

**STATE OF NEW JERSEY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS
124 HALSEY STREET, 6TH FLOOR
SOMERSET ROOM
NEWARK, NEW JERSEY
PUBLIC SESSION MINUTES
THURSDAY, MARCH 22, 2007**

A meeting of the New Jersey Board of Chiropractic Examiners was held February 22, 2007 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 Lawrence O'Connor, D.C., President of the Board, at 9:30 AM.

ATTENDANCE

PRESENT: Drs. Senatore, Murphy, Calio, Rada , Krouse, O'Connor, Spadafino, Stabile, and Mr. Traier

EXCUSED: Dr . Kostinas

ALSO PRESENT: DAG John Hugelmeyer, Executive Director Kevin Earle, and Recording Secretary Sonya Liverpool.

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF FEBRUARY 22, 2007

A MOTION WAS MADE BY DR. KROUSE, WHICH WAS SECONDED BY DR. MURPHY, TO APPROVE THE PUBLIC SESSION MINUTES OF FEBRUARY 22, 2007 MEETING AS AMENDED. A VOTE WAS TAKEN, AND THE MOTION PASSED WITH NINE MEMBERS PRESENT VOTING IN FAVOR AND ONE ABSTENTION (DR. RADA, WHO HAD NOT ATTENDED THE FEBRUARY MEETING).

Some discussion ensued about the Board's position, as detailed in the February Minutes, on an inquiry on Extra Corporeal Shock Therapy made by David Zuckerman, D.P.M.. Dr. Calio asked that this matter be placed on the April agenda for further consideration.

II. NEW BUSINESS

A. NOMINATIONS FOR OFFICERS

Dr. O'Connor opened nominations for Board officers for the 2007-2008. Elections will be held at the April meeting.

President

DR. STABILE NOMINATED DR. JOSEPH MURPHY AS BOARD PRESIDENT. THE NOMINATION WAS SECONDED BY DR. KROUSE.

Dr. Murphy made a statement thanking the Board for its consideration, but that he would be declining the nomination this year.

DR. MURPHY MADE A MOTION TO NOMINATE DR. ALBERT STABILE AS BOARD PRESIDENT. THE NOMINATION WAS SECONDED BY DR. SPADAFINO.

A MOTION WAS MADE AND SECONDED TO CLOSE THE NOMINATIONS, WITH ALL IN FAVOR.

Vice President

A MOTION WAS MADE BY DR. MURPHY, TO NOMINATE DR. ROSEMARY CALIO AS VICE PRESIDENT. THE NOMINATION WAS SECONDED BY DR. SENATORE.

A MOTION WAS MADE AND SECONDED TO CLOSE NOMINATIONS WITH ALL PRESENT VOTING IN FAVOR.

Secretary

A MOTION WAS MADE BY DR. STABILE TO NOMINATE DR. MICHAEL KROUSE AS SECRETARY, THE NOMINATION WAS SECONDED BY DR. SENATORE.

A MOTION WAS MADE AND SECONDED TO CLOSE NOMINATIONS WITH ALL PRESENT VOTING IN FAVOR.

Treasurer

A MOTION WAS MADE BY DR. MURPHY, TO NOMINATE DR. MICHAEL SPADAFINO AS TREASURER. THE NOMINATION WAS SECONDED BY DR. KROUSE.

A MOTION WAS MADE AND SECONDED TO CLOSE NOMINATIONS WITH ALL PRESENT VOTING IN FAVOR.

B. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS

Dr. Rada reported that several By-law amendments had been proposed and will be considered at the annual meeting of the National Board of Chiropractic Examiners in May. Dr. Rada recommended that all Board members view the proposed by-law changes by going to the National Board website at www.nbce.org. This matter should be placed on the agenda for the Board's consideration at the April meeting.

C. FISCAL YEAR 2000 BUDGET REPORT (FIRST HALF)

The Board reviewed a copy of the Board's fiscal 2000 budget report. The Division of Consumer Affairs fiscal office reports that it does not appear to be necessary to increase the Board's biennial registration fee at this time. Two significant expenses are expected to occur within the next fiscal year. If the Healthcare Profile is passed, the Board will be required to bear the costs of the initiation of the profiles. The profiles will also entail an annual maintenance cost as this service is out-sourced. It is also expected that the Board will receive approval to purchase the " Agenda Builder" application, which will allow Board agendas to be scanned versions of the Board agendas and all back up materials to be placed on cd's, which will be used on laptops issued under this contract. Laptops may only be used for the Agenda Builder application. The initiation of this project is expected to achieve significant savings in staff time, copying and mailing costs.

There was some discussion concerning the Division of Law billing and the recoupment of costs spent by attorneys. Deputy Attorney General Hugelmeyer explained that costs incurred for the services of counseling deputies are not recoverable under the Uniform Enforcement Act. Costs including attorney's fees are only recoverable pursuant to N.J.S.A.45:1-25d or by consent in order to avoid such proceedings in contested cases where matters have been referred to Division of Law Prosecution section.

