

MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board was held on Friday, September 11, 2009 in Room 4500, and on Saturday, September 12, 2009 in Room 4401, of the Grant Sawyer State Office Building at 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
David G. Rovetti, DC, Secretary
Lawrence Davis, DC, Member
Paul Jackson, Consumer Member
Jack Nolle, DC, Member

Consumer Member Richard P. McCann arrived at 11:00 AM on Friday, September 11. Also present were Elizabeth Foley, Esq., Deputy Attorney General Daniel Ebihara and CPBN Executive Director Cindy Wade.

Dr. Yamane determined that a quorum was present and called the meeting to order at 9:00 AM.

Dr. Margaret Colucci led those present in the Pledge of Allegiance.

Agenda Item 1 APPROVAL OF AGENDA

Dr. Colucci moved for approval of the agenda. Mr. Jackson seconded and the motion passed unanimously.

Agenda Item 2 PUBLIC INTEREST COMMENTS (No Action)

There were no public interest comments.

Agenda Item 3 APPROVAL OF PREVIOUS MINUTES

Dr. Colucci moved for approval of the May 29-30, 2009 minutes. Mr. Jackson seconded the motion and it passed unanimously.

Agenda Item 4 DISCUSSION/APPROVAL OF BOARD FINANCIAL REPORTS:

- A. Bank balance as of September 1, 2009**
- B. Income/Expense Report: July 1, 2009 through September 1, 2009**
- C. Accounts Receivable as of September 1, 2009**

Agenda Item 4 DISCUSSION/APPROVAL OF BOARD FINANCIAL REPORTS (cont'd):

- D. Accounts Payable as of September 1, 2009**
- E. Final Income/Expense Report for fiscal year 2008/09**
- F. Extraordinary Items/Items of Concern**

Cindy Wade reviewed the highlights of the financial reports and answered questions from the Board. CPA Mary Sanada reported by telephone that the recent audit has been completed with a favorable result.

Agenda items 6 through 12 were addressed out of order for the convenience of those present.

Agenda Item 9 Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of Matthew Simpson, DC, License No. B368, Complaint No. 08-12S.

Dr. Simpson and his attorney, Rich Tanasi, were present. Ms. Foley presented the terms and conditions of the proposed Agreed Settlement. Investigating Board Member Dr. Margaret Colucci stated that she concurred with the agreement as proposed. Mr. Jackson moved to accept the proposed Agreed Settlement. Dr. Nolle seconded the motion which passed with all in favor except Dr. Colucci who recused and Dr. Rovetti who abstained because of his business relationship with the respondent.

Agenda Item 6 Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of Reginald K. Profant, DC, License No. B74, Complaint No. 09-14S.

Dr. Profant was present. His attorney has withdrawn from the case and he was not represented by counsel. Ms. Foley described the circumstances of this matter. Dr. Profant responded to questions from the Board. After a recess during which Ms. Foley and Dr. Profant conferred, Dr. Profant agreed to a settlement of this matter in which he agreed that he mistakenly thought that it was okay for him to practice on family and friends while his license was inactive, and to pay a \$1,000 fine and reimburse the Board's costs through September 11, 2009 in 12 monthly installments. He will take and pass the CPBN Law test and the National Board Ethics and Boundaries test within 6 months. Dr. Profant's application for reinstatement to active status of his license will be approved and he may recommence practicing as soon as he has attained passing grades in both tests. Dr. Davis moved to approve the settlement as proposed. Mr. Jackson seconded. The motion passed with all in favor except Dr. Colucci who recused as the Investigating Board Member.

Agenda Item 7 Administrative hearing/granting of continuance/approval of proposed settlement agreement in the matter of Wade Siegel, DC, License No. B782, Complaint No. 09-07S.

Ms. Foley presented a letter from Dr. Siegel's attorney, Tom Pitaro, requesting a continuance of this matter. Dr. Rovetti moved to grant the continuance. Dr. Davis seconded and the motion passed unanimously.

The next meeting will be held in Las Vegas on Friday and Saturday, November 6 and 7, 2009.

