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SHELL MERCER, ESQ
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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, July 14, 2012 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
Benjamin Lurie, DC, Vice President
Lawrence Davis, DC, Member
Tracy DiFillippo, Esq., Consumer Member
Shell Mercer, Esq., Consumer Member
Annette Zaro, DC, Member

Secretary-Treasurer Dr. Jack Nolle was 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. He led those present in the Pledge of Allegiance and stated the purpose and mission of the Board.

Agenda Item 1 Public Interest Comments - No action

NCA President Dr. James Overland introduced Jessica Taylor of the law firm Hutchison & Steffen, an NCA sponsor.

Agenda Item 2 Approval of agenda – For possible action

Dr. Lurie moved for approval of the agenda. Tracy DiFillippo seconded and the motion passed unanimously.

Agenda Item 3 Approval of Consent Agenda – For possible action

The Consent Agenda was withdrawn and Agenda Items 4 and 5 were addressed individually.

Agenda Item 4 Approval of June 2 and June 12, 2012 minutes – For possible action.

Dr. Davis moved to approve the June 2 and June 12, 2012 minutes with the following amendment to the fourth line of Agenda Item 16N on Page 4 of the June 2, 2012 minutes: "...*the complainant does not want to pursue a malpractice action.*" Dr. Lurie seconded and the motion passed unanimously.

Agenda Item 5 Ratification of granting of DC licenses to applicants who passed the June 13 and July 11, 2012 examinations – For possible action

Ms. DiFillippo moved to grant DC licenses to the applicants who passed the June 13 and July 11, 2012 examinations. Ms. Mercer seconded the motion and it passed with all in favor.

Agenda Item 13 Status report regarding anonymous profiles of possible disciplinary actions. Board action will be limited to either dismissing the matter if the Board determines there is no violation, it has no jurisdiction over the subject, or providing direction to pursue the matter further – For possible action:

A. Complaint 10-13S

Dr. Davis reported that there is some new evidence in this case and it is still being investigated.

B. Complaints 11-8S

Dr. Zaro believes the lawsuit that has been holding up this case may be resolved which should enable her to finish the investigation.

C. Complaint 11-9S

Dr. Nolle was not present to report on the status of this complaint.

D. Complaint 11-11S

Dr. Zaro reported that this complaint will be addressed when the doctor is available to be present.

E. Complaint 11-21S

Ms. Mercer is still investigating this complaint.

F. Complaint 12-04S

Ms. Mercer is still investigating this complaint.

G. Complaint 12-10N

Dr. Rovetti stated that this complaint should be ready to be addressed at the next meeting. The DC is in northern Nevada which will probably necessitate having the October meeting in Reno.

Dr. Rovetti turned the Chair over to Shell Mercer for the following hearing.

Agenda Item 6 Continuation of Hearing in the matter of David Streng, DC, License No. B1207 – For possible action

Dr. Streng and his attorney, Rich Tanasi, were present. Deputy Attorney General Sophia Long was present as the Board's Counsel and Louis Ling was present as the Prosecuting Attorney. Ms. Mercer announced that this was the continuation of the June 2, 2012 hearing. Dr. Streng was still under oath as a defense witness and was questioned extensively by the Board Members with follow-up questions from Mr. Tanasi and Mr. Ling. Mr. Ling presented his closing argument and his recommendations for the Board's resolution of this case. Mr. Tanasi presented his closing argument and Dr. Streng made a brief statement.

Ms. Mercer made note of the defense's stipulation to Counts 1 and 2. There was much discussion about the degree of fraud involved and the appropriate discipline to be rendered. Regarding the First Cause of Action Ms. Mercer made a motion to find Dr. Streng guilty of violations of NRS 634.018(5), (10), (11) and (17), NRS 634.140(1) and NAC 634.435(1). Dr. Rovetti seconded. The motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

Regarding the Second Cause of Action Ms. Mercer made a motion to find Dr. Streng guilty of violations of NRS 634.018(5), (10), (11) and (17), NRS 634.140(1) and NAC 634.435(1). Dr. Lurie seconded. The motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

Regarding the Third Cause of Action Ms. Mercer made a motion to find Dr. Streng guilty of violations of NRS 634.018(5), (10), (11) and (17), NRS 634.140(1) and NAC 634.430(1)(f) and (m). Dr. Lurie seconded. The motion passed with all in favor except Ms. DiFillippo who was opposed and Dr. Davis recused as Investigating Board Member. Upon further consideration, Dr. Lurie moved to revisit the vote on the Third Cause of Action. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Davis who recused as Investigating Board Member. Again regarding the Third Cause of Action Dr. Rovetti moved to find Dr. Streng guilty of violations of NRS 634.018(5), (10), (11) and (17), NRS 634.140(1) and NAC 634.430(1)(f) and (m). Dr. Zaro seconded. The motion passed with Drs. Rovetti and Zaro and Ms. Mercer in favor, Dr. Lurie and Ms. DiFillippo opposed and Dr. Davis recused as Investigating Board Member.

