr. Rich seconded a motion to go into executive session for the purpose of deliberating on the matters of Joshua L. Hayes, D.C. and Richard O. Dustman, D.C., **Voting Aye:** Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. **Voting Nay:** None. **Abstaining:** President Dr. Frame. **Motion passed.**

President Dr. Frame called an executive session for the purpose of deliberating on the matters of Drs. Joshua Hayes and Richard O. Dustman. James T. Wakley, Principal Assistant AG was also present for the deliberations. President Dr. Frame did not participate in the deliberations. The meeting was called back to regular session at 1:59 p.m.

**JOSHUA L. HAYES, D.C.; CASE NO. 2020 CHR 045**

Vice-President Dr. Ault moved and Ms. Voltolini seconded a motion to accept the Findings of Fact and Conclusions of Law in the Hearing Examiner’s December 15, 2020 Report and Recommendation. **It is hereby ORDERED that:**

**JOHNSUA L. HAYES, D.C.** shall be Suspended for a term of one (1) year. Six months of the Suspension shall by Stayed pending **DR. HAYES’** completion of thirty-six (36) hours of continuing education on the topic of clinical documentation in the practice of chiropractic. **DR. HAYES** is further Ordered to pay a civil fine in the amount of: $1,500 for performing dry needling on Patient D; $2,500 for performing acupuncture on Patient C; and, $1,500 for failure to maintain patient records. **DR. HAYES** shall be subject to the Probationary terms and conditions in the Consent Agreement he signed in Case No. 2018 CHR 061 for an additional period of two (2) years, specifically through November 17, 2024.

This Order shall become effective immediately and is hereby entered upon the Journal of the Board for the 19th day of February 2021.

**Voting Aye:** Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. **Voting Nay:** None. **Abstaining:** President Dr. Frame. **Motion passed.**
RICHARD O. DUSTMAN, D.C.; CASE NO. 2020 CHR 050

Vice-President Dr. Ault moved and Ms. Voltolini seconded a motion to accept the Findings of Fact and Conclusions of Law in the Hearing Examiner’s January 6, 2021 Report and Recommendation. It is hereby ORDERED that:

RICHARD O. DUSTMAN, D.C. shall continue to be subject to the terms and conditions of the Consent Agreement he signed in Case No. 2019 CHR 012 for an additional two years, and further be subject to the following additional terms and conditions of Probation:

a. DR. DUSTMAN shall undergo a physical examination conducted by a physician of his choosing, approved by the Board. The examination will be for the purpose of making a determination as to whether or not he is physically able to perform the duties of a doctor of chiropractic. The examining physician is to make a written report to the Board within thirty (30) days of the examination. All professional fees associated with the examination and report shall be paid by DR. DUSTMAN. If the examining physician finds that DR. DUSTMAN is not capable of performing the duties of a doctor of chiropractic, DR. DUSTMAN will refrain from the practice of chiropractic for at least thirty days after which he may be re-examined.

b. DR. DUSTMAN shall pay Dr. Ronald Farabaugh in full for any unpaid fees related to the performance of his services as a compliance officer under Case No. 2019 CHR 012 unless he expressly agrees in writing to accept less.

c. DR. DUSTMAN shall identify a compliance officer in the manner set forth in the Consent Agreement under Case No. 2019 CHR 012 for the extended probationary period.

d. DR. DUSTMAN shall establish a reliable land line telephone at his office that has working voicemail or an answering machine that is remotely accessible. Once the phone line has been established, DR. DUSTMAN shall provide written notice of that telephone number to the Board and to his compliance officer.

e. DR. DUSTMAN shall arrange for a reliable electronic mail system that he can access twenty-four hours (24) per day, seven (7) days per week, three hundred and sixty-five (365) days per year. Once that system has been set up, DR. DUSTMAN shall provide a written notice of his email address to the Board and to his compliance officer.

f. DR. DUSTMAN shall establish a date and time once per month, every month, when he will call or meet face-to-face with his compliance officer to discuss progress on any compliance plan issues.

g. On Friday of each week, DR. DUSTMAN shall send an email to his compliance officer listing each patient that he saw during that week, using the first initial of their first and last name to conceal their identity. With regard to each such patient, DR. DUSTMAN will use a brief description of the services provided (e.g."manipulation" or "nutrition") and manner in which he was paid for the services (e.g. "cash" or "billed" or "third-party").
h. By the fifth (5) day of each month, the compliance officer will send an email to **DR. DUSTMAN** requesting to see treatment and billing records for any of the patients seen the preceding month. It is **DR. DUSTMAN**’s responsibility to provide copies of those records to the compliance officer within five (5) days of his receipt of that request. Each time that **DR. DUSTMAN** provides records of any kind to the compliance officer, he shall send an email to the Board certifying that he has done so.

i. On or before the end of each calendar quarter (March 31, June 30, September 30, December 31) **DR. DUSTMAN** shall arrange to meet face-to-face (or by video conference call, e.g. Zoom or Teams) with his compliance officer to review his progress over the three (3) months of that quarter, including his progress towards correcting deficiencies listed the previous quarter. Within forty-eight (48) hours following that face-to-face meeting or conference, **DR. DUSTMAN** shall send an email to the Board certifying that a quarterly face-to-face meeting has taken place.

j. On the first (1) day of every quarter (January 1, April 1, July 1, October 1), **DR. DUSTMAN** shall send an email to the Board, copied to his compliance officer, certifying that his account payable to the compliance officer has been satisfied.

