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Executive Director

CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

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MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board was held on Thursday, September 9 thru Sunday, September 12, 2010 in the Reno Meeting Room of Marriott's Residence Inn at 3225 Paradise Road, Las Vegas, NV 89109. The following board members were present for the roll call:

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

Consumer Member Paul Jackson arrived at 9:30 AM on Thursday, September 9. Also present were Staff Attorney Louis Ling, Esq., and Executive Director Cindy Wade.

President Dr. Margaret Colucci determined that a quorum was present and called the meeting to order at 9:05 AM. Dr. Ian Yamane led those present in the Pledge of Allegiance.

Agenda Item 1 Approval of Agenda

Dr. Yamane moved for approval of the agenda. Dr. Davis seconded and the motion passed with all in favor.

Agenda Item 2 Public Interest Comments

There were no public interest comments.

Dr. Colucci noted that Agenda Item 6 was noticed to commence at 9:00 AM, however, only one of the respondents was present. The Board proceeded to address other agenda items pending the arrival of the other respondent.

Agenda Item 4 Discussion/possible action regarding minutes of previous meeting:

- A. Approval of June 11-12, 2010 Minutes ✓
- B. Approval of July 10-11, 2010 Minutes ✓

Dr. Yamane made a motion to approve the minutes of the June 11-12 and July 10-11, 2010 meetings. Dr. Davis seconded the motion and it passed unanimously.

Agenda Item 7 Discussion/possible action regarding assignment of Compliance Monitor required by Board Order in the Matter of Allen Stout, DC, License No. B542.

The board agreed that Jon Floto, DC, is qualified to be a Compliance Monitor. However, he is not suitably located geographically to monitor Dr. Stout. Dr. Rovetti moved to table this matter until a qualified person is located who could better physically monitor Dr. Stout's practice. Dr. Davis seconded and the motion passed with all in favor.

Agenda Item 10 Discussion/possible action regarding request from American College of Addictionology and Compulsive Disorders for recognition of diplomate status for specialty advertising purposes.

Dr. Rovetti moved to accept the Addictionology and Compulsive Disorders Diplomate Program for advertising purposes. Dr. Yamane seconded the motion. After further discussion, Dr. Rovetti amended his motion to also include the Addictionology and Compulsive Disorders Certification Program for advertising purposes. Dr. Yamane seconded the amended motion and it passed with all in favor.

Agenda Item 16 Discussion/possible action for clarification:

- A. Pre-payment plans
- B. Cash discount plans

Upon review, Dr. Rovetti moved that a letter be drafted advising that these issues are not addressed in the chiropractic statutes, regulations or Board policies, and the State Insurance Commission and/or a private attorney should be consulted. Mr. Jackson seconded and the motion passed with all in favor.

At 9:35 AM Dr. Colucci turned the Chair over to Ms. Mercer who presided in the following matter:

Agenda Item 6 Discussion/possible action regarding 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.

Dr. Yamane recused from this matter because he is the Investigating Board Member. Dr. Johnson was the only respondent present. He stated that he understood that he and his counsel, Liborius Agwara, Esq., were supposed to be present at 9:00 this morning. There was a recess during which CPBN prosecuting attorney, Elizabeth Foley, contacted Mr. Agwara. Dr. Nassiri and Mr. Agwara subsequently arrived and the meeting reconvened at 10:05 AM.

Mr. Agwara requested the Board grant his Motion for Continuance or Stay of this matter. Ms. Foley argued against the Motion. Mr. Jackson moved that the Motion for Continuance or Stay be denied. Dr. Rovetti seconded the motion. There was discussion during which it was determined that the hearing was properly noticed and that there is potential harm to the public because the respondents are currently practicing. The motion passed with all Board members in favor.

After a break, Mr. Agwara proposed that, in lieu of proceeding with the hearing today, the Board accept voluntary surrender of his clients' licenses through the conclusion of the Federal Court action with the suspensions to commence in a couple of weeks to allow his clients to make arrangements for a temporary doctor to take care of their practice, and payment to the Board for the costs of today's proceedings in the amount of \$1,500. Mr. Jackson moved to deny the motion and Dr. Colucci seconded. The motion passed with Drs. Colucci and Davis, Mr. Jackson and Ms. Mercer in favor, and Dr. Rovetti opposed.

