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CINDY WADE
Executive Director

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MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Saturday, October 5, 2013 in Conference Room I204 of Kietzke Plaza, 4600 Kietzke Lane, Reno, Nevada 89502.

The following Board Members were present at the roll call:

David Rovetti, DC, President
Benjamin Lurie, DC, Vice President
Jack Nolle, DC, Secretary-Treasurer
Lawrence Davis, DC, Member
Annette Zaro, DC, Member

Consumer Members Tracy DiFillippo and Shell Mercer were not present. Also present were CPBN Counsel Louis Ling and Executive Director Cindy Wade, and Deputy Attorney General Colleen Platt.

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

There were no requests for changes to the agenda.

Dr. Rovetti turned the Chair over to Vice President Dr. Ben Lurie.

Agenda Item 3 Discussion/approval of proposed Settlement Agreement in the matter of Laura Harmon, DC, License No. B1356, Complaint 12-10N – For possible action

Dr. Harmon and her attorney, Steve Evenson, were present. At Dr. Lurie's request, Mr. Ling reviewed the charges and presented the terms and conditions of the proposed settlement agreement. Mr. Evenson stated that he and his client are in agreement with the proposed settlement. Dr. Nolle made a motion to accept the Settlement Agreement in the Matter of Laura Harmon, DC,

License No. B1356, Case No. 12-10N. Dr. Zaro seconded. The motion passed with all in favor except Dr. Rovetti, who recused because he was the investigating Board Member in this matter.

Dr. Rovetti resumed the Chair. He announced that Agenda Items 4 through 7 will be postponed until the Forte, LLP representatives arrive.

Agenda Item 8 Approval of August 6, August 20, September 10 and September 24, 2013 minutes – For possible action.

Dr. Nolle moved to approve the minutes of the August 6, August 20, September 10 and September 24, 2013 meetings. Dr. Davis seconded and the motion passed unanimously.

Agenda Item 9 Approve adoption of FCLB CCCA program – For possible action

Dr. Zaro described the process required by FCLB for certification of Chiropractor's Assistants. Most of the FCLB requirements are waived for Nevada applicants because of our CA certification program already in place. FCLB certified CAs would still have to apply for Nevada certification and be examined in x-ray and jurisprudence. There will be additional expense to applicants because they will have to pay fees to FCLB and CPBN. Issues with respect to testing sites and test scores were discussed.

Agenda Item 10 Discussion/possible approval to allow program to provide supplemental classroom hours for on-the-job training for Chiropractor's Assistants – For possible action

Dr. Lurie said a group of licensees in Las Vegas is considering providing classroom hours for CA on-the-job training applicants. They would offer weekend classes with instruction in therapies, x-ray and the laws. NCA President Dr. James Overland informed the Board that Dr. John Kenny of the Northwest Careers Institute is considering offering a similar program. He asked what criteria will be expected by the Board. This needs to be addressed in regulation and Mr. Ling will include it in the draft of proposed regulation changes.

Agenda Item 4 Forte, LLC, report on 2013 Legislature – No action

Mendy Elliott reviewed the bills significant to CPBN that were passed by the 2013 Legislature. At Dr. Nolle's suggestion, Ms. Elliott and Cindy Wade will draft a "white paper" for the Board to approve for presentation to Legislators. Ms. Elliott and Ms. Berkbigler expressed their appreciation for the support they received during the session.

Agenda Item 5 Discussion/possible approval re: new lobbyist contract – For possible action

The terms of the Forte, LLP, proposal in which the monthly retainer was reduced from \$1,500 to \$1,250, were reviewed. Dr. Lurie moved to accept the Forte, LLP, proposal. Dr. Davis seconded. The motion passed with all in favor. The contract will be delivered by Tuesday, October 8, 2013 and will go into effect as soon as it is approved by the Board of Examiners.

Agenda Item 6 Consideration of potential additions, deletions and/or amendments to NAC Chapter 634 – For possible action

Cindy Wade read for the record letters from Drs. Lisa Berger and Derek Day in which they oppose fee increases for DCs and CAs.

Several pre-payment plan regulations of other states were reviewed. It is important that establishment of a trust account and terms regarding refund disclosure be required to be clearly stated in the contracts. Louis will develop a simple version for inclusion in the proposed regulations.

