

Agenda Item 3**Review/Approve Meeting Minutes****Time: 1:09 p.m.**

James Morris reconnected to the videoconference.

James Morris, Doctor of Chiropractic, joined the meeting at 1:09 p.m.

The board reviewed the meeting minutes from November 22nd, 2019.

On a motion duly made by Jonathan Vito, seconded by Jeffrey Reinhardt, and approved unanimously by a roll call, it was

RESOLVED to approve the meeting minutes for November 22nd, 2019, as written.

Agenda Item 4**Board Business****Time: 1:10 p.m.****Ethics Report**

Dr. Larson addressed ethics reporting. There were no ethical violations to report.

Goals and Objectives

Dr. Larson began discussion on the board's goals and objectives that needed to be addressed at this special teleconference. He provided a brief overview of what the board had been discussing over several of their previous board meetings including injectable nutrients, the amending of current definitions in regulation, the ability to perform acupuncture, and inclusion into AS 08.01.050(d), for the purpose of providing licensed chiropractors the resources needed to address abuse of alcohol, drugs, or other substances.

He explained that the board, as well as previous chiropractic boards, have held the opinion that injectable nutrients are within their scope of practice, but that the Department of Law has cautioned them against it, citing their current statutes. He also explained that the board, in an attempt to allow for injectable nutrients and deal with other issues, had begun a regulations project at their prior board meeting that would amend the definitions of "prescription drug" and "surgery," as well as add a definition of "nutrition."

Dr. Larson reminded the board that Director Chambers provided them with a memorandum that they received a week earlier. The board took a minute to read over the memorandum, which focused on the board's scope of practice, how to expand it, and the possibility of assisting them through the legislation process.

Dr. Larson asked the board if they had any questions or concerns they would like to address with Director Chambers. Dr. Reinhardt asked Director Chambers if she could explain the supreme court ruling that was referenced in her memorandum regarding naturalists. She explained that the Alaska Association of Naturopathic Physicians sued the division because they were adopting regulations that supported statute that underscored the naturopath's statutory inability to prescribe medication. Ms. Chambers explained that she had put this reference in her memorandum as an example of another profession that has a limit on prescriptive authority in their statute and how it related to their inability to adopt regulations that widen their ability to prescribe. She asked the board if they wanted her to give them an overview of her interest in their goals and objectives, to which they agreed.

Director Chambers informed the board that she had met with Occupational Licensing Examiner Thomas Bay and his supervisor to find ways to support the board in accomplishing their various goals.

She explained that they went over the big picture aspect of where the board wants to go and what changes that might include as the profession advances in their education and training. She explained that her and Mr. Bay had a phone conversation with Dr. Larson on how to possibly get the board's goals and objectives done through a statutory change, which ultimately led to this teleconference in an attempt to get the board's thoughts and directions on the matter. Ms. Chambers said that some of the board's goals and objectives were less time sensitive than others, but that many of them would be beneficial to the board and license holders by providing clarity on them sooner rather than later.

Director Chambers explained that there are differing opinions throughout the state on some of the topics that were brought up, particularly injectable nutrients and prescription drugs. She informed the board that these issues will be resolved through clarity in statute or through regulation, but only through regulation if the regulation changes the board is proposing are accepted by the Department of Law, which she was skeptical of because regulations cannot go further than statutes go, and she believed the statutes were pretty clear on some of the proposed regulation changes. She also explained that these issues could be resolved a third way, through litigation and the court process, and that it was a likely outcome. She informed the board that the process of doing these changes in statute was likely the best resolution. She said this process would not only clarify these topics but would also help the board with their other goals and objectives, and together they would be large enough to package together in a bill, which reminded her of a previous optometry bill that was passed that expanded an optometrist's scope of practice regarding prescription drugs and surgery. She also mentioned that naturopathics are again trying to expand their scope of practice as well. She let the board know they were more than free to go in whatever direction they wanted to, but that if they wanted to get their goals and objectives done statutorily, they would need to address it then because the legislative session was coming up very soon.

Dr. Larson explained that the board had discussed opening up their statutes at their previous board meeting, and was told that, if they did so, anything else in their statutes could be removed or added without the board's consent. He went on to say that his concerns had since been alleviated, to which Dr. Reinhardt agreed. Dr. Reinhardt acknowledged that whenever the topic of injectable nutrients has been discussed it seems that prescription drugs has been discussed along with it. It was his belief that the board was moving away from prescription drugs. He added that, while it would be nice to be able to administer a local anesthetic, something that you would not prescribe to a patient but that you would utilize to make a procedure more comfortable for a patient, he is not sure where to balance the conversation between injectable nutrients and prescription drugs. Dr. Larson thanked him for bringing up his concerns.

