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**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, May 31, 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 9:30 AM:

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

Member Jack Nolle, DC, was not present. Also present were CPBN Counsel Louis Ling and Executive Director Cindy Wade.

President Dr. Lurie 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.

Dr. Lurie announced that Agenda Items 14, 15, 16, 18 and 19, and possibly others, will be addressed out of order for the convenience of those participating by telephone and Dr. Zaro who could not stay for the entire meeting.

**Agenda Item 1 Public Interest Comments - No action.**

There were no public interest comments.

**Agenda Item 2 Approval of agenda – For possible action.**

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

**Agenda Item 18 Consideration of establishing reciprocity – For possible action**

**A. For military veterans**

Caleb Cage, Director of Military & Veterans Policy for the State of Nevada, was present by telephone. He reviewed the action Governor Sandoval is taking to provide resources for service members, veterans and their families in the areas of wellness, education and employment. Executive Order 2014-11 requires certain other professional licensing bodies to establish reciprocity opportunities for service members, veterans and their families holding federal licenses that are not currently recognized by the State of Nevada. Dr. Lurie assured Mr. Cage that the Chiropractic Physicians' Board will make every effort to establish reciprocity opportunities for service members, veterans and their families.

**B. With other states**

Dr. Lurie recommended establishing overall reciprocity and cited the Arizona statute as an example. Dr. Davis said the Board should consider providing overall reciprocity to avoid the possibility of discrimination against non-military applicants. Dr. Zaro suggested the term "endorsement" should be used rather than "reciprocity." Dr. Rovetti mentioned that this reciprocity and/or endorsement being discussed would not change the way things are now except for not requiring those who did not take NBCE Part 4 to be able to practice in Nevada without having to take the SPEC test as currently required by statute. Dr. Davis moved to begin the process to establish reciprocity. Dr. Zaro seconded the motion and it passed unanimously.

**Agenda Item 3 Amend Board Policy 18 – For possible action**

Policy 18 currently requires that respondents be present at the meeting when their settlement agreements are to be considered by the Board. Dr. Lurie made a motion to amend Policy 18 to require a respondent's presence, only if previously requested, by way of phone, videoconference or in person. Dr. Zaro seconded the motion. After discussion, the motion did not pass with all opposed. Dr. Rovetti moved to delete Policy 18. Dr. Lurie seconded and the motion passed with all in favor.

**Agenda Item 4 Hearing/approval of Settlement Agreement in the Matter of Arthur G. Rossi, Jr., DC, License No. B1079, Case No. 13-12S – 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. Rossi.)**

Dr. Rossi was present without counsel. At Dr. Rossi's request Dr. Davis moved that the meeting be closed. Dr. Rovetti seconded and the motion passed with all in favor. When the meeting reopened Dr. Lurie moved to accept the Settlement Agreement as written. Dr. Rovetti seconded. The motion passed with all in favor except Dr. Zaro who recused because she was the Investigating Board Member.

Dr. Lurie stated that he was the Investigating Board Member in the following matter and turned the Chair over to Vice President Dr. Lawrence Davis.

**Agenda Item 5 Hearing/approval of Settlement Agreement in the Matter of Mark Baxter, DC, License No. B168, Case No. 14-06S – 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. Baxter.)**

Dr. Davis noted for the record that neither Dr. Baxter nor a representative was present. Dr. Lurie explained that a complaint was filed because Dr. Baxter had employed a person performing Chiropractor's Assistant duties for several months with no application on file with the Board. Dr. Baxter had previously received a Letter of Warning for a similar violation. The Settlement Agreement requires Dr. Baxter to pay a \$500 fine and pass the Nevada Jurisprudence test within 60 days.

Ms. Mercer moved to approve the Settlement Agreement. Dr. Rovetti seconded and the motion passed with all in favor except Dr. Lurie who recused.

Dr. Lurie resumed the Chair.

