

**BOARD OF CHIROPRACTIC EXAMINERS
MINUTES**

DATE: January 26, 2017

TIME: 9:00 AM CST

LOCATION: Poplar Conference Room
665 Mainstream Drive, 1st Floor
Nashville, TN 37243

MEMBERS PRESENT: Chris Alexander, D.C., President
Curtis Damien, D.C., Board Member
Sheila Fitzgerald, Consumer Member, Secretary
Cole Hosenfeld, D.C., Board Member
Andrea Selby, D.C., Board Member

MEMBERS ABSENT: Joseph Amato, D.C., Board Member

STAFF PRESENT: Michael Sobowale, Unit Director
Marcina Egedegbe, Board Administrator
Mary Webb, Board Administrator
Jared W. Smith, Unit Manager
Mark Cole, Assistant General Counsel
Nichelle Dorroh, Office of Investigations
Noranda French, Finance Office

GUESTS: John Williams, JD, TCA
Tiffany Stevens, Executive Director, TCA

Call to Order

Roll call of the Board members was initiated by Marcina Egedegbe, Board Administrator. With a quorum present, Dr. Alexander called the meeting to order at 9:14 AM. A roll call of the Administrative staff was conducted including introductions of new board staff members Jared W. Smith, Board Manager and Crystal Bloom, Licensing Technician.

Minutes

After a review of the minutes from the October 20, 2016 board meeting Dr. Hosenfeld made a motion, seconded by Dr. Selby, to accept the minutes as presented. The motion carried.

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Office of General Counsel Report

Mark Cole, Assistant General Counsel, presented the Office of General Counsel report. He reported there were 17 open disciplinary cases on 16 chiropractors as of January 9, 2017. Mr. Cole reiterated the importance of the Open Meetings Act and the Conflicts of Interest Policy. Mr. Cole informed the Board that the rule changes have been reviewed in the Attorney General's office. Rule 0260-2 in relation to the Chiropractic Physicians was discussed. Mr. Cole requested the Board to inform him of whether any member had previously completed a Worker's Compensation Impairment Rating during a hearing or in front of the Worker's Compensation review panel or if they know of any chiropractor who has completed such rating so the information may be shared with the Attorney General's Office. In relation to Rule 0260-2 for the Chiropractic Physicians, John Williams of the TCA informed the board that the issue of the reformed legislation in 2013 regarding chiropractor physicians being able to perform impairment ratings for worker's compensation was discussed and resolved in favor of chiropractic physicians. Rule 0260-3 and 0260-5 for CTAs and CXTs respectively will be discussed later in the meeting. Mr. Cole also informed the Board of the Sunshine Statute which must be renewed by the 2020 expiration date.

Agreed Order- James Goldman, DC #2053

Dr. Goldman had a Consent Order from August 2013 for solicitation. Dr. Goldman agreed to pay costs in the amount of \$758.00 but failed to pay the full amount in the allotted time. Dr. Goldman failed to respond to a second Consent Order and subsequently, the Office of General Counsel sent Dr. Goldman a Notice of Charges. Dr. Goldman signed the Agreed Order and agreed to pay the costs indicating a Class B Civil Penalty of \$500.00 not to exceed \$500.00 in total costs. Upon review and discussion, Dr. Selby made a motion, seconded by Dr. Hosenfeld, to accept Dr. Goldman's Agreed Order. The motion carried.

Investigative and Disciplinary Reports

Nichelle Dorroh of the Office of Investigations presented the investigative and disciplinary reports. She reported the Office of Investigations has opened two (2) new cases against Chiropractic Physicians. The office has nineteen (13) open complaint cases for the Board of Chiropractic Examiners as of January 9, 2017. According to the Office of Investigation's report presented by Ms. Dorroh, thirty-two (32) cases have been opened in the year, to date, and nineteen (19) cases have been closed in the month of December. Twelve (12) new cases were opened in November and eleven (11) cases have been closed to date. Nichelle Dorroh informed the Board that there has been steady progress of complaint case reviews due to hiring of staff including the addition of case investigators, two (2) board consultants and a Complaint Coordinator.

