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Consumer Member
SHELL MERCER, ESQ
Consumer Member
JULIE STRANDBERG
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CHIROPRACTIC PHYSICIANS' BOARD OF NEVADA

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MINUTES OF MEETING/HEARING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Friday, July 17, Saturday, July 18, and Sunday July 19, 2015 at Depo International, 703 South Eighth Street, Las Vegas, NV 89101.

The following Board Members were present at the roll call:

Margaret Colucci, DC, Member
Tracy DiFillippo, Consumer Member
Benjamin S. Lurie, DC, President
Shell Mercer, Consumer Member
Jack Nolle, DC, Member
David G. Rovetti, DC, Secretary-Treasurer

Also present were CPBN Counsel Louis Ling, Deputy Attorney General Sophia Long, and Executive Director Julie Strandberg. Vice President, Lawrence Davis, DC was not present.

President, Dr. Ben Lurie determined that a quorum was present and called the meeting to order at 9:30 a.m.

Ms. DiFillippo led those present in the Pledge of Allegiance. Dr. Nolle 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. Lurie moved to approve the agenda. Dr. Rovetti seconded and the motion passed with all in favor.

Agenda Item 3 Discussion/possible action in the Matter of Timothy Francis, DC, License No. B309, Complaint No. 14-08S –

Dr. Lurie commenced the meeting with the plan for the weekend. He stated that this is the continuation of the Timothy Francis, License No. B309, Complaint No. 14-08S for possible action.

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Dr. Lurie stated that he is the investigating board member for Complaint No. 14-08S and turned the Chair over to Shell Mercer to reopen the Timothy Francis hearing.

Ms. Mercer stated that when the Board adjourned previously, Edgar Carranza's witness, Dr. Bray, was on the stand. Ms. Mercer confirmed with Mr. Carranza that Dr. Bray is their witness and that Mr. Carranza had completed his direct examination. Mr. Carranza indicated Dr. Bray is their witness and that he has completed his direct examination.

Mr. Ling confirmed that Dr. Bray understood he was still under oath. Dr. Bray confirmed that he understood, and Mr. Ling continued with his cross examination on Dr. Bray who testified from a remote location via teleconference. Mr. Ling completed his cross examination.

Questioning was turned over to the Board to ask questions of Dr. Bray. The Board asked several questions. Mr. Ling followed-up to gain clarification of Exhibit 1.

Mr. Carranza began his redirect examination of Dr. Bray. Mr. Carranza completed his redirect questioning of Dr. Bray.

The Board followed-up with additional questions of Dr. Bray.

Mr. Carranza's witness, Dr. Darrick Sahara, was sworn in and reported from a remote location via teleconference. Mr. Carranza began his direct questioning. Mr. Carranza completed his questioning.

Mr. Ling indicated he did not have any questions for Dr. Sahara.

The Board began with questions to Dr. Sahara. The Board completed their questioning.

Mr. Carranza called Dr. Timothy Francis as the next witness. The Defendant, Dr. Francis, was sworn in, and Mr. Carranza began his direct examination.

At approximately 7:00 p.m., Dr. Lurie adjourned the hearing until 8:00 a.m., Saturday, July 18, 2015 and referred the Board to Agenda Item 8.

Agenda Item 8 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 08-29S (Dr. Rovetti)

Dr. Rovetti stated that the DC gave the patient a bear hug to adjust, which is a fairly established type of adjustment for thoracic pain. The complainant was an elderly lady. And, after the adjustment, she went to urgent care and was diagnosed with a contusion of the left chest wall. The DC's written notes were computer generated and stated that the treatment was "tolerated well." This complaint was put on hold in 2008 because the DC injured himself, moved to Alaska, and did not renew his license. However, he now wants to renew his Nevada license. He has taken 36 hours of continuing education, paid \$1,225.00 for the renewal, and has been issued his license, which triggered the investigation. Dr. Rovetti spoke to the DC. He basically stated that since this occurred in 2008, he doesn't really remember too much. The notes didn't indicate that the patient was injured. Dr. Rovetti recommended that the DC take continuing education courses on risk management and record keeping. He did so recently. No other complaints have been filed on this DC and he hasn't had any past record keeping problems. Dr. Rovetti recommended that the complaint be dismissed. Dr. Nolle moved to dismiss Complaint 08-29S. Dr. Lurie seconded and the motion passed with all in favor.

