

Board Members present: President Ronald J. Farabaugh, D.C., Vice-President Gregory P. Palkowski, D.C., Norman J. Gloekler, D.C., Brian S. Wilson, D.C.

Others present: Kelly A. Caudill, Executive Director; Leah V.B. O'Carroll, AAG and Elizabeth Moore, Executive Assistant

Members excused: None.

The Board's mission is...

to proactively protect the health and welfare of Ohio's citizens and to regulate the chiropractic profession with vision by setting high standards through examination of new doctors, annual license renewal, clinic inspections and timely investigation and disciplinary action when indicated.

CALL TO ORDER

President Dr. Farabaugh called the four hundredth and first Board meeting to order at 9:00 a.m. The meeting was held at the Ohio State Chiropractic Board Office; 77 South High Street, 16th Floor; Columbus, Ohio.

REVIEW OF MINUTES

MOTION 2014-001: Vice-President Dr. Palkowski moved and Dr. Wilson seconded a motion to approve the minutes of the June 6, 2013 Board meeting. Motion passed unanimously.

PRECEPTORSHIP APPLICATIONS

MOTION 2014-002: Dr. Wilson moved and Vice-President Dr. Palkowski seconded a motion to ratify the preceptorship approved for Jessica Smith with Deborah Skrzynecki, D.C. Motion passed unanimously.

ACUPUNCTURE CERTIFICATES

MOTION 2014-003: Dr. Gloekler moved and Vice-President Dr. Palkowski seconded a motion to ratify the acupuncture certificates issued to Drs. Clay Wolph and Julie Pyle. Motion passed unanimously.

RATIFICATION OF LICENSES

MOTION 2014-004: Dr. Gloekler moved and Dr. Wilson seconded a motion to ratify the following licenses issued as a result of the online Jurisprudence examination: Brock S. Frear, Danielle N. Matson, Andrew T. Brady, Joel Wilstead, Nathan G. Bunce, Nicholas C. Duchene, Cheri L. Gallant, Daniel A. Turo and Adam K. Pitsinger. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Director Caudill reviewed the Executive Director's report with the Board.

Director Caudill reported that Public Member John Kennedy is resigning from the Board effective September 1, 2013.

Director Caudill reported to date all staff and Drs. Palkowski, Gloekler and Wilson have completed annual ethics training as required by the Governor's Executive Order 2011-03.

Director Caudill announced the FCLB District II Meeting will be held on October 17-20, 2013 in Ft. Walton Beach, FL and the NBCE Part IV Exam will be held November 8-10, 2013.

MOTION 2014-005: Vice-President Dr. Palkowski moved and Dr. Wilson seconded a motion to approve the attendance and travel of Director Caudill and Dr. Gloekler to the FCLB District II Meeting scheduled for October 17-20, 2013 in Ft. Walton Beach, FL. Motion passed unanimously.

MOTION 2014-006: Vice-President Dr. Palkowski moved and Dr. Gloekler seconded a motion to approve Drs. Wilson and Gloekler's participation in the NBCE Part IV Exam on November 8-10, 2013. Motion passed unanimously.

Director Caudill reported that there will be a delay in the implementation of the new E-Licensing system. There is no update at this time on how long the delay will be.

Director Caudill reported that the Board's fiscal years 2012/2013 audit is complete with no findings or recommendations. A copy of the report was emailed to each Board member by the Auditor's office.

President Dr. Farabaugh commended the staff on receiving an audit with no findings or recommendations and expressed the Board's gratitude for always doing such a great job.

MOTION 2014-007: Dr. Wilson moved and Dr. Gloekler seconded a motion to accept the Director's Report as presented. Motion passed unanimously.

LEGAL ACTIVITIES

CONSENT AGREEMENT; CASE NO. 2012 CHR 063

MOTION 2014-008: Vice-President Dr. Palkowski moved and Dr. Wilson seconded a motion to accept the proposed Consent Agreement for the doctor cited in Case No. 2012 CHR 063 as presented. Voting Aye: Vice-President Dr. Palkowski, Dr. Gloekler and Dr. Wilson. Voting Nay: None. Abstaining: President Dr. Farabaugh. Motion passed.

