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SHELL MERCER, ESQ
Consumer Member
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 2, 2012 in Meeting Room B of the Marriott's Courtyard, 3275 Paradise Road, Las Vegas, Nevada 89109.

The following Board members were present at the roll call:

David G. Rovetti, DC, President
Benjamin S. Lurie, DC, Vice President
Jack Nolle, DC, Secretary-Treasurer
Lawrence Davis, DC, Member
Annette Zaro, DC, Member
Tracy DiFillippo, Esq., Consumer Member
Shell Mercer, Esq., Consumer Member

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

A quorum was present and Dr. Rovetti called the meeting to order. Tracy DiFillippo 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.

There were no public interest comments.

Agenda Item 2 Approval of agenda – For possible action.

Dr. Davis made a motion to approve the agenda. Dr. Nolle seconded and the motion passed unanimously.

Agenda Item 3 Approval of Consent Agenda – For possible action

CONSENT AGENDA

Agenda Item 4 Approval of March 10, 2012 minutes – For possible action.

Agenda Item 5 Ratification of granting of DC licenses to applicants who passed the March 14, April 11 and May 9, 2012 examinations – For possible action

Agenda Item 6 Ratification of granting of CA certificate to applicant who passed the February 16, 2012 examination – For possible action

Dr. Lurie moved for approval of the Consent Agenda. Dr. Nolle seconded the motion and it passed unanimously.

REGULAR AGENDA

Agenda Item 23 Determine interest and agenda for possible strategic planning meeting – For possible action

The Board agreed to schedule this topic for three hours on the next meeting agenda.

Agenda Item 11 Request for waiver of requirement of minimum 4,000 chiropractic college credit hours pursuant to NRS 634.090(1)(b) from applicant for DC licensure Milo D. Allen – For possible action

Cindy Wade explained that DC applicant Milo D. Allen does not meet the statutory requirement of 4,000 hours of chiropractic education under NRS 634.090(1)(b). Louis Ling advised that under NRS 634.090(2) the Board has the discretion to accept the applicant's 42 years of practice in California with no disciplinary action in lieu of the 4,000 hours. It was noted that Dr. Allen has never passed the National Board Parts III and IV. Mr. Ling advised that the Board also has the discretion to waive this requirement. Dr. Zaro expressed her concern that Dr. Allen may not have kept up to date with the latest diagnostic testing methods, x-ray equipment, MRI and other newer technologies. She pointed out that Dr. Allen's list of continuing education that he has attended includes practice building which does not satisfy Nevada's criteria. Dr. Zaro made a motion to accept Dr. Allen's application by recognizing his years of practice in lieu of the missing 220 hours of chiropractic school providing he take and pass the National Board SPEC Test. Dr. Lurie seconded. The motion failed with Drs. Davis and Zaro and Ms. Mercer in favor, and Drs. Lurie, Nolle and Rovetti and Ms. DiFillippo opposed. Ms. DiFillippo moved to waive Dr. Allen from both the 4,000 hour education requirement and from the SPEC Test in lieu of the National Board Parts III and IV. Dr. Rovetti seconded. The motion failed with Drs. Nolle and Rovetti and Ms. DiFillippo in favor, and Drs. Davis, Lurie and Zaro and Ms. Mercer opposed. After further discussion, Dr. Zaro made another motion to accept Dr. Allen's application with the requirement that he take and pass the National Board SPEC Test. The motion was seconded by Dr. Lurie and passed with Drs. Davis, Lurie, Rovetti and Zaro and Ms. Mercer in favor, and Dr. Nolle and Ms. DiFillippo opposed.

Agenda Item 7 Request from Francis Raines for reinstatement of license – For possible action

Dr. Raines and his attorney, Margaret Stanish, were present. Ms. Stanish reviewed the terms and conditions of her proposal for the Board's consideration for reinstatement of Dr. Raines's license. There was much discussion about the Board's concerns and the need to structure an appropriate plan that will also address public safety concerns. Dr. Zaro moved to deny reinstatement of Dr. Raines's license without prejudice and Dr. Lurie seconded. The motion did not pass with Drs. Zaro and Lurie in favor, and Drs. Davis, Nolle and Rovetti and Mrs. Mercer and Ms. DiFillippo opposed. After further discussion, Ms. DiFillippo made a motion to table the matter. Dr. Rovetti seconded the motion and it passed with all in favor. Dr. Nolle was assigned to work on expanding Dr. Raines's proposal to address everyone's concerns. Cindy Wade was instructed to authorize Dr. Raines to take the National Board SPEC Test.

Agenda Item 8 Request from Jason O. Jaeger, DC, that the CPBN adopt the ICA Best Practices Guidelines – For possible action

This matter was not addressed because Dr. Jaeger was unable to be present.

