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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, October 15, 2011 in Meeting Room A of the Marriott's Courtyard, 3275 Paradise Road, Las Vegas, Nevada 89109.

The following Board members were present at the roll call:

David Rovetti, DC, President
Lawrence Davis, DC, Vice President
Benjamin Lurie, DC, Secretary-Treasurer
Paul Jackson, Consumer Member
Annette Zaro, Member

Member Dr. Jack Nolle and Consumer Member Shell Mercer were not present. Also present were Board Counsel Louis Ling and Executive Director Cindy Wade.

A quorum was present and Dr. Rovetti called the meeting to order at 9:20 AM. Dr. Lawrence Davis led those present in the Pledge of Allegiance. Dr. Lurie stated the purpose and mission of the Board.

Agenda Item 1 Public Interest Comments – No Action

Derek Day, DC, commented that the NCA would like to work with the Board to develop a revision to the definition of "manipulation" that is currently in statute. This would require a statutory change and will be addressed at the December meeting.

Agenda Item 2 Approval of agenda – For possible action

Dr. Lurie moved to approve the agenda. Paul Jackson seconded and the motion passed unanimously.

Agenda Item 3 Approval of September 10, 2011 minutes– For possible action

Mr. Jackson requested that under Agenda Item 15E, the phrase "...determined that the complainant has a personal agenda" be changed to "...determined that there is no evidence to support the complaint." Dr. Davis objected to the statement made by Dr. Zaro under Agenda Item 11, "...as a former Board member Dr. Porter should be held to a higher standard with regard to his knowledge of and obeying the laws." He was informed by Mr. Ling that the minutes must record what was said and what took place at a meeting and the comment cannot be changed. Dr. Davis moved to approve the minutes with Mr. Jackson's correction. Mr. Jackson seconded the motion and it passed unanimously.

Agenda Item 4 Approval of proposed Settlement Agreement in the Matter of Don Vuong, DC, License No. B1097, and Jill Vuong, DC, License No. B1098, Case No. 11-10S – For possible action

Drs. Don and Jill Vuong were present. Investigating Board Member Dr. Ben Lurie described the charges in the complaint against Drs. Don and Jill Vuong, and the terms and conditions of the proposed settlement agreement. Within 60 days they will take and pass the Board's jurisprudence exam, pay the Board's costs of \$287.50, and pay a fine in the amount of \$1,000.00. They will also each receive a letter of reprimand regarding the employment of unregistered employees as Chiropractor's Assistants and regarding the failure to make and file accurate self-inspection forms. He commented that they are now in compliance and have been very cooperative. Following discussion, Dr. Zaro moved to accept the settlement agreement as proposed. Dr. Davis seconded the motion. Mr. Jackson commented that he felt the fine is too low and would like to see a requirement for community service. The motion passed with Drs. Davis, Rovetti and Zaro and Ms. Mercer in favor, Mr. Jackson not in favor and Dr. Lurie recused because he was the IBM in this matter.

Dr. Rovetti announced that Agenda Item 5 will be addressed at 12:00 Noon to accommodate the parties involved, Agenda Item 6 will be addressed at 10:00 AM, and Agenda Item 7 will be addressed later in the day if time allows.

Agenda Item 8 Secretary-Treasurer's Report:

A. Approval of annual financial audit – For possible action

Dr. Lurie reviewed the highlights of the audit report and moved that it be approved. Dr. Zaro seconded the motion and it passed with all in favor.

B. Cash position report – No action

Dr. Lurie reviewed the Board's cash position.

The following two matters will be addressed after decisions have been made with regard to Agenda Items 12, 13 and 14:

C. Approval of proposed revision to 2011/12 budget – For possible action

D. Extraordinary items – No action

Agenda Item 6 PUBLIC WORKSHOP to consider proposed amendments to Nevada Administrative Code 634 – For possible action

Louis Ling explained the rule-making process with regard to the proposed preceptor program regulation.