**Agenda Item 6 Appeal of staff denial of Application for Certification as Chiropractor's Assistant of Lynette Villa – 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 Ms. Villa.)**

Ms. Villa was present. She indicated she did not wish to go into closed session. Ms. Villa's application was denied due to discrepancies between the information she provided on her application and the results of her background check. She described the nature of her arrest at age 16 and her conviction three years later. She was not aware there was a criminal record of the incident. Dr. Zaro moved to allow Ms. Villa to reapply. Dr. Lurie seconded and the motion passed with all in favor.

**Agenda Item 7 Appeal of staff denial of Application for Certification as Chiropractor's Assistant of Cindy Ornelas – 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 Ms. Ornelas.)**

Ms. Ornelas was present. She did not request to go into closed session. Ms. Ornelas's application was denied because her application was incomplete and was submitted more than 15 days after she began her training. Ms. Ornelas stated that she had filled out the application but was in an accident before she got it mailed. Dr. Zaro moved to allow Ms. Ornelas to reapply and Ms. Mercer seconded. After discussion, Dr. Zaro amended the motion to allow Ms. Ornelas to complete her original application. Dr. Davis seconded the amended motion and it passed unanimously. Ms. Ornelas was provided a copy of her application to amend and resubmit.

Dr. Lurie stated he was the Investigating Board Member in the following matter and turned the Chair over to Vice President Dr. Lawrence Davis.

**Agenda Item 8 Hearing in the Matter of Douglas Kuehl, DC, License No. B616, Case No. 12-23S – 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. Kuehl.)**

Dr. Davis opened the hearing. He noted that neither Dr. Kuehl nor a representative were present and asked Louis Ling to present the case for the prosecution. Mr. Ling informed the Board that a Notice of Charges was issued based on certified copies of Dr. Kuehl's arrests and convictions stemming from domestic violence issues. The Notice of Charges was sent via certified mail to his two addresses of record but were returned unclaimed. He recounted Dr. Kuehl's history of domestic violence and crimes involving disrespect to the court and failure to abide by court orders. Warrants for his arrest have been issued but he has allegedly left the country and is living in the Philippines. Mr. Ling recommended Dr. Kuehl's license be revoked. Dr. Zaro questioned whether suspension would be more appropriate in view of Dr. Kuehl's absence today and the possibility that he could be rehabilitated by the time he might return and seek reinstatement of his license.

Ms. Mercer made a motion that Dr. Kuehl be found in violation of all of the causes of action set forth in the Notice of Charges. Dr. Zaro seconded the motion. After discussion, Ms. Mercer made a friendly amendment to her motion that Dr. Kuehl be found in violation of all of the causes of action in the Notice of Charges except for violation of NRS 634.018, Subsection 6. Dr. Rovetti seconded the amended motion and it passed with all in favor except Dr. Lurie who recused.

Dr. Rovetti made a motion to revoke Dr. Kuehl's license. The motion failed for lack of a second. Dr. Zaro moved that Dr. Kuehl's license be suspended indefinitely and Ms. Mercer seconded. The motion passed with all in favor except Dr. Rovetti who was opposed and Dr. Lurie recused.

Dr. Lurie resumed the Chair.

**Agenda Item 9 Ratification of granting of DC licenses to applicants who passed the examinations March 12, April 9 and May 14, 2014 – For possible action**

Dr. Davis moved to ratify granting of licenses to the Doctor of Chiropractic applicants who passed the March 12, April 9 and May 14, 2014 examinations. Ms. Mercer seconded and the motion passed unanimously.

**Agenda Item 10 Ratification of granting of CA certificates to applicants who passed the examinations on March 13, 2014 – For possible action**

Ms. Mercer moved to ratify granting of Chiropractor's Assistant certificates to the applicants who passed the March 13, 2014 examinations. Dr. Rovetti seconded and the motion passed unanimously.

**Agenda Item 11 Approval of February 22, 2014 meeting minutes - For possible action**

Dr. Rovetti made a motion to approve the minutes of the February 22, 2014 meeting. Dr. Zaro seconded and the motion passed unanimously.

