

**STATE OF NEW JERSEY**  
**DIVISION OF CONSUMER AFFAIRS 124 Halsey Street, 6th floor**  
**Newark, NJ 07102**  
**BOARD OF CHIROPRACTIC EXAMINERS**  
**PUBLIC SESSION MINUTES**

THURSDAY, MAY 20, 2004

A meeting of the New Jersey Board of Chiropractic Examiners was held on May 20, 2004 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 Thomas Senatore, D.C., President of the Board at 10:00 AM.

**ATTENDANCE**

**PRESENT:**

Drs. Atkisson, Calio, Louro, Murphy, O'Connor, Rada, Senatore, Stabile, Mr. Faulkner and Mr. Traier

**ALSO PRESENT:**

Deputy Attorney General Berger, Executive Director Earle, Paralegal Joshua Marzan, Recording Secretary Nina Lado, Assistant to the Executive Director Terri Goldberg

**I. APPROVAL OF THE PUBLIC SESSION MINUTES OF APRIL 15, 2004**

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

**II. ANNOUNCEMENTS**

Deputy Director of the Division of Consumer Anthony Miragliotta, was present to extend his congratulations to the New Jersey Board of Chiropractic Examiners upon its receipt and recognition as the "Outstanding Regulatory Board of 2004" by the Federation of Chiropractic Licensing Boards. Mr. Miragliotta extended the appreciation of Director Erdos who was not able to be present as well as that of the Attorney General.

**III. COMMITTEE APPOINTMENTS**

Dr. Senatore announced the following appointments to committees for the years 2004-2005.

Preliminary Investigative Committee (PIC)

Dr. Louro and Dr. Calio Co-Chairs

Dr. Atkisson

Dr. Rada (rotating)

Dr. Senatore (rotating)

Rules and Regulations Committee

Dr. Murphy Chair

Dr. Louro

Dr. O'Connor

Dr. Calio

Dr. Atkisson

New Licensee Orientation and Jurisprudence Examination

Dr. Rada and Dr. O'Connor Co-Chairs

Dr. Murphy

Dr. Stabile

Multi-disciplinary Committee

Dr. Atkisson and Dr. Louro Co-Chairs

Mr. Traier

Dr. Senatore

Continuing Education Committee

Dr. Stabile Chair

Dr. Calio

Dr. Rada

#### **IV. REPORT OF THE PROCEEDINGS OF THE FEDERATION OF CHIROPRACTIC LICENSING BOARDS ANNUAL MEETING**

Dr. O'Connor presented a comprehensive report on all activities that had occurred in connection with the Federation of Chiropractic Licensing Boards in Denver, Colorado. Dr. O'Connor reported that the educational sessions were most informative and well attended. A proposed by-law change to deal with the nominating process was defeated. A by-law change that granted a vote to the Executive Fellow member of the FCLB Board of Directors was passed and Executive Director Earl was unanimously re-elected to a second term as a member of the FCLB Board of Directors. Dr. O'Connor will Chair the Government Affairs and Legal Advisory Committee for a second year in a row and Dr. Rada will be Chairing a special committee establishing a new board member orientation and ethics program. Educational programs included an interactive key note presentation where two cases were presented from two different Boards that allowed the members of the audience to participate in the decision making via an electronic voting mechanism. Interesting presentations included that of Brian McCaulay, D.C., PhD., the Provost of Life Chiropractic College on the role of philosophy in the chiropractors continuing professional development. The Annual Joseph Janse Lecture was presented by Joseph Brimhall, D.C., the President of Western States Chiropractic College. His presentation was entitled "For the Good of the Patient: Opportunities, Challenges and Possibilities in Chiropractic."

#### **V. LEGISLATIVE REVIEW**

##### **A. A-2359**

The Board had an opportunity to review this legislation that would require that chiropractic physicians, podiatric physicians, allopathic physicians and osteopathic physicians be reimbursed at the same rate under various health and accident plans. The Board had an opportunity to review a draft comment that had been submitted on behalf of the Board as follows:

The Board offers several comments in support of Assembly Bill No. 2359.

