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SHELL MERCER, ESQ
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ANNETTE ZARO, DC
Member

CINDY WADE
Executive Director

CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

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MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board was held on Saturday, June 4, 2011 in Meeting Room A of the Marriott's Courtyard at 3275 Paradise Road, Las Vegas, Nevada 89109.

The following Board members were present at the roll call:

David Rovetti, President
Lawrence Davis, DC, Vice President
Benjamin Lurie, DC, Secretary-Treasurer
Paul Jackson, Consumer Member
Shell Mercer, JD, Consumer Member
Jack Nolle, DC, Member
Annette Zaro, Member

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

A quorum was present and President Dr. David Rovetti called the meeting to order at 9:30 AM. Shell Mercer led those present in the Pledge of Allegiance. Dr. Rovetti read the Board's statement of purpose: NRS 634.019 Legislative Declaration.

Agenda Item 1 Approval of agenda

Dr. Nolle made a motion to approve the agenda. Paul Jackson seconded the motion and it passed with all in favor.

Agenda Item 2 Public Interest Comments

There was no public comment.

Agenda Item 3 Approval of Consent Agenda

CONSENT AGENDA

Agenda Item 4 Approval of previous minutes:

- A. March 1, 2011 conference call meeting
- B. March 12, 2011 meeting

(cont'd)

Agenda Item 4 Approval of previous minutes: (cont'd)

C. Legislative Committee meeting minutes:

- (1) March 16, 2011
- (2) March 24, 2011
- (3) March 28, 2011
- (4) April 4, 2011
- (5) April 7, 2011
- (6) April 14, 2011
- (7) April 18, 2011
- (8) May 2, 2011
- (9) May 12, 2011
- (10) May 19, 2011

Agenda Item 5 Approval of Board financial status report:

- A. Bank balance as of June 1, 2011
- B. Income/Expense Report: July 1 through June 1, 2011
- C. Accounts Receivable as of June 1, 2011
- D. Accounts Payable as of June 1, 2011
- E. Extraordinary Items/Items of Concern

Agenda Item 6 Approval of Executive Director Reports:

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

Agenda Item 7 Granting of Doctor of Chiropractic licenses to applicants who passed the May 11, 2011 examination.

Dr. Rovetti requested that approval of the March 12, 2011 Meeting Minutes be pulled from the Consent Agenda. Shell Mercer made a motion for approval of the Consent Agenda with the exception of the March 12, 2011 Meeting Minutes. Dr. Lurie seconded and the motion passed with all in favor.

REGULAR AGENDA

Agenda Item 8 Discussion/possible action re: determination of probationary status/proposed modification of Agreement for Issuance of Conditional License of Casey Robinson, DC, License No. B1263.

Board Counsel Louis Ling informed the Board that Dr. Casey Robinson has not satisfied all of the terms and conditions of his September 26, 2007 Agreement for Issuance of Conditional License because he failed to comply with his agreement with the California board. Mr. Ling reviewed the terms and conditions of the proposed Settlement Agreement and Order which Dr. Robinson has signed. Dr. Lurie moved to accept the Settlement Agreement as proposed. Mr. Jackson seconded and the motion passed with all in favor.

Agenda Item 20 Discussion/possible action re: evaluation of using CEvaptive.com for testing, discipline issues, and/or mandatory CPBN continuing education on related topics by the Board.

This agenda item was addressed out of order because it is relevant to Agenda Items 9 and 10. Dr. Lurie was recently made aware of the remediation courses offered by CEvaptive. (cont'd)

Agenda Item 20 Discussion/possible action re: evaluation of using CEvaptive.com for testing, discipline issues, and/or mandatory CPBN continuing education on related topics by the Board. (cont'd)

Dr. Lurie has reviewed the three remedial courses on the subjects of moral turpitude, fraud and sexual boundary issues that are available in three or four modules each. He feels they would be very useful in the rendering of disciplinary actions. After much discussion, Dr. Lurie made a motion that the CPBN utilize CEvaptive remedial courses as a primary or secondary disciplinary measure. Dr. Davis offered a friendly amendment that the courses be used for remediation purposes on the recommendation of the Investigating Board Member in the resolution of disciplinary cases. The amendment was accepted by Dr. Lurie. Dr. Davis seconded the motion and it passed unanimously.

Agenda Item 9 Discussion/possible action re: proposed modification of June 2, 2010 Settlement Agreement with Derek Foreman, DC, License No. B810, and

Agenda Item 10 Discussion/possible action re: proposed modification of October 5, 2010 Settlement Agreement and January 25, 2011 Order Modifying the Final Order Dated October 5, 2010 with Keith Quisberg, DC, License No. B993.