Dr. Rovetti asked for public comment and acknowledged Dr. Derek Day, who was present representing the Nevada Chiropractic Association. Dr. Day commented that with regard to Section 3, No. 2 on Page 3 of the proposed regulation, the NCA recommends a minimum level of \$100,000/\$300,000 of malpractice insurance be established. With regard to Section 3, No. 3 on Page 3, the NCA recommends that preceptor applicants should be required to be in good standing, rather than restrict doctors whose licenses have been disciplined within the last ten years from serving as preceptors.

Agenda Item 6 PUBLIC WORKSHOP to consider proposed amendments to Nevada Administrative Code 634 – For possible action (cont'd)

Dr. Davis and Mr. Jackson stated that they would be more comfortable with a minimum of \$1,000,000/\$3,000,000 of malpractice insurance. Drs. Lurie and Zaro expressed their concerns about the lack of provision for public protection. There is no limit to the number of students that may be supervised by a licensee, no requirement for identification of students or for informed consent for patients who are to be treated by a student, no standards of care, etc.. Terminology such as “intern,” “extern,” “preceptor,” “student,” etc., should be defined. There are no oversight provisions. Dr. Rovetti expressed his reservations about over-regulating this program. He did agree that a licensee who has had disciplinary action within the past 10 years should not be approved as a preceptor.

Dr. Day stated that the statutory language was approved by the Legislature with the intent to keep the program simple. The preceptorships are short term and should not be over-regulated. It is the NCA’s position that the malpractice insurance requirement should be \$100,000/\$300,000 and that any licensee who is in good standing should be able to participate as a preceptor.

Regarding terminology, Mr. Ling advised that the terms “student,” “preceptor,” and “manipulation” are statutorily established in the bill and their definitions cannot be changed. This matter was to be continued after the following hearing.

Agenda Item 5 Administrative hearing in the Matter of Corazon Murillo, DC, License No. B647, Case No. 11-12S – For possible action

CPBN Consumer Member Shell Mercer was present. Corazon Murillo and her attorney, Richard Harris, were present. Deputy Attorney General Sophia Long was present as the Board’s Counsel. Dr. Rovetti asked Louis Ling to initiate the presentation of the matter.

Mr. Ling announced that the parties had reached agreement on a settlement. He reviewed the terms and conditions of the proposed settlement agreement. Dr. Murillo pled “no contest” to the seven causes of action that are stated in the Notice of Charges, including a statement that she submitted records to the insurance company for payments that were substantively inaccurate and constitute violations of the cited statutes. Dr. Murillo agreed to pay \$2,000 of the Board’s costs and pay a \$5,000 fine in payments, or payment of the fine may be worked off by means of community service at the rate of \$20 per hour, or by a combination of payments and community service; she agreed to surrender her license for a period of two years after which she could apply for reinstatement providing she has paid all of the costs and fine and she could provide evidence to the Board that she had resolved her issues with the insurance company to its satisfaction. If her license was reinstated, she would thereafter be required to recommence practicing in a situation where she would be supervised by a licensee, similar to a student in a preceptorship, during the first six months.

Investigating Board Member Paul Jackson recommended approval of the proposed settlement. He stated that Dr. Murillo had acknowledged her past mistakes and he was assured that she would not make the same mistakes again when she sought to return to practice. He said Dr. Murillo was not a rich person. She had been fined in the past which had created financial pressure, which is why the maximum possible \$35,000 fine was not imposed in this instance.

Mr. Harris stated that his client was in a rather precarious financial situation and had agreed to the settlement in order to avoid a lengthy and costly hearing. He said her significant inaccuracies were caused by a complicated family situation but there was no intent to defraud.

