



**State of New Jersey
Division of Consumer Affairs
Board of Chiropractic Examiners
124 Halsey Street, 6th Floor**

Public Session Minutes

Thursday, January 24, 2002

A meeting of the New Jersey Board of Chiropractic Examiners was held on January 24, 2002 at the State Office Building, 124 Halsey Street, 6th floor, Newark, New Jersey. The meeting was convened in accordance with the provisions 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 at 10:05 AM by Board President William Winters.

ATTENDANCE:

Drs. Atkisson, Apuzzio, Murphy, O'Connor, Rada, Senatore, Stetzel and Winters. Public Members Ken Faulkner and John Traier

ALSO PRESENT:

DAG John Hugelmeier, DAG Marilyn Bair, Executive Director Kevin Earle, Paralegal James Rodriguez, Recording Secretary Nina Lado

OTHERS:

There were 12 members of the public present

I. INTRODUCTION OF NEW PUBLIC MEMBERS

Dr. Winters took the opportunity to introduce two new public members, John Traier and Kenneth Faulkner who were appointed by Acting Governor Donald DeFrancesco to serve as public members of the Board of Chiropractic Examiners replacing Hadren Simmons and Morton Blum respectively. Both Mr. Traier and Mr. Faulkner introduced themselves to the Board and gave the Board some information concerning their background.

Board President Winters took the opportunity to thank former public members Hadren Simmons and Morton Blum for their long service as public members of the Board.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. STETZEL TO WISH BOTH MR. BLUM AND MR. SIMMONS WELL ON ALL THEIR FUTURE ENDEAVORS AND TO THANK THEM FOR

THEIR IMPORTANT CONTRIBUTIONS TO THE REGULATION OF THE PRACTICE OF CHIROPRACTIC IN THE STATE OF NEW JERSEY. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. APPROVAL OF THE PUBLIC SESSION MINUTES OF NOVEMBER 29, 2001

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE THE PUBLIC SESSION MINUTES OF NOVEMBER 29, 2001 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. NEWSLETTER

Executive Director Earle indicated that the Board Newsletter, The Column, had been printed and was currently at the mailing house awaiting distribution to all licensees. Board members and those present in the public were provided with copies of the Newsletter.

IV. OLD BUSINESS

A. NEW LAW-PUBLIC LAW 2001.CH.307

The Board had an opportunity to review a new law that was signed by Acting Governor DeFrancesco on January 3, 2002 which makes several changes to the Uniform Enforcement Act and increases the authority of the Boards to protect the public. Of particular note is the strengthened authority of the Board to inspect any premises from which a practice or activity subject to an act or regulation administered by the Board is conducted and in addition requiring any Board licensee to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill or safety. Further, the Board may order any person as a condition of continued reinstatement or renewed licensure to submit to any medical or diagnostic testing and monitoring or psychological evaluation and permits the Board to require a licensee to submit to any supervision monitoring or limitation on practice determined by the Board to be necessary. Finally, if upon an application by the Attorney General seeking a temporary Order suspending or limiting a license, the Board may determine, although no palpable demonstration of clear or imminent danger has been made, that the licensees continued unrestricted practice pending a plenary hearing may pose a risk and may order the licensee to submit to medical diagnostic testing or psychological evaluation or an assessment of skills.

The new law takes effect immediately.

