



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

P.O. Box 185 · Grafton, ND 58237

Phone: (701) 213-0476 · Fax: (855) 450-2153 · Email: contact@ndsbcc.org · Web: www.ndsbcc.org

Minutes of the Board Meeting of the North Dakota State Board of Chiropractic Examiners held July 13, 2022 via Zoom.

Call to Order: Dr. Eric Froehling called the meeting to order at 9:00 AM CST.

Roll Call: Those present included Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, Assistant Attorney General Ms. Allyson Hicks, and Executive Director Lisa Blanchard. Absent: Ms. Botz. Public: There were public attendees on the Zoom.

Reading of the Mission Statement: Dr. Froehling

Additions to the Agenda:

- 1) New Complaint – Dr. Pozarnsky #2022-06 – Executive Session Legal Authority NDCC 43-06-15(2) and NDCC 43-06-14.1(7)
- 2) Board Transition

A motion was made by Dr. Ficek, second by Ms. Mellum, to include the two additions and approve as amended. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Approvals:

A motion was made by Dr. Ten Broek, second by Dr. Yohe, to approve the minutes from the April 8, 2022 board meeting, June 1, 2022 special meeting, and June 15, 2022 special meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

A motion was made by Dr. Yohe, second by Dr. Ficek, to approve the Executive Director 2022 2nd Quarter Report. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

A motion was made by Ms. Mellum, second by Dr. Ten Broek, to approve the 2022 2nd Quarter Financial Reports. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

A motion was made by Ms. Mellum, second by Dr. Yohe, to approve the 2022 2nd Quarter Checks Written. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Licenses:

A motion was made by Dr. Ten Broek, second by Dr. Ficek, to ratify the chiropractic licenses and certified chiropractic clinical assistant certifications issued. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Reports:

A motion was made by Ms. Mellum, second by Dr. Ficek, to accept the FCLB Annual Meeting reports for Dr. Froehling and Ms. Blanchard. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Cases:

Freedom Chiropractic/Dr. Schmitz

- SC District Court Case 08-2020-CV-01827 – Order Awarding Attorney’s Fees. The Board discussed the order with Ms. Hicks and if any options existed. The payment will be made to Dr. Schmitz but mailed to his attorney. A motion was made by Dr. Yohe, second by Dr. Ten Broek, to pay the ordered amount from the Bank of North Dakota checking account from the operational funds. A roll call vote was taken with Froehling, Ten Broek, Ficek, and Yohe voting in the affirmative. Remmick voting negative. Mellum recused. Botz absent. Motion passes (4-1-1-1).
- Supreme Court Opinion No. 2022 ND 13 – Case No. 20210135. The Board’s response to the petition for rehearing was submitted. Information/Update only.

Dr. Jeffrey Pokorny (#2021-03). This case has been moved to litigation. Ms. Hicks has not received any updates but will inquire with the Civil Litigation office. AAG Ms. Courtney Titus has been assigned to this case.

The board recessed for a break from approximately 9:27 - 9:32.

Dr. Lance Wiegel (#2022-01). The Executive Director provided the Board with an update. She shared that the Conditional Dismissal agreement was signed and completed. The continuing education requirement has not been completed, but that he had 90-days to do so. Information only.

Dr. Jeffrey Pokorny (#2022-02). The requested response was received. A motion was made by Ms. Mellum, second by Dr. Remmick, to move to Executive Session for the discussion of this case. The legal authorities for this Executive Session are N.D.C.C. 44-04-19.1(2) Attorney Consultation; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, and Yohe voting in the affirmative. Ficek recused. Botz absent. Motion passes (5-0-1-1). The Executive Session began at 9:37 AM CST. The roll was taken with Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, 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.

Discussion was held on how the Board will proceed with this case including appointment of a Peer Review committee and who the Board may appoint with six licensees named as possibilities. A motion was made by Dr. Remmick, second by Ms. Mellum, to appoint a Peer Review committee to investigate the allegations and responses in #2022-02. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, and Yohe voting in the affirmative. Ficek recused. Botz absent. Motion passes (5-0-1-1).

A motion was made by Dr. Remmick, second by Dr. Ten Broek, to appoint Dr. Steven Pederson, Dr. Jacob Holkup, and Dr. William Swanson as the Peer Review Committee. A roll call vote was taken with

Froehling, Ten Broek, Mellum, Remmick, and Yohe voting in the affirmative. Ficek recused. Botz absent. Motion passes (5-0-1-1).

