

MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Friday, May 30, 2008 in Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington, Las Vegas, Nevada 89101. The following Board members were present for the roll call:

Ian K. Yamane, DC, President
Margaret Colucci, DC, Vice President
Stephanie Youngblood, DC, Secretary
Curtis Potts, DC, Member
Paul Jackson, Consumer Member

Dr. Yamane determined that a quorum of the Board was present and called the meeting to order at 9:27 AM. Members Dr. Deed Harrison and Richard McCann were not present. Also present were Deputy Attorney General Daniel Ebihara and CPBN Executive Director Cindy Wade.

Agenda Item 1 APPROVAL OF AGENDA

Dr. Colucci moved that the agenda be approved. Dr. Potts seconded and the motion passed unanimously.

Agenda Item 2 PUBLIC INTEREST COMMENTS

There were no public interest comments.

Agenda Item 3 Workshop and Public Comment Hearing for the Amendment of Regulations of the Chiropractic Physicians' Board of Nevada.

The proposed amendment of the regulations, NAC 634, were read in their entirety for the record. There was no one from the public present and there was no oral public comment. Written public comments from Drs. Paul Pirruccello and David Rovetti were read for the record. Dr. Rovetti's suggested revision was taken under consideration and it was agreed that NAC 634.541 should be amended to include the following provision: *"2. As used in this subsection, 'referral bureau' means a group of two or more licensees practicing in separate locations being advertised and/or marketed as a 'referral bureau' with a separate telephone number specifically designated for the 'referral bureau'".* Dr. Potts moved to approve the proposed regulation changes as amended. Dr. Colucci seconded. The motion passed with all in favor. The public hearing for formal adoption of the proposed regulations will be held in Las Vegas on July 11, 2008.

Dr. Yamane announced that the agenda items would be addressed out of order to accommodate those present. He turned the Chair over to Vice President Dr. Margaret Colucci for the next two matters because he was the investigating Board member.

Agenda Item 7A Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of David Spendlove, DC, License No. B399, Complaint No. 07-31.

Dr. Spendlove and prosecuting attorney Elizabeth Foley were present. Ms. Foley presented the proposed Agreed Settlement and Dr. Spendlove confirmed that he has agreed to its terms and conditions. Dr. Youngblood moved for approval of the Agreed Settlement. Paul Jackson seconded the motion and it passed unanimously with Dr. Yamane recused because he was the investigating Board member.

Agenda Item 7B Assignment of Compliance Monitor for probation of Dr. David Spendlove pursuant to approved Agreed Settlement.

Dr. Spendlove indicated that he would like Drs. Bradley Hopper or Ronald Greenwalt to monitor his compliance during the probationary period. The Board expressed their concern that Dr. Hopper and Dr. Greenwalt have no experience as Compliance Monitors. Dr. Jeffrey Andrews was present and indicated that he would be willing to be Dr. Spendlove's Compliance Monitor. Dr. Colucci moved to approve Dr. Andrews as Dr. Spendlove's Compliance Monitor. Mr. Jackson seconded and the motion passed unanimously with Dr. Yamane recused.

Dr. Yamane resumed the Chair.

Agenda Item 10 Administrative hearing/granting of continuance/possible approval of settlement agreement in the matter of Corazon Murillo, DC, License No. B647, Complaint No. 08-14.

Dr. Corazon Murillo was present. Elizabeth Foley advised that Dr. Murillo's attorney, Richard Harris, was out of the country and has requested a continuance of this matter. Ms. Foley stated that Dr. Murillo has mailed a check that will bring her payments up to date through the end of May. Dr. Colucci moved to grant a continuance in this matter. Dr. Potts seconded the motion and it passed with all in favor except Dr. Youngblood who recused as investigating Board member.

Agenda Item 15 Discussion/possible action regarding the status of compliance with the terms and conditions of the September 26, 2007 Agreement on Conditions for Licensure of Casey D. Robinson, DC, License No. B1263.

Dr. Robinson and Dr. Jeffrey Andrews, Esq., were present. Dr. Andrews explained that Dr. Robinson's practice in Nevada is limited to performing PPDs in other licensees' offices in southern Nevada and infrequently in Reno. Dr. Robinson does not have a permanent location where he has a continuous presence which has caused difficulty in monitoring his practice. Dr. Andrews has determined that Dr. Robinson's record keeping is somewhat deficient. This was admitted to by Dr. Robinson, who stated that he has made corrections and will continue to follow Dr. Andrews' direction with respect to his record keeping.

Agenda Item 12 Discussion/possible action with respect to request from Dr. Stephen Shaw, License No. B705, for approval to attend anger management course offered by Cornerstone Counseling Center rather than previously approved course and extension of time in which to complete the course.

