

MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board was held on Friday, May 29, 2009 and Saturday, May 30, 2009 in Room 4500 of the Grant Sawyer State Office Building at 555 E. Washington, Las Vegas, Nevada 89101. The following Board members were present for the roll call:

Ian K. Yamane, DC, President
Margaret Colucci, DC, Vice President
Paul Jackson, Consumer Member
Richard McCann, Consumer Member

Drs. Lawrence Davis, Jack Nolle and David Rovetti were not present at the roll call. Dr. Rovetti arrived at 4:00 PM. Also present were Elizabeth Foley, Esq., and CPBN Executive Director Cindy Wade.

Dr. Yamane determined that a quorum was present and called the meeting to order at 1:30 PM.

Rick McCann led those present in the Pledge of Allegiance.

Agenda Item 1 APPROVAL OF AGENDA

Dr. Colucci moved for approval of the agenda. Mr. Jackson seconded and the motion passed unanimously.

Agenda Item 2 PUBLIC INTEREST COMMENTS

There were no public interest comments.

Agenda Item 3 APPROVAL OF PREVIOUS MINUTES: March 13, 2009

Dr. Colucci moved for approval of the March 13, 2009 minutes. Mr. Jackson seconded the motion and it passed unanimously.

Agenda Item 4 DISCUSSION/APPROVAL OF BOARD FINANCIAL REPORTS:

- A. Bank balance as of May 1, 2009**
- B. Income/Expense Report: July 1, 2008 through May 1, 2009**
- C. Accounts Receivable as of May 1, 2009**
- D. Accounts Payable as of May 1, 2009**

Agenda Item 4 DISCUSSION/APPROVAL OF BOARD FINANCIAL REPORTS (cont'd):

E. Extraordinary Items/Items of Concern

Cindy Wade reviewed the highlights of the financial reports. She has arranged for \$250,000 of the Board's funds to be invested in two \$50,000 six-month CDs and one \$150,000 14-month CD.

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 fiscal year-to-date**
- 3. Costs collected since last report**
- 4. Costs collected fiscal year-to-date**

D. Approval of Mary C. Sanada, CPA, proposal for 2008/09 annual audit.

Review of the Executive Director Reports was deferred until Dr. Rovetti's anticipated arrival at 4:00 PM.

Dr. Yamane turned the Chair over to Dr. Colucci because he is the Investigating Board Member in the following matter.

Agenda Item 6 Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of Edward F. Johnson, DC, License No. B156, Complaint No. 09-06S.

Dr. Johnson's attorney, Valner Johnson, was present. Ms. Foley recommended approval of his request for a continuance in this matter. Mr. Johnson agreed to allow Dr. Yamane to vote in order to provide a quorum. Mr. McCann moved to grant Dr. Johnson's Motion for Continuance and to place this matter on the next meeting agenda. Mr. Jackson seconded and the motion passed with all in favor.

Dr. Yamane resumed the Chair.

Agenda Items 7 and 8 were postponed pending Dr. Rovetti's arrival. Items 9 and 10 were postponed until Saturday, May 30, 2009.

Agenda Item 11 Discussion/possible action to approve/deny request from Kelly E. Murie, DC, for waiver of inactive license renewal reinstatement fee.

Paul Jackson moved to deny Dr. Murie's request for waiver of the \$200 inactive license reinstatement fee. Dr. Colucci seconded the motion and it passed unanimously.

Agenda Item 12 Discussion/possible action for approval of Application for Activation of Dr. Vigen Toomians License No. B650.

Dr. Toomians was present to discuss his qualifications for reinstatement of his inactive license to active status after a 5-1/2 year hiatus during which he has not practiced. Dr. Colucci moved that he be required to pass the National Board SPEC test within 6 months and, as soon as he has passed the SPEC, he may resume practicing providing he hire at his expense a Board-approved Compliance Officer who will monitor his practice for six months with two written quarterly progress reports submitted to the Board. Paul Jackson seconded and the motion passed with all in favor.

Agenda Item 13 Granting of licenses:

A. Doctor of Chiropractic who passed the February 11, 2009 examination based on test review.

Following discussion, Mr. Jackson moved to deny the DC applicant a license based on his original test score and that he be allowed to re-take the test at the next mutually convenient opportunity. Mr. McCann seconded and the motion passed unanimously. This decision will be discussed on Saturday under Board Member Comments when the rest of the Board members are present.

