

**IDAHO BOARD OF CHIROPRACTIC PHYSICIANS**  
**Bureau of Occupational Licenses**  
700 West State Street, P.O. Box 83720  
Boise, ID 83720-0063

**Board Meeting Minutes of 6/3/2016**

**BOARD MEMBERS PRESENT:** Mary J White, DC - Chair  
Kathleen J McKay, DC  
Herbert W Oliver, DC  
Charles H Coiner  
John Downey, DC

**BUREAU STAFF:** Tana Cory, Bureau Chief  
Dawn Hall, Administrative Support Manager  
Lori Peel, Investigative Unit Manager  
Maurie Ellsworth, General Counsel

**OTHERS PRESENT:** Dr. Patrick Mayo, Peer Review Chair  
Ryan Fitzgerald, Idaho Association of  
Chiropractic Physicians

The meeting was called to order at 11:00 AM MDT by Mary J. White, DC.

**APPROVAL OF MINUTES**

Dr. Oliver made a motion to approve the minutes of 3/11/2016. It was seconded by Dr. McKay. Motion carried.

**LEGISLATIVE REPORT**

Ms. Cory gave the legislative report. She said that proposed law changes are due to the Governor's Office by August 1, and proposed rule changes are due to the Governor's Office by the third week in August for the 2017 Legislature.

**FINANCIAL REPORT**

Ms. Hall gave the financial report, which indicated that the Board had a cash balance of (\$46,823.72) as of 5/31/2016.

**FEE INCREASE OPTIONS**

Ms. Hall reviewed two fee increase options with the Board. Ms. Cory explained the legislative process for a proposed fee increase. Dr. Oliver suggested that the

Board propose a fee for the review and approval of continuing education courses, and Dr. White said the Board would discuss this during the New Business portion of the meeting under “Continuing Education Approvals.” Ms. Peel provided a report regarding the outstanding fines, costs, and fees to be paid by licensees who have been disciplined and those that have been recovered to date. Mr. Coiner made a motion to approve the second fee increase option that would generate an estimated \$36,150 and submit it as a proposed rule change for the 2017 Legislature. It was seconded by Dr. Oliver. Motion carried. The Board discussed the possibility of raising the fee caps in the law, and Ms. Hall suggested adding a section for “Fees” in the law and rules. Mr. Coiner made a motion to request Bureau staff to create a proposed law change to raise the fee caps and consolidate the fee provisions into a separate section in its laws and rules. It was seconded by Dr. McKay. Motion carried.

### **INVESTIGATIVE REPORT**

Ms. Peel gave the investigative report, which is linked above.

### **FOR BOARD DETERMINATION**

Ms. Peel presented case I-CHI-2016-3 for Board review. Dr. McKay made a motion to close this case with a warning letter to the Respondent. It was seconded by Dr. Oliver. Motion carried.

### **DISCIPLINE**

Ms. Peel presented a CEU Settlement Order in case CHI-2016-5. Dr. Oliver made a motion to approve the Settlement Order and allow the Board Chair to sign on behalf of the Board. It was seconded by Dr. McKay. Motion carried.

Ms. Peel presented an Informed Consent Form in case CHI-2014-13. No action was taken.

Ms. Peel presented a Request for Release from Probation in case CHI-2015-6. Dr. McKay made a motion to approve the Request for Release from Probation. It was seconded by Dr. Oliver. Motion carried.

### **ETHICS AND BOUNDARIES ASSESSMENT SERVICES (EBAS) UPDATE & UTILIZATION**

Ms. Peel reviewed the utilization of EBAS in past disciplinary cases with the Board.

## **MEDICAL DEVICES**

Mr. Ellsworth reviewed Idaho Code § 54-704 (1) and (2) and 54-705 with the Board. The Board discussed the use of medical devices by Idaho licensed Chiropractic Physicians. Mr. Fitzgerald said the Idaho Association of Chiropractic Physicians is working with a laser company, attorneys, and other state associations regarding the proposed law it will be presenting to the 2017 Legislature. The Board provided its recommendation to Ms. Peel regarding a current investigation case concerning the use of lasers. Dr. White requested that this issue be kept on the to do list for continued review.

