



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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Minutes of the Board Meeting of the North Dakota Board of Chiropractic Examiners held January 21, 2022, at the ND Heritage Center, Bismarck, ND

Call to Order: Dr. Dion Ficek called the meeting to order at 9:02 AM CST.

Roll Call: Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Yohe, Ms. Mellum, Executive Director Lisa Blanchard. Absent at the roll call: Ms. Botz and Assistant Attorney General Ms. Allyson Hicks. They arrived at 9:05 AM as the door to the facility was not open when they arrived. Absent: Dr. Ten Broek.

There were public attendees present.

Pledge of Allegiance.

Reading of the Mission Statement: Dr. Dion Ficek

Additions to the Agenda: A motion was made by Dr. Remmick, second by Dr. Froehling, to add Buchannon/CCCA Military Renewal Exemption request and the Attorney General's Office Open Record/Open Meeting complaint dated January 18, 2022 to the agenda. Motion passed.

Ms. Botz & Ms. Hicks join the meeting – 9:05 AM

Approvals:

A motion was made by Dr. Remmick, second by Dr. Yohe, to approve the minutes of the September 24, 2021 Board Meeting; December 1, 2021 Special Meeting; and December 20, 2021 Special Meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Froehling, second by Ms. Mellum, to approve the Executive Director 2021 3rd & 4th Quarter Reports. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Yohe, second by Dr. Froehling, to approve the 2021 3rd & 4th Quarter Financial Reports. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

A motion was made by Dr. Froehling, second by Dr. Yohe, to approve the 2021 3rd & 4th Quarter Checks Written. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Licenses:

A motion was made by Ms. Mellum, second by Ms. Botz, to ratify the Chiropractic Licenses issued, the Reactivation of an Inactive License, Certified Chiropractic Clinical Assistant Certifications issued, and Certified Chiropractic Clinical Assistant Certifications renewed. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Reports:

A motion was made by Dr. Yohe, second by Ms. Botz, to accept the Part IV testing report from Dr. Ten Broek. Motion passed.

Cases:

Freedom Chiropractic/Dr. Schmitz - Supreme Court Docket #20210135; Supreme Court Docket #20210273. Ms. Hicks provided an update on the status of the two cases. The oral argument for #20210273 was held on January 6, 2022. The oral argument for #20210135 is scheduled for February 8, 2022. Update only. No action taken.

Dr. Ten Broek (#2021-04). The conditional dismissal agreement and the payment of the fee were completed and received. A motion was made by Dr. Froehling, second by Dr. Yohe, to close this case. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

An announcement was made that because the Board has not received any guidance from the Attorney General's Office regarding whether N.D.C.C. 43-06-14.1(7) is applicable to all information received by the Board in relation to disciplinary cases, the Board would be discussing all disciplinary cases in executive session. Should the Attorney General's Office determine that N.D.C.C. 43-06-14.1(7) does not apply, the Board will unilaterally make all portions of the executive session recording, which are not subject to other exceptions under the law, open and accessible to the public.

Dr. Remmick takes over the meeting. Dr. Ficek recused.

Dr. Jeffrey Pokorny (#2021-03). The Board moved to Executive Session for the discussion of this case. The legal authority for Executive Session is N.D.C.C. 43-06-14.1(7).¹ All data and information, including patient records acquired by the board or the peer review committee, in the exercise of its duties and functions, are confidential and closed to the public. All board and peer review committee meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public. The Executive Session began at 9:20 AM CST. The roll was taken with Dr. Remmick, Dr. Froehling, Dr. Yohe, Ms. Mellum, Ms. Botz, Dr. Ficek, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 9:47 AM CST and the meeting was reopened.

¹ Due to a technical error, the legal authority for this executive session was originally incorrectly cited and noticed and was amended via an Amended Agenda to list N.D.C.C. 43-06-14.1(7), N.D.C.C. 44-04-19.1(2) and N.D.C.C. 44-04-19.1(9) as the correct authorities.

A motion was made by Dr. Froehling, second by Dr. Yohe, to offer Dr. Pokorny a Settlement Agreement for the violation of NDCC 43-06-15(g) and ND Admin Code 17-03-01-01(18). The terms of the agreement are: Repayment of all charges to patients and third party payors for \$4,371.79; a \$2,500.00 Administrative Fee; and successful completion of the ND Jurisprudence Examination. A roll call vote was taken with Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ficek abstaining; Ten Broek absent. (5-0-1-1) Motion passed.

