



Naturopathic Medicine Committee

Meeting Minutes

September 11, 2017

**COMMITTEE
MEMBERS
PRESENT:**

David Field, ND, Lac, Chair
Greta D'Amico, ND
Thyonne Gordon, PhD
Alexander Kim
Dara Thompson, ND
Myles Spar, MD
Michael Hirt, MD

**COMMITTEE
MEMBERS
ABSENT:**

Gregory Weisswasser, ND
Tara Levy, ND, Vice-Chair

**STAFF
PRESENT:**

Sabina Knight, Esq., Legal Counsel
Rebecca Mitchell, Executive Officer (EO)

Persons of Interest

Dean Grafilo, Director, Department of Consumer Affairs
David Chriss, Chief, DCA Division of Investigation
Stephanie Whitley, Supervising Investigator, DCA Division of Invest.
Jonathan Burke, Analyst, DCA Executive Office
Mark Ito, Budget Analyst, DCA Budget Unit
Jennifer Bahr, ND, President, Ca Naturopathic Doctor's Association
Aliza Cicerone, ND, CNDA
Judy Wolen, Lobbyist, CNDA

1. Welcome & Call to Order

The meeting was called to order at 10:07 a.m.

2. Establishment of a Quorum

Roll Call was taken and quorum was established.

3. Public Comment for Items Not on Agenda

There were no public comments.

4. Discussion and Possible Action Regarding Proposed Naturopathic Assistant (NA) Regulations

Ms. Mitchell, Executive Officer, reported on BPC 3640.2 and 3640.3 which authorizes NAs and clarifies what the NA is allowed to do and what they are prohibited from doing. Staff suggests that if the statutes have not been properly clarified within statute, that these issues be resolved prior to outlining the proposed language for regulations.

The Committee received inquiries from licensees requesting to allow NAs to do the following:

- Stop IV drip therapy under ND orders,
- Withdraw a butterfly or catheter needle if the NA has a phlebotomy certification, and
- Adjust the flow rate within a reasonable range under ND orders.

Unfortunately, these could not be added to regulations as they are prohibited under the current statutes. Committee member, Dr. D'Amico was concerned that the education and training of an NA falls solely on the employing ND. To clarify, the licensee is ultimately responsible for any NAs that they employ. If a NA has met the requirements by successfully completing a Medical Assistant training program, the hiring licensee should verify that the NA is competent and has met the training requirements.

The Committee will continue to work on clarifying regulations for NAs.

5. Executive Officer's Update:

Ms. Mitchell, Executive Officer, reported the following:

- Licensing Stats:
 - 673 Active
 - 17 Inactive
 - 158 Lapsed/Delinquent
 - 909 Licensees within our jurisdiction
 - 17 New Part 1 Applications pending
 - 6 New Part 2 Applications pending
 - 56 Renewal Applications pending
- Enforcement: The Committee, along with the assistance of DCA staff, processed the enforcement backlog. On 06/20/2017 there were 65 cases pending in all various stages of investigations. The Committee and DCA staff closed all but 17 cases. The Breakdown of the 17 cases are as follows:
 - 3 are against NDs
 - 1 is against an applicant
 - 13 are against unlicensed individuals – (naturopaths or others) in violation of using the title of ND or practicing naturopathic medicine.

The investigative cost at the end of fiscal year end 2016-17 was \$37,464 of the \$32,000 enforcement encumbrance. An expense of \$5,464 was over the enforcement budget.

For the reasons outlined above, the staff recommended promoting legislation within the oversight bill SB 796 (Hill) for the “naturopath/naturopathic” title protection. Additionally, consumer outreach campaigns may alleviate the public confusion associated with “naturopath” vs. a naturopathic doctor (ND).

- **NMC Assessment – Findings and Corrective Actions:**

Throughout May and June 2017, the Department of Consumer Affairs (DCA/Department) conducted a review and assessment of the Committee’s enforcement program. This included an audit of the review process and activities covering complaint intake, expert review, and investigations. There were several deficiencies noted within the program which included not having the established policies and procedures in written formats, not processing complaints in a timely manner, and not properly maintaining case files.

DCA provided the assistance of the Department’s Division of Investigation (DOI), the Office of Information Services (OIS), and Internal Audits to identify and assist with implementing appropriate actions to mitigate the deficiencies.

Improvements were made in the Committee’s enforcement program. The following are actions that were taken:

- Clean-up and update of over 50 completed cases in the BreEZe database (most were backlogged from the data conversion and manual entries that were made in error by temporary help). To date, there is no “backlog” in the Enforcement unit.
- Created physical files for each complaint that may not have had one.
- Review of case files to ensure that cases were appropriately worked and closed.

