



**NORTH DAKOTA
STATE BOARD OF CHIROPRACTIC EXAMINERS**

**Minutes of the Board Meeting of the North Dakota Board of Chiropractic
Examiners held September 18, 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. Yohe, Dr. Ten Broek, 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.

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. Remmick, to add the following topics to the proposed agenda: Department of Health/CBD; closing of board member email accounts; 2 emails from Dr. Schmitz. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Approvals:

A motion was made by Dr. Yohe, second by Dr. Froehling, to approve the minutes of the May 21, 2020 Board Meeting, June 8, 2020 Special Meeting, and September 2, 2020 Special Meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Yohe, second by Ms. Mellum, to accept and approve the Executive Director 2020 2nd Quarter Report. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, 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. Ten Broek, to approve the 2020 2nd Quarter Financial Reports. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, 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 2020 2nd Quarter checks written. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Licenses:

A motion was made by Dr. Remmick, second by Dr. Yohe, to ratify the chiropractic licenses issued and renewed and certified chiropractic clinical assistant certifications issued between May 21, 2020 – September 18, 2020. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Reports:

A motion was made by Dr. Remmick, second by Dr. Froehling, to accept Dr. Ficek's NBCE Part IV testing report and Dr. Yohe's NBCE Part III and Part IV test writing reports. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Cases:

Dr. Wiseth. The Executive Director updated the Board on the phone call received from Dr. Wiseth and the status of his current early release and status until June 2021. The Executive Director advised Dr. Wiseth that he must communicate his requests to the Board in writing. Information only. No action taken.

Dr. Isaak. The Executive Director shared that the hearing is scheduled to start November 30, 2020. Information only. No action taken.

Dr. Millage. Pending. No update prepared for this meeting.

Dr. Hengel Borud. The Executive Director had received a call from KMC as they were having communication issues with Dr. Hengel Borud. The Executive Director indicated that they would need to provide their information to the Board in writing if they were going to do so. Nothing was received. The 3rd report from KMC has not been received and is late. The Board instructed the Executive Director to contact Dr. Hengel Borud regarding the delay and to request a response to the status of the monitoring. Instruction only.

Mr. Svihovec joins the meeting at 8:54 AM.

Freedom Chiropractic/Dr. Schmitz. A motion was made by Dr. Remmick, second by Dr. Yohe, to move to Executive Session for attorney consultation, legal authority N.D.C.C. 44-04-19.1(2). A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, and Ten Broek voting in the affirmative. Mellum abstaining. Botz absent/not voting. (5-0-1-1) Motion passed. The Executive Session began at 8:58 AM CST. The roll was taken with Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Yohe, Dr. Ten Broek, Ms. Mellum, Ms. Hicks (via phone), Mr. Svihovec, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. A motion was made by Dr. Remmick, second by Dr. Froehling, to adjourn the executive session and return to open meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, and Ten Broek voting in the affirmative. Mellum abstaining. Botz absent/not voting. (5-0-1-1) Motion passed. The meeting/teleconference was re-opened at 9:19 AM CST. No action taken – attorney update.

Mr. Svihovec exits meeting at 9:20 AM CST.

New Complaint:

Dr. S. Nagel. A motion was made by Dr. Remmick, 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, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed. The Executive Session began at 9:29 AM CST. The roll was taken with Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Yohe, Dr. Ten Broek, 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. Froehling, second by Dr. Ten Broek, to adjourn the executive session and return to open meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed. The meeting/teleconference was re-opened at 9:39 AM CST.

A motion was made by Dr. Froehling, second by Dr. Yohe, to recuse Dr. Remmick from all discussion and voting in this case due to a conflict. A roll call vote was taken with Ficek, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Remmick abstaining. Botz absent/not voting. (5-0-1-1) Motion passed.

Dr. Ficek instructs Ms. Hicks to proceed as discussed in the executive session.

Cases:

Dr. Yohe. Dr. Ficek requests that Dr. Yohe exit the meeting for this topic and he accepts. The complaint and response from Dr. Yohe were reviewed. A motion was made by Ms. Mellum, second by Dr. Ten Broek, to dismiss the complaint for no violation of the law. A roll call vote was taken with Ficek, Remmick, Froehling, Ten Broek, and Mellum voting in the affirmative. Yohe and Botz absent/not voting. (5-0-2) Motion passed.

