



Naturopathic Medicine Committee

Meeting Minutes

March 3, 2014

COMMITTEE MEMBERS PRESENT: David Field, ND, Lac, Chair
Tara Levy, ND, Vice-Chair
Koren Barrett, ND
Michael Hirt, MD
KT Leung, CPA
Gregory Weisswasser, ND

COMMITTEE MEMBERS ABSENT: Caleb Zia, EdD
Beverly Yates, ND

STAFF PRESENT: Michael Santiago, Esq., Legal Counsel
Rebecca Mitchell, Executive Officer (EO)
Corrine Fishman, DCA, Board/Bureau Relations

1. Welcome & Call to Order

The meeting was called to order at 10:03 a.m.

2. Establishment of a Quorum

Roll Call was taken and it was determined that a quorum was present.

1. Chair Report – David Field, ND, LAc:

Dr. David Field thanked all the members of the Committee and the guests of the public for being present. He stated that the Committee and CNDA should encourage any legislation that will push the naturopathic profession forward. He also directed the EO to start the regulation process for any pending issues that have been acted on during prior meetings.

2. Executive Officer Report – Rebecca Mitchell

Licensing:

Mrs. Mitchell reported that there are currently 644 licensed naturopathic doctors since January 2005, 506 current/active licensees, 138 licenses are lapsed or inactive. There are currently 38 Initial License Applications on file. She also reported that there has been a problem with possible applicants learning about the restrictiveness of our statutes and making the decision not to apply. The main reasons are prescriptive rights and the grandfathering policies here in California.

Enforcement:

Mrs. Mitchell reported that all repeat and egregious offenders are normally cited and fined within the month they are reported to the Committee. However, due to the massive amount of time spent on the testing and conversion to the Breeze system, only the most egregious cases are being investigated and worked. There is a thirteen-month backlog to issue citations and fines for those who illegally use of the title “ND”. There are 149 complaints at various stages, currently pending. The majority of these complaints are illegal use of ND title.

The Committee has settled its first formal case prior to going to hearing, via a stipulated settlement. The enforcement costs for AG and DOI was a little over \$11k. The Committee was able to stipulate cost recovery of \$7k and will be paid to the program within the next 90 days, to be added back to the fund and not the current budget.

Mrs. Mitchell also reported that due to the fact that NMC was not on the pre-BreEZe data system known as Consumer Affairs System (CAS, all of the cases reported would need to be manually entered into the new BreEZe system. Due to the backlog, DCA has secured temporary assistance from California State Athletic Commission, another DCA program, to assist with the manual entries of the complaints.

Budget Update:

The Executive Officer reported that at the end of fiscal year 2012-2013, the Committee had 32.4 months in reserve, copies of Fund Condition and Year End Financial Reports were provided. As of 01/31/2014, the Committee has 46.30% of its budget remaining. It has been determined by the budget office that there would be an estimated \$10k remaining at the fiscal year end (06/30/2014).

Budget Highlights:

1. In recent years, there have been three (3) Budget Change Proposal submitted in hopes of securing a staff position for an analyst classification and augmentation for the position. There was another submitted in Spring 2012 to secure such position beginning in FY 2014-2015. It was rejected at Agency in anticipation of rejection by Dept. of Finance (DOF) as it purportedly did not meet DOF requirements.

Another BCP was submitted again in 2013 with the same staffing and augmentation request. The EO was provided with information that the current BCP has been approved at all levels up to the Governor. At this time, the EO is awaiting the final approval of the legislature to approve the staffing/augmentation requests through the Governor’s Budget. Mrs. Mitchell stated that she would be

present at the Budget Hearings to give a report of the program's deficiencies and problems outlining the staffing needs.

2. Although the BCP positions have not been approved through the final legislative process, DCA has allowed programs to fill the positions under a blanket line item within their current year's budget. Although the committee expects to have funds left at the fiscal year end (approx. \$10k), it is believed that the funds would be better used to create space for the position. The Osteopathic Medical Board (OMBC) has agreed to allow the committee the use of a private office for the EO, which will allow the space currently occupied by NMC staff to be used for the newly created position. The cost of the build of the office, furniture, data and phone cabling will cost approximately \$3,000. A Memorandum of Understanding (MOU) will be created to cover the issues of rent reimbursement and pro rata amounts.