This effort covered 102 cases in BreEZe. Approximately, half of the cases were processed and closed appropriately, however, the system had some issues which prevented these cases being coded correctly. This issue caused cases to show as open even though they were closed.

New policy and procedure manuals for the Enforcement Unit are in the process of being created and are approximately 80-85% complete. These manuals should be completed by the end of November or first part of December 2017. Furthermore, staff has received additional training, including training that was more specific to the Committee. Staff has a better understanding of what the expectations are and is working to meet or exceed those performance measures.

DCA Executive Staff, along with DOI and ISO staff, have been a remarkable resource and we appreciate the collaborative efforts to get our enforcement program meeting the standards of the Department.

Budget Update:

At the fiscal year-end of 2016/17, the Committee had 14.7 months (\$532,000) in reserve (copy of Fund Condition and Budget Reports are attached). It is anticipated that the budget for the current FY 2017/18 will be \$433,000.

Planned receipts for FY 2016/17 revenue was \$230,000. The actual receipts for FY 2016/17 revenue was \$351,000. The staff is watching the trend for the first part of fiscal year 2017/18 (July – January), to determine if the increase in revenue will continue.

The Naturopathic Medicine Committee Fund is better than expected at this time because of the higher revenue collected during FY 2016/17. It is anticipated that FY 2017/18 may show similar revenue. If this holds true, the Committee will not show a shortfall until later than the anticipated insolvency date of FY 2019/20. This will provide the Committee with extra time to get the fee increase statutes and regulations in place.

Budget Highlights:

1. The fund remains unbalanced due to increased pro rata. This includes increased Division of Investigation (DOI) costs associated with enforcement. The Committee has started discussions of raising fees or implementing fees for services currently being provided at no charge, (for example, Out-of-State License Verification with Osteopathic Medical Board fee is \$25).

Senator Hill has agreed to author a fee ceiling increase bill during the next session. We will need to start a Fee Increase Regulation Package to raise the fees. This should occur concurrently with the bill (statute) change to complete the process in a timely manner.

2. Addition of the Fictitious Name Permit Program as discussed under agenda item 9 will also assist in balancing out the current fund condition.
3. The Committee needs to start preparing for a move or build-out of office space. Both the Committee and the Osteopathic Medical Board (OMBC) have out grown current office space. The Committee and OMBC have started conversations with DCA Facilities and Department of General Services to come up with the best option to complete the process within current fiscal resources. A decision has been made by both programs to stay in our current office space and make building improvements to maximize space and make additional space that can be used for new staff in the near future.

SB 769 (Hill) – NMC Oversight Hearing Bill Status

SB 796 is the sunrise bill for Naturopathic Medicine Committee. This bill will extend the sunset date to January 1, 2022. Unfortunately, the title protection language of the bill was removed due to opposition. However, the legislature, mostly the Assembly, has requested that the Committee track and log the data

of unlicensed activity, including consumer harm at the end of a 12-month period. At that time, we can request a new title protection bill and they would be more comfortable with the changes to the Naturopathic Doctors Act at that time.

Medical Board of California is in support of our bill at this time. The bill is set to have a third reading for Asm. Floor on 9/6/17.

Clarification of Advertising Laws:

There is an increase of inquiries surrounding the general provisions, BPC 651 et seq. for advertising laws. The Committee has identified that this is something that should be updated in the Strategic Plan.

Committee should get suggestions from legal counsel on the most appropriate ways to answers some of the technical questions and provide the appropriate guidance to licensees.

Committee Member Training:

Committee Members are reminded to be sure to review the training requirements. All of the required training and the frequency of the training are included within this meeting material.

Once your training is complete, please be sure to submit your Certificates of Completion to the Executive Officer.

6. DCA Update – DCA Staff

Dean Grafilo, Director, Department of Consumer Affairs (DCA), was present and offered an update to the Committee on the collaborative efforts of DCA and Committee staff to process the enforcement backlog and improve the enforcement program. Recommendations to strengthen the enforcement program were offered and implemented. Mr. Grafilo thanked both DCA and Committee staff for working so quickly to correct the issues addressed within the Committee's audit.

David Chriss, Chief, Division of Investigations, DCA and Stephanie Whitley, Supervising Investigator, Division of Investigations, DCA, also updated the Committee on all of the processes that were identified and corrected by DCA and Committee staff.