Dr. Yohe returns to meeting.

Other Litigation:

Open Records/Meetings Lawsuit. Pending – waiting for the District Court decision.

Board Business:

Unlicensed Practice Report Follow-up. The Executive Director has received no follow-up communications from the Cass County State's Attorney. Ms. Hicks will follow-up with that office.

Provisional License – No Fingerprints Received. The Executive Director reported that one individual, issued a temporary provisional license during the timeframe in which fingerprints were not able to be completed, has not yet provided those to the Board for completion of his application. The Executive Director was instructed to write a letter to the applicant requesting an update or completion of the fingerprinting. Instruction only.

CCCA/ND Medical Imaging and Radiation Therapy Board (NDMIRT). The Executive Director reported on the increase in requests from our license holders inquiring on how to have their CCCA's or staff certified to perform x-rays. As that is regulated by the NDMIRT, all inquires are directed to them. Their board

meets in October 2020 and will discuss whether they will approve CCCA's to qualify for the Limited X-Ray Machine Operator license, per their Laws and/or Rules. The President of the NDMIRT Board also shared with the Executive Director that a few of our license holders may have incorrect information regarding the CCCA program from conversations held with their office staff. Information only. Further communications may occur after the NDMIRT board meetings in October.

Due to the apparent confusion regarding the ND CCCA program, the Board instructs the Executive Director to create an email blast about the CCCA certification and program and share with all license holders. Instruction only.

Record Retention – Disciplinary & Complaint Records. The requests to separate these into the 2 groups was approved. The sorting and organization of these records has been completed and the first disposal will occur in 2021 with the other agency specific records. Information only.

COVID-19 Inquiries. None to report.

Website & CE Broker Information. The Executive Director reported on the demo with CE Broker regarding their continuing education app. The goal for the Executive Director is to update the current CE reporting process to benefit both the board and the license holders. The Executive Director has additional questions for both CE Broker and Albertson's before proceeding. Additionally, she would like to view how the 2 applications work together via the ND Board of Nursing. Information only at this time – the Executive Director will continue to research and gather further information. There is no time limit on this project as there are no issues with the current method.

Wells Fargo Bank and Bank of North Dakota Signing Authority. A motion was made by Dr. Yohe, second by Dr. Froehling, to remove Dr. Pederson from both institutions and to add Dr. Ten Broek and Ms. Mellum to both accounts. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Formal/Ornamental License Certificate Design. The Executive Director reported that a design change is needed to accommodate 7 board member signatures vs. 5. The printer provided a proposal and the Executive Director will discuss a minor adjustment to the design. Instruction only.

2019/2020 Audit. A motion was made by Dr. Yohe, second by Dr. Ten Broek, to request a quote from Brady Martz for the 2019/2020 audit to be presented at the January 2021 board meeting for approval. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

CJIS Training. This is required for all board members every 2-years. An email reminder will be sent to the board member 60-days prior to their current expiration date. Reminder/Information only.

NBCE Letter. The Board previously requested the Executive Director to send a letter to the NBCE with their concerns regarding the Part IV testing and reimbursements. Dr. Ficek reviewed the draft and held the letter until he could attend the July 2020 testing to ask questions. He reported that only the nominated state licensing board members are reimbursed and that any other individuals are responsible for their own travel expenses to participate. This information was satisfactory to the Board and the letter will not be sent. Information only.

NBCE Part IV Testing (Nov. 13-15, 2020). Dr. Froehling is signed up. Dr. Ten Broek will check her schedule. If she is not available, Dr. Yohe may participate. Update only.

Policy Manual. No changes for approval at this meeting. The Executive Director will update the manual for approval at the January 2021 meeting based on the updated Administrative Rules and any other edits required. Information only.

FCLB Virtual District Meeting (Oct. 7 & 8, 2020). The registration is free for board members and staff. There will be a speaker for the first hour each day and then breakout for the Districts in the second hour. Our district portion is scheduled for the 8th. If registered, access to the recorded conference will be available if you are unable to attend live. The Executive Director encouraged all to register. Information only.

Board Phone – Verizon. The Executive Director updated on the age of current phone and the specials available to the Board via the state contract. The Board instructed the Executive Director to update the current phone to the iPhone SE device (\$.99). Instruction only.

