

State Board of Chiropractic Examiners

Public Session Minutes

January 23, 2003

A meeting of the New Jersey Board of Chiropractic Examiners was held on January 23, 2003 at the State Office Building, 124 Halsey Street, 6th floor, Newark New Jersey. The meeting was convened in accordance with the provision of the Open Public Meetings Act with previous notification having been sent to the Secretary of State and the following publications: The Bergen Record, Newark Star Ledger, Camden Courier Post, Trenton Times and Asbury Park Press to advise of the scheduling of this meeting. The meeting was called to order by Brian Atkisson, D.C., President of the Board at 10:00 AM.

ATTENDANCE

PRESENT:

Drs. Atkisson, Calio, Louro, Murphy, O'Connor, Rada, Senatore and Stabile Mr. Faulkner and Mr. Traier

ALSO PRESENT:

DAG John Hugelmeyer, Executive Director Kevin Earle, Terri Goldberg, Assistant to the Executive Director and recording secretary Nina Lado.

I. APPROVAL OF THE MINUTES OF DECEMBER 5, 2002

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE THE MINUTES AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH NINE MEMBERS VOTING IN FAVOR, NONE OPPOSED AND DR. STABILE ABSTAINED.

II. WELCOME OF NEW BOARD MEMBER

Dr. Atkisson noted that Dr. Albert Stabile had been appointed by Governor McGreevey to a full term as a member of the Board of Chiropractic Examiners replacing Dr. William Winters. Dr. Stabile was welcomed to the Board. Dr. Atkisson thanked Dr. Winters for his long years of service both as a member and as Board President.

III. APPOINTMENTS TO COMMITTEES

Dr. Atkisson announced the following appointments to Committees:
Dr. Stabile will be assigned to the Preliminary Investigation Committee;
Dr. Louro will be assigned to the Multi-Disciplinary Committee;
Dr. Calio will be assigned to the Rules and Regulations Committee.

IV. OLD BUSINESS

A. LOW LEVEL LASER THERAPY

The Board continued its discussion concerning the use of this modality for the treatment of certain conditions. Dr. Rada provided additional information which had been researched concerning the status of the FDA approval. Apparently only two devices have been provisionally approved by the FDA for low level laser or so called cold laser therapy. Specifically the two devices have only been approved for the treatment of two conditions which were identified as neck and shoulder pain and carpal tunnel. A question was raised whether the use of the FDA device was within the scope of practice of chiropractic and whether these devices can be used as adjunctive therapies within that scope. Some discussion was held concerning the status of research of the use of the device for other conditions. It was agreed that since the FDA had only approved the devices for the two above noted conditions that any such use of the device for any other condition must be provided under an approved investigative protocol under IRB (Institutional Review Board) review and supervision.

AFTER DISCUSSION, A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. SENATORE TO INDICATE THAT THE USE OF THESE DEVICES ARE WITHIN THE SCOPE OF PRACTICE OF CHIROPRACTIC AND CAN BE USED BY A CHIROPRACTOR. THIS APPROVAL IS LIMITED TO DEVICES APPROVED BY THE FOOD AND DRUG ADMINISTRATION AND ONLY FOR THE LIMITED CONDITIONS IDENTIFIED BY THE FDA. THE USE OF THIS DEVICE IS NOT DELEGABLE TO ANYONE OTHER THAN A HEALTHCARE PROFESSIONAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH EIGHT MEMBERS VOTING IN FAVOR AND TWO MEMBERS (DRS. RADA AND O'CONNOR) OPPOSED ON THE BASIS OF QUESTIONABLE EFFICACY. THE MOTION CARRIED.

FURTHER DISCUSSION CONTINUED ON EXPERIMENTAL INVESTIGATIONS. A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MR. TRAIER NOTING THAT ANY EXPERIMENTAL INVESTIGATIVE USE OF THE LOW LEVEL LASER OR COLD LASER DEVICE SHALL BE DONE PURSUANT TO FDA/CDRH/IRB GUIDELINES; SUBJECT TO WRITTEN INFORMED CONSENT NOTING THE RISKS, EFFICACY AND BENEFITS AND SO DOCUMENTED IN THE PATIENT RECORD; SHALL NOT BE USED WITHOUT THE DEVELOPMENT OF APPROPRIATE CLINICAL SUPPORT IN THE PATIENT RECORD. THE PRACTITIONER SHALL BE RESPONSIBLE FOR THE PROPER MAINTENANCE OF THE EQUIPMENT. SUCH A MODALITY MAY ONLY BE USED IN CONJUNCTION WITH AN ADJUSTMENT. NO COST SHALL BE INCURRED BY A PATIENT FOR ANY PROCEDURES ASSOCIATED WITH A STUDY. A VOTE WAS TAKEN AND THE MOTION PASSED UNANIMOUSLY.

B. BOARD REGULATIONS - NUTRITION

At the request of the New Jersey Chiropractic Society, Michael Spadafino, D.C., President of that Society had requested an opportunity to address the Board on the wording of the nutrition portion of the Board's Scope of Practice regulations. Dr. Spadafino provided the Board with recommended language for a change in the Scope of Practice.

FURTHER DISCUSSION WAS HELD AND THE MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. LOURO TO REFER THIS MATTER TO THE RULES AND REGULATIONS COMMITTEE WITH INSTRUCTIONS TO PUT A PRIORITY ON THE REVIEW OF THE PROPOSED LANGUAGE AND THE OTHER VARIATIONS ON LANGUAGE THAT HAD BEEN CONSIDERED BY THE COMMITTEE PREVIOUSLY. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Dr. Atkisson noted that several other issues had been referred to the Rules and Regulations Committee including more comprehensive language dealing with the use of exercise and rehabilitative therapies and the development of a preceptorship program.

