

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 8/22/2014

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
Jean Uranga, Board Prosecutor
Marilyn London, Technical Records Specialist

OTHERS PRESENT: Jason West, D.C.
Ryan Fitzgerald, ID Chiropractic Association
Tony Smith, Benton Ellis
Cory Matthews, D.C.
Tom Hickey, D.C.
Shannon Gaertner-Ewing, D.C.
Molly Steckel, ID Medical Association

The meeting was called to order at 9:30 AM MDT by James E. Hollingsworth, D.C.

APPROVAL OF MINUTES

Mr. Coiner made a motion to approve the minutes of June 27, 2014 and July 11, 2014. It was seconded by Dr. McKay. Motion carried.

Mr. Coiner made a motion to approve the minutes of May 2, 2014. It was seconded by Dr. McKay. Motion carried.

LEGISLATIVE REPORT

Ms. Cory reminded the Board of the legislative deadline of September 15, 2014 to submit all proposed law changes to the Governor's office.

FINANCIAL REPORT

Ms. Hall gave the financial report, which indicated that the Board has a cash balance of \$24,954.35 as of July 31, 2014.

RENEWAL CONTRACT

The Board reviewed the 2015 Contract Renewal. Dr. White moved that the Board approve the 2015 Contract Renewal and allow the Chair to sign. Dr. McKay seconded the motion. Motion carried.

DISCIPLINE

Ms. Uranga presented a memorandum regarding case numbers CHI-2011-4, CHI-2012-6 and CHI-2012-10 and investigative case numbers I-CHI-2009-6, I-CHI-2011-8 and I-CHI-2012-11.

I-CHI-2009-6 – Dr. Henze moved to close the case and send a copy of the advertising rules to the Respondent. Dr. White seconded the motion. Motion carried. Mr. Coiner voted nay.

I-CHI-2011-8 – Dr. Henze moved to close the case and send the advertising rules to the Respondent. Dr. McKay seconded the motion. Motion carried. Mr. Coiner abstained.

I-CHI-2012-11 – Mr. Coiner moved to close the case. Dr. McKay seconded the motion. Motion carried.

CHI-2011-9 – Dr. Henze moved to close the case. Mr. Coiner seconded the motion. Motion carried.

CHI-2012-10 – Dr. Henze moved to close the case. Dr. McKay seconded the motion. Motion carried.

Ms. Uranga presented a Stipulation and Consent Order in case CHI-2013-2. Dr. Henze made a motion to approve the Consent Order and allow the Board Chair to sign on behalf of the Board. It was seconded by Mr. Coiner. Motion carried.

INVESTIGATIVE REPORT

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

FOR BOARD DETERMINATION

Mr. Coiner made a motion to approve the Bureau's recommendation and authorize closure in case I-CHI-2014-14. It was seconded by Dr. White. Motion carried.

OLD BUSINESS

The Board reviewed the To Do List. Dr. White reported that she was not able to attend the Telehealth Conference on August 27, 2014 and will review it at a later date. She did attend the conference call meeting. Ms. Cory stated there is a Telehealth Council meeting on September 12, 2014.

LAWS AND RULES SUBCOMMITTEE REPORT

Dr. Hollingsworth asked Dr. Gaertner-Ewing to stay on the sub-committee as an advisor and she agreed.

Dr. Henze presented a copy of the sub-committee report and reviewed the latest changes for Idaho Code 54-704(d) that added subcutaneous, sub-dermal. Intramuscular, intra-articular and intravenous administration and replaced the word advanced with injectable.

Ms. Steckel said the word "injectable" would be a red flag for the Idaho Medical Association and suggested using "current clinical nutritional administration methods."

Discussion was held to use these methods under the proposal and the type of training that will be required for the certification.

Ms. Cory showed what the Optometry Board did for its advanced certification.

Dr. Henze invited Dr. Reed Phillips, past president of a Chiropractor college, to be on the sub-committee. Dr. West and Dr. Phillips will be working to put together information on education and training. Dr. West stated it could take longer to gather the information than the time available to present the proposal at this legislative session.

Dr. Henze gave the Board the Council on Chiropractor Education Accreditation Standards and A Comparative Study of Chiropractic and Medical Education, which will be part of the education and training package.

Dr. Henze stated that the sub-committee will be meeting with the Idaho Medical Association representatives on August 28, 2014.

