

## **MINUTES OF MEETING**

A meeting of the Chiropractic Physicians' Board of Nevada was held on Friday, July 13, 2007 in Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada 89101.

The following Board members were present for the roll call at 9:15 AM:

Stephanie Youngblood, DC, President  
Margaret Colucci, DC, Vice President  
Ian K. Yamane, DC, Secretary  
Deed Harrison, DC, Member  
Curtis Potts, DC, Member  
Richard McCann, J.D., Consumer Member

President Dr. Stephanie Youngblood determined that a quorum was present and called the meeting to order. Also present were Senior Deputy Attorney General Gina Session, prosecuting attorney for the Board Elizabeth Foley and CPBN Lobbyist Susan Fisher. CPBN Executive Director Cindy Wade arrived at 10:25 AM.

Dr. Harrison led those present in the Pledge of Allegiance

### **Agenda Item 1 APPROVAL OF AGENDA**

Rick McCann moved for approval of the agenda. Dr. Potts seconded the motion and it passed unanimously.

### **Agenda Item 2 PUBLIC INTEREST COMMENTS (No Action)**

There were no public interest comments.

Dr. Youngblood announced that Agenda Items 6, 7, 8 and 9 would next be addressed for the accommodation of those present.

**Agenda Item 6 Administrative hearing, approval of possible settlement agreement, or granting of request for continuance in the matter of Jaime S. DiOrio, DC, License No. B888, Complaint Nos. 04-7 and 04-11.**

Dr. DiOrio's attorney, Stephanie Cooper, was present. She requested a continuance of this matter. Ms. Cooper confirmed that she and Dr. DiOrio will be prepared for a hearing on September 14. Dr. Yamane moved to continue this matter until September 14, 2007. Dr. Potts seconded and the motion passed with all in favor except Dr. Colucci who recused because she is the investigating Board member.

**Agenda Item 9 Administrative hearing, approval of possible settlement agreement, or granting of request for continuance in the matter of James T. Overland, Sr., DC, License No. B527, Complaint No. 05-6.**

Attorney Valner Johnson was present representing Dr. James T. Overland, Sr.. He stated that they are not close to reaching a settlement and are still in the process of collecting evidence. Mr. Johnson requested a continuance until September 14. Dr. Colucci moved to continue this matter until September 14, 2007. The motion was seconded by Dr. Potts and it passed with all in favor except Dr. Youngblood who recused because she is the investigating Board member.

**Agenda Item 7 Administrative hearing, approval of possible settlement agreement, or granting of request for continuance in the matter of John G. Chase, DC, License No. B876, Complaint No. 01-14.**

Dr. Chase was present. Ms. Foley informed the Board that Dr. Chase is agreeable to the terms of the proposed Agreed Settlement. Dr. Colucci suggested that Dr. Chase be required to pass the Board's law test in addition to the other terms and conditions in the proposed agreement. Dr. Chase indicated that he would be willing to take the Board's law test. Dr. Colucci moved to approve the proposed Agreed Settlement with an amendment to include a provision that Dr. Chase be required to take and pass the CPBN law test in Las Vegas within one year. Dr. Youngblood seconded the motion. The motion passed with all in favor except Dr. Yamane who recused because he is the investigating Board member.

**Agenda Item 8 Administrative hearing, approval of possible settlement agreement, or granting of request for continuance in the matter of James Overland, Jr., DC, License No. B526, Complaint Nos. 06-18, 06-19 and 06-22.**

Dr. Overland was not present and there was no one present representing him. Ms. Foley explained that Dr. Overland has not signed the Agreed Settlement that was negotiated with and agreed to by him at the May 11 Board meeting. He contacted Ms. Foley several times to say he would be in to sign the agreement but has never shown up. Mr. McCann stated that Dr. Overland has assumed an adversarial position in this matter and it needs to be concluded. A message from Dr. Overland that was forwarded to Ms. Foley at 8:38 AM today by fax from his secretary was entered into the record (copy attached). The message does not contain a request for a continuance.

