

# State Board of Chiropractic Examiners

March 22, 2001

## Public Session Minutes

A meeting of the New Jersey Board of Chiropractic Examiners was held on March 22, 2001 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 9:50 AM by Board President William Winters.

**PRESENT:** Drs. Atkisson, Murphy, O'Connor, Rada, Senatore, Winters and Public Members Mr. Simmons and Mr. Blum

**ALSO PRESENT:** Executive Director Kevin B. Earle, Deputy Attorney General John Hugelmeyer, Deputy Attorney General Jodi Krugman, Regulatory Analyst Jake Gertsman, Division of Consumer Affairs Representative Bernadette Dudek, Board Paralegal James Rodriguez and recording secretary Nina Lado

**EXCUSED:** Drs. Apuzzio and Stetzel

### **I. APPROVAL OF THE PUBLIC SESSION MINUTES OF FEBRUARY 22, 2001**

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

### **II. NOMINATIONS**

Dr. Winters opened the floor for nominations for Board officers for 2001-2002. Elections will be held at the April Board meeting.

**PRESIDENT:** A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. SENATORE NOMINATING WILLIAM WINTERS, D.C. AS BOARD PRESIDENT. THERE BEING NO FURTHER NOMINATIONS, A MOTION WAS MADE BY MR. BLUM TO CLOSE NOMINATIONS.

**VICE-PRESIDENT:** A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MR. SIMMONS TO NOMINATE BRIAN ATKISSON, D.C. AS VICE-PRESIDENT. DR. ATKISSON DECLINED THE NOMINATION. A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO NOMINATE THOMAS SENATORE, D.C. AS VICE-PRESIDENT. THERE BEING NO FURTHER NOMINATIONS, A MOTION WAS MADE BY MR. BLUM TO CLOSE NOMINATIONS.

**SECRETARY:** A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. SENATORE TO NOMINATE ROBERT APUZZIO, D.C. AS BOARD SECRETARY. THERE BEING NO FURTHER NOMINATIONS, A MOTION WAS MADE BY MR. BLUM TO CLOSE NOMINATIONS.

**TREASURER:** A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. RADA TO NOMINATE LAWRENCE O'CONNOR, D.C. AS BOARD TREASURER. THERE BEING NO FURTHER NOMINATIONS, MR. BLUM MADE A MOTION TO CLOSE THE NOMINATIONS.

### **III. OLD BUSINESS**

## 1. PROPOSED REGULATIONS-PATIENT RECORD REVIEW

Regulatory Analyst Jake Gertsman was present along with DAsG Krugman and Hugelmeyer to discuss a procedure to review in a substantive fashion the comments received concerning patient record review regulation. It was recommended that two special meetings be scheduled in order to devote as much time as possible to the conclusion of this matter. The Board selected two dates of April 19, 2001 at 9:30 and May 3, 2001 at 9:30 for this purpose. Executive Director Earle will file notice with the Secretary of State and make sure that the distribution list receives notice of the meetings.

The Board had the opportunity to review the Hearing Officer's Report submitted by Deputy Attorney General Philip Hopkins. The report summarized each of the individuals who had testified at the hearing. He noted that those persons who testified in opposition to the Proposed Rule on behalf of State agencies requesting the Hearing did not offer any proposed amendments. Opposition was based on the anticipated economic impact and inconvenience to the patients of physical examinations required under proposed subsection (e). The Division of Pensions and Benefits and the Department of Banking and Insurance asserted that the rule exceeded the statutory authority of the Board and conflicts with rules governing reimbursement of benefits promulgated by respective agencies under the Auto Insurance Cost Reduction Act (AICRA) and the Healthcare Act. The representative of the Department of Banking and Insurance said that rules implementing AICRA require periodic evaluations of the need for continued care and that requiring physical examinations in each case would disrupt the prompt review of cases. The only regulation cited that was in conflict with the proposed Rule was N.J.A.C. 11:3-4.7, which concerns point of decision reviews in PIP claims. The Hearing Officer indicated that the proposed rule does appear to conflict with the rule in that subsection (e) of the Proposal requires a non attending chiropractor performing the record review to also perform a physical examination regardless of patient proximity or convenience. The insurance regulation requires an examination where the record is insufficient to authorize or deny reimbursement. The proposed rule states different criteria for an examination, that the rendering of an opinion that the care should be terminated, is not necessary or is palliative.

