



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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Minutes of the Board Meeting of the North Dakota State Board of Chiropractic Examiners held September 21, 2022, 2022 via Zoom.

Call to Order: Dr. Eric Froehling called the meeting to order at 9:02 AM CST.

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

Reading of the Mission Statement: Dr. Froehling

Additions to the Agenda:

1) Mr. Geiermann records request.

A motion was made by Dr. Ficek, second by Dr. Yohe, to include the addition and approve the agenda as amended. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Approvals:

A motion was made by Dr. Yohe, second by Dr. Ten Broek, to approve the minutes from the July 13, 2022 Board meeting, July 20, 2022 Special meeting, and August 22, 2022 Special meeting. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Licenses:

A motion was made by Dr. Ficek, second by Dr. Ten Broek, to ratify the chiropractic licenses and certified chiropractic clinical assistant certifications issued. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Reports:

A motion was made by Dr. Ten Broek, second by Dr. Rokke, to accept Dr. Yohe's NBCE Part I Testing report and Dr. Froehling's NBCE Special Meeting of Delegates report. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

A motion was made by Dr. Yohe, second by Dr. Ficek, to pay Dr. Froehling a per diem payment for his attendance at the NBCE Special Meeting of Delegates. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Cases:

Dr. Schmitz – Remand & Consideration of Settlement Offer to resolve Schmitz v. Board of Chiropractic Examiners, Case No. 2020-CV-01829. A counteroffer to the board's offer was received. A motion was made by Dr. Ficek, second by Dr. Yohe, 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. 44-04-19.1(9) Negotiating Instructions to the Attorney. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2). The Executive Session began at 9:15 AM CST. Attending the executive session were Dr. Froehling, Dr. Ten Broek, Dr. Ficek, Dr. Yohe, Dr. Rokke, Ms. Hicks, Mr. Svihovec, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 9:52 AM CST and the meeting was reopened.

Upon returning to the meeting, Ms. Hicks explained the motion needed. A motion was made by Dr. Ten Broek, second by Dr. Yohe, to have Mr. Svihovec proceed with the negotiating instructions provided during the executive session. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Geiermann Records Request. A request for the executive session recording held during the August 22, 2022 special meeting was received. A motion was made by Dr. Rokke, second by Dr. Yohe, to release the redacted recording to Mr. Geiermann. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Mr. Svihovec exits the meeting at approximately 9:56 AM. The board recessed for a break from approximately 9:56 – 10:05.

Dr. Jeffrey Pokorny (#2021-03). This case has been moved to litigation. Ms. Hicks is working with AAG Ms. Courtney Titus on drafting the complaint. Information only.

Dr. Lance Wiegel (#2022-01). All terms of the conditional dismissal agreement have been met. A motion was made by Dr. Yohe, second by Dr. Ficek, to close this case. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Dr. Jeffrey Pokorny (#2022-02). The Peer Review Committee (PRC) will be holding their first meeting at 8:00 PM CST on 09/21/2022. Per board policy, the PRC is to cease work and provide the board with a status update at 10 hours of time. A motion was made by Dr. Ficek, second by Dr. Yohe, to authorize Dr. Froehling the authority to review and approve continuation of the PRC committee to 20 hours. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Dr. Matthew Christensen (#2022-03). All terms of the conditional dismissal agreement have been met. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to close this case. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Dr. Daniel Pozarnsky (#2022-06). The requested responses have been received. A motion was made by Dr. Ficek, second by Dr. Yohe, 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, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2). The Executive Session began at 10:11 AM CST. Attending the executive session were Dr. Froehling, Dr. Ten Broek, Dr. Ficek, Dr. Yohe, Dr. Rokke, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 10:21 AM CST and the meeting was reopened.

The Board discussed the violations that were present, but also noted that one specific patient record date was missing that they would like to review. A request to Dr. Pozarnsky for the patient record dated 12/01/2020 will be made. Instruction only. No action taken.

