

**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, APRIL 26, 2007**

A meeting of the New Jersey Board of Chiropractic Examiners was held April 26, 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, Kostinas, Calio, Rada , Krouse, O'Connor, Spadafino, Stabile, and Mr. Traier

EXCUSED: Dr. Murphy

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

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

A MOTION WAS MADE BY DR. RADA, WHICH WAS SECONDED BY DR. KROUSE, TO APPROVE THE PUBLIC SESSION MINUTES OF MARCH 22, 2007 AS AMENDED. A VOTE WAS TAKEN, AND THE MOTION PASSED WITH NINE MEMBERS PRESENT VOTING IN FAVOR .

II. ELECTION OF OFFICERS

Dr. O'Connor as a point of personal privilege thanked the Board for their hard work, dedication, and support during his year as president of the Board. He remarked that serving in such a capacity is a place of honor among his peers. He complimented the Board for working as a team during the past year.

The following nominations were made at the March meeting:

President, Albert Stabile, D.C.

Vice President, Rosemary Calio, D.C.**R Secretary, Michael Krouse, D.C.**

Treasurer, Michael Spadafino, D.C.

A MOTION WAS MADE TO HAVE DR. KROUSE, AS SECRETARY OF THE BOARD CAST ONE BALLOT TO ELECT THE SLATE OF OFFICERS AS NOMINATED. THE MOTION WAS SECONDED BY DR. KOSTINAS. A MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Dr. Stabile then took the chair. He thanked the Board for their support and requested that several former presidents of the Board be recognized for their past service. Each were presented with a plaque to commemorate their term of office. These included Dr. Lawrence O'Connor, Dr. Brian Atkisson, Dr. Thomas Senatore and Dr. Mary-Ellen Rada. Dr. Murphy was not present and will be presented with his plaque at a later date.

Dr. Stabile asked everyone present in the room to bow their heads in a moment of silence in memory of Dr. Eugene Cianciulli, a former president of the Board who recently passed away.

III. OLD BUSINESS

A. DISCIPLINARY ACTION PENALTIES FROM 2005-2006

As per the Board's request, a spreadsheet showing the penalties imposed through disciplinary actions taken during 2005-2006 was reviewed by the Board.

This was accepted as informational.

B. EXTRACORPOREAL SHOCK WAVE THERAPY - ZUCKERMAN

The Board again reconsidered information submitted from Dr. Zuckerman, Podiatrist, who had questioned whether Extracorporeal Shock Wave Therapy would be considered within the scope of practice of a chiropractor. Additional information was provided by Dr. Calio concerning this procedure. A review of this literature indicates that the use of this therapy requires a pre-procedure dose of local anesthesia and is approved by the FDA for the treatment of certain conditions which would be beyond the scope of chiropractic.

A MOTION WAS MADE BY DR. CALIO, WHICH WAS SECONDED BY DR. O'CONNOR, TO FIND THE USE OF EXTRACORPOREAL SHOCK WAVE THERAPY IS BEYOND THE SCOPE OF CHIROPRACTIC PRACTICE IN NEW JERSEY FOR THE ABOVE STATED REASONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. DAVID G. HARRIS, D.C. - FIRST QUARTERLY MONITORING REPORT AS REQUIRED BY DISCIPLINARY ORDER

The Board reviewed a copy of the first quarterly monitoring report issued by Affiliated Monitors Inc.. The services of Affiliated Monitors is required pursuant to an Order of Reinstatement imposed on Dr. Harris. DAG Hugelmeyer suggested that Dr. Harris should be provided with an opportunity to respond to the report.

A MOTION WAS MADE BY DR. O'CONNOR, WHICH WAS SECONDED BY DR. RADA, TO TABLE THIS MATTER PENDING A RESPONSE FROM DR. HARRIS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

D. TROIS - RIVIERES UNIVERSITY - MARIE GOYETTE, D.C.

This matter was considered at the March meeting. Follow-up communication has been received from Trois - Rivieres University asking what steps should be taken for the university to receive approval and to ultimately result in the licensure of Dr. Goyette. It was noted that communication has been sent to Dr. Goyette informing her that the Board is not permitted to grant retrospective approval to a chiropractic educational institution. It was recommended that Executive Director Earle communicate with representatives of the school to provide guidance on the steps that need to be taken to obtain Board approval.

E. RICHARD S. CAPACIO, D.C. - RESPONSE TO PROVISIONAL ORDER OF DISCIPLINE

A Provisional Order of Discipline was filed on January 25, 2007 in the above captioned matter based upon Dr. Capacio's conviction and a suspension of his license to practice in the Commonwealth of Pennsylvania. A response has been received from Dr. Capacio agreeing to the terms and conditions of the POD.

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

AUTHORIZE THE ISSUANCE OF A FINAL ORDER

OF DISCIPLINE IN THE ABOVE CAPTIONED MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IV. NEW BUSINESS

A. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS - PROPOSED BYLAWS, REVISIONS AND RATIONALES

Dr. Rada reviewed the various proposed changes to the Bylaws that were recommended by the Board of Directors of the National Boards, they will be considered at the annual meeting of the National Board of Chiropractic Examiners on Friday, May 4th. Dr. Rada also discussed the various candidates who appear to be running for various district delegate positions.