The Hearing Officer recommended that the authority for the Board to implement such requirements should be referred to the Attorney General for legal advice. DAG Hopkins cited the provision which contains legislative findings and declarations in N.J.S.A. 45:9-41.18 that states, "It is a valid public purpose to establish a Board to regulate the practice of chiropractic in this State to properly protect the citizenry who receive the services of a chiropractor by maintaining standards of competency and integrity of the profession and preventing unsafe, fraudulent or deceptive practices which may damage the health of those citizens, as well as the reputation of the profession in this State."

Mr. Hopkins stated that it is not unreasonable for the Board to determine that the rendering of a professional opinion on the practice of chiropractic and the interpretation of records, constitutes the practice of chiropractic. Mr. Hopkins made the following specific recommendations:

- 1) No recommendation was made for subsection (a).
- 2) Subsection (b) requires a reasonable effort to obtain records and that the effort be documented placing a duty and obligation on the non-attending chiropractor to obtain records. The Board was requested to review the provisions of N.J.A.C. 13:44E-2.2(d)2, which allows a chiropractor to provide a summary of the record when requested in writing by an insurance carrier in response to a requirement in the insurance contract that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. Mr. Hopkins questions whether this proposed new section conflicts with the previous section when it is clear from the testimony presented that in the overwhelming majority of cases the purpose of a patient record review is to determine patient eligibility for benefits or reimbursement.
- 3) No recommendation is made for Subsection (c).
- 4) No recommendation is made for subsection (d).
- 5) Mr. Hopkins recommends that subsection (d) should be reconsidered because of an apparent conflict with the Department of Banking and Insurance Regulations at N.J.A.C. 11:3-4.7. To resolve the conflict between the two subsections, Mr. Hopkins recommends that the Board consider revising the first sentence of subsection (e) to mirror

the insurance rule. The non-attending chiropractor who complies with subsection (b) may render an opinion on the patient record. If the patient record is insufficient to make a determination with respect to treatment, then the non-attending chiropractor shall not render an opinion unless an independent chiropractic examination is performed. The examination shall comply with chiropractic regulations and any rules applicable to the purpose of the review.

6) No recommendations are made for subsection (f).

7) No recommendations are made for subsection (g),

8). Mr. Hopkins recommends that the Board should consider amending the first sentence of subsection (h) to clarify that the rendering of an opinion by a non-attending chiropractor pursuant to this section concerning the practice of chiropractic treatment by an attending chiropractor is the practice of chiropractic.

The Board noted that much of the suggested clarifying language is contained in the Board's other initiative on utilization reviews.

9) Mr. Hopkins further recommended that the Board should establish educational criteria for the non-attending chiropractor but noted that those criteria are beyond the scope of the current proposal. The educational criteria are also addressed in the utilization review proposal.

The Board then reviewed with counsel the various options concerning such substantive amendments which would require that there be a re-proposal and new comment period. It was recommended that the Board closely review the Department of Banking and Insurance Regulations. Noting that the only substantive opposition concerning the regulation came from auto insurance carriers, the more the Board can harmonize its regulation with the DOBI regulations, the quicker action can be taken to adopt the new regulations. DAG Hugelmeyer offered to work with the regulatory analyst and the Executive Director to draft responses for the Board's consideration which would incorporate the discussion held to this point in time.

It was further suggested that if the Board determines that regulations of the Department of Banking and Insurance, Department of Health and Senior Services or the Division of Pensions and Benefits should be modified to provide additional integrity to the claims review process, the Board should consider filing a Petition for Rulemaking with each agency.

## **IV. NEW BUSINESS**

### **1. PIP-TAC Committee**

Dr. Atkisson noted that the PIP-TAC committee meeting was re-scheduled for a Monday and thus he was not able to attend the most recent meeting of the PIP-TAC committee. He will attempt to obtain the minutes for the Board's review next month.

### **2. PROPOSED REGULATIONS - DEPARTMENT OF BANKING AND INSURANCE - FILING OF ELECTRONIC CLAIMS**

Board members discussed this proposal.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. MURPHY TO AUTHORIZE THE DRAFT OF A COMMENT THAT THE BOARD IS OVERALL IN FAVOR OF THE PROPOSAL, HOWEVER, IT SUGGESTS THAT THE ADOPTED REGULATIONS CONTAIN A PROVISION FOR PROMPT PAYMENT TO HEALTHCARE PROVIDERS AND FURTHER THAT THE PROPOSAL SHOULD CONSIDER A PROVISION FOR ELECTRONIC TRANSFER OF FUNDS TO THE HEALTHCARE PROVIDERS FROM INSURANCE CARRIERS.

