

MINUTES

UTAH CHIROPRACTIC PHYSICIAN LICENSING BOARD MEETING

January 8th, 2009

Room 464 - 4th Floor 9:00 a.m.
Heber M. Wells Building
Salt Lake City, UT 84111

CONVENED: 9:00 a.m.

ADJOURNED: 12:30 p.m.

Bureau Manager:

Sally A. Stewart

Board Secretary:

Penny Vogeler

Board Members Present

Lew A. Wheelwright, DC, Chairperson
Edmund L. Sperry, Public Member
James D. Knight, DC
Gordon M. McClean, DC

DOPL Staff Present:

F. David Stanley, Division Director
Wayne Holman, Chief Investigator
Debbie Harry, Compliance Specialist

Guests:

Tim Appgood, Utah Chiropractic Association
Craig Campbell, Utah Chiropractic Association
Larry Vance, Utah Chiropractic Association
Neil Erickson, DC
Emily Gammell, from Dr. Bruce Nielson's Office
Trev Wilde, State Farm Insurance Co

TOPICS FOR DISCUSSION

ADMINISTRATIVE BUSINESS:

Francine Giani, Executive Director
Governor's Executive Order

DECISIONS AND RECOMMENDATIONS

Ms. Giani was unable to attend the meeting. Ms. Stewart discussed the Executive Order from the Governor with the Board. The Executive Order establishes an Ethics Policy for Executive Branch Agencies and Employees. All Boards are being made aware of this order as a reminder.

MINUTES:

The minutes from the October 9th, 2008 meeting were reviewed. A motion was made by Dr. Knight and seconded by Dr. McClean to approve the minutes as written. Motion was passed unanimously.

NEW ADMINISTRATIVE BUSINESS:

Debbie Harry, Probation Review

Ms. Harry gave her report on the status of each probationer. She updated the Board on the following Probationers:

Jace Harvey Ferguson - to be seen in April

Ronald L. Rosquist - to be seen in April

Michael W. Wimmer - to be seen in April

Bruce C. Nielson - submitted 23 Charts. In Compliance.

Keith S. Hanson - In Compliance

Gregory Futrell - In Compliance, no new employees.

Steven S. Garvert - Charts reviewed; CE credits ok.

New Probationers:

Daniel D. Knechtel - not In Compliance

Kip C. Porter - previously probationer, needs Chaperone.

Derek W. Birch - non compliant. Closing Private practice.

Ms. Stewart discussed with the Board the recommendation of the amended order for Dr. Birch.

Wayne Holman, Chief Investigator.

Mr. Wayne Holman brought the Board up to date on investigations. DOPL is down three investigators from a year ago. He feels he will be able to spend more time on the medical professions in the near future as the contractor cases are down at present. Mr. Holman stated he reviews all cases, and then assigns them to a Supervisor. They then assign the case to an Investigator. He has recently made some changes in how cases are handled before being submitted to the Attorney General's Office. He now includes the Bureau Manager, the Supervisor and the Investigator in the decision. Mr. Holman plans to attend all Board meetings.

APPOINTMENTS:

PROBATION INTERVIEWS:

Bruce C. Nielson

Dr. James Knight interviewed Dr. Nielson. He stated he feels things are going very well working with a chaperone on staff. He sees many benefits as do the patients. He plans to continue to have a chaperone throughout his practice. He stated he has completed a ProBe program but stated there is no follow up from the program. He discussed the ProBe program and feels it was helpful and will now pattern his practice accordingly. He stated he has no personal stressors. He was accompanied by Emily Gammel and introduced her as his newest chaperone. She

discussed her duties as a chaperone with the Board. Due to being on probation Dr Nielson is no longer able to bill insurance companies. Dr. Nielson will be seen in April 2009. He was reminded to have his paperwork in by the 20th of the month prior to the meeting. **In compliance**

