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SHELL MERCER, ESQ
Consumer Member

CINDY WADE
Executive Director

CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

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MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Saturday, November 16, 2013 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 at 8:45 AM:

David Rovetti, DC, President
Benjamin Lurie, DC, Vice President
Shell Mercer, Consumer Member
Lawrence Davis, DC, Member

Member Dr. Annette Zaro arrived at 8:57 AM and Secretary-Treasurer Dr. Jack Nolle arrived at 9:30 AM. Consumer Member Tracy DiFillippo was not present. CPBN Counsel Louis Ling and Executive Director Cindy Wade were also present.

President Dr. David Rovetti determined that a quorum was present and called the meeting to order.

Dr. Benjamin Lurie led the Pledge of Allegiance and stated the purpose of the Board.

Agenda Item 1 Public Interest Comments - No action.

There was no public comment.

Agenda Item 2 Approval of agenda – For possible action.

Dr. Davis moved to approve the agenda. Dr. Lurie seconded and the motion passed with all in favor.

Dr. Rovetti announced that some agenda items will be addressed out of order to accommodate those scheduled to arrive at 9:00 AM. The Public Workshop will take place as soon as the disciplinary actions are completed.

Agenda Item 10 Ratification of granting of DC licenses to applicants who passed the examinations on October 9 and November 13, 2013 – For possible action

Dr. Davis made a motion to ratify the granting of licenses to the DC applicants who passed the examinations on October 9 and November 13, 2013. The motion was seconded by Dr. Lurie and passed unanimously.

Agenda Item 11 Approval of October 5, 2013 meeting minutes - For possible action

NCA President Dr. James Overland, Sr., was afforded time to review the record of his report in Agenda Item 21 as he had not previously requested a copy of the drafted minutes of the October 5, 2013 meeting. He stated that he had no objections. Dr. Lurie moved to approve the October 5, 2013 minutes. Dr. Davis seconded and the motion passed unanimously.

Agenda Item 17 Committee Reports – No action

B. Legislative Committee – Dr. Lurie

Legislative Chair Dr. Lurie reported that the contract with Forte, LLP has been finalized. He commented that we need to get started right away if the Board is going to have a bill for the 2015 Legislature.

C. Test Committee – Dr. Zaro

Test Committee Chair Dr. Zaro proposed the following possible dates for the next CA examinations: February 13, February 27 or March 13.

D. Preceptorship Committee – Dr. Davis

Preceptorship Committee Chair Dr. Davis stated there have been no new applications since his last report.

Deputy Attorney General Sophia Long was present as Board Counsel for Agenda Items 6, 7, 8 and 9.

Agenda Item 6 Discussion/possible approval of settlement agreement in the Matter of Brandi Bradshaw, DC, License No. B1341, Case No. 13-08S(a) – For possible action

Dr. Brandi Bradshaw and her attorney, Kristopher Rath, were present. As requested by Dr. Rovetti, Louis Ling explained that a joint investigation was conducted into this matter with the Medical, Pharmacy and Veterinary Boards. He referred to the Agreed Statement of Facts, and reviewed the terms and conditions of the proposed Settlement Agreement. Dr. Davis moved to accept the proposed Settlement Agreement and Dr. Zaro seconded. The motion passed with all in favor except Dr. Lurie who recused as the Investigating Board Member.

It was noted that Board Secretary-Treasurer Dr. Jack Nolle was present.

Agenda Item 7 Discussion/possible approval of settlement agreement in the Matter of Joshua Purcell, DC, License No. B917, Case No. 10-13S – For possible action

Dr. Purcell and attorney Matthew Wagner were present. Ms. Mercer disclosed her prior working relationship with attorneys Matthew Wagner and Ryan Bennett, but no conflict exists. Mr. Ling indicated that Dr. Purcell has admitted in the proposed Settlement Agreement to the violations itemized in the Notice of Charges. He reviewed each cause of action and the terms and conditions of the Settlement Agreement.

Dr. Zaro made a motion to accept the Settlement Agreement. Ms. Mercer seconded the motion. There was discussion in response to Dr. Lurie's inquiry about how the sampling of files and selection of the monitor will be conducted. The motion passed with all in favor except Dr. Lurie who was opposed, and Dr. Davis recused because he is the Investigating Board Member.

Agenda Item 19 Financial Status Report – No action

- A. Current cash position**
- B. 2012/13 Audit Results**
- C. Extraordinary items**

Cindy Wade briefly reviewed the results of the annual financial audit. Dr. Lurie inquired about the change in method of accounting for the staff attorney's work on complaints. Cindy stated that the auditor's recommendation was accepted and does not affect the net financial position. She reported that the new process that allows CAs to enter their CE into our database is working well. Initially there was a problem receiving online payments for CA renewals due to a disconnect between GLSuite and PayPal, but it has been corrected. In response to a request from Ms. Wade for clarification, the Board confirmed that now that Chiropractor's Assistants are allowed to attend seminars for DCs, the doctors may attend CA seminars.

