

State Board of Chiropractic Examiners

Public Session Minutes Thursday, January 29, 2004

A meeting of the New Jersey Board of Chiropractic Examiners was held on January 29, 2004 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 Mary-Ellen Rada, D.C., President of the Board at 10:00 AM.

ATTENDANCE

PRESENT: Drs. Atkisson, Calio, Louro, Murphy, O'Connor, Rada, Senatore, Stabile

ALSO PRESENT: Deputy Attorney General Hugelmeyer, Executive Director Earle, Paralegal Joshua Marzan, Recording Secretary Nina Lado, Assistant to the Executive Director Terri Goldberg

EXCUSED: Mr. Faulkner and Mr. Traier

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF NOVEMBER 20, 2003

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO ACCEPT THE PUBLIC SESSION MINUTES OF NOVEMBER 20, 2003 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. OLD BUSINESS

A. PROPOSED REGULATION: DELEGABLE TASKS OR FUNCTIONS OF UNLICENSED ASSISTANTS; ORDERING OF ELECTRIC THERAPY DEVICES FOR HOME USE - FINAL ADOPTION

Regulatory Analyst Devon Graf was available to review the comments received to this proposal, which was published in the New Jersey Register on Monday, October 20, 2003. Two comments were received with respect to the proposal. The first comment was received by Dana Cartin, PT, Director of Government Relations for the American Physical Therapy Association of New Jersey which commended the Board on its' initiative. The Board will respond by thanking the APTANJ for its' support of this initiative. The second comment was received by Dr. Steven Clark which requested that the regulation have a clear statement that when a chiropractor orders electrotherapy devices such as a TENS unit it may either be rented or sold by the treating chiropractor as is done by medical physicians. The Board opined that such a statement was not necessary. With respect to the issue of charging, the Board's regulations on excessive fees would be sufficient for the Board to evaluate the matter.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. CALIO TO ACCEPT THE RESPONSES AS NOTED ABOVE TO BE PUBLISHED IN THE NEW JERSEY REGISTER AND TO MOVE THE PROPOSAL TO ADOPTION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

DR. ATKISSON MADE A MOTION WHICH WAS SECONDED BY DR. O'CONNOR FOR THE BOARD TO EXTEND ITS THANKS TO FORMER BOARD MEMBER ROBERT APUZZIO, D.C. FOR HIS HARD WORK IN THE DEVELOPMENT AND RESEARCH ASSOCIATED WITH THIS BOARD INITIATIVE. A

VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. PROPOSED REGULATION: INDEPENDENT CHIROPRACTIC EXAMINATION

The Board reviewed the drafts of the responses to comments prepared by the Divisions Regulatory Unit.

This was accepted as informational. The adopted regulation will be published in the New Jersey Register as soon as possible.

C. PROPOSED REGULATIONS: SCOPE OF PRACTICE - NUTRITION

The Board reviewed language recommended by the Rules and Regulations Committee. The language reads as follows:

1. N.J.A.C. 13:44E-1.1(d)1 - A licensee may offer general nutritional advice, which may include the recommendation of vitamin, minerals, food products or nutritional supplements, to a patient when such advice is incidental to the chiropractic care being provided.
2. A licensee shall not offer nutritional advice as treatment for a specific disease, defect, or deformity.
3. A licensee shall not [incidental to chiropractic care,] prescribe, order, administer, sell, dispense or derive any financial benefit from the sale of vitamins, minerals, food products [or] nutritional supplements, nutritional analysis or nutritional counseling.
4. A licensee shall not represent himself or herself as a nutritional consultant.

AFTER SOME DISCUSSION, A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. STABLE TO ACCEPT THE RECOMMENDED LANGUAGE SUBMITTED BY THE RULES AND REGULATIONS COMMITTEE. THE MOTION FAILED FOR LACK OF A QUORUM WITH FIVE MEMBERS VOTING FOR TWO MEMBERS OPPOSED (DRS. LOURO AND CALIO) AND ONE ABSTENTION (DR. SENATORE).

Further discussion ensued over the issue of the terminology of food products and food supplements. No agreement could be reached on language and no further action will be taken on this proposal at this time.

