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Governor



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Member

Christian L. Augustin, Esq.
Consumer Member
Reza R. Ayazi, Esq.
Consumer Member

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James T. Overland, Sr., DC
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CHIROPRACTIC PHYSICIAN'S BOARD OF NEVADA

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A meeting of the Chiropractic Physicians' Board was held on Thursday, November 2, 2023 at the Fairfield Inn & Suites, 355 E. Warm Springs Road, Mohave Room, Las Vegas, NV 89119

The following Board members were present at roll call:

Nicole Canada, DC, President
Xavier Martinez, DC, Vice President
James T. Overland, Sr., DC, Secretary-Treasurer
Benjamin S. Lurie, DC, Board Member
Jason O. Jaeger, DC, Board Member
Christian L. Augustin, Esq., Consumer Member
Reza R. Ayazi, Esq., Consumer Member

Also, present were Board Counsel, Louis Ling, Esq. and Executive Director, Julie Strandberg.

President, Dr. Canada determined a quorum was present and called the meeting to order.

Dr. Canada led those present in the Pledge of Allegiance. Dr. Martinez stated the Purpose of the Board.

Agenda Item 1 Public Interest Comments - No action.

There were no public interest comments.

Agenda Item 2 Approval of agenda – For possible action.

Dr. Lurie moved to approve the agenda with the exception of agenda item 11. Dr. Lurie stated that this item will be tabled in order for he and Dr. Overland to discuss. Dr. Overland seconded, and the motion passed with all in favor.

Agenda Item 3 Approval of the July 13, 2023 Board Meeting Minutes. - For possible action.

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

Agenda Item 4 Discussion and potential action regarding the Application for CA certificate for Victoria Correa – For possible action. (Note: The Board may go into closed session pursuant to NRS 241.030 to consider the character alleged misconduct, or professional competence of Ms. Correa)

Dr. Canada welcomed Ms. Correa. Dr. Lurie moved to go into closed session. Dr. Martinez seconded, and the motion passed with all in favor. Dr. Canada asked Ms. Correa to discuss the discrepancies on her application. Ms. Correa provided her explanation to the Board. Dr. Canada opened up questioning to the Board. Dr. Lurie moved to go back to open session. Dr. Canada seconded, and the motion passed with all in favor. Dr. Martinez moved to deny the current application with the condition that Ms. Correa may reapply providing complete and accurate responses, which may be approved by staff. Dr. Overland seconded, and the motion passed with all in favor.

Agenda Item 5 Discussion and potential action regarding the Application for CA certificate for Melissa Andrade – For possible action. (Note: The Board may go into closed session pursuant to NRS 241.030 to consider the character alleged misconduct, or professional competence of Ms. Andrade)

Dr. Canada welcomed Ms. Andrade. Dr. Lurie moved to go into closed session. Dr. Martinez seconded, and the motion passed with all in favor. Dr. Canada asked Ms. Andrade to discuss the discrepancies on her application. Ms. Andrade provided her explanation to the Board. Dr. Canada opened up questioning to the Board. Dr. Martinez moved to go back to open meeting. Mr. Ayazi seconded, and the motion passed with all in favor.

Dr. Martinez moved to reject Ms. Andrade's application for chiropractic assistant, until she can provide legal proof that she has successfully completed her probation. She may then reapply providing complete and accurate responses. Dr. Lurie seconded, and the motion passed with all in favor.

The Board confirmed with Ms. Andrade that she can no longer work as a CA.

Agenda Item 7 PUBLIC WORKSHOPS: Will begin at 9:00 a.m. at the Fairfield Inn & Suites, 355 E. Warm Springs Road, Mohave Room, Las Vegas, NV 89119. Public workshop to consider amendments to Nevada Administrative Code 634. – For possible action.

A. Revisions to NAC 634 pursuant to Executive Order 2023-003.

Dr. Canada asked for public comment and there was none. Mr. Ling explained the regulations being proposed for revision with respect to Executive Order 2023-003.

Mr. Ayazi made a motion to move the recommended language to hearing. Dr. Martinez seconded, and the motion passed with all in favor.