The proposed changes in Nos. 4 and 5 of Section E on Page 14 were not approved.

There were no objections to a proposed regulation that will allow students enrolled in health care assistant programs to perform Chiropractor's Assistant services. The requirements would include a minimum age of 18, \$25 registration fee and proof that he/she is enrolled in a course of study in a health care field, with a letter from the supervising DC assuring that the student will not perform services outside of the chiropractic scope of practice.

Regarding Section H(1), the addition of (t) was not supported as this is already covered in the unprofessional conduct code. The OIG rules for Medicare should be applied to remuneration issues.

Dr. Overland stated that the NCA board is unanimously against raising the DC and CA fees. Following discussion with Mendy Elliott and Marsha Berkbigler, only the proposed increases in the CA examination and continuing education fees were approved.

Agenda Item 7 Consideration of potential addition to NRS Chapter 634 – For possible action

Dr. Rovetti stated that the Board will be pleased to consider proposed statutory changes submitted by the NCA.

Dr. Lurie expressed his concern that this Board has no statutory authority to require drug tests. Almost all other boards have this authority. This will be considered when the Board begins drafting a bill for the next Legislature.

Agenda Item 11 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:

L. Complaint 13-08S(b)

Dr. Lurie reported that this complaint resulted from an investigation of a chiropractic practice by other regulatory boards. The licensee was interviewed and it was determined that he was not involved in the treatment of patients with the use of medications. His records are in compliance with NAC 634.435. Dr. Lurie recommended the complaint be dismissed. Dr. Davis so moved. Dr. Nolle seconded and the motion passed with all in favor except Dr. Lurie who recused because he was the investigating Board Member.

Agenda Item 16 NCA report – No action

Dr. Overland reported that the Georgia Medical Association recently issued a cease and desist order to a chiropractor for advertising as a "Chiropractic Radiologist" because they claim ownership of the term "radiologist." This could have a profound impact on chiropractors' advertising in Nevada, and the Chiropractic Board needs to address how we can protect the licensees who have certification or diplomate status. The NACA (National Association of Chiropractic Attorneys) is looking into this.

Dr. Overland mentioned the Oregon State Exchange for the Affordable Care Act has interpreted Section 2706, which was intended to prevent discrimination against chiropractors, to mean they can do whatever they want to do, i.e., it doesn't allow equal accessibility to chiropractors to provide care. Section 2706 will be rendered meaningless if this is not challenged. The ACA and possibly other entities are involved in this issue. Dr. Overland said these are two areas where the Association and the Chiropractic Board need to work together to protect Nevada chiropractors. Marlene Lockard stated that the NCA submitted a letter for the record to the Silver State Exchange that brought to their attention the non-discriminatory language in Section 2706. So far there have been no issues but the NCA will continue to stay on top of it.

Dr. Overland stated that the NCA's board wants to address what happened during the Legislature with regard to SB198. He felt that although this is an isolated incident with respect to

a particular bill, it has had far reaching implications. There were some circumstances that compromised the NCA and its ability to deal with some of the legislators. The Association wants to repair the “chasm” that has developed by addressing the entire picture, recognizing that the CPBN is here to protect the public and the Association is here to promote and advance the profession within the state. The NCA feels that there were some egregious events by some individuals that caused some problems and there needs to be some damage control. Marlene Lockard said the NCA was very confused about how a bill could pass through every committee and both houses of the Legislature unanimously and then be vetoed. She presented a chronology of events that transpired with regard to SB198 to clarify what occurred. Dr. Overland mentioned there were two negative articles that included the terminology “warring factions” that implied the Association was at odds with the licensing board. As a result, he and Ms. Lockard have been approached by some Senators who referred to the articles and expressed their concerns. He stated that the NCA has worked very hard to gain recognition at the Legislature that chiropractic is a viable entity in Nevada. He said that some of the actions that took place were individualistic and not in support of the CPBN. He stated that when it appeared there were problems, they agreed to a friendly amendment that the NCA worked with but things changed at the eleventh hour from “neutral with or without concerns,” it was actually in opposition. The concern is, where is the trust factor and how can it be repaired, and where and how can the NCA and the CPBN work together for the betterment of the profession? He stated he is willing to sit down to see what can be done to further chiropractic in the State of Nevada, whether it be one-on-one, the two boards, the lobbyists, and/or the attorneys.