Mr. Ling explained that a problem exists with the terms and conditions of the Settlement Agreements with Drs. Foreman and Quisberg because the National Board's Ethics and Boundaries examination requires that four other sections be taken in addition to the billing and coding section. After discussion, Dr. Nolle moved to modify Drs. Foreman's and Quisberg's Orders to require that, in lieu of the National Board Ethics and Boundaries billing and coding test, all three of the CEvaptive billing and coding modules be taken and passed with a score of 75 or better, to be administered in the office of a Board member within 60 days. Dr. Lurie seconded and the motion passed with all in favor.

Agenda Item 11 Discussion/possible action re: request from Clyde Porter, DC, License No. B115, for early termination of his probation.

Cindy Wade referred the Board members to Dr. Porter's amended letter which was self-explanatory. Mr. Jackson moved that Dr. Porter's request be denied. Dr. Lurie seconded the motion. Following discussion, Ms. Mercer made a friendly amendment to deny the request "without prejudice." Mr. Jackson and Dr. Lurie accepted the friendly amendment. The motion passed with Drs. Lurie, Nolle, and Zaro, Ms. Mercer and Mr. Jackson in favor. Dr. Davis recused because he is Dr. Porter's chiropractor, and Dr. Rovetti recused because he was the IBM in Dr. Porter's disciplinary case.

Agenda Item 32B Committee reports: Legislative Committee

CPBN lobbyist Marsha Berkbigler reported by telephone on the status of passed and pending bills that will affect the Board. The NCA preceptorship bill passed and has been signed by the Governor. The bill to establish continuing education for chiropractor's assistants was successfully amended to correct the renewal year and will go through. AB289, the Dieticians' bill, passed but will not affect the Board. The integrated medicine bill, SB412, was killed. AB1, AB59, AB240, AB330, AB402 and SB37 will impact the Board and staff. AB578 will impact the Board and it will be very important to have a Board representative attend the interim committee meetings and hearings. Marsha will send a complete written report as soon as the session is ended.

Agenda Item 12 NCA matters:**B. NIAA/SB215/AB382/AB21/AB455**

NCA President Dr. James Overland, Sr., reported that AB119, the lien bill, failed to get out of committee. AB382 was almost killed due to malpractice insurance issues but was saved by promising that malpractice insurance will be made mandatory in the regulations. SB215 passed but the renewal year for CAs may have to be clarified later. The NIAA regulations were revised and chiropractors may now perform school sport/athletic physicals. However, chiropractors were not included in the definition of "health care provider" in AB455, which allows health care providers to assess head trauma, although physical therapists and advanced practitioners were included.

C. Manipulation/terminology

Dr. Overland advised that AB382 was strongly challenged by the physical therapists because of the existing definition of manipulation. He recommended that the Board consider revising the current definition found at NRS 634.105(2).

A. NCA/CPBN protocol, meetings and working relationship

Dr. Overland stated that about a year from now the NCA and the CPBN need to get together to formulate communications between the NCA and CPBN and their lobbyists. Mr. Jackson told Dr. Overland that he had personally carried the NCA's bills through the legislature and was offended because he wasn't invited to the bill signing in the Governor's office.

The meeting recessed for lunch and reconvened at 1:30 PM. Dr. Rovetti observed that we are saving a lot of expense by cutting down on the number of Board meetings. At this time there are four one-day meetings scheduled per year. The agendas are packed and we need to prioritize agenda items.

Agenda Item 13 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. Complaints 09-16N & 09-28N**

Dr. Nolle stated that the two complaints against the same DC concern CAs performing massage. He made a surprise visit to the doctor's practice and could not corroborate the complaints. This has become a moot issue because the Board no longer certifies massage therapists. He moved for dismissal of the complaints. Mr. Jackson seconded and the motion passed with all in favor except Dr. Nolle who recused because he was the IBM.

B. Complaint 10-12S

Dr. Rovetti explained that this complaint involved a dispute over the interpretation of an advertised offer of free services. The doctor has reimbursed the complainant for the disputed fees. However, he was in violation of NAC 634.556. Dr. Rovetti moved to dismiss the complaint with a letter of instruction to take and pass the CPBN Law test within 90 days. Mr. Jackson seconded and the motion passed with all in favor. It was decided that Dr. Rovetti, as the IBM, should not have made the motion. He withdrew his motion and Mr. Jackson withdrew his second. Ms. Mercer restated the same motion which was seconded by Mr. Jackson and passed with all in favor except Dr. Rovetti who recused because he was the IBM.

