

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

Public Session Minutes

Thursday, May 23, 2002

A meeting of the New Jersey Board of Chiropractic Examiners was held on May 23, 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 9:50AM by Board President Brian Atkisson.

ATTENDANCE:

Drs. Atkisson, Apuzzio, Murphy, O'Connor, Rada, Senatore 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

ABSENT: Kim Stetzel, D.C.

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF APRIL 25, 2002.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. APUZZIO TO ACCEPT THE PUBLIC SESSION MINUTES AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH EIGHT MEMBERS PRESENT VOTING IN FAVOR. NONE OPPOSED. DR. WINTERS ABSTAINED.

II. COMMITTEE ASSIGNMENTS

A. Dr. Atkisson made the following appointments to committees for the 2002-2003 period:

PRELIMINARY INVESTIGATION COMMITTEE:

Dr. Apuzzio, Chairperson
Dr. Atkisson
Drs. Senatore and Rada to serve on alternating months.

RULES AND REGULATIONS COMMITTEE:

Dr. Rada, Chairperson
Dr. Murphy
Dr. Winters
Dr. Atkisson
Drs. Stetzel and O'Connor will alternate

MD/DC/PT TASK FORCE:

Dr. Senatore, Chairperson

Dr. Atkisson
Dr. Apuzzio

EXAMINATION/CONTINUING EDUCATION :

Dr. O'Connor, Chairperson
Dr. Atkisson
Mr. Faulkner

Dr. Apuzzio

ENDORSEMENT COMMITTEE:

Dr. Winters, Chairperson
Mr. Traier

NEWSLETTER COMMITTEE:

Dr. Murphy, Chairperson
Dr. Stetzel
Mr. Faulkner
Mr. Traier

III. OLD BUSINESS

A. NEURODIAGNOSTIC RULE AMENDMENTS

The Board had the opportunity to review several recommendations made by Drs. Atkisson and Apuzzio to the current regulation contained at N.J.A.C. 13:44E-3.0, et seq.

1). 13:44E-3.2C-1 - It was recommended that the terms in the present regulation that reads, "repetitive stimulation studies including reflex, latency measurements such as F-wave studies, H-reflexes and sympathetic skin responses"; should be amended to read as follows:

Nerve conduction studies inclusive of motor, sensory, F-waves and H-reflexes.

2) 13:44E-3.4(a) Which currently reads: "a chiropractic physician performing, requesting or interpreting electrodiagnostic tests and special examinations shall . . ."

It was recommended that word requesting should be removed with the explanation that this subsection of the regulations should describe what the doctor performing the test is responsible for.

3) 13:44E-3.4(a) replacing subsection (b)4 with the following language:

"take and document in the patient's record a relevant history of the patient's presenting complaints. Chiropractic records are expected to meet acceptable clinical standards and contain such pertinent information to include, height, weight, past medical and surgical history and other pertinent information that might influence the outcome or interpretation of the study.

New Subsection 5 - should read:

Perform, at minimum, a problem focused examination.

New Subsection 6 should read:

Establish and document in the patient record a provisional diagnosis with clinical correlation

New Subsection 7 should read:

Abide by appropriate standards of informed consent explaining potential risks, potential benefits and other clinical options.

4) 13:44E-3.4(b) Should describe what the doctor ordering the tests should be responsible to complete. The leading paragraph of the subsection should be replaced and should read as follows:

"A chiropractic physician requesting the performance of electrodiagnostic tests and other special examinations with respect to a specific patient shall first:"

13:44E-3.4(c) Should read as follows:

A chiropractic physician who has complied with the requirements of B1-7, above, may perform or request electric diagnostic tests or special examinations, if the results of the tests selected are expected to:

1. Alter the course of the patient's treatment;
2. Aid in determining the extent of functional deficit present and;
3. Be useful in the assessment of deterioration or improvement of a condition for the purpose of continued care.

