

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

Conference Call Minutes of 5/2/2014

BOARD MEMBERS PRESENT: James E. Hollingsworth, D.C. - Chair
Michael Troy Henze, D.C.
Charles H. Coiner
Mary Jo White, D.C.
Kathleen Joann McKay, D.C.

BUREAU STAFF: Tana Cory, Bureau Chief
Dawn Hall, Administrative Support Manager
Lori Peel, Investigative Unit Manager
Maurie Ellsworth, Legal Counsel
Cherie Simpson, Management Assistant
Carrie Gilstrap, Technical Records Specialist II

OTHERS PRESENT: Kay Christensen, Office of the Attorney General
Cally Younger, Counsel to the Governor
Anita Hamann, Division of Financial Management
Chris Ross, Division of Financial Management
Tony Smith, Benton Ellis, & Associates
Dennis Stevenson, Admin. Rules Coordinator

The meeting was called to order at 1:00 PM MDT by James E. Hollingsworth, D.C.

NEW BUSINESS

BOARD MEMBER TRAINING

Cally Younger from the Governor's Office spoke to the Board regarding the role of members of the Board and their charge to protect the public ahead of promoting the profession. Board members do not have authority to act as individuals and they must be cautious of being perceived as being self-serving or having a conflict of interest.

Kay Christensen from the Contract Division of the Office of the Attorney General spoke to the Board members regarding their roles and responsibilities. She stated that regulatory boards are created for public protection. The Legislature has given authority to the board and the board must operate within the applicable statutes. The Board's duty is to analyze applicants before licensure and to

discipline licensees who do not practice within the laws and rules. Protection from individual liability is only guaranteed if the boards operate within the scope and course of their statute. Ms. Christensen reminded the Board that its focus is on public protection and advised the members to be careful and mindful of their roles as board members.

Ms. Christensen also reminded the Board that although the Legislature gave it authority to promulgate rules in instances where the law isn't clear, the rules they adopt must stay within and cannot expand the scope of the law.

She recommended that the Board repeal Rule 24.03.01.020 and clarify any scope of practice questions by amending the statute since the rule attempts to expand the authority given in the statute. Ms. Christensen cautioned the Board members that they must wear the "public protection" hat when conducting business and not the "association" hat.

Dr. Henze asked Ms. Christensen if she had any suggestions for resolving the conflict between the law and rule. Ms. Christensen stated that the Board could retract the motion it made during the October 25, 2013 meeting that stated:

"Dr. Henze moved that the Board accept Rule 020 as written and answer future questions seeking clarification by stating that currently Chiropractic Physicians licensed in the state of Idaho may certainly administer vitamins, minerals, herbal, etc. in all their forms, including but not limited to intramuscular and intravenous injections. Dr. White seconded the motion. The vote was: Dr. White, aye; Dr. McKay, aye; Dr. Henze, aye; Dr. Hollingsworth, aye; and Mr. Coiner, nay. Motion carried."

Ms. Christensen also stated that the Board could move forward with legislation to fix I.C. § 54-704(2)(b) and repeal Rule 020.

Dr. Henze stated that the Board does not want to make trouble but, it seems obvious to him when reading the rule that utilizing injectables are within a chiropractor's scope of practice.

The Board discussed a letter dated July 24, 2013 that was addressed to the Idaho Association of Chiropractic Physicians. This letter was written by a private attorney and provided the Association a legal interpretation that chiropractic physicians may administer injectable and intravenous nutritional therapy under Idaho law. The Association has not pursued legislation to clarify this matter.

Dr. Hollingsworth stated the purpose of Rule 020 was to clarify what a chiropractor does. During the October 25, 2013 meeting there was not a 'new' vote. The intent was to protect the public with its decision made during this meeting.

Dennis Stevenson, Administrative Rules Coordinator, explained the rulemaking process to the Board and how negotiated rulemaking is a requirement in the process. He stated that interested parties should always be brought in if they have been identified. He reminded the Board that a rule can only implement the statute and cannot go beyond what the law allows.

Ms. Cory stated the Legislature now requires that all proposed rule changes go through negotiated rule making before being presented.

Dr. Henze stated that the Board will need to contact the Board of Medicine and the Board of Pharmacy to notify them of the Board's intentions. He also stated that it should consider the recommendations and follow the advice of legal counsel. The Board should do it the right way by revising the statute; while including the other Boards in the process.

Mr. Coiner asked if changing this statute would be the Board's responsibility or the Association's? Ms. Christensen stated that ideally it would be the Association's since issues related to scope of practice are driven by the industry.

Dr. Henze stated that this is a public protection issue and he will contact the Association to let them know the Board can assist in fixing the statute.

Dr. White made a motion for Dr. Henze to invite the Idaho Association of Chiropractic Physicians (IACP) President and Executive Director to the next meeting on May 16, 2014 to discuss a joint effort to change the law and repeal or review Rule 020. It was seconded by Dr. Henze. Motion carried.

Dr. Henze again stated that he felt that the Board needs to follow the advice of Ms. Christensen in regard to Rule 020.

Mr. Coiner stated that he had voted against the Board's October 25, 2013 motion clarifying Rule 020 and that the motion should be retracted.

Dr. McKay made a motion to reconsider the motion that was adopted on 10/25/2013 regarding Rule 020. It was seconded by Dr. Henze. Dr. White stated that this Board should consider the plan and timeline and then come back and do the reconsideration of that motion at that time. Dr. Hollingsworth stated he agreed with Dr. White and that the Board does not need to be in a hurry. The roll call vote was: Dr. White, no; Dr. Henze, no; Dr. Hollingsworth, no; Mr. Coiner, aye; and Dr. McKay, aye. The motion failed for lack of a majority vote.

Mr. Stevenson offered the Board his assistance in its legislative process for making changes.

Dr. Henze again stated he will contact the Association.

NEXT MEETING was scheduled for May 16, 2014 at 1:00 PM MDT.

ADJOURNMENT

Mr. Coiner made a motion to adjourn the meeting at 2:47 PM. It was seconded by Dr. White. Motion carried.

James E. Hollingsworth, D.C., Chair

Michael Troy Henze, D.C.

Charles H. Coiner

Mary Jo White, D.C.

Kathleen Joann McKay, D.C.

Tana Cory, Bureau Chief