

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 6/12/2015

BOARD MEMBERS PRESENT: Mary Jo White, D.C. - Chair
Michael Troy Henze, D.C.
Charles H. Coiner
John Downey, D.C.

BOARD MEMBERS ABSENT: Kathleen Joann McKay, D.C.

BUREAU STAFF: Tana Cory, Bureau Chief
Dawn Hall, Administrative Support Manager
Lori Peel, Investigative Unit Manager
Maurie Ellsworth, General Counsel
Roger Hales, Administrative Attorney
Marilyn London, Technical Records Specialist
Debbie Toncray, Technical Records Specialist

OTHERS PRESENT: Ryan Fitzgerald, Idaho Chiropractic Association
Tony Smith, Eiguren & Ellis

The meeting was called to order at 1:03 PM MDT by Mary Jo White, D.C.

LEGISLATIVE REPORT

Ms. Cory said that proposed law changes are due by August 1 to the Division of Financial Management and the Office of the Governor, and rule changes are due by the third week of August.

FINANCIAL REPORT

Ms. Cory gave the financial report, which indicated that the Board had a negative cash balance of \$(11,995.62) as of May 31, 2015.

DISCIPLINE

Ms. Uranga presented a memorandum regarding case numbers CHI-2015-4, CHI-2014-1, CHI-2014-2, CHI-2015-6, CHI-2015-7, CHI-2015-5, CHI-2014-9, CHI-2015-8, and CHI-2014-13. Dr. Henze was recused from case numbers

CHI-2014-1, CHI-2014-2, and CHI-2015-6. After discussion, the Board gave recommendations for appropriate discipline in all but CHI-2015-8. Dr. Downey made a motion to approve the Bureau's recommendation and authorize closure in case CHI-2015-8. It was seconded by Mr. Coiner. Motion carried.

Ms. Uranga presented a Stipulation and Consent Order in case CHI-2014-15. 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 Dr. Downey. Motion carried.

EXECUTIVE SESSION

Dr. Downey made a motion that the Board go into executive session under Idaho Code § 67-2345(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 Mr. Coiner. The vote was: Dr. White, aye; Dr. Henze, aye; Mr. Coiner, aye; and Dr. Downey, aye. Motion carried. Dr. Henze then excused himself from the rest of the meeting at 2:32PM.

Dr. Downey made a motion to come out of executive session. It was seconded by Mr. Coiner. Dr. White, aye; Mr. Coiner, aye; and Dr. Downey, aye. Motion carried.

Mr. Coiner made a motion to deny the settlement offer and allow Ms. Uranga to communicate the same to Mr. Kirkendall. It was seconded by Dr. Downey. 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-2014-16. It was seconded by Dr. Downey. Motion carried.

Dr. Downey made a motion to approve the Bureau's recommendation and authorize closure in cases I-CHI-2014-21 and I-CHI-2014-23. It was seconded by Mr. Coiner. Motion carried.

OLD BUSINESS

LAW AND RULE PROPOSALS

Mr. Hales reviewed the proposed law change to Idaho Code § 54-704 (2) (b) and the proposed changes in Rule 020. The law change clarifies the prohibition of prescribing, dispensing, independently administering, or distributing legend or prescriptive drugs. The rule clarifies the use of vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes, and glandular extracts, durable and non-durable medical goods and devices. He said the law change updates the definition of legend and prescriptive drugs to be clear. He reminded the Board that all proposed law changes must be submitted to the Governor's Office by August 1, 2015.

Mr. Hales also reviewed the proposed revision to Rule 020 and the discussion regarding clarification of this rule. He said the last four words, "in all their forms," would be removed from Rule 020. Mr. Hales said that once the proposed language is finalized, other entities would be given the opportunity to review it, i.e. Idaho Board of Medicine, Idaho Board of Pharmacy, Idaho Chiropractor Association, Idaho Medical Association, Chairman Wood, and possibly others. The proposed rule must be to the Governor's Office by the third week in August to be presented before the 2016 Legislature.

Dr. White re-stated the suggestions that Chairman Wood made regarding the proposed language for Rule 020. She said the Board has provided the proposed language that will make the rule clear to licensees and others, that the rules will now support the statutory language, and modernize the statute as previously recommended by Mr. Hales and Mr. Ellsworth. She reminded the Board that it needs the proper authority to regulate the chiropractic profession.

Ms. Cory reminded the Board of their regulatory role in reviewing these proposed revisions. She suggested that the Board provide the revised draft to Chairman Wood when it is complete.

Dr. White recognized Ryan Fitzgerald as the representative of the Idaho Association of Chiropractic Physicians (Association). Mr. Fitzgerald said the Association has been discussing these law and rule changes with Chairman Wood. He said there would also need to be education provided to chiropractors regarding this issue, which the Association will be doing. The Association is currently working on draft legislation that is slightly broader than what has been suggested to the Board. The Board will send the language for the rule to the Association when the language is ready so the Association can send it to its members.