MODIFICATION OF CONSENT AGREEMENT; CASE NO. 2013 CHR 015

MOTION 2014-009: Vice-President Dr. Palkowski moved and Dr. Wilson seconded a motion to accept the proposed Modification of Consent Agreement for the doctor cited in Case No. 2013 CHR 015 as presented. Voting Aye: President Dr. Farabaugh, Vice-President Dr. Palkowski and Dr. Wilson. Voting Nay: None. Abstaining: Dr. Gloekler. Motion passed.

CONSENT AGREEMENT; CASE NO. 2011 CHR 018

MOTION 2014-010: Dr. Gloekler moved and Vice-President Dr. Palkowski seconded a motion to accept the proposed Consent Agreement for the doctor cited in Case No. 2011 CHR 018 as presented. Voting Aye: Vice-President Dr. Palkowski, Dr. Gloekler and Dr. Wilson. Voting Nay: None. Abstaining: President Dr. Farabaugh. Motion passed.

PERTINENT CORRESPONDENCE

Director Caudill presented a memo from the Council on Chiropractic Education (CCE) requesting stakeholder comments on Draft Residency Program Standards.

The Board instructed Director Caudill to respond to the CCE stating that the Board reviewed and discussed the draft Residency Program Standards and is supportive of the effort.

Director Caudill presented an email dated July 14, 2013 from Dr. Jeff Brown regarding marketing on websites such as Groupon and LivingSocial. Dr. Brown inquired if marketing via such websites constitutes fee splitting.

Director Caudill reported that based upon research conducted, it appears Groupon would collect the money for offers and distribute it to the doctor

The Board instructed Director Caudill to write Dr. Brown advising that marketing via Groupon and/or LivingSocial would appear to violate the Board's fee splitting rule based upon the Board's understanding of Groupon's fees and it is strongly recommended he consult with legal counsel prior to considering this type of marketing.

Director Caudill presented a facsimile dated July 26, 2013 from Dr. Andrew Pamer inquiring about "concierge/membership" model chiropractic practices and if the Board has any knowledge of the legalities of this model.

The Board instructed Director Caudill to respond to Dr. Pamer stating that the Board's laws and rules do not specifically address "concierge/membership" practices and he should consult with legal counsel regarding this business model. The Board additionally stated that if Dr. Pamer is considering this business model he is encouraged to review Board Rules 4734-8-05, 4734-9-09 and the new rule on prepayment plans due to go into effect in October 2013 to make certain he is in compliance with Board rules should he wish to change to a membership practice.

Director Caudill presented an email dated June 13, 2013 from Dr. Patrick Frank requesting CE credit for teaching a college course in anatomy.

The Board instructed Director Caudill to respond to Dr. Frank stating that he may use 12 teaching hours towards his 36 hours of CE required for 2014 license renewal. These hours may not be utilized towards Dr. Frank's required 1.5 hours of ethics.

Director Caudill presented an email dated August 21, 2013 from Christine Grilliot of Fairfield Spine Center regarding Electronic Health Records and maintaining original documents.

The Board instructed Director Caudill to respond to Ms. Grilliot stating that the Board's laws and rules do not specifically address the issue of maintaining original records. Board Rule 4734-8-05 requires documentation in paper, electronically, or in another readily accessible medium. The Board would have no purpose for requesting original records as long as records are maintained in an acceptable medium. The Board would also encourage Ms. Grilliot to consult with legal counsel to determine if any other state or federal laws require original records be maintained.

FIVE YEAR RULE REVIEW

The Board initiated its review of rules scheduled for five year rule review in April 2014. The Board posted notification of the review and opportunity to submit comment on its website and sent an email on June 13, 2013 to stakeholders seeking comment.

4734-6-02 Licensure by Endorsement

No stakeholder comment received.

Director Caudill recommended changes to the rule to update language. The Board accepted the

recommended changes and made no further amendments. Director Caudill also recommended that Board Rule 4734-6-01, which is not currently due for five year rule review, be amended in order for both rules to have the same requirements. The Board agreed with Director Caudill's recommendation. Board Rule 4734-6-01 will be offered for stakeholder comment and reviewed at the October 10, 2013 meeting.

4734-6-04 Preceptorships

No stakeholder comment received.

Director Caudill recommended changes to the rule to update language. The Board accepted the recommended changes and made no further amendments.