There was further discussion about monetary penalties imposed by Board Orders. Dr. Krouse suggested that it might be helpful if the staff could compile data on penalties in the last several years so the Board could get a sense of the relationship between offenses and associated monetary penalties.

A MOTION WAS MADE BY DR. KROUSE, WHICH WAS SECONDED BY DR. RADA, TO HAVE THE BOARD STAFF DO AN ANALYSIS OF ORDERS ENTERED IN THE LAST SEVERAL YEARS TO INDICATE THE OFFENSE AND THE AMOUNT OF THE MONETARY PENALTIES IMPOSED BY THOSE ORDERS OR SETTLEMENT LETTERS. THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

D. LEGISLATIVE REVIEW: SENATE BILL 2536

The Board reviewed legislation introduced on February 8, 2007, which would revise the laws for the regulation of Massage, Bodywork & Somatic Therapists. The legislation would change the title of Massage Therapists under the Massage, Bodywork & Somatic Therapy Committee to permit them to use the title " licensed massage therapists." Legislation also removes the prohibition of massage therapists from the " treatment of illness, disease, impairment or disability."

The Board opined that the change to the term licensed would work to a Chiropractor's advantage in assisting with the delegation provisions for physical modalities under the Chiropractic scope of practice and delegation regulations. As such, the Board would be supportive of such a change.

However, the Board does not support the removal of the phrase " or treatment" in the legislation noting that generally speaking, massage therapists have a high school education and 500 hours of training and therefore it should not be within their scope to hold themselves out as being able to provide treatment for any illness, disease, impairment or disability.

A MOTION WAS MADE BY DR. MURPHY, WHICH WAS SECONDED BY DR. KROUSE, TO ARTICULATE THE BOARD'S POSITION AS OUTLINED ABOVE. A MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

E. APPLICATIONS

1. Marie-Claude Goyette, D.C.

Dr. Goyette is an application for licensure by Part IV. She has completed Parts I-IV of National Board of Chiropractic Examiners. She is a graduate of Universite` du Quebec a Trois-Rivieres in 2004. The Board had an opportunity to review the lists of schools to which it had given approval under the statutory provisions of N.J.S.A. 45:9-41.6. Those provisions of the statute require that the Board may accept an applicant for licensure from an individual who has graduated from a college of Chiropractic which has been approved during the individual's entire course of study by the Board and accredited by the Counsel of Chiropractic Education. Universite' du Quebec a Trois-Rivieres is a CCE approved school but has never applied for Board approval.

The Board was advised by the Attorney General that it is not legally permissible for the Board to give approval to a candidate from a school that has not been reviewed and approved by the Board. While it may appear that the school has maintained the minimum requirements under the statute, it is also not possible for the Board to grant retrospective approval to the school in order to accommodate this candidate.

A MOTION WAS MADE BY DR. RADA, WHICH WAS SECONDED BY DR. KROUSE, TO DENY THIS APPLICATION DUE TO THE STATUTORY RESTRICTIONS NOTED ABOVE. A VOTE WAS TAKEN, AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

A discussion ensued about the fact that several institutions appear to have CCE approval that are outside of the United States that could be considered for Board approval.

A MOTION WAS MADE BY DR. RADA, WHICH WAS SECONDED BY DR. STABILE, TO CONTACT ALL OF THOSE SCHOOLS AND HAVING THEM REQUEST TO REVIEW THE CURRICULUM AND FACULTY IN

LIGHT OF THE BOARD'S STATUTORY REQUIREMENTS, FOR THE PURPOSES OF BOARD APPROVAL. A MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

2. Gideon Orbach, D.C.

Dr. Orbach is a 2001 graduate of the Cleveland College of Chiropractic and is currently licensed in Virginia, New York & Pennsylvania and all licenses are in good standing. He completed Parts I-IV of National Boards. The application revealed an incident in the past for which documentation and an explanation was submitted that was reviewed by the Board.

A MOTION WAS MADE BY DR. STABILE, WHICH WAS SECONDED BY DR. SENATORE, TO APPROVE DR. ORBACH'S LICENSE TO PRACTICE IN THE STATE OF NEW JERSEY. A VOTE WAS TAKEN, AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

3. Walter Kimberlin Jr., D.C.

Dr. Kimberlin is an applicant for licensure through Part IV and is 2000 graduate of Palmer College of Chiropractic. He is currently licensed in good standing in New York. In the context of the application, an incident was revealed and documentation and an explanation was submitted that was reviewed by the Board.