B. Board proposed revisions to NAC 634.

Mr. Ling explained the revisions to NAC 634, which were recommended by the Board. Dr. Lurie referred to NRS 7.045 and recommended that the word, "solicitation" be added to NAC 634.430, Section 3(a). Dr. Overland seconded, and the motion passed with all in favor.

Agenda Item 6 Disciplinary hearing and potential action in the Matter of The Joint, Complaint 22-18S – For possible action. (Note: The Board may go into closed session pursuant to NRS 241 to consider the character alleged misconduct, or professional competence of The Joint.)

Mr. Ling stated that he and Dr. Overland, Investigating Board Member just had a discussion with representatives from The Joint about a resolution to the Notice of Charges. Mr. Ling introduced Dr. Birkeland, owner of The Joint and the complainant, Alicia Valladolid. Mr. Ling stated that The Joint has agreed to the following terms: pay the Boards fees and costs, which should not exceed \$2,000, pay a \$500.00 fine for one cause of action, and within 30 days prepare and provide policies and procedures for the front desk and the x-ray and diagnostic request process. The policies and procedures will be disseminated to The Joint locations, and staff will be trained on the policies and procedures. Dr. Overland has requested to attend at least one training to confirm that the trainings are occurring. Mr. Ling asked Dr. Birkeland for his comments. Dr. Birkeland stated the he and Dr. Batencourt agree that it is not appropriate for an unlicensed person to provide any guidance or render any advice to a patient and apologized to the complainant and to the Board for taking their time. Dr. Birkeland stated that they had a conversation with Dr. Overland regarding the complaint and takes accountability for the administrative mistakes by not following up. Dr. Birkeland stated that The Joint wants to hold their team up to the standard of the Chiropractic Physicians' Board of Nevada.

Dr. Martinez asked how the discipline was determined. Mr. Ling stated that since this is the first public offense, he and Dr. Overland felt that their decision was fair. Mr. Augustin stated that he appreciates the policies and procedures, but since this is coming up by a consumer he has a sense that this has happened before. Mr. Ling stated that the primary purpose of discipline is to get the matter fixed to avoid future complaints of a similar nature. Mr. Ling said that if the Board offers a lower fine for the first offense the Board is saying, don't do it again, because if it happens again the discipline will be much more. This gives the Board a way to state publicly that there is concern. Fines are generally for administrative agencies to punish intentional, reckless behavior. Mr. Ling stated that the Board does not have evidence that this has happened to anyone else, so the Boards decision must be based on the evidence presented today, it is not appropriate to assume that this has happened before. Dr. Birkeland stated that he wanted to make it clear that The Joint does not have a formal process in place that allows unlicensed staff to order x-rays.

Mr. Augustin iterated that the same action took place at two separate Joint locations, which would appear to be an institutional issue. Mr. Augustin added that The Joint has 16 facilities and he believes a \$500 fine is quite lenient. Dr. Martinez stated that his understanding is that The Joint does not currently have a policies and procedures manual and confirmed with Dr. Overland that the manual was requested during the investigation. Dr. Birkeland stated that The Joint does have a policies and procedures manual, but it was not provided, because during their discussion with Dr. Overland they communicated that this behavior is not tolerated and at that point they thought the matter was done. Dr. Birkeland iterated that The Joint does not tolerate unlicensed staff to offer any healthcare guidance to patients and those individuals are no longer employed.

Dr. Lurie referred to the language written in the Notice of Charges, which indicated that The Joint had an unwritten policy allowing front office staff to order x-rays before a prospective patient would be allowed to see or speak to a chiropractic physician.

Mr. Ayazi explained that The Joint shouldn't accept something that they are not in agreement with, because if the Board accepted the settlement The Joint is admitting that there is a companywide policy in place that allows unlicensed staff to refer patients out for x-rays, but it doesn't sound like that is the case. Dr. Birkeland stated that his position is that he wants the Board to feel comfortable that The Joint does not have a policy that allows that. If this Board wants to

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further investigate The Joint is completely transparent and The Joint does not allow unlicensed staff to give patient direction.

Dr. Lurie made a motion to deny the settlement agreement, continue the investigation and move to a hearing. Dr. Martinez seconded, and the motion passed with Dr. Canada in opposition.

