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Consumer Member
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, February 22, 2014 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 9:00 AM:

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

Consumer Member Tracy DiFillippo, Esq., arrived at 9:07 AM. 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. Rovetti led those present in the Pledge of Allegiance and stated the purpose of the Board. He said the next meeting is tentatively scheduled for May 31, 2014 in Las Vegas and another meeting will probably be scheduled for sometime in September. He announced that this meeting is being recorded.

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 the motion and it passed unanimously.

Agenda Item 3 Hearing in the Matter of Paul G. Smith, DC, License No. B175, Case No. 11-11S – For possible action (Note: The Board may go into closed session pursuant to NRS ch. 241 to consider the character, alleged misconduct, or professional competence of Dr. Smith.)

Dr. Smith and his attorney, Jeffrey D. Andrews, were present. Dr. Lurie disclosed that his grandfather worked with Dr. Smith on the Boxing Commission. It was agreed that no conflict exists. Dr. Rovetti asked Ms. Mercer to chair this hearing.

Ms. Mercer opened the hearing. Prosecuting attorney Louis Ling made an opening statement. Both parties have stipulated to the Indictment and Order of Conviction of Paul G. Smith as Exhibit 1. He presented the facts of this case and his recommendation for disciplinary action. Mr. Andrews described Dr. Smith's history, current personal situation and cited several similar cases as precedents. He presented his proposal for disciplinary action.

Dr. Smith was sworn in and responded to questions from Board Members. Dr. Rovetti moved to find Dr. Smith guilty of violation of NRS 634.018(6) and/or NRS 634.140(1) as cited in the Notice of Charges. Ms. DiFillippo seconded the motion. Dr. Smith stipulated to the violation. The motion passed with all in favor.

Dr. Nolle made a motion that Dr. Smith be required to take the Nevada Law examination, attend 14 hours of continuing education on the subject of ethics and boundaries in addition to the 22 hours he has already completed to reinstate his license, reimburse the Board's costs, and that he be allowed to enter into a payment plan if the costs exceed \$500. Dr. Rovetti seconded the motion. Upon discussion, Dr. Nolle amended his motion to include that the continuing education be approved by the Investigating Board Member. Dr. Rovetti seconded the amended motion. After further discussion, the motion failed with Drs. Lurie, Nolle and Rovetti in favor, Dr. Davis, Ms. DiFillippo and Ms. Mercer not in favor and Dr. Zaro recused as the IBM. Ms. Mercer moved to require Dr. Smith to attend 14 hours of continuing education on the subject of ethics and boundaries as approved by the IBM for reinstatement of his license, attend the additional 36 hours by December 31, 2014 to renew his license, and pay the Board's costs. Dr. Rovetti seconded. The motion did not pass with Ms. Mercer and Dr. Rovetti in favor, Drs. Davis, Lurie and Nolle and Ms. DiFillippo not in favor and Dr. Zaro recused. Dr. Rovetti made a motion that Dr. Smith's discipline include all of the requirements in Dr. Nolle's motion plus attendance at the NCMIC live course within 90 days and 12 of the 36 hours required for license renewal be on the subject of ethics and boundaries. There was no second and the motion died.

Ms. DiFillippo made a motion that Dr. Smith be required to attend 14 continuing education hours in ethics and boundaries approved by the IBM plus 12 of the 36 hours in ethics and boundaries approved by the IBM for license renewal, pay the \$300 fee for license reinstatement, and reimburse the Board's costs under a payment plan. Ms. Mercer seconded. The motion passed with Drs. Nolle and Rovetti, Ms. Mercer and Ms. DiFillippo in favor, Drs. Davis and Lurie not in favor and Dr. Zaro recused.

Agenda Item 4 PUBLIC HEARING for the Adoption and Amendment of a Regulation of the Chiropractic Physicians' Board of Nevada – For possible action

Mr. Ling described the rule-making process that has transpired to date. The proposed regulation can still be amended for the Board's final approval. Dr. Rovetti called for public comment.

Drs. Joshua Kruger, Lawrence Smith, Matthew Mortensen, Paul Powers, Jo Briggs and Larry Schleusner commented in opposition to the proposal to limit to 12 the number of continuing education hours that may be taken via the internet or through other computerized means for license renewal credit. A copy of Dr. Powers' prepared remarks is on file for the record. NCA President Dr. James Overland testified in support of the proposal to limit to 12 the number of continuing education hours that may be taken via the internet or through other computerized means for license renewal credit. There was no further public comment. The Board then conducted a discussion of the proposed provision with the members of the public.