**Agenda Item 17 Approve voluntary surrender of license No. B624 of Michael Barney, DC – For possible action**

Dr. Lurie disclosed that he was previously a partner of Dr. Michael Barney. Dr. Rovetti moved to accept Dr. Barney's voluntary surrender of his license. Ms. Mercer seconded. The motion passed with all in favor except Dr. Lurie who recused.

**Agenda Item 20 Approve appointment of J. Michael Johnson, DC, to Continuing Education Committee – For possible action**

Dr. Rovetti moved to appoint Dr. J. Michael Johnson as a member of the CPBN Continuing Education Committee and to allow him to bill the Board at the same hourly rate that Board Members are paid for per diem. Upon advice from the Board's Counsel, Dr. Rovetti amended his motion to appoint Dr. Johnson as a member of the Continuing Education Committee. Ms. Mercer seconded. The motion passed with all in favor except Ms. DiFillippo who was opposed.

**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:**

**Complaint 11-08S (Dr. Zaro)**

Dr. Zaro reported that this complaint is ongoing and will probably take considerable more time to resolve. She recommended it be reassigned because she will be leaving the Board when her term expires the end of October.

**Complaint 12-20S (Dr. Zaro)**

Dr. Zaro was recently back in contact with the complainant who intends to pursue the complaint which has multiple somewhat complicated issues. She requested that this complaint be reassigned and to continue the investigation.

**Complaint 13-22S (Dr. Zaro)**

Dr. Zaro said this complaint is for an advertising violation. The investigation was placed on hold because the licensee went inactive but he recently reactivated his license. She requested reassignment of this complaint and that the investigation continue.

**Complaint 14-03S (Dr. Zaro)**

Dr. Zaro recommended this complaint be dismissed because the advertisement in question is not the responsibility of the licensee against whom the complaint was filed. The person who placed the ad is not a Nevada licensee. Dr. Lurie moved to dismiss Complaint 14-03S. Dr. Rovetti seconded and the motion passed with all in favor except Dr. Zaro who recused as the Investigating Board Member.

**Complaint 14-04S (Dr. Zaro)**

Dr. Zaro recommended dismissal of this complaint because it is a malpractice issue and not within the Board's purview. Dr. Lurie moved to dismiss Complaint 14-04S. Ms. Mercer seconded and the motion passed with all in favor except Dr. Zaro who recused.

**Complaint 14-09N (Dr. Rovetti)**

Dr. Rovetti has reviewed this complaint with the complainant and the Doctor. The complainant attended a free seminar regarding treatment of thyroid conditions with nutrition at which the Doctor stated he would be available to answer questions. However, he did not make himself available because he left immediately after his presentation. She made an appointment with him and was instructed to gather all of her medical records. She needed more time to gather her records and the appointment was re-set for two weeks later. When she arrived for her appointment the staff could find no record of either appointment and told her it was because they had issues with their computer. She requested a refund of the \$87.00 she paid for a "special appointment" and they issued a credit to her credit card account. Dr. Rovetti reviewed the advertisement records and the Doctor has agreed to make some changes. Ms. Mercer moved to dismiss the complaint. Ms. DiFillippo seconded and the motion passed with all in favor except Dr. Rovetti who recused as the Investigating Board Member.

**Complaint 14-07S (Ms. DiFillippo)**

Ms. DiFillippo stated she only recently received this complaint but she should be able to resolve it soon.

**Complaint 13-26N (Dr. Nolle)**

The status report on this complaint was tabled because Dr. Nolle was not present.

**Complaint 14-02S (Dr. Lurie)**

Dr. Lurie reported that this complaint alleges injury and is a malpractice issue. Dr. Rovetti moved to dismiss Complaint 14-02S. Ms. Mercer seconded the motion and it passed with all in favor except Dr. Lurie who recused as Investigating Board Member.

**Complaint 14-05N (Dr. Lurie)**

Dr. Lurie stated this is an advertising complaint. He reviewed the Doctor's advertisements and website and determined they meet the regulatory requirements. Ms. Mercer moved to dismiss Complaint 14-05N. Dr. Rovetti seconded. The motion passed with all in favor except Dr. Lurie who recused.