Financial Report

Ms. Noranda French presented the report from the Division of Health Licensure and Regulation. The financial report for fiscal year 2016 closing was provided to the Board. The Total Direct Expenditures is \$79,892.85, the Total Allocated Expenditures is \$128,874.37, the Board Fee Revenue is \$245,881.17, the Current Year Net was \$37,114.15, and the Cumulative Carryover is \$500,906.59. This year is the first year that LARS (online licensure renewal system) improvements were extracted directly from the cumulative carryover. The board's share amounted to \$4,390.31. Ms. French informed board members that there is a current policy in place for the health related boards which indicates that once a board has two consecutive years of cumulative carryover that is twice the amount of the average of the operating expenditures for the past three years, then the board must begin discussion of fee reductions. The board has reached this threshold to comply with the stated policy. Ms. French provided a breakdown of revenue distribution and multiple fee reduction scenarios for the board to review. Ms. French provided the Board a graphical comparison of expenditures to revenues over the past fiscal years. Although the Board closed in the red for FY15, historically the Board has performed well so there is no immediate concern. Board revenue has increased from the previous year to current indicating the Board is growing and there is an increase in the number of active chiropractic physicians. Ms. French noted that a CTA/CXT dual licensure would have a minimal impact on the board and would not sufficiently address the increased cumulative carryover. Following review and discussion by the Board, it was suggested by the board to have the Financial Office perform calculations of the financial effects of the CTA and CXT fee changes.

Applicant Interview/Review

William Bankester- Dr. Bankester is seeking licensure as a Chiropractic Physician. The Board reviewed his file due to multiple convictions on his criminal background check. Upon review and discussion, Ms. Fitzgerald made a motion, seconded by Dr. Selby, to approve Dr. Bankester for licensure. The motion carried.

Ryan Moore- Dr. Moore is seeking licensure as a Chiropractic Physician. The Board reviewed his file due to a conviction on his criminal background check. Upon review and discussion, Dr. Hosenfeld made a motion to approve Dr. Moore for licensure, Dr. Damien seconded the motion. The motion carried.

Peter Sedges- Mr. Sedges is seeking certification as a Chiropractic Therapy Assistant. The Board reviewed his file due to multiple convictions on his criminal background check. Mr. Sedges was present to discuss his application status. Upon review and discussion, Dr. Selby made a motion, seconded by Dr. Hosenfeld, to approve Mr. Sedges for certification. The motion carried.

Eric Seigal- Dr. Seigal is seeking licensure as a Chiropractic Physician. The Board reviewed his file due to multiple convictions on his criminal background check. Dr. Seigal was present to discuss his application status. Upon review and discussion, Ms. Fitzgerald made a motion, seconded by Dr. Hosenfeld, to approve Dr. Seigal for licensure. The motion carried.

Jake Whitby- Dr. Whitby is seeking licensure as a Chiropractic Physician. The Board reviewed Dr. Whitby's file because he marked 'No' on his license application for Chiropractic Physician although he had multiple convictions on his criminal background check. Upon review and discussion, Dr. Damien made a motion, seconded by Dr. Hosenfeld, to approve Dr. Whitby for licensure. The motion carried with Ms. Fitzgerald opposing.

Ratifications

Upon discussion of the ratification list, Dr. Hosenfeld made a motion, seconded by Ms. Fitzgerald to approve the following lists of new licensees, externships, reinstatements, and acupuncture qualifiers for ratification. The motion carried.

INITIAL LICENSES

CHIROPRACTIC PHYSICIANS – 7

BARRY, TIMOTHY
BARTON, NICOLE
COLLINS, CHRISTOPHER
JACOBS, CHASY
MARINO, JAMES
MEADOWS, KERRY
PRIDMORE, EVAN

CHIROPRACTIC THERAPY ASSISTANTS – 14

BROWN, MEGAN
CASEY, EILEEN
CASSO, CANDICE
DEWEESE, TAMMY
GULOMSHOEV, MELISSA
HARRELL, JANEL
HARRIS, JILL
HUFFMAN, CAITLYN
KERLEY, VICTORIA
MCELMURRAY, SAMANTHA
PIKHOTSKA, IRYNA
PINSON, BRITTANY
WHITMIRE, TAYLOR
WILSON, HALEY

CHIROPRACTIC X-RAY TECHNOLOGISTS – 0

TEMPORARY LICENSES & EXTERNSHIPS – 1

CURRENT EXTERNS- 1

NAME	START DATE	EXPIRATION DATE
ANDREOTTA, ANDREW	07/14/2016	07/14/2017

ACUPUNCTURE QUALIFICATION- 1

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LINZA, ANTHONY

CLOSED FILES- 1

CHIROPRACTIC THERAPY ASSISTANTS – 1

ALLISON, NICOLA JOELLE

Administrative Report

Ms. Egedegbe, Board Administrator, presented the administrative report. As of January 20, 2017, the Board of Chiropractic Examiners has 1161 active Chiropractic Physicians, 494 Chiropractic Therapy Assistants, and 103 Chiropractic X-Ray Technologists.

