

**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, JUNE 15, 2006**

A meeting of the New Jersey Board of Chiropractic Examiners was held on June 15, 2006 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. Calio, Kostinas, Krouse, O' Connor, Senatore, Spadafino, Murphy and Mr. Traier

EXCUSED: Drs. Stabile and Rada

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

(Three members of the public were also in attendance)

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF MAY 18, 2006

A MOTION WAS MADE BY DR. KOSTINAS, WHICH WAS SECONDED BY DR. KROUSE, TO APPROVE THE PUBLIC SESSION MINUTES OF MAY 18, 2006 AS AMENDED. A VOTE WAS TAKEN, AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. COMMITTEE APPOINTMENTS

Dr. O'Connor made the following appointments to Committees for the following year:

Rules & Regulations Committee - Dr. Calio (Chair), Dr. Krouse, Dr. Kostinas, Dr. O' Connor, Dr. Rada, Dr. Murphy

Preliminary Investigation Committee: Dr. O'Connor requested that the PIC be divided into two groups of three to relieve the burden on some of the members of the PIC. Each group will meet every other month.

Group 1 - Dr. Senatore (Chair), Dr. Calio, Dr. O'Connor

Group 2 - Dr. Stabile (Chair), Dr. Kostinas, Dr. Rada

Newsletter - Dr. Murphy (Chair), Dr. Calio

Multi-Disciplinary Committee - Dr. Senatore (Chair), Dr. Spadafino, Dr. Krouse, Dr. Calio

PIPTAC - Dr. Spadafino has agreed to serve as the Board's representative to the Dept. Of Banking & Insurance PIPTAC Committee

III. LEGISLATIVE REVIEW

A. ASSEMBLY BILL NO. 3122

(Dr. Spadafino was recused from the consideration of this matter due to his former involvement with the Association of NJ Chiropractors.)

This legislation will make several revisions to the Chiropractic Practice Act and would also establish a continuing education requirement for all licensees. The Board's comments on the proposed legislation were requested by the Attorney General's office.

The Board of Chiropractic Examiners reviewed this proposed legislation and make the following recommendation for amendments:

In section 1 of the Bill, the statutory citations should be corrected: N.J.S.A. 45:9-14.7 through N.J.S.A. 45: 9-14.9 are no longer effective. The statutory provisions that currently cover the practice of chiropractic can be found at N.J.S.A. 45:9-41.4 through 9-41.22.

The Board recommends the deletion of the phrase "and as used in Chapter 9 of Title 45 of the Revised Statutes" as this terminology may effect other Boards, such as the Board of Physical Therapy and the Board of Medical Examiners, which also fall under Chapter 9 of Title 45.

The Board recommends the deletion of the words "human and animal" in the definition of the term "practice of chiropractic."

The Board would add the word "injury" prior to the word "pressure" in the definition of the term "subluxation."

Under section b(1), the Board recommends the paragraph should end after the words "laboratory tests." The last phrase of the paragraph, leading into the three items below (1(a), 1(b) and 1©,) which currently reads "...so long as the methods of treatment or diagnoses or analysis were" should be deleted.. The Board also recommends the deletion of subsections 1(a), 1(b) and 1©. As presently written, the Board opines that this provision would be tantamount to an inappropriate and possibly unconstitutional delegation of legislative authority to the executive branch and to outside institutions such a chiropractic colleges. Only the Legislature should define the parameters of the scope of practice.

The Board is concerned about the language of b(1), which is one long, run-on sentence. The section should be corrected grammatically to make clear the intent of the section.

The Board would recommend the removal of the language in (b)1 that relates to dietary or nutritional counseling, since the same language is repeated in subsection b(3).. The section would then read that a chiropractor may: "...use any method of treatment except the use of surgery as requires cutting, or the prescription of any drug or medicine, except as set forth in b(3) below, for any ailment..."

The Board also objected to the use of the term "mental condition" and recommended that the term "mental or physical" be removed with only the word "condition" remaining in the two places it appears.

The Board notes that if a chiropractor is allowed to perform needle electromyography (EMG), then the recently enacted legislation prohibiting this practice, P.L. 2005, c. 303, would have to be amended.

Under b(4), the Board recommended making the section gender neutral. Under section 1 d, the Board recommends the deletion of the phrase: "on an individual."

Under section 3 the statutory citations should also be corrected as set forth above.

Under section 8a., the word "shall" should be removed.

Under Section 8a.(1), the Board recommends the deletion of the last sentence.

Under Section 8a.(2), the deletion of everything after the word "requirements." Again, the Board opines that such a provision would be an inappropriate delegation of the Board's authority to outside educational institutions and would unnecessarily restrict the Board's authority to approve or disapprove continuing education offerings.

In 8a.(3) the phrase "approved by the Board" should be deleted.

Further, the Board recommends that only paragraphs (1) and (5) of section 8 be mandatory (subsection should be preceded by the word "Shall.") and (2) through (4) should be permissive (subsection should be preceded by the word "May").

Under section 10, the Board recommends the deletion of the section that would permit the Board to waive continuing education due to a retirement of the license.

Under section 11 c, the Board recommends the deletion of a applying CE on a pro rata basis. Rather, the new statute should either require either 12 or 24 continuing education credits for all licensees after the regulations take effect.