**Complaint 14-06S (Dr. Lurie)**

Dr. Lurie reported that this complaint is complicated and will take considerable time to investigate.

**Agenda Item 28 Report on FCLB/NBCE Annual Conference – No action**

Dr. Zaro was commended for her well written report. She and Dr. Lurie attended the conference and felt it was very worthwhile. The FCLB is going forward with the Model Practice Act and international and state-by-state mobility. Dr. Lurie announced that Dr. Ron Tripp was re-elected as the NBCE District IV Director, Dr. Gary Counselman was elected FCLB District IV Director. Dr. Lurie and the other Board members congratulated Dr. Zaro on being elected FCLB Alternate District IV Director.

**Agenda Item 21 Annual staff evaluations – For possible action**

**A. Board Counsel**

**B. Executive Director**

Dr. Rovetti summarized the results of the Board Members' evaluations of Board Counsel Louis Ling and Executive Director Cindy Wade. He read the comments which were all positive. Dr. Lurie made a motion to approve a \$2,000 per year increase for the Executive Director. Ms. Mercer seconded and the motion passed unanimously.

When the Board returned from a lunch break, it was noted that Dr. Zaro was not present.

**Agenda Item 27 Report on Parker Seminar – No action**

Dr. Lurie said he observed that only 5 of the 14 Temporary License certificates issued were on display at the seminar. Some vendors complained because temporary licensure was not required for vendors performing therapeutic modalities. He commented that attendance appeared to be down again this year.

**Agenda Item 24 Board Counsel Report – No action**

Louis Ling advised that the Supreme Court is applying their Opinion in the Nassiri case, which affirmed the Board's Order in its entirety, as a precedent to make the clarification that the burden of proof in administrative agency proceedings from now on will be evidentiary standards.

**Agenda Item 25 Financial Status Report – For possible action**

- A. Current cash position**
- B. July 1, 2013–April 30, 2014 Income/Expense Actual to Budget Comparison**
- C. Accounts Receivable Summary**
- D. Accounts Payable Summary**
- E. Approval of proposed 2014/16 budget**
- F. Extraordinary Items**

Dr. Rovetti reviewed the highlights of the financial reports and the proposed budget. Dr. Lurie made a motion to approve the 2014/16 budget as proposed. Ms. DiFillippo seconded the motion which passed with all in favor except Ms. Mercer who was temporarily absent from the meeting.

**Agenda Item 22 Committee Reports – For possible action**

**A. Continuing Education Committee – Dr. Nolle**

Dr. Nolle was not present.

**B. Legislative Committee – Dr. Lurie**

Dr. Lurie and the lobbyists are preparing for the 2015 Legislature.

Louis Ling reported that he has crafted a response to Assemblyman James Oscarson's letter regarding telemedicine. It has been approved by Dr. Lurie and will be sent on Monday, June 2. There are some questions that need to be resolved, i.e., does an out-of-state DC who recommends nutritional substances to someone in Nevada need a Nevada license?

**C. Test Committee – Dr. Zaro**

Dr. Zaro was not present.

**D. Preceptorship Committee – Dr. Davis**

Dr. Davis reported that there are two preceptorship applications currently pending that should be completed within the next two weeks.

**E. Assignment of Legislative Decision Making – For possible action**

The Board Members agreed that Dr. Lurie did a great job during the last Legislative session. No action was deemed necessary because The Legislative Committee Chair has decision making authority.

**Agenda Item 29 NCA Report – No action**

Dr. James Overland was present representing the NCA. He congratulated the new Board officers. He cited a decision of the Oregon Court of Appeals that dry needling is not within the chiropractic scope of practice. He said Nevada needs to get something into regulation to deter this from happening here. The NCA's Annual Seminar will be in Las Vegas on September 27-28. Dr. Overland congratulated Ms. Mercer on her race for Family Court Judge. He is working with Dr. Kenny to provide an enhanced CA program. He inquired about the status of the physical therapist in southern Nevada who offered chiropractic adjustments. Dr. Rovetti informed him of the Physical Therapy Board's decision that this was an advertising violation and a fine was assessed. Dr. Overland stated that the NCA has no specific legislative bill as yet. He will let the Board know as soon as they have anything specific. He reported that Nevada Justice is behind a workman's comp bill that would greatly benefit chiropractors and he hopes the CPBN will support it.