Agenda Item 10 Discussion/possible action for approval of Application for Activation of Reginald K. Profant, DC, License No. B74.

Dr. Profant's application will be approved contingent upon his passing the CPBN Law test and the National Board Ethics and Boundaries test as established under Agenda Item 6.

Agenda Item 11 Discussion/possible action for determination of resolution of noncompliance with terms and conditions of the June 14, 2008 Agreed Settlement of Disciplinary Action and Order by Curtis Potts, DC, License No. B668.

Mr. Jackson moved to allow Dr. Potts an additional six months in which he may take the CPBN Law test as many times as necessary to attain a passing grade. Dr. Colucci seconded and the motion passed unanimously.

Agenda Item 12 Discussion/possible action for approval of request from Lisa Getas, DC, License No. B334 for modification of the requirements of the May 30, 2009 Findings of Fact, Conclusions of Law and Administrative Decision.

Dr. Davis moved that Dr. Getas be required to adhere to the terms of the Board's May 30, 2009 decision with respect to the National Board Ethics and Boundaries test and that she may perform her community service through her church. Mr. Jackson seconded. The motion passed with all in favor except Dr. Rovetti who recused.

Dr. Yamane turned the Chair over to Vice President Dr. Colucci for the following hearing.

Agenda Item 8 Administrative hearing/approval of proposed settlement agreement in the matter of Edward F. Johnson, DC, License No. B156, Complaint No. 09-06S.

Dr. Johnson and his attorney, Valner Johnson, were present for the hearing. Elizabeth Foley presented her opening statement in which she addressed Dr. Johnson's failure to comply with the Board's subpoenas. Mr. Johnson made his opening statement in which he asserted that the Board has no statutory authority to enforce subpoenas. Ms. Foley cited NRS 634.043(2)(c), NAC 430(1)(h) and a previous case that established precedent. **Dr. Edward Johnson** and **Gina Crown** were sworn in as witnesses and provided testimony. The hearing recessed at 12:50 PM with instructions to the respective attorneys to reach a settlement to be presented when the hearing resumed at 2:00 PM.

The hearing reopened at 2:10 PM with all concerned parties present. Ms. Foley stated that a settlement of this matter was reached and includes that the Board's investigators will be allowed unfettered access to all records in Dr. Johnson's practice from 9:00 AM to 6:00 PM on September 23 and 24, 2009 or another complaint will be filed with ten days' notice and the matter will be brought back to the Board on November 6, 2009. In addition, Dr. Johnson will pay a \$2,000 fine for violation of NRS 634.043(2)(c) and \$2,000 fine for violation of NAC 634.430(1)(h), a total fine of \$4,000, and he will reimburse the Board's costs in an amount not to exceed \$5,000, both to be paid within 30 days of the Board's approval of the Agreed Settlement. Dr. Rovetti moved for approval of the Agreed Settlement as proposed. Mr. Jackson seconded and the motion passed with all in favor except Dr. Yamane, who recused as the Investigating Board Member.

Dr. Yamane resumed the Chair.

Agenda Item 5 DISCUSSION/APPROVAL OF EXECUTIVE DIRECTOR REPORTS:

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

Agenda Item 5 DISCUSSION/APPROVAL OF EXECUTIVE DIRECTOR REPORTS (cont'd):

4. Costs collected fiscal year-to-date

Cindy Wade provided updates that have occurred since the reports were published. No action was taken.

Agenda Item 13 Granting of licenses to Doctors of Chiropractic who passed the August 12, 2009 examination.

Dr. Colucci moved that licenses be granted to the DC applicants who passed the August 12, 2009 law test. Dr. Davis seconded the motion and it passed unanimously.

Agenda Item 14 Granting of certificates to applicants who passed the chiropractor's assistant examinations on August 28, 2009

Dr. Colucci moved that certificates be granted to the Chiropractor's Assistant applicants who passed the August 28, 2009 examinations. Dr. Nolle seconded the motion and it passed unanimously.

Agenda Item 15 Discussion/possible action to approve proposed form letter for handling of patient records violations.