Dr. Larson informed Director Chambers that he has a diplomate in sports medicine and that it would be nice to do the things he was trained in, which includes anesthetics, antibiotics, and suturing. He explained that these things are covered under ancillary methodology and the argument revolves around direct administration vs. prescription to a patient. He referred to AS 08.20.100(b)(1), which states that chiropractors, "may analyze, diagnose, or treat the chiropractic condition of a patient by chiropractic core methodology or ancillary methodology." He then referred to AS 08.20.900(6), which states the following:

(6) "chiropractic core methodology" means the treatment and prevention of subluxation complex by chiropractic adjustment as indicated by a chiropractic diagnosis and includes the determination of contra-indications to chiropractic adjustment, the normal regimen and rehabilitation of the patient, and patient education procedures; chiropractic core methodology does not incorporate the use of prescription drugs, surgery, needle acupuncture, obstetrics, or x-rays used for therapeutic purposes;

He continued by referring to AS 08.20.900(1), which states, “‘ancillary methodology’ means employing within the scope of chiropractic practice, with appropriate training and education, those methods, procedures, modalities, devices, and measures commonly used by trained and licensed health care providers and includes...” Dr. Larson explained that the problem arises in AS 08.20.100(b)(1) because it states that chiropractors can treat the chiropractic condition of a patient by chiropractic core methodology or ancillary methodology. He said that many people think chiropractors are only allowed to work under the requirements of chiropractic core methodology and are entirely ignoring a chiropractor’s ability to treat the chiropractic condition of a patient by ancillary methodology. He stated that both methodologies are independent clauses and are separate from each other, and that chiropractors should be able to use certain ancillary methodologies that may not be allowed by chiropractic core methodology. Director Chambers suggested that the board, if they are receiving differing opinions amongst themselves and license holders, reach out to the legislature to provide clearer wording. She said that was probably the best method to get a determination, but that another method would be to wait until someone got in trouble and the courts decided on the matter. Ms. Chambers reminded the board that multiple board attorneys over the years have provided consistent advice to the board, and the advice has been that surgery and prescription drugs are not allowed under AS 08.20.900(3), which states the following:

(3) "chiropractic" is the clinical science of human health and disease that focuses on the detection, correction, and prevention of the subluxation complex and the employment of physiological therapeutic procedures preparatory to and complementary with the correction of the subluxation complex for the purpose of enhancing the body’s inherent recuperative powers, **without the use of surgery or prescription drugs**; the primary therapeutic vehicle of chiropractic is chiropractic adjustment;

Director Chambers stated that if the statute is not clear enough for members of the board that it needs to be clarified through the legislature. She said they could, at the same time, attempt to expand their scope of practice to include surgery or prescription drugs for those who have diplomates or certain advanced training and education that pertains to the practice of chiropractic. She explained that the board, if granted an expansion to their scope of practice, could then adopt regulations for it. Ms. Chambers reminded the board that she had written a motion, in her memorandum, for the board as a starting point that they could use to create a motion and pursue statute changes.

John Wayne Aderhold asked Ms. Chambers about her previous statement when she said the naturopaths were attempting to expand their scope of practice. She informed the board that the naturopaths have a legislative sponsor that is seeking expansion to include prescriptive authority for naturopaths who have met certain advanced training and education standards. She said that, if the bill passes, she did not think that approved naturopaths would be allowed to use controlled substances, but that it would include some non-controlled substances. Mr. Aderhold asked her if she knew who the legislative sponsor was, to which she replied Rep. Jennifer Johnston. Mr. Aderhold asked if the naturopaths were using the legislative route to revise their statutes to try to clarify things the way they want to see them, to which Ms. Chambers confirmed. She informed the board that there was an investigation that resulted in serious discipline and a lot of money spent by the licensees and the naturopath who was the subject of the investigation. She reminded the board that, when it comes to investigation costs, all expenses are paid for by the licensees. She explained that there was a naturopath who was administering a variety of prescription nutrients, and since prescriptive authority is not allowed under their statutes, she was determined to have been practicing outside of her scope of practice. She acknowledged that this case was a watershed moment for the naturopathic association

and that they understood they needed to clarify the issue in statute by trying to expand practice for those who have that training and education. Mr. Bay informed the board that if a similar case were to happen to the chiropractic board then license fees for chiropractors would go up significantly, which is what happened to naturopathic licensees. Director Chambers explained that when the naturopathic association sued the State of Alaska for implementing regulations to clarify the non-use of prescription drugs in their profession the naturopathic association lost and all of the division's legal fees were paid for by the licensees through license fees.