**Agenda Item 16 Lobbyist Report – No action**

Peter Krueger of Capitol Partners was present by telephone. He advised that because Marsha Berkbigler is running for Reno Mayor, she is no longer associated with Capitol Partners. They have hired Lauren Tevis in Las Vegas and Manuel Menderos in Reno. The three prominent issues in the 2015 Legislature will be mental health care and funding, education and funding, and medical marijuana. He stated that time is of the essence to get a bill in draft form if we are to have one in the upcoming session. He is working with Ms. Wade and Dr. Lurie to produce a white paper.

**Agenda Item 15 Development of strategy for enforcing AB456/NRS629 – For possible action**

It was determined that the best way to inform licensees of the specifics of AB456 is to write it up in the next Newsletter.

**Agenda Item 19 Review of advertising to determine compliance with NAC 634.515-634.570 - For possible action**

Dr. Alan Bader was present by telephone. Dr. Lurie reviewed the issues with Dr. Bader's website and yellow page ad. Dr. Bader agreed to immediately work on changing his website to get it into compliance and he will have the yellow page ad changed as soon as possible. Review of other ads was postponed until later in the meeting.

**Agenda Item 13 Requests from licensee for opinions – For possible action**

**A. Will a licensed DC in Nevada be permitted to legally obtain a medical marijuana card?**

Mr. Ling advised that a DC does have the right to obtain a medical marijuana card but might be subject to discipline if he or she uses marijuana excessively, if he or she uses marijuana in a public place (which could include his or her chiropractic office), or if he or she treats patients while under the influence of marijuana. Possession, sale, manufacturing, or use of marijuana remains a Federal crime, so if a DC is federally convicted, the CPBN could file disciplinary charges for violation of NRS 634.018(8) and 634.140(2)(a).

**B. Will chiropractors be able to perform evaluations and authorize a patient to obtain a medical marijuana card**

Mr. Ling advised that Nevada's medical marijuana laws do not authorize DCs to recommend medical marijuana for patients. A DC may perform an examination of a patient that might find that a patient would benefit from medical marijuana, but in such a case the DC must refer the patient to an MD or a DO because only MDs and DOs are legally authorized to recommend medical marijuana.

**Agenda Item 14 Consideration of potential changes to NRS and NAC Chapter 634 – For possible action**

Dr. Lurie reviewed his proposed statutory change to add drug testing requirements. After discussion, Dr. Lurie moved to proceed with establishing drug testing requirements in NRS 634. Dr. Davis seconded. The motion passed with all in favor except Ms. DiFillippo who was opposed.

Dr. Rovetti requested consideration of withdrawing the laws requiring certification of Chiropractor's Assistants by changing it to a registration requirement and making the supervising DC responsible. Medical Assistants are hired with no training and aren't even required to be registered with the Medical Board. After discussion, Dr. Lurie suggested this matter be tabled until more information can be gathered and brought to the next meeting.



Dr. Rovetti made a motion to go forward with his proposed changes to the CA program. Ms. DiFillippo seconded. The motion failed with Dr. Rovetti and Ms. DiFillippo in favor and Drs. Davis and Lurie and Ms. Mercer opposed.

Dr. Rovetti's request to include letterhead as a form of advertisement was not addressed as "stationery" is defined as advertisement in NAC 634.111.

Dr. Rovetti requested that "practicing below the standard of care" be included under NRS 634.018 as unprofessional conduct. Louis Ling will research the malpractice issues as currently the Board may only address "multiple malpractice." He said we may need to add "competency" and "negligence" language. Ms. Mercer made a motion to make it a consideration to include practicing below the standard of care under Unprofessional Conduct. Ms. DiFillippo seconded. After much discussion the motion passed with all in favor except Dr. Lurie who was opposed.

