

# State Board of Chiropractic Examiners

## 124 Halsey Street, 6th Floor

Thursday, February 28, 2002

### Public Session Minutes

A meeting of the New Jersey Board of Chiropractic Examiners was held on February 28, 2002 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 at 9:50AM 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 Hugelmeyer, Executive Director Kevin Earle, Paralegal James Rodriguez and recording secretary Nina Lado

#### **OTHERS:**

There were eight members of the public present.

### **I. APPROVAL OF THE PUBLIC SESSION MINUTES OF JANUARY 24, 2002**

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

### **II. OLD BUSINESS**

#### **A. USE AND PRESCRIPTION OF ELECTRIC MUSCLE STIMULATORS**

Several questions over the years have been raised over the use and prescription of electric muscle stimulation devices particularly those that are battery operated for home use. Likewise, questions have been raised concerning the home prescription of TENS units. Dr. Apuzzio conducted research and presented a written report with some recommendations which establish clinical standards for the use and prescription of such devices and the safety of their use in the home setting.

Dr. Apuzzio noted four specific absolute contraindications to the home or office use of EMS per FDA regulations indicating that they should not be used; 1) on patients using a cardiac pacemaker; 2) any application over the carotid sinus; 3) over blood vessels with thrombosis or emboli; and 4) over tissue or blood vessels vulnerable to hemorrhage.

Dr. Apuzzio also noted that in addition to the above absolute contraindications, the literature supported that practitioners should be aware that EMS devices should be subject to the following precautions:

- 1) the use of such devices over lumbar or abdominal areas of pregnant women;
- 2) on patients with epilepsy;
- 3) trans-thoracic applications in asthenic patients, particularly children;
- 4) over the eyes or internally since it will damage mucosal linings;
- 5) responsibility for treatment or adjustment of stimulation parameters should not be given to patients with cognitive impairment. Special care should be taken when treating cognitively impaired patients, young children, or patients where there are language or communications barriers.

The report further recommends that the prescription of batter operated devices for home use should be permissible assuming the patient is willing to assume responsibility for treatment and be capable of doing so. The patient records should document such an acknowledgment. In addition, the patient should be able to follow directions to carry out a home program as outlined by the chiropractor.

Since patients may need assistance with electrodes, especially those placed paraspinally, the availability of home assistance should be evaluated and ascertained by the treating chiropractor.

The report also established a number of guidelines which were helpful in clinical decision making and in the administration of treatment using all EMS devices and described what should be incorporated into the clinical record. Further, the report outlined what information should be included in a set of instructions for patients for home use. Any documentation and written acknowledgment that the patient has been provided with this information should be contained in the patient record.

Board members complimented Dr. Apuzzio on his research on this issue.

A MOTION WAS MADE BY DR. STETZEL WHICH WAS SECONDED BY DR. RADA TO ESTABLISH THE CONTENTS OF DR. APUZZIO'S REPORT IN A SET OF CLINICAL GUIDELINES WHICH SHALL BE PROVIDED TO BOTH INSURANCE CARRIERS AND TO LICENSEES. THE ACCEPTANCE OF THESE RECOMMENDATIONS, ASSUMING PRACTITIONERS FOLLOW THE GUIDELINES SET FORTH THEREIN, SHOULD NEGATE THE BOARD'S PRIOR RESTRICTION ON THE PRESCRIPTION OF EMS DEVICES FOR HOME USE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. APUZZIO, TO MOVE THE ISSUE TO THE RULES AND REGULATIONS COMMITTEE FOR THE INCORPORATION OF THESE SPECIFIC GUIDELINES INTO REGULATIONS CONCERNING DELEGABLE PROCEDURES. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Further discussion ensued concerning delegation of TENS units which had never been under any restriction by the Board. Questions also arose concerning the use of Interferential units. Dr. Apuzzio promised to conduct further research concerning Interferential units and will report to the Board at its March meeting.

## **II. PROPOSED REGULATIONS-UTILIZATION REVIEW**

The Board reviewed a copy of a Notice of Receipt and Action on a Petition for Rule Making which had been prepared by the Regulatory Affairs Unit of the Division of Consumer Affairs for publication in the New Jersey Register. No specific date of publication has been identified.

The matters was accepted as informational.

### **III. NEW BUSINESS**

#### **A. PETITION FOR RULE MAKING - ANIMAL CHIROPRACTIC**

The Board reviewed a copy of a Petition submitted by Margaret M. Dillon, D.C. requesting the Board to define the practice of Chiropractic on non-humans within the context of Board regulations. A draft Notice of Receipt of Petition for Rule Making has been prepared by the Regulatory Affairs Unit of the Division of Consumer Affairs. The Board also had available to it a copy of a memorandum prepared by Deputy Attorney General Steven Flanzman to former Consumer Affairs Director, Mark S. Herr providing some legal analysis of the question of the performance of manipulation on animals.