**Agenda Item 8 Administrative hearing, approval of possible settlement agreement, or granting of request for continuance in the matter of James Overland, Jr., DC, License No. B526, Complaint Nos. 06-18, 06-19 and 06-22. (Cont'd)**

Mr. McCann moved to deny a continuance in this matter. Dr. Potts seconded the motion. During discussion, it was noted that there was no formal request from Dr. Overland for a continuance. The motion passed with all in favor except Dr. Colucci who recused because she is the investigating Board member.

Dr. Youngblood directed that the board must now determine the effect of Dr. Overland's refusal to sign the Agreed Settlement after he agreed to it on May 11, 2007. Ms. Foley said that Dr. Overland had informed her of his intention to confer with a lawyer before he signed the agreement, but he never got back to her. It has been approximately eight weeks since he agreed to the terms of the Agreed Settlement at the Board's meeting. Mr. McCann stated that his refusal to sign the agreement puts him in contempt. Dr. Yamane moved that Dr. Overland is in violation. Mr. McCann seconded the motion which passed with all in favor except Dr. Colucci, who recused. It was decided that additional action pursuant to this matter would be appropriate. Following discussion, Dr. Yamane moved that Dr. Overland be assessed a fine in the amount of \$10,000 as well as the Board's costs, and that his license be revoked. Dr. Potts seconded the motion. After further discussion, Dr. Yamane amended the motion to include that the revocation be for a minimum period of three years effective 30 days from today, and the fine and costs must be paid before Dr. Overland's license may be reinstated. Dr. Potts seconded the amended motion and it passed with all in favor except Dr. Colucci, who recused.

**Agenda Item 3 APPROVAL OF PREVIOUS MINUTES: June 1, 2007**

Dr. Colucci moved for approval of the June 1, 2007 meeting minutes. Dr. Potts seconded and the motion passed unanimously.

**Agenda Item 4 DISCUSSION/APPROVAL OF BOARD FINANCIAL REPORTS:**

- A. Bank balance as of June 30, 2007**
- B. Income/Expense Report: July 1, 2006 through June 30, 2007**
- C. Accounts Receivable as of June 30, 2007**
- D. Accounts Payable as of June 30, 2007**
- E. Extraordinary Items/Items of Concern**

Dr. Youngblood moved for approval of the Board financial reports. Dr. Harrison seconded the motion and it passed unanimously.

**Agenda Item 5 DISCUSSION/APPROVAL OF Executive Director reports:**

- A. Status of Complaints Received**
- B. Status of Current Probations**
- C. Legal/Investigatory:**
  - 1. Costs assessed since last report**
  - 2. Costs assessed year-to-date**
  - 3. Costs collected since last report**
  - 4. Costs collected year-to-date**

Ms. Foley reviewed the status of her current cases. November 9 & 10, 2007 was set for a meeting and more hearings. Dr. Jeff Andrews' recent compliance report on the probations of Drs. Aaron and Kenneth Fust was reviewed. The Board agreed that Aaron Fust's probation should be on hold while he is not actively practicing. His and Kenneth Fust's proposed quarterly affidavits as to their practice status are acceptable. It is appropriate for the compliance monitor to contract with and collect payment directly from the person on probation as long as the compliance monitor notifies the Board if he should suspend the monitoring because he has not been paid. Dr. Potts moved to approve the Executive Director reports. Mr. McCann seconded the motion and it passed unanimously.

**Agenda Item 10 Status report/discussion/possible action regarding anonymous profiles of possible disciplinary actions. Board action will be limited to either dismissing the matter if the Board determines it has no jurisdiction over the subject or providing direction to pursue the matter further:**

**A. Complaint 06-20**

Dr. Colucci explained that this complaint was filed because the doctor did not inform the Board office of his new practice location, that he did not inform the Board of the transfer to his custody of the patient records or the physical location of the patient records he obtained when he began practicing there, that he allowed an unlicensed applicant to practice chiropractic under his supervision, and that he failed to produce patient records that were subpoenaed by the Board.