STATISTICAL REPORT

LICENSURE STATUS TOTALS FROM THE MONTHS OF
October 15, 2016 through January 20, 2017

CHIROPRACTIC PHYSICIAN	
New applications received- 12	
New licenses issued - 12	Renewal Total - 69
Reinstatements -13	Online Renewals - 66
Temp Licenses/ Externships - 1	Paper Renewals - 3
Licenses Retired - 8	
Failed to Renew/Expired Licensees - 14	
CHIROPRACTIC THERAPY ASSISTANT	
New applications received- 16	
New licenses issued - 16	Renewal Total - 22
Reinstatements - 4	Online Renewals - 20
Licenses Retired - 12	Paper Renewals - 2
Failed to Renew/Expired Licensees - 18	
CHIROPRACTIC X-RAY TECHNOLOGIST	
New applications received- 1	
New licenses issued - 1	Renewal Total - 8
Reinstatements - 1	Online Renewals - 6
Licenses Retired - 6	Paper Renewals - 2
Failed to Renew/Expired Licensees - 0	

For this reporting period, the usage rate for utilizing the online renewal portal for Chiropractic Physicians is 96%; Chiropractic Therapy Assistants, 91%; and, Chiropractic X-Ray Technologists, 75%.

TSAC/ CHILD SUPPORT ORDERS

There are no Chiropractic health professionals to report for TSAC or Child Support violations for this period.

BOARD MEMBERS

As of January 26, 2017 there is 1 Consumer Member vacancy on the Board. The 2017 Conflict of Interest forms are available for review. Please check your folders for more information.

Ms. Egedegbe reiterated the travel policy and informed the board members of the upcoming professional conferences for 2017. Mr. Sobowale addressed the board concerns in regards to previous out-of-state travel authorizations. Mr. Sobowale reiterated the board travel regulation policies as set forth by the State Department of Finance & Administration. Per Diem reimbursement rates were discussed as well as the expectations of the travel authorization timeline process was discussed with the board members. Delegates and alternates for each conference are as followed:

- 2017 Annual Business Meeting of State Delegates May 5, 2017 Orlando, FL [Alexander]
- FCLB/ NBCE Annual Meeting Nominations May 3-7, 2017 Orlando, FL [Alexander/ Sobowale]

NBCE Part IV Practical Examination

- Spring Part IV Exam – May 19, 20 & 21, 2017 (various locations) [Hosenfeld]
- Part IV Test Committee Meeting – June 9 & 10, 2017 Greely, CO [Hosenfeld or Alexander]
- Fall Part IV Exam – November 10-12, 2017 (various locations) [No nomination at this time]

Upon discussion, Dr. Hosenfeld made a motion, seconded by Dr. Selby to approve himself to attend the Spring Part IV Exam, for Dr. Alexander or Dr. Hosenfeld to attend the Part IV Test Committee Meeting, and for Dr. Alexander and Mr. Sobowale to be delegates at the FCLB/NBCE Annual Meeting. The motion carried.

CTA/CXT PROJECT

Ms. Egedegbe presented a proposal for a CTA/CXT Internship form for new licensees. The CTA/CXT form was designed to ensure the uniformity of the internship hours. Ms. Egedegbe reported she is currently consulting with the Tennessee Chiropractic Association (TCA) and a finalized form will be presented at the next board meeting.

