

Board Members present: President Gregory P. Palkowski, D.C., Vice-President Norman J. Gloekler, D.C., Mickey E. Frame, D.C. and Kelly J. Roush, D.C.

Others present: Kelly A. Caudill, Executive Director; Elizabeth Moore, Executive Assistant and LaTawnda Moore, AAG.

Members excused: Dr. Frame was excused at 11:30 a.m.

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*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. Palkowski called the four hundred and twenty-ninth Board meeting to order at 9:00 a.m. at the Vern Riffe Center for Government and the Arts; 77 South High Street, 19th Floor, Room 1914, Columbus, Ohio.

### **REVIEW OF MINUTES**

**Dr. Frame moved and Vice-President Dr. Gloekler seconded a motion to approve the minutes of the February 15, 2018 Board meeting.** Motion passed unanimously.

### **RATIFICATION OF CHIROPRACTIC LICENSES**

**Vice-President Dr. Gloekler moved and Dr. Roush seconded a motion to ratify approval of the chiropractic licenses issued to Kristen Zumberger, Ian Giachetti, Allison Aylesworth, Lynn Allen, Mariah Southard, Mercedes Long, Saniya Johnson and Cody Robinson.** Motion passed unanimously.

### **RATIFICATION OF ACUPUNCTURE CERTIFICATES**

**Vice-President Dr. Gloekler moved and Dr. Frame seconded a motion to ratify approval of the acupuncture certificates issued to Drs. Deborah Murdock and Kristene Clark.** Motion passed unanimously.

### **RATIFICATION OF PRECEPTORSHIPS**

**Dr. Frame moved and Vice-President Dr. Gloekler seconded a motion to ratify approval of the preceptorships for Sean Hammonds with Dr. Christopher Raymond; Kyle Arrington with Dr. Craig Longworth; Kara Crabhill with Dr. Debbie Hamilton; Shaina Hickman with Dr. Stephanie Spiers and Joseph Benne with Dr. Jon Schwanz.** Motion passed unanimously.

### **CE WAIVERS/EXTENSIONS**

**Dr. Roush moved and Dr. Frame seconded a motion to ratify approval of the CE waivers granted to Drs. William Musser and Harry Shullo and approval of the CE extensions granted to Drs. Anthony Blevins and John Kohl.** Motion passed unanimously.

### **EXECUTIVE DIRECTOR'S REPORT**

Director Caudill reviewed the Executive Director's report with the Board which included the Board Docket, Legislative Matters, Administrative Rules, Investigative Statistics and miscellaneous matters.

**Vice-President Dr. Gloekler moved and Dr. Frame seconded a motion to accept the Director's Report as presented.** Motion passed unanimously.

## **LEGAL ACTIVITIES**

### **CONSENT AGREEMENT, CASE NO. 2015 CHR 035**

**Dr. Roush moved and Dr. Frame seconded a motion to accept the proposed Consent Agreement as presented.** Voting Aye: Vice-President Dr. Gloekler, Dr. Roush and Dr. Frame. Voting Nay: None. Abstained: President Dr. Palkowski. Motion passed.

### **NOTICE OF OPPORTUNITY FOR HEARING, CASE NO. 2018 CHR 016**

**Dr. Frame moved and Dr. Roush seconded a motion to accept the proposed Notice of Opportunity for Hearing as presented.** Voting Aye: President Dr. Palkowski, Dr. Frame and Dr. Roush. Voting Nay: None. Abstained: Vice-President Dr. Gloekler. Motion passed.

### **NOTICE OF OPPORTUNITY FOR HEARING, CASE NO. 2018 CHR 062**

**Dr. Frame moved and Dr. Roush seconded a motion to accept the proposed Notice of Opportunity for Hearing as presented.** Voting Aye: Vice-President Dr. Gloekler, Dr. Frame and Dr. Roush. Voting Nay: None. Abstaining: President Dr. Palkowski. Motion passed.

### **VOLUNTARY PERMANENT SURRENDER OF LICENSE, CASE NO. 2018 CHR 028**

**Dr. Roush moved and Vice-President Dr. Gloekler seconded a motion to accept the proposed Voluntary Permanent Surrender of License as presented and hereby Orders the license to practice chiropractic in the state of Ohio shall be REVOKED.** Voting Aye: Vice-President Dr. Gloekler, Dr. Frame and Dr. Roush. Voting Nay: None. Abstaining: President Dr. Palkowski. Motion passed.