Legislation:

AB 258	Use of "Veteran" on Applications
AB 393	Publishing Licensing Fees and Requirements
AB 512	Sponsored Free Health Care Events
AB 576	Revenue Recovery and Collaborative Enforcement Team Act
AB 906	Personal Services Contracts
AB 1057	Licensing Applications – Veterans
SB 44	Hyperlinking Voter Registration Information
SB 666	Disciplinary Action for Employer Retaliation

Staffing:

As previously stated under the Budget report, a BCP was submitted again this year with the same staffing and augmentation request. This position was approved at all levels and is awaiting Legislature approval of the Governor's proposed budget. If approved, this position would be funded effective July 1, 2014. The primary duties would be licensing (original applications and renewals), some administrative duties such as ordering supplies, answering phone calls and would also assist with preparation duties for enforcement, legislative and regulatory processes for the EO. This would alleviate the clerical and analytical duties from the EO, allowing the EO the ability to carry out all executive, regulatory changes and enforcement duties that are currently backlogged.

The Osteopathic Medical Board (OMBC) and prior EO have an agreement that will allow minor use of OMBC clerical staff on an intermittent basis to provide clerical support to the Committee. This will be included within the MOU, and payment reimbursement for use will be paid through pro rata channels.

BreEZe Project:

The Interim EO continues to participate in multiple planning and testing sessions in preparation for conversion to DCA's new automated licensing and enforcement system, BreEZe. Sessions last from 1-8 hours each and cover the topics of data conversion, licensing and enforcement workflow, system security, cashiering, and document creation.

As we are extremely close to the anticipated go-live date of October 8th, the need for participation by the EO has grown. The EO spends about 9/10 of her time dealing with BreZE, but is excited for the system to be completed properly, so that its use, not only by staff, but of the licensees and consumers will be that of ease and convenience.

Website Redesign:

The EO reported that they are currently working with the Internet and Graphics team to redesign the program's current website. The new website will be more streamlined and user friendly. The new website's appearance will be in line with the other programs under DCA. It was requested that if there are any suggestions from the Committee as to what they would like to see on the website, that they be communicated to staff.

3. Approval of Meeting Minutes: September 30, 2013

Motion/Second to approve September 30, 2013, Meeting Minutes with change to update footer to "09/30/2013". Roll call vote taken, motion carried 6-0-0.

4. Formulary Sub-Committee Update – Koren Barrett, ND

Dr. Barrett updated the Committee on the Sub-Committee's decision to recommend an Exclusionary Formulary instead of an Inclusionary one or the hybrid-type formulary currently in place. The Sub-Committee submitted the Report to the Naturopathic Medicine Committee on 01/27/2014. The three (3) main focal points of this report were:

- Physician and Surgeon (MD/DO) oversight should be eliminated;
- The Formulary for licensed Naturopathic Doctors in California should be defined by an exclusionary list rather than an inclusionary list;
- The Formulary should be included and maintained in the California Code of Regulations, rather than in the statute.

The Naturopathic Formulary Sub-committee has unanimously agreed to support elimination of MD supervision. Since the original report, the NMC has had almost seven (7) years of experience with the public receiving Naturopathic medical care in the state of California. The current scope does not put any restrictions on medications prescribed other than those listed in statute, (exclusion of schedule I and II drugs), or those agreed upon between the MD/DO and the ND, in their supervision agreement. There has been an excellent safety record with no reports of patient harm or disciplinary action.

Elimination of the Physician and Surgeon supervision would remove barriers to access to care for patients of NDs unable to secure a supervising MD/DO. The previous formulary report discussed NDs who had difficulty securing malpractice coverage to do the supervision. They concluded the supervision provision is untenable with which the sub-committee agreed with.

The Naturopathic Formulary Sub-committee has unanimously agreed to support institution of an exclusionary formulary. This recommendation does diverge from the recommendation of an inclusionary formulary made by the Naturopathic Formulary committee in their 2007 report for several important reasons.

As previously discussed, California naturopathic doctors currently have an excellent safety record with a formulary scope that is only limited by exclusion of schedule I and II drugs in statute and the individually agreed upon formulary between each MD/ DO and ND in their supervision agreement. This broad formulary with excellent safety supports the recommendation of an exclusionary formulary.

An exclusionary formulary is simpler for patients, pharmacists, NDs, and other health professionals. Furthermore this removes the burden from the pharmacist to know the specific drugs on the ND formulary and places that burden on the ND themselves and the regulating naturopathic committee.