B. INQUIRY OF ROBERT J. REINHARDT, D.C.

The Board at its November meeting discussed an inquiry made by DR. Reinhardt concerning the ability of chiropractors to perform pre-participation sports examinations. At the previous meeting the Board had not been provided with a copy of the form that was proposed to be completed for the examination. The Board reviewed a copy of the form as well as a copy of a letter dated March 11, 1994 from Former Executive Director Kay McCormack regarding pre-participation screening examinations. That letter specifically articulated a January 1992 Board policy regarding team physicians and screening examination noting that chiropractors can do so only within their scope of practice. The Board noted that the physical examination form submitted by Dr. Reinhardt contains a number of areas which calls for medical conclusions. The Board opined that such an evaluation was outside the scope of chiropractic.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. O'CONNOR TO INFORM DR. REINHARDT THAT PRE-PARTICIPATION SPORTS EXAMINATION MUST BE LIMITED TO CHIROPRACTIC EVALUATIONS. ANY AREAS SUCH AS AN EVALUATION OF VISION, HEARING, SKIN, ABDOMEN AS WELL AS INFORMATION ABOUT IMMUNIZATIONS ARE BEYOND THE SCOPE OF CHIROPRACTIC AND THEREFORE NOT PERMISSIBLE FOR CHIROPRACTORS TO PERFORM OR PROVIDE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH NINE MEMBERS VOTING IN FAVOR. NONE OPPOSED. ONE ABSTAINED.

C. NEW JERSEY CHIROPRACTIC FORUM ON UTILIZATION REVIEW

On January 17, 2002 the Board received a Petition for Rule Making from the New Jersey Chiropractic Forum pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 13:45A-19.1. The petition for Rule Making requests that the Board adopt a new regulation on utilization review with the following language:

A Utilization Review which evaluates and/or expresses an opinion regarding the appropriateness and necessity of chiropractic services through the examination of a chiropractor or his records, containing the analysis, diagnosis and treatment of a patients condition, constitutes the practice of chiropractic, and shall only be performed by a chiropractor who is licensed under N.J.S.A. 45:9-14.5, and has at least two years of post-graduate clinical experience.

Consistent with N.J.S.A. 45:9-41.27, the offering of an opinion with regard to the treatment or care of a chiropractic subluxation, as identified by chiropractic analysis, shall be deemed the exclusive practice of chiropractic.

Some discussion ensued, the Board was reminded of the status of the prior initiative on utilization review which when reviewed by the Division of Law had identified a New Jersey Supreme Court Case in the matter of Rosenberg in which the Supreme Court opined that any medical doctor where the discipline overlaps with that of a chiropractor such as in the area of radiology may testify in a medical malpractice case. The Division of Law noted that the Board's proposed regulations should accommodate this New Jersey Supreme Court opinion. The Board disagreed with that opinion and the matter had been submitted to the prior Attorney General's office for review and evaluation.

The Board continued its review of this matter and questioned if any representatives of the New Jersey Chiropractic Forum were present. Dr. Thomas Sidoti indicated that the new petition was in fact identical to the language that had been previously approved by the Board prior to the Division of Law review. Dr. Sidoti was questioned as to whether the New Jersey Chiropractic Forum was withdrawing its prior Petition for Rule Making and Dr. Sidoti affirmed that it was in fact withdrawing the prior petition. Executive Director Earle will seek written confirmation of this.

After some discussion, the Board suggested the following modification to the language in the petition as follows.

A Utilization Review which expresses an opinion regarding the appropriateness and necessity of chiropractic services through the examination of a chiropractor's records, containing the analysis, diagnosis and treatment of a patient's condition, constitutes the practice of chiropractic and shall only be performed by a chiropractor who is licensed under N.J.S.A. 45:9-14.5 and who has at least two years of post graduate clinical experience. In addition, consistent with N.J.S.A. 45:9-41.27, the offering of an opinion with regard to a chiropractic subluxation as identified by chiropractic analysis, shall be deemed to be exclusive to the practice of chiropractic.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. O'CONNOR TO ACCEPT THE PETITION FOR RULE MAKING SUBMITTED BY THE NEW JERSEY CHIROPRACTIC FORUM. A VOTE WAS TAKEN AND THE MOTION PASSED WITH NINE MEMBERS VOTING IN FAVOR. MR. FAULKNER ABSTAINED.