6) 13:44E-3.5(a)2iii Should read:

120 hours of course work sponsored by an accredited chiropractic college or healthcare institution. Course work must include 120 classroom and hands on learning with an examination demonstrating competency in the performance of electrodiagnostic testing.

7) 13:44E-3.5(b) Should be amended to read:

A chiropractic physician whose training has been obtained shall submit to the Board an application for approval by evaluation of equivalency of training and competency. Chiropractic physicians who have performed electrodiagnostic tests and special examinations prior to March 1, 1999, who have filed a timely application with the Board, may continue to perform such tests pending Board action on the application.

8) 13:44E-3.6(a) Should be amended to read:

A chiropractic physician performing an electrodiagnostic test or special examination shall provide the patient with a written description of the test addressing the risks involved in disorders of homeostasis, infectious diseases and contraindications for electrodiagnostic testing, for example, the presence of a pacemaker, if pertinent.

9) 13:44E-3.6(b) Should be amended to read:

The chiropractic physician performing the electrodiagnostic test shall ensure that all equipment used in the performance of electrodiagnostic tests and special examinations. This recommended change emphasizes the responsibility that the chiropractic physician who actually performs the test is responsible for the equipment.

13:44E-3.6(c)3 Should be amended to read:

Consider repeat testing only when prior results are indicative of a deteriorating condition that warrants subsequent monitoring, when the results of the initial test were justifiably suspect, or there is a change in the patient's clinical condition.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. ATKISSON TO PROPOSE THESE AMENDMENTS FOR PUBLICATION IN THE NEW JERSEY REGISTER AS A PROPOSAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. DEPARTMENT OF BANKING AND INSURANCE - AMENDMENTS TO THE MEDICAL FEE SCHEDULE

The Board had an opportunity to review the comments submitted on May 13, 2002 to proposed regulations by the Department of Banking and Insurance.

THIS WAS ACCEPTED AS INFORMATIONAL

C. ANIMAL CHIROPRACTIC - ACTION FOR PETITION FOR RULEMAKING

On February 8, 2002 the Board received a petition for Rulemaking filed by Margaret Dillon, D.C. On February 28, 2002, the Board considered the petition and referred the matter to the Regulations Committee for a recommendation. The Board reviewed a draft Notice of Action of Petition for Rulemaking. At its meeting on May 7, 2002, the Regulations Committee determined to recommend to the Board that the petition be rejected upon advice of counsel, because NJSA 45:9-41.18 states that the scope of practice for chiropractic is limited to human beings based upon the language in the Statute that provides the Board with its mission to protect the "citizens of the State of New Jersey." Since animals cannot be citizens, it is clear that the Legislature's purpose, as outlined in its findings and declarations, intended the practice of chiropractic to be limited to human beings.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. O'CONNOR TO DENY THE PETITION FOR RULEMAKING AND ACCEPT THE COMMITTEE'S REPORT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Further discussion occurred whether veterinarians could use the term chiropractic in their scope of practice. The Deputy Attorney General, John Hugelmeyer suggested that the Board make some contact with the Veterinary Board to facilitate some agreement on this issue.

IV. NBCE ANNUAL MEETING

Dr. O'Connor reported on his attendance as the delegate from New Jersey to the Federation of Chiropractic Licensing Board's annual meeting as well as the National Board of Chiropractic Examiners Annual meeting. Dr. O'Connor indicated that considerable discussion occurred concerning the Federation's proposed development of a continuing education recognition program. He emphasized that this would be focused on the establishment of specific requirements on course providers with a focus on post graduate training programs offered by CCE approved institutions. The program is modeled after the Continuing Education Recognition program offered by the American Dental Association and will ensure consistency among continuing education providers in terms of making certain that instructors are appropriately credentialed and the providers maintain appropriate attendance records. It has also been recommended that the providers maintain attendance records to be reported to a centralized database which would be part of the ALLDOCs database. In this way, the Federation's ALLDOCs program will accommodate continuing education records. States will still have the ability to individually approve providers and courses. Individual states who subscribe to the FCLB/CERP program will save the course providers from seeking individual approval for course offerings on a state by state basis.