B. FEDERATION OF CHIROPRACTIC LICENSING BOARDS - ANNUAL MEETING

The Board reviewed a notice from the FCLB concerning the annual meeting. There are no changes to the Bylaws under consideration at this time. The slate of officers reviewed. It was noted that Dr. Lawrence O'Connor is being recommended for the position of Treasurer of the FCLB.

C. APPLICATIONS FOR LICENSURE

1. Jason Weniger, D.C. - Application for licensure

A review of this application indicates that Dr. Weniger did not reveal an incident in his past that was picked up during the CHBC. Dr. Weniger submitted an explanation and noted that the incident occurred many years ago and he was given a conditional discharge. Upon review of this matter, it was recommended that Dr. Weniger should be notified that any record of this incident would have to be formally expunged by the courts. Dr. Weniger should be advised that he should seek legal counsel to accomplish this end.

A MOTION WAS MADE BY DR. CALIO, WHICH WAS SECONDED BY DR. SPADAFINO, TO GRANT LICENSURE TO DR. WENIGER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

2. David Colarusso, D.C. - Application for Electro -Diagnostic Permit

A MOTION WAS MADE BY DR. RADA, WHICH WAS SECONDED BY DR. CALIO, TO APPROVE THE APPLICATION FOR AN ELECTRO-DIAGNOSTIC PERMIT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

3. Judy C. Thompson, D.C. - Reinstatement

The Board reviewed a letter from Dr. Thompson who was the subject of a Final Order of Discipline dated January 15, 2005 based upon a suspension in the State of Minnesota. Minnesota suspended her license based upon a conviction. Dr. Thompson is inquiring about what steps need to be taken to reinstate her license in New Jersey. She indicated that the matter in Minnesota is being "cleared up." Dr. Thompson should be advised that she should submit an application and provide the status of her license in Minnesota.

4. Edward J. Cerato, D.C.

Dr. Cerato submitted an application by endorsement. Criminal History Background Check indicates that there was a matter which was reported in 1991 for which an explanation was submitted.

A MOTION WAS MADE BY DR. RADA, WHICH WAS SECONDED BY DR. O'CONNOR, TO APPROVE THE APPLICATION FOR LICENSURE BY ENDORSEMENT. A VOTE WAS TAKEN AND

THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

V. MISCELLANEOUS MATTERS

A. INQUIRY OF PHILLIP AGRIOS, D.C.

Dr. Agrios has submitted information concerning use of and delivery of oxygen to patients and questions whether a chiropractor in the State of New Jersey can order oxygen to be used in an oxygen concentrator or must it be ordered by M.D.. Deputy Attorney general Hugelmeyer indicated that some research on this matter was done. Pursuant to State Law, a prescription is required for the administration in the State of New Jersey and such a prescription may be ordered by a medical doctor.

B. INQUIRY OF SCOTT P. WALKER

Dr. Walker submitted an inquiry concerning the status of licensure in the State of New Jersey by graduates of Pennsylvania Straight Chiropractic College. Dr. Walker indicated in his letter that he had heard that another graduate had been licensed in New Jersey and thought that he might now be qualified. Dr. Walker attended Pennsylvania College of Straight Chiropractic but completed his education at Life University which accepted sixteen classes as transfer credits. He also successfully completed National Boards Parts I-IV and PT. A review of the files finds that Dr. Walker had previously made an inquiry to Board in the late 1990's and a written response was submitted indicating that the Statute requires that a chiropractic school be approved for "all four years" of attendance. A response to Dr. Walker should provide him with that citation. Dr. Walker should also be provided with a copy of the pending legislation that would provide an opportunity for Pennsylvania Straight graduates to be licensed in New Jersey.

C. APPELLATE COURT DECISION: Carol Bedford and H. Paul Bedford vs. Anthony Riello, D.C., Peter Lowenstein, D.C. and Coastal Chiropractic

(Dr. Spadafino was recused from the consideration of this matter)

The Board reviewed a decision issued by New Jersey Superior Court, Appellate Division in the matter of Bedford vs. Riello, which reviewed a chiropractic malpractice case in which two chiropractors were alleged to have caused damage to a patients knee after it was adjusted. At the Trial Court level, a case against the chiropractors was dismissed. The matter was appealed by the complainants to the Appellate Division. The Appellate Division narrowly interpreted the Board's statute noting that such extra spinal manipulations would exceed the scope of practice. Based upon its review of the Board's response to comments upon the initial adoption of its regulations in 1991, the court opined that "the term related structures" "may permit a chiropractor to maneuver other structures, such as the knee but only as the movement impacts upon the spine." The court further concluded that " the scope of chiropractic in New Jersey is limited to adjustments of the spinal column and does not include the adjustment of other joints." The court disagreed with the Trial Judge's determination that the scope of practice regulations " does not preclude the adjustment of a knee" or "of other extremities such as the wrist and/ or ankle." The matter was remanded for a retrial noting that the plaintiff would be entitled to a jury instruction that " regardless of how the knee adjustment was performed, any such adjustment was outside the scope of chiropractic practice in New Jersey, and that defendant's violation of the code could be considered evidence of negligence."