Finally, the Board recommends that the 180-day requirement for promulgation of continuing education requirements be changed to require promulgation of regulations within one year of the effective date.

A MOTION WAS MADE BY DR. SENATORE, WHICH WAS SECONDED BY DR. KOSTINAS, TO SUPPORT THE LEGISLATION IF THE ABOVE NOTED AMENDMENTS ARE INCORPORATED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IV. APPLICATIONS

A. JENNIFER A. FURCHT, D.C.

A MOTION WAS MADE BY DR. SENATORE, WHICH WAS SECONDED BY DR. KOSTINAS, TO APPROVE DR. FURCHT'S APPLICATION FOR LICENSURE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. GARY S. TORRES, D.C.

A MOTION WAS MADE BY DR. KOSTINAS, WHICH WAS SECONDED BY DR. SPADAFINO, TO APPROVE DR. TORRES FOR LICENSURE BY ENDORSEMENT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

V. ELECTRO DIAGNOSTIC PERMITS

1. Robert Melo, D.C.
2. Brent Kaiser, D.C.
3. Phillip S. Kim, D.C.
4. James Kirk, D.C.
5. Jay A. Paris, D.C.
6. Sonia Tesolin, D.C.
7. Anthony Cifelli, D.C.

A MOTION WAS MADE BY DR. SENATORE, WHICH WAS SECONDED BY DR. KOSTINAS, TO APPROVE THE ISSUANCE OF ELECTRO DIAGNOSTIC PERMITS FOR THE ABOVE NOTED INDIVIDUALS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VI. INQUIRIES

A. MARK E. MANIGAN, ESQ.

Mr. Manigan has submitted an inquiry for the Board's interpretation of Statutes & Regulations governing self-referral. He questions whether a New Jersey licensed Chiropractor can purchase an ownership interest in ambulatory surgery center, which would permit him to refer patients from his practice to the ambulatory center for certain procedures such as Manipulation Under Anesthesia.

Deputy Attorney General Hugelmeyer noted that the inquiry raises several complicated issues involving self-referral. He has requested some time to research the issue with others in the Division of Law.

This matter was tabled.

VII. OLD BUSINESS

A. GREGORY TRENTACOSTA, D.C.

The Board reviewed a final report of attendance of Dr. Trentacosta at the ProBE ethics program, including a copy of his final essay.

This was accepted as informational.

VIII. APPEARANCE

I/M/O MIHRAN G. BAKALIAN, D.C.

Deputy Attorney General John D. Hugelmeyer represented the Attorney General in this matter.

Dr. Bakalian was represented by Alex Keosky, Esq.

Deputy Attorney General Nancy Costello-Miller counseled the Board in this matter.

On January 30, 2006, a Provisional Order of Discipline was issued by the Board seeking a suspension of Dr. Bakalian's license to practice chiropractic in the State of NJ. Dr. Bakalian entered into a Stipulation of Settlement with the State of NJ, Office of the Insurance Fraud Prosecutor, in which he agreed to pay a civil penalty in the amount of \$5,000 and attorney's fees of \$1,250. In the Stipulation of Settlement, the respondent stipulated and acknowledged that he had knowingly and intentionally submitted false or misleading statements of material fact to Northwestern Mutual Life Insurance Company in support of a claim for benefits under a disability income insurance policy. On February 23, 2006, Dr. Bakalian submitted a letter requesting a dismissal of these charges and to provide certain exhibits in mitigation of penalty. On April 5, 2006, a letter was submitted by Deputy Attorney General John D. Hugelmeyer in response to Dr. Bakalian's submission, further reply was submitted by Dr. Bakalian on April 11, 2006. At the April meeting, the Board determined to offer Dr. Bakalian the opportunity to appear at a hearing in mitigation of penalty.

An opening statement was made by Deputy Attorney General Hugelmeyer. Dr. Bakalian was sworn and testified with regard to the history of this matter and submitted several documents for the Board's consideration suggesting that some alterations were made to these submissions to the insurance carrier without his knowledge.

Deputy Attorney General Hugelmeyer made a closing statement suggesting that the Board cannot go behind the facts established by the Stipulation of Settlement and the respondent's own admissions as contained in that Stipulation of Settlement. He stated that the entry of the settlement with the Office of the Insurance Fraud Prosecutor firmly establishes a basis for discipline under the Uniform Enforcement Act. Dr. Bakalian then made a final statement. The Board then moved into Executive session to deliberate.

The Board then returned to Public session.

A MOTION WAS MADE BY DR. SENATORE, WHICH WAS SECONDED BY DR. MURPHY, TO FIND THAT DR. BAKALIAN'S ENTRY INTO THE STIPULATION OF SETTLEMENT ESTABLISHES THE BASES UNDER THE PROVISIONS OF N.J.S.A 45:1-21(k). THE BOARD IMPOSES SANCTIONS TO INCLUDE A REPRIMAND; A REQUIREMENT TO COMPLETE THE ProBE OR PRIME ETHICS COURSE AND THE PAYMENT OF ALL COSTS INCURRED BY THE BOARD IN THIS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR. .

ADJOURNMENT

A MOTION WAS MADE BY DR. CALIO, WHICH WAS SECONDED BY DR. KOSTINAS, TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS, INVESTIGATIVE REPORTS AND CONSUMER COMPLAINTS. 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