The doctor has explained that he provides occasional relief work. Last fall he agreed to provide temporary coverage at a practice that had been purchased jointly by a DC applicant and a Nevada licensee who had a primary practice elsewhere. He was unaware that he needed to notify the Board where he was practicing, but did so as soon as he became aware that there was a problem. Because he was only providing temporary relief and was not the owner of the practice he never had custody of the patient records. With respect to allowing an unlicensed applicant to practice chiropractic under his supervision, he had no knowledge of the arrangements between the two owners and assumed the applicant/owner was performing CA services as an "applicant waiting to take exam". He not only never had access to the subpoenaed patient's records, he also never received a subpoena for the records.

Dr. Colucci recommended dismissal of this complaint. Dr. Youngblood made a motion to dismiss the complaint. Dr. Harrison seconded and the motion passed with all in favor except Dr. Colucci who recused because she is the investigating Board member.

**B. Complaint 07-08**

Dr. Colucci described this complaint which is for an advertising violation against a licensee who was previously disciplined for a similar violation. In addition, he is currently on probation for yet another different violation. Following discussion, Dr. Yamane moved that this doctor and the other doctors at this practice should be noticed for this violation. Dr. Youngblood seconded and the motion passed with all in favor except Dr. Colucci who recused because she is the investigating Board member. (See Page 6 for additional reference to this matter.)

**C. Complaint 07-09**

Dr. Colucci explained that the complainant is a disabled VA patient who claimed the DC’s office and staff are “unprofessional”. The complainant preferred a female doctor and is very unhappy with the doctor’s report. She claims it contains “distortions and untruths”, and she is under the impression that it has cut her off from continued chiropractic care.

During an unannounced visit to the doctor’s office Dr. Colucci found no evidence that his office and staff are unprofessional. A review of the patient’s records revealed a billing code error which was immediately corrected by the doctor when brought to his attention. The complainant’s chiropractic care was not cut off and she is currently being treated by a female chiropractor. There were no violations of the chiropractic statute or regulations. Dr. Potts moved for dismissal of the complaint. Dr. Yamane seconded the motion and it passed with all in favor except Dr. Colucci who recused because she is the investigating Board member.

**Agenda Item 11 Discussion/possible action regarding development of regulation changes for future Workshop including, but not limited to:**

**A. Scope of Practice Committee status report**

Dr. Youngblood presented a rough draft of the proposed revised Scope of Practice that the committee has compiled to date. Dr. Harrison volunteered to serve on the Scope of Practice Committee. Susan Fisher informed the Board that a Legislative Interim Committee on Health Care has been established that will be reviewing each health care agency’s Scope of Practice. Dr. Potts volunteered to work with Ms. Fisher to maintain the Board’s involvement with this committee.

**B. License/certificate fee increases**

The implications of increased fees were considered. Cindy read a letter from Dr. Teresa DeJournette expressing her concerns about the timing and cost of license renewals. Dr. Yamane moved for approval of the following fee increases:

- For an examination for a license to practice chiropractic . . . . . [\$100.00] **\$125.00**
- For an examination for a certificate as a chiropractor’s assistant . . . . . [\$50.00] **\$60.00**
- For the issuance of a license to practice chiropractic . . . . . [\$200.00] **\$225.00**
- For the annual renewal of a license to practice chiropractic . . . . . [\$300.00] **\$350.00**
- For the annual renewal of an inactive license to practice chiropractic . . . . . [\$100.00] **\$125.00**
- For the annual renewal of a certificate as a chiropractor’s assistant . . . . . [\$50.00] **\$60.00**
- For reinstating a certificate as a chiropractor’s assistant which has been  
suspended pursuant to **NRS 634.130** . . . . . [\$35.00] **\$70.00**
- For reinstating an inactive license to practice chiropractic which has been  
suspended or revoked . . . . . [\$100.00] **\$200.00**

Rick McCann seconded the motion which passed with all in favor except Dr. Potts who was opposed.

Following a break for lunch, the meeting reconvened at 1:45 PM. The following matter was addressed out of order to accommodate the presence of Cynthia A. Bazin.