Agenda Item 8 Discussion/possible approval of settlement agreement in the Matter of David Stella, DC, License No. B753, Case No. 13-10S – For possible action

Dr. Stella was present. The Board members were given time to read the proposed Settlement Agreement. Mr. Ling reviewed the issues, and the terms and conditions proposed in the agreement. Ms. Mercer made a motion to accept the proposed Settlement Agreement and Dr. Rovetti seconded. After some discussion the motion failed with all opposed except Dr. Zaro who recused as the Investigating Board Member. Upon further discussion, Ms. Mercer moved that the agreement be amended to allow Dr. Stella to pay the fine in full within one year, and that any manual cervical traction procedures billed under code 97140 must be performed for at least eight minutes. Dr. Nolle seconded and the motion passed with all in favor except Dr. Zaro who recused. The agreement was revised, printed and signed.

The Board members were given time to review the proposed Settlement Agreement with Tad Tenney, DC.

Agenda Item 9 Discussion/possible approval of settlement agreement in the Matter of Tad Tenney, DC, License No. B780, Case No. 13-24S – For possible action

Dr. Tenney was present. Mr. Ling explained that, as in the previous case, a Notice of Charges was not issued in this matter because the respondent was cooperative and it saves the Board time and money. He noted that Dr. Tenney has admitted to the advertising violations described in the proposed Settlement Agreement. He reviewed the terms and conditions of the agreement. Dr. Lurie moved to accept the proposed Settlement Agreement. Dr. Davis seconded the motion. In response to questions from Ms. Mercer and Dr. Lurie, Dr. Tenney stated that he purchased prepared ads and inserted his own information. The motion passed with Drs. Davis, Lurie, Nolle and Rovetti in favor, Ms. Mercer opposed, and Dr. Zaro recused as Investigating Board Member.

Agenda Item 5 Presentation/discussion re: First Chiropractic Physicians Association of Nevada – No action

Dr. DeLoy Blanchard, President of the FCPAN, explained that his association is a subdivision of the First Chiropractic Physicians Association of America and likely will function more as a lobbying group. Its mission is to expand the chiropractic scope to include pharmaceuticals. Their endeavor will be to influence the profession, possibly with and through the NCA, with the goal of establishing prescriptive rights for Nevada chiropractors.

Agenda Item 3 Discussion/possible action to develop regulation to allow Chiropractor's Assistants to begin active/passive therapy 10 minutes prior to a doctor arriving at the clinic or end within 10 minutes after leaving the clinic.

Dr. Lurie reported that he met with Dr. Overland to discuss the possibility of establishing acceptable parameters for indirect supervision of CAs. He agreed to present Dr. Overland's outline to the Board for consideration of a proposed regulation. Ms. Mercer expressed her strong opposition to this proposal. Dr. Overland cited other states with similar laws. Dr. Nolle stated that he is okay with it. Drs. Rovetti and Lurie have concerns, and Drs. Davis and Zaro are not in favor.

Agenda Item 4 PUBLIC WORKSHOP to consider proposed amendments to Nevada Administrative Code 634 – For possible action

Dr. James Overland was the only public member present. Dr. Rovetti asked Louis Ling to conduct the workshop. Mr. Ling gave a brief overview of the rule-making process and proceeded to address each section individually.

Section 1 The term "*certified*" will be used throughout with reference to Chiropractor's Assistants and "*licensed*" will preface the term "chiropractic physician."

Section 2 Dr. Overland said the NCA is okay with the two proposed fee increases.

Section 3 There were no additional changes.

Section 4 Everyone was in favor of requiring a 90% score for open book tests.

Section 5 The word "*clinical*" was inserted in the phrase "...in a chiropractic practice in any '*clinical*' capacity."

Section 6 The phrase "examined the patient" was deleted.

Section 7 None of the proposed changes were approved except "...or 12 months of part time" was added to 2(a)(2).

Section 8 There were no additional changes.

Section 9 The language was rearranged.

Section 10 There were no additional changes.

Section 11 The term "registered" was changed to "*certified*" throughout with reference to Chiropractor's Assistant. The term "corporate" was changed to "*accredited*." A provision was added to allow Chiropractor's Assistants to attend any approved continuing education course.

Section 12 The term "registered" was changed to "*certified*" throughout.

Section 13 There were no additional changes.

Section 14 There were no additional changes.

Section 15 No changes are to be made.

Section 16 The phrase "*within 15 days*" was added.

Section 17 (1)(i) was split into two parts.