Dr. Matthew Christensen (#2022-03). The requested response was received. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to move to Executive Session for the discussion of this case. The legal authorities for this Executive Session are N.D.C.C. 44-04-19.1(2) Attorney Consultation; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 9:57 AM CST. The roll was taken with Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 10:14 AM CST and the meeting was reopened.

A brief discussion was held regarding this complaint. A motion was made by Ms. Mellum, second by Dr. Yohe, to offer a Conditional Dismissal to Dr. Christensen for violation of N.D.A.C. 17-03-01-01(20)(b). The terms of the agreement are to include a \$500.00 administrative fee, the removal of "guarantee" from the website, and completion of the online jurisprudence examination. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

The board recessed for a break from approximately 10:17 – 10:23.

Dr. Eric Seamands (#2022-04). The requested response was received. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to move to Executive Session for the discussion of this case. The legal authorities for this Executive Session are N.D.C.C. 44-04-19.1(2) Attorney Consultation; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 10:26 AM CST. The roll was taken with Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 10:28 AM CST and the meeting was reopened.

A motion was made by Dr. Yohe, second by Dr. Ficek, to dismiss this complaint as the situation has been rectified. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Dr. Jeffrey Pokorny (#2022-05). The additional information requested from the complainant was received. A motion was made by Dr. Ten Broek, second by Ms. Mellum, to move to Executive Session for the discussion of this case. The legal authorities for this Executive Session are N.D.C.C. 44-04-19.1(2) Attorney Consultation; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, and Yohe voting in the affirmative. Ficek recused. Botz absent. Motion passes (5-0-1-1). The Executive Session began at 10:31 AM CST. The roll was taken with Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 10:41 AM CST and the meeting was reopened.

A motion was made by Dr. Ten Broek, second by Dr. Yohe, to dismiss this complaint for no violation of the law as the information provided did not justify the board moving forward. During discussion, Ms. Hicks indicated that an allegation in this complaint exists in another open case that the Board has moved for further investigation. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, and Yohe voting in the affirmative. Ficek recused. Botz absent. Motion passes (5-0-1-1).

New Complaints:

Dr. Daniel Pozarnsky (#2022-06). A new complaint was received. A motion was made by Dr. Ficek, second by Ms. Mellum, to move to Executive Session for the discussion of this new complaint. The legal authorities for the Executive Session are N.D.C.C. 43-06-15(2): The reports are not public records; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 10:48 AM CST. The roll was taken with Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 10:52 AM CST and the meeting was reopened.

Upon returning to open meeting, Dr. Yohe disclosed he had a potential conflict in this case as he and the licensee previously, but simultaneously, worked as part of the NDSU athletic sports medicine team. Ms. Hicks provided the Board with the current Conflict of Interest rules and the requirements to be met. A motion was made by Dr. Remmick, second by Dr. Ficek, that the Board does not find that a conflict exists. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, and Ficek voting in the affirmative. Yohe abstaining. Botz absent. Motion passes (5-0-1-1).

Continuing with Dr. Daniel Pozarnsky (#2022-06). A motion was made by Dr. Ficek, second by Ms. Mellum, to move to Executive Session for the discussion of this new complaint. The legal authorities for the Executive Session are N.D.C.C. 43-06-15(2): The reports are not public records; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 11:00 AM CST. The roll was taken with Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Remmick, Dr. Ficek, Dr. Yohe, Ms. Hicks, and Ms. Blanchard in attendance. The Executive Session was recorded as required by law. The Executive Session ended at 11:04 AM CST and the meeting was reopened.

A motion was made by Dr. Yohe, second Dr. Ten Broek, to proceed with requesting a response to the complaint as discussed in executive session. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Applications:

Graduate Intern – Shad Froseth. The graduate internship for Dr. Froseth expires on 07/26/2022. He requested an extension until his exam scores are released in mid-August. The Executive Director indicated this has occurred one time previously in 2012 and that the Board had no authority to make an exception nor waive the 15-month duration as listed in NDCC 43-06-02(3)(e). A motion was made by Dr. Ficek, second by Dr. Ten Broek, to deny the request as the Board does not have the legal authority to grant an extension or waiver. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, and Ficek voting in the affirmative. Yohe and Botz absent. Motion passes (5-0-2).

During the discussion of the topic above, Dr. Yohe's connection to Zoom was disconnected at 11:08 AM. He was reconnected at the end of the break.

The board recessed for a break from approximately 11:10 – 11:17.