Agenda Item 9 Discussion and potential action regarding the proposals for the Board lobbyist – For possible action.

Dr. Canada asked the Board if they had any questions regarding the lobbyist proposals from Strategies 360, Mr. Musgrove or Mr. McCann. Dr. Lurie made a motion to approve the contract with Strategies 360. Mr. Augustin seconded, and the motion passed with all in favor.

Mr. Musgrove thanked the Board for accepting the contract and provided an update on the legislature.

Agenda Item 8 Discussion and potential action regarding the report from the September 15, 2023 working group regarding the chiropractic assistant program – For possible action.

Julie Strandberg provided an overview of the documentation. Dr. Lurie made a motion to table this agenda item and that specific language be presented at the next Board meeting. Dr. Martinez seconded, and the motion passed with all in favor.

Agenda Item 10 Discussion and potential action regarding the auditing contract with Bertrand and Associates. – For possible action.

Julie Strandberg explained that this is an amendment to the existing contract with Bertrand & Associates to increase the amount of the contract due to the requirement to include the GASB 68 pension liability calculation.

Dr. Lurie made a motion to approve the amendment. Mr. Augustin seconded, and the motion passed with all in favor.

Agenda Item 11 Discussion and potential action regarding questions on the Self-Inspection Form and the License Renewal Form – For possible action.

Agenda Item 16 Discussion and potential action regarding whether a DC can advertise as a certified yoga instructor – For possible action.

Dr. Canada asked the Board if there were any comments or questions regarding advertising as a certified yoga instructor. Mr. Ling stated that the state does not license yoga and she has obtained a certification as a yoga instructor. Dr. Lurie stated that based on the Board's rules the yoga certification does not fit into the Board's regulations. Mr. Ling referred to NAC 634.521, which states that a licensee cannot be false or misleading and NAC 634.550, which prohibits a licensee from advertising as certified or an expert in practice of chiropractic and neither apply, so it appears that there is nothing in the regulations that states that a chiropractic physician cannot advertise yoga with the proper certification.

Dr. Martinez made a motion to not take action. Dr. Overland seconded for discussion. Dr. Overland asked if the Board was required to provide a response one way or the other. Mr. Ling informed the Board that if the chiropractic physician would like an answer they must submit an official request for an advisory opinion. The motion passed with all in favor.

Agenda Item 15 Discussion and potential action regarding whether the use of the Bioscan SRT by a DC is within the scope of practice – For possible action.

Dr. Kimberly Nelson was present by telephone and described the use of the Bioscan SRT.

Dr. Lurie made a motion to approve the use of the Bioscan SRT. Dr. Overland seconded, and the motion passed with all in favor.

Agenda Item 12 Discussion and potential action regarding Continuing Education requirements for chiropractic physicians – For possible action.

Dr. Overland provided an overview of the states that require live and online continuing education. Dr. Overland stated that he would like the Board to consider a combination of online and in-person continuing education. Dr. Lurie expressed concern with requiring live seminars due to the changes in chiropractic practices, being that not all practices are hands on and not all individuals are comfortable being in a room with others. Dr. Overland recommended that the Board allow licensees to submit an exemption waiver to sit in a live seminar.

There was no motion taken.

Agenda Item 13 Discussion regarding correspondence between the Cooperative Association of Chiropractic Physicians (CACP) and the Physical Therapy Examiners – No action.

Dr. Overland shared that the CACP, is an arm of the culinary union and has determined that it is more cost effective to have the members of the CACP oversee their own clinic and employ physical therapists, acupuncturists and chiropractic physicians rather than have the union members go to selected providers. Dr. Overland stated that he talked with the Executive Director of the CACP and there are six physical therapists working in the clinic who are performing Grade IV mobilization, of which, five of the six are doctors of physical therapy. The Executive Director of the CACP wrote to the Physical Therapy Board and asked that the physical therapists refrain from adjusting a patient's neck or back when they are receiving chiropractic care and in turn chiropractic physicians will not perform physiotherapy on patients receiving care from a physical therapist. The physical therapy board responded, saying that pursuant to NRS 640.024 physical therapists are allowed to perform mobilization and indicated that it is not a chiropractic adjustment.