This Order shall become effective immediately and is hereby entered upon the Journal of the Board for the 19th day of February 2021.

**Voting Aye:** Vice-President Dr. Ault, Dr. Haggerty, Dr. Rich and Ms. Voltolini. **Voting Nay:** None. **Abstaining:** President Dr. Frame. **Motion passed.**

**ADMINISTRATIVE RULES REVIEW**

Director Caudill reported that the following rules were sent out for stakeholder comment on January 15, 2021: 4734-9-02 Advertising and solicitation; 4734-9-06 Sexual misconduct; 4734-9-10 Conduct following action against a license and 4734-12-01 Animal chiropractic. The Board reviewed the following stakeholder comments that were received:

4734-9-02 Advertising and Solicitation:
Mike Schroeder, Injury Referral Group – concerned with contact only being initiated beginning twenty-four hours after the time of the accident and only once through telephone in any 48 hour period. Mr. Schroeder feels individuals with various health conditions are solicited and advertised to every day in multiple forms, including print, radio, TV, lectures and direct communication. Health care providers derive their income from treating the population. Placing a restriction on the ability to contact and educate individuals involved in MVAs restricts the providers’ ability to do business and can cause unnecessary delays in receiving care, which can lead to worsening of complaints and increased cost of care.

Director Caudill reported that she advised Mr. Schroder that the Board’s rule is promulgating the new law in ORC 1349.05.

4734-9-06 Sexual Misconduct:
Brian D. Royer, D.C. – Supports removing references to gender; feels it causes a problem using the words “pelvic area” and “breast.” States that using non-specific anatomical terms when defining
something as serious as sexual misconduct means that it is relying on the interpretation of the members of the Board to determine whether or not a licensee has committed an offense. Prefers to take as much of the interpretation out of the process as possible, current members of the Board will not always be on the Board and it is imperative that future Board members are clear on the intent of the rule and do not interpret the wording of the anatomy; concerned that the wording of this section would make it necessary for licensees to have an attendant/chaperone present for any examination of the shoulder, low back or hip.

Gregory A. Goffe, D.C. – requests that the term “pelvic area” be clarified, as it is routine for a chiropractor to contact the sacrum and/or the ilia during the routine course of care that would commonly be referred to as the “pelvic area.”

The Board instructed Director Caudill to respond the Drs. Royer and Goffe stating that most of the content of the rule, including the term pelvic area, has been in effect since 2013. There have been no instances of the Board misinterpreting or misusing the definition of sexual misconduct. Proposing discipline against a licensee is a serious matter that is reviewed thoroughly not only by the Board, but also by the Board’s legal counsel from the office of the Ohio Attorney General and therefore the Board is leaving the proposed amendments to the rule unchanged.

Dr. Rich moved and Dr. Haggerty seconded a motion to file rules 4734-9-02 Advertising and solicitation; 4734-9-06 Sexual misconduct; 4734-9-10 Conduct following action against a license and 4734-12-01 Animal chiropractic as presented, and provided a favorable CSI recommendation, proceed with filing the rules with JCARR with authority to Director Caudill to make any non-substantive changes that may be recommended by CSI and/or JCARR. Motion passed unanimously.

PERTINENT CORRESPONDENCE
Director Caudill presented a letter dated February 18, 2021 from David C. Radford, D.C. regarding vitamin B deficiency, stating: “The problem of vitamin B12 or cobalamin deficiency is one that our profession is able to address by virtue of education and licensing. The question in front of us today is will we recognize the signs and symptoms, and will we help these citizens of Ohio get the care they need?”

The Board thoroughly reviewed and discussed Dr. Radford’s correspondence and instructed Director Caudill to respond to Dr. Radford stating that it is within the scope of practice for chiropractors to diagnose and manage patients with vitamin deficiencies so long as they do so in accordance with the Board’s laws and rules. Those patients in need of greater intervention than what is within the scope of chiropractic should be referred to an appropriately licensed healthcare provider.”

Director Caudill presented a letter dated February 18, 2021 from Dr. Joseph Brimall, President and CEO of University of Western States regarding education and training for the administration of therapeutic agents orally, intranasally, and by intramuscular or subcutaneous injection.

The Board thoroughly reviewed and discussed Dr. Brimhall’s letter and found it informative. Since there were no questions posed in Dr. Brimhall’s letter, the Board did not instruct Director Caudill to respond.

Vice-President Dr. Ault moved and Dr. Rich 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 2:30 p.m.

Approved By Majority of Board:  

Mickey E. Frame, D.C.  
President

Attested By Its Secretary:

Kelly A. Caudill  
Executive Director