B. Complaint 11-08S (Ms. Mercer)

Ms. Mercer stated that complaint 11-08S is still under investigation.

C. Complaint 14-08S (Dr. Lurie)

Dr. Lurie explained that Complaint 14-08S is the Dr. Francis hearing, which is ongoing at this time.

D. Complaint 14-23S (Ms. DiFillippo)

This complaint is regarding a DC who allegedly allowed an unlicensed massage therapist work out of his office. It is understood that the massage therapist license lapsed while conducting business out of the DC's office. The Massage Board investigated their licensee, and he has since renewed his license. Ms. DiFillippo recommended sending a letter to the chiropractor advising him that going forward, he have a written rental agreement with tenants. Dr. Rovetti moved to dismiss Complaint 14.23S. Dr. Nolle seconded and the motion passed with all in favor except Ms. DiFillippo who recused herself as the Investigating Board Member.

E. Complaint 14-24S (Dr. Colucci)

This complaint was filed against a DC for failure to release patient records. The DC indicated and provided documentation that he was out of the country. The files have been confirmed with the complainant as received. Dr. Colucci recommended dismissal. Dr. Lurie moved to dismiss Complaint 14-24S. Ms. Mercer seconded and the motion passed with all in favor except Dr. Colucci who recused as the Investigating Board Member.

F. Complaint 15-01S (Dr. Lurie)

This complaint is against a non-licensed DC, who stated he is licensed in Michigan and in Nevada, but does not have an active license in our state. A citation has been issued by the Board. However, the individual cannot be located. There are other legal issues against this individual. He does have an active web-site, but does not have a valid address. His business address is a P.O. Box. It is also suspected that he may be operating a mobile chiropractic business. The Advantage Group has been assigned to assist in the location of this individual. This complaint will be held until confirmation is received that the citation has been served.

G. Complaint 15-05S (Dr. Colucci)

Mr. Ling stated that the investigation is done. Action will be taken at the next Board meeting.

H. Complaint 15-06S (Ms. DiFillippo)

Ms. DiFillippo stated that complaint 15-06S is still under investigation.

I. Complaint 15-08N (Dr. Lurie)

Dr. Lurie stated that this complaint has been transferred to an outside Investigating Board Member. The recommendation will come before the Board at the next meeting.

J. Complaint 15-09S (Dr. Colucci)

This complaint is against a licensee who has been on inactive status since 2003 and appeared to be representing himself as practicing. Dr. Colucci stated that the Board

doesn't have any jurisdiction over the DC since he is on inactive status. Mr. Ling stated that the DC is managing a multi-disciplinary practice and shows himself as Dr. X, Practice Manager. Mr. Ling stated, the DC is not currently performing chiropractic services although there might be chiropractors in his practice. Mr. Ling stated that there is nothing in the law that states the owner of a Chiropractic Office must be a Chiropractor. Dr. Colucci stated that after discussing this case with Mr. Ling, the Board does not have any grounds to pursue this matter.

Dr. Colucci recommended dismissal with a letter. She recommended that the Board consider to propose legislation not to allow a non-Chiropractor be an owner of a Chiropractic office.

Dr. Nolle stated that once they finish school they are allowed to call themselves a DC whether they're licensed or not. So, if he's just representing himself as Dr. X then that falls within his rights. But, when you say he represents himself as practicing, what was it that took it that next step? Dr. Colucci advised that was a slip of verbiage. Mr. Ling indicated that the original complaint was that the DC was representing himself as practicing and the complainant was concerned that he was seeking payment for the services of this multi-disciplinary practice that he is the manager of. Mr. Ling indicated that the letter sent to the DC state that any correspondence sent on behalf of his practices indicate that he is not a practicing chiropractor. Dr. Rovetti moved to dismiss Complaint 15-09S. Ms. Mercer seconded and the motion passed with all in favor except Dr. Colucci who recused herself as the Investigating Board Member.