## **OLD/NEW BUSINESS**

Director Caudill reported that she completed her research on stem cell therapy, platelet rich plasma injections, and injectable vitamins which included contacting all Board-approved chiropractic colleges to inquire if these procedures are included in their core and/or postgrad curriculum. Director Caudill reported no chiropractic college teaches any of these services except for the University of Western States that teaches IV and injectable vitamins to meet the specific requirements of Idaho law which permits the service by chiropractors. The Board discussed the matter and collectively agreed that in accordance with the Board's laws and rules Ohio licensed chiropractic physicians may not perform stem cell therapy and platelet rich plasma injections. The Board also determined that IV and injectable vitamins are not within the scope of practice of chiropractic.

## **ADMINISTRATIVE RULE REVIEW**

The following rules are up for five-year rule review in 2018:

**4734-1-03** Payment of fees

**4734-5-01** Board approved chiropractic educational institutions and programs

**4734-6-05** License for voluntary public service

**4734-6-07** Addresses of licensees

**4734-8-02** Unlicensed supportive personnel

**4734-8-03** Quality intervention program

**4734-8-05** Examination and prescription protocols

- 4734-8-06** Board consideration of sanctions
- 4734-8-08** Universal precautions
- 4734-9-01** Fine schedules
- 4734-9-03** Signage and display of license
- 4734-9-04** Ownership of chiropractic practice
- 4734-9-05** Confidentiality
- 4734-9-06** Sexual misconduct
- 4734-9-08** Professional ethics
- 4734-9-09** Fee splitting prohibited
- 4734-9-10** Conduct following action against a license
- 4734-9-11** Prepayment plans
- 4734-10-03** Application for acupuncture certificate
- 4734-10-05** Acupuncture referral

The Board sent email to licensees, chiropractic colleges and associations seeking input on the rules on March 1, 2018. The Board also posted notification of the opportunity to provide input on the rules on its website.

The Board is also proposing amendment to rules:

**4734-7-03** Continuing education credit for providing health care to indigent and uninsured persons as a volunteer. The Board sent email to licensees, chiropractic colleges and associations seeking input on the rules on March 23, 2018. The Board also posted notification of the opportunity to provide input on the rules on its website.

**4734-8-09** Concussion management. The Board sent email to licensees, chiropractic colleges and associations seeking input on the rules on March 6, 2018. The Board also posted notification of the opportunity to provide input on the rules on its website.

The Board reviewed the following comments received from stakeholders:

**4734-5-01**

Northeast Ohio Academy of Chiropractic: HB 276 made changes to the chiropractic physician's scope of practice starting on April 6, 2017. Now chiropractic physicians can recommend over the counter medications. The NOAC proposes that the term "pharmacology" be added to 4734-5-01. This rule needs to reflect that we have training in pharmacology and that there has been a change to our scope of practice.

**4734-7-03**

Peter Markovic, D.C.: This sound like a good rule.

David Pamer, D.C.: This rule is an excellent way for those who need care and cannot afford it to receive the necessary health care. It also rewards those that utilize their professional skills to enhance the quality of life of others.

Jerrold Simon, D.C.: Thank you for asking for my input. I have reviewed Board Rule 4734-7-03 regarding "Continuing education credit for providing health care to indigent and uninsured persons as a volunteer" and find it to be reasonable, charitable and satisfactory.

**4734-8-02**

Northeast Ohio Academy of Chiropractic: Chiropractic physicians can delegate various services to unlicensed personnel such as vitals, modalities and exercise instruction. The chiropractor must be in the office when these delegated tasks are performed. An MD or DO can delegate these exact same tasks (vitals, modalities and exercise instruction) however the MD/DO does not have to be in the office for the unlicensed personnel to perform those tasks.

Unlicensed personnel in a medical doctor's office can perform an astonishing array of delegated tasks. These include drug injections, trigger point injections, biopsies, vaccine injections, nerve conduction studies, suture removal, ultrasound, diathermy, electrical neuromuscular stimulation and exercise instruction. All the delegated tasks in the medical doctor's office except the administration of drugs can be performed without the medical doctor even being in the office. All the delegated tasks in a chiropractor's can only be performed when the chiropractor is onsite. MDs/DOs have been able to delegate these tasks while not being onsite for many years if not decades. There have been no public safety concerns regarding these delegated tasks performed when the physician is not onsite. The NOAC proposes that changes be made to 4734-8-02 to allow chiropractic physicians to delegate tasks to unlicensed personnel when they are not onsite.

