

**State Board of Chiropractic Examiners**  
**124 Halsey Street, 6th Floor**

**Public Session Minutes**

**March 21, 2002**

A meeting of the New Jersey Board of Chiropractic Examiners was held on March 21, 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 9:40AM 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

Executive Director Earle reported that the Division of Consumer Affairs will now be posting all Open Public Minutes and Open Public Agendas on the Board's website. Agendas will be posted within a few days of distribution to the Board. Minutes will be posted after they have been formally amended and/or approved by the Board. The website can be accessed at [www.state.nj.us/lps/ca/medical.htm#chiro2](http://www.state.nj.us/lps/ca/medical.htm#chiro2)

**I. APPROVAL OF THE PUBLIC SESSION MINUTES OF FEBRUARY 28, 2002**

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE PUBLIC SESSION MINUTES OF FEBRUARY 28, 2002 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

**II. NOMINATIONS**

Dr. Winters called for nominations of Board officers for the 2002-2003 period. Elections will be held at the April meeting at which time the new officers will assume their positions.

**TREASURER:** Dr. Winters called for nominations for treasurer. Dr. Senatore nominated John Traier as treasurer. The Nomination was seconded by Dr. Apuzzio. Mr. Traier accepted the nomination. No other nominations were made.

**SECRETARY:** Dr. Rada nominated Dr. Lawrence O'Connor for the position of secretary. The nomination was seconded by Dr. Senatore. There were no other nominations.

**VICE-PRESIDENT:** Dr. Rada was nominated by Dr. Atkisson. The nomination was seconded by Dr.

O'Connor. There were no other nominations.

**PRESIDENT:** Dr. Rada nominated Dr. Brian Atkisson. The nomination was seconded by Dr. Stetzel. There were no other nominations.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. STETZEL TO CLOSE NOMINATIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **III. OLD BUSINESS**

#### **A. PRESCRIPTION OF DEVICES FOR HOME USE**

Dr. Robert Apuzzio submitted some supplementary material concerning the issue of the prescription of battery operated interferential devices for home use. Dr. Apuzzio discussed the various devices including TENS, electric muscle stimulation devices and interferential units and the differences between each. Interferential devices require the precise placement of electrodes which if not performed correctly could potentially, by improper positioning by electrodes, create skin currents and ultimately burns. Therefore, it was recommended that the Board take the position that such devices may not be appropriately prescribed for home use.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO ACCEPT DR. APUZZIO'S RECOMMENDATIONS AND REFER THIS MATTER TO THE RULES AND REGULATIONS COMMITTEE FOR THE PREPARATION OF APPROPRIATE REGULATIONS INCORPORATING THE RECOMMENDATIONS REVIEWED BY THE BOARD AT ITS TWO MOST RECENT MEETINGS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Dr. Apuzzio also indicated that he had inadvertently neglected to include among the precautions for the home prescription of electric muscle stimulation the use of such devices over malignancies. It was suggested that the recommendations reviewed at the previous meeting in February be modified to include the precaution. The Board agreed on the inclusion of this precaution.

#### **B. ROBERT LADUCA, D.C. REQUEST FOR REINSTATEMENT**

Deputy Attorney General Hugelmeyer reported on information obtained from the Maryland Board of Chiropractic Examiners to clarify information that was reviewed at the February 28, 2002 meeting concerning Dr. LaDuca's request for reinstatement. It appeared that this matter was not an obstacle for the Board's approval of the reinstatement request.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. APUZZIO TO APPROVE THE REINSTATEMENT OF DR. LADUCA'S LICENSE TO PRACTICE CHIROPRACTIC IN THE STATE OF NEW JERSEY. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

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

Dr. Senatore was recused in the consideration of this matter.

Dr. DiPastina was the subject of a stayed suspension for a period of six months which is now expired. With the exception of a requirement to complete a record keeping course, which is currently in progress, all other terms and conditions of the Order have been fulfilled. Dr. DiPastina has, through the Executive Director, requested that the term of the suspension now be lifted.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. O'CONNOR LIFTING THE STAYED SUSPENSION AND RECOMMENDING THAT DR. DIPASTINA BE GRANTED AN ADDITIONAL SIX MONTHS TO COMPLETE THE REMAINING RECORD KEEPING COURSE AS REQUIRED BY THE ORDER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **D. CHRISTOPHER DONOFRI, D.C.**

Dr. Donofri was the subject of a settlement letter which required his completion of the PRIME (Professional Renewal/Remediation in Medicine through Ethics) Course. The Board reviewed the results of his participation in court as well as a final essay prepared in connection therewith.