Agenda Item 9 Appeal of denial of application for DC licensure of Justin Goldstein – For possible action

Dr. Goldstein and his attorney, John Hunt, were present. Cindy Wade explained that Dr. Goldstein provided no details regarding the felony assault and battery and misdemeanor DUI convictions that he reported in his application. He did promptly respond to her request for his conviction records which revealed that he was convicted of two felony counts rather than one. One count was for “assault and battery” and the other count was for “indecent assault and battery on a person age 14 or older,” in addition to the misdemeanor conviction for DUI. Ms. Wade stated that she was not comfortable in approving Dr. Goldstein’s application and felt it should be addressed by the Board. She also explained that the erroneous letters received by Dr. Goldstein from the former staff member were sent without her knowledge or approval, and resulted in that employee’s termination. Mr. Hunt stated that the Board needs to be remedial, not punitive, and that a denial would not hold up on judicial review as Dr. Goldstein has lived an exemplary life. Dr. Goldstein responded to questions from the Board. Ms. Mercer moved to accept Dr. Goldstein’s application. Dr. Davis seconded and the motion passed with all in favor except Dr. Zaro who was opposed.

Agenda Item 16 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 08-033S (Dr. Lurie)

Dr. Lurie explained that disposition of this old complaint had been delayed due to a civil lawsuit. The lawsuit concluded earlier this year with a judgment against the licensee and the complainant is satisfied. The licensee is no longer practicing in Nevada. She voluntarily gave up her license and is leaving the state. Dr. Lurie recommended dismissal. Dr. Rovetti made a motion to dismiss Complaint 08-33S. Ms. Mercer seconded and the motion passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

B. Complaint 08-35S (Dr. Lurie)

This complaint was based on the same situation against the same licensee in Complaint 08-33S. Dr. Lurie was not able to contact the complainant and recommended dismissal. Dr. Rovetti moved to dismiss Complaint 08-35S. Dr. Nolle seconded the motion and it passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

C. Complaint 09-26S (Dr. Lurie)

This complaint was also filed against the same licensee in Complaint 08-33S. Dr. Lurie left a message with the complainant with no response. He recommended the complaint be dismissed. Ms. Mercer moved to dismiss Complaint 09-26S. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

D. Complaint 09-33S (Dr. Lurie)

This complaint was also filed against the same licensee in Complaint 08-33S. Dr. Lurie contacted the complainant’s attorney who couldn’t remember the details of the complaint and was okay with its dismissal. Ms. Mercer moved to dismiss Complaint 09-33S. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

E. Complaint 10-13S (Dr. Davis)

Dr. Davis reported that this complaint is still being investigated.

F. Complaint 11-8S (Dr. Zaro)

Dr. Zaro reported that this complaint is still pending due to ongoing litigation.

G. Complaint 11-9S (Dr. Nolle)

Dr. Nolle is still investigating this complaint.

H. Complaint 11-11S (Dr. Zaro)

Dr. Zaro stated that this complaint is pending the availability of the licensee.

I. Complaint 11-13N (Dr. Lurie)

Dr. Lurie thoroughly investigated this complaint. He inspected the licensee's office and the patient records are in compliance. This is a malpractice case and the complainant is pursuing it with an attorney. Dr. Lurie recommended the complaint be dismissed. Dr. Zaro moved to dismiss Complaint 11-13N. Ms. Mercer seconded and the motion passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

J. Complaint 11-20S (Dr. Lurie)

Dr. Lurie reported that this complaint included an allegation of possible steroid applications but found no evidence of this when he conducted a surprise inspection of the licensee's office. Dr. Lurie reviewed the patient records and determined that they were deficient under NAC 634.435. The licensee has made the appropriate corrections to the way he does his SOAP notes. The complainant has retained an attorney to pursue a malpractice lawsuit. Dr. Lurie recommended the complaint be dismissed with a letter of instruction advising that at any time the Board may enter the practice to review current record keeping procedures. Dr. Rovetti moved to dismiss the complaint with the letter of instruction. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

K. Complaint 11-21S (Ms. Mercer)

Ms. Mercer is still working on this complaint.

L. Complaint 12-04S (Ms. Mercer)

Ms. Mercer is still working on this complaint.

M. Complaint 12-07S (Dr. Lurie)

This complaint involved a licensee's prepaid nutritional program. Dr. Lurie met with the complainant and determined that the doctor left his practice and placed the complainant under the care of a chiropractor who was less than qualified to continue the nutritional program. Dr. Lurie contacted the original doctor who agreed to a refund. The complainant received the refund and was satisfied with this resolution. She sent a letter requesting her complaint be dismissed. Dr. Rovetti moved that Complaint 12-07S be dismissed. Ms. DiFillippo seconded the motion and passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

N. Complaint 12-08S (Dr. Davis)

Dr. Davis reported that although the complainant had responded well to the care he received, on one particular visit he felt worse after treatment. He sought care from a new DC, the treatment was successful and he is fine. His complaint is for malpractice against the first doctor. He understands Dr. Davis's explanation that the CPBN does not investigate malpractice and the complainant does not want to pursue a malpractice action. Dr. Davis recommended dismissal of the complaint. Dr. Lurie moved that Complaint 12-08S be dismissed. Dr. Zaro seconded and the motion passed with Drs. Lurie, Zaro and Nolle and Ms. Mercer and Ms. DiFillippo in favor, Dr. Rovetti recused because he has knowledge of the case, and Dr. Davis recused as the Investigating Board Member.