Agenda Item 13 Committee reports – No action

A. Continuing Education Committee – Dr. Nolle

Dr. Nolle suggested possible consideration of home study for CE credit. The number of online CE hours for DCs will be limited to 12 in regulation, but CAs will be allowed to attend all of their required 12 hours online.

B. Legislative Committee – Dr. Lurie

Dr. Lurie said he will review the NCA’s chronology. He will probably generate a response.

C. Test Committee – Dr. Zaro

Dr. Zaro is looking for a new location to administer the CA exams because it is becoming increasingly difficult to get two adjacent rooms at the community college. The situation might be alleviated by offering the exams every three or four months

D. Preceptorship Committee – Dr. Davis

Dr. Davis reported that there have been no new applications since his last report. We might consider sending letters to those who have completed their preceptorships to find out how it worked for them. It might also be helpful to contact the colleges.

Agenda Item 14 Board Counsel Report – No action

Mr. Ling reported that he is still awaiting notice of a new date for the Nassiri hearing from the Supreme Court.

Agenda Item 11 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 a hearing is scheduled for November 16.

B. Complaint 11-8S

Dr. Zaro is still waiting for the civil matter to conclude, probably sometime in 2014.

C. Complaint 11-21S

D. Complaint 12-04S

Complaints 11-21S and 12-04S were not addressed because the investigating Board Member was not present.

E. Complaint 12-18S

Cindy Wade reported that this complaint will be ready to be addressed at the next meeting.

F. Complaint 12-19S

Dr. Davis stated that this complaint will be ready to be addressed at the next meeting.

G. Complaint 12-20S

Dr. Zaro reported that this case is still ongoing.

H. Complaint 12-23S

A Notice of Charges will be issued and then the case will go into the dormant file because the doctor's location is unknown.

I. Complaint 13-05N

J. Complaint 13-06N

Dr. Rovetti stated that his investigations into Complaint 13-05N and 13-06N are still ongoing.

K. Complaint 13-08S(a)

Dr. Lurie reported that a possible settlement agreement is being negotiated.

M. Complaint 13-10S

Dr. Zaro will have a settlement agreement to present at the next Las Vegas meeting.

N. Complaint 13-11S

Dr. Zaro reported that she needs to engage a private investigator for further investigation of this case.

O. Complaint 13-12S

This complaint was not addressed because the investigating Board Member was not present.

P. Complaint 13-15N

Dr. Rovetti reported that the complainant may have received a rough adjustment because the doctor was upset at the time. Also, his notes were substandard. This investigation is ongoing.

Q. Complaint 13-19S

This complaint alleges that a massage therapist is performing adjustments. Dr. Zaro will try to find a qualified person to go in for an adjustment.

R. Complaint 13-20N

Dr. Davis is in the process of investigating this complaint about an unlicensed person performing massage therapy in a chiropractor's office.

S. Complaint 13-21S

Dr. Lurie is investigating this complaint which alleges a licensee is drug impaired.

T. Complaint 13-22S

This is an advertising violation. Dr. Zaro will request documentation from the doctor.

Agenda Item 15 Executive Director Reports– No action

A. Status of Complaints Received

B. Status of Current Probations

C. Legal/Investigatory

Cindy Wade reported that a licensee who was given until July 1, 2013 to get into compliance with his child support and student loan obligations has provided documentation of his compliance.

Ms. Wade reviewed SB21 because it requires staff to determine from renewing DCs and CAs if they have or do not have a business license number and generate a report for the State Controller. If the Controller's search reveals that a DC or a CA owes money to the state, they cannot be renewed until the debt is resolved. SB236 requires state agencies to make forms available on their websites by June 30, 2015 in a format that will allow them to be completed, downloaded, saved and electronically submitted to the agency.

SB220 authorizes the Board to enter and inspect a chiropractic practice to determine if anyone is practicing without a license or a certificate, and to accept anonymous complaints. It also provides that the Board may issue a cease and desist order, a citation, and/or assess a fine up to \$5,000 for unlicensed activity.

SB351 amends NRS 629 to prohibit health care providers from purchasing liens and provides for a \$25,000 fine for each violation. AB456 amends NRS 629 to require all health care professionals to wear a name tag indicating his or her specific licensure or certification while providing health care services.

