



**NORTH DAKOTA
STATE BOARD OF CHIROPRACTIC EXAMINERS**

**Minutes of the Board Meeting of the North Dakota Board of Chiropractic
Examiners held May 21, 2020, at the Radisson Hotel, Bismarck, ND &
Teleconference**

Call to Order: Dr. Dion Ficek called the meeting to order at 8:30 AM CST.

Roll Call: Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Pederson, Dr. Yohe, Ms. Mellum, and Executive Director Lisa Blanchard were present in meeting location. Assistant Attorney General Ms. Allyson Hicks was present via teleconference. Absent: Ms. Botz

There were public attendees present on the teleconference.

Dr. Ficek announced the Governor's appointment of the consumer position, Ms. Kalyn Botz. Due to the 3-day notice of the meeting and a conflict in her schedule, she was not able to attend the meeting.

Pledge of Allegiance.

Reading of the Mission Statement: Dr. Dion Ficek

Additions to the Agenda: A motion was made by Dr. Froehling, second by Dr. Pederson, to add the following topics to the proposed agenda: Department of Commerce Annual Survey; Freedom Chiropractic/Dr. Schmitz – Arguments from Counsel for Motion to Stay; Patient Record Retention Schedule for Chiropractic Clinics; and NBCE Part IV Testing Participation. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Approvals:

A motion was made by Dr. Remmick, second by Ms. Mellum, to approve the minutes of the January 17, 2020 Board Meeting, February 26, 2020 Special Meeting, April 29, 2020 Special Meeting, and May 14, 2020 Special Meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Froehling, second by Dr. Yohe, to accept and approve the Executive Director 2020 1st Quarter Report. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Yohe, second by Dr. Pederson, to approve the 2020 1st Quarter Financial Reports. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Froehling, second by Dr. Pederson, to approve the 2020 1st Quarter checks written. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Licenses:

A motion was made by Dr. Pederson, second by Dr. Yohe, to ratify the presented list of chiropractic licenses issued, reactivated, or renewed. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Froehling, second by Dr. Pederson to ratify the presented list of certified chiropractic clinical assistant certifications issued and renewed. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Cases:

Dr. Wiseth. Held over item. No action taken.

Dr. Isaac. Pending. No action taken.

Dr. Millage. There have been no responses to the settlement offers issued by the Board. Ms. Hicks provided the Board with possible options available to them. A motion was made by Dr. Remmick, second by Dr. Pederson, to pursue litigation and filing a formal complaint utilizing the Civil Litigation department of the ND Attorney General's office. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Mr. Michael Geiermann and Special Assistant Attorney General Mr. Nathan Svihovec joined the meeting via teleconference.

Freedom Chiropractic/Dr. Schmitz - Arguments from Counsel for Motion to Stay. Dr. Ficek granted Mr. Geiermann and Mr. Svihovec 15-minutes each to present their arguments for a motion to the stay order. Both attorneys briefly presented their arguments for the Board to consider.

Approval of Draft Order for Summary Judgement – Freedom Chiropractic/Dr. Schmitz. A motion was made by Dr. Froehling, second by Dr. Pederson, to move to Executive Session for attorney work product, legal authority N.D.C.C. 44-04-19.1(1) and attorney consultation, legal authority N.D.C.C. 44-04-19.1(2). A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed. The Executive Session began at 9:15 AM CST. The roll was taken with Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Pederson, Dr. Yohe, Ms. Mellum, Ms. Hicks (via phone), and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. A motion was made by Dr. Remmick, second by Dr. Yohe, to adjourn the executive session and return to open meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Yohe voting in the affirmative. Mellum abstaining. Botz absent/not voting. (5-0-1-1) Motion passed. The meeting/teleconference was re-opened at 9:44 AM CST. A motion was made by Dr. Froehling, second by Dr. Pederson, to adopt the Order for Summary Judgement as drafted. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Yohe voting in the affirmative. Mellum abstaining. Botz

absent/not voting. (5-0-1-1) Motion passed. A motion was made by Dr. Remmick, second by Dr. Pederson, to deny the motion for reconsideration to stay the order. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Yohe voting in the affirmative. Mellum abstaining. Botz absent/not voting. (5-0-1-1) Motion passed. Dr. Ficek will need to sign the Order and it will be served upon Mr. Geiermann.

