

**North Carolina Board of Chiropractic Examiners**  
**Regular Board Meeting**  
**January 24, 2020**  
**Minutes**



**Time and Place of Meeting:** A regular meeting of the North Carolina Board of Chiropractic Examiners was held in Durham, North Carolina at the Sheraton Imperial Hotel on Friday, January 24, 2020.

**Members Present:** Dr. Kevin Sharp  
Dr. Thomas Ayres  
Dr. Thomas Mitchell  
Dr. Christopher Outten  
Dr. John Hammer  
Dr. Raymond Chavez  
Ms. Kimberly Swintosky  
Ms. Lulu Caballeros

**Quorum Present:** Yes

**Staff Present:** Mr. Thomas Sullivan, Executive Director  
Mr. Jack Nichols, Esq., NCL Board Counsel  
Ms. Lisa Jones, Investigator  
Mr. John Riggelman, Licensing Specialist

**Invited Guest:** Ms. Heather Wrenn, Executive Director – NCCA

**Meeting Called to Order:** Dr. Sharp called the meeting to order at 10:00 AM. Dr. Sharp reminded all Board Members of Ethics and Conflict of Interest Requirements and our Legislative mandate to properly regulate doctors of chiropractic for the benefit and protection of the people of North Carolina.

**Approval of Minutes:** Dr. Sharp stated that there were two separate meeting minutes to be reviewed for approval.

Dr. Sharp asked if there were any comments or corrections to the Minutes from the Regular Board Meeting held on October 25, 2019.

**With no comments or corrections, a Motion was made to approve the Minutes of the Regular Board Meeting held on October 25, 2019 as submitted. The Motion was seconded and unanimously approved.**

Dr. Sharp then asked if there were any comments or corrections to the Minutes from the Special Board Meeting (Conference Call) held on November 18, 2019.

**With no further comments or corrections, a Motion was made to approve the Minutes of the Special Board Meeting (Conference Call) held on November 18, 2019. The Motion was seconded and unanimously approved.**

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**President's Remarks:**

Dr. Sharp stated the FCLB National Meeting will be held on April 22-25, 2020 in Denver. Dr. Ayres has been designated as the Board's delegate and Dr. Sharp the Board's Alternate Delegate.

Dr. Sharp stated that the next FCLB Regional meeting will be held this fall in Florida and encouraged as many Board members as possible to attend.

Dr. Sharp stated that he had been asked and accepted the invitation to serve on the FCLB "Model Practice Act Task Force". He will keep Board Counsel informed about relevant activities.

Dr. Sharp presented the concept of a "Clinical Review Committee" to formalize the review of licensee questions above treatments and procedures. After some discussion, the concept was tabled for a future meeting.

Dr. Sharp announced that he would be joined by Mr. Sullivan and Mr. Nichols to meet with members of The Joint Corporate compliance staff in Raleigh on January 31, 2020.

Dr. Sharp then presented the idea of implementing a periodically, mandatory Ethics and Sexual Boundaries CE course. After some discussion, the topic was tabled until the next Board meeting.

Dr. Sharp then called for the Review Committee Report.

**Review Committee:**

Mr. Sullivan reported on Complaint activity since the October Board meeting and YTD 2019:

- Complaints filed –47 (+9 from Oct.)
- PC Hearings held – 23 (+1 from Oct.)
- Complaints Resolved – 26 (+7 from Oct.) (includes prior years).
- PC found – 22 (+1 from Oct.) (includes prior years).

Mr. Sullivan then reviewed Amended Rule 10 .0503 that now allows sitting Board members to participate in Probable Cause Hearings ("PCH"). Board members will be contacted to participate in future Hearings, and this will create the opportunity for further participation and education in the disciplinary process. He also reminded Board members that participation in a PCH eliminates them from further participation should the case become a "Contested Case" and heard by the full Board. Therefore, members will be rotated to make sure we will have a majority of the Board eligible to participate in Contested Case/Full Board Hearings.

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Education Committee Report: Mr. Sullivan outlined the implementation of the new XT Certification Requirements. Dr. Outten presented the final version of the “Practical Exam” forms to be completed by the DC within 90-days of an applicant passing the Board exam.

Mr. Sullivan reviewed the last two years of XT Exams including the number and performance of each of the course sponsors: NCCA and Carolina Chiropractors. Carolina Chiropractors have struggled to meet the 25-person minimum to justify an exam being administered by the Board. He reminded the Board is only required to give three exams a year and the Board staff will continue to monitor exam participation to determine if demand exceeds the need for more than three exams a year.

Mr. Sullivan stated that the NCCA had requested a review of the mandatory CCCA recertification classes for potential changes. The CCCA recertification process requires certificate holders to be recertified every 3 years by completing 6-hours of Board approved courses with 4-hours being mandatory courses (Acute Low Back, Acute Cervical Spine, Coding & Documentation, and Indication/Contraindication).

After some discussion, Dr. Outten volunteered to review the required courses of the recertification program and report at the April Board meeting.

Executive Director’s Report: Ms. Swintosky stated that she has reviewed the Monthly Oversight Reporting Package for the months of November and December with nothing unusual to report.

Mr. Sullivan reviewed the unaudited actual/budget results for the first 6-months of Fiscal Year 2019-20 that ended December 31, 2019.

Mr. Sullivan then reviewed the financial results for Q1 2019-20. Revenues were ahead of plan by \$20,107 due primarily to DC renewal fees being paid sooner than budgeted (timing). Expenses were negative to plan by \$23,499 with legal expense over budget partially offset by lower spending and some timing differences to budget.