Dr. Lurie stated that the physical therapists could care less what this Board has done, what the Attorney General has said, what the Governor has said, what the House of Representatives has said, or what the Senate has said. Regardless of what they have been told they are going to do whatever they want to do within their laws, whether it says they can or cannot.

Agenda Item 14 Discussion regarding new legislative mandates as it relates to chiropractic physician PPD Raters – No action.

Dr. Overland shared that PPD raters use the AMA Guide to Impairment 5th Edition and currently chiropractic physicians' focus on musculoskeletal and medical doctors and osteopathic doctors are allowed to evaluate the whole spine, however there is a new bill that allows DC's, MD's and DO's to take a new review course and exam to be certified to evaluate the entire body, which will go into effect by July 2026. Prior to the legislative change there were two governing bodies that were allowed to credential PPD raters, which were, ABIME and NIRSAT. To be credentialed with ABIME you have to recredential every five years to use the acronym CICE. Dr. Overland referred to chiropractic physicians' that are using the credentials CICE without having the proper ABIME re-certification. This will change and there will no longer be the accreditation

agency. Dr. Overland stated that DC's must follow the advertising rules with respect to the accrediting agencies.

Agenda Item 17 NCA Report – No action.

Dr. Marcia Tinberg was not present, but provided a written report, which was shared with the Board. Dr. Overland noted that the NAC is sponsoring the PPD Ratings seminar on December 9-10, 2023.

Agenda Item 18 NCC Report – No action.

A representative from the NCC was not present.

Agenda Item 19 Board Counsel Report – No action.

Mr. Ling stated that he had nothing to report.

Agenda Item 20 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 19-12S (Overland)

Dr. Overland stated this complaint involved a criminal and civil component. The criminal complaint has been solved; however the civil case is ongoing.

B. Complaint 21-31S (Lurie)

Dr. Lurie stated that Mr. Ling is working on a revised Notice of Charges and this complaint will be set for hearing in the future.

C. Complaint 22-14S (Overland)

Dr. Overland stated that the complainant alleged that they were injured by the DC. The complainant stated that they inquired with an attorney regarding a malpractice claim, however has since decided to drop the complaint due to the stress involved. Dr. Overland reported that he does not feel that there was any wrongdoing by the DC and recommended that the complaint be dismissed. Dr. Lurie moved to dismiss complaint 22-14S. Mr. Ayazi seconded, and the motion passed with all in favor. Dr. Overland recused himself as the investigating board member.

D. Complaint 22-18S (Overland)

Dr. Overland stated this is the case against The Joint, and was heard under agenda item 6.

E. Complaint 22-19S (Lurie)

Dr. Lurie stated that the investigation for this complaint is ongoing.

F. Complaint 22-20S (Canada)

Dr. Canada stated that the complainant alleged inappropriate contact from the DC. Dr. Canada attempted to reach the DC, however was unsuccessful, but did speak with a DC that was in the office at the time of treatment, who indicated that the patient did not bring anything to their attention at the time of treatment. Dr. Canada stated that this investigation is ongoing.

G. Complaint 22-21N (Martinez)

Dr. Martinez stated that this is an alleged scope of practice violation and he and Mr.

