



# NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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## **Minutes of the Board Meeting of the North Dakota Board of Chiropractic Examiners held October 18, 2023, 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. Yohe, Dr. Rokke and Dr. Askew. Absent: Ms. Botz. Executive Director Lisa Blanchard and Assistant Attorney General Ms. Allyson Hicks were present. Public: There were public attendees present.

**Reading of the Mission Statement:** Dr. Froehling

### **Additions to the Agenda:**

There were no additions to the agenda. A motion was made by Dr. Ten Broek, second by Dr. Yohe, approve the agenda as proposed. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

### **Approvals:**

A motion was made by Dr. Rokke, second by Dr. Yohe, to approve the minutes from the July 26, 2023 Board Meeting. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

A motion was made by Dr. Yohe, second by Ms. Mellum, to approve the Executive Director 2023 3<sup>rd</sup> Quarter Report. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew 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 2023 3<sup>rd</sup> Quarter Financial Reports. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew 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 2023 3<sup>rd</sup> Quarter Approval of Checks Written. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

### **Licenses:**

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

Edison Arauz, D.C. – An update on the status of his conditional license was provided. The first report from KMC University was received. The next required report is ongoing. No action taken. Update only.

**Reports:**

A motion was made by Dr. Yohe, second by Dr. Askew, to accept the FCLB District Meeting Reports from Dr. Rokke, Dr. Ten Broek, & Ms. Blanchard; and the verbal FARB RLS report from Ms. Hicks. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

**Litigation:**

Dr. Schmitz v. ND Bd of Chiropractic Examiners, Case No. 08-2022-CV-02783. Ms. Hicks provided an update on the status of this case and the Open Records request made by Dr. Schmitz. No action taken. Information only.

**Cases:**

Dr. Jeffrey Pokorny (#2021-03). The conditional dismissal agreement was fully executed on 7/25/2023. The only term of the agreement remaining is verification that all reimbursements/refunds have been made. Information was provided to the Board by the deadline in the agreement, however, some indicated that they were still processing, etc. The Board will ask Ms. Titus to request a progress update on the incomplete accounts. Instruction only.

Dr. Jeffrey Pokorny (#2022-02). The Peer Review Committee has completed their investigation and submitted a report to the Board. 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 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 9:21 AM CST. Attending the Executive Session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Yohe, Dr. Rokke, Dr. Askew, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 9:49 AM CST and the meeting was reopened.

Upon returning to the open meeting, the Executive Director informed the Board that she had outstanding PRC committee vouchers for approval. A motion was made by Dr. Askew, second by Ms. Mellum, to pay the outstanding vouchers for Dr. Holkup (\$2,025.00) and Dr. Weiss (\$7,975.50). A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

Further discussion was held on the violations and potential discipline. A motion was made by Dr. Ten Broek, second by Dr. Yohe, that the Board finds reasonable cause for 19 violations of N.D.C.C. 43-06-15(1)(e) and N.D.A.C. 17-03-01-01(3) as specified in the Peer Review Committee report. A settlement agreement will be offered with the following terms:

- Reimbursement of the Peer Review Committee Costs = \$14,625.50.
- Fee for Violations: 19 violations at \$500.00/violation = \$9,500.00
- Professional Monitoring by KMC University at Dr. Pokorny's expense.
  - Two quarterly reviews consisting of 10 charts each.

- The Board may end the monitoring after 2 reviews if KMC indicates that the documentation is adequate. If KMC reports the notes are deficient, then additional monitoring will be determined by the Board.

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

Dr. Daniel Pozarnsky (#2022-07). Ms. Hicks is continuing to work on the additional information requested 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). All terms of the settlement agreement have been met, to include the payment of a fee and the completion of the EBAS examination. A motion was made by Dr. Rokke, second by Dr. Ten Broek, to close the case as all terms have been met. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

Dr. Mason Custer (#2023-02). The Board received notification from Child Support Enforcement that they had lifted the suspension. The Board notified Dr. Custer upon notification on August 7, 2023 that his license was no longer suspended. Information only.

Dr. Jason Moore (#2023-03). The requested response was received. A motion was made by Dr. Yohe, second by Dr. Askew, to move to Executive Session for the discussion of this case. 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz 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. Yohe, Dr. Rokke, Dr. Askew, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 10:40 AM CST and the meeting was reopened. *Ms. Hicks was absent from the meeting from 10:30 AM – 10:41 AM.*

Upon return to the open meeting, a motion was made by Dr. Rokke, second by Dr. Yohe, to proceed as discussed in the executive session requesting follow-up information. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

Dr. Robert Shaw (#2023-04). The requested response was received. A motion was made by Dr. Rokke, second by Ms. Mellum, to move to Executive Session for the discussion of this case. 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 10:45 AM CST. Attending the Executive Session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Yohe, Dr. Rokke, Dr. Askew, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 10:55 AM CST and the meeting was reopened.