4734-6-08 Pre-Chiropractic Educational Requirements

No stakeholder comment received.

Director Caudill recommended changes to the rule to update language. The Board accepted the recommended changes and made no further amendments.

4734-5-02 Board Relationship with the CCE

4734-5-03 Site Visitation Procedures

4734-5-04 Initial Approval of Chiropractic Educational Institutions or Programs

4734-5-06 Revocation of Approval of Chiropractic Educational Institutions or Programs

The Board reviewed and considered stakeholder comment received from the Council on Chiropractic Education (CCE). The CCE recommended updating references within rules 5-01 and 5-02 that are outdated or do not reflect the current structure of CCE. The CCE also suggested rescinding or revising rules 5-03, 5-04 and 5-06 as they are duplicative in nature since the CCE is the only agency recognized by the U.S. Department of Education to accredit doctor of chiropractic degree programs.

The Board also reviewed and considered stakeholder comment received from the Council on Chiropractic Education International (CCEI). The CCEI would like language in rules 5-02, 5-04 and 5-06 to include the CCEI and its member accrediting agencies as those that may accredit doctor of chiropractic degree programs. The CCEI also feels that it is duplicative and expensive for the Board to conduct site visitations to programs seeking Board approval and suggests it may be more efficient for the Board to accept the work of evaluation and accreditation performed by the CCE and/or CCEI member accrediting agencies.

Director Caudill presented a draft of each rule incorporating technical changes based on input from the CCE and CCEI. The Board accepted the changes and instructed Director Caudill to review each rule and incorporate draft language to make it more clear that non-US doctor of chiropractic degree programs may apply for Board-approval. Since ORC Section 4734.21 states that the Board may conduct on-site inspections, reviews and inquires as it considers necessary when determining if a school or college should receive Board approval, the language in the rules regarding site visits will remain in the Chapter 5 rules pertaining to program approval.

The Board suspended the Five Year Rule Review in order to hold a Public Rules Hearing scheduled for 1:00 p.m.

PUBLIC RULES HEARING

A Public Rules Hearing was held at 1:00 p.m. on the 19th floor, room 1920 regarding the following rules: To be amended: 4734-9-03 Signage and display of license and certificate; 4734-9-08 Professional ethics and 4734-9-10 Conduct following action against a license. To be adopted: 4734-9-11 Prepayment plans. Anderson Court Reporting Services made a stenographic record of the proceedings at the Board's expense.

Written testimony was offered by the Chiropractic Strategies Group by Kelly O'Reilly of Governmental Policy Group regarding rules 4734-9-10 and 4734-9-10 prior to the hearing. Ms. O'Reilly also offered testimony at the hearing.

Upon conclusion of the hearing, the Board returned to the Board office to deliberate on the rules and the testimony received. Ms. O'Reilly as well as attorney Keith Karr was present for the deliberation.

MOTION 2014-011: Dr. Wilson moved and Dr. Gloekler seconded a motion to approve the final filing of the following rules with JCARR with authority to Director Caudill to make any non-substantive changes that may be recommended by JCARR: To be amended: 4734-9-03 Signage and display of license and certificate; 4734-9-08 Professional ethics and 4734-9-10 Conduct following action against a license. To be adopted: 4734-9-11 Prepayment plans. Motion passed unanimously.

FIVE YEAR RULE REVIEW- continued

The Board members resumed their discussion of the rules scheduled five year rule review in April 2014. Ms. O'Reilly was present for the discussion until 2:00 p.m. and Keith Karr was present until the conclusion of the discussion on rule 4734-9-02.

4734-8-04 Documentation and Record Keeping

The Board reviewed and considered stakeholder comment from Chiropractic Strategies Group (CSG). CSG believes the words "proper" and "legible" are too subjective in paragraph (A); the records retention schedule in paragraph (D) is either duplicative or in conflict with federal program requirements; believes paragraph (E) seems to require an Ohio licensed chiropractor be majority owner of corporation that owns records; and, paragraph (G) of the rule seems to attempt to require non-chiropractors to comply with documentation and record keeping.

The Board reviewed and considered stakeholder comment from the Ohio State Chiropractic Association (OSCA). The OSCA requests clarification as to the retention of records contained in paragraph (D).