Agenda Item 5 Administrative hearing in the Matter of Corazon Murillo, DC, License No. B647, Case No. 11-12S – For possible action (cont'd)

Dr. Davis inquired about the actual location where Dr. Murillo rendered the treatments for which she billed the insurance company. Mr. Harris responded that Dr. Murillo was pleading no contest and she was not agreeing to the actual charges in the Notice of Charges. He said that there were a lot of allegations made by Mr. Ling but his scenario was not quite right. He stated that there was treatment and the treatment was provided both in Nevada and California. Shell Mercer asked if Dr. Murillo had a license to practice anywhere else. Mr. Harris responded that Dr. Murillo has a California license.

Ms. Mercer asked Paul Jackson about why he agreed to a reduction of fines because of some financial pressure in the past. Mr. Jackson responded that the prior fines were justified but the reality was that Dr. Murillo was not financially capable of paying those fines. Ms. Mercer asked if fines were being imposed on a sliding scale based on the respondent's financial condition. Mr. Jackson stated that Dr. Murillo's financial difficulties were taken into consideration by allowing her to make payments or do community service. The previous fine caused Dr. Murillo a greater financial hardship than was the Board's intent.

Dr. Zaro expressed her concerns about recidivism, the absence of a requirement for training in boundaries and ethics, and that the fine for the seven counts appeared to be a lesser amount than the case heard earlier today. Mr. Ling explained that recidivism is not an issue because the charges are not the same as those in Dr. Murillo's previous actions. He pointed out that the surrender is for a definite two-year period. In addition to paying the costs and fine and settling with the insurance company, if Dr. Murillo was reinstated she would be required to practice in a preceptor situation, which should address the boundaries and ethics question. With a revocation, she could apply for reinstatement at any time.

Ms. Mercer commented that the no contest plea appears to be an admission that there is sufficient evidence to prove the charges. Mr. Harris replied that in that case, they would have the alternative to proceed to District Court for an injunction and present the whole story. He added that he found the mention of Dr. Murillo's past record a bit prejudicial because he represented Dr. Murillo in the action three years ago for which she was found in violation for not timely notifying the Board of a change of address and fined thousands of dollars which was, in the end, reversed. He said there was also an earlier action many years ago when Dr. Murillo first began to practice and she prevailed in that matter. He stated that the only charge that Dr. Murillo has ever been found guilty of is her failure to provide her change of address.

Dr. Rovetti commented that if her license was reinstated he would like to see some boundaries and ethics hours included in Dr. Murillo's continuing education the next time she has to get continuing education hours.

Dr. Lurie recused himself from voting because his practices have provided services to Mr. Harris. Dr. Zaro disclosed that she has treated Mr. Harris, but it was agreed that this does not constitute a conflict. Dr. Rovetti moved to accept the Settlement Agreement as proposed. Dr. Zaro seconded the motion. The motion passed with Drs. Davis, Rovetti and Zaro and Ms. Mercer in favor, and Dr. Lurie and Mr. Jackson recused.

The following matter resumed at 2:00 PM after a break for lunch.

Agenda Item 6 PUBLIC WORKSHOP to consider proposed amendments to Nevada Administrative Code 634 – For possible action (cont'd)

Dr. Zaro and Dr. Lurie requested consideration of the following provisions:

- Preceptors be required to carry \$1,000,000/\$3,000,000 malpractice insurance
- Preceptors must have practiced in Nevada for at least five years
- Approval of licensees applying for preceptorships to be discretionary by the CPBN
- Limit one student to be supervised at a time by a licensee
- Require that students be identified with a badge
- Require informed consent of patients to be treated by students
- Provide a definition of “manipulation”
- Appointment of a Board member to monitor preceptorships
- Establish a manual of practice standards and procedures by which students must abide
- Require periodic evaluations and final exam based on the manual
- Require students to have passed NBCE Parts I through IV and Physiotherapy, and be accepted for preceptor program by their chiropractic college
- Require that student application forms include a confidentiality waiver to enable CPBN to obtain students’ records
- Require that students sign off that they have read and understand NRS and NAC 634
- Provide CPBN with authority to remove student or preceptor
- Provide that “intern” or “extern” may be paid
- Require that patient forms be signed by the supervising licensee

Dr. Day objected that this is too much regulation. There will be another Workshop on the preceptor regulation at the December meeting.