Dr. O'Connor also noted that the changes to the FCLB By-Laws which would establish an Executive Fellow seat on the FCLB Board of Directors, was passed unanimously by the delegates. Following the adoption of that by-laws amendment, Executive Director Earle was unanimously elected to fill the seat on the Board of Directors for a two year term.

V. RULES AND REGULATIONS COMMITTEE

Dr. Rada reported on the most recent meeting of the Rules and Regulations Committee and reported on the following pending matters:

A. Permissible practice structures: Regulatory Analyst Jake Gertsman has redrafted this proposal and incorporated the changes made by the Board. It is currently under review by the Director's office and will be transmitted to the Division of Law for further review before it is submitted to the New Jersey Register for publication.

B. Delegation of EMS, TENS and Interferential devices. The regulatory unit is also preparing the prefatory language for this initiative to be submitted to the New Jersey Register for publication.

C. Independent Chiropractic Examinations. The Committee reviewed draft language that would establish standards for the performance of independent chiropractic examinations. The Board reviewed the draft copy as recommended by the Regulations Committee which would contain the following provisions:

1. A chiropractor seeking to perform an ICE in New Jersey shall hold a valid license and have at least two years of clinical experience post licensure.

2. In performing an independent chiropractic examination the following requirements shall apply:

a). Complete and document a pertinent case history;

b). Document the nature and extent of records reviewed and/or other diagnostic information presented such as radiographs and/or the results of diagnostic testing.

3. Perform and document a clinical examination appropriate to the presenting patient as required by N.J.A.C. 13:44E-1.1(b).

4. Perform and document a chiropractic analysis or diagnosis as required by N.J.A.C. 13:44E-1.1(b) Including a recording of specific tests, examinations or observations performed, and documenting the results and evaluation thereof, including an evaluation of the patient's response to prior treatment.

5. When expressing an opinion with respect to the patient's present condition, including the patient's need for further chiropractic care, the opinion shall document the clinical rationale for the opinion expressed.

6. The ICE chiropractor shall not make recommendations to the patient for alterations in care by the attending chiropractor, except for the provision of N.J.A.C. 13:44E-2.2(f)3 which requires that if an examination discloses abnormalities or conditions not known to the patient, the licensee shall advise the patient to consult another healthcare professional for treatment.

7. The Independent Chiropractic Examiner who performs the examination shall be the author of the report.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. APUZZIO TO HAVE THE REGULATORY UNIT INCORPORATE THE CHANGES RECOMMENDED AT THE BOARD MEETING AND SUBMIT THE PROPOSAL TO THE NEW JERSEY REGISTER FOR PUBLICATION AND COMMENT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VI. DISCIPLINARY MATTERS

A. LOUIS D'AGOSTINO, D.C.

Dr. D'Agostino was an applicant for license by endorsement from the State of Georgia. During the course of review of the application, it appeared that Dr. D'Agostino had plead guilty to a charge of distribution of cocaine on January 25, 1999 in US District Court, Middle District of Florida, and was sentenced to 24 months of imprisonment followed by five years of supervised release. On or about November 15, 2000 the Florida State Board of Chiropractic Examiners denied the respondent a license to practice chiropractic in the State of Florida. In the context of his application for

New Jersey license, Dr. D'Agostino responded "No" to the question as to whether or not he had ever been denied a license to practice chiropractic in any other state. Based upon the Board's review of the application it was determined that the application should be denied. A Provisional Order of Denial of Licensure was filed with the Board on September 27, 2001 and sent by certified mail, return receipt requested. No response was submitted to the Provisional Order of Denial.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR TO AUTHORIZE THE ISSUANCE OF A FINAL ORDER OF DENIAL OF LICENSE TO DR. D'AGOSTINO. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. MICHAEL CAPILLI, D.C.