Drs. Shaw and Andrews were sworn in. Following discussion, Dr. Youngblood moved that Dr. Shaw should attend the anger management course administered by Cornerstone Counseling Center rather than Dr. Mortillaro's program. Dr. Potts seconded and the motion passed unanimously. Dr. Youngblood moved to extend the time period for Dr. Shaw to attend the Cornerstone Counseling Center Course to 15 months from this date. The motion was seconded by Dr. Potts and passed unanimously.

Agenda Item 20 Discussion/possible action regarding replacement for CPBN lobbyist, Susan Fisher of Fisher Consulting:

A. Interview/approval of Lesley Pittman, Sierra Strategies

B. Approval of contract with Lesley Pittman, Sierra Strategies

Lobbyist candidate Lesley Pittman was introduced. She described her background and qualifications as a lobbyist. Her purchase of Fisher Consulting will probably take effect on July 1, 2008. Mr. Jackson advised that other potential lobbyists should be allowed the opportunity to apply and moved that the hiring of a new lobbyist and approval of a contract be tabled until the June 14, 2008 meeting. Dr. Potts seconded and the motion passed with all in favor.

Agenda Item 13 Discussion/possible action regarding approval of Dr. Jeffrey Andrews, Esq., as Compliance Monitor of probation of James Spickelmier, DC, License No. B531.

Dr. Potts moved to approve Dr. Jeffrey Andrews as Compliance Monitor for Dr. Spickelmier. Dr. Youngblood seconded the motion and it passed unanimously.

Agenda Item 14 Discussion/possible action regarding determination of beginning date of probation of Jaime DiOrio, DC, License No. B888.

Dr. Andrews explained that the monitoring of Dr. DiOrio's compliance was delayed due to her issues with the terms of the Agreed Settlement and recommended that her probationary period be extended by three months. Dr. Yamane advised that it will be necessary to obtain her agreement to the extension. Dr. Youngblood moved that Dr. Andrews should solicit Dr. DiOrio's consent to amend the Agreed Settlement to officially extend the ending date of her probation by three months. Mr. Jackson seconded and the motion passed with all in favor except Dr. Colucci who recused because she was the investigating Board member in this matter.

Agenda Item 17 Status report/discussion/possible action regarding anonymous profiles of possible disciplinary actions. Board action will be limited to either dismissing the matter if the Board determines it has no jurisdiction over the subject or providing direction to pursue the matter further.

C. Complaint 08-07S

Drs. Colucci and Andrews explained that a group of licensees have issued a brochure that contains some violations. One of the licensees is currently on probation and Dr. Andrews is the Compliance Monitor. Paul Jackson moved that the licensee who is on probation be notified to appear before the Board at the July meeting. Dr. Youngblood seconded and the motion passed with all in favor except Dr. Colucci, who recused. A decision will be made at the July meeting on how to deal with the other licensees in this matter.

Further with respect to Complaint 08-07S, Dr. Colucci made a motion that all of the licensees responsible for the brochure should be sent a Complaint and Notice of Hearing for the July meeting. Dr. Youngblood seconded the motion. After further discussion, Dr. Colucci withdrew her motion and Dr. Youngblood withdrew her second. Mr. Jackson amended his previous motion, as follows: That the licensee who is currently on probation be noticed to appear before the Board on July 11, 2008 for a determination of possible violation of the terms of his probation, and that letters of instruction be sent to the other licensees. Dr. Youngblood seconded the amended motion and it passed with all in favor except Dr. Colucci who recused.

Agenda Item 23 Discussion/possible action regarding approval of proposed policies:

B. Monitoring of Compliance of Disciplined Licensees

Dr. Youngblood moved to approve the new policy for Monitoring of Compliance of Disciplined Licensees. Dr. Colucci seconded and the motion passed unanimously.

A. Denial of Credit for Presenters of Continuing Education Seminars

Dr. Potts moved to approve the new policy for Denial of Credit for Presenters of Continuing Education Seminars. Dr. Colucci seconded the motion and it passed unanimously.

Agenda Item 17 Status report/discussion/possible action regarding anonymous profiles of possible disciplinary actions. Board action will be limited to either dismissing the matter if the Board determines it has no jurisdiction over the subject or providing direction to pursue the matter further.

A. Complaint 08-02S

This complaint alleged upcoding and was thoroughly investigated by the Board's investigator and the investigating Board member, Dr. Youngblood. The licensee provided extensive documentation for justification of the course of treatment, billing, referrals to other professionals and the reason for discontinuing treatment. The allegation of upcoding was not substantiated. Dr. Colucci moved to dismiss the complaint. Dr. Potts seconded and the motion passed unanimously with Dr. Youngblood recused.

