



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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Minutes of the Board Meeting of the North Dakota Board of Chiropractic Examiners held July 26, 2023 at 9:00 AM CST in the Peace Garden Room, ND Capitol, Bismarck, ND

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. Ficek, Dr. Rokke and Ms. Botz. Absent: Dr. Yohe. Executive Director Lisa Blanchard and Assistant Attorney General Ms. Allyson Hicks were present. Public: Dr. Jeffrey Askew, a new board appointee - effective September 1, 2023. There were other public attendees present.

Pledge of Allegiance.

Reading of the Mission Statement: Dr. Froehling

Additions to the Agenda:

- 1) Attorney General's Office Professional License Board Training Seminar;
- 2) 2021/2022 Audit;
- 3) New Complaint – Dr. Hager (#2023-05)
 - a. Executive Session Legal Authorities:
 - i. The governing body anticipates this topic may be discussed in Executive Session. The legal authority for Executive Session is N.D.C.C.44-04-19.2(1): A governing body may hold an executive session to consider or discuss closed or confidential records.
 - ii. The governing body anticipates this topic may be discussed in Executive Session. The legal authority for Executive Session is 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.

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

Approvals:

A motion was made by Ms. Mellum, second by Dr. Rokke, to approve the minutes from the April 12, 2023 Board Meeting, May 10, 2023 Special Meeting, June 7, 2023 Special Meeting, and June 21, 2023 Special Meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

A motion was made by Dr. Ficek, second by Ms. Botz, to approve the Executive Director 2023 2nd Quarter Report. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

A motion was made by Dr. Ten Broek, second by Ms. Mellum, to approve the 2023 2nd Quarter Financial Reports. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

A motion was made by Ms. Mellum, second by Dr. Rokke, to approve the 2023 2nd Quarter Approval of Checks Written. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Licenses:

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

Edison Arauz, D.C. – An update on the status of his conditional license was provided. A motion was made by Dr. Ficek, second by Ms. Mellum, to have the Executive Director send a status check request to Dr. Arauz for an update and to notify him that it is his responsibility to comply with the timelines set in the agreement. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Reports:

A motion was made by Dr. Rokke, second by Ms. Mellum, to accept the FCLB Annual Meeting Reports from Dr. Froehling & Ms. Blanchard; NBCE Part IV Testing Reports from Dr. Ficek & Dr. Rokke; and the NBCE Part IV Test Writing Report from Dr. Ten Broek. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Cases:

Dr. Schmitz - Settlement of Schmitz v. Board of Chiropractic Examiners, Case No. 2020-CV-01829. All terms of the agreement have been met. A motion was made by Ms. Botz, second by Dr. Rokke, to dismiss this case. A roll call vote was taken with Froehling, Ten Broek, Ficek, Rokke, and Botz voting in the affirmative. Mellum recused. Yohe absent. Motion passes (5-0-1-1).

Dr. Schmitz v. ND Bd of Chiropractic Examiners, Case No. 08-2022-CV-02783. Ms. Hicks provided an update that we are currently waiting on the District Court's ruling on the motion for summary judgement. Information/Update only.

Dr. Jeffrey Pokorny (#2021-03). The conditional dismissal agreement was fully executed on 7/25/2023. No action required until the terms of the agreement have been met. Information/Update only.

Dr. Jeffrey Pokorny (#2022-02). This case is pending the conclusion of the Peer Review Committee's investigation. The Executive Director indicated that she had received a voucher from Dr. Weiss for an additional 10 hours of time. A motion was made by Dr. Ten Broek, second by Ms. Mellum, to approve the payment of the voucher. Information/Update only. A roll call vote was taken with Froehling, Ten Broek, Mellum, Rokke, and Botz voting in the affirmative. Ficek recused. Yohe absent. Motion passes (5-0-1-1).

Dr. Daniel Pozarnsky (#2022-07). The Board received a request from Dr. Pozarnsky's legal counsel in response to the Board's settlement agreement. The meeting minutes portion of the request was completed. Ms. Hicks is working on the additional information and will provide it to Dr. Pozarnsky's attorney when completed. Information/Update only.

Dr. Daniel Pozarnsky (#2022-08). No action was taken as the Board will keep this case open during the pendency of #2022-07. Information only.

Dr. Timothy Corrigan (#2023-01). The Board requested a response from Dr. Corrigan on May 10th. No response was received. A second request was sent on June 28th and the response was received on July 12th. A motion was made by Dr. Rokke, second by Dr. Ten Broek, to move to Executive Session for the discussion of this complaint. The legal authorities for the Executive Session are: N.D.C.C. 44-04-19.1(2): Attorney Consultation; N.D.C.C. 44-04-19.2(1) A governing body may hold an executive session to consider or discuss closed or confidential records; 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; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1). The Executive Session began at 9:30 AM CST. Attending the Executive Session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Ficek, Dr. Rokke, Ms. Botz, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 9:44 AM CST and the meeting was reopened.