Keith S. Hansen

Mr. Sperry interviewed Dr. Hansen. He is working two days a month in chiropractics. He also works doing ultrasound in Dr. Rawling's office and is an ultrasound consultant. He feels things are going well. He was asked if he was benefiting from being accountable to the Board. He stated he does not plan on going into a full practice in the future as his body cannot take it. He was instructed to keep up with the probation time limit of 5 years. Dr. Wheelwright expressed concern about the age limit of 25 years and younger. He is continuing to have the patients' charts signed by the chaperone. Dr. Hansen was told he may submit a request for early release at the next meeting on April 9th, 2009. **In compliance.**

Gregory Futrell

Dr. Wheelwright was the interviewer. He completed the ethics and values course through UVSC and stated he felt the course made him re-evaluate his personal values and look at how these values have such an effect on one's life. He is current on his reports. He stated he meets personally with a few Chiropractors for discussion and interaction on a regular basis and feels this is helpful. His practice has been slowing down since November and he has noticed a decrease in his patient load but does not feel it is causing any added stress to his life at this time. His chaperone was discussed and the part she plays in his practice. He stated she prepares the patient for the assessment or adjustment and has them sign the form. She remains in the room throughout the treatment. Dr. Futrell will be seen in April 2009. **In compliance**

Steven S. Garvert

Dr. Wheelwright interviewed Dr. Garvert. He stated his practice is going well and he just completed the ethics course at USU. He plans to take an insurance course also. He is now aware of the consequences of crossing the line and feels he is a better person because of his probation with DOPL. Carol Haggan comes to his office quarterly to pull 10 charts for review. She also periodically makes some suggestions

and it seems to be going very well. All restitution has been paid. Dr. Garvert is now working “out of network” and his practice is about 70% cash. Dr. Garvert will be seen in April 2009. **In compliance**

Daniel D. Knechtel

Dr. McClean interviewed Dr. Knechtel. He stated he has been shadowing with two Doctors. He has been offered a job with his brother. He stated his personal life is good. He will be starting his counseling soon. Dr. McClean noted he is working in the right direction. Dr. Wheelwright asked why he had waited so long to arrange for counseling. Dr. Knechtel stated he had simply overlooked this matter and apologized. He anticipates starting to work with his brother sometime this month. At this point he does not know how long the counseling will continue. He was reminded his supervisor reports are due February 20th. His supervisor must also acknowledge having read the Memorandum of Understanding and Order. He was also reminded he has twelve months to complete an ethics course. The course must be approved by the Board. Dr. Knechtel explained his financial situation and his desire to complete what is required. The Board stressed they are not to be the “bad guy” and that the costs are not their responsibility. He signed the MOU agreeing to comply with its terms and their responsibility to discuss these issues with him. He must have the evaluation, with a pre approved counselor. It was stressed that the Ethics and Boundaries courses must be completed by September 2009. Dr. Knechtel will be seen in April 2009. **In compliance**

NEW STIPULATION:

Kip C. Porter

Ed Sperry conducted the interview with Dr. Porter. He was asked to discuss his understanding of the new stipulation. He stated he understands he is required to have a chaperone, to meet with the Board and to complete a CPEP Course. He needs to find an Ethics and Boundaries course, and if approved by the Board, complete it. Dr. Porter was asked to discuss what led to his Stipulation and Order. He stated he feels he did nothing wrong, that everything he did was standard care. He then recommended the patient see a Massage Therapist. Months later the patient filed a sexual assault charge. He was very unhappy with the way the investigation was handled. He was looking forward to coming before the Board today to discuss his situation.

He signed the stipulation and did not have a hearing due to financial reasons. He said he signed the stipulation because it states he treated a female patient without a chaperone. Dr. Wheelwright questioned whether Dr. Porter was in violation of anything under these facts and requested more information be provided to the Board by the AG's office or Investigations as to what the matter was all about. Dr. McClean moved to postpone this interview, seconded by Dr. Knight. The motion passed unanimously. Mr. Holman agreed to look into the matter and report back in April. Dr. Porter will return April 9th, 2009.

Compliance or non compliance was not determined at this time.