### **3. FEDERATION OF CHIROPRACTIC LICENSING BOARDS PROPOSED BY-LAWS**

The Board reviewed proposed by-laws of the Federation of Chiropractic Licensing Boards which would provide for a category of membership known as an Executive Fellow which would consider an individual from a State serving in an administrative capacity with a Board of Chiropractic Examiners. A vote on the by-law amendment will be held at the FCLB annual meeting in San Antonio.

This was accepted as informational.

#### **4. FCLB - MEMO ON THE OFFICE OF THE TREASURER**

The Board reviewed a memo from David E. Brown.

This was accepted as informational.

#### **5. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS**

A request was received from the National Board of Chiropractic Examiners for either one or two participants in the Part IV Test Development Committee. Dr. Winters indicated that Dr. O'Connor had agreed to attend this session. Dr. Winters also indicated an interest and he will check his schedule to determine if it is possible to participate in this committee.

#### **V. LEGISLATIVE REVIEW S-2176**

The Board reviewed this proposed regulation introduced by Senator Cardinale and Sinagra which would provide for prompt notification to healthcare licensing boards when a healthcare practitioner is suspected of injuring a patient or suspected of other wrongdoing. Further, the individual who reports information pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall have immunity from civil or criminal liability on account of the report or testimony. The Board reviewed this matter and suggested that it should contain a provision for an employee's report concerning suspected impairment.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. SENATORE TO SUPPORT THIS BILL WITH THE RECOMMENDED AMENDMENTS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **V. GENERAL CORRESPONDENCE**

##### **1. SENATOR JOHN ADLER**

The Board reviewed a letter of February 27, 2001 directed to Acting Governor Donald DeFrancesco from Senator Adler expressing concern over the proposal from the Department of Banking and Insurance.

This was accepted as informational.

##### **2. STEWART H. GOODMAN, D.C.**

The Board reviewed correspondence directed to Horizon Blue Cross Blue Shield concerning non-payment for x-ray services due to his failure to participate in the "Quality Improvement Program" sponsored by Blue Cross Blue Shield.

The Board accepted this as informational.

#### **VI. ENDORSEMENT**

##### **SIGMUND MILLER, D.C.**

Dr. Miller is a current licensee in the State of California and holds inactive licenses in Florida, Delaware,

Massachusetts and Kansas. There is no record of disciplinary action. Dr. Miller completed Parts I and II but it was noted that Part III was not available when he graduated from Chiropractic College in 1977.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR TO ACCEPT DR. MILLER 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.

## **VII. JURISPRUDENCE EXAMINATION**

A discussion was held concerning the present jurisprudence exam and it was recommended that Board members take stock of the types of violations issued on an annual basis and develop a jurisprudence examination consistent with the percentages of violations in each category. Board members were asked to review their regulation books and submit possible questions.

## **VIII. CONTINUING EDUCATION**

Dr. Winters reported that he was aware that various chiropractic organizations will be seeking new legislation that would establish continuing education in the State of New Jersey for licensed chiropractors. He understands that the Chiropractic Forum is reviewing statutory language in other professions in order to develop such a proposal and will be seeking sponsorship in the legislature.

## **IX. ANIMAL CHIROPRACTIC**

Dr. Winters inquired about the position of the Board of Veterinary Medical Examiners concerning the practice of chiropractic on animals and noted that there had previously been an agreement between the two Boards establishing a protocol for such activity. The Board of Veterinary Medical Examiners has now rejected that agreement and Board members were provided with a copy of a letter from Diane Romano, Executive Director of that Board to an individual making an inquiry. There was a notation made by Ms. Romano of an opinion by the Attorney General concerning this activity which opined that legislature in establishing the Board of Chiropractic did not anticipate that chiropractors would practice on anyone but human subjects. The Board has asked for a copy of that opinion to give this matter further review.

## **ADJOURNMENT**

AT 1:50 P.M., A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. ATKISSON TO MOVE INTO EXECUTIVE SESSION TO CONSIDER 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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*Posted March 2002*