Regarding the Fourth Cause of Action Dr. Rovetti moved to find Dr. Streng guilty of violations of NRS 634.018(5), (10), (11) and (17), NRS 634.140(1) and NAC 634.430(1)(f) and (m). Ms. Mercer seconded. The motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

The voting Board members discussed appropriate disciplinary options and agreed to address them individually. Ms. Mercer made a motion that as part of Dr. Streng's discipline he be required to take and pass the National Board's Ethics and Boundaries Test within 90 days of entry of the Board's Order. Dr. Lurie seconded and the motion passed with all in favor except Dr. Davis who recused as Investigating Board Member. Ms. Mercer moved that Dr. Streng be required to attend 12 hours of a live seminar on the subject of billing and coding and 12 hours of record keeping, with 12 hours in any combination of subjects attended within six months and the full 24 hours attended within one year. Dr. Zaro seconded the motion. After discussion, Ms. Mercer amended her motion to allow that six of the 24 hours may be attended online. Dr. Zaro seconded the amended motion and it passed unanimously with Dr. Davis recused as Investigating Board Member.

Dr. Rovetti moved to suspend Dr. Streng's license for 60 days and that he be placed on probation for two years with compliance monitoring. Ms. Mercer seconded. The motion did not pass with Dr. Rovetti in favor, Drs. Lurie and Zaro, Ms. DiFillippo and Ms. Mercer opposed and Dr. Davis recused as Investigating Board Member. Ms. DeFillippo moved to impose probation for two years with compliance monitoring. Dr. Rovetti seconded the motion. Following discussion, Ms. DiFillippo amended the motion to include that the compliance monitoring be more intense at the direction of the Investigating Board Member. Dr. Rovetti seconded the amended motion. The motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

Ms. Mercer moved that Dr. Streng be required to reimburse the Board's total costs to be paid by the end of his probationary period, and that he be responsible for the costs of the tests, continuing education and compliance monitor. Dr. Zaro seconded and the motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

Ms. Mercer moved that Dr. Streng be fined \$2,500 for each of Counts 1, 2 and 4, and \$1,500 for Count 3, a total of \$9,000, to be paid by the end of his probationary period. There was no second and the motion failed. Dr. Lurie moved that Dr. Streng be fined \$2,500 for each of Counts 1 and 2, \$1,000 for Count 3 and \$5,000 for Count 4, a total of \$11,000. Dr. Rovetti seconded. The motion passed with Drs. Lurie, Rovetti and Zaro and Ms. DiFillippo in favor, Ms. Mercer opposed and Dr. Davis recused as Investigating Board Member.

Dr. Rovetti moved that Dr. Streng be required to take and pass the Nevada Law Test within 90 days. Dr. Lurie seconded. The motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

Dr. Rovetti resumed the Chair.

Agenda Item 7 Employee evaluations – For possible action

A. Staff Attorney

B. Executive Director

This matter was postponed until the next meeting due to Dr. Nolle's absence.

Agenda Item 8 Approval of exception to CPBN Policy No. 18 pursuant to proposed Settlement Agreement under Agenda Item 9 – For possible Action

Dr. Rovetti moved to make an exception to Policy No. 18 so that Agenda Item No. 9 may be addressed. Ms. DiFillippo seconded. The motion failed with Dr. Rovetti in favor, Drs. Lurie and Zaro, Ms. DiFillippo and Ms. Mercer opposed and Dr. Davis recused because he has an association with the respondent.

Agenda Item 9 Approval of proposed Settlement Agreement in the matter of Daniel Brady, DC, License No. B1391 – For possible action

This matter was postponed until the next meeting in northern Nevada so that Dr. Brady can be present.

Agenda Item 10 Discussion and determination regarding "osteopractic" training and options related thereto – For possible action

There was much discussion about "osteopractic" and related scope of practice issues. Dr. Lurie made a motion to request an Attorney General Opinion. Dr. Rovetti seconded and the motion passed with all in favor.

Agenda Item 11 Review of Board's proposed 2013 legislative bill - For possible action

There was discussion about the proposed language change in Section 9 of the BDR but it was agreed to leave it as currently written. Dr. Rovetti made a motion to mandate that two hours of the 36 continuing education hours required for biennial license renewal be on a topic selected by the Board. Dr. Zaro seconded. The motion failed with Drs. Lurie, Rovetti and Zaro in favor and Dr. Davis, Ms. DiFillippo and Ms. Mercer opposed.