#### **B. FEDERATION OF CHIROPRACTIC LICENSING BOARDS - ANNUAL MEETING**

The Federation of Chiropractic Licensing Boards annual meeting will be conducted on May 2-4, 2002, in Chicago, Illinois. The meeting will be preceded by a meeting of the Association of Chiropractic Board administrators. It was reported that two Board members were appointed to National Committees. Dr. O'Connor has been appointed by FCLB President Wayne Wolfson to be the chair of the CIN-BAD Promotion Committee. Dr. Brian Atkisson was appointed by Dr. Wolfson to be a member of the Clinical Competency Task Force. Executive Director Earle was re-appointed as a member of the Continuing Education Task Force.

Dr. Winters noted that Dr. O'Connor will possibly be seeking a position within the FCLB District III and therefore designated Dr. O'Connor as the delegate to the FCLB meeting. Dr. Winters further designated Dr. Mary Ellen Rada to serve as the delegate to the National Board of Chiropractic Examiners meeting which will occur on May 3 in conjunction with the above two other meetings.

### **IV. GENERAL INQUIRIES**

#### **INQUIRY OF MATTHEW J. SMITH, ESQ.**

Mr. Smith makes a general inquiry requesting a "formal opinion from the Board regarding whether or not a chiropractic practice which refers patients for electro-diagnostic testing such as NCV and EMG testing which is performed in the chiropractor's office by another physician who owns a corporation but does not sit on the corporate board of the chiropractic facility, but instead claims to be a board members of his own electro-diagnostic testing corporation, constitutes a violation of N.J.A.C. 13:44E-3.9(a)."

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. RADA TO INDICATE THAT THE INFORMATION CONTAINED IN THE INQUIRY WAS INSUFFICIENT FOR THE BOARD TO MAKE A DETERMINATION ON THIS MATTER. IT WAS SUGGESTED THAT MR. SMITH CONDUCT HIS OWN LEGAL ANALYSIS OF THE BOARD'S REGULATIONS. SHOULD HE DETERMINE HE WISHES TO MAKE A COMPLAINT REGARDING A SPECIFIC SITUATION HE MAY DO SO. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **V. DISCIPLINARY MATTERS**

#### **A. ANTHONY DIPASTINA, D.C.**

The Board reviewed the latest report from Gerald M. Vernon, D.C., D.O., on the monitoring activities for the above captioned licensee. The six month period of suspension has now expired and permission was requested to terminate Dr. Vernon's activities at this time. In addition, Dr. DiPastina made several attempts to identify a record keeping course. In connection with that, the Board reviewed two programs of either twelve or eighteen hours offered in conjunction with Texas Chiropractic College. Dr. DiPastina is required to complete 24 hours of continuing education in connection with the Consent Order.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE TWELVE HOUR COURSE AND TO TERMINATE THE MONITORING REQUIREMENTS SET FORTH IN THE BOARD ORDER PENDING THE RECEIPT OF A FINAL REPORT FROM DR. VERNON. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Dr. Senatore was recused from consideration in this matter.

**B. PETER LOWENSTEIN, D.C.**

The Board also reviewed the record keeping course referenced in the DiPastina matter.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE TWELVE HOUR COURSE TO MEET THE RECORD KEEPING REQUIREMENTS AS SET FORTH IN THE BOARD ORDER ENTERED IN THIS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

**C. JOHN CLARK, D.C.**

The Board also reviewed the record keeping course referenced in the DiPastina matter.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE TWELVE HOUR COURSE TO MEET THE RECORD KEEPING REQUIREMENTS AS SET FORTH IN THE BOARD ORDER ENTERED IN THIS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

**VI. DISCIPLINARY MATTERS FILED**

**A. M. MICHAEL MOORE, D.C.**

On January 30, 2002 a Consent Order of Voluntary Permanent Surrender to be Deemed a Revocation was entered in the above captioned matter. Based upon findings that Dr. Moore permitted his practice to be run in absentia by his office manager. His testimony admitted that he was out of the office and even traveling out of the country during a period of at least two years during which time treatment records, bills and claim forms did not accurately reflect the treatment or services rendered and that bills were submitted to insurance companies for services, goods and appliances that had not been rendered or supplied. His license is permanently surrendered with prejudice to any re-application. Effective with the Order, Dr. Moore permanently ceases and desists from the practice of chiropractic. Civil penalties in the amount of \$25,000 and costs of \$11,305 are imposed.

**B. ALAN MARCUS, D.C.**

On February 28, 2002 a Consent Order of Voluntary Surrender to be Deemed Revocation was entered on the above captioned matter based upon a conviction in Passaic County Superior Court. On April 2, 2001 Dr. Marcus pled guilty to the accusation of child cruelty and neglect and to the Indictment for five counts of criminal sexual assault. Dr. Marcus may not apply for reinstatement before a period of ten years has elapsed from the date of the Order. Costs in the amount of \$4,535.02 to be paid out over a period of 18 months.