**Agenda Item 14 Interview with investigator Cynthia A. Bazin.**

An interview with Ms. Bazin was conducted. She will provide references for contact by the Board and consideration of her services will be addressed at a future meeting.

**Agenda Item 10** (Cont'd from Page 4)

**B. Complaint 07-08**

The Agreed Settlement with the doctor in this matter was located and reviewed with the Board by Ms. Session. Dr. Yamane moved that the complaint, along with the advertisement, be submitted to the compliance monitor for his review with the licensee and subsequent recommendation for its disposition. Dr. Potts seconded the motion and it passed with all in favor except Dr. Colucci who recused because she is the investigating Board member.

**Agenda Item 11** Discussion/possible action regarding development of regulation changes for future Workshop including, but not limited to:

**C. Revised proposed definition of “mobile chiropractic”**

Dr. Potts moved to accept the definition of “mobile chiropractic” as proposed. Dr. Yamane seconded the motion and it passed with all in favor.

**D. Establishment of authority to refer to other agencies investigative information regarding possible illegal activities of non-licensees detected during an investigation**

This proposed new regulation was tabled pending further research by Ms. Session because of an apparent conflict with the current statute. It was agreed that the contractual agreement with the Board’s investigator should be reviewed at the next meeting and that any future contract and the procedure should include a provision that the investigator may not share investigative information without the express permission of the Board.

**E. Any other changes, additions or deletions**

There were no other proposed changes, additions or deletions.

**Agenda Item 12** Establishment of Board policy with respect to payment for services to Probation Compliance Monitors.

Following discussion, Dr. Potts moved that it is the Board’s policy that compliance monitors make their own contractual arrangements with the licensees for payment without involvement of the Board. Dr. Yamane seconded the motion and it passed unanimously.

**Agenda Item 13** Discussion/possible action regarding substitution of CPBN Law Test in lieu of NBCE Ethics Test as resolution of Letter of Public Instruction to Bryan Hansen, DC.

Dr. Potts explained that Dr. Hansen mistakenly took the CPBN law test instead of the NBCE Ethics test as set forth in the December 27, 2006 Letter of Public Instruction. He moved that Dr. Hansen’s passing grade in the CPBN law test be accepted in lieu of taking the NBCE Ethics test. Second was by Dr. Colucci. The motion did not pass with Drs. Potts and Harrison and Mr. McCann in favor and Drs. Colucci, Yamane and Youngblood against. As recommended by Ms. Session, Dr. Colucci moved that Dr. Hansen be appropriately notified of this situation and that he be requested to appear before the Board for determination of its resolution. Dr. Yamane seconded and the motion passed unanimously.

**NON-ACTION ITEMS:**

**Agenda Item 15 Reports:**

**A. Attorney**

The status of Ms. Foley's current cases was reviewed under Agenda Item 5A.

**B. Investigator**

Ms. Wade distributed the investigator's written report for review. There was no comment.

**C. Committees**

Susan Fisher reviewed the pertinent results of the 2007 Legislative session. She stated that the Board needs to establish a position with respect to chiropractors' use of low laser therapy. She will research this and work with the Scope of Practice Committee.

**Agenda Item 16 Correspondence Report.**

There was no comment regarding the final letter from the State Bar about the Board's complaint against Brent Harsh and the matter is closed. Correspondence received from two licensees regarding the performance by chiropractors of taxi cab physicals will be referred to the Nevada Chiropractic Association. Two advertisements received expressing concern about possible violations were deemed to be not in violation of the chiropractic advertising regulations.

**Agenda Item 17 Board Member Comments.**

The Board agreed that consideration of Cynthia Bazin as an independently contracted investigator for the Board should be an action item on the next agenda if her reference check is satisfactory.

**Agenda Item 18 Public Comment.**

There was no public comment.

**Agenda Item 19 Adjournment.**

The meeting adjourned at 4:00 PM.

Approved: September 14, 2007

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Ian K. Yamane, DC, Secretary