B. Complaint 08-03S

The complainant, who originally filed a complaint with the Medical Board, was contacted numerous times over several months to obtain the complainant's notarized signature on the CPBN complaint form with no response. Dr. Youngblood made a motion to dismiss the complaint. Dr. Yamane seconded the motion and it passed with all in favor.

D. Complaint 08-11N

Paul Jackson explained that the complainant claims that a chiropractic manipulation caused injury to her T6 vertebra. The doctor's patient records are well documented and the treatment was within the chiropractic scope of practice. There appears to be no violation. Dr. Colucci moved to dismiss the complaint. The motion was seconded by Dr. Youngblood and passed with all in favor except Mr. Jackson, who recused.

Agenda Item 18 Approval of granting of licenses to DC applicants who successfully passed the May 14, 2008 Law Test.

Dr. Youngblood moved that licenses be granted to the DC applicants who successfully passed the May 14, 2008 Law Test. Dr. Yamane seconded and the motion passed unanimously.

Agenda Item 19 Discussion/possible action with respect to request from DC applicant Michael Assouri to be granted a license based on his November 14, 2007 Law Test score.

It was agreed that the Board has no latitude in the enforcement of NAC 634.290(3). Dr. Yamane moved to deny Dr. Assouri's request. Dr. Colucci seconded and the motion passed unanimously.

Agenda Item 21 Discussion/possible action with respect to Board's position on regulation of laser therapy.

Susan Fisher and Dr. Yamane will attend the June 3 Legislative Health Care Subcommittee meeting where the regulation of laser therapy will be addressed. Everyone agreed that laser therapy should be regulated. Dr. Yamane will report on the meeting at the June 14 meeting in Reno.

The Board recessed for lunch at 12:25 PM and resumed at 1:30 PM.

Agenda Item 8 Discussion/possible action regarding appeal of staff denial of Application for Certification of Chiropractor's Assistant of Jacob Villasenor.

Jacob Villasenor and Dr. Israel Villasenor were present and sworn in. This matter was postponed awaiting arrival of attorney Tom Erickson.

Agenda Item 9 Administrative hearing/granting of continuance/possible approval of settlement agreement in the matter of Charles Musich, DC, License No. B1056, Complaint Nos. 07-28 and 08-15.

Dr. Musich and his attorney, Patricia Daehnko, were present. Elizabeth Foley requested that this matter be continued because she had just received a brief questioning the constitutionality of the charges against Dr. Musich and needs time to prepare her answer. It was determined that Ms. Foley's answer should be due by June 13, 2008 and Ms. Daehnko's response should be due by June 27. Dr. Youngblood moved that this matter be continued. Mr. Jackson seconded and passed with all in favor except Dr. Colucci who recused because she is the investigating Board member.

Agenda Item 8 Discussion/possible action regarding appeal of staff denial of Application for Certification of Chiropractor's Assistant of Jacob Villasenor.

Mr. Villasenor, his attorney, Tom Erickson, and Dr. Israel Villasenor were present. Mr. Erickson described the 2007 incident for which Mr. Villasenor received a misdemeanor conviction and also his conviction in 2002 for D.U.I.. He provided documentation of these matters which was reviewed by the Board members. Mr. Villasenor's progress with his probation and the mandated rehabilitation program, as well as the work that he would perform at Dr. Villasenor's practice were discussed. Dr. Yamane stated that Mr. Villasenor needs to complete the rehabilitation program before the Board can consider approving his application. Dr. Colucci moved to deny Jacob Villasenor's application for Certification of Chiropractor's Assistant at this time. Mr. Jackson seconded and the motion passed with all in favor except Dr. Potts who recused.

Agenda Item 16 Discussion/possible action regarding request for reinstatement of license from Mark Rubin, License No. B648.

Dr. Rubin and his attorney, Maria Maskall were present. Also present was Senior Deputy Attorney General David Newton.

Agenda Item 16 (cont'd)

Mr. Newton stated that Dr. Rubin has passed the CPBN Law Test. He has received an Order from Clark County which reduces his child support arrearages to \$5,000 and \$10 per

month payments temporarily “until New York cooperates with Nevada”, therefore, he is now in compliance with his child support obligations. Dr. Youngblood moved to reinstate Dr. Rubin’s license No. B648 with the understanding that he must begin repayment of the balance due of the \$6,500 fine at the rate of \$270.83 per month with the first payment due on July 1, 2008; if a payment is late the full balance due must be paid within 30 days. Dr. Yamane seconded the motion. Following discussion Dr. Youngblood amended her motion to include that Dr. Rubin must resume reporting quarterly on the status of his child support payment with the first report due on October 1, 2008. Dr. Yamane seconded the amended motion. After further discussion, Dr. Youngblood amended the amended motion to include that Dr. Rubin’s two-year probation will begin on June 1, 2008. Dr. Yamane seconded the second amended motion and it passed unanimously.