Agenda Item 12 Consideration of potential additions, deletions and/or amendments to NAC chapter 634 – For possible action

Following discussion about the current provision in NAC 634.435(1)(a) that health care records include documentation of treatment of a patient "within 72 hours" after that treatment, Dr. Davis moved to change the requirement to "*at the end of the business day.*" Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Lurie who was opposed.

It was agreed that NAC 634.419(1) should be revised to require that the form to register persons providing services other than chiropractic or clerical be submitted "*within 15 days after*" rather than "*at least 15 days before*" the person commences providing the services.

There was discussion regarding the determination of accountability for generation of patient records and their accuracy. Dr. Zaro made a motion that in order to have a complete and accurate record, the following provision should be added: *(7) Anyone who is involved in the treatment of a patient must document with their initials or sign the patient's chart.* Dr. Davis seconded. The motion failed with Drs. Davis and Zaro and Ms. DiFillippo in favor and Drs. Lurie and Rovetti and Ms. Mercer opposed. After further discussion, Dr. Lurie moved that NAC 634.435 should be revised to include: *the DC must sign or initial patient charts after each treatment.* Ms. DiFillippo seconded. The motion passed with all in favor except Dr. Rovetti who was opposed.

Agenda Item 14 Consideration of adoption of proposed CPBN policies – For possible Action

A. New Policy on FCLB and Other Conferences

There was no action taken and the current policy remains in effect.

B. New Policy to establish that a speaker may receive credit for a seminar or presentation

Dr. Rovetti moved to adopt as policy: *“For the purpose of NAC 634.385(8), upon request to the Board, a speaker may receive credit for a seminar or presentation he/she gives if he/she has never received CE credit for presenting that material at a seminar. Any additional presentation(s) on substantially the same material will not qualify for additional CE for the presenter.”* Ms. Mercer seconded. The motion did not pass with Dr. Rovetti in favor and Drs. Davis, Lurie and Zaro and Ms. DiFillippo and Ms. Mercer opposed.

Agenda Item 15 CPBN Strategic planning – For possible action

Due to lack of time, this matter was postponed until the next meeting.

Agenda Item 16 Committee reports – No action

A. Continuing Education Committee

There was no Continuing Education Committee report due to the absence of the Committee Chair.

B. Legislative Committee

Dr. Lurie reported that because the preceptor regulation was not approved by the Legislative Commission it will be noticed for another hearing at the next meeting.

C. Test Committee

Dr. Zaro will revise the DC test after the statute is revised to require a 90% passing score for online or open-book testing. She plans to survey the CA examinees in August to get some feedback about the test.

Agenda Item 17 Report on FCLB/NBCE Annual Meetings – No action

This matter was postponed due to lack of time.

Agenda Item 18 NCA Report – No action

Dr. Overland announced that the NCA’s annual seminar will be in September.

Dr. Overland also expressed his concern that the preceptorship regulation language that the Board voted on at the December, 2011 meeting, written up by LCB and sent out to our licensees, was changed at the Board’s meeting in March. He said that the NCA is concerned about the revised language that establishes consideration of disciplinary action from “day one” versus the two-year criteria that was decided on in December, 2011. Louis Ling advised that the Board did nothing wrong and it is not at all unusual to make amendments at a Hearing to Adopt Regulations. Louis met with NCA lobbyist Marlene Lockard after the Legislative Commission meeting and invited her to submit the NCA’s desired language.

Dr. Overland commented that he feels the Board is over-regulating and micro-managing, i.e., requiring CAs to sign patient charts. He advised that the Board’s Consumer Members need to be more educated on the operation of a chiropractic office. He invited them to visit his office.

Agenda Item 19 Correspondence Report – No action

There were no comments about the Correspondence Report.

Agenda Item 20 Board Member Comments – No action

Dr. Rovetti advised that the next meeting will be held in Reno on October 13.

July 14, 2012 Meeting Minutes

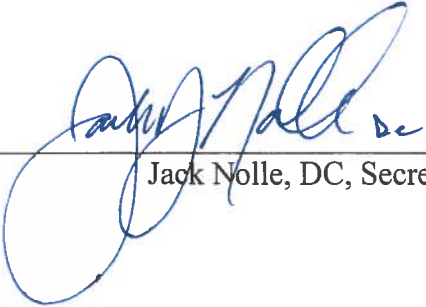
Agenda Item 21 Public Comment – No action

There was no public comment.

Agenda Item 22 Adjournment – For possible action

The meeting adjourned at 7:19 PM.

Approved: September 11, 2012



Jack Nolle, DC, Secretary-Treasurer