The original formulary committee's inclusionary formulary is outdated and does not represent current ND training or practice. NDs are trained as primary care doctors. For an ND to operate as a primary care doctor they need to be able to assist their patients with basic medical needs. An example of a basic medical need would be the initiation, change of medication or discontinuation of anti-hypertensives. Anti-hypertensives were not included on the list of medications by the previous report. This omission would limit the ability of an ND to operate as a primary care doctor and provide that basic medical need of their patient.

It has been brought to our attention that several medications were inadvertently omitted from the original report. An exclusionary formulary would prevent these inadvertent omissions that would restrict an ND operating as a primary care doctor.

The Naturopathic Formulary Sub-Committee concurs with the previous report which recommends the "formulary be included and maintained in the California Code of Regulations, rather than in the statute." This is appropriate in a changing field of medicine where new and safer medications become available replacing older outdated pharmaceuticals. A naturopathic formulary committee that meets on an annual basis to review and update the formulary through regulation will keep it current rather than a more time consuming and costly statutory change. This will be in the best interest of public safety as the naturopathic formulary will stay current enabling naturopathic doctors to give their patients the best treatment choices.

Mrs. Mitchell, stated that an exclusionary formulary was shared from other states and would allow a starting point for the use of the sub-committee.

Dr. Field thanked the sub-committee for their continued efforts and hard work.

Motion/Second to adopt Formulary Sub-Committee Report to the Naturopathic Medicine Committee as submitted. Roll call vote taken, motion carried 6-0-0.

5. Disciplinary Guidelines Process – Rebecca Mitchell, EO and Michael Santiago, Esq., Legal Counsel

Mrs. Mitchell, advised the Committee on the process for the Disciplinary Guidelines (DG). A draft was drafted by staff; Mrs. Mitchell and Mr. Santiago will make edits to the document as needed and bring the document back to the Committee in order to adopt the language. Mr. Santiago has suggested that the Committee approve the

language for SB 1441 and promulgate the adopted language into Regulations along with the DG.

6. SB 1441 – Uniform Standards for Substance Abusing Licensees

The Committee took action on the Trigger Language options for SB 1441 Regulations. Motion to adopt Option #1: Presumption – the committee will presume that if a violation involves drugs or alcohol, the licensee is a substance abusing licensee, and the uniform standards will attach. It will be up to the licensee to present evidence to rebut this presumption.

Motion/Second to adopt Trigger Language Option # 1- Presumption for SB 1441 Regulations. Roll call vote taken, motion carried 5-1-0.

7. SB 1111 – Regulatory Boards – Consumer Protection Enforcement Initiative (CPEI)

The Committee took action to adopt SB 1111 – Proposed Changes through Regulations Language as drafted.

Motion/Second to adopt SB 1111 – Proposed Changes through Regulations. Roll call vote taken, motion carried 6-0-0.

8. AB 2699 – Sponsored Free Health Care Events Update

The staff has started regulation paperwork to adopt AB 2699 – Sponsored Free Health Care Events in Regulation.

9. Standard of Practice Document (AANP) – Dr. Gregory Weisswasser, ND

Dr. Weisswasser updated the Committee on the Standard of Practice Document. At this time the American Association of Naturopathic Physicians (AANP), has produced a draft Standard of Practice document. This document is still in draft stage and remains a confidential document. The EO provided this document to the members via email and it was requested that any comments or questions be submitted to the EO and the EO will get this information to the sub-committee for further discussion at a later date.

It has been agreed by the Committee that the AANP document is the direction in which they would like to pursue and use as a starting point for standards of practice for the Committee. It was also agreed to that the standard of practice needs to remain consistent with not only the AANP but with the training and licensing requirements of the Committee and should avoid using language from other non-naturopathic healing arts professions.

Dr. Weisswasser will keep the Committee updated on changes to the document.

10. Public Comment

There was public comment from Mr. Harvey Makishima, Chairman/CEO of Public Awareness for Preventive Health Care (PAPHC). Mr. Makishima reported to the committee of an update to last year's meeting between PAPHC and California Public Employee Retirement System (CalPERS). PAPHC sent a letter stating their concern that CalPERS was in violation of the Federal Affordable Care Act (ACA) and the nondiscriminatory provisions of Public Health Service Act (PHS Act) Section 2706 (a).