O. Complaint 12-09 (Dr. Rovetti)

This is a new complaint and Dr. Rovetti will handle its investigation.

Agenda Item 14 NCA Report – No action

NCA President Dr. James Overland stated that the NCA has received inquiries from CA applicants who have failed the test twice regarding the application form and the revised NAC 634. He was advised that the application form for new applicants is also required for applicants who failed the test twice because they have to start all over again. Copies of the recently revised regulations have been sent to all current applicants. Dr. Overland expressed the NCA's concerns about the "osteopractic" and "chiropt" courses that are being offered and asked that the Board look into these issues.

Agenda Item 10 Hearing in the matter of David Streng, DC, License No. B1207 – For possible action

Dr. Rovetti turned the Chair over to Shell Mercer. Dr. Streng and his attorney, Rich Tanasi, were present. Deputy Attorney General Scott Davis was present as the Board's counsel. Louis Ling and Mr. Tanasi stipulated to Exhibits 1, 2, 3 and 4. They also stipulated to the addition of Page 28A to Exhibit 2. Mr. Ling presented his opening statement. Mr. Tanasi declined to make an opening statement. Witness for the prosecution, Robert Young, was sworn in and testified. He answered questions from the Board. Prosecution witness, investigator Donald Obritsch, was sworn in and testified. He answered questions from the Board. The defense's witness, Dr. David Streng, was sworn in and testified, during which Exhibits 6, 7, 9, 10 and 11 were admitted. Mr. Ling's objections to Exhibits 5 and 8 were sustained and they were not admitted. Exhibit 12 was withdrawn by Mr. Tanasi. The hearing did not conclude and will reconvene on July 14, 2012 at 8:45 AM in Las Vegas.

Dr. Rovetti resumed the Chair.

Agenda Item 26 Correspondence Report – No action

Dr. Rovetti informed the Board members that the Governor's office has requested that we respond to a licensee who complained about the costs incurred by the Board's decision regarding an advertising violation and then reversed its decision. The Board agreed that his expenses for changing the name of his practice should be refunded.

Cindy requested input for the Newsletter.

Agenda Item 20 Board Counsel Report – No action

A. Report on status of Nassiri/Johnson appeal

Dr. Lurie will attend the settlement hearing with Louis on July 5.

B. Report on status of Lin appeal

Louis reported on the status of the settlement with Dr. Lin.

C. Report on other current legal matters

There were no other current legal matters.

Agenda Item 27 Board Member Comments – No action

There were no Board Member comments.

Agenda Item 28 Public Comment – No action

There were no public comments.

The following agenda items were postponed due to lack of time. They will be agendized for a telephone conference call meeting on Tuesday, June 12, 2012 at 12:00 Noon until 1:00 PM.

Agenda Item 12 Review of Board's 2013 legislative bill - For possible action

Agenda Item 13 Consideration of potential additions, deletions and/or amendments to NAC chapter 634 – For possible action

Agenda Item 15 Review/discussion of “Groupons” and other coupons used by chiropractors in Nevada.

Agenda Item 17 Executive Director Reports – No action

- A. Status of Complaints Received
- B. Status of Current Probations
- C. Legal/Investigatory Costs Report
- D. Calendar

Agenda Item 18 Board Financial Status Report – No action

- A. Cash position report
- B. Income/Expense Report: July 1 through April 30, 2012
- C. Accounts Receivable as of April 30, 2012
- D. Accounts Payable as of April 30, 2012
- E. Extraordinary Items

Agenda Item 19 Secretary-Treasurer’s Report

- A. Current financial status – No action
- B. Adoption of proposed 2012/14 budget – For possible action
- C. Extraordinary Items/Items of Concern – For possible action

Agenda Item 21 Employee evaluations – For possible action

- A. Staff Attorney
- B. Executive Director

Agenda Item 22 Proposed CEU Guidelines – For possible action

- A. Mission Statement and Application Process
- B. Continuing Education Application Policy

Agenda Item 24 Committee reports – No action

- A. Continuing Education Committee
- B. Legislative Committee
- C. Test Committee

Agenda Item 25 Report on FCLB/NBCE Annual Meetings – No action

Agenda Item 29 Adjournment – For possible action

Dr. Lurie moved to adjourn the meeting. Ms. Mercer seconded and the motion passed unanimously.