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Section 18 “Made” was changed to “*established*,” a threshold of \$250 was added, and the time frame was changed to “*15 days*.”

Section 19 The word “where” was changed to “*when*” and the term “*health care*” assistant was added.

There were no other public comments with respect to the proposed regulation changes.

Agenda Item 14 Discussion/approval re: CPBN policies – For possible action:

B. Proposed revisions to Specialty Advertising policy

Dr. Kenneth Hogan was present. Dr. Rovetti recommended that, although the FMCSA Certified Medical Examiner program does not meet the minimum criteria of the CPBN’s Specialty Advertising policy, it is a Federal program and an exception should be made for its approval. Dr. Rovetti moved that an exception be made to the Specialty Advertising policy to include “FMCSA Certified Medical Examiner” because it is a federal program. Dr. Nolle seconded the motion and it passed unanimously.

The Certified Functional Medicine Training Program appears to meet the criteria of the CPBN’s Specialty Advertising policy. Dr. Zaro moved that Certified Functional Medicine Practitioner (CFMP) be approved for inclusion in the Specialty Advertising policy. Dr. Lurie seconded the motion. Upon discussion, Dr. Lurie stated that he feels this program needs further investigation. The motion passed with all in favor except Dr. Lurie who was opposed, and Ms. Mercer abstained.

A. New policy re: Board expenditures

Dr. Nolle received no input for revision of his previously proposed policy. It was agreed if an expenditure should substantially exceed the budgeted amount, the decision to approve or not approve it will be the responsibility of any two of the following: Board President, Secretary-Treasurer and Executive Director. If the person responsible for the expenditure disagrees, it may be addressed at the next meeting.

Agenda Item 15 Discussion/approval of selected Board policies to be made into regulation – For possible action

No policies were selected for conversion to regulations at this time. This will be addressed as needed in the future.

Agenda Item 18 Board Counsel Report – No action

Louis Ling reminded everyone that the Nassiri appeal will take place on December 10 at 11:30 AM in the Las Vegas Supreme Court. At this time there are no impending Board hearings. He commented that, although the Purcell case was long and complicated, the costs were contained at less than \$22,000.

Agenda Item 16 Discussion/consideration of approval of Application for Licensure of Chad Wheatley, DC – For possible action

Dr. Zaro has reviewed the MacQuairie University curriculum and finds it to be equivalent to Nevada’s requirements under NRS 634.090. Mr. Ling advised that the Board has the authority to recognize Australia’s accreditation. Ms. Mercer moved to approve Dr. Wheatley’s application. Dr. Rovetti seconded. The motion passed with everyone in favor except Dr. Lurie who abstained.

Agenda Item 20 Executive Director Reports – No action

A. Status of Complaints Received

B. Status of Current Probations

C. Legal/Investigatory

Ms. Wade had nothing to add to her written reports except to indicate that one doctor who has been making payments for several years will have completed all of his disciplinary requirements when his next and last payment is received.

Agenda Item 21 NCA Report – No action

Dr. Overland reported that the NCA Annual Meeting last month in Reno went well. The NCA has named John Kenny, DC, Chiropractor of the Year. Dr. Kenny may be interested in providing space for CA testing.

Dr. Overland advised the CPBN to act on the potential backlash of other health care professions by DCs claiming certification in diplomate fields such as orthopedics, neurology, etc..

Dr. Overland stated the CPBN should take action against the physical therapist in a rural area of Nevada who is advertising adjustments. Various means of dealing with this situation were considered. Mr. Mercer disclosed that within the past year she has served as Board Counsel on two disciplinary cases for the P.T. Board. The Board members agreed that we should wait until the P.T. Board has acted on this matter.

Dr. Davis asked Dr. Overland what he recommends the Board should do about the diplomate turf war. Dr. Overland replied that we should wait and see what other states do about it, but he would like the Board to state its position.

Agenda Item 12 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 11-8S

Dr. Zaro is still waiting for closure of the civil case in this matter.

B. Complaint 11-21S

C. Complaint 12-04S

J. Complaint 13-12S

Ms. Mercer explained that Complaint 11-21S involved an unsuccessful attempt by the DC to recover a fee from the insurance company. He then aggressively tried to collect from the patient but finally dropped it. The complainant has relocated to Germany and is not responding. Ms. Mercer recommended the complaint be dismissed.

Ms. Mercer recommended Complaint 12-04S also be dismissed. It involves a dispute over insurance and payment of fees. She has discussed it with the DC but there has been no response from the complainant.

Dr. Lurie made a motion to dismiss Complaints 11-21S and 12-04S. Dr. Nolle seconded and the motion passed with all in favor except Ms. Mercer who recused as the Investigating Board Member.

Ms. Mercer reported that she is still investigating Complaint 13-12S.