## **OLD BUSINESS**

To Do List – The Board reviewed the to do list and no action was taken.

## **PEER REVIEW DISCUSSION – DR. MAYO**

Dr. Patrick Mayo, Peer Review Chair, said that he, Mr. Ellsworth and Dr. Oliver met to discuss the peer review laws and rules. He said that his recommendation is to keep peer review since it serves an important role in providing the public with the mechanism to question the practices of a chiropractor. Dr. Mayo suggested that a time frame be included within the law and rules for the chiropractic physician to provide the requested peer review documentation in a timely manner. He also said since the process is non-binding that there should not be an appeal process in the rules.

Mr. Ellsworth said the initial concern regarding peer review was the under-utilization of it and possible wrong usage of it (i.e. discovery in ongoing investigations). Ms. Peel said that peer reviewers are not considered experts in ongoing investigations, so any peer review information would not be included in an investigation.

Dr. Mayo asked the Board what it wants him to provide to the Investigative Unit when the peer review process indicates a licensed chiropractic physician appears to have violated a law or rule. He said the reviewers have an ethical obligation to report violations by a chiropractic physician that appear to be supported by information reviewed while conducting the peer review. Dr. Mayo said that a copy of the peer review report gets sent to the peer review liaison who can then send the report to the Investigative Unit. Ms. Peel said that if the report is supplied as the complaint, it becomes part of the investigative case. She said the original request for peer review could also be forwarded to the Investigative Unit. The following statement would need to be included as part of the complaint: “Based on a peer review there may be a violation of the laws and rules, so this matter is being referred to the Investigative Unit. Attached is a copy of the original request for peer review.”

The Board received copies of the Peer Review Manual and Peer Review Worksheet.

Dr. Oliver made a motion to delete the appeal clause, to add a time limit of fourteen (14) days for the doctor to respond to the request, and to revise the language to require the request for peer review to be referred for investigation if it appears there has been a violation of the law or rules, and to report to the Board Liaison as proposed language for the Peer Review rules to present to the 2017 Legislature. It was seconded by Dr. McKay. Motion carried. The motion was amended to include the appointment of Dr. Downey as the Peer Review Liaison. It was seconded by Dr. McKay. Motion carried.

Mr. Coiner left the meeting around 1:40 PM MDT.

### **FOLLOW-UP LETTER TO LICENSEES ON 2016 LEGISLATIVE ITEMS**

The Board reviewed a proposed letter to be sent to licensees updating them on the items presented in the 2016 Legislature. Ms. Cory reviewed the process for drafting the letter. Dr. Downey made a motion to have the letter sent to the licensees. It was second by Dr. Oliver. Motion carried.

### **REVIEW OF STATUTES FOR “ANTIQUATED” LANGUAGE**

Dr. White asked for Mr. Ellsworth’s suggestions for the starting point to review and possibly change the existing language of the laws and rules. Mr. Ellsworth said it depends on whether the Board’s desire is to re-write the laws and rules or simply clean up any antiquated language in each section. Ms. Cory reviewed the process that would need to be completed in order to update just the fees section to present to the 2017 Legislature. She and Mr. Ellsworth said this would be a good place to start this year to clean up the antiquated language. Mr. Ellsworth said the Board could start making a list of the antiquated language within the laws and rules to work on to present to a future Legislative Session.

### **NEW BUSINESS**

#### **TELEHEALTH**

Dr. White asked about the legislation that was passed in 2015 and how it will affect the Board and the practice of Chiropractic Physicians. She asked that this subject also be included on the agenda for the next meeting.

#### **IDACARE**

Mr. Ellsworth reviewed the Patient Freedom of Information Act, otherwise known as IdaCare. He said the new statute eliminates all the requirements of the initial

law except to have the licensure status and disciplinary actions of health care providers available to the public on their Board's website. Dr. McKay made a motion to have Dr. White work with Ms. Cory on a notification to licensees regarding the elimination of IdaCare and send it to all licensees. It was seconded by Dr. Oliver. Motion carried.

## **CONTINUING EDUCATION APPROVALS**

The Board reviewed its laws and rules regarding continuing education. The Board agreed to examine its continuing education rules in order to update them.