2016 CE AUDIT

The 2016 Audit was completed on January 15, 2016. The results were presented in a graphical format for the board to review. According to the data, 74% of chiropractic physicians, 70% of

chiropractic therapy assistants, and 83% of chiropractic x-ray technologists were marked compliant for the 2016 CE audit for an overall 76% compliance rate for the chiropractic profession. Ms. Egedegbe informed the board that the compliance rate is not final due to the fact that CE submissions are still incoming to the administrative office. A 90-day reminder compliance notice is a suggested communication to be sent to all non-compliant chiropractic professionals who did not adhere to the January 15th CE submission deadline. Dr. Hosenfeld suggested that chiropractic professionals receive an automatic notification informing professionals of the continuing education requirements and deadlines. Mr. Sobowale informed the board that this information along with other pertinent information will be included in the Chiropractic Examiners newsletter to be posted on the board website in the near future.

AGREED CITATIONS

Mr. Sobowale, Board Director, presented the following Agreed Citations to the Board for approval:

Fawnda Cofield, CTA #1268

Ms. Cofield agreed to pay a civil penalty in the amount of one hundred dollars (\$100.00) for practicing on a lapsed license for approximately 2 months. A motion was made by Ms. Fitzgerald, and seconded by Dr. Hosenfeld and Dr. Damien, to approve the Agreed Citation as presented. The motion carried.

Jeffrey Fabozzi, D.C. #1236

Dr. Fabozzi practiced on a lapsed license for approximately 2 ½ months and agreed to pay the assessed civil penalty in the amount of one thousand dollars (\$1,000.00). A motion was made by Ms. Fitzgerald, and seconded by Dr. Hosenfeld, to approve the Agreed Citation as presented. The motion carried.

Richard Kind, D.C. #504

Dr. Kind practiced on a lapsed license for approximately four (4) months and agreed to pay the assessed civil penalty in the amount of one-thousand five hundred dollars (\$1,500.00). A motion was made by Dr. Selby, and seconded by Dr. Damien, to approve the Agreed Citation as presented. The motion carried.

Dale Smith, DC #1198

Dr. Smith failed to renew his license and practiced on a lapsed license for approximately five (5) months. Dr. Smith agreed to pay the assessed civil penalty in the amount of one thousand dollars (\$1,000.00). A motion was made by Dr. Selby, and seconded by Ms. Fitzgerald, to approve the Agreed Citation as presented. The motion carried.

Brendan Wright, DC #1192

Dr. Wright failed to renew his license and practiced on a lapsed license for approximately three (3) months. Dr. Wright agreed to pay the assessed civil penalty in the amount of one thousand dollars (\$1,000.00). A motion was made by Ms. Fitzgerald, and seconded by Dr. Selby, to approve the Agreed Citation as presented. The motion carried.

Jacqueline Russell, CTA #1112

Ms. Russell failed to renew her license and practiced on an expired license for approximately eight and one-half (8 ½) months. Pursuant to the old lapsed license policy, Ms. Russell was assessed a civil penalty. Ms. Russell agreed to pay the assessed civil penalty in the amount of eight hundred seventy-five dollars (\$875.00). A motion was made by Dr. Selby, and seconded by Dr. Hosenfeld, to approve the Agreed Citation as presented. The motion carried.

Correspondence Review

Audra Arstikaitis-Nagel- Dr. Arstikaitis-Nagel submitted a request for CE submission extension. Upon review by the Board, a motion was made by Ms. Fitzgerald and seconded by Dr. Hosenfeld to grant Dr. Arstikaitis-Nagel a three month/ninety day (3 month/90 day) extension to complete the required CEs.

Robin Barnes, DC- Dr. Barnes submitted a request for CE submission. Upon discussion, Dr. Damien made a motion to table the discussion to the next meeting due to the lack of information as to the specific reason(s) for another request. The motion was seconded by Dr. Hosenfeld. The motion carried.

Ryan Bowers, DC- Mr. Barnes submitted a request for CE extension. Dr. Bowers is deficient four (4) CE hours. Upon discussion, Ms. Fitzgerald made a motion to approve Dr. Bowers to complete the remaining four (4) hours in-person or on-line within the next ninety (90) days. The motion was seconded by Dr. Hosenfeld. The motion carried.

Susan Flegle- Ms. Flegle submitted a request for internship extension. Upon discussion, Ms. Fitzgerald made a motion to accept Ms. Flegle's request. The motion was seconded by Dr. Hosenfeld. The motion carried.

Douglas Sams- Mr. Sams submitted a request for internship extension. Mr. Sams has already graduated from Logan Chiropractic College but failed Parts II and III of the NBCE Exam. Mr. Sams was advised by the administrative office that he would not be able to complete the externship due to his failing record. Upon discussion, Ms. Fitzgerald made a motion not to accept Mr. Sams' request. The motion was seconded by Dr. Hosenfeld. The motion carried.

