

State Board of Chiropractic Examiners

Public Session Minutes Thursday, September 25, 2003

A meeting of the New Jersey Board of Chiropractic Examiners was held on September 25, 2003 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 Mary-Ellen Rada, D.C., President of the Board at 10:00 AM.

ATTENDANCE

PRESENT:

Drs. Atkisson, Calio, Louro, Murphy, Rada, Senatore, Mr. Faulkner and Mr. Traier

EXCUSED:

Dr. O'Connor and Stabile

ALSO PRESENT:

DAG John Hugelmeyer, Executive Director Kevin Earle, Terri Goldberg, Assistant to the Executive Director and recording secretary Nina Lado and Joshua Marzan.

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF JULY 24, 2003.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY MR. TRAIER TO ACCEPT THE PUBLIC SESSION MINUTES OF JULY 24, 2003 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. BOARD MEETING SCHEDULE

The Board reviewed a meeting schedule for calendar year 2004 as follows:

BOARD MEETINGS	PRELIMINARY INVESTIGATION COMMITTEE
January 29, 2004	January 15, 2004
February 26, 2004	February 19, 2004
March 18, 2004	March 11, 2004
April 15, 2004	April 8, 2004
May 20, 2004	May 13, 2004
June 24, 2004	June 17, 2004
July 22, 2004	July 15, 2004

No meeting	August 19, 2004
September 23, 2004	September 16, 2004
October 21, 2004	October 14, 2004
November 18, 2004	November 4, 2004
December 16, 2004	December 9, 2004

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY MR. TRAIER TO ACCEPT THE SCHEDULE OF MEETING FOR THE CALENDAR YEAR 2004. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. MISCELLANEOUS ANNOUNCEMENTS

A. Dr. Rada announced that Regulatory Analyst Jake Gertsman has taken a position with another section in the Division of Consumer Affairs. The Board expressed appreciation for all of Jake's hard work on all of the Board's regulatory initiatives.

B. Dr. Rada announced that an initiative will be undertaken to make a memorial contribution in memory of former public member Morton Blum. Board members were solicited for contributions to that memorial.

IV. OLD BUSINESS

A. COUNCIL ON CHIROPRACTIC EDUCATION ANNOUNCEMENTS

The Board reviewed three announcements. These were accepted as informational.

B. LIFE UNIVERSITY

A letter was received by Dr. John Downes, Dean of the College of Chiropractic requesting guidance on the Board's desire to conduct a re-examination following up on the Board's site visit which had occurred in November 2002. After discussing the matter the Board determined that a smaller site team consisting of one Board member and the Executive Director be assigned to conduct the re-evaluation. Dr. Rada requested that Dr. Atkisson be assigned this task.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. LOURO TO AUTHORIZE THE FOLLOW-UP VISIT WITH A SITE TEAM AS OUTLINED ABOVE. A MOTION WAS PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. PALMER UNIVERSITY - FLORIDA

Executive Director Earle reported that he had been contacted by Douglas Hoyle, PhD, of Palmer University reporting that the clinic was not yet in operation at Palmer University and asking whether the Board would delay its site visit until the clinic would be in operation which is likely to occur around the 8th quarter. It was then suggested that a smaller site team to include Executive Director Earle and Dr. Rada conduct this evaluation after the Board is advised two quarters post clinic opening.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. CALIO TO AUTHORIZE THE FOLLOW-UP SITE VISIT AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

DR. LOURO WAS RECUSED IN THE CONSIDERATION OF THIS MATTER.

V. NEW BUSINESS

A. GENERAL INQUIRIES

1. CHARLES A. BLUM, D.C.

Dr. Blum submitted a question regarding Scope of Practice in the area of craniopathy/cranial manipulation/TMJ therapy.

Question one asked whether the term "related structures" can be construed to be structures directly related to the spine such as the TMJ or cranial bones and sutures. The Board opined that a chiropractor cannot treat a stand alone diagnosis of TMJ (temporo mandibular). A chiropractor's function is to analyze and/or diagnose a spinal disorder that may be contributing to a TMJ problem or conversely a TMJ problem may be causing a spinal subluxation.

Question two: Dr. Blum asked the following question: "Since most if not all chiropractic college clinics teach TMJ diagnosis in their examination procedures, could this statement be construed that TMJ examinations and possible treatment or co-treatment with a dentist is allowable within a chiropractor's Scope of Practice in New Jersey?" The Board opined that TMJ disorder may be co-treated and co-managed with a licensed dentist.