A MOTION WS THEN MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. APUZZIO TO ACCEPT THE AMENDMENT SUGGESTED BY THE BOARD TO THE PETITION AND TO SUBMIT THIS AMENDMENT AS A PROPOSAL TO THE NEW JERSEY REGISTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

V. NEW BUSINESS

A. PROPOSED REGULATION: PERMISSIBLE PRACTICE STRUCTURES

Regulatory Analyst Jake Gertsman was present for the discussion on this matter. The Board reviewed a draft regulation approved by the Rules and Regulations Committee which would establish a number of definitions related to professional practice structures that may be utilized by licensed chiropractors. The new regulation would identify closely allied licensed healthcare professionals as any individual licensed by a professional or occupational licensing

board, or other state agency in the fields of medicine or its branches, dentistry, podiatry, physical therapy, psychology, occupational therapy, nursing, acupuncture or massage bodywork or somatic therapy. The regulation identifies the types of permissible business structures which are identified as sole proprietorships, partnerships including limited liability partnerships, limited liability companies or professional service corporations. Further, the proposed regulation specifically limits shareholders in such practices to chiropractors and closely allied licensed healthcare professionals. General business corporations were identified as an impermissible form of business for a chiropractor. However, some discussion ensued concerning the role of a licensee as an employee of a general business corporation, noting that a chiropractor could be employed by a corporation licensed by the New Jersey Department of Health and Senior Services as an HMO, Hospital, long or short term healthcare facility, ambulatory care facility or other healthcare facility or provider such as a diagnostic imaging facility.

Chiropractors may also be employed under this new proposal in a medical or chiropractic clinic where the corporation is not in business of offering treatment services but the healthcare professionals provide services directly to employees or monitor the medical or chiropractic health of its employees. Other specific exceptions would be religious or fraternal type organizations or accredited educational institutions which provide services to students or faculty. Some discussion surrounded the issue of chiropractors employed by corporations licensed by the Department of Banking and Insurance as an insurance carrier which offers coverage for chiropractic services where the licensee is employed to perform quality assurance for utilization review services and further corporations which are employed or under contract to an insurance carrier or managed care plan offering coverage for chiropractic services which provided quality assurance for utilization review services.

The Committee also made a suggestion to modify the Board's present regulations at N.J.A.C. 13:44E-2.7 entitled Referral Fees. The Board determined to defer further discussion on this matter to some time in the future.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY MR. FAULKNER TO PROPOSE THIS AMENDMENT TO THE BOARD'S REGULATIONS AND PUBLISH IT FOR COMMENT IN THE NEW JERSEY REGISTER. A VOTE WAS TAKEN AND ALL MEMBERS PRESENT VOTED IN FAVOR.

REGULATORY ANALYST GERTSMAN WILL CLEAN UP THE LANGUAGE AS SOON AS POSSIBLE AND PREPARE IT FOR INTERNAL REVIEW.

B. FIRST TRENTON COMPANIES

The Board reviewed a request from Marilyn Dolan, Medical Unit Supervisor of the First Trenton Company questioning whether chiropractic physicians can carry out the orders of an MD in a multi-disciplinary practice setting that would generally be considered physiotherapy services such as the use of modalities like ultrasound or electric stimulation which are performed absent a chiropractic adjustment.

Board members noted that this issue comes up particularly since a number of new multi-disciplinary settings appear to be cropping up in the state. Board members were referred to the Board of Medical Examiners regulations which permit an MD to delegate such modalities to "licensed healthcare professionals." Board members were also directed to the specific requirements set forth in its own scope of practice regulations at N.J.A.C. 13:44E-1.1(e) which state that a licensee may order or administer physical modalities where indicated in conjunction with a spinal adjustment.

Several members of the public expressed opinions with respect to these issues.