Ms. Wade read for the record a letter from Dr. John Grimes opposing the proposed provision for regulation of pre-payment plans because it was received after the written comments regarding the proposed regulation were distributed to the Board Members. Dr. Larry Schleusner testified against this proposed regulation. There was no further public comment regarding this subject. The Board held a discussion about this provision with those present.

Dr. Rovetti moved to accept the regulation changes as proposed. Ms. Mercer seconded. The motion did not pass with Dr. Rovetti in favor and Drs. Davis, Lurie, Nolle and Zaro, Ms. DiFillippo and Ms. Mercer not in favor.

The Board deliberated on the areas of concern.

Dr. Davis made a motion to strike Section 16, subsection 10, the provision to limit the number of online continuing education hours to 12. Ms. DiFillippo seconded. The motion passed with all in favor except Dr. Rovetti who was opposed.

Ms. DiFillippo moved to remove Section 5 at this time and prepare a separate regulation change with respect to prepayment plans in the future. Ms. Mercer seconded and the motion passed with all in favor.

Ms. Mercer made a motion to pass the remaining proposed regulations with the incorporation of Dr. Davis's recommendation to delete the words "*of that chiropractor's assistant*" in No. 5(a)(1) of Section 4 on Page 5. Dr. Zaro seconded and the motion passed unanimously.

Following a break for lunch, the meeting resumed at 2:30 PM.

Agenda Item 16 Request from licensee for opinion: Is the treatment utilizing a nebulizer with Glutathion within the Nevada chiropractic scope of practice? – For possible action

Dr. Matthew Mortensen described the treatment process utilizing a nebulizer with Glutathion and responded to questions from Board Members. The Board arrived at the consensus that treatment utilizing a nebulizer with Glutathion is within the chiropractic scope of practice. Dr. Nolle so moved, Dr. Davis seconded and the motion passed with all in favor.

Agenda Item 5 Ratification of granting of DC licenses to applicants who passed the examinations on December 11, 2013, and January 8 and February 12, 2014 – For possible action

Dr. Nolle moved to ratify the granting of licenses to the doctors who passed the examinations on December 11, 2013, and January 8 and February 12, 2014. Dr. Davis seconded and the motion passed unanimously.

Agenda Item 6 Approval of November 16, 2013 meeting minutes - For possible action

Dr. Davis moved to approve the November 16, 2013 minutes as amended with his requested correction of the wording in "M" on Page 7. Dr. Zaro seconded. The motion passed with all in favor except Ms. DiFillippo who recused because she was not present at the November meeting.

Agenda Item 7 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:

Complaint 11-8S (Dr. Zaro)

Dr. Zaro reported that this complaint is still under investigation.

Complaint 12-20S (Dr. Zaro)

The complainant has not returned Dr. Zaro's calls; she will continue to investigate.

Complaint 13-11S (Dr. Zaro)

Dr. Zaro has thoroughly investigated this matter and found no violation as the complaint is a malpractice issue. Ms. Mercer moved to dismiss the complaint. Ms. DiFillippo seconded and the motion passed with all in favor.

Complaint 13-12S (Dr. Zaro)

A Notice of Charges has been issued and this case will be addressed at the next meeting.

Complaint 13-22S (Dr. Zaro)

Dr. Zaro reported that this complaint was for an advertising violation for self-laudatory statements. The licensee has closed his practice and placed his license on inactive status. Ms. Mercer made a motion to dismiss. Dr. Davis seconded the motion. There was discussion about the status of a complaint against a licensee on inactive status. Ms. Mercer amended her motion to dismiss the complaint without prejudice. The motion did not pass with all opposed except Dr. Zaro who recused. Dr. Davis made a motion to continue the investigation. The motion died for lack of a second. Ms. Mercer made a motion to place the complaint on hold unless the doctor reinstates his license to active status. The motion died for lack of a second. Dr. Davis moved to continue the investigation for determination of a violation. Ms. DiFillippo seconded. The motion passed with all in favor except Dr. Zaro who recused.

Complaint 12-18S (C. Wade for outside Counsel)

Ms. Wade explained that this complaint alleged inappropriate referral to an imaging facility in which the licensees own financial interests. A thorough investigation was conducted. An outside counsel reviewed the investigative report and found no evidence to substantiate the allegation. However, she recommends that letters should be issued to the licensees because of the potential for inappropriate referrals. Dr. Zaro moved to dismiss the complaint with warning letters to the licensees. Ms. Mercer seconded. The motion passed with all in favor except Ms. DiFillippo who recused because she has some knowledge of this matter.