Dr. Ficek takes over the meeting.

Dr. Michael Mack & Cassandra Sampson (#2021-05). The Board moved to Executive Session for the discussion of this case. The legal authority for Executive Session is N.D.C.C. 43-06 14.1(7). All data and information, including patient records acquired by the board or the peer review committee, in the exercise of its duties and functions, are confidential and closed to the public. All board and peer review committee meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public. The Executive Session began at 9:59 AM CST. The roll was taken with Dr. Ficek, Dr. Remmick, Dr. Froehling, Dr. Yohe, Ms. Mellum, Ms. Botz, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 10:03 AM CST and the meeting was reopened.

A motion was made by Ms. Mellum, second by Ms. Botz, to dismiss the case. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Applications:

Edison Arauz. The Executive Director updated the Board that notification was received from Dr. Arauz that he officially withdrew his application. Update only. No action taken.

Board Business:

AG Open Record/Open Meeting Complaint (April/2021) – Schmitz; AG Open Record/Open Meeting Complaint (May/2021) – Custer; AG Open Record Complaint (December/2021) – Schmitz. No Attorney General opinions have been received regarding these three complaints. No action taken.

AG Open Record Complaint (January/2022) – Schmitz. A new complaint was received, dated January 18, 2022. A motion was made by Dr. Remmick, second by Dr. Froehling, to create a policy delegating the President of the Board the authority to approve and sign the response for this complaint and any future open record/open meeting complaints filed with the Attorney General. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Buchannon CCCA Military Renewal Request. The employer of a CCCA who is currently on active military duty is requesting an exemption to the renewal requirement due to her employee's current military status. A motion was made by Dr. Remmick, second by Dr. Yohe, to extend the current March 1, 2022 renewal deadline until June 1, 2022 for Ms. Buchannon. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

DOT Physicals – Licensure Requirements – Temporary License. The Executive Director received a question about an individual licensed in MN, not in ND, performing DOT physicals in ND as a relief practice situation for a ND licensee. Upon review of NDCC 43-51-05, a motion was made by Dr. Yohe, second by Ms. Botz, to have the Executive Director create a Temporary License application and provide it to the licensee for completion. Approval of the application is delegated to the Executive Director for ratification by the Board at the next meeting following the approval. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Website: Continuing Education Reporting Options. The Executive Director refreshed the Board upon the discussion held in January 2021. Due to other organizations that are in possible development of CE reporting platforms, the Executive Director indicated it would be best for the Board to wait until more information is available for review. The Executive Director will share updated information when it is available. No action taken.

Board Member Tablets. The Board discussed options for updating the current devices and budgeting for the replacements on an ongoing basis. The Executive Director provided some pricing options. A motion was made by Dr. Froehling, second by Ms. Botz, to purchase 8 Microsoft Surface Laptop GO devices. A roll call vote was taken with Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ficek voting negative. Ten Broek absent/not voting. (5-1-1) Motion passed. The Executive Director will purchase and prepare the new devices for distribution at the April 2022 board meeting.

Virtual Meetings. A discussion was held on whether the Board wanted to move to holding virtual meetings vs. conference call meetings. Ms. Hicks indicated we were her only agency still holding conference calls. A motion was made by Dr. Yohe, second by Ms. Mellum, to subscribe to Zoom Pro (\$150/year) and switch to virtual meetings as a replacement for conference calls. A roll call vote was taken with Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ficek voting negative. Ten Broek absent/not voting. (5-1-1) Motion passed.

External Hard Drive(s). The Executive Director suggested the Board purchase 2 external hard drives for the backup of the board's main computer. One device can always remain in the safe, rotating between the 2 drives. A motion was made by Dr. Froehling, second by Dr. Yohe, to purchase 2 external hard drives from the office supply contract (\$103/each). A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Portable Printer. The Executive Director indicated that she is removing this item/request from the list. No action taken.

