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CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

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MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board was held on Saturday, October 23, 2010 in Meeting Room A of the Marriott's Courtyard, 3275 Paradise Road, Las Vegas, Nevada 89109. The following Board members were present at 9:00 AM for the roll call:

Margaret Colucci, DC, President
Lawrence Davis, DC, Vice President
David G. Rovetti, DC, Secretary
Paul Jackson, Consumer Member
Shell Mercer, Esq., Consumer Member
Ian K. Yamane, DC, Member

Also present were Board Counsel Louis Ling and Executive Director, Cindy Wade.

A quorum was present and the meeting was called to order. Dr. Colucci led those present in the Pledge of Allegiance.

Agenda Item 1 Approval of Agenda

Dr. Davis 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 4 Discussion regarding present status of *Lin v. Chiropractic Physicians' Board of Nevada* (Eight J.D. Case No. A618159).

Mr. Ling summarized the current status of Dr. Lin's license and his chiropractic practice, and also the present status of Dr. Lin's Petition for Judicial Review which will take approximately six months to resolve. Ms. Mercer disclosed that she is handling the probate for the estate of the brother of the Judge Williams, the Judge for the Judicial Review, as he is one of the heirs.

Agenda Item 5 Board Member Comments.

Paul Jackson has met with Drs. Nolle and Rovetti to work out the RFP process for a lobbyist. They will review the applications and narrow them down to three for the Board's selection at the December 4 meeting.

Agenda Item 5 Board Member Comments (cont'd)

Dr. Colucci gave a brief report on the October 6-10 FCLB Regional Meeting. She is running for the office of FCLB Treasurer and asked for the Board's support of her candidacy.

Mr. Jackson expressed his concern about the costs that have been incurred in the current disciplinary case. He recommended this matter be on the agenda for the next meeting

Dr. Rovetti recommended that there should be an orientation for the new Board members preceding the meeting on December 4.

After a recess, the meeting reconvened at 10:42 AM. Dr. Colucci turned the Chair over to Ms. Mercer for the following matter.

Agenda Item 3 Continuation of administrative hearing in the matters of Obteen Nassiri, DC, License No. B847, Complaint Nos. 07-10S and 08-19S and Edward F. Johnson, DC, License No. B156, Complaint No. 09-06S, including discussion/deliberation toward final decision in the matters.

Respondents Drs. Nassiri and Johnson were not present. Their attorney, Liborius Agwara, and prosecuting attorney, Elizabeth Foley, were present. A list of the exhibits that were offered and admitted during the previous session of the hearing was reviewed and clarified. Mr. Agwara stated that he would not present any witnesses for the defense and rested. Ms. Foley presented her closing argument followed by Mr. Agwara's closing argument and Ms. Foley's rebuttal.

There was a break for lunch and the hearing reconvened at 1:54 PM. The hearing went off the record while the Board members reviewed Ms. Foley's brief. The hearing went back on the record at 2:13 PM. Ms. Mercer instructed the Board members that in the course of their deliberation process the absence of the respondents may not be construed as guilt in any way because they are represented at this hearing by their counsel, Mr. Agwara.

The Board addressed each charge individually which resulted as follows:

Nassiri Charge A, violations of NRS 634.140(5) and NRS 439B.425: Paul Jackson moved to find Dr. Nassiri in violation of the first Cause of Action entitled "Referrals." Dr. Colucci seconded and the motion passed with all in favor.

Nassiri Charge B, violation of NAC 634.430(1)(e) pursuant to NRS 634.018(10): Mr. Jackson moved that Dr. Nassiri be found in violation on the second Cause of Action entitled "Capping Fee Splitting." Dr. Rovetti seconded and the motion passed with all in favor.

Johnson Charge A, violation of NAC 634.430(1)(e) pursuant to NRS 634.018(10): Mr. Jackson made a motion to find Dr. Johnson in violation on the first Cause of Action entitled "Capping Fee Splitting." Dr. Rovetti seconded the motion. The motion passed with all in favor.

Nassiri Charge C, violations of NAC 634.430(1)(m) pursuant to NRS 634.018(10), NRS 686A.2815, NAC 634.430(1)(f) subsections 1-3, NAC 634.430(1)(f) pursuant to NRS 634.018(10), and NRS 629.061(1)(a). Dr. Rovetti made a motion to find Dr. Nassiri in violation of the third Cause of Action entitled "Fraud Related to Chiropractic." Mr. Jackson seconded and the motion passed with all in favor.

Johnson Charge B, violations of NAC 634.430(1)(m) pursuant to NRS 634.018(10), NRS 686A.2815, NAC 634.430(1)(f) subsections 1-3, and NAC 634.430(1)(f) pursuant to NRS 634.018(10). There was discussion concerning fraudulent billing. Dr. Colucci read the findings from an MRI that was in evidence. It was determined that fraudulent billing was not proven. Dr. Rovetti moved to find Dr. Johnson in violation of Sections 2 and 3 of Charge B, the second Cause of Action, but not in violation of Section 4. Ms. Mercer seconded the motion and it passed with all in favor.