The board noted that today's healthcare system should not be prejudiced toward any philosophy of health care, but give equitable consideration and reimbursement for the delivery of safe and efficacious interventions for both conventional and chiropractic health care services. Most people believe the availability of alternative care is an important selection criterion in their choice of a health plan. State laws that establish professional standing protect the public by ensuring that covered health benefits are provided by trained and qualified practitioners whose services meet recognized standards of care.

The Board opined that the public must also be protected from selective financial barriers imposed by insurers that make accessing chiropractic care cost-prohibitive. Separate financial obligations are imposed through: (1) lower annual or lifetime dollar limits, (2) lower service limits (e.g., lower number of covered outpatient office visits), or (3) greater cost-sharing requirements (e.g., higher co-payments often prohibitive, and higher deductibles \$500-1,000), effectively limiting chiropractic availability only to those with higher discretionary income. This disparate health care coverage imposes a two-tiered system of health care that serves to deny or limit patients and families access to chiropractic services to those citizens who typically fall in the middle and lower income stratum.

Contrary to the argument that equitable reimbursement will increase the overall healthcare cost to the employer or the individual consumer, the opposite or stabilizing of healthcare costs should actually result. If an insurance policy pays for treatment of back conditions by an osteopath or a medical doctor, and that same patient elected instead to receive services through a chiropractor, the only difference is in the provider not the service. This would serve to increase the competitive market and help to keep health care costs in check further protecting the consumer and their employers. Additionally, the increase in functionality and productivity resulting from appropriate chiropractic treatment will substantially offset the costs.

The Board noted that it has reviewed thousands of cases, patient and billing records and points out that many times insurance fraud in chiropractic offices results from individual doctors up-coding, unbundling and misrepresenting services. These activities often occur in order to gain payment leverage to compensate for comparatively lower reimbursement rates chiropractors receive in comparison to allopathic or osteopathic physicians for the same or similar services. Fair reimbursement for substantially similar or equal services would go a long way in remedying such situations.

Providing parity for chiropractic services will effectively eliminate compensation methods that may impede the chiropractor's ability to treat, be an advocate for patients and deliver a high quality and cost effective service in an environment where reimbursement levels are extremely low or nonexistent. The Chiropractic Board of Examiners supports a health care system that provides financially accessible, quality health care for all New Jersey residents. Providing parity in the delivery of these services will help accomplish that mission, and therefore the Board supports this Legislation..

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

B. A-456

This legislation provides that only a licensed physician may perform needle electromyography or interpret evoked potential and nerve conduction studies. The Board commented that it has been presented with a petition for rulemaking by the New Jersey Council on Neurology seeking a rule change to permit chiropractors, with appropriate training to perform needle electromyography. The Board noted that the chiropractic practice included the neurological and muscular skeletal system and that many patients present with neurological symptoms and thus would be appropriate for chiropractors to perform various forms of neuro diagnostic studies. In 1999 the legislature passed the Automobile Insurance Cost Reduction Act which now appears at N.J.S.A. 39:6A-4.7 and required that the Professional Licensing Boards governing healthcare providers in the Division of Consumer Affairs to promulgate a list of valid diagnostic tests to be used in conjunction with the appropriate healthcare protocols in the treatment of persons sustaining bodily injury. It was noted that this section provided that the list of valid diagnostic tests once approved by the Commissioner of Banking and Insurance would apply only to benefits under the Automobile Insurance Benefits.

In response to that the New Jersey Board adopted comprehensive standards for the performance of electrodiagnostic tests including specific training requirements, record keeping requirements and a number of other standards including the establishment of appropriate clinical diagnosis for such testing. The passage of this legislation would create a conflict with that statutory construct. With regard to the question of the insertion of needles in connection with the needle EMG, the Board's current regulations require that such testing be referred

out to plenary licensed physicians. The Board opines that its Rules and Regulations Committee is currently considering the issues raised in the Petition for Rulemaking and suggests that with appropriate training the performance of such testing would clearly fall within the scope of chiropractic practice as many patients do present with neurological symptoms that would necessitate such testing in order to properly diagnose and treat these patients. The Board further noted that Board members were aware that in certain circumstances technicians under the supervision of plenary licensed physicians have been in fact inserting needles and performing needle EMG testing under a physician's supervision.