B. Doctors of Chiropractic who passed the May 13, 2009 examination.

Dr. Colucci moved to grant licenses to the DC applicants who passed the May 13, 2009 examination whose background checks have cleared and to those with pending background checks as soon as they clear.

Agenda Item 14 Discussion/possible action to approve board policy that all respondents be required to attend meetings at which their settlement agreements will be addressed.

Mr. Jackson moved to adopt the policy as written. Mr. McCann seconded and the motion passed unanimously.

Agenda Item 15 Discussion/possible action for adoption of minimal standards for evaluating an Online Continuing Education program.

Dr. Colucci recommended consideration of using the PACE program. This matter will be placed on the next meeting agenda and an invitation will be extended for someone from PACE to present their program.

Agenda Item 16 Discussion/possible action regarding Legislative issues:

A. SB26

B. Other Legislative bills/issues

NCA Lobbyist Maury Astley informed the Board that SB26 has been signed by the Governor. He and Dr. Robin Huhn expressed their appreciation for the Board's acceptance of the change of a maximum fine of \$10,000 per act to \$5,000 per act. Dr. Colucci requested that in the future the NCA become involved earlier in the process rather than to impose their opposition at the last minute as occurred during this Legislature.

Agenda Item 17 Discussion/possible action to establish subcommittee for development of disciplinary penalty guidelines.

Dr. Yamane announced that this matter will be tabled until a future meeting.

Agenda Items 18, 19, 20, 21 and 22 were postponed until Saturday, May 30, 2009. Regarding Agenda Item 21, Dr. Huhn informed the Board that the NCA is compiling information for training of CAs for development of an online CA training program.

Agenda Item 23 Reports:

A. FCLB/NBCE Annual Meeting

Dr. Colucci reported on the topics that were addressed at the meeting including CA testing, documentation, online CE and uniform disciplinary action. She was elected the new FCLB District IV Director.

Agenda Item 23 Reports (cont'd)

B. Attorney

Ms. Foley reported on the status of her current cases.

C. Investigator

Written reports from the Board's investigators were distributed and reviewed.

D. Other committees

Committee reports were postponed until Saturday, May 30, 2009.

Agenda Item 25 was postponed until Saturday, May 30, 2009.

Agenda Item 26 Public Comment.

Dr. Huhn expressed the NCA's interest in the imposition of a limitation on the number of online CE hours allowed for license renewal. This will be addressed at the next meeting.

Agenda Item 24 Correspondence Report.

Several inquiries have been received regarding chiropractors' use of oxygen therapy. Cindy Wade will contact the Pharmacy Board and report on their advice at the next meeting.

Ms. Wade expressed concern about a letter received from NCA President Dr. James Overland, Sr., in which he stated that the NCA had received "numerous calls" complaining about the CA exams, and conflicting information that appeared in his article in the NCA Newsletter that refers to "a few complaints" about the CA exams and that NCA "will provide needed information to CPBN to assist in a more balanced and fair test in the future," which would be inappropriate. Dr. Overland has not responded to Test Committee Chair Dr. Colucci's letter in which she advised that it is more appropriate for any such complaints to be referred to the CPBN and requested the names of the persons who called, their comments and the specific questions that they feel are "unfair, trick questions and/or poorly worded" so that she may contact them.

Following a recess, the meeting reconvened at 4:00 PM. Board Member Dr. David Rovetti was present.

Agenda Item 8 Administrative hearing/approval of proposed settlement agreement in the matter of Corazon Murillo, DC, License No. B647, Complaint No. 08-38S.

Dr. Murillo and her attorney, Richard Harris, were present. Elizabeth Foley reviewed the proposed Agreed Settlement. She informed the Board that Dr. Murillo is willing to cooperate in a serious case that is pending by providing witness testimony. She recommended approval of the settlement agreement with the concurrence of Mr. Harris and IBM Dr. Colucci. Following discussion, Dr. Rovetti moved to approve the Agreed Settlement with an amendment that Dr. Murillo must pass the National Board Ethics and Boundaries Examination by December 31, 2009 and she may deduct the actual cost of the exam from the amount of the assessed fine. If payment of the fine and Board's costs are not received within five days, or if she does not pass the National Board test by December 31, 2009, she will be subject to automatic suspension of her license and disciplinary action. Rick McCann seconded and the motion passed with all in favor except Dr. Colucci, who recused.

Agenda Item 7 Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of Verl Brent Bell, DC, License No. B864, Complaint No. 08-34I.

