



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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Minutes of the Special Meeting of the North Dakota State Board of Chiropractic Examiners held November 9, 2022 via Zoom.

Call to Order: Dr. Eric Froehling called the meeting to order at 12:01 PM CST.

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

Reading of the Mission Statement: Dr. Froehling

As this was a special meeting, no additions to the agenda were permitted. Due to time, the order of the agenda was not followed. These minutes reflect the order of the meeting.

Agenda:

Board Business:

Proposed Legislative Changes. The 2 bill drafts, one for disciplinary records and the other for hearings, were reviewed. Discussion was held on the reason for the bills and whether other boards were considering similar language this session. Ms. Hicks explained the purpose of the bills is to provide clarification as the current statutes are not as clear and scattered. A motion was made by Dr. Ficek, second by Ms. Mellum, to have the Executive Director prefile the bill drafts by the December 8, 2022 deadline. A roll call vote was taken with all members voting in the affirmative. Motion passes (7-0).

Best Practices Academy Education Request. An education request was received for a 100-hour Acupuncture training course. 17-02-04-06(3) is specific that the education must be sponsored by council on chiropractic education accredited college. The Board instructed the Executive Director to respond to the request indicating that they were unable to approve unless BPA found a sponsor. The Board will consider this section during their next Administrative Rules review. Instruction only.

Records Request – Dr. Schmitz. A request for the executive session recording held during the October 26, 2022 special meeting was received. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to release the redacted recording to Dr. Schmitz. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, Rokke, and Botz voting in the affirmative. Mellum recused. Motion passes (6-0-1).

Application:

Edison Arauz. Dr. Arauz's application for chiropractic licensure is complete. Discussion was held on his previous disciplinary actions in Manitoba. His license is considered in good standing by that jurisdiction, however, there are conditions to his license that he must meet if he would be practicing in Manitoba. The Board discussed options for a conditional license with similar conditions set by Manitoba. A motion was made by Dr. Ficek, second by Dr. Yohe, to offer Dr. Arauz a conditional license. At his expense, he

must contract with KMC University for the monitoring of his documentation and billing. In the first six months of practice, there is to be a 15-chart review. This will be followed by a 15-chart review in the next three-month period. Both reviews will require reports. At the conclusion of the second review, the Board will reevaluate the conditional license. A roll call vote was taken with all members voting in the affirmative. Motion passes (7-0).

Cases:

Dr. Jeffrey Pokorny (#2021-03). Ms. Hicks requested approval of the Administrative Complaint. A motion was made by Dr. Rokke, second by Dr. Yohe, to approve the Administrative Complaint in the case of Dr. Jeffrey Pokorny case number #2021-03. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Botz voting in the affirmative. Ficek recused. Motion passes (6-0-1).

Dr. Schmitz - Remand & Consideration of Settlement Offer to resolve Schmitz v. Board of Chiropractic Examiners, Case No. 2020-CV-01829. No update at this time.

Dr. Schmitz v. ND State Bd of Chiropractic Examiners, Case No. 08-2022-CV-02783. Ms. Hicks provided the Board with an update and the status of this lawsuit. She requested permission to file a general response denying the allegations. A motion was made by Dr. Yohe, second by Dr. Ficek, to approve the Attorney General's office request for permission to file a general response in this case. A roll call vote was taken with Froehling, Ten Broek, Ficek, Yohe, Rokke, and Botz voting in the affirmative. Mellum recused. Motion passes (6-0-1).

New Complaints:

Dr. Daniel Pozarnsky (#2022-08). A new complaint was received. A motion was made by Dr. Ficek, second by Dr. Rokke, 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): Signed written statements and other reports reporting to the board violations or alleged violations under chapter 43-06 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 all members voting in the affirmative. Motion passes (7-0). The Executive Session began at 12:35 PM CST. Attending the executive session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Ficek, Dr. Yohe, Dr. Rokke, Ms. Botz, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 12:37 PM CST and the meeting was reopened.

A motion was made by Dr. Rokke, second Dr. Yohe, to proceed with requesting a response to the complaint as discussed in executive session. A roll call vote was taken with all members voting in the affirmative. Motion passes (7-0).

Cases:

Dr. Mason Custer (#2022-09). The Board received an Order of Suspension from ND Child Support Enforcement by authority of N.D.C.C. 50-09-08.6. The order was effective on October 18, 2022. The Board issued an Order Suspending the License. Child Support Enforcement will notify the Board when the suspension is lifted, and the Board's order will automatically be rescinded. Information only.

Board Business:

2021/2022 Audit Quote – Brady Martz. The quote was received for \$9,500.00. A motion was made by Ms. Mellum, second by Dr. Yohe, to approve the quote from Brady Martz for the 2021/2022 audit. A roll call vote was taken with all members voting in the affirmative. Motion passes (7-0).

Cases:

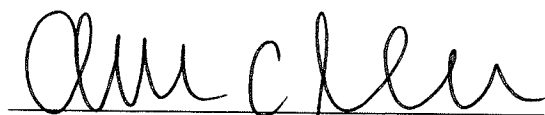
Dr. Daniel Pozarnsky (#2022-06). Discussion was held on the status of this case and the previous discussions. Dr. Ten Broek requested that the Board move to executive session. A motion was made by Dr. Ten Broek, second by Dr. Ficek, to move to executive session. The legal authorities for this Executive 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 all members voting in the affirmative. Motion passes (7-0). The Executive Session began at 12:48 PM CST. Attending the executive session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Ficek, Dr. Yohe, Dr. Rokke, Ms. Botz, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 12:53 PM CST and the meeting was reopened.

Upon returning to the open meeting, Ms. Hicks reminded the Board that they had previously discussed offering a conditional dismissal for violations of 17-03-01-01(3) and 17-03-01-05. The terms previously discussed included a \$500.00 fee for each violation and a \$284.75 reimbursement to the patient. An additional discussion was held requiring the jurisprudence examination. A motion was made by Dr. Yohe, second by Dr. Ficek, to offer Dr. Pozarnsky a conditional dismissal for violation of 17-03-01-01(3) and 17-03-01-05. The terms include a \$500.00 fee for each violation, a \$284.75 reimbursement to the patient, and the successful completion of the jurisprudence examination. A roll call vote was taken with all members voting in the affirmative. Motion passes (7-0).

Per Diem. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to pay a full per diem payment (\$250) for this meeting. A roll call vote was taken with all members voting in the affirmative. Motion passes (7-0).

Adjourn: A motion was made by Dr. Ficek, second by Dr. Yohe, to adjourn the meeting. Motion passed. The meeting ended at approximately 12:59 PM CST.

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



Christa Mellum, Secretary

01-30-23

Date