A MOTION WAS MADE BY DR. STABILE, WHICH WAS SECONDED BY DR. SPADAFINO, TO APPROVE THE APPLICATION FOR LICENSURE. A MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

F. REINSTATEMENT APPLICATIONS

1. Louis J. Orlando, D.C.

Dr. Orlando is a candidate for reinstatement. In the context of the completion of his criminal history background check, a record of arrest was revealed. This arrest occurred before Dr. Orlando was originally licensed in 1986. The incident in question happened in 1974. Dr. Orlando answered negatively to the question of arrests on his criminal history certification form.

A MOTION WAS MADE BY DR. SENATORE, WHICH WAS SECONDED BY DR. KROUSE, TO APPROVE THE APPLICATION FOR REINSTATEMENT. HOWEVER, A LETTER SHOULD BE DIRECTED TO DR. ORLANDO, NOTING THAT THE BOARD DID NOT INTENTIONALLY IDENTIFY THE DISCREPANCY IN HIS APPLICATION AND REMINDING HIM OF HIS ONGOING OBLIGATION FOR HONESTY IN ANY COMMUNICATION WITH THE BOARD. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

G. ENDORSEMENT APPLICATIONS

1. Gary Walter Evans, D.C.

Dr. Evans is a 1986 graduate of Logan College of Chiropractic and is currently licensed in the State of California. There is no record of Disciplinary Action.

A MOTION WAS MADE BY DR. CALIO, WHICH WAS SECONDED BY DR. STABILE, TO APPROVE DR. EVAN'S APPLICATION BY ENDORSEMENT. A VOTE WAS TAKEN, AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. OLD BUSINESS

A. PERMISSIBLE PRACTICE STRUCTURES -PROPOSED REGULATION

Executive Director Earle reported that the Board's proposal for Permissible Practice Structures is in comment

period. To date, only one comment as been received. The comment period closes on April 6, 2007.

This was accepted as informational.

III. GENERAL INQUIRIES

A. PREFERRED CHIROPRACTIC DOCTOR

The Board reviewed a letter from Casey Below, Office Assistant with Preferred Chiropractic Doctor based in Clanton, AL requesting information on the billing practices of Chiropractic offices and asking whether it is legal for a Chiropractor to charge a cash patient and an insurance patient a different price for the same services. Ms. Below should be directed to the Board's regulations on over utilization and excessive fees at N.J.A.C. 13:44E-2.11. The Board is not in a position to provide legal counsel to general inquirers and it should be suggested that the company ought to contact competent legal counsel for advice on this issue.

B. INQUIRY OF DAVID HARRIS, D.C.

Dr. Harris holds a permit for Electro Diagnostic testing and is seeking to perform VENG assessments. He describes the Electroystamography Test as one designed to help an individual diagnose the cause of dizziness or vertigo by recording involuntary movements of the eye.

The Board opined that Dr. Harris should be referred to the Board's regulations on Electro Diagnostic Testing which specifically outlines the types of tests that are permitted under the rule. A VENG Test is not included among that list of permissible tests.

C. INQUIRY OF RONALD J. PARENTE, D.C.

Dr. Parente has submitted an email inquiry asking whether he is required to maintain records of evaluations of patients undergoing independent medical examinations.

A MOTION WAS MADE BY DR. STABILE, WHICH WAS SECONDED BY DR. RADA, TO REPLY TO DR. PARENTE THAT BOTH THE PATIENT RECORDS RULE AND THE REGULATIONS ON INDEPENDENT CHIROPRACTIC EXAMINATION REQUIRE THAT HE MAINTAIN RECORDS OF ALL PATIENTS FOR AT LEAST SEVEN YEARS. A MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

D. INQUIRY OF CAROLINA PRADOS, D.C.

Dr. Prados has requested the Board's opinion regarding the advertisement of a " free 15-20 minute massage on a Spinolator." She notes that typically no charge is given for these services within her office at the present time.

A MOTION WAS MADE BY DR. STABILE, WHICH WAS SECONDED BY DR. SENATORE, TO REPLY TO DR. PRADOS THAT IT IS

MISLEADING TO A PATIENT TO OFFER SOMETHING FOR FREE THAT IS ORDINARILY PROVIDED FREE WITHIN THE CONTEXT OF AN OFFICE. FURTHER, IT SHOULD BE NOTED THAT FOR SOME PATIENTS THE USE OF A SPINOLATOR MAYBE CONTRAINDICATED AND THAT SHE WOULD BE RESPONSIBLE FOR ANY NEGATIVE OUTCOMES THAT MIGHT OCCUR AS A RESULT OF THIS " FREE SERVICE." A VOTE WAS TAKEN, AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

ADJOURNMENT

A MOTION WAS MADE BY MR. TRAIER, WHICH WAS SECONDED BY DR. SPADAFINO, TO GO INTO EXECUTIVE SESSION TO CONSIDER FOUR PENDING DISCIPLINARY MATTERS, THREE

ENFORCEMENT BUREAU REPORTS, TWO CONSUMER COMPLAINTS & ONE MISCELLANEOUS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Respectfully Submitted,

Kevin B. Earle, M.P.H.
Executive Director