



**State of New Jersey
Division of Consumer Affairs
Board of Chiropractic Examiners
124 Halsey Street, 6th Floor**

Public Session Minutes

Thursday, September 26, 2002

A meeting of the New Jersey Board of Chiropractic Examiners was held on September 26, 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 10:00AM by Board President Brian Atkisson

ATTENDANCE:

Drs. Atkisson, Louro, Murphy, Rada, Senatore, Stetzel, Winters Public Members Ken Faulkner and John Traier

ALSO PRESENT:

DAG John Hugelmeyer, Executive Director Kevin Earle, Paralegal James Rodriguez, Jake Gertsman, Regulatory Analyst and recording secretary Nina Lado

EXCUSED: Dr. O'Connor

WELCOME OF NEW BOARD MEMBER

Dr. Atkisson welcomed Joseph Louro, D.C. as a member of the Board who has been appointed by Governor McGreevey to replace Dr. Robert Apuzzio whose term was expired.

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

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY MR. FAULKNER TO ACCEPT THE PUBLIC SESSION MINUTES OF JULY 25, 2002 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. OLD BUSINESS

A. PROPOSED REGULATIONS - USE AND PRESCRIPTION OF ELECTRO-THERAPY DEVICES

Regulatory Analyst Jake Gertsman indicated that the Division of Consumer Affairs had completed its work on the prefatory language on this Board proposal and had submitted it to the Division of Law for their review.

B. PROPOSED REGULATIONS - PROFESSIONAL PRACTICE STRUCTURES

Deputy Attorney General Hugelmeyer reported that when this matter had been reviewed by the Division of Law there had been some questions with relation to the Board of Medical Examiners regulations on professional practice structures and some question as to whether or not there should be some harmonization between the Board of Chiropractic Examiner's regulations and those of the BME.

A MOTION WAS MADE BY DR. STETZEL WHICH WAS SECONDED BY MR. TRAIER TO HAVE THE DEPUTY ATTORNEY GENERAL OUTLINE THE ISSUES OF CONCERN IMPLICATED BY THE PROPOSAL.

C. PROPOSED REGULATIONS-INDEPENDENT CHIROPRACTIC EXAMINATIONS

The Board reviewed the latest draft of the regulations on Independent Chiropractic Examinations. The Board discussed the need for the reviewing chiropractor to perform and document in the patient record a history and clinical examination and a chiropractic analysis and diagnosis. Several other minor changes in language were suggested. Regulatory Analyst Jake Gertsman will incorporate the changes suggested by the Board and bring back a re-draft of the regulation for the Board's consideration at its October 24th meeting.

D. LEGISLATIVE INITIATIVE-CONTINUING EDUCATION REQUIREMENTS

In September 2001 the Board had informally reviewed an initiative of the New Jersey Chiropractic Forum on a proposed legislative amendment to the Chiropractic Statute which would establish a requirement for continuing education of 24 hours for each biennial renewal cycle. The Board at the time expressed an interest in supporting such an initiative, however, the legislation has never been introduced. Relevant background information was reviewed by the Board.

Dr. William Cerino, D.C., Chairman, of the New Jersey Chiropractic Forum noted that the Forum has been discussing this issue, but has not come up with a definitive agreement. He noted that the discussion of this requirement has been the subject of "heated debate." Reference was made to the proposed CE initiative by the Federation of Chiropractic Licensing Boards. Executive Director Earle, who is a member of the task force that is developing the CE program with the Federation emphasized to the Board and to those in the audience that the Federation's proposed pace program would approve providers, and has no intention of getting into approving specific continuing education courses. The guidelines being proposed for the Federation's program established generic guidelines for course providers to include the requirement that every course offering have a syllabus, appropriate course materials, appropriate and credentialed instructors, attendance monitoring and record keeping, etc.

It was suggested that the Executive Committee establish a date to meet with representatives of the New Jersey Chiropractic Forum and its component representatives to discuss any concerns that may exist with an eye toward collaboratively developing a format for a CE enabling statute that would be mutually acceptable.

E. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS

The Board reviewed information received from Peter D. Ferguson, D.C., President of the National Board concerning issues related to the election for the NBCE District IV Director's position.

THIS WAS ACCEPTED AS INFORMATIONAL.

F. COMMISSIONER'S ADVISORY COMMITTEE ON PIP

Dr. Atkisson provided information concerning the August 19, 2002 meeting of the Commissioner's PIP Advisory Committee. Dr. Atkisson reported that the members of the Committee discussed the various care path recommendations. Dr. Atkisson had previously submitted some comments to the Commissioner's office but this

material was not yet reviewed by the Advisory Committee. No resolution was forthcoming from the meeting.