Comment was received from Dr. Michael Goione in the audience who indicated that he had listened to the testimony of one plenary licensed physician in support of the legislation who was specifically asked by the legislators whether such a change would impede on another practitioners scope of practice. It was reported that the answer was in the negative, which is untrue.

**AFTER CONSIDERING THE MATTER, A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. RADA TO EXPRESS THE BOARD'S OPPOSITION TO THIS LEGISLATION AS STATED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.**

C. A-2740

This legislation would make it a crime of a third degree to practice psychology, marriage and family therapy, chiropractic or state certified psychoanalysis without the appropriate license or certification. The Board noted that the language in subsection B was unclear noting that the meaning of the term "Scope of Practice permitted by Board Order" was not well defined. The Board recommended that the Bill be amended to make it a crime of a third degree if an individual "exceeds the limitations set forth in a Board Order."

The Board also noted that under the provisions of the Uniform Enforcement Act there are procedures for the reinstatement of a license that has been suspended for non-payment of renewal fees and provides a provision for an individual to pay those renewal fees and reinstatement fees noting that it has a mechanism for an individual to take an examination if the license has been suspended pursuant to this section for a period of five years or more. The Board recommended that subsection F be added that would provide an exclusion for licenses suspended under this provision unless the unlicensed practice continues beyond a five year window.

**A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. ATKISSON TO SUPPORT THE LEGISLATION IN PRINCIPLE WITH THE AMENDMENTS RECOMMENDED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.**

## **VI. MICHAEL SHERMAN, D.C.**

The Board reviewed correspondence from Dr. Michael Sherman of Fairlawn, New Jersey noting that in the most recent edition of the Board's newsletter, The Column, certain disciplinary actions were listed on page 9 against an individual with the same first and last name as himself. Dr. Sherman noted that a number of practitioners and colleagues have called him concerning this matter. It was noted that the Michael Sherman that was the subject of the Board's sanction was from Ventnor, New Jersey. Executive Director Earle reported that he had requested and that he had made certain that the electronic version of the Board's newsletter has now been modified to list the city and state of each one of the individuals sanctioned and it will be a policy in the future to make certain that the city and state of each practitioner is listed in any future newsletters. Dr. Sherman had asked that a letter be directed to all licensees noting the error. Executive Director Earle indicated that this may not be possible, however, some notation might possibly be made on the website.

**A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. O'CONNOR TO DIRECT A LETTER TO DR. SHERMAN NOTING ITS SINCERE APOLOGIES FOR THE ERROR AND NOTING THE ABOVE STEPS THAT WILL BE TAKEN TO CORRECT THE ERROR. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.**

## **VII. ENDORSEMENT APPLICATIONS**

### **A. MARK CARRICK, D.C.**

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO APPROVE DR. CARRICK'S LICENSE 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.

### **B. ROBERT C. GORDON, JR., D.C.**

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO APPROVE DR. GORDON'S LICENSE 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 WITH THE EXCEPTION OF DR. SENATORE WHO WAS RECUSED FROM THIS MATTER.

## **VIII. DISCIPLINARY MATTERS**

### **MICHAEL L. CHEIFITZ, D.C.**

The Board reviewed and approved the Temporary Consent Order entered in the matter of Michael L. Cheifitz, D.C. who has agreed to voluntarily surrender his chiropractic license pending an assessment of the physician's health program based upon a pattern of arrests for possession of controlled substances and drug paraphenalia.

## **IX. GENERAL INQUIRIES**

### **A. INQUIRY OF PHILIP KIM, D.C.**

Dr. Kim is inquiring whether it would be permissible under the Board's Diagnostic Testing Regulations at N.J.A.C. 13:44E-3.5 for him to hire a nerve technician with years of experience and medical training in another country but not licensed in this country. Dr. Kim asks whether he would be able to order a nerve conduction velocity test but have an assistant perform it and bill a third party carrier. The Board directed that Dr. Kim be directed to the specific provisions of the regulation that prohibit the use of a testing assistant by an individual who has not been trained to perform the tests himself.