Complaint 13-05N (Dr. Rovetti)

Dr. Rovetti has tried to contact this massage therapist for a follow-up appointment to his first visit when he received an adjustment but she does not return his calls. The Massage Therapy Board does not know her current whereabouts. Dr. Zaro moved to dismiss this complaint. Dr. Lurie seconded and the motion passed with all in favor except Dr. Rovetti who recused.

Complaint 13-06N (Dr. Rovetti)

Dr. Rovetti is continuing to investigate this complaint against another massage therapist who is performing adjustments.

Complaint 13-25S (Dr. Lurie)

Dr. Lurie determined that this complaint is for malpractice and has informed the complainant that it is not within the Board's jurisdiction. In the course of his investigation he did find some minor record keeping issues and recommended the complaint be dismissed with a letter of instruction to the licensee citing NAC 634.435. Ms. Mercer moved to dismiss the complaint with a letter of instruction. Ms. DiFillippo seconded. The motion passed with all in favor except Dr. Lurie who recused as Investigating Board Member.

Complaint 13-27S (Dr. Lurie)

Dr. Lurie's investigation of this complaint resulted in the determination that it is a malpractice issue. The Doctor's patient records are compliant with NAC 634.435. Dr. Nolle moved to dismiss the complaint. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Lurie who recused.

Complaint 14-01S (Dr. Lurie)

This complaint was filed by Board staff because the licensee did not timely respond to a request for the patient records pursuant to another complaint because he had not notified the Board of his new practice address. Dr. Lurie recommended the complaint be dismissed with a letter of instruction citing the 15-day rule under NRS 634.129. Ms. Mercer moved to dismiss the complaint with a letter of instruction. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Lurie who recused.

Complaint 13-26N (Dr. Nolle)

Dr. Nolle reported that this complaint concerns malpractice. He is continuing the investigation because there may be some other issues.

Agenda Item 11 Determination of appropriate action to be taken with respect to responses on Self Inspection Reports and other investigations – For possible action

A. CAs performing physiotherapy and/or x-ray for longer than 15 days with no application on file

Ms. Wade reported that the Self Inspection Reports are still being received. She said the procedure with respect to persons who appear to have been in training for more than 15 days has always been to contact the supervising licensees by letter requiring them to get the trainees' applications filed. If there is a second violation a complaint should be filed against the licensee. Dr. Nolle moved to direct Ms. Wade to continue with the current procedure. Ms. Mercer seconded the motion. The motion did not pass with Drs. Nolle and Rovetti and Ms. Mercer in favor and Drs. Davis, Lurie and Zaro and Ms. DiFillippo opposed. There was discussion regarding the Self Inspection Report form. Ms. Mercer moved to follow the established procedure with the current report, revise the form and reconsider the procedure at a future meeting. Dr. Rovetti seconded and the motion passed with all in favor.

B. Definition of physiotherapy vs. massage therapy

The Self Inspection Report form will be revised to clarify the difference between physiotherapy and massage therapy.

C. Liability for massage therapists employed by DCs

Dr. Lurie reported that this issue came up at a Legislative Committee meeting. We should inform our licensees that massage therapists are not within our jurisdiction. Patient complaints should be referred to the Massage Therapy Board.

D. DCs billing for independently-contracted massage therapy services

After much discussion, it was agreed that NAC 634.419 should be deleted at the next rule-making.

Agenda Item 12 Appointment of FCLB and NBCE delegates, alternates and attendees at the April 30-May 4, 2014 Annual Conference at Myrtle Beach, SC – For possible action

Dr. Lurie will serve as FCLB Delegate and Dr. Zaro will be the FCLB Alternate Delegate. Dr. Zaro will serve as the NBCE Delegate and Dr. Lurie will be the NBCE Alternate Delegate.

Agenda Item 13 Appointment of Board Members to participate in National Board Part IV Examinations on May 16-18 and November 14-16, 2014 and Test Committee Meeting on June 6&7, 2014 – For possible action

Drs. Lurie and Zaro will participate in the May, 2014 National Board Part IV Examinations. Drs. Rovetti and Zaro will participate in the November, 2014 Part IV Examinations. Dr. Lurie will participate in the June, 2014 National Board Test Committee Meeting.

Agenda Item 15 Consideration of establishing reciprocity with other or bordering states – For possible action

Reciprocity with other states will be considered for a statutory change. The specifics will need to be defined by regulation.

Agenda Item 17 Committee Reports – No action

A. Continuing Education Committee – Dr. Nolle

Dr. Mike Johnson has offered to assist with CE approvals. Dr. Nolle will meet with him.