- Ling are in the process of coming to a resolution, but if not, this case will go to hearing.
- H. Complaint 22-23N (Martinez)**
Dr. Martinez stated that this complaint is against the DC discussed in complaint 22-21N.
- I. Complaint 23-02N (Overland)**
Dr. Overland stated that the DC diagnosed the complainant with neuropathy. The complainant paid a large sum of money for this diagnosis and there is allegedly a misdiagnosis which is being investigated.
- J. Complaint 23-07S (Overland)**
Dr. Overland stated that the complainant felt that the DC did not provide a proper PPD rating. Dr. Overland stated that it was the opinion of the DC to provide the necessary rating and there was no wrongdoing, and recommended dismissal. Dr. Lurie moved to dismiss complaint 23-07S. Dr. Martinez seconded, and the motion passed with all in favor. Dr. Overland recused himself as the investigating board member.
- K. Complaint 23-08N (Lurie)**
Dr. Lurie stated that the complainant alleged that the chiropractic physician injured them. Dr. Lurie reviewed the records from the DC and records from other medical providers and an injury was not substantiated. Dr. Lurie stated that this is an outside malpractice case and recommended dismissal. Dr. Overland moved to dismiss complaint 23-08N. Dr. Martinez seconded, and the motion passed with all in favor. Dr. Lurie recused himself as the investigating board member.
- L. Complaint 23-09S (Overland)**
Dr. Overland stated that the chiropractic physician was advertising physical therapy, however did not have a physical therapist on staff. Dr. Overland spoke to the DC, who changed his advertising to remove physical therapy and recommended dismissal with a letter of instruction. Dr. Martinez moved to dismiss complaint 23-09S. Dr. Lurie seconded, and the motion passed with all in favor. Dr. Overland recused himself as the investigating board member.
- M. Complaint 23-10S (Jaeger)**
This agenda item was tabled.
- N. Complaint 23-11S (Overland) 1:06**
Julie Strandberg stated that a citation was issued to Dr. Robinson for practicing without an active license and he has until December 9, 2023 to contest the citation. Dr. Overland stated that the Division of Industrial Relations confirmed that Dr. Robinson performed six PPD's while his license was expired and the citation included a fine of \$3,000.00 or \$500.00 per PPD. Following discussion, Dr. Martinez made a motion to withdraw the citation and issue a notice of charges. Mr. Ayazi seconded, for discussion. The motion passed with all in favor.
- O. Complaint 23-12S (Lurie)**
Dr. Lurie stated that he filed this complaint as part of the investigation in complaint 22-19S.
- P. Complaint 23-13S (Lurie)**
Dr. Lurie stated that he filed this complaint as part of the investigation in complaint 22-19S.
- Q. Complaint 23-14S (Canada)**
Dr. Canada stated that the complainant alleged that the DC looked at them and felt

they needed to be treated for scoliosis, which was confirmed by the DC. Dr. Canada stated that there was not a violation and recommended dismissal. Dr. Martinez moved to dismiss complaint 23-14S. Dr. Overland seconded, and the motion passed with all in favor. Dr. Canada recused herself as the investigating board member.

- R. **Complaint 23-15S (Nolle)**
Julie Strandberg stated that this complaint is still under investigation.
- S. **Complaint 23-16S (Nolle)**
Julie Strandberg stated that this complaint is still under investigation.
- T. **Complaint 23-17N (Martinez)**
Dr. Martinez stated that the complainant alleged that the chiropractic physician was an imposter and his x-ray machine was out of date. Dr. Martinez verified the chiropractic physician's license and that his x-ray machine is in compliance and recommended dismissal. Mr. Augustin moved to dismiss complaint 23-17N. Mr. Ayazi seconded, and the motion passed with all in favor. Dr. Martinez recused himself as the investigating board member.
- U. **Complaint 23-18S (Jaeger)**
This agenda item was tabled.
- V. **Complaint 23-19S (Canada)**
Dr. Canada stated that his complaint is under investigation.
- W. **Complaint 23-20S (Jaeger)**
This agenda item was tabled.
- X. **Complaint 23-21S (Overland)**
Dr. Overland stated that the complainant alleged that they were injured by the DC and is under investigation.

Agenda Item 21 Discussion and potential action to revise or release Casey Robinson, DC from probation. – For possible action.

Mr. Ayazi moved to table agenda item 21. Mr. Augustin seconded, and the motion passed with all in favor.

Agenda Item 22 Discussion and potential action regarding the Language Access Plan – For possible action.

Julie Strandberg provided an overview of the language access plan required pursuant to NRS 232.0081.

Agenda Item 23 FCLB/NBCE Matters – For possible action.