Consumer Member Richard McCann arrived at 2:30 PM.

Agenda Item 11 Administrative hearing/granting of continuance/possible approval of settlement agreement in the matter of David Buanno, DC, License No. B432, Complaint Nos. 05-26 and 08-06S.

Dr. David Buanno was present. Elizabeth Foley presented **Exhibit Nos. 1 through 21**, all of which were admitted with no objection from Dr. Buanno. The following witnesses were sworn in and provided testimony: **David Bridges** and **David Buanno, DC**. Ms. Foley rested for the prosecution and Dr. Buanno provided no evidence or witnesses in his defense. Ms. Foley presented her closing statement, followed by Dr. Buanno’s closing statement.

The Board proceeded to deliberate on the Findings of Fact as set forth in the Complaint for Disciplinary Action and Notice of Hearing (with Dr. Youngblood recused):

Factual Allegation No. 1 Dr. Potts moved that the allegation is **true and correct**. Dr. Colucci seconded and the motion passed unanimously.

Factual Allegation No. 2 Dr. Colucci moved that this allegation is **true**. Dr. Potts seconded and the motion passed unanimously.

Factual Allegation No. 3 Dr. Potts moved that this is a **true** statement. Dr. Colucci seconded and the motion passed unanimously.

Factual Allegation No. 4 Dr. Colucci moved that this allegation is **true**. Dr. Yamane seconded the motion. Dr. Colucci moved that her motion be **amended to include that the allegation begin as follows**: “Respondent *and/or his agent*.....” Dr. Potts seconded the amended motion and it passed unanimously.

Factual Allegation No. 5 Dr. Potts moved that the allegation is a **true** statement. Mr. Jackson seconded and the motion passed unanimously.

Factual Allegation No. 6 Mr. Jackson moved that this allegation be accepted as a **true** statement. Mr. McCann seconded the motion and it passed unanimously.

Factual Allegation No. 7 Mr. Jackson moved that this is a **true** statement. Mr. McCann seconded and the motion passed unanimously.

Factual Allegation No. 8 Mr. Jackson moved that this is a **true** statement. Dr. Yamane seconded the motion and it passed unanimously.

Factual Allegation No. 9 Mr. Jackson moved that this is a **true** statement. Dr. Yamane seconded and the motion passed unanimously.

Factual Allegation No. 10 Mr. Jackson moved that this is a **true** statement. Dr. Yamane seconded the motion and it passed unanimously.

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The Board voted on their Findings as to the Charges, as follows:

Charge No. 1 By recording unlawful liens on the real property of Clark County Residents, the Respondent violated NRS 634.018(5), unprofessional conduct, including the acts precluded by NAC 634.430(1)(f) by engaging in practices regarding the billing of patients that are abusive and

fraudulent.

Mr. Jackson moved that this is a **true** statement. Dr. Yamane seconded and the motion passed unanimously.

Charge No. 2 By recording unlawful liens on the real property of Clark County Residents, the Respondent violated NRS 634.018(5) unprofessional conduct including the acts precluded by NAC 634.430(1)(f)(1) regarding billing patients for chiropractic services that have not been performed.

Mr. Jackson moved that this statement has been **substantiated and is a truthful statement**. Dr. Colucci seconded the motion and it passed unanimously.

Charge No. 3 By recording unlawful liens on the real property of Clark County Residents, Respondent violated NRS 634.018(5) unprofessional conduct, including the acts precluded by NAC 634.430(1)(f)(3)(I) and (II) regarding the submission to patients of bills which fail to disclose to a patient that a bill has already been paid, in full or in part, by one or more carriers of insurance.

Dr. Potts moved that this statement is **true**. Dr. Colucci seconded and the motion passed unanimously.

Charge No. 4 By recording unlawful liens on the real property of residents of Clark County, Respondent violated NRS 634.018(5) unprofessional conduct, including the acts precluded by NAC 634.430(1)(m) regarding engaging in fraud misrepresentation or deception in business affairs that related to the practice of chiropractic.

Mr. Jackson moved that this is a **true** statement. Dr. Colucci seconded and the motion passed unanimously.

Charge No. 5 By failing to keep and maintain patient records pertaining to the unlawful liens, the Respondent has violated NRS 634.018(5) unprofessional conduct, as required by Nac 634.435.