The proposed form letter was reviewed and several revisions were suggested. Rick McCann moved to approve use of the form letter with the suggested changes. Dr. Nolle seconded and the motion passed unanimously.

Agenda Item 16 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 08-31S

The complainant alleges that the Doctor hurt her when he treated her in 2007/08 and claims that her purpose in filing the complaint was to assure that what happened to her doesn't happen to anyone else. The Board found no violation of NRS 634 or NAC 634. Dr. Rovetti moved to dismiss the complaint. Mr. Jackson seconded and the motion passed with all in favor except Dr. Colucci who recused as the Investigating Board Member.

B. Complaint 08-37S

Dr. Colucci explained that the billing issues in this complaint appear to be the result of a dispute between two licensees over possession of the complainant's patient records. It was agreed that this complaint needs to be further investigated.

C. Complaint 09-03S & Complaint 09-21S

Complaint 09-03S was filed because the doctor's office did not include the first visit reports in response to two different requests for a client's records. Complaint 09-21S was filed against the same licensee because the complainant was unable to obtain copies of her records. All of the records were released in response to the Board's certified letters. Mr. McCann made a motion to dismiss the complaints with a letter of instruction to the licensee with respect to timely release of patient records. Dr. Nolle seconded the motion and it passed with all in favor except Dr. Colucci who recused as the Investigating Board Member.

Agenda Item 16 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 (cont'd):

D. Complaint 09-09S

The complainant alleged that she was injured by the doctor who has no history of prior malpractice issues. There was no violation of the statute or regulations and Mr. Jackson moved to dismiss the complaint. Dr. Yamane seconded. The motion passed with all in favor except Dr. Colucci who recused as the Investigating Board Member.

E. Complaint 09-10S

This complaint was filed because the patient's bill was referred for collection. The DC has refuted the allegations and the complaint appears to be a fee dispute. However, in his review of the patient records Dr. Rovetti determined that they are substandard. Rick McCann moved to dismiss the complaint with a letter of instruction sent to the licensee by means of the form letter that was approved under Agenda Item 15. Dr. Colucci seconded and the motion passed with all in favor except Dr. Rovetti who recused as Investigating Board Member.

F. Complaint 09-13N

The complainant alleged illegible patient records, insurance fraud and malpractice. There is no evidence to substantiate insurance fraud or malpractice, but the patient's case couldn't be settled because the insurance adjuster was unable to decipher the DC's notes which Dr. Rovetti has determined to be undecipherable. The DC has revised the subject notes and they are now legible. He has developed a key and from now on will provide readable notes at no charge. He has also offered to write off part of the complainant's bill. Dr. Colucci moved for dismissal of the complaint with a letter of instruction to the licensee by means of the form letter that was approved under Agenda Item 15. Dr. Nolle seconded and the motion passed with all in favor except Dr. Rovetti who recused as Investigating Board Member.

G. Complaint 09-17S

Dr. Rovetti briefly described several serious charges in this complaint and recommended that it be further investigated. There was no action taken.

H. Complaint 09-19S

The allegation in this complaint that the patient was misled regarding her insurance coverage appears to be substantiated. Mr. Jackson moved that a Complaint and Notice of Hearing be filed for a determination at the next meeting. Mr. McCann seconded. The motion passed with Drs. Davis, Nolle and Yamane and Paul Jackson and Rick McCann in favor, Dr. Colucci not in favor, and Dr. Rovetti recused as the Investigating Board Member.

I. Complaint 09-05S

Dr. Davis stated that this complaint addresses a standard of care issue, possible over-utilization, and poor record keeping. Dr. Colucci moved that this case be further investigated. Paul Jackson seconded and the motion passed with all in favor except Dr. Davis who recused as Investigating Board Member.

Agenda Item 16 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 (cont'd):

J. Complaint 09-11N

This case involves standards of care concerns with respect to failure to perform a competent exam on an accident victim prior to initiating care, and failure to provide itemized bills to the patient. Mr. Jackson moved for further investigation of this complaint. Dr. Colucci seconded. The motion passed with Drs. Colucci, Nolle and Yamane and Mr. Jackson and Mr. McCann in favor, Dr. Rovetti opposed, and Dr. Davis recused as the Investigating Board Member.