Board Business:

Dr. Bisson Dry Needling Certification Review/Request. Dr. Bisson was recently licensed in ND. He was able to practice dry needling in MT, his previous location, with 24 hours of training. The rules for dry needling are different between the jurisdictions. He provided information on the number of procedures he's completed in MT. He has been granted the temporary limited-scope certification, which is good for 18-months. A motion was made by Dr. Remmick, second by Dr. Yohe, to deny granting the full ND certification as the Board does not have the authority to waive the administrative rules. Dr. Bisson will need to complete the additional 26 hours of in-person training as required. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Closed - AG Open Record/Open Meeting Complaint (April 2021) – Schmitz; Closed - AG Open Record/Open Meeting Complaint (May 2021) – Custer. The Attorney General's office issued their opinion on May 19, 2022 for these complaints. The Board was not found in violation. No action required. Information only.

AG Open Record Complaint (December 2021) – Schmitz; AG Open Record Complaint (January 18, 2022) – Schmitz; AG Open Record Complaint (January 31, 2022) – Schmitz. These three are pending opinions from the AG's office. No action.

Albertson's Contract. There have been issues with the Albertson's contracts and Participating Agreements within the state/other boards. Ms. Hicks has been working with Albertson's, ND ITD, and the Procurement office to have the contract and agreements updated and corrected. The Board will hold the outstanding invoice until further notice from Ms. Hicks. Information only. No action required.

Financial Institution Update. The Choice Financial account is open. However, it is not currently functional (no checks, etc.). The Executive Director requested that the Board authorize her to use the Bank of ND checking account until the Choice Financial account is fully functional. A motion was made by Ms. Mellum, second by Dr. Yohe, to authorize the ED to use the BND Checking account until the Choice

account is functional. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

State P-Card. The Executive Director provided the Board with information regarding the State's Purchasing Card program and inquiring whether they would like to consider switching from our current credit card through Wells Fargo. A motion was made by Ms. Mellum, second by Dr. Ficek, to pursue a State P-Card with the Secretary/Treasurer designated as the Card Administrator and the Executive Director designated as the Card Holder. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1). If the Board is accepted, then the Executive Director will create Policy regarding this for the Manual.

FCLB District Meeting. Will be held September 29 – October 2, 2022 in Lake Tahoe. A motion was made by Dr. Yohe, second by Dr. Ten Broek, to authorize Dr. Ficek and Executive Director Blanchard to attend. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Legislative Changes. Ms. Hicks prepared options for 2 bills. The first relates to the complaint/disciplinary records of the board. She provided an all-confidential option and an all-exempt option. The Board discussed their thoughts. A motion was made by Dr. Ficek, second by Dr. Yohe, to have Ms. Hicks draft the all-confidential option into bill form for further review and discussion at the September meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1). The second option relates to the complaint process/hearing requirement. Based upon the recent Supreme Court ruling, the Board does not have the option to waive the hearing requirement for any situation. The proposal would provide the Board with those options. A motion was made by Dr. Ficek, second by Ms. Mellum, to have Ms. Hicks draft this proposal into bill form for further review and discussion at the September meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Administrative Rules. No proposals at this meeting.

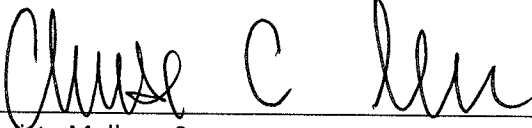
Policy Manual. No changes made during the meeting. The Executive Director will draft P-Card language if the Board is accepted into the program.

Per Diem. As there have been a few instances of chaos regarding per diem, Dr. Froehling shared his thoughts on the payment – law entitles a full payment for each meeting – and that his opinion is that a full payment should be made for all meetings. When a meeting/special meeting is called, it is not without justification or purpose. A motion was made by Dr. Ficek, second by Dr. Yohe, to pay a full per diem payment (\$250) for this meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Remmick, Ficek, and Yohe voting in the affirmative. Botz absent. Motion passes (6-0-1).

Board Calendar. A brief discussion was held regarding the next scheduled meeting (September) and whether to proceed with Zoom or in-person. Dr. Froehling indicated that the January 2023 will be an in-person meeting, but that he feels September can be Zoom as this meeting went well. If held by Zoom, Dr. Ficek requested moving the meeting from the current scheduled Friday to Wednesday. The next board meeting will be held via Zoom on Wednesday, September 21, 2022 starting at 9:00 AM CST.

Adjourn: A motion was made by Dr. Yohe, second by Dr. Ficek, to adjourn the meeting. Motion passed. The meeting ended at approximately 12:00 PM CST.

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



Christa Mellum, Secretary

10/12/22

Date