This restriction has an anticompetitive effect on chiropractic physicians. There are physical medicine practices that are delegating tasks to unlicensed personnel while the MD is not onsite in Northeast Ohio. These practices have a competitive advantage over the chiropractors in this area. Please consider making the proposed changes.

Director Caudill made an inquiry to the State Medical Board regarding these comments. Medical Board Response: A physician may not authorize unlicensed personnel to perform trigger point injections, biopsies, nerve conduction studies, diathermy, electrical neuromuscular stimulation, therapeutic ultrasound, or any other modalities. Those are procedures. The performance of a procedure may not be delegated to an unlicensed person.

An unlicensed person may only be delegated a task, but only in compliance with the rules in Chapter 4731-23, OAC. A task includes the administration of a non-controlled substance --- with the physician providing on-site supervision.

Rule 4731-23-03(G), states: "The supervising physician retains responsibility for the manner in which the delegated task is carried out." I believe the Medical Board has taken disciplinary action for the delegation to an unlicensed person that was not in compliance with the rule.

NOAC response: Well they didn't deny the delegation of tasks when the MD is not in the office.

The MD delegation rules are vague. I did a long search on the SMBO website and when delegation is brought up in newsletters no practical examples are given. They just list the rules. I doubt that upon hearing that chiropractors can delegate US, EMS, modalities to unlicensed personnel that the medical board would have said the MD can't do it. All the examples I provided were from good sources some from unlicensed medical assistants themselves. I have been hearing for decades that unlicensed people perform the electrical part of the electrodiagnostic studies/EMG and the MD comes in and does the needle part. I even worked with an unlicensed MA that did that in a neurologist's office when she was 18. I have several recent reports that MDs are delegating modalities and exercise instruction to unlicensed personnel when they are not in the office. For billing purposes this cannot be done for Medicare patients. I believe that is the case for Medicaid also. But these offices are doing mostly personal injury.

I worked in 2 medical doctor/mechanotherapists offices years ago part time. Both offices delegated unlicensed personnel to perform US, EMS and exercise instruction. Both offices had visits from the medical board. Nothing was said about delegation but they were all over the mechanotherapists for calling themselves doctors. All advertising and materials in the waiting room had to have doctor removed from them.

Alan Palgut, D.C.: Chiropractic physicians must be able to delegate tasks to train unlicensed personnel equal to board rules that are established for medical physicians. Chiropractic physician (sic) should be able to delegate all of the items currently specified in rule 4734-8-02 to trained unlicensed supportive personnel and not be on premise or within the building. However they should be within telephone communication with their office if they are off premise. As long as there are written orders from the chiropractic physician to provide services to chiropractic patients, with a clinical note, electronic medical records, to document the procedures that should be allowed. The chiropractic physician should review those medical records post-treatment when returning to the office.

I am proposing these changes to this rule because it is a restrictive, anti-competitive rule that does not mere (sic) image what medical providers can do.

#### **4734-8-09**

Max Denton, D.C. and Jerrold Simon, D.C.: Chiropractic Orthopedics Diplomates should be included in the list of those that can perform youth sports participant concussion assessment and clearance.

James DePietro, D.C.: Other types of Diplomates should be included in the list of those that can perform youth sports participant concussion assessment and clearance.

Chris Mabry, D.C.: As a matter of maintaining the Chiropractic Neurologists' standing as contemporaries and equivalents with other physicians managing concussion, it would be wise to adopt this latest position paper's recommendations and formally adopt it as the Board's guideline for concussion management.

David Ratliff, D.C.: Opinion on the considerations made to change the board rules in regards to concussions. - My practice has a strong nutritional component. I've found that a sick, stressed, or injured body has a greater need for specific nutritional support. The bodies ability to self heal is related not only to nerve function, but a well stocked nutritional pantry. If the body is trying to make new cells and don't have what it needs to nutritionally, it'll steal from other tissues, such as joints, ligaments, muscles, and teeth. A concussion usually involves injured brain tissue being released into the blood stream and a possible attack by the bodies own immune system against its own brain tissue. This delays healing and exacerbates the symptoms. I feel these patients are suffering from a greater need for specific nutrition to aid the body in self healing. With that in mind please understand all I do with nutrition is support the bodies deficiencies. I do not specifically treat any disorder. I don't think it's appropriate to force me or other doctors in my similar position to approach people who have ever had a concussion like the medical doctors do. We are specialist and treat and approach cases differently. I understand there are medical standards with acute cases and we don't want to put the patient at risk of death or injury, but as far as I know chiropractors aren't injuring these people. More regulation of our methods seem excessive. If you do go down this road I believe any future required education should be provided for free by the board on you

website. Thanks for listening.