Question three: Dr. Blum related to NJAC 13:44E-1.1(c)5 which dealt with the performance of diagnostic and analytical tests consistent with chiropractic practice. Dr. Blum inquires whether non invasive muscle testing that is used to determine and treat TMJ dysfunction is within a chiropractor's Scope of Practice in New Jersey. The Board opined that such testing could be performed by a chiropractor as long as that testing was non-invasive and indicated in compliance with N.J.A.C 13:44E-3.2.

Question four: Dr. Blum questions whether TMJ therapy or craniopathy or cranial therapy can be construed as physical modalities which could be administered in conjunction with a spinal adjustment. The Board opined that these therapies are not considered physical modalities within the meaning of New Jersey Statutes and Regulations.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY MR. FAULKNER TO RESPOND TO DR. BLUM AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

2. DAVID M. FERRANTE, ESQ. REHABILITATION PROCEDURES BY CHIROPRACTORS

The Board reviewed correspondence from attorney Ferrante regarding the performance of rehabilitation procedures by chiropractors referencing the case of Prudential v. Richard J. Nardone, D.C. (332NJSuper126). Mr. Ferrante cited the decision that opined that muscle strengthening and soft tissue stretching were outside the scope of chiropractic practice, and gave an explanation of rehabilitation therapy as understood by him. Deputy Attorney General Hugelmeyer prepared a draft response for the Board's consideration as follows:

The Board is aware of the opinion to which you refer, and that the court expressly stated therein that it was not determining the treatment issues it had raised in dicta, "because PruPac is obtaining relief based upon Nardone's failure to cooperate." Prudential v. Nardone, 332 N.J.Super. 126, 137 (Law Div. 2000). The opinion also relates that treatment notes for the patients in question were not made available by the defendants. Id. at 129.

Consequently, the court had no need or opportunity to take into consideration the distinction recognized by

the Board between modalities performed by chiropractors in conjunction with their performance of chiropractic adjustments, as permitted by N.J.A.C. 13:44E-1.1(c)7, and the activities set out in the definition of "physical therapy" at N.J.A.C. 13:39A-2.1, which the court cited. The Board believes that modalities rendered in conjunction with, and to facilitate, enhance or prolong the effects of, chiropractic adjustments, have a purpose which differs from, and a role in chiropractic practice which makes them distinct from, physical therapy. Chiropractors are permitted to, and do, refer patients to physical therapists. N.J.A.C. 13:44E-2.12.

In short, chiropractic modalities are distinguishable from physical therapy by virtue of their relationship to the adjustments of the articulations of the spinal column, and their specific purposes within that system of care. It is not their descriptions, such as muscle strengthening or soft tissue stretching, which are determinative. Rather, it is their purpose and relationship to the adjustments of the patients, that place these activities within the practice of chiropractic.

The Board declines to comment on the use of specific CPT codes, but hopes that this response to your inquiry is of help to you.

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. ATKISSON TO APPROVE THE DRAFT RESPONSE AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Dr. Atkisson discussed the question of the issue of rehabilitative exercise and the use of physical modalities that need to be clarified in the Board's rules and regulations.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY MR. TRAIER TO MAKE THIS INITIATIVE WITH THE RULES AND REGULATIONS COMMITTEE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

3. INQUIRY OF MICHAEL E. FANELLI, D.C.

Dr. Fanelli submitted an inquiry concerning the offering of wellness service for a reduced fee in which the licensee would offer two massage therapy sessions and one chiropractic visit per month for a flat fee. The offer would be restricted for symptom free maintenance care and the doctor noted that if an examination reveals an acute or subacute condition which warrants more frequent treatment then the offer does not apply. Secondly, it would be a cash offer and that insurance would not be accepted on assignment nor would patients be provided with bills to submit to their insurance carrier.

The Board questioned who would actually be performing the massage services and noted that until such time that massage therapists are duly licensed by the State of New Jersey such services could not be delegated to anyone but a licensed healthcare provider. The Board also emphasizes that a full examination must be performed regardless of whether the patient presents without a condition and that a contemporaneous record must be maintained as per Board regulations.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY MR. TRAIER TO RESPOND TO DR. FANELLI AS NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

4. INQUIRY OF GENEX SERVICES, INC./BARBARA SALANDRIA, RN,CPC

Ms. Salandria submitted a question regarding chiropractic Scope of Practice, specifically, with reference to extraspinal manipulations, under CPT Code 98943.

The Board opined that any extraspinal manipulations must demonstrate in the clinical record its nexus to the spine and contiguous structures. That is to say that either the extraspinal condition must have some basis on a condition in the spine or alternatively the extraspinal condition may be causing a problem with

the spine.