Discussion was held on discipline for violation of 17-03-01-01(22), sexual misconduct or sexualizing behavior, in that Dr. Corrigan made inappropriate sexual verbal comments to a patient; and 43-06-15(4), failure to cooperate fully with a board investigation, including responding fully and promptly to any questions raised by the Board. A motion was made by Dr. Ficek, second by Ms. Mellum, to offer a settlement agreement for these two violations. The terms of the agreement are to include:

- 1) A \$500 fee for each violation. There are two categories of violations for a total of \$1,000.
- 2) He shall take and pass one essay question from the boundaries section of the EBAS examination at his cost. The first attempt at the exam must occur within 30 days of the date of execution of the agreement. If successful passage on the first attempt does not occur, the license shall be immediately suspended until successful passage of the EBAS exam occurs.

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

Additional discussion was held regarding substandard documentation received in the investigation of this complaint. A motion was made by Dr. Rokke, second by Dr. Ten Broek, to file a board-initiated complaint and request Dr. Corrigan to respond. He is to provide the Executive Director with his patient lists or schedules for 2023. She will randomly select 10 patients from the list and Dr. Corrigan will provide the entire patient file for 2023 for each patient. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Dr. Mason Custer (#2023-02). The suspension order was signed June 7th in response to the notice from Child Support Enforcement. Discussion was held on the suspended license and the current license

renewal period. The Executive Director will send a letter to Dr. Custer explaining this and his options. Instruction only.

New Complaints.

Unlicensed Practice Complaint. An unlicensed practice complaint was received. The unlicensed chiropractor appears to be licensed in MN, but has provided telehealth care to an individual in North Dakota. A motion was made by Dr. Rokke, second by Dr. Ten Broek, to have Ms. Hicks forward the information to the Grand Forks States Attorney as this is not in our jurisdiction and to alert the chiropractor regarding the licensure requirements in North Dakota. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Dr. Jason Moore (#2023-03); Dr. Robert Shaw (#2023-04); and Dr. Allen Hager (#2023-05). Ms. Hicks instructed that the Board could hold a single executive session for all 3 new complaints if they are discussed separately during the executive session and when back in open meeting. A motion was made by Dr. Rokke, second by Dr. Ten Broek, to move to Executive Session for the discussion of these 3 new complaints. The legal authorities for the Executive Session are: N.D.C.C. 44-04-19.2(1) A governing body may hold an executive session to consider or discuss closed or confidential records; and 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1). The Executive Session began at 10:17 AM CST. Attending the Executive Session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Ficek, Dr. Rokke, Ms. Botz, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 10:37 AM CST and the meeting was reopened.

Dr. Jason Moore (#2023-03). A motion was made by Dr. Ten Broek, second by Ms. Mellum, to request a response from Dr. Moore regarding this complaint based on the discussion held in executive session. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Dr. Robert Shaw (#2023-04). A motion was made by Dr. Ficek, second by Ms. Botz, to request a response from Dr. Shaw regarding this complaint based on the discussion held in executive session. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Dr. Allen Hager (#2023-05). A motion was made by Dr. Ficek, second by Dr. Ten Broek, to request a response from Dr. Hager regarding this complaint based on the discussion held in executive session. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Applications:

Dr. Lanny Gabbert – 2023 Chiropractor License Renewal. Dr. Gabbert self-disclosed a previous disciplinary action taken by ND ESPB on his 2023 application for license renewal. Ms. Hicks disclosed her potential conflict as she also represents ESPB. She did not represent them at the time of or during this action. No board member requested her recusal. The Board reviewed the documentation provided by ESPB relating to this action. A motion was made by Dr. Ficek, second by Ms. Botz, to approve the 2023

license renewal for Dr. Gabbert. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

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.

Animal Chiropractic Information/Board of Veterinary Medicine. Dr. Froehling, Ms. Hicks, and Ms. Blanchard met with the respective counterparts of the ND Board of Veterinary Medicine on July 5th regarding Animal Chiropractic. The Veterinary Board approached us as they are considering moving forward with legislation that will allow licensed chiropractors to become certified to perform animal chiropractic. The preliminary draft language presented was modeled from the MN animal chiropractic language. A lengthy discussion was held, and a lot of work will be involved. Many decisions will need to be made and agreed upon by all parties involved. At this time, the Board would like to move forward with adding the option for licensed chiropractors to be certified to perform animal chiropractic to the law. Ms. Hicks and Ms. Blanchard will work on drafting some language options for the Board to review. No action taken.