## **CONTINUING EDUCATION – LONG DISTANCE LEARNING**

The Board agreed to investigate the amount of online hours of continuing education that are approved to be completed for renewal by other states. Dr. White suggested that the Board contact the Federation of Chiropractic Licensing Boards (FCLB) and ask for a poll of other states regarding the number of online hours. Mr. Fitzgerald said the Idaho Association of Chiropractic Physicians (IACP) just completed this type of survey, and he will provide the information to the Board.

## **LAWS AND RULES FOR LICENSURE BY ENDORSEMENT**

Dr. White suggested that the Board also request the FCLB poll other states regarding the laws and rules for licensure by endorsement. She said that she learned at the FCLB Annual Conference that other states license through reciprocity and do not require the Special Purposes Exam for Chiropractic (SPEC) for licensure. Dr. Downey made a motion to change the rule for licensure by endorsement to remove the SPEC as a requirement. The Board discussed the reasons this particular requirement was included in the rules. Ms. Peel asked Ms. Simpson to join the meeting, and Ms. Simpson said this requirement went into effect when the State exam was eliminated. Dr. White said she will research the SPEC. The motion was tabled.

## **PROPOSED LAWS AND RULES**

No action was taken since the Board had previously discussed the laws and rules.

## **FCLB ANNUAL CONFERENCE – FOLLOWUP REPORTS: DR. WHITE AND DR. OLIVER**

Dr. Oliver said he thought it would be essential for new Board members to attend the FCLB Annual Conference because of the copious amount of education received about the national organization. Dr. White agreed, and said it was very

helpful to hear the national organization discuss its services and relationship with the National Boards of Chiropractic Examiners (NBCE), and what other states are doing with their laws and rules.

## **CORRESPONDENCE**

The Board discussed the email from Dr. Craig Manning asking about prescriptive rights to Type I and II medical devices. Dr. Downey made a motion to have Mr. Ellsworth draft a response to Dr. Manning to let him know that nothing has changed in the chiropractic scope of practice statute since 1993, and authorize the Chair to sign the letter. It was seconded by Dr. Oliver. Motion carried.

The Board discussed the email from Dr. Scott Walker regarding the prohibition of a mobile chiropractic practice. Dr. McKay made a motion to let Dr. Walker know that the Idaho Chiropractic Act does not address this issue, and have Ms. Toncray send the response. It was seconded by Dr. Oliver. Motion carried.

## **CE COURSES**

Dr. McKay made a motion to have Dr. White and herself review the previously approved CE on the website. It was seconded Dr. Downey. Motion carried.

## **EXECUTIVE SESSION**

Dr. McKay made a motion that the Board go into executive session under Idaho Code § 74-206(1)(d) to consider records that are exempt from disclosure under the Idaho Public Records Law. The purpose of the Executive Session was to consider license application materials. It was seconded by Dr. Oliver. The vote was: Dr. White, aye; Dr. Downey, aye; Dr. McKay, aye; and Dr. Oliver, aye. Motion carried.

Dr. Downey made a motion to come out of executive session. It was seconded by Dr. McKay. The vote was: Dr. White, aye; Dr. Downey, aye; Dr. McKay, aye; and Dr. Oliver, aye. Motion carried.

## **APPLICATIONS**

Dr. Downey made a motion to approve the following for licensure:

Ralf Schurmann     DCA-1719

It was seconded by Dr. Oliver. Motion carried.

Dr. McKay made a motion to table the following application until he completes the SPEC:

Applicant ID 901144059

It was seconded by Dr. Oliver. Motion carried.

**CE AUDIT/REINSTATEMENT REVIEW**

The Board reviewed all CE audits and reinstatements.

**NEXT MEETING** was scheduled for July 15, 2016, at 1:00 PM MDT.

**ADJOURNMENT**

Dr. McKay made a motion to adjourn the meeting at 5:03 PM MDT. It was seconded by Dr. Oliver. Motion carried.

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Mary J White, DC, Chair

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Kathleen J McKay, DC

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Herbert W Oliver, DC

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Charles H Coiner

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John Downey, DC

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Tana Cory, Bureau Chief