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. CALIO TO RESPOND TO THE INQUIRY AS NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

5. INQUIRY OF THE NJ CHIROPRACTIC SOCIETY

Michael Spadafino, D.C., President of the New Jersey Chiropractic Society submitted a copy of a letter and attachments which was recently forwarded to the New Jersey Department of Banking and Insurance regarding the position taken by Horizon Blue Cross/Blue Shield of New Jersey that physical therapy modalities, adjunctive therapy, manual traction are not within a chiropractic scope of practice. The Board opined that such activities are clearly referenced in Board regulations and, therefore, would be considered to be within the Scope of Practice. Dr. Spadafino requested that the Board conduct an investigation of both Horizon and the Department of Banking and Insurance positions to confirm that such services are within the chiropractic scope of practice as defined under New Jersey law. It was suggested to Dr. Spadafino, who was present for the discussion, that a specific inquiry should be directed to Commissioner Hollie Backi of the Department of Banking and Insurance, the Director of the Department of Health and to the Director of the Division of Pensions and Benefits in the Department of Treasury providing full background information. The Board noted that the material attached to the inquiry from Dr. Spadafino was not complete. The Board requested that Dr. Spadafino provide more complete information to the Board so that specific inquiry could be made to those agencies.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. ATKISSON TO REQUEST MORE COMPLETE INFORMATION SO THAT THE BOARD COULD DO THE APPROPRIATE FOLLOW-UP. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

6. TIMOTHY HAYES, D.C.

The Board received follow-up information from Dr. Hayes regarding a position taken by Empire Blue Cross/Blue Shield regarding extraspinal manipulations which were denied compensation by that carrier based upon the comment that it was not within the Scope of Chiropractic Practice in the State of New Jersey. As it has in the past, the Board notes that to the extent that the record reflects that the extraspinal condition has some nexus to a spinal condition, such an adjustment would be appropriately within the Scope of Practice.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. CALIO TO RESPOND TO DR. HAYES AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

7. DEPARTMENT OF BANKING AND INSURANCE PROPOSED REGULATIONS

The Board reviewed a copy of the comment provided to the Department of Banking and Insurance on its proposed new rules on personal injury protection benefits that was forwarded to the Department on September 17, 2003. Drs. Calio, Rada and Atkisson as well as Executive Director Earle prepared the comment on the regulations.

THIS WAS ACCEPTED AS INFORMATIONAL.

VI. ENDORSEMENT

A. MICHAEL JOHN AUSTIN, D.C.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. LOURO TO

APPROVE DR. AUSTIN FOR LICENSURE 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. VICTOR E. DOLAN, D.C.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. MURPHY TO APPROVE DR. DOLAN FOR LICENSURE 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. JASON DAVID KART, D.C.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. LOURO TO APPROVE DR. KART FOR LICENSURE 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.

D. CRYSTAL A. JOSEPH, D.C.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. CALIO TO APPROVE DR. JOSEPH FOR LICENSURE 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.

E. WILLIAM SUH, D.C.

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY DR. LOURO TO APPROVE DR. SUH FOR LICENSURE 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.

F. BRUCE NUMEROFF, D.C.

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY DR. MURPHY TO APPROVE DR. NUMEROFF FOR LICENSURE 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.

VII. GENERAL INFORMATION

A. PROFESSIONAL RENEWAL CENTER

The Board reviewed information concerning the services provided by the Professional Renewal Center for individuals who may have sexual misconduct, boundary violations or addiction problems.

THIS WAS ACCEPTED AS INFORMATIONAL

B. FEDERATION OF CHIROPRACTIC LICENSING BOARDS DISTRICT MEETING

The Board reviewed the agenda for the District meeting of the Federation of Chiropractic Licensing Boards. The meeting will be attended by Drs. Rada, O'Connor and Executive Director Earle.

VIII. NEW LICENSEE ORIENTATION

Dr. Rada and Executive Director Earle explained a new initiative to combine the new licensee orientation program with the jurisprudence examination. The Board staff is investigating a delivery model for such an orientation program and individual Board members have been asked to contribute specific sections of the new licensee orientation. Dr. Rada urged the Board members who have been given these assignments to produce this information expeditiously so that the Board can proceed with this initiative.

MOTION TO GO INTO EXECUTIVE SESSION

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. LOURO TO GO INTO EXECUTIVE SESSION TO REVIEW PENDING DISCIPLINARY MATTERS AND CONSUMER COMPLAINTS AT 12:34 PM. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

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