A Provisional Order of Discipline was served on Dr. Capilli for violations of the Board's regulations on Duty to Cooperate for his failure to comply with the terms of a Consent Order entered which imposed a monetary penalty. Dr. Capilli issued a check for \$5,000 in partial payment of the penalties which was returned for insufficient funds from his banking institution. Several communications seeking replacement funds were ignored by Dr. Capilli. No response was received from Dr. Capilli to the Provisional Order of Discipline.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR TO AUTHORIZE THE ISSUANCE OF A FINAL ORDER OF DISCIPLINE WHICH WOULD ACTIVELY SUSPEND DR. CAPILLI'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.

VII. APPEARANCES

A. EMILIO GRUGNALE, D.C.

** DR. SENATORE WAS RECUSED IN THE CONSIDERATION OF THIS MATTER.

Dr. Grugnale appeared before the Board for a status conference based upon a Consent Order entered on November 16, 2000. Reverend Edward Reading of the Physician's Health Program was also present to advise the Board as to Dr. Grugnale's progress.

A MOTION WAS MADE BY DR. RADA 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.

FOLLOWING THE RETURN FROM EXECUTIVE SESSION A MOTION WAS MADE TO ENTER AN ORDER RESCINDING THE TERMS AND CONDITIONS OF THE PRIOR CONSENT ORDER AND AUTHORIZING AN AGREEMENT FOR DR. GRUGNALE TO CONTINUE QUARTERLY CONTACT WITH THE PHYSICIAN'S HEALTH PROGRAM AND ONCE A MONTH RANDOM URINE SCREENS. A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. RADA TO APPROVE THE RECOMMENDATIONS AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VIII. GENERAL INQUIRIES

INQUIRY OF GERALD CUMMINS, JR., ESQ.

Mr. Cummins requested guidance from the Board as to whether the use of a VAX-D machine was covered by the rules relating to electro-magnetic, electro-mechanical or mechanical traction or any other similar modality. Mr. Cummins also requested guidance on the requirements of informed consent. Upon review the Board determined that this treatment is considered a physical modality which must be done in conjunction with a spinal adjustment. Further, there is no specific rule concerning informed consent.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY WINTERS TO RESPOND TO MR. CUMMINS IN THAT MANNER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IX. ENDORSEMENTS

A. RICHARD VISONE, D.C.

Dr. Visone is a 1993 graduate of Life College and has been licensed in the State of Nevada since 1993 has taken National Board's Parts I, II and III. He completed a clinical examination in chiropractic technique, clinical competency, law and radiology offered by the Chiropractic Physician's Board of Nevada. The CIN-BAD report is clear.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY MR. TRAIER TO ACCEPT DR. VISONE FOR 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. VINCENZO R. SINATRA, D.C.

Dr. Sinatra is a 1979 graduate of Logan College and has been licensed to practice chiropractic in Arkansas and New York. Dr. Sinatra does not hold an active license in Arkansas. The license in New York is current and in good standing. He passed an equivalent examination in the State of New York.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. APUZZIO TO ACCEPT DR. SINATRA FOR 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.

C. STEVEN TILL

Dr. Till is a 1987 graduate of Cleveland Chiropractic College Los Angeles. He has been licensed to practice chiropractic in New York since 1990. He passed parts I and II of the National Boards as well as a clinical competency examination in the State of New York.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. WINTERS TO ACCEPT DR. TILL FOR 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.

X. MISCELLANEOUS MATTERS

It was noted to the Board that on some occasions the President of the Board will need to act on behalf of the Board in between meetings and requires a standing motion made by the Board to authorize the President to act on its behalf on such occasions.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. MURPHY TO AUTHORIZE DR. ATKISSON TO ACT ON BEHALF OF THE BOARD IN BETWEEN MEETINGS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

ADJOURNMENT

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

EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS AND INVESTIGATIONS AT 1:45 PM. 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 July 2002