It was noted that, because of the complexity of issues to be determined, the entire group would be broken down into Committees. Dr. Atkisson provided the Board with the distribution of Committee members. Finally, Dr. Atkisson reported that the timing of the use of the care pathways was discussed as to whether that timing should begin from the date of accident or the date of initial treatment. Dr. Atkisson reported that it was very likely that the Department would recommend that time should begin from the date of accident. Dr. Atkisson will keep the Board further advised of any developments.

G. LIFE UNIVERSITY - STATUS OF ACCREDITATION APPEAL

The Board reviewed a letter from Michael J. Schmidt, Interim President of Life University which questions interpretations of the New Jersey Statute, specifically, N.J.S.A. 45:9-41.6 which discusses Board approval. The requirement that applicants must have graduated from a college of chiropractic which was approved during the individual's entire course of study by the Board and accredited by the Council on Chiropractic Education, the Straight Chiropractic Academic Standards Association or any other accrediting agency approved by the US Department of Education. Deputy Attorney General Hugelmeyer discussed interpretations of the Board's statute and it was concluded that Life University must maintain both Board approval and accreditation by either the CCE or the Southern Association of Colleges and Schools which is the regional accrediting agency for the South Eastern United States. The Straight Chiropractic Academic Standards Association no longer exists. A decision on the appeal currently pending with the Council on Chiropractic Education is expected in late October. It was determined that a site team should be assembled to include former Board members, particularly Dr. Anthony DeMarco who had participated on several site teams during his tenure on the Board. Dr. Robert Apuzzio was also suggested as a potential site team member. Dr. Atkisson will work with Executive Director Earle to assemble the site team to visit the school and conduct an evaluation. The Board office was asked to obtain as much information as possible to identify what problems were associated with the CCE accreditation and to determine the exact status of the University's Accreditation with the Southern Association of Colleges and Schools. Additionally, written information should be evaluated before putting a site team together. A site team visit will only be necessitated should the counsel on chiropractic education deny Life University's appeal.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. WINTERS TO ASSEMBLE A SITE TEAM AS SOON AS POSSIBLE TO VISIT THE SCHOOL, CONTINGENT UPON THE DECISION OF THE COUNSEL ON CHIROPRACTIC EDUCATION'S ACCREDITATION APPEAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

FURTHER DISCUSSIONS ENSUED CONCERNING A PUBLIC STATEMENT TO STUDENTS CURRENTLY ATTENDING LIFE UNIVERSITY. IT WAS SUGGESTED THAT THE BOARD CAN MAKE NO ASSURANCES THAT LIFE UNIVERSITY WILL CONTINUE TO BE APPROVED BY THE BOARD. CONTINUED BOARD APPROVAL IS CONTINGENT UPON THE FINDINGS OF THE SITE TEAM AND THE APPROVAL OF THE FULL BOARD, IF ACCREDITATION BY EITHER CCE OR SACS IS RETAINED.

III. NEW BUSINESS

A. COUNSEL ON CHIROPRACTIC EDUCATION-STANDARDS/REVISIONS

Dr. Atkisson had requested that Drs. Murphy, Rada and he review the present CCE standards with an eye toward recommending revisions to the current standards for accrediting chiropractic programs and institutions. Dr. Murphy felt that it was a comprehensive document and suggested that to assure uniformity in chiropractic education their should be one accrediting body recognized. Dr. Rada also commented that it was a well written document, however, Dr. Rada reviewed the subsection under the "Model of Effectiveness," most notably the professional factors, which were defined as suggestions or "pressures" imposed on organizations by members of the profession and other related professions, Alumni programs, institutions and other State licensing Boards. Dr. Rada suggested that the term "pressures" is inappropriate noting that educational institutions should not be subject to pressures. It was also suggested that on page 73 the references to quantitative clinic requirements will not be the sole criteria used to assess the

program or institution's success. It was suggested that the word "will" should be changed to the word "shall."

Dr. Atkisson discussed the concept of mission elements as it appears on page 63 and noted that professional practice ethics was included on the required course offerings. It was not clear how much academic time should be devoted to this subject. However, in the Board's opinion significant emphasis should be placed on this area. On page 70 there appears to be no mention of courses taken via distance learning, which is a new phenomenon in education. It was suggested that the CCE consider the inclusion of this category on this page.

On page 83 it was suggested that under attitudes a third section be added which states, "recognize that a diagnosis is fluid which may or may not require modification as the case progresses." Under professional issues on page 93, the knowledge category, reference is made to understanding the need to follow sound business practices. It was suggested that the term sound and ethical business practices should be added.