DISCUSSION ITEMS:

Wayne Holman

Mr. Holman asked what is meant when a probationer states they have been dropped by the insurance companies. It was discussed that insurance companies are informed of the probationary status by the data bank. DOPL is required to report all probationers to the databank. Insurance carriers may not allow (and in most cases will not allow) providers to bill insurance companies while in a disciplinary status. Mr. Holman asked if there was a way to stop this from happening for a first time probationer. Ms. Stewart stated that unfortunately this cannot be changed. There is no lesser form of "disciplinary action" available. The Letter of Concern is non-disciplinary only.

Sally A. Stewart
Professional Boundaries Inc.

Information which had been mailed to Ms. Stewart as Bureau Manager concerning courses offered was presented to the Board. She felt, having discussed it with Dr. Charles Walter, DOPL's medical consultant; this appears to be a very sound course and thought the Board might be interested in this information. It includes ethics as well as boundary issues courses for both sexual and non-sexual limitations. It also offers continuing education credits. After some discussion a motion was made by Mr. Sperry, seconded by Dr. McClean to add this to DOPL's approved list. The motion passed unanimously.

Dr. Lew Wheelwright
Concerns with Board Membership

Dr. Lew Wheelwright addressed the Board with a few concerns. His term of appointment to the Board will conclude in a few months (June 30th, 2009) and he wanted to give some advice to the Board on three

issues. He feels that as a member of the Board you have to “walk a fine line” between being a professional and having friends and colleges come before the Board. He referred to a Department of Commerce misinterpretation or misunderstanding that goes back some time concerning the question of there being two Chiropractic Associations within the State of Utah. There is only one Chiropractic Association in the state of Utah. It is the Utah Chiropractic Physicians Association. The other group being misrepresented as an association is CHP. The method of how the Board members are appointed to the Board is the concern. The purpose of the Board is to do what is right for the public. Dr. Wheelwright stated anyone who is a member of the Board cannot be an officer or directing member of an Association.

His second issue was his recommendation that the Board look into the rules and revisit them in the near future for clarification. He feels the rules should be a living document. He was referring to the issue of injectables. (allopathic/homeopathic).

Dr. Wheelwright also feels the Statute should be addressed in regards to new members and their responsibilities. He feels they need to be made aware of the costs involved including those of attending meetings, both in state and out of state. He feels they should also be made aware of the time commitments as well as the travel expenses. He suggested that perhaps the Association can go to legislature with this concern and propose changes to the statute to fund some of these expenses. An education and enforcement fund (for travel and registration costs) might need to be established either by through an increase in fees or the addition of citation authority.

Ms. Stewart also discussed what leads to disciplinary orders and the manner in which the stipulations are written.

PROBATION INTERVIEWS (continued):
Derek Birch

Dr. Birch was interviewed by Dr. McClean. Ms. Stewart and Dr. Birch had previously discussed by telephone a recommendation for an amendment to his order due to changes in his circumstances. Dr. Birch stated he has closed his practice and is looking for someone to work under as a mentor. As a result of

this change he would not be involved in billing. He understands he needs to complete an ethics class and also additional CE. He also realizes he would benefit from counseling and plans to pursue this matter. He does want to practice individually again at some future time but does not want to have a repeat of previous behavior. When that time comes, if he is still on probation, he will submit a practice plan to meet the terms and conditions of his Stipulation and Order. At this time he is working at UPS and continues to look for an associate position in a Chiropractic practice.

He feels his decision to close his practice was a great stress reliever. He was able to negotiate to terminate his office lease contract. Dr. Birch agreed he has confidence issues and mentoring will be helpful. He was advised by the Board to address issues not fear them. The Board remarked on the changes in his attitude and demeanor, and what a nice change it was. A motion was made by Dr. Knight, seconded by Dr. McClean to recommend the amendment suggested. Motion carried unanimously. It was suggested Dr. Birch try to work in his profession at least on a part time basis. Dr. Birch is will be seen April 9th, 2009.
In compliance.

NEXT SCHEDULED MEETING

April 9th, 2009

ADJOURN:

12:30 p.m. (no motion required)

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

April 9, 2009
Date Approved

(ss) Lew Wheelwright, Chairperson
Chiropractic Physician Licensing Board

April 9, 2009
Date Approved

(ss) Sally A. Stewart, Bureau Manager
Division of Occupational & Professional Licensing