

**STATE BOARD OF CHIROPRACTIC EXAMINERS
DIVISION OF CONSUMER AFFAIRS
PUBLIC SESSION MINUTES**

SEPTEMBER 23, 2004

A meeting of the New Jersey Board of Chiropractic Examiners was held on September 23, 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, Murphy, O'Connor, Rada, Senatore and Stabile and Mr. Traier

ABSENT:

Dr. Louro and Mr. Faulkner

ALSO PRESENT:

DAG John Hugelmeyer, Executive Director Kevin Earle, and recording secretary Shekenna Brown.

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF JULY 22, 2004.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE PUBLIC SESSION MINUTES OF JULY 22, 2004 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. LEGISLATIVE REVIEW

A. ASSEMBLY BILL 1763

This legislation would permit persons with a criminal record to obtain certain employment if the disqualifying offense was committed more than 10 years ago. The provisions of the bill would not apply when a persons background check reveals a conviction for criminal homicide, except vehicular homicide; kidnapping; luring or enticing a child; aggravated sexual assault; aggravated criminal sexual contact; criminal sexual contact if the victim is a minor; criminal restraint if the victim is a minor and the offender is the parent of the victim; false imprisonment; robbery; arson; endangering the welfare of children; perjury; false swearing; or conspiracies or attempts to commit any of these crimes.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. CALIO TO EXPRESS THE BOARD'S SUPPORT OF THIS LEGISLATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. ASSEMBLY BILL 2319

This legislation would require certain persons to report suspected abuse, neglect or exploitation against vulnerable adults. A discussion ensued to clarify the definition of "vulnerable adult." The legislation defines such person as someone 18 years of age or older who resides in a community setting and who, because of a physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning his well-being and is the subject of abuse, neglect or exploitation.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. RADA TO EXPRESS SUPPORT FOR THIS LEGISLATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. MISCELLANEOUS MATTERS

A. CORRESPONDENCE OF JEFFREY B. RANDOLPH, ESQ.

Re: ACN Group Provider Agreement & Recredentialing Application

Mr. Randolph, on behalf of The Association of New Jersey Chiropractors has submitted an inquiry noting that several chiropractic physicians had questioned the provisions of a group provider agreement and recredentialing application for American Chiropractic Network, a subsidiary of United Healthcare. The letter suggests that there are certain provisions of the application that might perhaps be contrary to New Jersey law or regulation specifically the requirement that a credentialed provider make a differential diagnoses that is not limited solely to the detection of a subluxation complex. Reference is made to the provisions of New Jersey law and regulation which permit chiropractic physicians to identify and treat a subluxation without a subjective complaint or objective finding.

After discussing this matter, the Board was advised by Counsel that the credentialing criteria used by any insurance or managed care organization is a private agreement to abide by certain conditions of inclusion within that provider group. The specific provisions of New Jersey law and regulation referenced in Mr. Randolph's correspondence is "permissive" language and does not compel any insurance provider or managed care network to accept "subluxation" based chiropractic care because of that provision of the statutes and regulations. It was suggested that the Association of New Jersey Chiropractors direct its inquiry to the New Jersey Department of Banking and Insurance and the New Jersey Department of Health to express their concerns about the form of credentialing being employed by this network.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO SUBMIT THE ABOVE NOTED RECOMMENDATION TO THE ASSOCIATION OF NEW JERSEY CHIROPRACTORS FOR THEIR ACTION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS

Dr. Senatore announced that Dr. Calio and Dr. Rada would be representing New Jersey in the administration of the Part IV Practical Examination in November 2004.

C. ADOPTED REGULATIONS INDEPENDENT CHIROPRACTIC EXAMINATIONS

The Board accepted as informational a copy of the notice of adoption that appeared in the New Jersey Register on August 2, 2004 of its new rule on Independent Chiropractic Examinations at N.J.A.C. 13:44E-2.14.

D. RICHARD FINDER, D.C.

Dr. Finder was the subject of a Final Order of Revocation entered on December 5, 2002 which imposed a \$50,000.00 penalty. The Board reviewed correspondence from Dr. Finder seeking to appeal and dispute this judgment amount. The Board was notified that following Dr. Finder's revocation, he pled guilty to additional insurance fraud charge and was sentenced to prison.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. O'CONNOR SUGGESTING THAT DR. FINDER SEEK COUNSEL ON PROCEDURES TO APPEAL BOARD ORDERS. HIS REQUEST FOR THE ABATEMENT FOR THE \$50,000.00 PENALTY IS DENIED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

E. WAYNE M. POLLER, D.C.

Dr. Poller is requesting that the Board's website be updated to specifically state the infractions of individual licensees.