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 – For possible action: Complaint 11-17N

Dr. Rovetti explained that the complainant alleged the DC did not release his records to his attorney in a timely manner. However, Dr. Rovetti has determined that the records were released within one week of the request. He moved to dismiss the complaint. Ms. Mercer seconded and the motion passed with all in favor.

Agenda Item 10 Proposed CPBN new policy and revisions – For possible action:

A. New Policy 23 – for clarification of NAC 634.536 Designation as Licensee

There was no action taken and this matter will be addressed again at the next meeting.

B. Policy 9

Dr. Lurie made a motion to change the title of Policy 9 from “Settlement Agreement” to “Proposed Settlement Agreement Language.” Ms. Mercer seconded and the motion passed unanimously.

C. Policy 18

Dr. Lurie Moved to revise Policy 18 to include the word “Proposed” in the title and to revise the following phrase: “...must be [in attendance] *present* at which approval *or denial* of the *proposed* agreement by the Board is to be addressed.” Dr. Zaro seconded and the motion passed with all in favor.

Agenda Item 10 Proposed CPBN new policy and revisions – For possible action: (cont'd)

D. Policy 21

Dr. Lurie made a motion to rephrase Policy 21 as follows: "...license/practice of a doctor *or certificate of a Chiropractor's Assistant.*" And "...the Board's [prosecuting] *staff* attorney...." Dr. Davis seconded the motion and it passed unanimously.

Agenda Item 11 Approval of proposed scheduling change for DC applicant examinations – For possible action

Dr. Lurie recommended that the DC Law Test schedule be changed from quarterly to monthly and that the Board consider offering the tests online. He moved that the DC Law Test be administered on the second Wednesday of each month or online. Dr. Zaro seconded the motion. After further discussion, Dr. Lurie amended his motion to clarify that "online" means being administered at an approved test center such as CEvaptive. The motion passed with all in favor.

Agenda Item 12 Approval to send a Board Member to or have a Board member watch the Webinar of the *Citizen Advocacy Center* 2011 Annual Meeting October 20 and 21 in Washington DC- For possible action

Dr. Zaro and Mr. Jackson indicated their interest in attending the meeting. However, the Out of State Travel budget is limited with several other trips coming up next year, and a webinar is also available. Dr. Zaro offered to attend the meeting if the Board will pay just her hotel and the registration fee. Dr. Rovetti moved to accept Dr. Zaro's offer to attend the CAC meeting next week. There was no second and the motion died. After further discussion, Dr. Davis moved to have Dr. Zaro participate in the webinar. Mr. Jackson seconded the motion. The motion passed with Drs. Davis, Rovetti and Zaro and Mr. Jackson in favor, and Dr. Lurie and Ms. Mercer opposed.

Agenda Item 13 Approval to send a Board Member to the 36th Annual FARB Forum January 27-29, 2012 in Sarasota, Florida- For possible action

This matter was tabled until the December meeting.

Agenda Item 14 Approval of Board's purchase of Ipads or other electronic devices – For possible action

Following discussion, there was no action taken on this matter.

Agenda Item 8 Secretary-Treasurer's Report:

C. Approval of proposed revision to 2011/12 budget – For possible action

There was discussion regarding allocation of the remaining funds for out of state travel. This matter will be addressed again at the December meeting.

D. Extraordinary Items – No action

There were no extraordinary items.

Agenda Item 15 Approval of proposed Information Document to be available to licensees regarding advertising – For possible action

This matter was postponed until the December meeting.

Agenda Item 16 Establish date for February, 2012 CA examinations – For possible action

Dr. Davis made a motion to administer the next CA examinations on Thursday, February 16, 2012. Dr. Lurie seconded the motion and it passed unanimously. Dr. Davis wants the tests administered at the same time of day, north and south.