Ms. Steckel encouraged the Board to continue going forward with the proposed law at this time and indicated that it can be pulled at any time if there is a problem.

Mr. Fitzgerald agreed also to continue to move forward with the process.

Dr. Gaertner-Ewing informed the Board of a meeting in Arkansas on the national level regarding advanced clinical nutrition expansion of practice and public protection and she encouraged the Board to send a Board member.

Dr. West said he and Dr. Phillips will be attending the meeting in Arkansas.

Mr. Coiner moved to thank Dr. Henze and the sub-committee for all the hard work, and for the Board to continue forward with efforts to propose legislation for the 2015 legislative session. Dr. McKay seconded the motion. Motion carried.

RULE 020

Dr. White discussed Rule 020 and addressed her concerns regarding a motion that was approved by the Board in the October 25, 2013 minutes. The minutes concerning the motion read: "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."

Dr. White's concern is that the action the Board took is not defensible.

Dr. Henze stated that the Board is working toward changes to protect the public and fix the problem.

Dr. Henze moved that historically, in the state of Idaho, the application of clinical nutritional substances in all their forms is within the scope of practice of chiropractic physicians. During this time in which the Board of chiropractic physicians is developing language to revise the statute and develop rules for implementation, application, and necessary education appropriate for all methods of administration, it is imperative that chiropractic physicians comply with state and federal regulations regarding these methods and to obtain necessary additional education of advanced clinical nutritional administration methods to protect the public. Each physician should contact their attorney regarding utilization of their procedures. There was no second. Motion died.

Mr. Ellsworth stated that he has given the Board his legal opinion that the statute has clear language that chiropractors do not have prescriptive authority and the rule the Board accepted is ambiguous. The Board has chosen to ignore his opinion.

Dr. Hollingsworth read Rule 020 and states that it says nutrients in all their forms.

Dr. White moved as follows:

(1) that the Board retract the motion passed during the October 25, 2013 Board meeting that read: "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. Motion carried."

(2) I further move to authorize the Bureau to answer correspondence with regards to intravenous (IV) and intramuscular (IM) nutrients by indicating there is currently a conflict between the statute and rules with regards to nutritional practice. This "answer" should include a response such as that was previously issued by the board to seek their own personal legal counsel regarding the definition and use of the procedure or substances you are using.

(3) I further move to authorize the expenditure to send notification to every licensed chiropractor indicating the conflict between our statute and rules; regarding the use, administration of IV, and/or injectable nutrients and intra-articular subcutaneous injections. No second. Motion fails.

Dr. White moved that as follows:

That the Board retract the motion passed during the October 25, 2013 board meeting that read: "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. Motion carried."

Mr. Coiner seconded the motion. The vote was: Dr. McKay, aye; Dr. White, aye; Mr. Coiner, aye; Dr. Henze, nay; Dr. Hollingsworth, nay. Motion carried.

Dr. White moved to authorize the Bureau to answer correspondence with regards to intravenous (IV) and intramuscular (IM) nutrients by indicating there is currently a conflict between the statute and rules with regards to nutritional practice. This "answer" should include a response such as that was previously issued by the board to seek their own personal legal counsel regarding the definition and use of the procedure or substances you are using. No second. Motion died.

Dr. White moved to authorize the Bureau to answer scope of practice correspondence as the Board previously did by sending a copy of the Board's laws and rules and direct them to use their legal counsel to answer any questions. Dr. McKay seconded the motion. Motion carried.

NEW BUSINESS

CORRESPONDENCE

The Board reviewed a letter asking if chiropractors can dispense over the counter topical creams and patches out of office in the state of Idaho. Dr. White moved to direct the Bureau to respond as previously done sending a copy of the laws and rules and direct them to use their legal counsel to answer any questions. Dr. McKay seconded the motion. Motion carried. Dr. Henze voted nay.

The Board reviewed two letters regarding scope of practice. Mr. Coiner moved that the Bureau respond by sending a copy of the laws and rules and direct them to use their legal counsel to answer any questions. Dr. White seconded the motion. Motion carried. Dr. Henze voted nay.

NEXT MEETING was scheduled for a conference call on September 5, 2014 at 1:00 PM MDT.

ADJOURNMENT

Dr. White made a motion to adjourn the meeting at 1:55 PM MDT. It was seconded by Mr. Coiner. 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