AFTER DISCUSSION, A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. STETZEL TO RESPOND TO FIRST TRENTON COMPANIES TO INDICATE THAT THE MATERIAL SUBMITTED IS INSUFFICIENT FOR THE BOARD TO RENDER A CONCLUSION SINCE IT IS NOT CLEAR FROM THE MATERIAL REVIEWED AS TO WHETHER A CHIROPRACTIC ADJUSTMENT WAS PERFORMED IN CONJUNCTION WITH THE MODALITY. HOWEVER, THE BOARD OPINES THAT THE BOARD INTERPRETS ITS PRESENT REGULATIONS UNDER ITS SCOPE OF PRACTICE TO REQUIRE THAT WHENEVER PHYSICAL MODALITIES ARE ADMINISTERED BY A CHIROPRACTOR, AN ADJUSTMENT MUST BE PERFORMED, AND DOCUMENTED IN THE PATIENT RECORD. THE BOARD FURTHER RESPONDS THAT IT IS PRESENTLY DEVELOPING GUIDELINES FOR MULTI-DISCIPLINARY PRACTICES

AND WILL BE LOOKING INTO THIS ISSUE OF MULTI-DISCIPLINARY PRACTICES IN CONSULTATION WITH THE BOARD OF PHYSICAL THERAPY AND THE BOARD OF MEDICAL EXAMINERS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. AMERICAN CHIROPRACTIC ASSOCIATION-COUNCIL ON CHIROPRACTIC PHYSIOLOGICAL THERAPEUTICS AND REHABILITATION.

The Board received an inquiry from Donald Fedoryk, D.C. on behalf of the American Chiropractic Association on Chiropractic Physiological Therapeutics and Rehabilitation to ask if the Board recognizes or has any specific policy regarding chiropractic diplomate specialties. And further, whether there is any additional certification required to perform any bill for rehabilitation techniques. The Board responded to indicate that the Board does not recognize any diplomate specialties. The Board only requires as a condition of its advertising regulations that if one is to use a designation on identifies the name of the organization which conferred the designation. The Board does not require any specific certification to perform any bill rehabilitation techniques. With respect to advertising, there are no restrictions on the words "rehab" or "rehabilitation."

D. CHRISTIAN J. LEVANDUSKI, D.C.

Dr. Levanduski has provided a course outline and has requested the Board's approval in order to perform certain electro-diagnostic tests under the Board's Electro-diagnostic regulations, specifically those contained in N.J.A.C. 44E-3.5. Dr. Levanduski submitted a course outline for the Neuronal Conduction Certificate Program of New York Chiropractic College which included an outline and description of course materials.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. SENATORE TO APPROVE THE COURSE. DRS. APUZZIO AND ATKISSON WILL SEEK OUT ADDITIONAL INFORMATION FROM OTHER COURSE PROVIDERS, SPECIFICALLY CCE APPROVED CHIROPRACTIC COLLEGES AND OTHER SOURCES TO DEVELOP A LIST OF APPROVED COURSES TO MEET THE REQUIREMENTS SET FORTH IN THE BOARD REGULATIONS. DR. APUZZIO WILL SPECIFICALLY CONTACT THE AMERICAN CHIROPRACTIC BOARD OF NEUROLOGY TO IDENTIFY SPECIFIC COMPONENTS OF THAT PROGRAM THAT MIGHT BE UTILIZED TO MEET THE REQUIREMENTS AS SET FORTH IN BOARD REGULATIONS.

E. RONALD ZWEIBAUM, D.C.

Dr. Zweibaum submitted an inquiry requesting the interpretation of certain aspects of the Board's recently adopted Patient Record Review Regulations. Dr. Zweibaum noted that in spite of sending a narrative report of several pages detailing an entire summary of the patients history, treatment, exam, findings, diagnostic test findings, progress and plan treatment he is also asked to send the daily treatment notes as well. He notes that this is a duplication of documentation. Dr. Zweibaum was directed to the specific requirements in the Patient Record Review Rule noting that the reviewing chiropractor is required to review all relevant records and therefore he would be obligated to provide these records if requested.

Further, Dr. Zweibaum inquires that if the notes are requested as a condition of reimbursement and review, is the reviewer obligated to state the reason for the request? Under the Patient Record Review rule, the Board requires that the request be made and the records be provided pursuant to that regulation.