After a recess for lunch, the meeting reconvened at 1:10 PM with Dr. Colucci as Chair.

Agenda Item 23 Discussion/approval of Executive Director Reports:

- A. Status of Complaints received
- B. Status of Current Probations
- C. Legal/Investigatory

Cindy Wade provided updates of the reports since they were published. There were no questions or comments.

Dr. Colucci turned the Chair over to Ms. Mercer.

Agenda Item 6 Discussion/possible action regarding 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. (cont'd)

Mr. Agwara objected to the combining of the Nassiri and Johnson actions. His objection was not sustained.

Ms. Foley made her opening statement. Mr. Agwara declined to make an opening statement.

Gina Crown was sworn in and testified for the prosecution.

Mr. Agwara declared that he might call Ben Smith of State Farm Insurance, who was present in the audience, as a witness and invoked the exclusionary rule. Mr. Smith left the hearing.

Mr. Agwara cross-examined witness Gina Crown.

The hearing recessed until 10:30 AM, Friday, September 10.

Dr. Colucci called the meeting to order at 9:07 AM on Friday, September 10. The following Board members were present at the roll call:

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

Also present were Louis Ling and Cindy Wade. Dr. Yamane led those present in the Pledge of Allegiance.

Agenda Item 9 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: Complaint No. 10-11S.

Dr. Rovetti explained that this complaint addresses a possible violation of NAC 634.419(4)(c). This matter needs further fact finding and should be brought before the Board at the next meeting.

Agenda Item 15 Discussion/possible action regarding laser treatment:

- A. Scope of practice issue
- B. Administration of Class 3 laser treatment by Chiropractic Physicians or Chiropractor's Assistants

The use of non-invasive laser treatment for therapeutic purposes by chiropractors is universally accepted. It has been brought to the Board's attention that some licensees are advertising laser treatment for cosmetic purposes. The Board will pursue further exploration of this issue by working with the Nevada Chiropractic Association. Ms. Mercer moved that a letter be sent in response to the attorney who brought this issue to the Board's attention. It should include the Board's thanks for expressing his concern, that the Board has addressed this matter and is in the process of looking further into these issues and, inasmuch as he is concerned about public safety, so is the Board. Mr. Jackson seconded the motion and it passed unanimously.

Agenda Item 21 Discussion/approval of Staff Attorney Report.

Louis Ling updated the Board on the current status of the Michael Lin, DC, disciplinary matter. He has not been notified if Dr. Lin has contacted Affiliated Monitors. Dr. Lin's attorney did not include the hearing date in the Petition for Judicial Review. Mr. Jackson moved to table this matter until Mr. Ling can obtain this information. Dr. Rovetti seconded and the motion passed unanimously.

Agenda Item 14 Discussion/possible action regarding potential complaint against Chiropractor's Assistants in the Michael Lin, DC, disciplinary matter.

Dr. Colucci moved that a complaint be filed to initiate an investigation based on the evidence gathered in the Michael Lin, DC, disciplinary matter. Mr. Jackson seconded. The motion passed with all in favor except Dr. Rovetti who was opposed.

At 10:50 AM it was determined that all parties were present and the following hearing was reconvened with Ms. Mercer as Chair.

Agenda Item 6 Discussion/possible action regarding 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. (cont'd)

Witness Gina Crown answered questioned from the Board which concluded her testimony.

Elizabeth Foley stated that her next witness, Liz Rowan, will provide testimony utilizing Power Point for presentation of evidence. A CD will be provided to the Court Reporter to be appended to the transcript of the proceedings as evidence.

Liz Rowan was sworn in and provided testimony and evidence for the prosecution. The hearing was recessed until 10:30 AM on Saturday, September 11. All parties were advised to be prepared to go until 10:00 PM on Saturday.

Dr. Colucci resumed the Chair.