D. PETITION FOR RULEMAKING: REFERRAL OF PATIENTS TO PHYSICAL THERAPISTS

The Board had received a Petition for Rulemaking submitted by APTA-NJ on October 28, 2003 which sought the deletion of N.J.A.C. 13:44E-2.12, "Referral of Patients to Physical Therapists." The Association noted that as a result of the passage of Public Law 2003, Chapter 18, the requirement of physician direction for the initiation of Physical Therapy has been deleted in the Physical Therapy Act. On December 2, 2003 a further explanation was submitted by the organization clarifying its intention and requesting that language related to "physician direction" of physical therapy be deleted.

Some discussion ensued over standards that should be used to guide chiropractors when making referrals to physical therapists.

AFTER SOME DISCUSSION, A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. CALIO TO RESPOND TO THE ASSOCIATION THAT THE REQUESTED CHANGE WILL BE CONSIDERED WHEN THE BOARD OF PHYSICAL THERAPY HAS COMPLETED ITS REGULATIONS PURSUANT TO THE NEW PHYSICAL THERAPY ACT. SUCH CHANGE SHOULD INCLUDE THE PHRASE "REFERRAL AND/OR WHEN PROVIDING PHYSICIAN DIRECTION." A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. NEW BUSINESS

A. PETITION FOR RULEMAKING-NEEDLE ELECTROMYOGRAPHY

The New Jersey Chiropractic Society Council on Neurology submitted a Petition for Rulemaking on November 14, 2003 seeking to amend N.J.A.C. 13:44E-1.1, N.J.A.C. 13:44E-3.2(c) and N.J.A.C. 13:44E-3.3 to permit chiropractors to perform needle EMG diagnostic testing with appropriate training.

The Board noted that this matter will require further study in order to make an appropriate decision on this matter. In addition, consultation will need to occur with the Board of Medical Examiners and review of the Chiropractic Practice Act should be undertaken to determine whether the insertion of a needle can fall under the category of a "cutting instruments" the use of which is prohibited under the Chiropractic Practice Act.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. STABILE TO REJECT THE PETITION AS IS, AND REFER THE MATTER TO THE RULES AND REGULATIONS COMMITTEE TO EVALUATE THE SPECIFIED TRAINING AND PROCEDURES OF BOARD OVERSIGHT THAT SHOULD BE INSTITUTED BEFORE MAKING A SPECIFIC RECOMMENDATION FOR AN AMENDMENT TO THE BOARD'S REGULATIONS ON ELECTRO DIAGNOSTIC TESTING. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. KATS MANAGEMENT

The Board reviewed correspondence from Keith Maule on behalf of Kats Management questioning whether it is permissible for New Jersey chiropractors to provide their patients with brochures informing them of benefits of taking vitamins. The Board noted that said brochure was not provided to the Board for its' review. The correspondent should be contacted to provide the materials so the Board can properly evaluate the matter.

C. LIFE UNIVERSITY

The Board reviewed information indicating that the Southern Accreditation Commission has determined to deny reaffirmation of accreditation of Life University and is continuing its period of probation for failure to comply with criteria section 14 (Condition of Eligibility 13-Finances) and section 6.3.1 (Financial Resources).

This was accepted as informational.

D. NEW JERSEY CHIROPRACTIC SOCIETY

1. The Board reviewed a letter from Michael Spadafino, D.C., president of the New Jersey Chiropractic Society asking for the Board to respond to various issues. Dr. Steven Clark, a representative of the Chiropractic Society was in the audience and suggested that the matter be tabled so that he could provide further information and clarification on the various issues and focus on issues that fall under Board jurisdiction.

2. The Board reviewed a second piece of correspondence to following from a previous letter considered by the Board in September concerning Horizon Blue Cross Blue Shield's denial of physical therapy modalities, adjunctive therapy and manual traction performed by chiropractors, based upon Horizon's rationale that such modalities are "beyond the scope of chiropractic physicians."

The Board noted that the Rules and Regulations Committee is currently in the process of developing language that would clarify and explain the Board's position with regard to these practices. The Board noted that it previously, on October 14, 2003 responded to David M. Ferrante, Esq. on this issue and noted that the Board believes that:

Modalities rendered in conjunction with, and to facilitate, enhance or prolong the effects of, chiropractic adjustments, have a purpose which differs from and have a role in chiropractic practice which makes them distinct from physical therapy.