K. Complaint 09-18S

The complainant alleged that she was injured by the doctor. There was no violation of the statute or regulations and Dr. Rovetti moved to dismiss the complaint. Mr. McCann seconded. The motion passed with all in favor except Dr. Davis who recused as the Investigating Board Member.

Agenda Item 21 Discussion/possible action regarding recent negative newspaper article against CPBN Consumer Member Richard McCann.

There was much discussion regarding this matter but no action was taken. If Mr. McCann decides to request to be reappointed, Dr. Yamane will write a Board letter in support of his reappointment.

Agenda Item 22 Discussion/possible action for determination of disciplinary action(s) and disciplinary protocol(s) against out-of-state, non-Nevada-licensed DC's performing utilization reviews on Nevada Residents.

The intent of NRS 634.208(1) was discussed. Dr. Rovetti will collect more information and this matter will be addressed at a future meeting.

Agenda Item 23 Discussion/possible action for approval of Drs. Colucci and Davis to attend FCLB District IV Regional Meeting in South Dakota October 1-4, 2009.

Dr. Rovetti moved to approve Drs. Colucci and Davis to attend the next FCLB District IV meeting. Dr. Yamane seconded and the motion passed unanimously.

Agenda Item 24 Discussion/possible action for approval of presentation of membership packets by the NCA at DC and CA exams.

Following discussion, Dr. Nolle moved for establishment of the following parameters: The NCA representative may make a presentation at the CA exams before the testing begins in the same manner in which the presentation was made in Las Vegas in August. For the DC exams, the NCA representative should not enter the exam room until the testing process is complete and the proctor opens the door. The examinees will be advised that they are free to leave if they do not wish to remain for the NCA's presentation. The persons in charge of each CA and DC exam will make a disclaimer statement prior to the NCA's presentation. The NCA's hand-out material is to be submitted for preview by the Board for its approval of the content, consistency and the manner in which it is to be presented.

The meeting recessed at 5:15 PM and reconvened at 9:05 AM on Saturday, September 12, 2009 in room 4401 at the same location. All Board members were present at the roll call.

Agenda Item 17 Discussion/possible action for approval of proposed letter requesting AGO.

Following discussion, during which Drs. Stephanie Youngblood and James Overland, Sr., offered public comment, Dr. Davis moved to table this matter until the November 6-7, 2009 meeting and that more information should be gathered in the meantime. Dr. Colucci seconded the motion. Mr. Jackson stated that this is a public safety issue and must be addressed by the CPBN. The motion passed unanimously.

Agenda Item 19 Discussion/possible action regarding continuing education issues:**A. Approval of seminar topics for NCA seminars.**

Dr. Overland, Sr., has requested a list of the most common complaints that the CPBN deals with for publication in the NCA newsletter. A list will be generated by Cindy Wade and e-mailed to Dr. Nolle for forwarding to the NCA.

B. Establishment of a limit to the number of on-line CE hours that may be allowed for license renewal credit as requested by NCA

The Board agreed to address a possible change to the NAC to limit the number of on-line hours for license renewal credit to 12.

C. Approval of NCA administration of on-line seminars for license renewal credit

It was agreed that Board members will send recommended topics for on-line seminars to Dr. Nolle for forwarding to Dr. Overland. There was discussion that insurance billing should be an approved topic for credit for license renewal. This will be included as another possible change to the NAC when the Board addresses rule-making again at the next meeting.

Agenda Item 18 Discussion/possible action regarding legislative bill issues:**A. Final report on 2009 Legislature from Board's Lobbyist****B. Proposed procedures required by new bills**

Paula Berkley reviewed the bills that were passed in the Legislature and require procedural changes. Mr. Jackson moved that the proposed procedures be tabled and placed on the next agenda for adoption as policies. Dr. Rovetti seconded and the motion passed unanimously. Ms. Berkley presented a summary of the highlights of the 2009 Legislature.