Website, Technology & Office Equipment Planning. No information at this time as requested quotes were not received. The executive director will follow up and bring quotes to the Board when received.

Copy Machine Contract Renewal/Approval – Advanced Business Methods. Our current lease expires in November. A quote was provided for the newer model of the existing machine. The cost will be \$0.60 more per month than we are currently paying. A motion was made by Ms. Mellum, second by Dr. Ten Broek, to approve the quote. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Administrative Rules. Due to SB2249, the Executive Director requested the Board discuss Continuing Education and Reciprocity, so she can discuss these items with the Labor Commissioner when he requests his mandated meeting with the Board. A lengthy discussion was held on the continuing education requirements. Ms. Blanchard provided research regarding the requirements of all states. Ms. Hicks reminded the Board that their mission is to protect the public and not how to make things easier for the licensee when considering this topic. In general, all were ok with the current total required number of hours (20/year). Discussion on the Professional Boundary Hours requirement was held regarding necessity and total number. Generally, we have minimal disciplinary complaints in this area. At this time, we have no data available to indicate if this requirement is a contributing factor to the lower numbers compared to other jurisdictions. If Administrative Rule changes are proposed, the Board would be in favor of modifying the 3 hours every 3-years requirement to 1 hour/year for Professional Boundaries. Further discussion was held on the topic of documentation. This topic produces the highest volume of our complaints. The Board would be in favor of considering adding a 1- or 2-hour requirement in Documentation/year. These would be included in the total 20 hours – not in addition to. Regarding reciprocity, currently the Executive Director estimates from the submission of an application to the issuing of a license is approximately 30-days. From the receipt of a completed application to the issuing of a license is less than 2-hours. The granting of a license within three days of receipt of an application would not be possible. No action taken, only initial discussion in preparation for the Labor Commissioner meeting when that occurs.

In addition to the items per SB2249, a brief discussion was held on “standards of care”. There are differences between jurisdictions on how this is addressed in statutes. Ms. Hicks and Ms. Blanchard will work on gathering some information and drafting some possibilities for the Board to review and consider. Information only. We will continue to review the Administrative Rules for additional updates at future meetings.

Manuals:

- Policy Manual. This was presented and adopted at the January 2023 board meeting. No changes were made.
- Procedure & Operations. This was previously a part of the Policy manual but separated out into its own document. It is a work in progress and will be continually updated and added to as the Executive Director works on items. A motion was made by Dr. Ten Broek, second by Ms. Mellum, to adopt the Procedure & Operations manual. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).
- Peer Review Manual. This has not been distributed. Ms. Hicks and Ms. Blanchard have opted to table this until further discussions of the Administrative Rules are completed.

2021/2022 Audit. Brady Martz completed the and the Executive Director picked up the materials on er way to this meeting. A copy of the audit report was distributed to each board member at the meeting. As there was not adequate time to review the document, it will be discussed further and formally accepted at a future meeting. Information only.

Board Calendar Review

- FCLB District Meeting – October 5-8 in SD. A motion was made by Dr. Ficek, second by Ms. Mellum, to authorize Dr. Ten Broek, Dr. Rokke, and Ms. Blanchard’s attendance. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).
- FARB RLS (Hicks) – Ms. Hicks would like to attend and is requesting assistance from the boards she represents. A motion was made by Ms. Mellum, second by Dr. Ficek, to provide \$1,000.00 to Ms. Hicks towards the cost of her attendance. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).
- AG Office Licensing Board Training Seminar – October 25. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to authorize a per diem payment for Dr. Askew to attend. Ms. Blanchard will also attend virtually. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Per Diem.

Dr. Froehling – July 5 Meeting with Vet Board. Dr. Froehling has requested a per diem for his attendance at the meeting. A motion was made by Dr. Ficek, second by Dr. Ten Broek, to authorize a per diem payment for Dr. Froehling. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

July 26, 2023 Board Meeting. A motion was made by Dr. Ficek, second by Dr. Rokke, to pay per diem (\$250) and appropriate expenses for this meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Ficek, Rokke, and Botz voting in the affirmative. Yohe absent. Motion passes (6-0-1).

Adjourn: A motion was made by Dr. Ficek, second by Ms. Botz, to adjourn the meeting. Motion passed. The meeting ended at approximately 12:05 PM CST.

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

Signature: *Christa Mellum*
Christa Mellum (Oct 19, 2023 09:20 CDT)

Email: ndsbce.mellum@gmail.com

10/19/2023

Christa Mellum, Secretary

Date