The Board further noted that the application of these modalities are distinguishable from physical therapy by

virtue of their relationship to the articulations of the spinal column and their specific purpose within that system of care. It is not their descriptions, such as muscle strengthening or soft tissue stretching which are determinative. Rather it is their purpose and their relationship to the adjustment of the patients, that place these activities within the practice of chiropractic.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. CALIO TO PROVIDE THE ABOVE NOTE RESPONSE TO THE NEW JERSEY CHIROPRACTIC SOCIETY. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

E. LOUIS W. BARILE, D.C.

The Board reviewed correspondence from Dr. Barile asking whether it would be permissible for a chiropractor to refer a patient to another chiropractor for the sole purpose of taking x-rays.

THIS MATTER WAS TABLED SO DAG HUGELMEYER COULD RESEARCH THE ISSUE FURTHER AND REPORT AT THE FEBRUARY MEETING.

F. THE ETHICS GROUP, LLC/MINI-PROBE COURSE

The Board reviewed a flyer offering a two day seminar March 12-13, 2004 to be offered to Board members both inside and outside of New Jersey, which would allow board members to simulate the ProBE Ethics intervention. Drs. Rada, O'Connor and Atkisson expressed interest in the program.

IV. DISCIPLINARY MATTERS

A. VIRGINIA FATATO, D.C.

The Board reviewed a report from The Ethics Group regarding Dr. Fatato's participation in the ProBE ethics intervention which was pursued as a condition of the Final Order filed with the Board on May 21, 2001. The Board noted that Dr. Fatato would be required to complete the continuing education required by the Order as well as pay the outstanding penalties before reinstating.

B. I/M/O THE TEMPORARY SUSPENSION OF GREGORY S. TRENTACOSTA, D.C.

On January 16, 2004 a Verified Complaint and Order to Show Cause was filed and served on Dr. Trentacosta seeking the temporary suspension of his license to practice chiropractic in the State of New Jersey based upon an arrest on a charge of second degree sexual assault of a patient during the course of chiropractic treatment. Deputy Attorney General Siobhan Krier was assigned to prosecute this matter and reported to the Board that Dr. Trentacosta had voluntarily agreed to enter into an Interim Consent Order of Voluntary Suspension of License pending final resolution of all criminal charges to be effective on February 4, 2004. Dr. Trentacosta agrees to immediately employ a Board approved chaperone until the Order becomes effective. Upon proof of the final resolution of the criminal charges. Respondent is granted leave to petition the Board for relief from this Interim Order of Voluntary Surrender of License.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE THE INTERIM CONSENT ORDER AS PRESENTED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. ANDREW SECHTIN, D.C.

Deputy Attorney General Daniel Goodman is assigned to this matter. Dr. Sechtin was the subject of a previous Order requiring continued monitoring by the Physician's Health Program on an issue involving impairment which was entered on January 15, 2003. The Board approved the entry of a Consent Order in which Dr. Sechtin would agree to the voluntary surrender of his license for a period of no less than six months.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. ATKISSON TO APPROVE THE CONSENT ORDERED AS PROFFERED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

V. LICENSURE ISSUES

ENDORSEMENT

A. GUY JOHN VILLANO, D.C.

The Board reviewed an application for license through endorsement from Guy John Villano, D.C. a 1988 graduate of National College of Chiropractic. The Board noted that there appeared to be a databank report indicating that Dr. Villano may have defaulted on a higher education loan.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. SENATORE TO MAKE FURTHER INQUIRY OF DR. VILLANO ON THE STATUS OF HIS REPAYMENT OF HIS HIGHER EDUCATION LOAN BEFORE ACTING ON THIS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. MICHELE ANN NACCARELLA, D.C.

Dr. Naccarella is a 1989 graduate of New York Chiropractic College and is current in the State of New York. A review of CIN-BAD reveals no board actions taken in any other State.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. LOURO TO ACCEPT DR. NACCARELLA 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.

C. THOMAS G. LEE, D.C.

The Board reviewed an appeal for license consideration through endorsement. Dr. Lee is a 1999 graduate of Pennsylvania College of Chiropractic and holds licenses in Pennsylvania and Delaware. Dr. Lee was available to answer questions. Upon review of the record, the Board finds that its denial of Pennsylvania College of Straight Chiropractic occurred after Dr. Lee had graduated.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. LOURO TO APPROVE DR. LEE 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.