K. Complaint 15-10S (Dr. Lurie)

Dr. Lurie stated that complaint 15-10S is still under investigation.

L. Complaint 15-11S (Dr. Lurie)

Dr. Lurie stated that complaint 15-11S was given to Dr. Rovetti and is still under investigation.

M. Complaint 15-12S (Dr. Nolle)

This complaint was filed by an attorney due to a charge or fee for a "patient report" billed by a DC. Terminology is the issue in this case. The attorney requested that the doctor provide initial and final reports via email, which was confirmed by the DC. Reports were prepared by the DC and sent to the attorney. The attorney indicated she did not authorize the production of the reports and refused to accept the reports and pay for them. Dr. Nolle surveyed a couple of DC's and an attorney who stated that based on the wording used in the attorney's request, which indicated a "report," it implies something above and beyond patient records. Dr. Lurie stated that the doctor is allowed to charge for his time to create these reports. Dr. Colucci stated that being transparent is important, and the doctor should have disclosed the fees to the attorney. Dr. Nolle recommended to dismiss with a letter to the doctor indicating in the future to identify applicable fees and a letter to the attorney indicating that she may want to ask what fees are involved up front. Dr. Lurie moved to dismiss Complaint 15-12S. Ms. DiFillippo seconded and the motion passed with all in favor.

N. Complaint 15-13S (Dr. Lurie)

Dr. Lurie stated that complaint 15-13S was given to Dr. Rovetti and is still under investigation.

O. Complaint 15-14S (Dr. Lurie)

This is a personal injury case where the complainant visited several Chiropractors. The complainant alleged that he was misdiagnosed by one chiropractor, and another chiropractor stated it had to do with his leg length, and everything about the previous diagnosis was incorrect. Dr. Lurie reached out to the DC for the patient records and they are accurate and in compliance with NAC 634.435. The complainant also filed a civil case in small claims court against the DC. When the DC agreed to a reduction in the patient's fees relative to the personal injury case, the complainant withdrew his claims. The Chiropractor's attorney drafted a letter stating that if the DC reduced the fees owed by the complainant, the complainant would release the Chiropractor from all liabilities. The DC's attorney informed that the complainant has a history of filing over 100 small claims lawsuits against doctors and other people. Dr. Lurie stated the issue is that the patient signed a document stating that he would release all liabilities against the Chiropractor and withdrew everything from small claims court. So, the assumption is that releasing all liabilities is releasing all liabilities for whatever it is their claiming. Mr. Ling will review the attorney's letter.

P. Complaint 15-15S (Dr. Colucci)

The complainant indicates that the DC improperly used the cervical traction device. Dr. Colucci reviewed the patient's records and felt they were completely in order and everything was documented. Dr. Colucci stated that she doesn't see any violation in this case and recommended that the Board dismiss with a letter. Dr. Colucci also indicated that the Board should prepare a dismissal form letter for circumstances that appear to be more malpractice in nature. Dr. Lurie stated that the Board typically doesn't look at malpractice. Mr. Ling advised that the letter should indicate language as stated in SB 231. Indicating that the case has been reviewed and it appears the DC failed to follow standard of care, but may not have done harm. Dr. Nolle moved to dismiss Complaint 15-15S. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Colucci who recused herself as the Investigating Board Member.

Q. Complaint 15-16S (Dr. Rovetti)

This is an advertising complaint about a radio advertisement that indicates what the DC does, but it does not disclose the name of the DC. Dr. Rovetti felt that without actually hearing the advertisement, it would be impossible to prove that the DC did not state that he was a DC. Dr. Rovetti stated that an advertising letter was already sent to the DC. A reply from the DC indicated that he will insure that future advertising will comply with the rule of disclosing he is a chiropractor. Dr. Rovetti felt that this was a minor advertising violation, and that it has been handled adequately with the letter and subsequent reply. He recommended to dismiss this complaint. Ms. Mercer moved to dismiss Complaint 15-16S. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Rovetti who recused himself as the Investigating Board Member.

Dr. Rovetti reminded the Board that there was regulation in place that required DC's to keep a file of their advertising for two or three years. For some reason, it was removed from the law and that is something he would like to see added back.