Kathryn Vemer- Ms. Vemer submitted a request for internship extension. Upon discussion and review of additional information provided by the TCA, Dr. Damien made a motion to grant Ms. Flegle a four (4) month extension to finish her internship. The motion was seconded by Ms. Fitzgerald. The motion carried.

Legislation Updates Discussion

Mr. Cole reported that a hearing on the sunset bill extending the Board until June 30, 2021 will be held before the Joint Government Operations Committee later this year. John Williams of the Tennessee Chiropractic Association (TCA) reported that his office is working on a bill that would affect parts of the Chiropractic Practice Act. The changes would not change the scope of practice for the Chiropractic profession but enhance what is already stated. Currently, the scope

of practice is difficult to comprehend but the changes would definitively outline the scope in a listed format for easy reference. Other small changes include the increase amount of the per diem for the Chiropractic board members who attend the board meetings from \$50.00 per meeting to \$100.00 per meeting. In addition, a second bill will have a short amendment to the Health Care Empowerment Act which would allow MDs and DOs to enter into a written contract for the performance of specific services to be provided to patients. Insurance could not be billed for the particular services- the patient would pay directly for the service. The Department of Commerce and Insurance would not regulate these services or regulate the billing for these services and the physician contract will set the amount to be paid for these specific services. The final bill Mr. Williams discussed was the phasing-out of the Professional Privilege Tax (\$400.00 yearly tax) for all health professions. The bill has enough sponsors to pass in the legislature.

Discussion of CTA/CXT Rule Amendments

Dr. Hosenfeld updated the Board on the progress of the CTA/CXT rule revisions. A copy of the edited rules was provided to the board members to review. Dr. Hosenfeld presented his edits to the CTA/CXT rules and explained his suggested changes. Dr. Hosenfeld explained in detail a revision addressing the time window for CTAs and CXT upon completion of the mandatory 50-hour course and the certification awarded by the Chiropractic State Board. After passing the examination and during the 1200-hour or 1040-hour internship for the CTA or CXT certification, the applicant works under the direction of the licensed chiropractor who is billing third-party payors for those services performed by the CTA and/or CXT intern. Dr. Hosenfeld's rule revisions attempts to bridge the 'gray area' in the certification process by providing the name of those interns to the TCA and/or Board Office so those interns may be referenced by third parties. Currently, third-party payors cannot see those interns who fall into the 'gray area'.

Dr. Hosenfeld suggested that an updated list of current interns be maintained by the board administrative office to be looked up by a third-party payor if needed. Ms. Stevens addressed the Board to provide insight of the previous methods used in the past in which the internship information was posted online and available to the public. Ms. Stevens commented that revising the practice in accordance with Dr. Hosenfeld's suggestion would close the loop hole and reduce the amount of paperwork for the staff. John Williams of the TCA advised the board that other health-related boards have a similar provision for temporary licensees to work under the direction of the licensed physician and bill for the services provided. Mark Cole advised that the use of the term 'temporarily certified' before the intern is certified may be problematic. Currently, there is nothing in the statute that addresses temporary certification for CTA practice. The issuance of a temporary permit by the state may be added to the CTA rule revisions to be reviewed at the rule-making hearing. Mr. Williams added that the statutory language is broad and the rules give the statutory authority to allow for the establishment of a temporary certification for CTAs. There was discussion on the proper language to be used in the rule revision for interns to be able to bill for services provided.

The board discussed the fee schedule changes in relation to the financial report which was presented earlier in the meeting. Dr. Hosenfeld suggested a fee change for CTA renewal from \$100.00 yearly to \$50.00 yearly. The reciprocity application fee for single and CTA/CXT dual licensure would be changed to \$150.00. The Board discussed at length the CE requirements for the CTAs and CXTs and approved a multi-media option for completion of CEs for CXTs. After discussion of a few typographical errors and other minor changes to the proposed changes from Dr. Hosenfeld, Ms. Fitzgerald made a motion to accept the rule revisions as discussed and give Board Attorney Mark Cole the authority to make changes electronically on behalf of the board. The motion was seconded by Dr. Damien. The motion carried.