### **B. INQUIRY OF LINDA S. JAMES, PH.D. GEORGIAN COURT UNIVERSITY**

Dr. James is asking whether the State of New Jersey recognizes graduates of Pennsylvania College of Straight Chiropractic as having graduated from an accredited college. The answer directed to Dr. James would indicated that there was a period of time in which graduates of that institution were grand fathered, however, that is no longer the case after the Board conducted an inspection of that institution and denies Board approval.

### **C. INQUIRY OF SAMUEL D. THOMPSON, PH.D., ASSEMBLYMAN, 13TH DISTRICT NEW JERSEY LEGISLATIVE OFFICES**

Assemblyman Thompson inquires as to whether a licensed physician and chiropractor can be owners in the same professional services entity or a limited liability corporation. The Board directed Executive Director Earle to respond to Assemblyman Thompson that such an arrangement was permissible.

### **D. INQUIRY OF ROBERT GORDON, D.C. \*\*Dr. Senatore was recused in the consideration of this matter. \*\***

The Board found that the nature of Dr. Gordon's question was not clear. Executive Director Earle reported that there had been some questions raised concerning individuals taking MUA courses in New Jersey who did not hold licenses in this State which requires that a proctorship be completed using the procedure on two patients. Dr.

Gordon noted that most CCE accredited colleges that sponsor MUA training adhere to the concept of proctorship. Dr. Gordon is suggesting that a program that does not include a proctorship would be unsafe.

The Board accepted this as informational.

#### **E. NICHOLAS ROSANIA, D.C.**

The Board reviewed correspondence from Patrick P. Toscano, Jr., Esq. on behalf of Dr. Rosania whose license was suspended for a period of five years pursuant to an Order entered on the 19th day of June 2003. Mr. Toscano notes that Dr. Rosania was scheduled to be released from an intensive supervision program that is expected to occur on October 2, 2004 and has requested the Board to reconsider the term of the suspension.

**A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO DENY THE REQUEST FOR A REDUCTION IN THE PERIOD OF SUSPENSION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.**

#### **F. WESTERN STATES CHIROPRACTIC COLLEGE/CE VANTIVE UNIVERSITY**

The Board reviewed correspondence from Western States noting the offering of educational modules dealing with fraud, sexual boundaries and moral turpitude that are a on-line offering.

The Board accepted this as informational.

### **X. REQUEST FOR REINSTATMENT**

#### **NICHOLAS SOTTIRIOU, D.C.**

This matter was reviewed based upon a letter from Robert Conroy, Esq. on behalf of Dr. Sottiriou asking for the Board's consideration for Dr. Sottiriou returning to practice after his license had been revoked based upon a criminal conviction in US District Court.

**A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED DR. ATKISSON TO DENY THE REQUEST AT THIS TIME FOR THE FOLLOWING REASONS:**

- 1. THE BOARD HAS SEEN EVIDENCE OF VIOLATION OF A PRIOR ORDER BY EVIDENCING DR. SOTTIRIOU'S INVOLVEMENT IN CHIROPRACTIC PRACTICE DURING A PERIOD OF TIME WHEN HE WAS RESTRICTED TO DO SO.**
- 2. FAILURE TO PAY THE CIVIL PENALTIES IMPOSED BY THE ORDER.**
- 3. THE LACK OF DEMONSTRATION OF REMORSE.**
- 4. THE LACK OF DEMONSTRATION OF REHABILITATION.**

**A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.**

### **PUBLIC COMMENT**

Dr. Diane Kramer noted that she had a representative of a company that supplies low level laser therapy and had provided copies of information for the Board's review. The Board thanked Dr. Kramer for the information and noted that it would review the material and report on it at the next Board meeting in June.

### **ADJOURNMENT**

**A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. LOURO TO ADJOURN THE**

MEETING AND GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS AND CONSUMER COMPLAINTS. THE MEETING WAS ADJOURNED AT 12:00 PM. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Respectfully Submitted,

Kevin B. Earl, Executive Director

---