Finally, Dr. Zweibaum asked if the reviewer states that he is attempting to verify that the billing reflects the actual treatment rendered, would that be outside the purposes of clinical review? The Board opined that the answer to this question is "no."

VI. GENERAL INQUIRIES

The Board reviewed an e-mail message concerning the Chiropractic Healthcare Section of the American Public Health Association (APHA) announcing a call for abstracts to be presented at the APHA annual meeting in November 2002.

VII. DISCIPLINARY MATTERS

A. IMO SUSPENSION OR REVOCATION OR THE LICENSE OF DANIEL J. CATANZARO, D.C.

The Board reviewed a Notice of Hearing and Notice to File Answer as well as an Administrative Complaint filed on January 15, 2002 in the above captioned matter.

THIS WAS ACCEPTED AS INFORMATIONAL.

B. ANTHONY DePASTINA, D.C.

The Board reviewed the most recent report from Gerald M. Vernon, D.O., D.C., on the monitoring functions required by Consent Order entered by Dr. DePastina.

C. SCOTT WHITE, D.C.

The Board reviewed information concerning a motion made by Mark M. Cheser, Esq. seeking reconsideration of the sanctions imposed in the above captioned matter. The Board had been supplied with transcripts of the entry of a guilty plea and further a transcript of the sentencing before Superior Court, Monmouth County on this matter.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. ATKISSON TO GO INTO EXECUTIVE SESSION TO DELIBERATE AND RECEIVE ADVICE OF COUNSEL ON THIS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

UPON RETURNING TO PUBLIC SESSION, A MOTION WAS MADE BY MR. TRAIER, WHICH WAS SECONDED BY DR. APUZZIO, TO GRANT THE MOTION FOR RE-CONSIDERATION AND MAKE A DETERMINATION ON THE PAPERS SUBMITTED BY COUNSEL FOR RESPONDENT AND THE DEPUTY ATTORNEY GENERAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

A MOTION WAS THEN MADE BY DR. APUZZIO WHICH WAS SECONDED BY MR. TRAIER TO MODIFY THE FINAL ORDER OF DISCIPLINE TO IMPOSE A REVOCATION NOTING THAT DR. WHITE MAY NOT SEEK REINSTATEMENT BEFORE THREE YEARS HAS PASSED, AS OPPOSED TO FIVE YEARS AS ORIGINALLY OUTLINED IN THE FINAL ORDER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

D. ALAN MARCUS, D.C. Final Hearing 1:00 PM

Joseph Affilito, Esq., for Respondent
Hakima Bey-Lawson, DAG, for the State

THIS MATTER WAS ADJOURNED UNTIL THE FEBRUARY MEETING.

VIII. ENDORSEMENT

A. GEORGE F. FIEBERG, D.C.

The Board reviewed an application for licensure by Endorsement. Dr. Fieberg was a 1965 graduate of Palmer College of Chiropractic. He was licensed to practice chiropractic in the State of New York in 1974. Upon further review it was found that Dr. Fieberg had not completed the two years of pre-chiropractic education required for licensure in New Jersey. The Board determined that some form of examination will be required in substitution for that deficiency.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. APUZZIO TO REQUIRE DR. FIEBERG TO UNDERGO A CLINICAL COMPETENCY EXAMINATION ADMINISTERED BY BOARD MEMBERS APUZZIO AND SENATORE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL

MEMBERS PRESENT VOTING IN FAVOR.

B. LISA M. BLAKE, D.C.

The Board reviewed an application for licensure by Endorsement by Dr. Blake. Dr. Blake is a 1998 graduate of New York Chiropractic College. She was licensed in Georgia, New Mexico and New York.

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

MOTION TO GO INTO EXECUTIVE SESSION

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. ATKISSON TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS AND CONSUMER COMPLAINTS. THE MEETING WAS ADJOURNED AT 2:30 PM. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Respectfully Submitted,

Kevin B. Earle, Executive Director

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