Elizabeth Foley stated that Dr. Bell has not answered the Complaint. She summarized the issues in this matter. A call was placed to the complainant, Dr. Shannon Gaertner-Ewing, Chair of the Idaho State Board of Chiropractic Physicians. Dr. Gaertner-Ewing was sworn in and provided testimony. Cindy Wade was then sworn in and testified. Ms. Foley requested that Exhibits 1 through 9 be admitted. Dr. Colucci moved that the allegations numbered 1 through 8 on Page 3 of the Complaint and Notice of Hearing be accepted as factual. Mr. Jackson seconded and the motion passed with all in favor. Following deliberation, Rick McCann moved that the charges numbered 1 through 4 on Page 4 of the Complaint and Notice of Hearing be accepted and that Verl Brent Bell is guilty of unprofessional conduct on all four of the charges. Paul Jackson seconded and the motion passed with all in favor. Mr. McCann moved that an Order be issued revoking Verl Brent Bell's license effective upon completion of the Order and to continue until he has completed his Federal felony probation at which time he may re-apply for licensure; also, that he be fined the maximum amount of \$10,000 and that he be required to reimburse the Board for its costs in this matter. Mr. Jackson seconded and the motion passed with all in favor.

The meeting was recessed and resumed at 9:10 AM on Saturday, May 30, 2009 in Room 4500 of the Grant Sawyer State Office Building at 555 E. Washington, Las Vegas, Nevada 89101. The following Board members were present:

Ian K. Yamane, DC, President
Margaret Colucci, DC, Vice President
David G. Rovetti, DC, Secretary
Jack Nolle, DC, Member
Paul Jackson, Consumer Member
Richard McCann, Consumer Member

Agenda Item 9 Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of Lisa Getas, DC, License No. B334, Complaint No. 07-27N.

Dr. Lisa Getas was present. Elizabeth Foley presented the issues in this matter. Dr. Getas waived her right to be represented by an attorney and was sworn in. She requested that the meeting be closed, however, it was not closed as no one from the public was present. Dr. Getas summarized the background of her felony conviction and responded to questions from Board members. Ms. Foley requested admission of Exhibits 1 through 9. Dr. Rovetti recused himself from this matter because of his personal friendship with Dr. Getas. Rick McCann moved that the factual allegations Nos. 1 through 6 on Page 3 of the Complaint and Notice of Hearing be accepted as written. Dr. Colucci seconded and the motion passed with all in favor except Dr. Rovetti who recused. Paul Jackson moved that Dr. Getas is in violation of NRS 634.018(6) and is found guilty. Rick McCann seconded the motion and it passed with all in favor except Dr. Rovetti who recused. Mr. Jackson made a motion that Dr. Getas be placed on probation through the end of her supervised release on August 25, 2010 with no compliance monitor required because her violation was not connected to her chiropractic practice. She must also reimburse the Board's costs, take and pass the National Board Ethics and Boundaries examination and perform 12 hours of community service by teaching math at a high school with a letter of completion to be sent to the CPBN Executive Director by December 31, 2009. Dr. Nolle seconded. The motion passed with all in favor except Dr. Rovetti who recused.

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 09-04S

Dr. Rovetti was the investigating Board Member for this complaint in which the patient claimed that the doctor misrepresented that he was a provider for her insurance. The doctor and the patient have resolved this matter and Dr. Rovetti recommended dismissal of the complaint. Mr. Jackson moved to dismiss Complaint 09-04S. Mr. McCann seconded and the motion passed with all in favor except Dr. Rovetti who recused.

B. Complaint 09-08N

This complaint was filed because a website offered a coupon that was in violation of NAC 634.556(2)(a), and it contained a profile of an unlicensed applicant that described him as a new addition to their team of "providers." NRS 629.031(1) indicates that a "Provider of health care" is defined to be a licensed chiropractor. Upon investigation, it was found that the applicant was not providing chiropractic services. The complaint was withdrawn. An advertising violation warning letter was sent to the licensees responsible for the website who subsequently amended the coupon and the applicant's profile to comply with the statutes and regulations. Rick McCann moved to dismiss the complaint. The motion was seconded by Dr. Rovetti and passed unanimously.

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D. Approval of Mary C. Sanada, CPA, proposal for 2008/09 annual audit.

The Executive Director reports were reviewed. Dr. Rovetti moved to accept the 2008/09 audit proposal of CPA Mary Sanada. Dr. Nolle seconded and the motion passed unanimously.