- A. **Selection of Board's choice for FCLB Voting Delegate**
Dr. Overland expressed interest in being the FCLB voting delegate.
- B. **Selection of Board's choice for FCLB Alternate Delegate**
Dr. Canada expressed interest in being the FCLB alternate delegate.
- C. **Selection of Board's choice for NBCE Voting Delegate**
Dr. Lurie expressed interest in being the NBCE voting delegate.
- D. **Selection of Board's choice for NBCE Alternate Delegate**
Dr. Canada expressed interest in being the NBCE alternate delegate.
- E. **Attendance of Board Member(s) at the FCLB's 97th Annual Educational Congress May 1-5, 2024 Phoenix, AZ**

- Dr. Canada, Dr. Overland and Julie Strandberg expressed interest in attending. Dr. Lurie expressed interest in attending on his own dime.
- F. **Selection of Board Member to participate in the Spring National Board Part IV Exam - May 18-19, 2024**
Dr. Martinez and Dr. Canada expressed interest in attending the Spring Part IV examination.
 - G. **Selection of Board Member to participate in the National Board Part IV Test Committee meeting - June 8, 2024**
Dr. Canada expressed interest in attending the Part IV test committee meeting.
 - H. **Selection of Board Member to participate in the Fall National Board Part IV Exam - November 9-10, 2024**
Dr. Overland and Dr. Canada expressed interest in attending the Fall Part IV examination.
 - I. **FCLB District Meeting – Keystone, SD – October 5-8, 2023**
Julie Strandberg, Dr. Overland and Dr. Canada shared information from the district meeting.
 - J. **Other FCLB/NBCE matters.**
There were no other matters discussed.

Agenda Item 24 Consideration of potential additions, deletions, and/or amendments to NRS 634 and NAC 634– For possible action.

- A. **NRS 634.090 (1)(b) Except as otherwise provided in subsections 3 and 6, that the applicant has a high school education and is a graduate from a college of chiropractic which is accredited by the Council on Chiropractic Education, or its successor organization, or an accrediting agency recognized by that organization; and**

Julie Strandberg explained that this is a list of potential revisions to NRS and NAC.

Agenda Item 25 Discussion and potential action regarding NRS 7.045 – For possible action.

Dr. Lurie stated that NRS 7.045 included new language that went into effect on October 1, 2023 as it relates to solicitation and defines what happens if a licensee is caught capping and soliciting car accident patients, personal injury patients, etc. Dr. Lurie stated that he wanted to ensure that the Board is making our doctors aware of the legal changes to NRS that could affect them.

Agenda Item 26 Committee Reports

- A. **Continuing Education Committee (Dr. Martinez) – For possible action.**
Dr. Martinez stated that he had nothing to report.
- B. **Legislative Committee (Dr. Overland) – For possible action.**
Dr. Overland stated that he had nothing to add.
- C. **Preceptorship Committee (Dr. Canada) – For possible action.**
Dr. Canada stated that there have been a number of preceptor application submitted.
- D. **Test Committee (Dr. Canada) - For possible action.**
Dr. Canada stated that she had nothing to report.

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Agenda Item 27 Executive Director Reports:

- A. Status of Pending Complaints – No action.**
- B. Status of Current Disciplinary Actions – No action.**
- C. Legal/Investigatory Costs – No action.**
Julie Strandberg gave an overview of the executive director's reports.

Agenda Item 28 Financial Status Reports:

- A. Current cash position & projections – No action.**
- B. Accounts Receivable Summary – No action.**
- C. Accounts Payable Summary – No action.**
- D. Employee Accrued Compensation – No action.**
- E. Income/Expense Actual to Budget Comparison as of September 30, 2023 – No action.**
- F. Budget to Actual at September 30, 2023 – No action.**
Julie Strandberg gave an overview of the executive director's reports.

Agenda Item 29 Discussion and potential action regarding the Board's 2024 meeting schedule – For possible action.

The following meetings were scheduled for 2024: January 11-12, April 11, July 11 and October 10.

Agenda Item 30 Discussion and potential action regarding the chiropractic assistant exam dates for February, June and September – For possible action.

The following CA exam dates were set for 2024: February 22 (online & in-person), June 13 (online only) and September 19 (online & in-person).

Agenda Item 31 Board Member Comments. – No action.

Dr. Overland asked that the Board review the existing documents and provide feedback.

Agenda Item 32 Public Interest Comments – No action.

There were no public comments.

Agenda Item 33 Adjournment – For possible action.

Dr. Lurie moved to adjourn the meeting. Mr. Ayazi seconded, and the motion passed unanimously.

January 11, 2024



Nicole Canada, DC
President