R. Complaint 15-17S (Dr. Rovetti)

Dr. Rovetti stated that complaint 15-17S is still under investigation.

S. Complaint 15-18N (Dr. Davis)

Julie Strandberg indicated that complaint 15-18N is still under investigation.

T. Complaint 15-19S (Dr. Lurie)

This is a complaint from a DC regarding another DC for failure to release a patient's file. Dr. Lurie contacted the DC to ensure he understood that there was a request from the patient to have their file released. The DC was advised that he could charge .60 cents per page for copies if necessary. The DCs resolved the situation amongst each other, and Dr. Lurie received a message from the complainant stating he would like to dismiss the complaint. Dr. Lurie recommended dismissal. Ms. DiFillippo moved to dismiss complaint 15-19S. Dr. Colucci seconded and the motion passed with all in favor except Dr. Lurie who recused himself as the Investigating Board Member.

Dr. Rovetti recommended that this complaint be kept in his file for future reference.

U. Complaint 15-20S (Dr. Rovetti)

While investigating a complaint against a DC, Dr. Rovetti came across the biography of the DC's wife on the DC's website. Her biography indicated that she is a trained Naturopath and provides Nutritional Testing and treatment plans. The Board has approved her as a CA in training. However, being a CA prevents her from diagnosing and creating treatment plans. A cease and desist letter was sent to her to stop diagnosing and preparing treatment plans. Dr. Rovetti contacted the DC's wife to discuss the circumstance, and she brought to his attention AB 295 which allows an unlicensed person to conduct wellness services. She formally withdrew her CA application. Following additional discussion, it was decided that to comply with current Nevada laws and regulations, her practice must be a separate legal and business entity from the Chiropractor's practice. Pursuant to NRS 629.075, she is allowed to refer patients to the Chiropractor, however he is not allowed to refer patients to her. A letter will be drafted with final review by Ms. DiFillippo and sent to both the DC and his wife.

Dr. Lurie moved to dismiss Complaint 15-20S. Ms. Mercer seconded and the motion passed with all in favor except Dr. Rovetti who recused himself as the Investigating Board Member.

V. Complaint 15-21S (Dr. Rovetti)

This is an advertising complaint where the DC does not identify himself in the ad. An advertising letter was sent to request the correction. If this is not corrected, the complaint will be brought back before the Board. Ms. Mercer moved to dismiss Complaint 15-21S. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Rovetti who recused himself as the Investigating Board Member.

W. Complaint 15-22S (Dr. Rovetti)

This is an advertising complaint, where the DC advertised that he provides drug testing. Dr. Rovetti stated that this is not prohibited by Nevada law, so he recommended dismissal. Dr. Nolle moved to dismiss Complaint 15-22S. Ms. Mercer seconded and the motion passed with all in favor except Dr. Rovetti who recused himself as the Investigating Board Member.

X. Complaint 15-23S (Dr. Rovetti)

This is an advertising complaint regarding a DC who conducted a seminar on depression and anxiety and may be certified in addictionology. Dr. Rovetti questioned whether a DC can treat depression and anxiety? Dr. Nolle clarified, that the DC is not treating, but simply providing an information seminar. Julie Strandberg noted this DC advertised another seminar that was brought to the Board's attention a few years ago. Dr. Lurie stated that the previous complaint was a diabetic seminar and was recommended for dismissal. Dr. Rovetti asked, "When a DC is holding a seminar, aren't they treating?" Ms. Mercer felt that, the DC is not treating but the Board has a responsibility to protect the public. Dr. Lurie stated, if I'm giving an educational seminar with the hopes that attendees will sign up as patients, and I in turn am going to treat them for these conditions based on my expert or educational opinion of treating depression and anxiety, then that may be an issue. Dr. Nolle would like to see the curriculum and the content on the seminar. Dr. Nolle would also like to see what the DC/instructor hands out. DR. Nolle noted that DC's can treat diabetic patients with diet, nutrition, and nutraceuticals. The DC does not have to be a specialist. Mr. Ling stated that the DC can tell the public that there are things chiropractic-like they can do for them if they're having anxiety as long as the DC doesn't cross into the realm of psychology. Dr. Rovetti will look into this further. Dr. Lurie asked that the DC provide us with the course information, with identifiable data redacted for review by the Board.