Dr. David Field, Chair, NMC thanked everyone for their collaborative efforts. He also thanked Director Grafilo for the new approach taken by DCA in working closely with the programs and offering the assistance.

7. Discussion and Possible Action on Legislation for NMC to Pursue:

There are two (2) separate group of bills that the Committee plans to pursue; separating cleanup and technical changes in one (1) bill, and all other changes or additions to current statue in the other proposed bills.

The following items have been identified by the Committee, staff, and stakeholders, as possible areas that need legislative changes or new statutes:

1. Title Protection
 2. Independent Prescribing Scope
 3. Authority to Supervise Nurses
 4. Minor Office Procedures
 5. Workers Compensation
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1. Fictitious Name Permit Program
 2. Fee Ceiling Increase
 3. Medical Cannabis Counseling

8. Discussion and Possible Action regarding Subcommittee Drug Formulary Draft Recommendation:

Dr. Dara Thompson reported on the Proposed Exclusionary Formulary and shared the list. There were three lists created when developing the formularies, these are as follows:

1. List #101 (for use under current laws – MD/DO formulary protocol in place).
2. List #102 (for use under independent prescribing laws if/when statutes have been changed).
3. Exclusionary List #101 (will become the formulary for all naturopathic doctors in CA. This list provides requirements that licensees must meet if they choose to prescribe list #101 drugs).

A request to remove the following were suggested:

- Oral Chelation from List #102
- Oxygen from List #102
- Add to List #102 (A) All hormones including... “both natural and synthetic”.

A request to change the following were suggested:

- Refer to List #101 as “Exclusionary Drug Formulary List #101”.
- Also include NPLEX Pharmacology Exam as a requirement for NDF issuance.
- Add grandfather clause for NDs currently using physician protocol for at least 12 months and no adverse actions taken on prescribing violations.

Further research and development of requirements for new licensees in bottom section of the report is still needed.

Motion – D’Amico / Second – Kim, to adopt the Proposed Exclusionary Formulary with amendments outlined above. Roll call vote taken, motion carried 6-0-1. (YES – Field, D’Amico, Hirt, Gordon, Thompson, Kim, Spar / NO – none / Abstentions – none).

9. Meeting Minutes for Review/Approval:

- Approval for Meeting minutes of May 15, 2017

Motion – Gordon / Second – D’Amico, to approve 05/15/17 meeting minutes as submitted with no amendments. Roll call vote taken, motion carried 6-0-1. (YES – Field, D’Amico, Hirt, Gordon, Thompson, Kim / NO – none / Abstentions – Spar).

10. Discussion and Possible Action on Legislative Proposal to Establish a Fictitious Name Permit Program

Ms. Mitchell reported that she added the fee schedule for the FNP program as set during the 05/15/2017 meeting. Proposed language for the program has been created and the Committee will need to find an author to carry this bill.

This program is needed in order to track Fictitious Names used by licensees, enforce the laws surrounding naturopathic corporations, and more effectively protect consumers by making sure that names are not too similar or exactly that of another licensees practice.

Motion – Thompson / Second – D’Amico, to approve fee structure for FNP program and move forward with finding an author. Roll call vote taken, motion carried 6-0-1. (YES – Field, D’Amico, Hirt, Gordon, Thompson, Kim, Spar / NO – none / Abstentions – none).

11. Presentation on NMC Outreach Efforts:

Ms. Mitchell reported on the NMC Outreach effort that was presented to the Medical Board of California on 07/28/2017 in San Francisco, CA. The Committee got a response from Dr. Howard Krauss, MBC Committee Member, that the MBC has “open ears and open minds for the Naturopathic Profession”. The presentation garnered great feedback from MBC and the Attorney General’s office.

The Committee is scheduled to present at the Osteopathic Medical Board’s meeting on 10/19/2017. Staff has suggested turning this presentation into a video that can be posted to our website. Staff will reach out to DCA Public Affairs Office to get assistance with this. Additionally, Dr. D’Amico has requested that we include Naturopathic Manipulation information within the presentation as this is an area that raises significant questions from other healthcare practitioners.

12. Establish Future Meeting Dates and Locations:

- Winter Meeting scheduled for December 4, 2017 as a teleconference meeting only.
- March 19, 2017 (Spring Meeting)
- Use Doodle survey to schedule the Summer 2018 Meetings.

13. Agenda Items for Future Meetings

- Regulation language examples for proposed FNP program
- Drug Formulary Subcommittee recommendations
- Jurisprudence Exam

14. Adjournment

There being no further business or public comment, the meeting was adjourned at 3:07 p.m.