Agenda Item 13 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: (cont'd)

C. Complaint 10-20N

Dr. Rovetti stated that he has not yet concluded his investigation into this complaint.

D. Complaint 10-21S

Dr. Lurie advised that his investigation of this case did not uphold the complainant's allegations, but he did ascertain that the DC needs to assure that his patients' records are timely released upon receipt of a proper request. Dr. Nolle made a motion to dismiss Complaint 10-21S with a letter of instruction regarding compliance with NRS 629.061(1). Ms. Mercer seconded and the motion passed with all in favor except Dr. Lurie who recused because he was the IBM.

E. Complaint 11-1N

Mr. Jackson explained that the allegations in this complaint were thoroughly investigated by a private investigator and could not be substantiated. It does appear that the DC should receive some instruction about proper record keeping and employment practices. Ms. Mercer moved that the doctor be issued a letter of instruction directing her to NAC 634.419 and 634.435, and should include the report from the reviewer of her patient records. Dr. Rovetti seconded the motion which passed with all in favor except Mr. Jackson who recused as the IBM.

F. Complaint 11-2S

Dr. Lurie reported that the DC has refunded the balance of the remaining funds of the complainant's pre-payment plan because his new location is too far away for the patient to get to his office. There is no evidence of a violation because the regulatory language concerning notification of the location of patient records due to closure of a practice is unclear. Shell Mercer moved to dismiss the complaint with a letter of instruction regarding proper notification of change of location of patient records. Dr. Nolle seconded and the motion passed with all in favor except Dr. Lurie who recused because he was the IBM.

G. Complaint 11-3S

Dr. Lurie thoroughly investigated this complaint about billing issues and alleged improper billing codes. The DC's coding was appropriate and his fees were usual and customary. No violations were detected. Ms. Mercer made a motion to dismiss the complaint. Dr. Nolle seconded and the motion passed with all in favor except Dr. Lurie who recused because he was the IBM.

H. Complaint 11-6S(a,b,c&d)

Dr. Rovetti has reviewed the contractual issues contained in these complaints. After much discussion, it was determined that these issues are not for the Board to address at this time. Ms. Mercer moved to dismiss the complaints. Dr. Lurie seconded. The motion passed with all in favor except Dr. Rovetti who recused because he was the IBM.

I. Complaint 11-7N

Dr. Davis explained that this complaint alleges that the DC's fees for x-rays were too high. The Board does not have jurisdiction over fees and the doctor's charges for the patient's x-rays are within the standards of the community. Dr. Davis has determined that there is no violation. Shell Mercer made a motion to dismiss the complaint and Dr. Zaro seconded. The motion passed with all in favor except Dr. Davis who recused because he was the IBM.

Agenda Item 14 Discussion/possible action regarding approval of December 4, 2010 meeting minutes.

A verbatim excerpt transcribed from the December 4, 2010 audio tape supports Dr. Zaro's request to change the phrase in Agenda Item 14 regarding discussion of continuing education credits for CAs from "...*the Board agreed to also support it*" to "...*the Board agreed to consider the BDR.*" Ms. Mercer moved to approve the minutes of the December 4, 2010 meeting with Dr. Zaro's proposed correction. Dr. Zaro seconded. The motion passed with all in favor except Mr. Jackson who was opposed.

Agenda Item 4B Approval of previous minutes: March 12, 2011

Dr. Rovetti requested that under Agenda Item 4 Public Hearing of the March 12, 2011 meeting, the minutes should reflect that he was not in favor in principal regarding continuing education for Chiropractor's Assistants. Dr. Zaro moved to approve the minutes of the March 12, 2011 meeting with Dr. Rovetti's proposed correction. Shell Mercer seconded and the motion passed with all in favor except Paul Jackson who was opposed.

Agenda Item 15 Discussion/possible action regarding Secretary-Treasurer's report:

A. Report on results of investigation into possible unlicensed practice

Dr. Lurie has personally checked out the practice locations of all of the southern Nevada DCs who did not renew their licenses and has assured that none of them are practicing. Dr. Rovetti checked on several licensees in Elko with the same results. This is something that should be done at the end of each renewal season.

B. Establishment of fees for incidental services

Dr. Lurie has determined that our credit card costs are very high. Under NRS 634.135(2), we can pass along these fees. This will be addressed at the next meeting.