Following the issuance of the opinion, the Association of New Jersey Chiropractors contacted the Board indicating that the matter would be appealed to the New Jersey Supreme Court and making a request that the Board become an amicus curiae to the matter before the NJ Supreme Court. Several individuals representing the association were available to speak on this matter. Dr. Phillip Santiago, who had served as an expert in this matter at the Trial Court level, and who was a member of the initial Board of Chiropractic Examiners that adopted the regulations discussed some of the thinking of the original ANJC Board when it adopted its initial regulations. Dr. Gregory Doerr representing the Sports Council, shared with the Board his treatment of a patient who was able to participate in the Boston Marathon as a result of an extra spinal manipulation. He further expressed concern that the court ruling would cause insurance

companies to seek repayment of fees for insurance submissions that included extra spinal manipulations.

Jeffrey Randolph, Esq., counsel to the ANJC, noted that the ANJC was asked to participate as amicus in the Appellate Court matter in a late stage and filed a brief. He expressed concern that the matter appears to create confusion and "strikes decades of Board decisions regarding extra spinal manipulations." He noted that if the Attorney General, on behalf of the Board enters the case as an amicus curiae, the likelihood of a Supreme Court review rises significantly.

Dr. William Cirino also expressed concern of the economic impact to chiropractors in the state and the serious impact on patients who benefit greatly from such manipulations.

FOLLOWING THE CONSIDERATION OF THIS MATTER, A MOTION WAS MADE BY DR. O'CONNOR, WHICH WAS SECONDED BY DR. KOSTINAS, TO GO INTO EXECUTIVE SESSION TO SEEK ADVICE FROM COUNSEL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

All members of the public left the room including Dr. Spadafino who is recused in this matter.

Upon returning to Public Session, the following motions were made:

A MOTION WAS MADE BY DR. SENATORE, WHICH WAS SECONDED BY DR. KOSTINAS, TO AUTHORIZE THE DEPUTY ATTORNEY

GENERAL TO REQUEST THE ATTORNEY GENERAL, OR HIS DESIGNEE, TO REVIEW THE FULL RECORD IN THE MATTER OF BEDFORD VS. RIELLO WITH AN EYE TOWARDS SEEKING AMICUS CURIAE STATUS, AS THIS DECISION RAISES SERIOUS PUBLIC HEALTH AND PROFESSIONAL CONSEQUENCES. A COMMITTEE OF THE BOARD WILL BE FORMED TO ASSIST THE DEPUTY IN ARTICULATING TO THE ATTORNEY GENERAL OR TO HIS DESIGNEE THE AFORESAID INTEREST. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

A MOTION WAS MADE BY DR. O'CONNOR, WHICH WAS SECONDED BY DR. SENATORE, TO AUTHORIZE THE SAME COMMITTEE TO DRAFT A PROPOSED AMENDMENT TO THE STATUTE REGARDING THE SCOPE OF PRACTICE TO MODERNIZE THE SCOPE IN ACCORDANCE WITH BOTH THE TRADITIONAL AND CONTEMPORARY PRACTICE OF CHIROPRACTIC AND TO ASSIST IN RESOLVING THIS ISSUE. A PROPOSED LEGISLATION WILL BE PRESENTED TO THE DIRECTOR OF CONSUMER AFFAIRS AND TO THE ATTORNEY GENERAL TO SEEK THEIR SUPPORT FOR ITS SPONSORSHIP AND PASSAGE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Dr. Stabile appointed the following Ad-Hoc Committee to assist the Attorney General in this matter and to review the statutory scope of practice and make recommendations on amendments:

Dr. Lawrence O'Connor (Chair)

Dr. Rosemary Calio

Dr. Thomas Senatore

Dr. Albert Stabile

VI. APPEARANCES

A. ANDREW SECHTIN, D.C.

Dr. Sechtin was the subject of a prior Consent Order as well as an Order of reinstatement that was filed on January 25, 2007. Upon the filing of an application for reinstatement, Dr. Sechtin revealed an incident involving an arrest that occurred on May 8, 2006 which appeared to have involved alcohol. Dr.

Sechtin appeared and was sworn and was asked to provide an explanation of the circumstances surrounding this arrest. A report from the professional Assistance Program was also reviewed. Following Dr. Sechtin's testimony, the Board reminded Dr. Sechtin of the precarious nature of his recovery and that any relapse would be reported to the Board through the Professional Assistance Program which would jeopardize his continued active practice of chiropractic in the state. Dr. Sechtin acknowledged the Board's advice and the matter was closed.

ADJOURNMENT

A MOTION WAS MADE BY MR. TRAIER, WHICH WAS SECONDED BY DR. O'CONNOR, TO GO INTO EXECUTIVE SESSION. 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**