Nassiri Charge D, violation of NAC 634.435. Dr. Rovetti made a motion that Dr. Nassiri be found in violation of the fourth Cause of Action entitled "Non Compliance with Health Records Requirements." Ms. Mercer seconded. The motion passed with all in favor.

Johnson Charge C, violation of NAC 634.435. Mr. Jackson made a motion that Dr. Johnson be found in violation of the third Cause of Action entitled "Non Compliance with Health Records Requirements." Dr. Rovetti seconded. The motion passed with all in favor.

Nassiri Charge E(9), violation of NAC 634.430(1)(h) pursuant to NRS 634.018(10) and E(10), violation of NAC 634.430(1)(h) pursuant to NRS 634.018(10), and E(11), violation of NRS 634.043(2)(c). Dr. Rovetti made a motion to find Dr. Nassiri in violation of the fifth Cause of Action entitled "Failing to Make Record Available to Board." Dr. Davis seconded and the motion passed with all in favor.

Johnson Charge D, violation of NAC 634.430(1)(h) pursuant to NRS 634.018(10) and NRS 634.043(2)(c). Dr. Davis made a motion to find Dr. Johnson in violation of the fourth Cause of Action entitled "Failing to Make Records Available to Board." Dr. Colucci seconded. The motion passed with all in favor.

Nassiri Charge F, violation of NAC 634.430(1)(n), NRS 634.018(15) and NRS 634.123. Dr. Rovetti moved to find Dr. Nassiri in violation of the sixth Cause of Action entitled "Unregistered Chiropractic Assistants." Dr. Davis seconded the motion and it passed with all in favor.

Johnson Charge E, violation of NAC 634.430(1)(n), NRS 634.018(15), NRS 634.123, NRS 634.127 and NRS 634.018(11). During discussion it was determined that Dr. Johnson was not responsible with respect to the supervision of more than four chiropractor's assistants at the same time and that charge should be dismissed. Dr. Colucci made a motion to find Dr. Johnson in violation of the fifth Cause of Action entitled "Unregistered Chiropractic Assistants" including Nos. 8, 9 and 11 with No. 10 dismissed. Mr. Jackson seconded the motion. The motion passed with all in favor.

The Board proceeded to deliberate on the discipline to be rendered.

Johnson Dr. Colucci moved that Dr. Johnson's license be suspended for one year effective immediately, followed by a three-year probation with compliance monitoring, that he be fined \$1,000 per violation, a total of \$5,000 and assessed 20% of the Board's total costs, that he take and pass the National Board Ethics and Boundaries test and the CPBN Law test, that he complete 100 hours of community service as approved by Mr. Ling or, in lieu of paying the \$5,000 fine he may complete 500 hours of community service as approved by Mr. Ling, all of which must be accomplished before the end of his suspension. As well, he may not work as a Chiropractor's Assistant or a Chiropractor's Assistant in training, own, manage, bill, code or market a chiropractic practice during the suspension, he must appear before the Board with a proposed Compliance Monitor to be approved by the Board, and he may submit a plan for reimbursement of the Board's costs at any time for the Board's approval. Mr. Jackson seconded. The motion passed with all in favor.

Nassiri Dr. Rovetti moved that Dr. Nassiri's license be suspended for a minimum of six years or until further order of the Board, that he be fined \$5,000 per cause of action totaling \$30,000 and assessed 80% of the Board's total costs, that he complete 100 hours of community service, and that he take and pass the National Board Ethics and Boundaries test and the CPBN Law test, all of which must be completed prior to applying for reinstatement of his license, and that upon reinstatement his practice must be monitored for compliance for three years at his expense. Ms. Mercer seconded the motion. After discussion, Dr. Rovetti amended his motion to require Dr. Nassiri to complete 100 hours of community service per year, a total of 600 hours and all of the discipline must be completed before Dr. Nassiri's license may be reinstated. Ms. Mercer seconded the amended motion. The motion did not pass with Dr. Rovetti and Ms. Mercer in favor and Drs. Colucci and Davis and Mr. Jackson opposed.

After further discussion, Mr. Jackson made a motion for revocation of Dr. Nassiri's license, that he be fined \$5,000 per violation, a total of \$30,000, and assessed 80% of the Board's total costs and that he may not purchase or participate in any chiropractic facility in Nevada. Dr. Colucci seconded. The motion passed with Drs. Colucci and Davis and Mr. Jackson in favor, and Dr. Rovetti and Ms. Mercer not in favor. There was more discussion and Mr. Jackson moved to include the date of this hearing, October 23, 2010, as the effective date and the fine and Board's costs are to be paid within 30 days. Dr. Colucci seconded the motion. Following discussion, Ms. Mercer made a friendly amendment to make the effective date of the revocation and the other discipline that the Board ordered stayed until approval of the bankruptcy court. Dr. Davis seconded and the amended motion passed with all in favor.

Dr. Colucci resumed the Chair and the meeting was adjourned at 6:35 PM.

Approved: December 4, 2010



David G. Rovetti, DC, Secretary