Mr. Sullivan then stated that the New and Amended Rules process was completed with the RCC approval at their December 19, 2019 meeting. The New and Amended Rules were effective January 1, 2020. The An email will be posted on the Board website and an email will be sent to licentiates by the end of January.

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Mr. Sullivan provided a status on the 2020 DC license renewal process. He stated that 272 DC's had yet to renew but expected to meet budget for DC renewal revenue.

Mr Sullivan then stated that the current Board Office Lease will expire on 9/30/20. While he recommended staying in the Triangle area, he did not recommend renewing the current lease due to property management issues and the desire to upgrade the quality of the office. He expects pricing to be in the \$25/sf area and will present options at the April Board meeting.

Old Business:

Mr. Sullivan provided an update on the FDA's continuing review of CBD. There has been no new information that would change the Board's current position that it will not make a recommendation on the use, recommendation, or sale of CBD or CBD-related products by licensees until the FDA rules on how they will regulate CBD and CBD-related products.

Dr. Sharp then stated that with the publication of the Position Statements late in 2019, it was appropriate to remove the "Practice Guidelines" document from the website.

**With no further discussion, a Motion was made to remove the "Practice Guidelines" from the website to eliminate any confusion or conflict with the Board's Position Statements. The Motion was seconded and unanimously Approved.**

New Business:

Mr. Sullivan then presented a series of questions from licensees to the Board:

Is Balloon/Sinuplasty/Bilateral Nasal/Cranial Facial Release within scope of practice?

**After some discussion, it was determined that this technique is within scope of practice.**

Is the use of a Dual-Energy X-Ray Absorptiometry (DEXA-Scan), which is a low-level radiation device that measures bone density, within scope of practice?

**After some discussion, it was determined that the use of this device is within scope of practice and as with any radiation emitting equipment, the licensee must undergo proper training and register the device with the NC Radiology Commission.**

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Can a licensee, who is a certified Phlebotomist, draw blood?

**After some discussion, it was determined that a licensee with a Phlebotomist certificate can draw blood.**

Are there any advertising guidelines that differentiate Spinal Decompression equipment from Traction equipment?

At some point in the past, the Board had dealt with advertising issues where licensees were representing “traction” as “spinal decompression”. It was thought that the Board had produced a list of equipment types/manufacturers for each category. The Board office was not able to find such a list and the issue was tabled.

Public Session:

Dr. Sharp then announced that the Public Session of the meeting will begin and requested if anyone would like to speak.

Following Public Comments, Dr. Sharp called for a 15-minute break to reconvene at 12:15 P.M.

Dr. Sharp reconvened the meeting at 12:15 P.M. and called upon Mr. Nichols for the Attorney’s Report.

Attorney’s Report:

Mr. Nichols began his report by stating there were two items for the Board’s consideration. Mr. Sullivan would present the first item.

Mr. Sullivan asked the Board members to reference the Proposal for Decision included in their Pre-Mailing package. Mr. Sullivan stated that since Mr. Nichols had argued the case for the Board in front of an Administrative Law Judge at the Office of Administrative Hearings, he would present the finds of the court. The case was the Board v. David Sefried, D.C. Following the conclusion of the hearing on June 19, 2019, Judge Melissa Owens Lassiter issued a Proposal for Decision on October 24, 2019 where she stated that the Board lacked sufficient credible evidence to revoke, suspend, or censure the license or otherwise discipline or reprimand the respondent and the Board should dismiss the disciplinary complaint against Dr. Sefried.

Mr. Sullivan stated that it is the Board Staff’s recommendation for the Board to concur with the Proposal for Decision rendered by Judge Lassiter to dismiss the disciplinary complaint against Dr. Sefried.

**After some discussion, a motion was made to accept the Proposal for Decision rendered by Judge Lassiter to dismiss the disciplinary complaint against Dr. Sefried. The motion was seconded and unanimously approved.**

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Mr. Nichols then referenced the Board's the Final Agency Decision (FAD) rendered on January 15, 2020 against Erik Madsen, D.C. that was included in the Pre-Mailing. The FAD follows a Full Board Hearing held on December 13, 2019. Subsequent to the FAD being issued on January 15, 2020, Dr. Madsen submitted a request to perform certain treatments during the period of his license suspension.

**After some discussion, a motion was made to deny the request by Dr. Madsen to perform the list of treatments as the treatments were considered to be within the scope of chiropractic and not acceptable to be performed during the time his license is suspended. The motion was seconded and approved by a 6-1 vote (1 recused, Hammer).**

Dr. Sharp stated that there was business for the Board to discussion in Closed Session and asked for a motion to enter Closed Session.

**A motion was made to enter Closed Session. The motion was seconded and unanimously approved.**

Closed Session

Discussed Board Staff.

**A motion was made to return to Open Session. The motion was seconded and unanimously approved.**

Announcements:

Dr. Sharp announced that the next Regular Board Meeting will be held at 10 A.M. on Friday, April 17, 2020 at the Sheraton Imperial Hotel in Durham, N.C.

Adjournment:

With no further business to be brought before the Board, Dr. Sharp adjourned the Meeting at 1:17 P.M.

Respectfully submitted this 17<sup>th</sup> day of April 2020.

John P. Hammer, DC  
Secretary, Board of Chiropractic Examiners