Agenda Item 17 Board Counsel Report – No action

Mr. Ling reported that the Lin case has been passed on to another judge, again delaying the oral arguments. He presented oral argument in the Nassiri/Johnson case on September 28 with Dr. Lurie and Paul Jackson also in attendance. Judge Hardcastle will issue the written Order in about two weeks. Mr. Ling attended the FARB meeting for attorneys in September.

Agenda Item 18 Committee Reports – No action

A. Continuing Education Committee

Dr. Zaro reported that she has approved 12 CE applications since the September meeting. She and Louis Ling participated in a conference call meeting with Texas Chiropractic College and WiseDC.com in which errors in their online programming that she had discovered were reviewed. The WiseDC.com people will fix their programming and thanked Dr. Zaro for making them aware of the problem. Approval of their seminars is suspended until their programming is fixed.

B. Legislative Committee

Mr. Jackson commented that the Sunset Review Committee will not start meeting until after the first of the year. He stated that the lobbyist contract needs to be addressed at the December 10 meeting to determine if the present contract can be extended, or if we should do a short contract for \$2,000 a month for January 1 through June 30, 2012, and then extend it for 12 more months.

C. Test Committee

Dr. Davis reported that there are many questions that need to be addressed concerning the new requirement that CAs who have failed twice must take an educational course, i.e, how many hours, what is the deadline to complete the course, and can the NCA review course be approved? He will work on this with Louis and Cindy.

Agenda Item 19 Report on FCLB Regional Meeting – No action

Dr. Davis attended as the CPBN's voting delegate. Drs. Lurie and Zaro, and former Board members, Dr. Maggie Colucci and Stephanie Youngblood, also attended. He reported that Nevada is ahead of the other states with our Chiropractor's Assistant certification program. The FCLB is developing a CA test. CAs could eventually evolve into an inter-jurisdictional profession that would allow them to move state-to-state. They are also working on reporting of CA disciplinary actions to CIN-BAD. The Model Practice Act was a hot topic. Dr. Lurie feels that Nevada stands out compared to other states. Dr. Zaro commented that the scope of practice is quite varied among the different states.

Agenda Item 20 Discussion of effective investigation and investigation management strategies – No action

There was not enough time to address this matter. It will appear on the next meeting agenda.

Agenda Item 21 Correspondence Report – No action

Dr. Rovetti will advise Dr. Bret Corbett that the Board has no objection to his use of the name "A B Chiropractic" for his practice. Cindy Wade requested input from Board members for the Newsletter. Dr. Rovetti will respond to a communication from Mark Witt, D.O., upon Louis's approval.

Agenda Item 7 Consideration of potential amendments or additions to NAC chapter 634 – For possible action

This was postponed until the December meeting.

Agenda Item 22 Board Member Comments – No action

There were no Board Member comments.

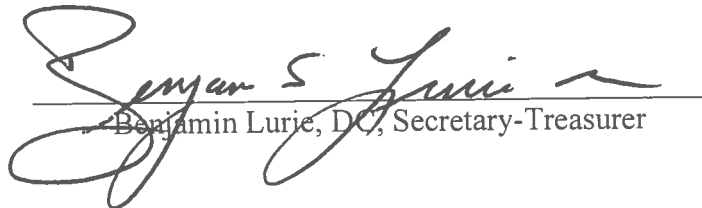
Agenda Item 23 Public Comment – No Action

Dr. Day reiterated the NCA's desire to redefine manipulation. He also commented that the intent of the preceptorship bill was to give student doctors coming into the state the ability to adjust and to gain experience working with our licensees.

Agenda Item 24 Adjournment – For possible action

The meeting adjourned at 4:30 PM.

Approved: December 10, 2011


Benjamin Lurie, DC, Secretary-Treasurer