This was accepted as informational.

The Board discussed the possibilities of hearing a presentation on the individuals offering the PRIME or ProBE Ethics Course. Executive Director Earle will arrange for such a presentation in the near future.

#### **E. JOHN A. CLARK, D.C.**

The Board reviewed a request for two additional courses submitted by Dr. Clark in satisfaction of his requirement to complete continuing education pursuant to a settlement letter entered on this matter. The following courses were submitted: Chiropractic Management of Cervicogenic Disorders and Headache: The State of the Art presented by Christopher Colloca, D.C. on April 6 and 7, 2002 and Conservative Treatment and Rehabilitation of Whiplash injuries presented by Gary F. Iema, D.C. on April 27 and 28, 2002. The Board also reviewed the course curriculum.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY MR. FAULKNER TO APPROVE THE COURSE OUTLINES AS SUBMITTED IN SATISFACTION OF THE SETTLEMENT LETTER REQUIREMENTS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **IV. NEW BUSINESS**

#### **A. PIP TAC REPORT**

Dr. Atkisson indicated that the PIP TAC has not met and has noted that it is not clear as to whether the new administration will continue with the PIP TAC committee. Dr. Atkisson indicated that he had been in contact with Jean Bickal, Assistant Commissioner of the Department of Insurance to discuss this matter. The Department is discussing with the new Commissioner as to whether it will seek input of the Professional Board's in the development of standards for the conduct of independent examinations. The Board's Rules and Regulations Committee is currently considering establishing standards for independent chiropractic examinations.

Dr. Atkisson also presented the most recent amendments to the medical fee schedules which were distributed to the Board.

#### **B. LEGISLATIVE REVIEW - S-1224**

The Board reviewed provisions of this legislation sponsored by Senator Girgenti and Senator Bagger which would give the professional boards the authority to provide for fingerprinting of applicants for licensure. Executive Director Earle discussed this matter and noted that Board's would not be required to fingerprint applicants and obtain any criminal history associated therewith. The legislation confers the authority on the

Board's to require fingerprinting as it deems necessary.

A MOTION WAS MADE BY MR. FAULKNER WHICH WAS SECONDED BY DR. STETZEL TO ENDORSE THIS LEGISLATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **V. ENDORSEMENT APPLICATIONS**

### **JAMES C. SHROBA, D.C.**

The Board reviewed an application for licensure by Endorsement from Dr. James Shroba. Dr. Shroba is a 1992 graduate of National College of Chiropractic and is licensed in Illinois and Massachusetts and sat for examinations in both Maine and Massachusetts.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. ATKISSON 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.

## **VI. HEARING - 1:00 PM**

### **DAVID G. HARRIS, D.C.**

**(Proceedings Recorded)**

**Eleanor G. Bernstein, DAG - For the State**

**Andrew Karas, Esq. - For Respondent**

On March 8, 2002 an Order to Show Cause, Notice of Hearing and Requirement to File Answer in Verified Complaint were filed by the Attorney General seeking a temporary suspension of the license issued to the above captioned chiropractor based upon an arrest and indictment in Passaic County Superior Court on nine counts of healthcare claims fraud; three counts of attempted theft by deception in the third degree; and two counts of the use of a runner in the third degree. An Answer to the Complaint was filed by Andrew Karas, Esq. on behalf of Dr. Harris.

Deputy Attorney General Bernstein presented an opening statement which was followed by an opening statement by Mr. Karas on behalf of Dr. Harris.

Deputy Attorney General Bernstein then presented her case in chief and submitted the following items into evidence:

S1- a certification by George P. Wall, a senior investigator of the Passaic County Prosecutor's Office attaching a fictitious police report of an accident which incorporated the fictitious names of three individuals who were in fact investigators affiliated with the Passaic County Prosecutor's Office;

S2- a certification by George P. Wall, senior investigator reporting that on October 4, 2000 under the direction of the Passaic County Prosecutor's Office a cooperating witness approached Dr. Harris at his office and negotiated a referral fee of \$650 per patient. The certification also states that on November 10, 2000 the cooperating witness met with Dr. Harris and received payment of \$1300 in cash as a referral fee for patients Angelo Ortiz (Investigator Escobar), Antonio Reyes (Investigator Urena) payment for the third patient Virginia Garcia (Investigator Navarro) would be made the following week. The certification continues that on December 15, 2000 the cooperating witness received \$650 for the referral of patient Garcia. The certification states that these monies were secured at that Passaic County Prosecutor's offices;

S-3 certification by George P. Wall, senior investigator of the Passaic County Prosecutor's Office attaching six transcripts of tape recordings between the cooperating witness and Dr. Harris;

S-4 a certification of Investigator Luz Escobar.