Upon return to the open meeting, a motion was made by Dr. Rokke, second by Ms. Mellum, to send a letter of concern to Dr. Shaw regarding documentation along with a dismissal of the complaint for no violation of law. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

Dr. Allen Hager (#2023-05). The requested response was received. A motion was made by Dr. Rokke, second by Dr. Yohe, to move to Executive Session for the discussion of this case. 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 11:04 AM CST. Attending the Executive Session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Yohe, Dr. Rokke, Dr. Askew, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 11:06 AM CST and the meeting was reopened.

Upon return to the open meeting, a motion was made by Ms. Mellum, second by Dr. Rokke, to dismiss the complaint for no violation of law. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

Dr. Timothy Corrigan (#2023-06). The requested response was received. A motion was made by Dr. Yohe, second by Ms. Mellum, to move to Executive Session for the discussion of this case. 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. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1). The Executive Session began at 11:23 AM CST. Attending the Executive Session were Dr. Froehling, Dr. Ten Broek, Ms. Mellum, Dr. Yohe, Dr. Rokke, Dr. Askew, Ms. Hicks, and Ms. Blanchard. The Executive Session was recorded as required by law. The Executive Session ended at 11:40 AM CST and the meeting was reopened.

Upon return to the open meeting, the Board determined additional time to review the information received was needed. The Board instructed the Executive Director to assign each board member specific patient records to review and to provide a report. No action was taken. Instruction only.

**New Complaints:**

Anonymous. The Board received an anonymous complaint. Discussion occurred on the information received and whether the Board wanted to file a board-initiated complaint. After further discussion on the matter and based upon the information received, the Board felt this was a poor business decision and not a violation of law, therefore they opted not to file a board-initiated complaint. No action was taken.

**Applications:**

Dr. Kyle Warren. Dr. Warren applied for licensure after being notified by the Board and the Grand Forks States Attorney regarding the unlicensed practice situation. The application was routine except for the agreement with Grand Forks County regarding the unlicensed practice. The Board accepted Dr. Warren's explanation in the matter. A motion was made by Dr. Askew, second by Dr. Yohe, to approve the application of Dr. Warren. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

**Board Business:** *Due to the availability of Ms. Hicks, the Board discussed a few of these items in between cases vs. in the order of the agenda. It will be noted when each item was discussed.*

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. *This was discussed between #2023-03 & #2023-04.*

2021/2022 Audit. The audit was distributed at the July 2023 meeting. As there was not time to fully review at that meeting, the Board held this over. A motion was made by Dr. Yohe, second by Ms. Mellum to accept the 2021/2022 Audit Report as presented by Brady Martz. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1). *This was discussed between #2023-05 & #2023-06.*

Animal Chiropractic Information/Board of Veterinary Medicine. The Board of Veterinary Medicine reported to the Board that a survey was conducted within the ND Veterinary Association indicating they would not support chiropractors performing animal chiropractic. As this conversation was initiated by the NDBVM, we will table it until there is further communication from them. No action taken – information only.

Website, Technology & Office Equipment Planning. The Executive Director provided information regarding the project quote from Albertson's regarding the addition of Continuing Education reporting and a licensee dashboard on our website. A motion was made by Ms. Mellum, second by Dr. Yohe, to accept the quote for \$5,000.00 and to initiate the project. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

CLEAR Executive Leadership Program for Regulators. The Executive Director presenting this virtual training opportunity to the Board. Ms. Hicks indicated that the ND Legislature receives their regulatory information from CLEAR and this would be a good opportunity. A motion was made by Dr. Yohe, second by Dr. Rokke, to pay the \$640.00 registration fee for Ms. Blanchard to attend. A roll call vote was taken with Froehling, Ten Broek, Mellum, Yohe, Rokke, and Askew voting in the affirmative. Botz absent. Motion passes (6-0-1).

Administrative Rules. The Executive Director provided some possible updates to the Rules for the Board to consider. Due to time, the Board will wait until the January 2024 meeting to start the process of discussing changes to the Administrative Rules. Information only. No action was taken.

Manuals: Policy Manual and Procedure & Operations. No changes have been made to the manuals since the last meeting. Information only.

Board Calendar Review. The Board confirmed the next meeting will be held on Friday, January 19, 2024 in Bismarck.

**Per Diem.**

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

**Adjourn:** A motion was made by Dr. Ten Broek, second by Dr. Yohe, to adjourn the meeting. Motion passed. The meeting ended at approximately 12:02 PM CST.

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

**Signature:** Christa Mellum  
Christa Mellum (Jan 22, 2024 09:59 CST)

**Email:** ndsbce.mellum@gmail.com

01/22/2024

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Christa Mellum, Secretary

Date