Agenda Item 19 Staff Attorney Performance Evaluation:

- A. Review of evaluation results
- B. Discussion/possible action regarding permanent part-time employment of Louis Ling, Esq., as CPBN Staff Attorney

Dr. Rovetti presented a summary of the Board members' evaluations of Mr. Ling's performance. Dr. Davis moved to hire Mr. Ling as Staff Attorney on a permanent part-time basis. Shell Mercer seconded. The motion passed with all in favor.

Agenda Item 21 Discussion/approval of Board Financial Status Report:

- A. Bank balance as of September 1, 2010
- B. Income/Expense Report: July 1, 2010 through August 31, 2010
- C. 2009/10 Income/Expense Statement
- D. Extraordinary Items/Items of Concern
 - (1) Cash position
 - (2) Sale of CPBN shares of Employers Holdings, Inc.

The Board's current financial situation was reviewed. Mr. Jackson made a motion to allow the Executive Director, with the permission of the Board President and Secretary, to sell up to 50% of the CPBN shares of EIG between now and the December meeting. Dr. Rovetti seconded and the motion passed with all in favor.

Agenda Item 25 Discussion/approval of appointments of delegate and alternate delegate, and approval of any other Board member or staff to attend FCLB Regional Meeting in Sedona, Arizona October 6-10, 2010.

Drs. Colucci and Davis will attend the meeting.

Agenda Item 26 Correspondence Report

There was no correspondence to report.

Agenda Item 27 Board Member comments

There were no Board member comments.

Agenda Item 28 Public Comment

There were no public comments.

The meeting recessed at 6:00 PM and resumed at 9:10 AM on Saturday, September 11, 2010. The following Board members were present at the roll call:

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

Also present were Louis Ling, Esq., and Cindy Wade. Mr. Jackson led those present in the Pledge of Allegiance. There was a moment of silence to honor the victims of "9/11." Dr. Colucci called the meeting to order.

Agenda Item 3 Public Hearing for the Adoption of Regulations of the Chiropractic Physicians' Board of Nevada.

Drs. Ben Lurie and Annette Zaro were present and were advised that anyone providing testimony will be sworn in.

NAC 634.385(7) will be amended to state: "...*proper billing and coding*...of insurance." A new provision will be added that will provide for a maximum of four hours of CE credit per renewal period to a licensee who attends a Board meeting or meetings unless the attendee is a respondent in a disciplinary matter. The provisions that were omitted in the drafted regulations will be re-noticed for a new hearing for adoption as temporary regulations.

Agenda Item 8 Discussion/possible action regarding approval of Application for Temporary License of Stacy Bone-Rapp, DC.

Cindy Wade provided background on this matter. Mr. Jackson moved to deny Dr. Bone-Rapp's application. Dr. Colucci seconded the motion. After discussion, Mr. Jackson withdrew his motion and Dr. Colucci withdrew her second. Ms. Mercer moved to approve the application pursuant to NAC 634.367(4) which allows the Board discretion in this situation. Dr. Nolle seconded and the motion passed with all in favor except Mr. Jackson, who abstained.

Agenda Item 17 Discussion/possible action for granting of Doctor of Chiropractic licenses to applicants who passed the August 11, 2010 examination.

Ms. Mercer moved to grant DC licenses to those who passed the August 11, 2010 examination. Dr. Rovetti seconded. The motion passed with all in favor.

Agenda Item 18 Discussion/possible action for granting of Chiropractor's Assistant certificates to applicants who passed the August 13, 2010 examination.

Mr. Jackson moved to grant CA certificates to those who passed the August 13, 2010 examination. Ms. Mercer seconded. The motion passed with all in favor.

Ms. Mercer assumed the Chair for the following hearing.

Agenda Item 6 Discussion/possible action regarding resumption 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. (cont'd)

All parties were present. Testimony of Ms. Rowan resumed.

Following a lunch recess, Dr. Colucci resumed the Chair.

Agenda Item 5 Discussion/possible action regarding approval of proposed agreed settlement in the matter of Dennis Dumler, DC, License No. B678, Complaint No. 10-08S.