B. Legislative Committee – Dr. Lurie

Dr. Lurie attended the February 5 Legislative Commission meeting where our proposed regulations were reviewed. He stated we need to start preparing for the next legislative session. He has contacted the NCA with regard to any legislative issues. The deadline for Boards and Commissions to submit bill drafts is in May.

C. Test Committee – Dr. Zaro

Dr. Zaro plans to eliminate the oral x-ray exam for CAs. The next CA tests will be administered on either August 14 or August 28. Test rooms should be reserved from 8:00 AM to 12:00 Noon and the testing should start at 9:00 AM.

D. Preceptorship Committee – Dr. Davis

Dr. Davis reported that there is one new preceptorship since his last report.

Agenda Item 18 Board Counsel Report – No action

Mr. Ling reported that the Nassiri appeal hearing at the Supreme Court went very well. He only used half of his allotted time and there were no questions.

Agenda Item 19 Financial Status Report – No action

A. Current cash position

B. July 1, 2013–January 31, 2014 Income/Expense Actual to Budget Comparison

C. Accounts Receivable Summary

D. Accounts Payable Summary

E. Extraordinary Items

There were no questions about the financials. Ms. Wade stated that our current position is good.

Agenda Item 20 Executive Director Reports– No action

A. Status of Complaints Received

B. Status of Current Probations

C. Legal/Investigatory

D. CA Renewals

E. Licensee Self Inspection Report Summary

Ms. Wade reported that staff is still working on late CA renewals and Self Inspection Reports that are still coming in. She will have final reports at the next meeting.

Agenda Item 21 Report on FARB Forum – No action

Ms. Mercer reported on the topics addressed at the FARB Forum in Austin, Texas in January.

Agenda Item 22 NCA Report – No action

NCA President Dr. James Overland requested feedback as to how the Board will handle anonymous complaints as allowed by SB 220. He inquired about what is being done about the physical therapist who is performing chiropractic in Caliente. He noted that the Physical Therapy Board has sent cease and desist letters to chiropractors who advertise “physical therapy” rather than “physiotherapy”. Dr. Rovetti informed him that the Physical Therapy Board has promised to address the Caliente physical therapist matter at their meeting on March 20.

Agenda Item 23 Election of Officers – For possible action

Dr. Rovetti announced that an election of officers will be held pursuant to NAC 634.140. He asked Mr. Ling to preside.

Mr. Ling opened the nominations for President. Dr. Rovetti nominated himself, Dr. Lurie nominated Dr. Zaro and Ms. Mercer nominated Dr. Lurie. Mr. Ling tallied the ballots and announced the result was 3-2-2. Upon discussion, it was agreed there would probably be no change in the voting and the nominee with 3 votes should be elected President. Mr. Ling revealed that Dr. Lurie received 3 votes, Dr. Rovetti received 2 and Dr. Zaro received 2. Ms. Mercer moved to elect Dr. Lurie President. Ms. DiFillippo seconded the motion. The motion passed with all in favor.

Nominations were opened for Vice President. Dr. Rovetti nominated himself. Ms. DiFillippo nominated Dr. Davis. Dr. Zaro nominated herself. Mr. Ling tallied the ballots and announced the result was 3-2-2. Ms. Mercer moved to accept the person who received 3 votes. Ms. DiFillippo seconded and the motion passed with all in favor. Mr. Ling announced that Dr. Davis received the 3 votes and is the new Vice President.

Nominations were opened for Secretary-Treasurer. Dr. Davis nominated Dr. Nolle. Ms. DiFillippo nominated Dr. Zaro. Dr. Zaro declined the nomination. Dr. Lurie nominated Dr. Rovetti. Mr. Ling tallied the ballots and declared Dr. Rovetti to be the Secretary-Treasurer, 5 votes to 2.

Agenda Item 27 Public Interest Comments – No action

There were no public interest comments.

There was no time left to address the following agenda items. They will be placed on the agenda for the next meeting.

Agenda Item 8 Consideration of potential changes to NRS and NAC Chapter 634 – For possible action

Agenda Item 9 Development of strategy for enforcing AB456/NRS629 – For Possible Action

Agenda Item 10 Lobbyist Report – No action

Agenda Item 14 Report on Parker Seminar – For possible action

Agenda Item 24 Educational Moment – No action

Agenda Item 25 Correspondence Report – No action

February 22, 2014 Meeting Minutes

Agenda Item 26 Board Member Comments – No action

Agenda Item 28 Adjournment – For possible action

The meeting adjourned at 5:03 PM.

Approved: May 31, 2014

A handwritten signature in black ink that reads "David G. Rovetti DC". The signature is written in a cursive style with a large initial "D".

David G. Rovetti, DC, Secretary-Treasurer