The PHS Act section 2706(a), as added by the ACA, states that a "group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable state law." PHS Act section 2706(a) does not require "that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer," and nothing in PHS Act section 2706(a) prevents "a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures." Similar language is included in section 1852(b)(2) of the Social Security Act and implementing HHS regulations.

Mr. Makishima also reported that studies have shown both cost effectiveness and greater quality of care when alternative medicine, specifically naturopathic medicine is used in conjunction with allopathic care. He stated that at this time, CalPERS is researching these issues and should be communicating their findings to PAPHC in mid-March 2014. CalPERS is seeking guidance from the Centers for Medicare and Medicaid Services (CMS), as CMS is implementing the ACA by developing new programs and tools to assist in delivering better health care systems.

Mr. Makishima stated that he will provide updates as they are available.

11. California Naturopathic Doctors Association Update – Dr. Angela Agrios, ND, CNDA and Judy Wolen, Contract Lobbyist with Capitol Partners, Inc.

Ms. Judy Wolen reported on current legislative language being proposed or watched by California Naturopathic Doctors Association (CNDA). CNDA has 35 bills that are currently being reviewed by the Legislative Committee; CNDA is awaiting results to determine which bills they will move forward with.

Ms. Wolen stated that CNDA is in support of prior bill (SB 690) (Federal level 2706(a)); reintroduced as AB 2015, this is a new directive for nondiscrimination in alternative health care providers when allowing enrolling in insurance carriers, which clarifies the prior language.

Dr. Agrios reported that the CNDA has an author for the new legislation, to remain unnamed at this time until the current legislative session concludes. She also reported that the CNDA now has more staffing and is trying to get back to a more profound outreach for public relations/awareness efforts.

It was reported that CNDA will now only have a conference once per year instead of twice, which will allow for more resources to be used in legislation and public outreach. However, they will continue providing webinars as they have in the past for continuing education.

Dr. Agrios also stated that the CNDA has recently developed resources to assist with setup and best business practices to assist both members and non-member licensees with administration issues of a naturopathic medical practice.

CNDA requested reporting from the NMC for new and current licensees or when a licensee becomes delinquent. This will allow for outreach efforts. Committee staff suggested that the Association staff send request via email and that a report with this information can be provided to them on a monthly basis.

12. Closed Session – Consideration of Reclassification and Compensation Changes of the Executive Officer

(Pursuant to Government Code Section 11126(a)(1), the Committee will meet in closed session to consider the reclassification and compensation changes of the Executive Officer)

Members of the public were excused.

13. Announcement Regarding Closed Session – (Pursuant to Government Code Section 11125.2)

Dr. Field reported that the Committee waived confidentiality rights and reported on the following closed session topics discussed and the decisions made (Confidential pursuant to Government Code section 11126(a)(1).)

The Committee discussed the reclassification and compensation changes of the Executive Officer to allow for supervision of program staff.

- Motion/second to request letter to DCA OHR and CalHR, requesting the reclassification of the Executive Officer P4 (E97) level to at least that of P2 (E98) level. This change will allow for supervision of staff and will alleviate a salary compaction issue when hiring staff at an AGPA level. Roll call vote taken, motion carried (5-0-0)

Dr. Field directed the EO to contact DCA OHR to complete this request.

14. Establish Minor Surgery Sub-Committee

Dr. Field requested to establish a Minor Surgery sub-committee. Dr. Weisswasser and Dr. Field will make up the Minor Surgery sub-committee.

Dr. Agrios (CNDA) reported the possibility of starting dialogue with Dr. Dohn Kruschwitz, MD, ND of National College of Natural Medicine (NCNM). As a medical doctor and naturopathic physician, Dr. Kruschwitz would bring a wealth of knowledge and numerous years of clinical experience in minor surgery and would be a great consultation resource for the sub-committee in this area. Dr. Field requested contact information from Dr. Agrios in order to start the communication with Dr. Kruschwitz.

15. Establish Future Meeting Dates & Locations

The next meeting will be scheduled tentatively for Monday, November 3, 2014 in San Diego. The Committee would like to have the meeting in southern California area. Check the possibility of using the Bastyr College facilities. The Committee would like to encourage the Bastyr students to attend.

16. Agenda Items for Future Meetings

- SB 1441 / Disciplinary Guidelines
- Standard of Practice Document / Recommended Standard of Practice
- Regulation Update

17. Adjournment

There being no further business, the meeting was adjourned at 1:17 p.m.