Dr. Lurie stated he will recuse himself from voting.

Dr. Lurie adjourned the Board meeting until 8:00 a.m. on Saturday, July 18, 2015

At 8:15 a.m., Saturday, July 18, 2015, Ms. Mercer stated that the Board was back on the record in the matter of Dr. Francis.

Mr. Carranza continued his direct examination of Dr. Timothy Francis and concluded his direct examination.

Mr. Ling began his cross examination of Dr. Timothy Francis and concluded his cross examination.

Sophia Long, Deputy Attorney General, reminded the Board of the two charges in the complaint. The first complaint is an allegation that Dr. Francis "engaged in a romantic or dating relationship with Patient T," who we know is Ms. Taylor, "including and engaging in sexual relations as part of the relationship." The second charge is an allegation that Dr. Francis failed to make or maintain any health care records regarding his diagnosis and treatment of Patient T, again, who we know is Ms. Taylor. Ms. Long asked the Board to keep these charges in mind when asking questions.

The Board began their questioning of Dr. Timothy Francis. The Board completed their questioning.

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Mr. Carranza began his redirect examination of Dr. Timothy Francis and concluded his redirect examination.

Mr. Ling began his re-cross examination of Dr. Timothy Francis and concluded his re-cross examination.

The Board followed-up with questions to Dr. Timothy Francis. The Board completed their questioning.

Mr. Carranza stated that he didn't have anything further.

Mr. Ling reminded the Board that Exhibits 4 through 15 were taken from packets that Ms. Taylor provided and were copied by him and Dr. Lurie. Each packet includes the exhibits how they were provided.

Mr. Carranza stated that they were done.

Ms. Mercer asked Mr. Carranza how he would like to proceed. He stated, "I think we rest since there are no more witnesses." He recommended the Board return tomorrow morning to close and deliberate.

Mr. Ling and Dr. Lurie agreed.

Dr. Lurie recommended that the Board adjourn until 8:00 a.m. Sunday, July 19, 2015.

At 8:20 a.m., Sunday, July 19, 2015, Ms. Mercer opened the meeting and stated that the Board was back on the record in the matter of Dr. Timothy Francis and called on Mr. Ling for his closing arguments.

Mr. Ling began his closing arguments by addressing the consideration of Dr. Evan's expert witness report. Mr. Ling moved to consider excluding "Exhibit JJ" provided by Dr. Evan's. Dr. Evan's doesn't mention any relevant Nevada law. Mr. Ling stated that an objection was going to be made, had Dr. Evan's been present. Mr. Ling indicated that NRS 50.275 qualifies whether there is a need for an expert witness, "*If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.*" Based on this statute, Dr. Evan's doesn't have any specialized knowledge as to what constitutes a Doctor -Patient relationship. He has no specialized knowledge to share with the Board, so that's why his testimony would have been excluded had he testified. Mr. Ling stated the second reason he doesn't believe this Board, which is a Board of experts made up of two lawyers and three Chiropractors, needs his assistance to understand the evidence. He is not going to be here, but each packet includes Dr. Evans' expert witness report. Mr. Ling recommended that Dr. Evan's expert witness report be removed, because the Board will not have the opportunity to ask him questions. Mr. Ling stated that he needs to know whether to address it in his closing arguments. Ms. Mercer asked Mr. Ling if he had a conversation with Mr. Carranza about this. Louis indicated no. Ms. Mercer wanted clarification as to why it was stipulated to admit Dr. Evan's report and now Mr. Ling is moving to exclude it. Mr. Ling stated that was with the understanding that he was going to be here and that we would have had the opportunity to question him. Mr. Carranza stated that was never the understanding. Exhibits FF and EE are also letters from witnesses that did not appear and were also stipulated. Mr. Carranza indicated that he did not have a discussion with Mr. Ling that the witnesses were required to appear in order for their letters to be admitted. Mr. Carranza stated that in an effort to move things along last night, he made the decision not to call Dr. Evans so we could go straight to close, knowing that we had stipulated the report. Ms. Mercer stated that the reports stay as stipulated. Mr. Ling concluded his closing arguments.