Dr. Hengel Borud. The second monitoring report from KMC University has been received. The Board members reviewed the report and were satisfied with the progress made. KMC requested the Board to consider decreasing the number of charts reviewed for the remaining audits from 10 to 3. A motion was made by Dr. Froehling, second by Dr. Yohe, to accept KMC University's request to decrease the number of reviewed charts to 3 for the remaining reviews. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Dr. Pozarnsky. All terms of the conditional dismissal have been met. A motion was made by Dr. Yohe, second by Dr. Pederson, to close the case. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Dr. Dietz. The legal authority for closing this portion of the meeting is N.D.C.C. 44-04-19.2(1), closed or confidential records; and N.D.C.C. 43-06-14.1(7), patient records acquired by the Board are confidential and closed to the public. The Executive Session began at 9:57 AM CST. The roll was taken with Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Pederson, Dr. Yohe, Ms. Mellum, Ms. Hicks (via phone), and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. A motion was made by Dr. Yohe, second by Dr. Pederson, to adjourn the executive session and return to open meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed. The meeting/teleconference was re-opened at 10:02 AM CST. A motion was made by Dr. Froehling, second by Dr. Yohe, to dismiss the complaint as no violation of law was found. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

New Complaint: A motion was made by Dr. Remmick, second by Dr. Pederson, to recuse Dr. Yohe from the next agenda topic. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Mellum voting in the affirmative. Yohe recused. Botz absent/not voting. (5-0-1-1) Motion passed.

Dr. Yohe. A motion was made by Dr. Froehling, second by Ms. Mellum, to move to Executive Session for N.D.C.C.44-04-19.2(1), closed or confidential records; and N.D.C.C. 43-06-15(2), reports are not public records. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Mellum voting in the affirmative. Yohe recused. Botz absent/not voting. (5-0-1-1) Motion passed. The Executive Session began at 10:06 AM CST. The roll was taken with Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Pederson, Ms. Mellum, Ms. Hicks (via phone), and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. A motion was made by Dr. Pederson, second by Dr. Froehling, to adjourn the executive session and return to open meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Mellum voting in the affirmative. Yohe recused. Botz absent/not voting. (5-0-1-1) Motion passed. The meeting/teleconference was re-opened at 10:15 AM CST. A motion was made by Dr. Remmick, second by Dr. Pederson, to proceed as discussed in executive session. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, and Mellum voting in the affirmative. Yohe recused. Botz absent/not voting. (5-0-1-1) Motion passed.

Board Business:

Unlicensed Practice Report Follow-up. The Executive Director provided the information to the Cass County State's Attorney Office. There was some confusion on their part and Ms. Hicks spoke with Mr. Burdick regarding the information. It was her understanding that they would be following up with the Executive Director. Ms. Hicks will follow-up on. Update only.

Canadian Applicant Questions. There have been 2 separate requests made regarding the equivalency of the Canadian Chiropractic Examining Boards (CCEB) and the NBCE. One application has been submitted but is incomplete at this time and no final determination will be made until the application materials are received. A motion was made by Ms. Mellum, second by Dr. Remmick, to accept the successful completion of all 3-parts of the CCEB as equivalent to the NBCE examinations. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Record Retention – Disciplinary & Complaint Records (updates). At the January board meeting, it was voted to separate these records into 2 categories vs. one. The Executive Director learned that the initial disposal of records would be required to be completed by June 30, 2020 if the application were to be submitted and approved by that date. Due to the postponement of the March 25, 2020 meeting, Dr. Ficek granted the Executive Director's request to postpone the submission of the application until after July 1, 2020 allowing an entire year to review, organize, and dispose (if applicable) the records. Update only.

COVID-19 Inquiries:

Continuing Education. There have been multiple asks regarding the continuing education requirement due on September 1, 2020. The Board does not have specific waiver authority to waive the administrative rules, therefore, they do not have the legal authority to do so. There are no restrictions on distance/online education.

Dry Needling Face-to-Face requirement. As this is an in-person requirement, completing this certification has been stalled during the pandemic. Additionally, the providers of these courses have not held seminars in North Dakota, therefore travel is required. The Board will consider adjustments for the Administrative Rules. No action at this time.

Dry Needling Temporary Limited Scope Extension Request. A license holder requested an extension to their Temporary Limited Scope authorization. They had the expiration date incorrect when making the request so they may not require an extension. Upon review of the Administrative Rules, the Board does not have specific waiver authority, therefore, they do not have the legal authority to grant extensions to the duration of the temporary limited scope authorization. The Executive Director will notify the license holder.

T10 Internship-Clinical Requirement Issues. A student sent a request for the Board to waive clinical requirements due to COVID-19. The Chiropractic College contacted the Executive Director and apologized for the student's request as it should not have been sent to the Board. The college is working on solutions to the issues. Information only.