VI. REQUEST FOR REINSTATEMENT

SCOTT J. SCHEMANSKI, D.C.

The Board reviewed a request for reinstatement from Dr. Schemanski as well as a response submitted by Deputy Attorney General Joan Gelber in opposition to Dr. Schemanski's request given the existence of a presently pending Complaint which is being heard at the Office of Administrative Law. Dr. Schemanski will be asked to provide an affidavit seeking information as to his specific activities since the time of the lapse of his license, and to appear before the Preliminary Investigative Committee.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. SENATORE TO REQUIRE DR. SCHEMANSKI'S APPEARANCE BEFORE THE PRELIMINARY INVESTIGATION COMMITTEE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VII. LEGISLATIVE REVIEW A-1913

The Board had an opportunity to review Assembly Bill 1913 which was introduced by Assemblywoman Loretta Weinberg which passed the Assembly Health Committee. The Board makes the following comments:

1. The Board notes that the proposed legislation does not reflect an understanding that the licensing boards mission is the protection of public health, safety and welfare and that the Board function is that of a law enforcement agency which would properly belong in an agency where the primary mission is the enforcement of law.
2. The Board notes that the focus of the legislation appears to relate to issues involving the performance of the Board of Medical Examiners. The Board noted that its Board has functioned quite well in recent years and that the combination of public spirited Board members, adequate investigative resources and technical resources will make licensing boards most effectively. The Board noted that the Study Commission as proposed also should include Board members or former Board members rather than outside interest groups. The Study Commission if developed should include individuals who are knowledgeable about regulatory issues.
3. The Board noted that it has embarked on a number of new initiatives devoted to the protection of the public and the education of its licensees and is undertaking a new initiative to offer via secure website a new licensee orientation and jurisprudence examination. This initiative has never been undertaken by any other licensing board in this country to our knowledge. This Board also is very heavily involved in the regulatory community through its activity with the Federation of Chiropractic Licensing Boards and is keenly interested in learning from sister agencies across the country for the betterment of the regulation of chiropractic.
4. The board noted that moving the disciplinary function away from the Board's is a great concern. The potential movement of disciplinary cases to the Office of Administrative Law is particularly disconcerting noting that the OAL is neither thorough nor expeditious. Resolution of a case at OAL takes a number of years. The Board notes that other States where the investigative and disciplinary function are separated from the Board, the disciplinary function is quite time consuming.
5. The Board notes that its position with regard to chiropractors engaged in activities such as the use of runners and convictions of healthcare claims fraud the Board has consistently taken strong action against such individuals.
6. The Board has a number of recommendations that might be helpful in allowing the Boards to more quickly resolve such matters including better coordination with the office of the Insurance Fraud Prosecutor.
7. Finally, the Board notes that many actions taken by this Board involve matters other than "health." They involve violations of specific laws and regulations under the jurisdiction of the Board and reflect serious ethical lapses such as cases involving fraud or sexual misconduct on the part of the chiropractor. Those activities demand serious penalties, re-education and remediation. The professional Boards are the appropriate places to make such determinations in a law enforcement environment.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. SENATORE TO EXPRESS OPPOSITION TO THE PENDING LEGISLATION AND TO SUBMIT ITS COMMENTS AS NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VIII. MISCELLANEOUS MATTERS

A. DANIEL E. GOLDEN, D.C.

The Board reviewed correspondence from former Board member Golden thanking the Board for the plaque commemorating his service.

This was accepted as informational.

B. FCLB- VOTING DELEGATES/ALTERNATES NBCE

The Board reviewed correspondence from FCLB and NBCE requesting the names of the voting delegates and alternates at the annual meeting. Dr. O'Connor will serve as the voting delegate for the Federation and Dr. Rada will serve as alternate. For the NBCE meeting Dr. Rada will serve as the voting delegate and Dr. O'Connor will serve as the alternate.

ADJOURNMENT

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. LOURO TO ADJOURN THE PUBLIC SESSION MEETING AT 3:40 PM. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBER PRESENT VOTING IN FAVOR.