S-5 a certification of Investigator Virginia Navarro.

S-6 a certification of Investigator Antonio B. Urena.

S-7 a certification of Senior Investigator George P. Wall of the Passaic County Prosecutor's office certifying that the Chiropractic treatment records for Virginia Garcia, Angelo Ortiz and Antonio Reyes (fictitious names) are true and accurate copies of the original records which were obtained through search warrant executed at the office of David Harris, D.C.

S-8 a certification of George P. Wall, Senior Investigator of the Passaic County Prosecutor's Office certifying that copies of claim forms and treatment records from Selective Insurance Company for Virginia Garcia, Angelo Ortiz and Antonio Reyes (fictitious names) are true and accurate documentation maintained in the Passaic County Prosecutor's Office.

S-9 a certification of Senior Investigator George P. Wall attaching a true and accurate copy of the original indictment number 01-11-1274-I filed with the Superior Court of New Jersey, Passaic County in the matter of the State of New Jersey vs. David Harris.

All exhibits received and marked by the State were entered into evidence.

Mr. Karas entered the following items.

H-1 a partial transcript of testimony of Senior Investigator George Wall of the Passaic County Prosecutor's Office, specifically, pages 28 and 29 of that transcript. H-1 was admitted into evidence conditioned upon the provision of the complete transcript of Mr. Wall's testimony.

H-2 pages 56-105 of the testimony of George P. Wall, Senior Investigator of the Passaic County Prosecutor's Office before a Grand Jury.

H-3 an inventory receipt and return of property seized from the offices of Dr. Harris on May 14, 2001.

Deputy Attorney General Bernstein proceeded to present the State's case after which Mr. Karas presented Dr. Harris' defense.

Final statements were heard.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. RADA TO GO INTO EXECUTIVE SESSION TO DELIBERATE.

THE BOARD RETURNED TO OPEN SESSION.

DRS. MURPHY AND WINTERS WERE NO LONGER PRESENT AT THE MEETING AT THIS TIME.

DR. SENATORE ASSUMED THE CHAIR.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR WHICH DENIED THE APPLICATION FOR A TEMPORARY SUSPENSION. THE BOARD WILL RETAIN JURISDICTION OVER THIS MATTER AND WILL CONSIDER DATES FOR A PLENARY HEARING. A VOTE WAS TAKEN AND THE MOTION PASSED WITH SEVEN MEMBERS VOTING IN FAVOR OF THE MOTION AND ONE

OPPOSED (Mr. Traier). THE HEARING WAS THEN ADJOURNED.

## VII. DISCIPLINARY ACTIONS FILED

### A. PETER LOWENSTEIN, D.C.

On February 22, 2002 a Consent Order was filed with the Board based upon a finding that respondent failed to maintain appropriate patient records which accurately and adequately documented the care provided to patients. The failure to maintain patient records was found to be the basis for disciplinary action. Respondent shall complete and pass a twelve hour course in record keeping; cease and desist from violations of the Board's record keeping regulation and pay a civil penalty in the amount of \$2,000 and costs in the amount of \$159.00.

### B. ALAN MARCUS, D.C.

A Consent Order of Voluntary Surrender to be Deemed a Revocation was entered on February 28, 2002 based upon respondents plea of guilty to an accusation for child cruelty and neglect and to an indictment for five counts of criminal sexual contact. He was sentenced on May 25, 2001 to a period of 180 days of incarceration. Respondent is required to immediately surrender his license to practice chiropractic. The Board shall not entertain an application for reinstatement prior to ten years from the entry of the Order. Investigative costs in the amount of \$4535.00 are assessed. Prior to any reinstatement respondent is required to provide proof of psychiatric and psychological evaluation in compliance with treatment recommendations from a mental health facility to be approved in advance by the Board and to provide proof of compliance with all terms of the criminal sentence imposed on May 25, 2002. Prior to any reinstatement the Board may require an independent psychiatric or psychological evaluation. The Board reserves the right to place any restriction on the respondents practice that it deems necessary to protect the public health, safety and welfare.

## ADJOURNMENT

A MOTION WAS MADE BY DR. STETZEL WHICH WAS SECONDED BY DR. ATKISSON TO ADJOURN THE PUBLIC SESSION MEETING AT 4:35PM TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS, CONSUMER COMPLAINTS AND INVESTIGATIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Respectfully Submitted,

Kevin B. Earle, Executive Director