A MOTION WAS MADE BY DR. STETZEL WHICH WAS SECONDED MR. FAULKNER TO APPROVE THE RECOMMENDATIONS AS OUTLINED BY THE COMMITTEE AND FORWARD SAME TO THE COUNCIL ON CHIROPRACTIC EDUCATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS - PART IV

The Board reviewed a letter from NBCE soliciting the appointment of at least one examiner to the Part IV examination in November. Dr. Rada volunteered to serve as an examiner. If any other Board members are interested, they should contact Dr. Atkisson.

C. PALMER COLLEGE OF CHIROPRACTIC - FLORIDA

The Board reviewed a letter from Douglas E. Hoyle, PhD., Chief Planning Officer and Executive Assistant to the Chancellor of Palmer University, formally requesting the Board's appointment of a site team for the approval of Palmer College of Chiropractic Florida. The University requested that a site team be assembled to conduct an evaluation pursuant to Board statutes.

As discussed in the Life University matter noted above, a site team will be assembled to conduct a site team evaluation. Dr. Atkisson will work with Executive Director Earle to assemble the appropriate members of the team.

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY MR. TRAIER TO ASSEMBLE A SITE TEAM AS SOON AS POSSIBLE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IV. PROPOSED REGULATIONS

A. DEPARTMENT OF BANKING AND INSURANCE-HEALTH BENEFITS PLANS AND PROMPT PAYMENT OF CLAIMS

Executive Director Earle noted that although the comment period for this proposal had expired, the information contained in the regulation dealt with the procedures used by insurance carriers to use extrapolation methods to resolve claim payment disputes.

THE BOARD ACCEPTED THIS AS INFORMATIONAL.

B. DEPARTMENT OF BANKING AND INSURANCE - PERSONAL INJURY PROTECTION BENEFITS; MEDICAL PROTOCOLS; DIAGNOSTIC TESTS

This amendment to the DOBI regulations would change the requirement of insurance carriers to submit decision point review reports from a monthly basis to a quarterly basis.

THE BOARD ACCEPTED THIS AS INFORMATIONAL.

V. ADOPTED REGULATIONS

A. DELEGABLE TASKS OR FUNCTIONS OF UNLICENSED ASSISTANTS

DAG Hugelmeyer reported that there had been an administrative error in the filing of the adoption of this subsection of this regulation which had not been included when the regulation was initially published. A correction was published in the New Jersey Register on October 5, 2002.

B. OCCUPATIONAL THERAPY ADVISORY COUNSEL

The Board reviewed the adopted regulations of the OT Advisory Counsel which were published in the August 5, 2002 register.

THIS WAS ACCEPTED AS INFORMATIONAL.

VI. GENERAL INQUIRIES

A. PERFORMANCE HEALTH, INC./BIO FREEZE

The Board reviewed a letter from Katherine Duso, administrator of Performance Health, Inc. questioning whether or not chiropractors would be permitted to sell this gel out of their offices which was used for cryotherapy. The company had been questioned as to whether or not this would fall into the restriction of nutritional counseling and the sale of vitamins and nutritional supplements.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. MURPHY TO NOTE THAT THERE DOES NOT APPEAR TO BE ANY RESTRICTION IN BOARD REGULATION OR STATUTE ON THE SALE OF THIS MATERIAL FROM A CHIROPRACTOR'S OFFICE. A VOTE WAS TAKEN WITH SEVEN MEMBERS VOTING IN FAVOR. ONE OPPOSED (DR. STETZEL) AND TWO ABSTENTIONS.(DRS. WINTERS AND RADA)

B. CATHERINE DIAMANTE, D.C.

Dr. Diamante submitted a letter questioning extra spinal adjustments where there is a diagnosis of cervical brachial syndrome. The Board opined that there must be a nexus between the structure being adjusted and the spine such that the efficacy of the spinal adjustment is enhanced or facilitated by the extra spinal adjustment, or vice versa. The extra spinal condition may be exacerbating the spinal condition.

A MOTION WAS MADE BY DR. STETZEL WHICH WAS SECONDED BY MR. FAULKNER, TO RESPOND TO DR. DIAMANTE AS NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. LARRY A. GOLDFARB, D.C.

Dr. Goldfarb submitted information concerning a machine known as the B-200 for testing and rehabilitation as part of a comprehensive low back program. It was noted that the Board does not endorse any particular product or rehabilitative technique, and that a spinal adjustment must be done contemporaneously with any type of rehabilitative activity in which a patient is engaged. It was suggested that Dr. Goldfarb be referred to the scope of practice regulations, as well as the regulation on excessive fees.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MR. FAULKNER TO RESPOND TO DR. GOLDFARB AS NOTED ABOVE. A VOTE WAS PASSED AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IT WAS SUGGESTED THAT AT THE NEXT MEETING THE BOARD DISCUSS THE ISSUE OF REHABILITATIVE EXERCISE IN CONJUNCTION WITH CHIROPRACTIC TREATMENT WHICH APPEARS TO BE AN AREA OF SOME CONFUSION.