New Complaints:

Dr. Daniel Pozarnsky (#2022-07). A new complaint was received. A motion was made by Dr. Ficek, second by Dr. Ten Broek, 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, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2). The Executive Session began at 10:28 AM CST. Attending the executive session were Dr. Froehling, Dr. Ten Broek, Dr. Ficek, Dr. Yohe, Dr. Rokke, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 10:35 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, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Applications:

CCCA – Nicole Bohrer. The Executive Director provided information regarding the application received and the history of Ms. Bohrer's (Bruce) previous incomplete applications with the board. Ms. Hicks requested a discussion on the potential conflict of Dr. Ten Broek due to the previous employment relationship with applicant and the board action taken against Dr. Ten Broek based upon that employment. Ms. Hicks and Dr. Ten Broek provided a factual background of the conflict. After a brief explanation of the rules of the Ethics Commission, Dr. Ten Broek formally requested a neutral reviewer to make the decision, adding that she felt there would be an appearance of bias. Ms. Hicks explained that because no policy designating the neutral reviewer existed, the default under rule would be the remainder of the Board. The Neutral Reviewer discussed the conflict, and a motion was made by Dr. Ficek, second by Dr. Yohe, to recuse Dr. Ten Broek from this topic. A roll call vote was taken with Froehling, Ficek, Yohe, and Rokke voting in the affirmative. Ten Broek recused. Mellum and Botz absent. Motion passes (4-0-1-2). Additional discussion was held regarding the issuing of the temporary certification. A motion was made by Dr. Yohe, second by Dr. Ficek, to not issue a Temporary Certification

for this applicant and to bring the final approval of licensure to the Board when the application is complete. A roll call vote was taken with Froehling, Ficek, Yohe, and Rokke voting in the affirmative. Ten Broek recused. Mellum and Botz absent. Motion passes (4-0-1-2).

D.C. Renewal – Stuart Lamp. The Executive Director reported the status of Dr. Lamp’s renewal indicating that the application for renewal was received prior to the deadline, but payment of the renewal fee and the required continuing education have not been received. A motion was made by Dr. Ficek, second by Dr. Yohe, instructing the Executive Director send a letter to Dr. Lamp with the information regarding his license status and what is required to renew the license. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

During this discussion, Dr. Rokke asked a question about information he had received directly regarding this licensee. Ms. Hicks asked if it was related to the current discussion and that Dr. Rokke should talk to the Executive Director as the Board can file a board-initiated complaint, if necessary. Information/advisement only.

The board recessed for a break from approximately 10:50 – 11:00.

Board Business:

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.

2021/2022 Audit Preparation – Vendor Selection. The Executive Director asked the Board if she should contact Brady Martz for a quote as they have completed the previous two audits. The Board instructed the ED to contact Brady Martz. The ED will bring the quote to the full board for acceptance when received. Instruction only.

Albertson’s Contract. A new Participating Agreement has been drafted, but not received back from Albertson’s. The annual support fee will increase to \$5,200.00/year. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to authorize Dr. Froehling to review, approve, and sign the new PA when received and authorizes the Executive Director to pay the annual support fee. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

State P-Card. The Executive Director provided the Board with an update that the initial applications will be submitted after this board meeting. Information only.

Attorney General’s Board Training – October 5, 2022. Dr. Rokke and Ms. Blanchard are registered to attend virtually. The Executive Director noted that the board members have received a Per Diem for their attendance in the past, however, we missed approving a payment for Dr. Ten Broek for her attendance in 2021. A motion was made by Dr. Ficek, second by Dr. Yohe, to pay a per diem for Dr. Rokke for 2022 and to retroactively pay Dr. Ten Broek for attending in 2021. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Legislative Changes. The bill drafts did not get distributed for the meeting. The Board will review and discuss at a special meeting. No action.

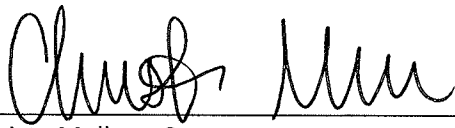
Administrative Rules. No proposals at this meeting. Ms. Hicks recommended waiting until after the upcoming Legislative Session is completed before completing a new review. Information only.

Policy Manual. No changes made during the meeting. The Executive Director had proposed updates for changing of bank account names; and two changes in the CHRI section due to procedural changes from the BCI. A motion was made by Dr. Ten Broek, second by Dr. Ficek, to approve the edits as proposed. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Per Diem. A motion was made by Dr. Yohe, second by Dr. Ficek, to pay a full per diem payment (\$250) for this meeting. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, and Rokke voting in the affirmative. Mellum and Botz absent. Motion passes (5-0-2).

Adjourn: A motion was made by Dr. Yohe, second by Dr. Ten Broek, to adjourn the meeting. Motion passed. The meeting ended at approximately 11:20 AM CST.

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



Christa Mellum, Secretary

01-30-23

Date