Agenda Item 16 Discussion/possible action regarding Board policies:

A. Proposed revision to "Compensation of Salary to Board Members and Per Diem Allowance and Travel Expenses to Board Members and Employees"

Dr. Lurie proposed to amend the policy to only pay hotel and dinner expenses for the night before if there is no early flight available for arrival in time for a morning meeting. After considerable discussion, this matter was tabled.

B. Proposed revision to "Confidentiality of Testing Material"

Dr. Rovetti made a motion to approve the revised wording to the policy as proposed by Dr. Lurie. Dr. Davis seconded and the motion passed unanimously.

C. Proposed revision to "Identification of Applicants"

Shell Mercer moved to adopt the revised wording to the policy as proposed by Dr. Lurie. Dr. Davis seconded and the motion passed unanimously.

D. Proposed revision to "Test Guest Examiners and Proctors"

Dr. Davis made a motion to revise the wording of the policy to "*Guest examiners must be actively licensed Doctors of Chiropractic in Nevada in good standing with the Board and.....*". Dr. Zaro seconded the motion and it passed with all in favor.

E. Establishment of new policy re: Use of Homeopathic Supplements

This policy will be addressed later in the meeting if time allows.

(cont'd)

Agenda Item 16 Discussion/possible action regarding Board policies (cont'd):

F. Policy reference/review

Dr. Lurie advised that Board members should refer to Board policies when applicable. As an example, the "Use of High Tech Equipment in a Chiropractic Office" policy should have been utilized when approval of a Bax Aura device was addressed at a previous meeting.

Agenda Item 17 Discussion/possible action for clarification of the term "educational entity" with regard to seminar sponsors.

This matter was tabled until the next meeting. Dr. Zaro will do more research to find out what else can be defined as an educational entity.

Agenda Item 18 Discussion/possible action regarding solicitation of questionable franchise.

A franchise recently put up a website for two licensees that contained advertising violations. When the licensees were made aware of the advertising violations and some possible more serious violations, they reconsidered the franchise arrangement and cancelled their contract. Dr. Lurie made a motion to publish a warning in the Newsletter as a reminder that all Nevada chiropractic laws must be followed when a licensee is considering entering into a franchise arrangement. Dr. Rovetti seconded and the motion passed with all in favor. Dr. Davis will obtain the New Mexico regulations that allow establishment of an escrow account for advance payments and this will be on the next meeting agenda.

Agenda Item 19 Discussion/possible action regarding next regulation changes:

A. Committee progress report

The committee will conduct a review of Nevada Administrative Code 634 for out of date, unnecessary, duplicative, etc., regulations and prepare a report that must be submitted before the end of the year as mandated by the Governor's Executive Order.

B. Revise Sec. 5 of uncodified regulations: Declaratory order or advisory opinion.

Board Counsel Louis Ling will research other Boards' regulations for the proper language.

C. Revise NAC 634.435(3)

This regulation needs to be revised to include reporting the location of the patient records of a licensee who closes his practice. Dr. Lurie and Dr. Nolle will begin the rule-making process by researching and drafting this and other revisions, as well as new regulations to address the preceptorship program, continuing education for chiropractor's assistants, definition of manipulation, prepayment plans, etc..

Agenda Item 21 Discussion/possible action re: employment of part-time investigator:

A. Task force report (No Action)

Mr. Jackson recommended contracting with a private investigator for six or twelve months at \$20 per hour for 20 hours a week. This person should be located in Las Vegas and could work on verifying the data collected on the Self-Inspection forms when not investigating complaints.

B. Establishment of part-time investigator position

Budgetary concerns and the necessity of this position were discussed. Mr. Jackson will solicit candidates and this matter will be considered again at the September meeting.

Agenda Item 22 Discussion/possible action to establish Board's position regarding legislative bills.

Dr. Lurie recommended that the exact language of a bill should be provided in writing before the Board is asked to vote on its approval. The Board should decide at the next meeting if it wants to submit a Board bill for the 2013 Legislature.

Agenda Item 23 Discussion/possible action for establishment of a requirement that Board members report all employment, contractual, fiduciary, etc, relationships.

This matter was dropped after a brief discussion of Mr. Jackson's proposal.

Agenda Item 24 Discussion/possible action for establishment of a requirement that Board subcommittees consist of at least two members.

Mr. Jackson recommended that all Board committees should have at least two members and requested that he be appointed to the Continuing Education Committee. It was recommended that rather than being appointed to the CE Committee, Mr. Jackson could work with Dr. Zaro on a task force to establish specific guidelines for CE approval. Dr. Lurie will assist Dr. Davis with the Test Committee. Mr. Ling confirmed that committee meetings and task force meetings must be agendized and minutes taken, but the Test committee may work on test material in closed session.