The Board proposed leaving the records retention schedule at five years but including language to clarify patient records must be maintained from the last date of clinical encounter. The Board is considering rescinding paragraphs E and G and addressing those matters in the Terminating the Doctor Patient Relationship rule. Director Caudill is to present a draft of the rule with proposed language at the October 10, 2013 meeting.

4734-8-07 Terminating the Doctor Patient Relationship

No stakeholder comment received.

Director Caudill recommended changes to the rule to update language and provider better clarification and guidance to licensees. She also recommended a separate rule be adopted for

dismissing a patient from care in lieu of one rule for both termination and dismissal. The Board accepted the recommendation and language and made no further amendments.

4734-9-02 Advertising and Solicitation

The Board reviewed and considered stakeholder comment received from CSG. CSG believes the word “intent” in paragraph (B) is too subjective; the Board does not have authority to require a that co-pay waiver be consented to by an insurance plan as required by paragraph (J); paragraphs (L), (M) and (N) requiring solicitation records for six months is too extravagant; and, paragraph (O) of the rule is duplicative of Ohio’s do not call statute.

The Board reviewed and considered stakeholder comment received from the OSCA. The OSCA requests clarification or broader guidelines for gift cards in paragraph (O)(12) and suggests that telemarketing calls be recorded.

The Board reviewed and considered stakeholder comment from the National Insurance Crime Bureau (NICB). The NICB offered support of the rule as an aide to the effort to combat insurance fraud in Ohio.

The Board reviewed and considered stakeholder comment from Mr. Greg Caudill and Drs. Adam Solomon; Seth Gray; Roy Korth; Gina Infantino; Christopher Stevenson and Joel Wilstead. These individuals request the Board to continue to allow chiropractors to telemarket.

Director Caudill recommended one minor amendment to the rule to correct an omission in paragraph (D) of the words “or services” in a sentence.

The Board instructed Director Caudill to prepare a draft amendment of the rule and present it with the following amendments at the October 10, 2013 meeting: leave the word “intent” in paragraph (B); leave in language regarding waiver and discount of copays and deductibles since ORC Section 4734.31 prohibits waiving or reducing copayment and deductibles without full knowledge and consent of the plan purchaser, payer and third-party administrator; require recording of telemarketing calls. The Board will consider the retention requirements in paragraphs (L), (M), and (N) at the October Board meeting. The gift card language in the rule will be addressed in 4734-9-07.

4734-9-07 Billing Practices

The Board reviewed and considered stakeholder comment from CSG. CSG believes paragraph (F) is duplicative of other Ohio fraud statutes; the Board does not have authority to require a that co-pay waiver be consented to by an insurance plan as required by paragraph (G); paragraph (H) is duplicative of rule 4734-9-02; the regulatory intent of paragraph (I) does not outweigh the cost of compliance; and, the Board lacks authority to regulate transportation in paragraph (J).

The Board reviewed and considered stakeholder comment from the OSCA. The OSCA believes paragraph (H) of the rule contradicts what 4734-9-02 states with regard to gift cards and would like consistency with the language.

The Board reviewed and considered stakeholder comment from the National Insurance Crime Bureau (NICB). The NICB offered support of the rule as an aide to the effort to combat insurance fraud in Ohio.

President Dr. Farabaugh was assigned to research gifts, incentives and complimentary

transportation and come back to the October 10, 2013 meeting with proposed changes to paragraphs H, I and J of the rule.

ELECTION OF BOARD PRESIDENT

MOTION 2014-012: Dr. Gloekler moved and Dr. Wilson seconded a motion to elect Dr. Palkowski as President of the Board. Voting Aye: President Dr. Farabaugh, Vice-President Dr. Palkowski, Dr. Gloekler and Dr. Wilson. Abstaining: None. Voting Nay: None. Motion passed unanimously.

President Dr. Palkowski appointed Dr. Gloekler as Vice-President of the Board.

MOTION 2014-013: Dr. Wilson moved and Vice-President Dr. Palkowski seconded a motion to adjourn the meeting. Motion passed unanimously.

With no further business to be brought before the Board, President Dr. Farabaugh adjourned the meeting at 3:15 p.m.

Approved By Majority of Board:

Attested By Its Secretary:

Ronald J. Farabaugh, D.C.
President

Kelly A. Caudill
Executive Director

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