Administrative Rules. The request for review of the Attorney General's office was submitted on September 4, 2020. Ms. Hicks reports that it has been sent to AG Stenehjem for final review and that she received no questions or information on issues from the AAG that performed the review. Discussion was held on who will provide the testimony for the Board to the Administrative Rules Committee. The Board authorizes and directs the Executive Director to provide the testimony. Inquiry will be made on how many may attend the actual meeting. Information only.

Department of Commerce Workforce Division Listening Session/Info. The Executive Director reported on her attendance at the Dept. of Commerce listening session as well as the Greater ND Chamber Virtual session regarding Occupational Licensing. The report completed earlier in the year by the Department of Commerce was very well received and provided the department with facts regarding the licensing boards that they did not previously have. It is anticipated that there will be legislative bills in the upcoming session, however, they may not be as concerning as they were last session. Update and Information only.

Schmitz email – administrative rules addition. Dr. Schmitz emailed the Executive Director and Ms. Hicks with a language suggestion for the Administrative Rules after the public comment period closed and after the Board met for their review and consideration of the comments made. The information will be included in the record noting that it arrived after the above dates and therefore not considered. No action taken.

Closing of Board Email addresses. With Dr. Pederson's term ending, the Executive Director asked the procedure for closing or deactivating a board member's email address. The Executive Director changed the password on the account so she may access for open record purposes, but Dr. Pederson would no longer have access. A motion was made by Dr. Froehling, second by Dr. Yohe, to have the Executive Director, along with Ms. Hicks, create a policy indicating that upon proper archiving of any records that may not be already held in the board office, that the account may be deactivated or closed. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Ten Broek, and Mellum voting in the affirmative. Botz absent/not voting. (6-0-1) Motion passed.

Schmitz email – per diem policy question. The Board discussed their policy regarding the paying of Per Diem for conference call meetings that is lower than the amount allowed by the law. Ms. Hicks advised

that the Policy Manual should be the same as the Law. The Board may discuss and vote to pay a lesser amount at each meeting, but the motion should be clear as to why they are deviating from the law. The Executive Director will draft some possible language updates to the Policy Manual for the Board's review, selection, and approval at the January 2021 board meeting. Instruction only.

Board response to CBD questions. When the Board received inquiries regarding CBD, they were advising license holders to contact the Department of Health. Dr. Froehling made an inquiry and the Department of Health indicated he should contact his licensing board as they only regulate medical marijuana. As the Board is unable to provide legal advice or advisory opinions, any future questions regarding CBD will be advised to contact their private attorney for assessment and guidance. Information only.

2020/2021 Calendar Review. The Executive Director requested that the Board set the date for the January 2021 Board Meeting. They reviewed their calendars and selected Friday, January 22, 2021 in Bismarck, ND.

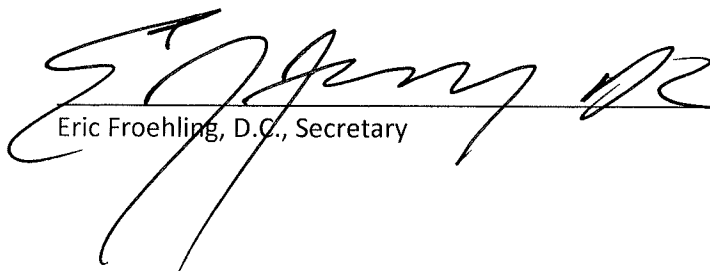
The Board recessed for lunch from 12:05 PM CST – 12:45 PM CST. The teleconference line was disconnected during the break and reconnected prior to reconvening.

Century Code/Law (43-06) Review for 2021 Legislative Session. The Board reviewed and discussed the previous edits of 43-06 and any other possible changes and updates, including telehealth, nutrition, and sports physicals. The Executive Director was instructed to contact the NDHSAA in writing regarding sports physicals. The Executive Director and Ms. Hicks will work on the definition of the CCE and update all references in the chapter. The deadline for agency bill submission is December 4, 2020. No actions taken.

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

Adjourn: A motion was made by Dr. Yohe, second by Dr. Froehling, to adjourn the meeting. Motion passed. The meeting ended at 2:19 PM CST.

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

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Eric Froehling, D.C., Secretary

01/22/21
Date