V. REQUEST FOR REINSTATEMENT

A. JEFFREY BEHREND, D.C.

The Board reviewed a communication submitted by Teresa M. Lentini, Esq. on behalf of Dr. Jeffrey Behrend who was the subject of a Consent Order on September 15, 1999 which was reviewed by the Board. Ms. Lentini on behalf of Dr. Behrend is requesting that the restrictions imposed by the September 15, 1999 Order be removed. Backup documentation was also reviewed by the Board.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. RADA TO REQUIRE DR. BEHREND'S APPEARANCE BEFORE THE BOARD BEFORE PROCEEDING WITH REINSTATEMENT. A VOTE WAS TAKEN AND THE MOTION FAILED.

A MOTION WAS THEN MADE BY MR. FAULKNER WHICH WAS SECONDED BY DR. STABLE TO REINSTATE DR. BEHREND'S LICENSE WITHOUT RESTRICTION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. STEVEN T. PLINIO, D.C.

Dr. Plinio was the subject of a Final Decision and Order entered on January 22, 2000 in which his license was revoked. He was permitted to apply for reinstatement of his license upon successful completion of all terms of the sentence as set forth in an August 23, 1999 Certified Judgement of Conviction.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. RADA TO REQUIRE DR. PLINIO'S APPEARANCE BEFORE THE NEXT MEETING OF THE BOARD BEFORE ACTING ON THE APPLICATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VI. APPLICATIONS FOR LICENSURE

PAULO JORGE PEREIRA, D.C.

The Board reviewed Dr. Pereira's application for licensure which noted an affirmative answer to a question concerning arrests or convictions. Background information was attached. Dr. Pereira appeared without counsel, was sworn and testified to the facts concerning the arrest. There was some discussion.

A MOTION WAS APPROVED TO GO INTO EXECUTIVE SESSION TO DELIBERATE. UPON RETURNING TO PUBLIC SESSION, A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. RADA TO APPROVE DR. PEREIRA'S APPLICATION FOR LICENSURE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VII. ENDORSEMENT

RANDI I. ROSS, D.C.

Dr. Ross is a 1988 graduate of New York Chiropractic College. Completed parts I, II and III of the National Boards as well as the New York examination.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE APPLICATION FOR LICENSURE BY ENDORSEMENT SUBJECT TO THE SUCCESSFUL COMPLETION OF THE JURISPRUDENCE EXAMINATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VIII. GENERAL INQUIRIES

A. THOMAS J. JOE, D.C.

The Board reviewed a general inquiry from the above captioned chiropractor questioning whether or not it is permissible to hire a massage therapist to work as an independent contractor.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. CALIO TO INFORM DR. JOE THAT UNTIL SUCH TIME THAT MASSAGE THERAPISTS ARE LICENSED IN THE STATE OF NEW JERSEY, DELEGATION TO A MASSAGE THERAPIST IS STILL IMPERMISSIBLE UNDER BOARD REGULATIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. ROBERT J. REINHARDT, D.C.

Dr. Reinhardt provided additional information concerning his inquiry on referrals to acupuncturist from chiropractors. Inquiry has been made to the Acupuncture Examiners Board. It was the Board offices' understanding that the Acupuncture Committee was in favor of permitting chiropractors to make referrals to acupuncturists. The Acupuncture Board has expressed concern that chiropractors will be categorized as "physicians" and thus be precluded from the requirement to complete a full course in acupuncture and obtain licensure prior to obtaining such services. Presently the statute only permits plenary licensed physicians or dentists to perform acupuncture upon the completion of 300 hours of training.

THIS MATTER WAS TABLED PENDING RECEIPT OF FURTHER INFORMATION CONCERNING THE STATUTORY REFERENCES NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. NBCE ANNUAL MEETING FCLB ANNUAL MEETING

Dr. Atkisson appointed Dr. O'Connor to be the delegate for the Federation of Chiropractic Licensing Boards Annual Congress in May 2003. Dr. Rada will be the alternate. Dr. Rada was appointed as delegate to the National Board of Chiropractic Examiners meeting and Dr. O'Connor will serve as alternate for that meeting.

IX. DISCIPLINARY MATTERS

IMO THE SUSPENSION AND/OR REVOCATION OF DANIEL J. CATANZARO, D.C.

On January 9, 2003 a Motion was filed by attorney Anthony LaBue, Esq. on behalf of Dr. Catanzaro seeking to dismiss this administrative Complaint with prejudice and requesting oral argument on the Motion. The State was represented by Joan Gelber, DAG and proceedings were recorded by a court reporter.

Mr. LaBue presented argument on his Motion and a response was presented by DAG Gelber.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. MURPHY TO DENY THE MOTION TO DISMISS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR TO DENY THE MOTION TO TRANSFER THE MATTER TO THE OFFICE OF ADMINISTRATIVE LAW. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Mr. LaBue then requested that the Board issue a stay of its determination so that he could consider an appeal to with the Appellate Division.

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY MR. TRAIER TO DENY THE STAY. A VOTE WAS TAKEN AND THE MOTION PASSED UNANIMOUSLY.

MOTION TO GO INTO EXECUTIVE SESSION

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. CALIO TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY ACTIONS AND INVESTIGATIONS AS WELL AS CONSUMER COMPLAINTS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.