Director Caudill advised the Board she responded to comments about the concussion rule and advised the stakeholders that no additional providers can be added at this time and the Board is only proposing to amend the rule to update the concussion consensus statement.

**4734-9-11**

Brandon Zimmer, D.C.: I believe that the board should revise 4734-9-11 Prepayment Plans. Section E should be revised as no prepayment plan shall exceed one month in duration instead of twelve months in duration. Also a 12 visit max within that one month duration.

**4734-10-3 and 4734-10-4**

David Copp, D.C.: Rules 4734-10-1\*, 4734-10-2\*, 4734-10-3 and 4734-10-4 are unreasonable for they do not consider the licensure and experience of chiropractors who have practiced acupuncture in other states. The board requires 300 hours of acupuncture education and passage of the National Board test, however, I practiced acupuncture in the state of MN for 23 years through my chiropractic license and gained more experience over those 23 years than a 300-hour course could provide. My concern is that I want to continue practicing acupuncture in Ohio so I can help patients with my 23 years of experience, but do not feel it's fair to suffer the time and costs of having to take those classes over again and to pay for all those expenses. (\*Rules 10-1 and 10-2 are not under review at this time.)

Director Caudill advised the Board she responded to Dr. Copp and advised him of the 300 hour statutory requirement for acupuncture education and further advised him he may wish to consider contacting his legislator to discuss this matter further.

Ryan Cooke, D.C.: As it stands, we are to state that we are a "chiropractor certified by the state board to practice acupuncture." I would like the board to consider allowing something that is less cumbersome but still accurate to our profession. Suggestions may include "chiropractic acupuncturist" or something similar that would convey our services without implying that we are a L.Ac or specifically an 'acupuncturist."

Director Caudill advised the Board she communicated to Dr. Cooke that the Board's laws and rules do not specifically prohibit him from referring to himself as a chiropractic acupuncturist so long as the advertisement or solicitation clearly indicates he is a chiropractor who practices acupuncture and not an acupuncturist licensed by the State Medical Board.

Director Caudill provided a packet of the rules with comments and suggested changes to make the rules more clear for ease of compliance:

**4734-1-03:** rescind the rule since the payments are made electronically via eLicense.

**4734-5-01:** update the accreditation standards from 2013 to 2018 and reference language directly from the Standards in regard to objectives and curriculum.

**4734-6-05:** rescind the rule or update it, remove renewal language.

**4734-6-07:** rescind and draft as new to update requirements to capture email address and reporting to eLicense.

**4734-7-03:** to correct an incorrect reference to a paragraph number and clarify documentation of CE language.

**4734-8-03:** minor changes to make the rule more effective.

- 4734-8-06:** add additional language for aggravating and mitigating factors.
- 4734-8-08:** update language to modernize and make clearer.
- 4734-8-09:** update consensus statement reference.
- 4734-9-01:** update to simplify and make clearer for ease of compliance and understanding.
- 4734-9-08:** make guidance clearer for acceptable professional credentials.
- 4734-9-10:** rescind and draft as new to make clearer for ease of compliance.
- 4734-10-03:** rescind and draft as new to make clearer for ease of compliance.

Upon review of the stakeholder comments on the rules and Director Caudill’s suggestions, the Board instructed Director Caudill to make some additional minor revisions to the rules, research therapeutic modalities for possible inclusion in the unlicensed personnel rule, and to reorder the priority of paragraphs in the professional ethics rule. The Board discussed the comments suggesting removal of the requirement that a licensee remain on the premises while unlicensed personnel provides care and will revisit this at the June Board meeting at which time Director Caudill will provide updated drafts of all of the rules for review.

**Dr. Roush moved and Vice-President Dr. Gloekler seconded a motion to adjourn the meeting.** Motion passed unanimously.

With no further business to be brought before the Board, President Dr. Palkowski adjourned the meeting at 12:10 p.m.

Approved By Majority of Board:

Attested By Its Secretary:

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 Gregory P. Palkowski, D.C.  
 President

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 Kelly A. Caudill  
 Executive Director

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