C. Review of miscellaneous bills that affect the Board and/or chiropractic

SB8, SB362 and AB461 were reviewed. The new elder abuse reporting requirement will be addressed in the next CPBN Newsletter and would also be a good seminar topic.

There was discussion with Dr. Overland about proper protocols when contacting the Board about questions and issues that require Board decisions. Agenda items must be submitted through Cindy Wade for submittal to the Board President and/or Secretary for their approval prior to publication of the agenda.

Agenda Item 20 Discussion/possible action for preliminary review of regulations for possible revision.

Changes to the following regulations were recommended by Paula Berkley and Cindy Wade: Regarding **NAC 634.305 Examination for certification as chiropractor's assistant**, Dr. Robin Huhn made public comment that she is in support of the proposed changes. Paul Jackson moved to address the proposed changes to NAC 634.305 at the Rule-making Workshop. Dr. Yamane seconded and the motion passed unanimously; regarding **NAC 634.385 Continuing education of licensees**, Dr. Rovetti moved to address the proposed changes at the Rule-making Workshop. Mr. Jackson seconded the motion and it passed unanimously.

Agenda Item 20 Discussion/possible action for preliminary review of regulations for possible revision (cont'd)

With respect to a request from Dr. James Overland, Sr., to consider adding a provision for reciprocity for licensees who have been licensed in other states for over 20 years, Dr. Rovetti moved to not go forward with this issue. Mr. Jackson seconded and the motion passed with all in favor.

Paula and Cindy presented several possible regulation changes, of which the following were approved for further research and consideration at the next meeting:

- Replace current “live” DC testing with open-book test to be offered by mail or on-line
- Require all licensees to re-take Law test periodically (assumes on-line testing)
- Revise NAC 634.385(2)(f) to require a 20-30% percent range of random audits in lieu of the current requirement of original CE attendance paperwork
- Add new requirements to NAC 634.367 Temporary License: Authorized acts: (A) Require proof of malpractice insurance coverage; (B) Determine ownership of records of patients treated by Temporary licensees; (C) Provide evidence of chiropractic college degree
- Add to NAC 634.435 Health Care Records to include that patient records must be generated and available within 72 hours

Mr. Jackson made a motion to move forward with the above recommendations. Dr. Rovetti seconded and the motion passed unanimously. The Rule-making Workshop was tentatively set for March 12-13, 2010 and the Hearing to Adopt for June 11-12, 2010.

Agenda Item 25 Discussion/possible action for clarification of laws regarding cash discounts, co-payment and deductible waivers, pre-pay plans, free services, etc..

The licensee who made this request will be referred to his attorney.

Agenda Item 26 Discussion/possible action for approval of longevity pay for Executive Director.

Dr. Rovetti explained how this matter came up and moved that longevity pay be approved for Cindy Wade effective July, 2009. Dr Colucci seconded the motion. After discussion, Dr. Rovetti withdrew his motion and Dr. Colucci withdrew her second. Dr. Rovetti moved that this matter be tabled until the next meeting and that Dan Ebihara was requested to look into the eligibility provisions in the meantime. Paul Jackson seconded and the motion passed with all in favor.

Agenda Item 27 Board retreat:

A. Mission statement

B. Perception of Board by public/profession/state government

Dr. Rovetti conducted a discussion of the above topics. No action was taken.

Agenda Item 28 (NON-ACTION) Reports:

A. Attorney

B. Investigator

C. Other committees

There were no comments regarding the reports.

Agenda Item 29 (NON-ACTION) Correspondence Report.

There was no discussion regarding the Correspondence Report.

Agenda Item 30 (NON-ACTION) Board Member Comments.

There was no discussion regarding Board Member Comments.

Agenda Item 31 (NON-ACTION) Public Comment.

There was no public comment.

Agenda Item 32 Adjournment.

Dr. Yamane moved that the meeting be adjourned. Mr. Jackson seconded the motion and it passed unanimously.

Approved: November 6, 2009

David G. Rovetti, DC, Secretary