Mr. Jackson moved that this statement is **substantiated** by the evidence and is a **true** statement. Dr. Potts seconded and the motion passed unanimously.

Charge No. 6 Respondent has engaged in conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public which constitutes unprofessional conduct precluded by NRS 634.018(10).

Dr. Potts moved that this is a **true** statement. Mr. Jackson seconded the motion and it passed unanimously.

Following discussion, Mr. Jackson moved to revoke Dr. Buanno's license for 15 years, invoke a \$10,000 fine and require that he reimburse the Board for its costs in this matter. Dr. Colucci seconded the motion. After discussion, Mr. Jackson withdrew his motion and Dr. Colucci withdrew her second. Dr. Colucci made a motion that Dr. Buanno's license be revoked for five years, that he be required to pay a \$10,000 fine and reimburse the Board for its costs in this matter within 90 days, that he take and pass the National Board Ethics Test and the CPBN Law Test, and that he attend the required continuing education hours during the five-year period that his license is revoked. Dr. Potts seconded. The motion passed with Drs. Colucci, Potts, Yamane and Youngblood and Mr. McCann in favor and Mr. Jackson recused. Ms. Foley will draft the Board's Order.

Agenda Item 22 Discussion/possible action regarding approval of proposed Procedure: Handling of Complaints Filed Against Board Members

Dr. Potts moved for approval of the procedure as drafted. Mr. Jackson seconded and the motion passed unanimously.

Agenda Item 24 Discussion/possible action regarding inter-scholastic issues.

Following discussion, Dr. Yamane moved that a packet be prepared and submitted to the NIAA. Dr. Youngblood seconded the motion and it passed unanimously.

Agenda Item 4 APPROVAL OF PREVIOUS MINUTES: April 4, 2008 Board Meeting.

Dr. Potts moved for approval of the April 4, 2008 minutes. Dr. Colucci seconded and the motion passed unanimously.

Agenda Item 5 DISCUSSION/APPROVAL OF BOARD FINANCIAL REPORTS:

- A. Bank balance as of May 15, 2008**
- B. Income/Expense Report: July 1, 2007 through May 15, 2008**
- C. Accounts Receivable as of May 15, 2008**
- D. Accounts Payable as of May 15, 2008**
- E. Extraordinary Items/Items of Concern**

Cindy Wade expressed her concerns that the Board's funds will be very low by the time the renewals start coming in about November 1. She described the actions being taken by the staff to cut expenses. The Board members will consider deferring their salaries until November/December and postponing any meetings after the July 11, 2008 meeting until fall. Mr. Jackson moved to approve the financial reports. Dr. Colucci seconded and the motion passed unanimously.

Agenda Item 6 DISCUSSION/APPROVAL OF Executive Director reports:

- A Status of Complaints Received**
- B. Status of Current Probations**
- C. Legal/Investigatory:**
 - 1. Costs assessed since last report**
 - 2. Costs assessed year-to-date**
 - 3. Costs collected since last report**
 - 4. Costs collected year-to-date**

Dr. Potts moved for approval of the Executive Director reports. Dr. Colucci seconded and the motion passed unanimously.

NON-ACTION ITEMS:

Agenda Item 25 Review IBM responsibilities under the Complaint, Investigation, Agreed Settlement/Disciplinary Action Process Procedure with respect to obtaining settlements

Dr. Yamane stressed the importance of investigating Board members' compliance with the procedure. The IBM can save a lot of money by performing the initial investigation and negotiating a settlement with the licensee prior to turning a complaint over to an investigator and/or the attorney. If an Agreed Settlement is successfully attained, it must be presented to the Board by the prosecuting attorney.

Agenda Item 26 FCLB/NBCE Annual Meeting report.

Drs. Yamane, Youngblood and Colucci reported on the major topics of the FCLB meeting that they attended in Atlanta in May.

Agenda Item 27 Reports:

- A. Attorney**

B. Investigator

C. Committees

There were no reports.

Agenda Item 28 Correspondence Report.

The Board requested that the matter of Chiro-Income Solutions' non-compliance with the referral bureau regulations be included as an action item on the June 14, 2008 agenda.

Agenda Item 29 Board Member Comments.

Dr. Yamane expressed his appreciation to the Board members for their dedication. He commented that the Board is functioning well and making good progress.

Agenda Item 30 Public Comment.

There was no public comment.

ACTION ITEM:

Agenda Item 31 Adjournment.

Dr. Youngblood moved for adjournment. Dr. Yamane seconded and the motion passed unanimously.

Approved: June 14, 2008

Stephanie Youngblood DC, Secretary