AB155 requires staff to notify newly licensed DCs and certified CAs of their duty as mandatory reporters of child abuse in writing or by electronic transmission and obtain a written acknowledgement or electronic record that they have been so informed. This requirement also applies to all DCs and CAs when they renew.

Summaries of the pertinent parts of SB351, AB456 and AB155 will be published in the next Newsletter.

Agenda Item 12 Financial status report – For possible action

A. Current cash position

B. June 30, 2013 F/Y Income/Expense Actual to Budget Comparison

C. July 1–August 31, 2013 Income/Expense Actual to Budget Comparison

D. July 1–August 31, 2013 to July 1, August 31, 2012 Income/Expense Actual Comparison

E. Accounts Receivable Summary

F. Accounts Payable Summary

G. Extraordinary items

H. Request for approval of expenditures

Review of the income and expense statements disclosed that although we experienced a 9% drop in revenue, the net operating result was approximately 3% under budget at the end of the fiscal year. This included a \$28,653 write-off of an uncollectible debt.

There were no objections to the requested expenditures for purchase of new computers and a printer, travel for one Board Member to attend the Annual FARB Forum in January, 2014 and for a staff member to attend the annual GLSolutions Client Conference in January, 2014. Ms. Wade also reported that the annual financial audit is currently in progress.

Agenda Item 17 Approval of proposed policy re: Board member travel – For possible action

Dr. Nolle presented a proposal for a policy on Board expenditures. He will redraft it to include some recommended changes and it will be addressed again at the next meeting.

Agenda Item 18 Discussion re: review of Board policies for updating and possible conversion to regulation – No action

Dr. Lurie requested everyone to review the Board's policies prior to the next meeting for determination of which ones should be made into regulations.

Agenda Item 19 Report on September 12, 2013 meeting with Physical Therapy Board; determine next step – For possible action

Dr. Rovetti reviewed a timeline of the events to date with regard to the seminars in which spinal manipulation is taught to Physical Therapists. He summarized the outcome of a Physical Therapy Board meeting that he and Louis Ling recently attended. Dr. Rovetti will continue to work on this issue with Mr. Ling's guidance.

Agenda Item 20 Discussion re: utilization of "Probe" program – No action

Dr. Lurie described the Probe program and recommended its use as a resource for rehabilitation candidates.

Agenda Item 21 Report on FCLB Regional Meeting – No action

Dr. Davis reported on the various topics covered at the meeting in Vancouver, Washington in September. He felt the break-out sessions were very effective and recommended their use by the Board.

The Board then conducted an impromptu break-out session focused on informed consent. The Board felt it was constructive and agreed to have a break-out session at each meeting.

Agenda Item 22 Correspondence Report – No action

The First Chiropractic Physician Association of America, Inc. (FCPAA) is a new free professional association attempting to become established in Nevada. It appears to promote full prescriptive rights and possibly invasive treatments, neither of which is within Nevada's scope of practice. Dr. Rovetti suggested their President, Dr. Blanchard, be invited to our November meeting for a 10 minute presentation.

Agenda Item 23 Board Member Comments – No action

Dr. Rovetti stated that the November 16 meeting will start at 8:45 AM. Two hours for the Rule-Making Workshop and any other business will be allowed. If a settlement cannot be attained the hearing will begin at 11:00 AM and it could go into Sunday. Louis will check with the respondent's attorney about his availability on the 17th.

Dr. Davis thanked Dr. Overland and Ms. Lockard for their presentation. He agrees with Dr. Overland that the Board and the Association need to work together and any differences should be resolved without bringing them to the attention of the Legislature.

Dr. Lurie stated that he agrees with Dr. Davis. He has extended his hand to sit down with Dr. Overland and discuss the issues and that invitation is still open. He reiterated the importance of getting information to Board Members in advance of the Board's meetings, including settlement agreements.

Dr. Rovetti said he takes a slightly different view of the Board's relationship with the NCA. The association serves as the watchdog for the profession. He feels it is good to have a "healthy friction" between the two entities as long as it is kept cordial and at a minimum.

Dr. Lurie will have a rebuttal to Dr. Overland's presentation at the next meeting.

Agenda Item 24 Public Interest Comments – No action.

There were no public interest comments.

Agenda Item 25 Adjournment – For possible action

The meeting adjourned at 5:05 PM.

Jack Nolle, DC, Secretary-Treasurer