D. Complaint 12-18S

Ms. Wade has been advised that new evidence in this matter was just received and the investigation is still ongoing.

E. Complaint 12-19S

An insurance adjustor for a PI case alleged excessive treatment. Investigating Board Member Dr. Davis requested additional information from him 3 times with no response. The licensee was being monitored during the period cited in the complaint due to a past disciplinary action. The monitoring shows that the DC is in compliance with his treatment plan conduct. Dr. Zaro moved to dismiss the complaint and Ms. Mercer seconded. The motion passed with all in favor except Dr. Davis who recused.

M. Complaint 13-20N

Dr. Davis explained that an unlicensed massage therapist placed advertising materials in a DC's office without his permission. The money the doctor received from the massage therapist was for her space rent. There was no violation and Dr. Davis recommended dismissal. Dr. Lurie moved to dismiss Complaint 13-20N. Dr. Nolle seconded and the motion passed with all in favor except Dr. Davis who recused as the IBM.

F. Complaint 12-20S

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

G. Complaint 13-05N

Dr. Rovetti is still trying to locate the massage therapist who was reportedly performing adjustments.

H. Complaint 13-06N

Dr. Rovetti still needs to do some work on this complaint.

I. Complaint 13-11S

Dr. Zaro has interviewed the complainant and the DC. The patient's statements regarding her malpractice claim conflict with the doctor's statement. The doctor's software enables him to go back and alter records. She will make another attempt to verify the complainant's claim that the DC altered his records, otherwise, it is a case of "he said/she said."

K. Complaint 13-15S

The complainant alleges the DC injured her while performing a drop table adjustment because he was angry, which the doctor denies. Investigating Board Member Dr. Rovetti inspected the doctor's notes which do not mention drop table or cervical adjustment, nor do they accurately reflect the patient's progress. After discussion, Dr. Zaro moved to dismiss the complaint with a letter of instruction regarding proper record keeping. Dr. Lurie seconded. The motion passed with all in favor except Dr. Rovetti who recused.

L. Complaint 13-19S

This complaint from the Massage Therapy Board investigator alleged an unlicensed person was performing adjustments as well as massage therapy. Investigating Board Member Dr. Zaro made an appointment and did receive a massage from the person. She said he is very strong but did not perform an adjustment. Ms. Mercer moved to dismiss the complaint. Dr. Davis seconded and the motion passed with all in favor except Dr. Zaro who recused.

M. Complaint 13-21S

Dr. Lurie stated that this complaint alleges a licensee appeared to be drug impaired. He interviewed the licensee, employees where he worked when the incident occurred, and the complainant. The doctor claims he has a low blood sugar condition. There are issues with the questions on the application form and information that he did not provide. However, there is no provision in our current laws that allows us to compel him to be drug tested. Dr. Lurie recommended dismissal of the complaint with a letter of concern.

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Ms. Mercer made a motion to dismiss the complaint with a letter of concern recommending he seek appropriate health care for his condition. Dr. Zaro seconded and the motion passed with all in favor except Dr. Lurie who recused as Investigating Board Member.

N. Complaint 13-22S

Dr. Zaro said this complaint is for an advertising violation. The DC did not respond within the given time frame, which is another violation. She is still working on this complaint.

O. Complaint 13-25S

Dr. Lurie just received this complaint. It alleges malpractice and was filed by a mother on behalf of her deceased son. He will interview the doctor and proceed from there with his investigation.

Agenda Item 13 Consideration of potential changes to NRS Chapter 634 – For possible action

There were no proposed statutory changes. This matter will be on the agenda of the next meeting.

Agenda Item 22 Educational Moment re: “How much regulation do we really need?” – No action

Dr. Rovetti played an audio from a PBS show that presented examples of overregulation.

Agenda Item 23 Correspondence Report – No action

There were no comments with regard to the correspondence.

Agenda Item 24 Board Member Comments – No action

Dr. Zaro commented that practicing under the influence of drugs or alcohol should be added as a definition of Unprofessional Conduct.

Dr. Rovetti commented that the number of pending complaints is down and there are no hearings coming up.

Dr. Lurie said he still wishes to receive settlement agreement documents sooner. He commented that our application forms are in need of updating. He will continue to work with Dr. Overland on mutual concerns.

Dr. Zaro recommended that the policy that requires the respondent to be present at the meeting when his/her settlement agreement is on the agenda should be addressed for possible revision at the next meeting. Allowing them to participate by phone, Skype or other electronic means should be considered. She commended Louis Ling for a great job putting together her settlement agreements.

The next meeting was tentatively set for February 22, 2014.

Agenda Item 25 Public Interest Comments – No action

There were no further public interest comments.

Agenda Item 26 Adjournment – For possible action

The meeting was adjourned.