Binding Machine. The existing electric binding machine has stopped working/no longer powers on. The Executive Director provided a few manual and electric options for the Board to consider. A motion was made by Dr. Remmick, second by Ms. Mellum, to purchase the GBC Manual binder for \$233.03 from the office supply contract. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Adobe (full). The Board previously authorized the purchase, but due to contract renewal, the Executive Director did not purchase immediately and then completely forgot about the purchase. Due to the increase of records requests and the moving of most items to an electronic format, the full version

would be beneficial to the office. A motion was made by Dr. Froehling, second by Ms. Botz, to purchase the full version of Adobe for the office. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Fax. The Board converted to electronic faxing in 2021. This went very well, and the Executive Director recommends no changes. Update only.

2022 Calendar. The Board made no changes to the proposed calendar.

FCLB Annual Meeting. A motion was made by Dr. Remmick, second by Dr. Yohe, to approve 2 board members and the ED attend the FCLB Annual Meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

FCLB District Meeting. A motion was made by Dr. Remmick, second by Dr. Froehling, to send 2 people (to be determined closer to the meeting) to the FCLB District Meeting. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Dues. A motion was made by Dr. Froehling, second by Dr. Yohe, to pay the FCLB dues for 2022. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed. Discussion was held and the Board will not be renewing their membership with FARB for 2022.

FCLB/NBCE Voting and Alternate Voting Delegates. The President will be designated as the voting delegate for both organizations. Ms. Mellum or Ms. Blanchard will be designated as the alternate delegate for the FCLB based upon who will be attending the annual meeting.

FCLB PACE Reviewer Nomination. The Board was invited to nominate an individual to be a part of the PACE Review team. No member indicated interest. No action taken.

Financial: Reserve Accounts. A motion was made by Dr. Froehling, second by Ms. Botz, to transfer \$5,000 to the 1-year operating fund; \$10,000 to the litigation fund; and \$2,000 to the technology fund. This increases their balances to \$60,000; \$120,000; and \$24,000 respectively. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Legislative Changes. The Executive Director informed the Board about the information she learned about the agency fee study in NDCC 54-35-27. She passed out a table that included all of the board's current fees and where the legal authority (Century Code/Administrative Rules) for each fee can be located. Information only at this time until further information is provided to agencies.

Ms. Hicks indicated that now is the time to start reviewing the law as the next legislative session is a year away. She indicated that the Board should consider changes to 43-06-14.1(7). The Board requested that she draft some language options for their consideration. Instruction only.

Administrative Rules. No rule changes proposed at this time.

Policy Manual. Earlier in the meeting, the Board added the policy regarding Open Record Complaint responses. Two further additions were discussed. 1) Delegating to the President the authority to respond to open records requests and assert exemptions and confidentiality provisions. 2) The executive director shall mute any participant in a remote meeting that is not a member of the governing body, staff, or an invited guest. A motion was made by Dr. Froehling, second by Ms. Mellum, to include the above in the Board's Policy Manual. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Executive Director Employment Agreement. The Executive Director voluntarily exited the meeting room, and the Secretary took over the recording duties. Discussion was held on the review. No negative responses. The President is grateful for Ms. Blanchard. A motion was made by Dr. Yohe, second by Ms. Botz, to renew the contract for another year with a \$2,500.00 raise to \$47,500.00. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed. The Executive Director returned to the meeting.

2022 Proposed Budget. The Board reviewed the proposed budget and any rationale used for making the determinations. There were no changes made to the Income section. The Dues line was reduced to \$1,324. The Office Equipment Expense was increased to \$9,000. Per Diem was increased to \$20,000. Salary was increased to \$47,500. A motion was made by Dr. Froehling, second by Dr. Yohe, to approve the 2022 Budget as discussed. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Election of Officers:

A motion was made by Dr. Yohe, second by Dr. Remmick, to nominate Dr. Froehling for President; Dr. Ten Broek for Vice President; and Ms. Mellum as Secretary/Treasurer. No further nominations were made. A roll call vote was taken with Ficek, Remmick, Froehling, Yohe, Mellum, and Botz voting in the affirmative. Ten Broek absent/not voting. (6-0-1) Motion passed.

Per Diem:

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

Adjourn: A motion was made by Dr. Yohe, second by Ms. Mellum, to adjourn the meeting. Motion passed. The meeting ended at approximately 12:40 PM CST.

These minutes were prepared by Lisa Blanchard, Executive Director, for signature by Ms. Christa Mellum, Secretary.


Christa Mellum, CCCA Secretary

04-08-22
Date