**VII. ENDORSEMENT**

**A. ANDREW SIRLIN, D.C.**

The Board reviewed an application for licensure by Endorsement submitted by Dr. Sirlin. Dr. Sirlin is a 1985

graduate of New York Chiropractic College. He is licensed by New York.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. ATKISSON TO GRANT DR. SIRLIN A LICENSE BY ENDORSEMENT PENDING THE SUCCESSFUL COMPLETION OF THE JURISPRUDENCE EXAMINATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **B. DAVID SILVERBERG, D.C.**

The Board reviewed an application for licensure by Endorsement submitted by Dr. Silverberg. Dr. Silverberg is a 1995 graduate of New York Chiropractic College. He is licensed in New York.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. RADA TO GRANT DR. SILVERBERG A LICENSE BY ENDORSEMENT PENDING THE SUCCESSFUL COMPLETION OF THE JURISPRUDENCE EXAMINATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **C. ROBERT BURGER, D.C.**

The Board reviewed an application for licensure by Endorsement submitted by Dr. Burger. Dr. Burger is a 1997 graduate of Life University. He is licensed in Colorado.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO GRANT DR. BURGER A LICENSE BY ENDORSEMENT PENDING THE SUCCESSFUL COMPLETION OF THE JURISPRUDENCE EXAMINATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **IX. IMO THE REINSTATEMENT OF ROBERT LADUCA, D.C.**

Dr. LaDuca was the subject of a disciplinary action in connection with the V&K matter in which his license had been revoked with a condition that he not re-apply for reinstatement any earlier than two years. That period has now expired. Dr. LaDuca appeared before the Board. A court reporter was present to record his testimony. He appeared without counsel.

Dr. LaDuca testified that following the closure of the V&K office he relocated to Maryland where he had an active license and spent several years in that practice. When his license had the opportunity for renewal in Maryland he let the license lapse under the expectation that the action taken by New Jersey would ultimately come to the attention of the Maryland Board. He sold the practice some time in 2001. DR. LaDuca was asked whether it was permissible for him to derive income from a practice when he did not hold a current license to practice in that state and he advised the Board that he was advised by his attorney that it was permissible under Maryland statutes. He was asked what approximate income he had derived from the practice. He indicated that the income was in the range of \$175,000 per year.

Dr. LaDuca testified that he had completed four different seminars for which he presented evidence of completion. It appeared that the programs were offered in connection with a State Chiropractic Convention in the State of Maryland. Dr. LaDuca indicated that his intention was to work as an associate in the State of New Jersey should the opportunity present itself. He did not indicate that he had arranged employment pending approval of the New Jersey Board.

Dr. LaDuca was asked how he had been recently supporting himself. He indicated that he had undergone training in mainframe programming and was employed in such a capacity.

Further questions were raised concerning the sale of his practice in Maryland. He indicated that he had sold

the practice to a young associate based upon a payout of the percentage of the collections which would be 5% in the first year and 10% of the gross practice income in the years 2, 3 and 4. The gross practice income averaged \$4-500,000 per year and was seeing 150 patients per week. Patients average treatment was 12-25 visits. Dr. LaDuca indicated that he had learned a lot from the experience associated with the disciplinary action and represented to the Board that he would never put himself in the position where he would allow his clinical judgement to be compromised as had been in this particular situation. Dr. LaDuca was then excused.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. APUZZIO TO TABLE CONSIDERATION OF THIS MATTER PENDING DEPUTY ATTORNEY GENERAL HUGELMEYER'S OPPORTUNITY TO CONTACT COUNSEL REPRESENTING THE MARYLAND BOARD TO DETERMINE WHETHER OR NOT IT WAS PERMISSIBLE FOR DR. LADUCA TO DERIVE INCOME FROM A PRACTICE IN WHICH HE DID NOT HOLD A CURRENT CHIROPRACTIC LICENSE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **X. MISCELLANEOUS ITEMS**

### **A. RECUSAL PROCEDURES**

The Board reviewed a memorandum from Deputy Director Anthony Miragliotta describing recusal procedures to be used by Board members. Board members will be required to sign a form designating items on the agenda under which they are required to be recused. These forms should be kept in the file and in the preparation of agendas. Board members who are recused shall be identified to the Board staff.

### **B. NUTRITIONAL ADVICE**

Board members conducted a discussion concerning the potential of changing language under the Board's Scope of Practice Regulations dealing with the provision of nutritional advice incidental to chiropractic treatment. Board members discussed the fact that some members of the licensed community are attacking the regulations as being unduly vague. Board members discussed the potential economic conflict of interest relating to the dispensing, prescription or sale of vitamins and nutritional supplements. Some discussion also ensued concerning the effect of nutrition on an individual's ability to support a chiropractic adjustment. After some discussion, no recommendation has yet been recommended to change the existing scope of practice regulation.

## **ADJOURNMENT**

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO GO INTO EXECUTIVE SESSION TO CONSIDER VARIOUS CONSUMER COMPLAINTS AND PENDING DISCIPLINARY MATTERS. 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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