Dr. Rovetti noted that we now have citation authority. He will write up and bring to the next meeting a proposal for a program to allow citations to be issued for minor violations such as advertising, record keeping and first-time failure to register a CA.

Dr. Rovetti requested that NRS 634.020 and 634.115 be revised to allow the Board the option to not charge, or to charge a discounted fee, for temporary licenses for out-of-state DCs who wish to come to Nevada to treat uninsured patients at no charge. Dr. Davis moved to develop a plan to revise the statutory requirement to allow the Board to waive all or part of the temporary license fee for applicants doing chiropractic work for charity. Ms. DiFillippo seconded and the motion passed unanimously.

Cindy Wade's requests for changes to NRS 634.090, 634.130 and 634.131 were reviewed. Ms. Mercer moved that they be approved for inclusion in the Board's Legislative bill. Ms. DiFillippo seconded the motion and it passed unanimously.

As requested by Drs. Rovetti and Lurie, Louis Ling has drafted a regulation to define "precisely controlled force." Dr. Lurie made a motion to move forward with the proposed language to be added to NAC 634. Dr. Rovetti seconded and the motion passed with all in favor.

### **Agenda Item 23 Reassignment of Committee Chairs – For possible action**

Ms. Mercer moved that Dr. Lurie be appointed Legislative Chair. Ms. DiFillippo seconded and the motion passed unanimously.

Ms. Mercer moved to appoint Dr. Nolle Chair of the Test Committee. Dr. Davis seconded and the motion passed unanimously.

Dr. Lurie moved to appoint Dr. Rovetti Chair of the Preceptorship Committee. Ms. Mercer seconded and the motion passed unanimously.

Dr. Lurie moved to appoint Dr. Davis Chair of the Continuing Education Committee. Dr. Rovetti seconded and the motion passed unanimously.

### **Agenda Item 26 Executive Director Reports– No action**

#### **A. Status of Complaints Received**

#### **B. Legal/Investigatory**

#### **C. Licensee Self Inspection Report Summary**

#### **D. Status of Current Probations**

There were no questions or comments regarding the Executive Director's written reports. Ms. Wade commented on the amount of time and effort it took to process and follow up on the Self Inspection Reports, but the end result was very beneficial.

A number of unregistered CAs were contacted and they subsequently submitted applications, six CAs whose certificates had expired were reinstated, and almost one-third of the doctors' e-mail and practice addresses were updated or added. The form needs to be revised and Cindy will have a draft ready to present at the next meeting.

**Agenda Item 30 Educational Moment – No action**

This agenda item was not addressed because Dr. Zaro was not present.

**Agenda Item 31 Correspondence Report – No action**

The one item in the Correspondence Report was already addressed under Agenda Item 29.

**Agenda Item 19 Review of advertising to determine compliance with NAC 634.515-634.570 - For possible action (cont'd)**

Several questionable advertisements in the form of websites, business cards, etc., were reviewed and will be followed up on. Dr. Rovetti will work on revisions to the Advertising Guidelines that are posted on the Board's website and will bring proposed changes to the next meeting.

**Agenda Item 32 Board Member Comments – No action**

The next meeting will be on Saturday, September 6, 2014, probably in Reno.

Ms. Mercer asked if there is a "Chiropractor Day." She was informed that October is "Chiropractor Month." She also recommended that "moral turpitude" be removed from NRS 634.018(6).

Dr. Lurie thanked everyone for their participation and help in making this a successful meeting.

**Agenda Item 33 Public Interest Comments – No action**

There were no comments from the public.

**Agenda Item 34 Adjournment – For possible action**

Ms. Mercer moved for adjournment. Ms. DiFillippo seconded, the motion passed unanimously and the meeting was adjourned.

Approved: January 10, 2015



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David G. Rovetti, DC, Secretary-Treasurer