Other Board Business

PACE Approval Process Discussion

Board Chair Dr. Alexander contributed to the discussion on PACE by explaining the process course presenters must complete for CE course provider approval. The criteria course presenters must follow are outlined in the board rules but PACE listings are vague and not regularly updated on the PACE website. The discussion included course provider Dr. Dwight Whynot and its affiliation with Logan University and/or PACE. Due to the fact that Dr. Whynot's affiliation had been terminated at the time many chiropractic physicians had been enrolled, Dr. Alexander suggested a retroactive approval of 12 hours for those physicians who attended the December courses with Dr. Dwight Whynot. Ms. Fitzgerald made a motion to accept the continuing education credits of those physicians who took the December 1st and December 15th courses with Dr. Dwight Whynot. The motion was seconded by Dr. Hosenfeld. The motion carried.

Dr. Alexander commented that the 3rd party vendors' relationship with PACE has caused some confusion for chiropractic physicians seeking courses which are board approved i.e. Fetterman Events. Fetterman Events did not provide the certificate of course completion in an acceptable format. Fetterman Events courses were not listed as a vendor on the PACE website as required by board policy. Dr. Alexander proposed a policy statement addressing PACE course approval and 3rd party vendors who offer CE courses. Mr. Sobowale added the specific criteria course providers must follow to be an acceptable course provider recognized by the board. Mr. Sobowale noted that there are chiropractic physicians who submitted Fetterman Events courses for continuing education credit and have yet to be addressed. Dr. Damien suggested tabling this discussion until next meeting for the purpose of doing more research on the topic at hand.

Mandatory Practitioner Profile Policy

Mr. Sobowale presented a Mandatory Practitioner's Profile policy to the board for adoption due to recommendations from the legislative audit by the Comptroller's office. It was determined that

the board was responsible for collecting this information and those chiropractic physicians who failed to comply may face disciplinary action as statutorily empowered in the Consumer-Right-To-Know Act of 1998. The mandatory practitioner profile form is currently only available on paper but will soon be available online as part of the new online license application system. Dr. Hosenfeld made a motion to accept the policy statement on enforcing compliance with the consumer right-to-know law. The motion was seconded by Ms. Fitzgerald. The motion carried.

CE Non-Compliance Policy

Mr. Sobowale presented the Continuing Education (CE) Non-Compliance Policy update to include a 90-day grace period to cure the deficiency before disciplinary action is assessed for non-compliance. Dr. Alexander questioned whether there was any precedent in place to defer concerns about CEs to a board liaison to answer questions in the interim between board meetings. Mr. Cole advised that there was no precedent in place and the current consultants in the Attorney General's office are not a confirmed resource to provide advisory consultation. Ms. Fitzgerald made a motion to accept the amended policy statement on non-compliance for the continuing education requirement. The motion was seconded by Dr. Selby. The motion carried. The policy update was revised to prohibit the allowance of 3rd party continuing education vendors to be approved for credit to take effect on June 1, 2017. Dr. Damien made a motion to accept the additional revisions. The motion was seconded by Dr. Selby. The motion carried.

Election of Officers

Dr. Cole Hosenfeld was nominated by Ms. Fitzgerald as Vice Chair of the Chiropractic Board. The motion was seconded by Dr. Selby. The motion carried. Dr. Andrea Selby made a motion to keep the remaining officer positions as is- Dr. Christopher Alexander as Board Chair and Ms. Sheila Fitzgerald as Board Secretary. The motion was seconded by Dr. Hosenfeld. The motion carried.

Ratification of 2018 Board Dates

The 2018 Board meeting dates are as followed: January 25, 2018, April 19, 2018, July 19, 2018 and October 18, 2018. Ms. Fitzgerald made a motion to accept the 2018 board meeting dates. The motion was seconded by Dr. Hosenfeld. The motion carried.

Board Attorney Mark Cole advised the board that due to several expected lengthy cases, the next board meeting may carry over to a second day. The board agreed to hold an extended meeting on one day as opposed to having board business carry over to a second day. The next board meeting is scheduled for April 27, 2017.

Social Media Policy

There was no discussion on this issue.

D.O.T. Issue

There was no discussion on this issue.

Adjournment

There being no other business, the meeting adjourned at 1:51 pm.

These minutes were ratified by the Board on April 27, 2017.