It was noted that Dr. Dumler was present. Mr. Ling provided a brief background of this matter and presented the terms and conditions of the proposed settlement agreement. Dr. Nolle moved to accept the settlement agreement as proposed and Dr. Rovetti seconded the motion. Following discussion, Dr. Rovetti withdrew his second. It was then determined that Dr. Colucci must recuse herself from this matter because she is the Investigating Board Member. She turned the Chair over to Dr. Davis.

Dr. Davis noted that there was a motion on the floor. Dr. Yamane seconded the motion. After discussion about the terms and conditions of the proposed agreement and the determination that the IBM was unwilling to agree to any changes, Ms. Mercer moved to accept the settlement as proposed. Dr. Davis seconded. The motion passed with Drs. Davis, Nolle and Yamane and Ms. Mercer in favor and Dr. Rovetti and Mr. Jackson not in favor.

Dr. Colucci resumed the Chair.

Agenda Item 11 Discussion/possible action regarding non-licensees adjusting in events.

NCA President James Overland, DC, was present. He expressed his concern that non-licensees, including chiropractic students, may be performing adjustments during sports and other events that occur in Nevada. Following discussion of this matter, Dr. Yamane made a motion that a notice should appear on the Board's website and a letter should be created to be included with the approval letters to seminar sponsors warning that doctors and/or students who anticipate performing chiropractic in the state of Nevada must obtain a Nevada Temporary License. NRS 634.115, 634.227 and NAC 634.367 will be cited. Mr. Jackson seconded. The motion passed with all in favor except Dr. Rovetti, who was opposed.

Agenda Item 12 Discussion/possible action regarding advertising violations on licensee websites.

This matter was discussed but no action was taken.

Agenda Item 13 NIAA sports physicals update.

Dr. Overland reviewed the current status of the NIAA regulation changes. He expressed his appreciation to Drs. Colucci and Yamane for their efforts toward coalescence with the NCA.

Dr. Colucci turned the Chair over to Ms. Mercer and the following matter was resumed.

Agenda Item 6 Discussion/possible action regarding resumption 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. (cont'd)

Ms. Rowan's testimony for the prosecution was concluded.

Mr. Agwara objected that Ms. Foley is related to the Magistrate Judge in Dr. Nassiri's Federal case. Ms. Foley stated that the Magistrate Judge is her distant cousin and they are not in regular contact with each other. The objection was not sustained.

Mr. Agwara objected that Ms. Rowan and Gina Crown had discussed Ms. Crown's testimony and moved to strike all of Ms. Rowan's testimony. Ms. Rowan denied that such a discussion had occurred. Mr. Agwara's motion was denied. Ms. Rowan was cross examined by Mr. Agwara.

Following a dinner break, Ms. Foley announced that both parties had agreed on a proposed settlement. Ms. Mercer stated that the Board will consider only acceptance or denial of the proposed agreement.

The terms of the proposed agreement with Dr. Nassiri would include reimbursement of all of the Board's costs less \$4,000 for Dr. Johnson's share of the costs, with payments from Advanced Accident of at least \$500 per month, plus payment of a \$5,000 fine. There would be a six-month suspension which would be stayed, and a two-year monitored probation imposed with quarterly reports to the Board. Dr. Nassiri would be required to take and pass the Nevada Law Test and the National Board Ethics and Boundaries test within six months, and he will admit to improper record keeping.

The terms with Dr. Johnson would include a one-month suspension which would be stayed, and a one-year monitored probation imposed with quarterly reports to the Board. Dr. Johnson would reimburse \$4,000 of the Board's costs with payments of at least \$500 per month, plus payment of a \$1,000 fine. Dr. Johnson will admit to failure to register Chiropractor's Assistants.

Agenda Item 6 Discussion/possible action regarding resumption 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. (cont'd)

Dr. Rovetti moved to accept the agreement and Ms. Mercer seconded. The motion did not pass with Dr. Rovetti and Ms. Mercer in favor and Drs. Colucci and Davis and Mr. Jackson opposed.

It was then agreed to vote separately on the proposed agreements. Dr. Rovetti moved to accept the agreement as proposed for Dr. Nassiri. Ms. Mercer seconded. The motion did not pass with Dr. Rovetti and Ms. Mercer in favor and Drs. Colucci and Davis and Mr. Jackson opposed. Dr. Rovetti moved to accept the agreement as proposed for Dr. Johnson. The motion did not pass with Dr. Rovetti and Ms. Mercer in favor and Drs. Colucci and Davis and Mr. Jackson opposed.