Mr. Carranza made his closing arguments.

Mr. Ling rebutted Mr. Carranza's closing arguments.

Ms. Mercer stated that it was time for the Board to make its decision. Ms. Mercer asked if the Board had made their decision regarding the doctor-patient relationship or if they wanted to discuss first. Ms. DiFillippo stated she preferred to focus on the charges. Ms. Long reminded the Board that the evidentiary portion of the hearing is over, which means that all Board questions need to be directed toward the Board. Everyone should have the necessary information to make their decision. Additionally, she stated that regardless of whether the Board finds Dr. Francis was in violation or not, the Board's burden of proof in order to determine what is called, "preponderance of the evidence," which means the Board thinks he was in violation, the Board has to be at least 51 percent sure. So, if the Board is at 50/50, then Dr. Francis is not in violation of any of those allegations. Ms. Mercer provided an overview of the statutes that Dr. Francis is being charged with as follows: Dr. Francis has been charged with NRS 634.018, "Unprofessional Conduct" defined means, "Conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public." Subsection 11 is, "Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or the regulations adopted by the Board, or any other statute or regulation pertaining to the practice of chiropractic." He's also been charged with Section 17 of that statute, "Violating a lawful order of the Board, a lawful agreement with the Board, or any of the provisions of this chapter or any regulation adopted pursuant Thereto." Also, NRS 634.140, "Grounds for initiating disciplinary action." "The grounds for initiating disciplinary action pursuant to this chapter are, Subsection 1, "Unprofessional Conduct." Additionally, Dr. Francis is charged with violation of NAC 634.430, "Unprofessional Conduct: As used in Subsection 10 of NRS 634.018, the Board will interpret the phrase, "conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public" to include, without limitation: (a) Engaging in or soliciting sexual misconduct as defined in Subsection 2." Subsection 1(o), "Engaging with a patient in a romantic or dating relationship unless the patient is the spouse of the licensee," which does not apply. And then Subsection 2(c) (1), "Sexual misconduct" means, "Sexual relations between a licensee and a patient of that licensee, regardless of whether the patient initiated or consented to those sexual relations." And (2) (c) (2), "Conduct by a licensee, in regard to a patient, that is sexual in nature, sexually suggestive or sexually demeaning to the patient." And finally, Dr. Francis is charged with a violation of NAC 634.435, "Health Care Records."

The Board's deliberation began. Following the deliberation, Dr. Rovetti moved that Dr. Timothy Francis was in violation of the first cause of action. Dr. Colucci seconded, and the motion passed 4-1. Ms. DiFillippo voting in opposition. Dr. Rovetti moved that Dr. Timothy Francis was in violation of the second cause of action. Dr. Colucci seconded, and the motion passed with all in favor except Dr. Lurie who recused himself as the Investigating Board Member.

Ms. Mercer stated, that the Board now needs to determine the penalty. Ms. DiFillippo inquired if the Board is allowed to get a recommendation. Ms. Long stated the Board could refer to Mr. Ling for a recommendation, if they would like. Mr. Ling recommended that Dr. Francis be ordered to pay all of the fees and costs of the investigation and prosecution of this matter. The other options available, are as follows: revocation of his license, suspension of his license, probation, which would mean putting terms on his license, and a fine. In this case, there are two causes of action. There is a fine authority up to \$10,000.00 per charge, for a total of \$20,000 in fines. Mr. Ling stated that he has two recommendations. The first being revocation of Dr. Francis' license, and that would be based on the idea that the violation in this matter was not accidental. He noted that when the Board makes disciplinary recommendations, there is a range: On one end, its pure accident, non-intentional negligence kinds of things, things that you might be able to teach about, such as, recordkeeping violations, continuing education violations, renewal