Agenda Item 19 Agenda Item 18 HVLA thrust manipulation by Physical Therapists:

A. Report on attendance at May 7, 2009 Physical Therapy Board meeting

B. Discussion/possible action regarding Spinal Manipulation Institute seminar that instructs HVLA thrust manipulation to Physical Therapists

C. Discussion/possible action regarding Physical Therapists performing manipulations

Dr. Rovetti reported on his activities with respect to his participation at the May 7, 2009 Physical Therapy Board meeting and the HVLA thrust manipulation issues. Mr. Jackson made a motion to establish a subcommittee of Rick McCann, Dr. Rovetti and himself to formulate a letter requesting a legal opinion from the State Attorney General. Dr. Rovetti seconded and the motion passed unanimously.

Agenda Item 21 Review/discussion/possible action to approve Palmer on-line CA training program.

Dr. Colucci has reviewed the course outline of the Palmer online CA training program. She moved that this program be approved for 25 hours of credit toward CA on-the-job training. Dr. Nolle seconded and the motion passed unanimously.

Agenda Item 22 Discussion/possible action re: status of sports physical issue.

Dr. Nolle reported that this matter was tabled at the NIAA meeting in January. Following discussion, Dr. Nolle moved to nullify the opinion that was unilaterally submitted to the NIAA by the Board's Secretary in response to their April 11, 2000 questionnaire in that he was not authorized to express that opinion on behalf of the Board. Mr. Jackson seconded the motion and it passed with all in favor. Dr. Rovetti made a motion that it is this Board's position that chiropractors are qualified to perform sports physical examinations based on the physiology courses taught in chiropractic colleges that include cardio-vascular, thereby falling within the chiropractic Scope of Practice. Dr. Nolle seconded and the motion passed with Drs. Colucci, Nolle, Rovetti and Yamane in favor and Paul Jackson and Rick McCann recused as not being qualified to make a judgment on this issue. It was agreed that this matter should be addressed by the professional association. NCA Lobbyist Maury Astley will pass this information on to the NCA and advise that the NCA should have a representative attend the June NIAA meeting.

Agenda Item 20 Discussion/possible action to establish regularly scheduled Board meetings.

Dr. Colucci moved to accept the proposed schedule for quarterly Board meetings to be held at 9:00 AM on the second Friday and Saturday of September, December, March and June. Mr. Jackson seconded the motion and it passed unanimously. Mr. Jackson made a motion that Board members may have the option to travel the night before the meetings as long as they pay for their hotel and meals and are not paid a salary for that day. Dr. Rovetti seconded the motion and it passed with all in favor.

Agenda Item 18 Discussion/possible action to approve plans for a Board retreat.

On Dr. Rovetti's recommendation it was agreed that rather than hold a retreat, it would be more efficient and economical for the Board to have an ongoing agenda item at each meeting at which to address the Board's goals, vision of future accomplishments, etc..

Agenda Item 23 Reports:**C. Other committees**

Regarding the Legislative Committee, Dr. Yamane observed that a better flow of communication and information is needed. He requested that Dr. Rovetti be involved in the Legislative process for a last minute decision and/or to provide testimony if the need arises. Legislative communications should include Dr. Yamane through Paul Jackson who will consult with Lobbyist Paula Berkley.

Agenda Item 25 Board Member Comments.

Dr. Yamane requested that **Agenda Item 13 Granting of licenses: Doctor of Chiropractic who passed the February 11, 2009 examination based on test review** be revisited. Following discussion, Paul Jackson made a motion to deny granting of a license to the applicant with the provision that he if he re-takes and passes the Law test before the next Board meeting he will automatically be granted a license. Mr. McCann seconded. The motion passed with Drs. Colucci, Nolle and Yamane, and Paul Jackson and Rick McCann in favor. Dr. Rovetti was opposed because he felt the applicant should be granted a license immediately. Following discussion, it was agreed that at the next meeting the Board's test review policy should be reviewed for possible clarification and re-evaluation of the subject test question.

On-line continuing education seminars will also be an agenda item at the next meeting.

Dr. Colucci announced that the FCLB District IV Regional Meeting will be held in Keystone, South Dakota on October 1-4, 2009; the next annual FCLB/NBCE meeting will be in Baltimore, Maryland on April 28-May 2, 2010.

Dr. Rovetti requested that out of state utilization reviews be an agenda item for the September Board meeting.

Agenda Item 27 Adjournment.

Dr. Yamane moved for adjournment of the meeting. Mr. Jackson seconded and the motion passed unanimously.

Approved: September 11, 2009

David G. Rovetti, DC, Secretary