The board agreed that they had no issues with the motion that Director Chambers wrote for them, but that they needed to figure out, as a board, if they wanted to pursue legislation. Dr. Reinhardt reiterated that they kept going back and forth between injectable nutrients and prescription drugs. He asked if they were planning on addressing both issues through legislation, but that it was his understanding they were not trying to get surgery or prescription drugs in their scope. Dr. Larson said that they will have to address both issues because their current definition of surgery, according to the Department of Law, does not allow for injections of any kind and injectable nutrients is being seen as injecting drugs that require a prescription. Dr.'s Larson, Reinhardt, and Vito did not agree that administering a nutritional product is the same as prescribing a drug. Dr. Larson said that, although the board is trying to clarify the difference between a nutrient and a prescription drug through the regulation process, they are likely going to need to address the issue from a statutory standpoint than a regulatory standpoint. Ms. Chambers agreed, stating that the current chiropractic statutes do not allow for prescription drugs and that prescription drugs include any legend drugs. She said that if anybody is injecting anything that requires a prescription then they are in violation of statute. She informed the board that they have been discussing controlled substances that are scheduled drugs, but that non-controlled substances are also prescription drugs and are not currently allowed in chiropractic either. She said that if the practice of chiropractic is changing and chiropractors are gaining the education and training, then it might be time for their statutes to catch up with that. Dr. Larson explained that several chiropractic schools provide that training and it is readily available. Director Chambers informed the board that she tried to encapsulate their goals and objectives in her motion, and, if approved by the board, she can move forward in the process by contacting the governor's legislative office to try to get some help for them in what would likely be a legislative sponsor. Dr. Larson asked the board if they were in support of Director Chambers' recommendation of pursuing legislation to accomplish their various goals. The board agreed to move forward in support of pursuing legislation to accomplish their goals and objectives.

On a motion duly made by Jonathan Vito, seconded by Jeffrey Reinhardt, and approved unanimously by a roll call, it was

RESOLVED to have the Board of Chiropractic Examiners support pursuing legislation to accomplish the following goals:

- 1. Add the following activities into the chiropractic scope of practice:**
 - a. Acupuncture**
 - b. Injection, dispensation, or prescription of supplements and other medications that are not controlled substances if the agent is used in a manner consistent with standards adopted by the board in regulation**
- 2. Clarify that a licensee may perform chiropractic only if the services are within the scope of the licensee's education, training, and experience as established by regulations adopted by the board**

3. Add Board of Chiropractic Examiners to AS 08.01.050(d) to allow the department to provide assistance and treatment to persons licensed by the board who abuse alcohol, other drugs, or other substances

Director Chambers informed the board that they would need a spokesperson from the board, someone who would help draft the statutes and testify in front of the legislature. Dr. Larson asked the board if there was anybody who would like to be the spokesperson. Dr. Reinhardt asked if it had to be an individual or if it could be two people. Ms. Chambers said that it could be two people. Dr. Larson and Dr. Reinhardt agreed to be the Spokesmen for the board.

On a motion duly made by Jonathan Vito, seconded by James Morris, and approved unanimously by a roll call, it was

RESOLVED to have Dr. Larson and Dr. Reinhardt be designated as the spokesmen for the board and to serve as the lead in this legislation.

Mr. Bay asked the board if they were still interested in moving forward with their regulations project to amend certain definitions that would allow for injectable nutrients and deal with other issues, now that they are moving forward to try and approve them in statute. The board agreed that they still wanted to amend the definitions in order to have clarity and to eliminate all confusion.

Agenda Item 5

Correspondence

Time: 2:09 p.m.

Chiropractic Neurology Diplomate

Mr. Bay informed the board that Dr. Vanessa Wilczak, who had previously had the International Academy of Chiropractic Neurology (IACN) ask the board about approving the International Board of Electrodiagnosis (IBE) diplomate as an approved chiropractic specialty program, was also a member of the International Board of Chiropractic Neurology (IBCN) diplomate, which was being added to 12 AAC 16.048 as an approved chiropractic specialty program. He explained that she had reached back out to him with another question, asking if electrodiagnosis, including needle EMG, was permitted under the chiropractic neurology diplomate, and that it was included in the diplomate training. Dr. Larson gave a brief overview of what needle EMG constitutes and explained that it comes down to the Department of Law's advice, which states that a needle incises living tissue and therefore constitutes "surgery" as defined in 12 AAC 16.990(b)(2)(A). The board discussed the topic and agreed, based on the interpretation from the Department of Law, that needle EMG is a questionable portion of practice, and that the board cannot approve of it at this time. The board tasked Mr. Bay with contacting Dr. Wilczak with their decision and to also let her know that they are working towards clarifying statute so that all who pursue advanced training and education can perform the things they are trained to do, and to hold off until there is a clear definition that allows for it. Mr. Bay asked the board if they wanted him to relay the same message to people who ask about dry needling, to which the board agreed.

TASK

Mr. Bay will contact Dr. Wilczak to explain the board's decision on the use of needle EMG.