Ms. Rowan testified on re-direct and answered questions from the Board.

Dr. Edward Johnson was sworn in and testified. There was no cross examination. Dr. Johnson answered questions from the Board.

The hearing was recessed until 10:30 AM on Sunday, September 12, 2010.

The meeting resumed on Sunday, September 12. The following Board members were present at the roll call:

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

Dr. Colucci called the meeting to order at 9:15 AM. Also present were Louis Ling, Esq., and Cindy Wade.

Agenda Item 20 Discussion/possible approval:

A. Committee mission outlines

Dr. Davis proposed the following mission statement for the Test Committee: "The Test questions shall be representative of the skill, knowledge and qualifications that the Board feels are required for public protection by the DCs and CAs." There were no other mission statements presented and this matter was tabled until the next meeting. ✓

B. Job descriptions

- (1) Receptionist/Licensing Specialist
- (2) Executive Director

The job descriptions were reviewed. There were no comments except that it is probably not necessary to require a Bachelor's Degree for the Executive Director position. ✓

Dr. Colucci turned the Chair over to Ms. Mercer.

Agenda Item 6 Discussion/possible action regarding resumption 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. (cont'd)

All parties were present at 10:30 AM and the Board was advised that there was a new proposal for settlement of the matter. Dr. Yamane presented the proposed settlement for Dr. Johnson which included one-year suspension, \$1,000 fine, take and pass National Board Ethics and Boundaries test and CPBN Law test and admission of failure to comply with subpoenas and failure to register Chiropractor's Assistants. Also, the ownership of Good Hands Chiropractic will revert back to Advanced Accident Chiropractic. The costs of this matter will be addressed in Dr. Nassiri's proposed settlement.

Dr. Rovetti moved to accept the settlement with Dr. Johnson as proposed. Ms. Mercer seconded. The vote was tabled until the Board could hear the proposed settlement for Dr. Nassiri.

Dr. Yamane presented the proposed settlement with Dr. Nassiri which would include reimbursement to the Board's for its costs up to a maximum of \$100,000 with 36 payments of \$2,778 per month beginning on November 11, 2010, a \$5,000 fine, surrender of Dr. Nassiri's license for one year effective October 1, 2010, take and pass the National Board Ethics and Boundaries test and the CPBN Law test, and admissions of record keeping violation, failure to comply with Board subpoenas and failure to timely register Chiropractor's Assistants. Referrals to other Nassiri-owned or family-related entities would not be allowed. To assure compliance upon reinstatement of his license, a Board approved Compliance monitor would be employed by Dr. Nassiri to monitor the practice on-site during the first three weeks, then weekly visits for three months, bi-monthly visits for three months, monthly visits for three months, and quarterly visits thereafter, for a total period of three years.

There was discussion with regard to hiring of a licensee to practice during Drs. Nassiri's and Johnson's suspensions, the presence of Drs. Nassiri and Johnson on the premises of the practice performing administrative duties during the suspensions, as well as a Compliance Monitor to ensure proper management of the practice.

Dr. Nassiri withdrew his settlement offer. The motion to accept Dr. Johnson's settlement offer did not pass with Drs. Colucci, Davis and Rovetti and Mr. Jackson and Ms. Mercer against and no one in favor.


Ms. Foley called Dr. Nassiri as a witness. He was sworn in and testified. There was no cross examination. Dr. Nassiri answered questions from the Board.

Mr. Agwara announced that he had a previous engagement at 2:00 PM. Discussion ensued regarding a date to reconvene. Mr. Agwara and his clients, Drs. Nassiri and Johnson, agreed to waive the 30-day notice requirement. It was agreed to reconvene the hearing in Las Vegas on Saturday and Sunday, September 25 and 26.

Agenda Item 6 Adjournment

The hearing recessed at 1:50 PM.

Approved: December 4, 2010



David Rovetti, DC, Secretary