violations, etc. Those are usually correctable by a fine. On the other end, it is intentional. When you get down to intentional conduct, you have to ask yourself as a board, "Does Dr. Francis understand what the problem is? Does he understand his boundaries?" Mr. Ling stated that there is a number of different portions of the National Board Ethics and Boundaries exam, but the Board needs to make sure that he knows where his boundaries are. It may be necessary for him to take all portions of the exam. After Dr. Francis has been evaluated and has completed the ethics and boundaries exam, he could come back to the Board and convince you that he understands where those lines are. At that time the Board could lift the suspension and allow Dr. Francis to go back into practice. Mr. Ling and Dr. Lurie believe this is a very serious case. Dr. Lurie has expressed strong concern with the fact that this doctor does not understand his boundaries and that makes him dangerous. Which means he could do it again. The Board does not have any evidence that Dr. Francis has done this with anybody else, but our job is to protect the public going forward. Mr. Ling asked, "How do we make sure that he doesn't do this again?" Mr. Ling stated another recommendation would be to ask Dr. Francis to get examined by an expert. Mr. Ling stated if it is determined that treatment is needed, get him into a treatment program. Get Dr. Francis reeducated to remind him of his boundaries. And then the Board can look at the results and determine whether he should be back in practice after all.

After much discussion, Dr. Rovetti moved to require that Dr. Francis serve three years of probation and pay the Boards fees and costs in full within the three-year probationary period, and pass the Ethics and Boundaries test and the Boards' law test within three months. One month following the exams, Dr. Francis shall provide a plan of correction to the Investigating Board Member for approval. Dr. Lurie will provide informal monitoring. Dr. Colucci seconded, and the motion passed 4-1. Ms. DiFillippo voting in opposition. Dr. Lurie recused himself as the Investigating Board Member.

Agenda Item 4 Approval of May 29-30 Meeting/Hearing Minutes and June 23, 2015 Meeting Minutes – For possible action

This item was tabled at the June 23, 2015 board meeting for additional dialogue to be added to an agenda item on the May 29-30 meeting/hearing minutes. The minutes were revised and sent to the Board members. Dr. Lurie confirmed that the Board was satisfied with the minutes. Dr. Colucci moved to approve the May 29 and 30, 2015 meeting/hearing minutes and the June 23, 2015 meeting minutes. Ms. DiFillippo seconded, and the motion passed with all in favor.

Agenda Item 5 Discussion/determination in the event a Chiropractor's Assistant applicant's background check identifies something other than what was disclosed on the application – For possible action

This item was tabled at the June 23, 2015 Board meeting to make revisions to the recommended policy. Dr. Rovetti stated that his recommendation for the policy is identified in the action sheet. Dr. Lurie stated that this is a new policy that will be added to the existing Board policies in the event a CA indicates something other than what they stated on their application.

Dr. Rovetti moved to approve the policy. Dr. Lurie seconded for discussion.

Dr. Lurie asked whether minor charges would be considered as misdemeanors versus felonies.

Mr. Ling stated what should be considered is, how long ago the incident occurred, what the incident was (misdemeanor, etc.) and what has happened since. He indicated that this policy is similar to what other Boards utilize.

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Ms. DiFillippo stated that the Board should be sure to be consistent. Mr. Ling and Dr. Lurie stated if there are concerns between the Executive Director and the President it may be brought before the Board.

The motion passed with all in favor.

Agenda Item 6 Discussion/determination as to the scope of practice of a Chiropractor's Assistant with regard to massage therapy – For possible action

This item was tabled until the next Board meeting.

Agenda Item 7 Discussion/approval of revisions made to the application for licensure for a Doctor of Chiropractic in Nevada – For possible action

This item was tabled until the next Board meeting.

Agenda Item 9 Establish dates for the next Chiropractor's Assistant examination and Board meeting – For possible action

The next two Board meetings were scheduled for Saturday, September 26, 2015 in Reno and Saturday, November 7, 2015 in Las Vegas.

Agenda Item 10 Discussion/determination whether the use of a MC1/QuantaShape Ultrasound by a Doctor of Chiropractic (DC) is within our scope of practice? Is it permissible for a Chiropractor's Assistant to assist the DC when treating patients with this equipment? – For possible action

Dr. Rovetti introduced the request from the owners of Quanta Aesthetic Lasers. He stated that they are requesting approval to market their FDA approved computerized body massager and ultrasound diathermy system to licensed chiropractors in Nevada. Dr. Rovetti stated, the question with approving this is that it is not for weight loss or musculoskeletal pain, but is for aesthetics to essentially make people look better. The device may assist to tone up, reduce adipose tissue, and shrink fat cells. So, in reality it's more cosmetic. It may alter the biomechanics of the spine by moving the fat around.