CE Approval Request (M. Eslinger). Dr. Eslinger submitted information regarding a completed CE course asking for Board approval. The instructor provided the required information. A motion was made by Dr. Yohe, second by Dr. Froehling, to approve the 12-hours requested, upon verification from the instructor. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Telemedicine Services Inquiry. The Executive Director received an email requesting a response. Ms. Hicks advised that the Board cannot provide legal advice and to respond to the specific questions asked, would be doing so. The Board instructed the Executive Director to provide the generic cannot provide legal advice or advisory opinion response. Instruction only.

PACE Amendments. The FCLB provided information regarding proposed amendments to the PACE guidelines. The public comment period was to occur at the annual meeting. As that meeting was cancelled, they held an online forum. We did not participate. Information only.

Website. The Executive Director updated the Board on the updates made to the website. She shared on the acupuncture certified/dry needling certified designation being added to the license renewal certificates. She asked if the Board would like the licensees to have the ability to Print the License Renewal Certificates directly from the website. A motion was made by Dr. Pederson, second by Ms. Mellum, to authorize the Executive Director to have Albertson's add the Print Licenses feature to the website. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Board Office Main Computer. As requested, the Executive Director prepared a proposal for updating the main office computer. She included a proposal for a mobile printer as well. A motion was made by Dr. Froehling, second by Dr. Pederson, to authorize the purchase of the proposed computer and mobile printer. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

CE Broker Information. The Executive Director provided further information regarding the service. She requested the Board's feedback/interest on proceeding with a personalized Demo with the company. The Board instructed to proceed with a Demo and further information for the next meeting. Information only.

Policy Manual. A motion was made by Dr. Froehling, second by Dr. Remmick, to approve the additions completed after the January 2020 board meeting (reserve account dollar amounts; peer review deposition reimbursement amounts; removal of travel-to-treat section). A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

FCLB District Meeting. As the annual meeting was cancelled, the Executive Director asked if there was any interest from other board members wishing to attend the District meeting. All had prior conflicts. Yohe and Blanchard will attend as previously planned. Information only.

NBCE Part IV Testing. The Board has discussed numerous times the availability of local chiropractors assisting with the administration of Part IV testing vs. bringing in chiropractors from long distances. This is especially illuminated now with the COVID-19 situation and the cancelling and rescheduling of the

examinations. The Board instructed the Executive Director, working with Dr. Ficek, to write a letter of concern sharing the thoughts of this Board to the NBCE. Instruction only.

Patient Record Retention – Chiropractic Clinics. Dr. Remmick has received numerous questions regarding the patient record retention duration and feels it should be highlighted on the website. The Administrative Rules list the current retention duration and the Board is proposing to shorten that from 10 to 7 years. After the rules are official, we will add this to the website in a more visible reference.

Department of Commerce Annual Survey. This is a website-based survey (no hard copy), so the Executive Director utilized copy/paste in order to draft the survey responses. A draft was presented to the Board for review and approval. A motion was made by Dr. Pederson, second by Dr. Yohe, to approve the responses as presented and modified. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed. The Executive Director will complete the online survey and submit prior to the deadline.

2020 Calendar Review. No changes made. Next scheduled meeting will be September 18, 2020.

The Board recessed from 11:45 AM – 12:31 PM for lunch.

Administrative Rules. The Board reviewed the formatted draft of the administrative rules, the drafted Notice, Abbreviated Notice, and Fiscal Note. A motion was made by Dr. Remmick, second by Dr. Pederson, to approve the Rules as updated. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed. A motion was made by Dr. Froehling, second by Ms. Mellum, to approve the Notice, Abbreviated Notice, and Fiscal Note as drafted and updated. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

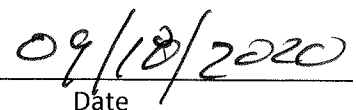
Century Code Review for 2021 Legislative Session. Due to the loss of computer files that occurred immediately after the January 2020 board meeting for Ms. Hicks, the Board did not have an updated draft to review for this meeting. The Board reviewed and discussed all of 43-06 for possible changes and updates. The Executive Director was instructed to complete research on Telehealth and to contact the NDHSAA regarding sports physicals. No actions taken.

Per Diem: A motion was made by Dr. Froehling, second by Dr. Pederson, to pay 1-day Per Diem and appropriate expenses for this meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Pederson, Yohe, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Adjourn: A motion was made by Dr. Pederson, second by Dr. Yohe, to adjourn the meeting. Motion passed. The meeting ended at 2:34 PM CST.

These minutes were prepared by Lisa Blanchard, Executive Director, for signature by Dr. Eric Froehling, Secretary.


Eric Froehling, D.C., Secretary


Date