Ms. Cory reminded the Board that Chairman Wood should be contacted and allowed to review the proposed language for the statute and rule prior to the information being disseminated to anyone else.

Mr. Coiner expressed his concerns regarding the statute, the rule and the current Food and Drug Administration (FDA) regulations for vitamins, minerals, etc. Mr. Hales said he spoke with Mark Johnson with the Idaho State Board of Pharmacy and asked if in his review the list of specific terms of “vitamins, minerals, botanical medicine, herbals, homeopathic, phytonutrients, antioxidants, enzymes, and glandular extracts,” included prescriptive or legend drugs. Mr. Hales said some of these could be prescription or legend drugs depending on their form, but they could also not be legend or prescriptive drugs in other forms. Ms. Cory stated that the language in the rules will need to match the revised law. Dr. White said that Mark Johnson was confident that the language in the statute would clarify any of the categories which might come into question as far as prescriptive or legend drugs. Mr. Coiner suggested that language be included that ties the rule back to the statute even though it may be redundant.

Mr. Coiner made a motion to authorize Dr. White to continue to work on this process with the same parties as before and submit the proposal to Chairman Wood for his review. It was seconded by Dr. Downey. Motion carried.

TO DO LIST

Mr. Hales briefly reviewed the Wisconsin and New Mexico chiropractic acts. Wisconsin’s chiropractic act has a section that includes the general prohibition of prescribing drugs, but also establishes an advanced certification program. Mr. Hales said Wisconsin allows chiropractors to prescribe drugs under the advanced practice certification program. Mr. Hales said that New Mexico’s chiropractic act is slightly broader. It includes an expansive chiropractic formulary and advanced chiropractic certification where chiropractors who have the certification can prescribe items specifically listed in the chiropractic formulary.

Mr. Fitzgerald said that any type of advanced chiropractic certification must include further extensive education prior to receiving the certification. He suggested that there would not be any grandfathering for such certification. There are several post-graduate programs for this type of certification.

OBJECTION TO COSTS AND FEES: CHI-2010-7

Mr. Ellsworth presented the objection to costs and fees regarding case number CHI-2010-7. Following Board review Mr. Coiner made a motion to deny the objection, authorize Mr. Ellsworth to prepare an order including a payment date six months from this denial, and have Dr. White review and sign it. It was seconded by Dr. Downey. Motion carried.

NEW BUSINESS

CORRESPONDENCE: CHIROPRACTIC SCOPE OF CARE, TRIGGER POINT INJECTIONS

The Board discussed the question submitted by a representative of State Farm regarding the use of trigger point injections by chiropractors. Dr. Downey made a motion to draft a letter to provide the law and rule to the State Farm representative, let him know that the Board is currently working to clarify this issue, and that he can consult his own attorney. It was seconded by Mr. Coiner. Motion carried. The Board agreed to have Ms. Toncray put this response in the Board books for future use.

CORRESPONDENCE: CHIROPRACTIC CONTINUING EDUCATION- WEBINAR

The Board discussed the webinar and agreed that it would be considered distance learning based on Rule 350(03). Dr. Downey made a motion to have Ms. London or Ms. Toncray respond to the inquirer. It was seconded by Mr. Coiner. Motion carried.

CORRESPONDENCE: CHIROPRACTIC SCOPE OF CARE, USE OF PROCAINE AND INJECTIONS

The Board discussed this question that was also submitted by a State Farm representative regarding the use of procaine and injections given by chiropractors. The Board agreed to have the standard response (as above in the response to the trigger point injections) provided to the State Farm Representative.

REVIEW TEMPORARY PERMIT RULE AND APPLICATION

Ms. London reviewed the temporary permit and application and explained the suggested additions. Dr. White will research the timing for passing and failing parts I-IV (in accordance with Rule 43(a)). She will present her findings at the next meeting.

FCLB/NBCE Annual Conference

Dr. White requested and the Board agreed to postpone this report until after she attends the District meeting that will be held in October 2015. Dr. White stated she will send the meeting information to Ms. London so she can send it to all members of the Board.

APPROVED CE COURSES

ProSport Chiropractic
2015 Seattle Summer Seminar

Standard Process NW
Doctor of the Future: Seven Pillars of Health

CE AUDITS

The Board reviewed and approved the continuing education (CE) audit documents.

NEXT MEETING was scheduled via video conference for Friday, July 17, 2015 at 1:00PM.

ADJOURNMENT

Dr. Downey made a motion to adjourn the meeting at 4:12PM. It was seconded by Mr. Coiner. Motion carried.

Mary Jo White, D.C., Chair

Kathleen Joann McKay, D.C.

Michael Troy Henze, D.C.

Charles H. Coiner

John Downey, D.C.

Tana Cory, Bureau Chief