Agenda Item 25 Discussion/possible action for NBCE to join CLEAR (Council on Licensure, Enforcement and Regulation).

Dr. Rovetti described the purpose of CLEAR and made a motion that the Board join the membership. Mr. Jackson seconded and the motion passed with all in favor.

Agenda Item 26 Discussion/possible action for approval of contractual agreement with Robyn Mitchell, DC, DACBR, as member of Test Committee.

Dr. Bill Bailey is unavailable to administer the CA tests on Thursdays. Dr. Davis recommended he be replaced by Dr. Robyn Mitchell who is available and interested. Ms. Mercer made a motion to appoint Dr. Mitchell to the Test Committee and Dr. Nolle seconded the motion. Dr. Davis suggested that she be paid \$18.75 per hour. The motion passed with all in favor.

Agenda Item 27 Discussion/possible action to approve a survey mailing.

Dr. Zaro recommended that a task force be assigned to generate a survey of licensees for the purpose of gathering information in areas that might assist the Board to improve its effectiveness, i.e., questions about the laws or regulations, billing/coding problems, advertising compliance, etc.. Board members and the NCA should submit questions for the survey.

Agenda Item 28 Discussion/possible action for adoption of a policy that CPBN perform year-end performance evaluations.

Dr. Zaro suggested that the Board perform a self-evaluation on its effectiveness and efficiency of resolving disciplinary matters. Dr. Rovetti will work on this and it will be addressed at the next meeting.

Agenda Item 29 Report on FCLB/NBCE Annual Meetings

The Board members complimented Dr. Zaro on her thorough and well-written report.

Agenda Item 30 Discussion/possible action for approval of Board members to attend the FCLB regional meeting September 22-25 in Whitefish, Montana.

Dr. Lurie made a motion to send the Board's Voting Delegate Dr. Davis to the meeting. Dr. Zaro seconded and the motion passed with all in favor. Dr. Lurie moved to send Dr. Nolle to the meeting. Dr. Davis seconded and the motion passed unanimously.

Agenda Item 31 Board Counsel Report

A. Lin v. CPBN

Mr. Ling reported that there is no change in the status of the Lin matter. The issues cannot be resolved and we will be going to hearing sometime in the next few months.

B. Nassiri/Johnson v. CPBN

Mr. Ling reported that there is also no change in the status of the Nassiri/Johnson matter. The issues cannot be resolved and we will be going to hearing sometime in the next few months. He will notify everyone as soon as the hearing dates are set.

C. Other pending legal matters

There are no other legal matters pending at this time.

Agenda Item 32 Committee reports:

A. Continuing Education Committee

Dr. Zaro had nothing more to report.

B. Legislative Committee

The Legislative Committee report was made earlier in the meeting.

C. Test Committee

Dr. Davis reported that he has reviewed each CA test and scored each question. He revised the test by increasing the number of questions and changing the point value.

Agenda Item 33 Review of Roberts Rules of Order.

There was not enough time remaining and this review was tabled.

Agenda Item 34 Discussion/possible action to establish location for next meeting.

The September 10 meeting will be in Reno and the December 10 meeting will be in Las Vegas.

Agenda Item 35 Correspondence Report

Cindy Wade reported that seven advertising violation form letters were issued with positive results. She distributed copies of the first draft of the Spring/Summer Newsletter and asked for input from the Board members.

Agenda Item 16 Discussion/possible action regarding Board policies

E Establishment of Policy regarding use of homeopathic supplements.

The proposed new policy was reviewed and discussed. Dr. Zaro moved to approve the policy as proposed except for deletion of the last sentence. Dr. Lurie seconded. The motion passed with all in favor except Dr. Rovetti, who was opposed.

Agenda Item 37 Public Comment

Dr. Overland stated that without the assistance of Paul Jackson AB382 probably wouldn't have passed.

Agenda Item 36 Board Member Comments

Dr. Zaro will prepare an agenda item for the September meeting for the Board to approve up to 12 hours of continuing education for license renewal for attending the FCLB Annual Meeting.

Dr. Lurie requested that all Board members submit any outstanding expenses by the end of the fiscal year on June 30.

Drs. Rovetti, Lurie and Nolle expressed their appreciation for a good meeting. Ms. Mercer said she is impressed with everyone on the Board.

Agenda Item 39 Adjournment

Mr. Jackson moved for adjournment. Dr. Davis seconded and the motion passed unanimously. The meeting adjourned at 6:30 PM.

Approved: September 10, 2011


Benjamin S. Lurie, DC, Secretary-Treasurer