Dr. Lurie gave an additional summary of the material provided, and stated by description it sounds like physiotherapy. Dr. Colucci asked if the letter would specify that this approval excludes the use of this device to treat cellulite. Mr. Ling stated the Board can approve sections a) 1-3 and b) 1-4 indicating that this device cannot be marketed for the reduction of cellulite.

Dr. Nolle stated that if the Board has to review every device that is on the market that puts is a burden on the Board. It seems reasonable that as long as a device falls under the Chiropractic scope of practice it would be allowed.

Dr. Lurie made a motion to approve the uses of the MC1 with the exception of, "Temporarily reduces the appearance of cellulite" as outlined in the "Intended Use" section of the documentation provided by Quanta Aesthetic Laser. Dr. Rovetti seconded and the motion passed with all in favor.

A letter will be sent to Quanta Aesthetic Laser outlining the instruction approved by the Board.

Agenda Item 11 Report on FARB Forum – Ms. Mercer – No action

Ms. Mercer attended the January 2015 FARB Forum in Tucson, AZ and provided a report on the topics discussed.

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The next FARB forum will be held in Denver, CO from October 1-4, 2015. Ms. Mercer expressed that she would be interested in attending. This item will be on the next Board meeting agenda.

Agenda Item 12 FCLB/NBCE Matters – No action

1. Highlights from the May FCLB conference in New Orleans
2. District IV Highlights

This item was tabled until the next Board meeting.

Agenda Item 13 Committee Reports

- A. Continuing Education Committee (Dr. Davis) – No action
- B. Legislative Committee (Dr. Lurie) – No action
- C. Preceptorship Committee (Dr. Rovetti) – No action
- D. Test Committee (Dr. Nolle): Approve revised Chiropractor's Assistant examination – For possible action

This item was tabled until the next Board meeting.

Agenda Item 14 Board Counsel Report – No action

This item was tabled until the next Board meeting.

Agenda Item 15 Executive Director Reports:

- A. Status of Pending Complaints – No action
- B. Status of Current Disciplinary Actions – No action
- C. Legal/Investigatory Costs – No action

This item was tabled until the next Board meeting.

Agenda Item 16 Financial Status Reports – No action

- A. Current cash position
- B. November 1, 2014 – May 30, 2015 Income/Expense Actual to Budget Comparison
- C. Accounts Receivable Summary
- D. Accounts Payable Summary
- E. Extraordinary Items

This item was tabled until the next Board meeting.

Agenda Item 17 Establish CPBN Facebook/Twitter accounts for posting of updates – For possible action

This item was tabled until the next Board meeting.

Agenda Item 18 Consideration of potential additions, deletions and/or amendments to NAC Chapter 634 – For possible action

This item was tabled until the next Board meeting.

Agenda Item 19 NCA Report – No action

This item was tabled until the next Board meeting.

Agenda Item 20 NCC Report – No action

This item was tabled until the next Board meeting.

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Agenda Item 21 Correspondence Report – No action

1. Nevada Chiropractic Association – Advertising Complaints
2. Board of Physical Therapy Examiners, May 21, 2015 meeting – Chiropractic Physicians' Board of Nevada letter

This item was tabled until the next Board meeting. However, the complaints from the NCA will be removed.

Agenda Item 22 Board Member Comments – No action

Dr. Lurie thanked everyone for their time and commitment to the Board. He stated that these hearings are difficult and it's very hard to bring someone before the Board, due to the fact that this is your profession and your peers. He then gave a big thank you to Depo International for their hospitality!

Each Board member made comments with respect to the hearing and their individual feelings about the circumstance heard.

Agenda Item 23 Public Interest Comments – No action.

This portion of the meeting is open to the public to speak on any topic NOT on today's agenda and may be limited to 3 minutes.

There was no public comment.

Agenda Item 24 Adjournment – For possible action

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

Approved September 26, 2015



David Rovetti, DC, Secretary-Treasurer