Executive Director Earle noted that the policies with respect to disciplinary actions are set by the Division of Consumer Affairs and the Board is not in a position to quantify or classify infractions of individual licensees. It is expected that within the next year all Board disciplinary actions will be hyperlinked to the online license directory so that members of the public, managed care organizations and other individuals may see a copy of any publicly filed document with the Board.

IV. ELECTRODIAGNOSTIC PERMIT APPLICANTS

A. Joseph A. Bryson, D.C.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. STABILE TO DENY THIS APPLICATION NOTING THAT THE 18 HOURS OF EDUCATION IN NERVE CONDUCTION TESTING WHICH WAS OFFERED BY THE MANUFACTURER OF THE EQUIPMENT PROVIDED FOR SUCH TESTING WAS INSUFFICIENT TO MEET THE STANDARDS OF THE BOARD'S ELECTED DIAGNOSTIC REGULATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. ATKISSON TO APPROVE THE FOLLOWING APPLICATIONS SUBJECT TO THE RECEIPT OF COPIES OF TRANSCRIPTS OF COURSES OFFERED THROUGH POST GRADUATE TRAINING PROGRAMS OF CHIROPRACTIC COLLEGES:

JOHN CERF, D.C.
JOSEPH J. GAROLIS, D.C.
ROY JACKSON, D.C.
RICHARD SABBAGH, D.C.
ANTHONY FAVA, D.C.
LAWRENCE PETRACCO, D.C.

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

V. ENDORSEMENT APPLICATIONS

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE THE APPLICATIONS OF SYNTHIA MARRERO, D.C. AND STEVEN TILL, D.C. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VI. FINAL HEARING - IN THE MATTER OF THE SUSPENSION OR REVOCATION OF SCOTT J. SCHEMANSKI, D.C. (Proceedings recorded)

Joan D. Gelber, Deputy Attorney General on behalf of the Complainant (Peter C. Harvey, Attorney General of New Jersey) Glen L. Schemanski, Esq. on behalf of Respondent

This matter having been scheduled for a 1:00 PM hearing and notice given to all parties via regular mail and overnight express via United Parcel Service. Executive Director Earle undertook an effort to identify whether Dr. Schemanski and/or Glen L. Schemanski, Esq. would be appearing. The area around the meeting room and in the lobby was searched and no individual responded by those names. The Chair moved to proceed with the case.

Deputy Attorney General Gelber presented summary information as to why the Board should accept in total the findings of Administrative Law Judge Solomon Metzger arguing that the charges in the Administrative complaint were supported by independent testimony of individuals who had been solicited by an individual working in the

capacity of a runner on behalf of Dr. Schemanski and his practice and the live testimony of individuals who testified that they had been treated by an unlicensed individual later identified as Dean Schemanski who holds no license as a health care provider. It was also further noted that Dr. Schemanski had practiced without benefit of a current license. Deputy Gelber asked the Board to find that ample proofs had been submitted to affirm the findings of the Judge. Deputy Gelber asked that the Board move into evidence items number P18 and P19 which would verify the birth dates of the two minor individuals who had been solicited by Dr. Schemanski's practice. This was accepted into evidence.

In addition, the Board was asked to move into evidence a copy of the verifications from the United Parcel Service that notice of the hearing had been provided to Glen L. Schemanski, Esq. These items were marked as P20 - P22.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. RADA TO CLOSE THE HEARING AND GO INTO EXECUTIVE SESSION TO DELIBERATE.

UPON RETURNING TO PUBLIC SESSION, A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. ATKISSON THAT THE BOARD ACCEPT THE INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE SOLOMAN A. METZGER CONCERNING THE FINDING OF FACT AND CONCLUSIONS OF LAW ISSUED ON JULY 7, 2004. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENTING VOTING IN FAVOR.

MR. TRAIER MADE A MOTION WHICH WAS SECONDED BY DR. ATKISSON TO MOVE THAT THE LICENSE OF SCOTT J. SCHEMANSKI, D.C. BE REVOKED EFFECTIVE IMMEDIATELY DUE TO THE FACT THAT HE DOES NOT HOLD A CURRENT LICENSE IN THE STATE OF NEW JERSEY AND IMPOSING COSTS OF \$38,164.64, ATTORNEY'S FEES OF \$66,450.00 AND A CIVIL PENALTY OF \$150,000.00. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

ADJOURNMENT

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. STABILE TO ADJOURN THE MEETING AT 4:13PM. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Respectfully Submitted,

Kevin B. Earle, MPH
Executive Director