E. NEW JERSEY CHIROPRACTIC SOCIETY - VETERINARY CHIROPRACTIC

The Board reviewed a letter which was received the day after the last Board meeting concerning the use of the term "chiropractic" by the Board of Veterinary Examiners. The Board noted that the question was answered at the July 25, 2002 Board meeting in response to Dr. Margaret Dillon's letter. It was suggested that the New Jersey Chiropractic Society be provided with a copy of that response.

F. NEW JERSEY CHIROPRACTIC SOCIETY - USE OF PHYSICAL MODALITIES BY CHIROPRACTORS

The Board reviewed a letter noting that certain insurance carriers will not reimburse for the use of physical modalities on the basis of the fact that "chiropractors are not licensed to use modalities." The New Jersey Chiropractic Society was requesting a clarification of this matter. It was suggested that a response to the NJCS be drafted to note that the Scope of Practice Regulation specifically, N.J.A.C. 13:44E-1.1(e) makes specific reference to the use of physical modalities. Further, it was noted that the use of physical modalities was authorized by Statute, specifically N.J.S.A. 45:9-14.5(a) which references and limits the delegation on the use of such devices to licensed health care providers (i.e., other chiropractors, physical therapists or nurses). Furthermore, the types of modalities are specifically outlined in the statute. Board regulations at 13:44E-2.8(c)5 deal with the issue of prohibiting delegation of certain physical modalities to unlicensed assistants, which the Board had historically interpreted to include such devices as electric muscle stimulation, micro current devices and interferential devices. The response should note that the Board is currently in the process of developing regulations which more specifically deal with these devices and their prescription for home use. The Board opined that it was clear from the statute that the State Legislature intended licensed chiropractors to be permitted to use physical modalities in conjunction with their chiropractic practice. This legislative intention is fully supported by extensive references to physical modalities in Board regulations.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. RADA TO RESPOND TO THE NEW JERSEY CHIROPRACTIC SOCIETY AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

G. THOMAS S. POSIO, D.C., PhD

Dr. Posio submitted information concerning a copyright in chiropractic treatment entitled MAT-FDR. Background information was attached.

A MOTION WAS MADE BY MR. FAULKNER WHICH WAS SECONDED BY DR. RADA TO RESPOND TO DR. POSIO THAT THE BOARD DOES NOT ENDORSE ANY SPECIFIC CHIROPRACTIC TECHNIQUE. THE BOARD FURTHER NOTES THAT THERE ARE SPECIFIC GUIDELINES FOR CLINICAL TRIALS OF DEVICES AND TECHNIQUES. IT WAS SUGGESTED THAT ANY ACTIVITY ENGAGED IN BY A LICENSEE SHOULD BE CONSISTENT WITH THE SCOPE OF PRACTICE AS SET FORTH IN BOARD STATUTE AND REGULATIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

H. JEFF ROSENZWEIG, D.C.

The Board reviewed a letter from Dr. Rosenzweig concerning a disciplinary action taken in 1991 related to an advertisement. The letter contained an attachment of a letter from another individual cited in the referenced Consent Order noting that neither he nor Dr. Rosenzweig had any knowledge of the advertisement. Although the letter didn't make a formal request, telephonic contact with Dr. Rosenzweig asked that the Board reconsider this disciplinary action. The Board was advised by the Deputy Attorney General that it does not have the statutory authority to expunge disciplinary records. The Legislature did not empower professional boards to take such an action. Expungement only occurs in connection with criminal matters according to New Jersey statutes and unfortunately the Board is not in a

position to comply with Dr. Rosenzweig's request. Should any individual request a copy of the action, it is explainable by a licensee and should not affect credentialing or reimbursement.

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

I. STATE FARM INSURANCE COMPANY

The Board reviewed a question from the Special Investigations Unit of State Farm Insurance questioning whether the use of a massage table known as a spinolator would meet the definition and standard for mechanical traction as defined under CPT Code 97012.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. SENATORE TO RESPOND TO STATE FARM THAT THIS DEVICE DOES FALL UNDER THE CATEGORY OF MECHANICAL TRACTION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VII. ENDORSEMENT APPLICATIONS

A. DEBBIE SKJAVELAND, B.A., D.C.

The Board had previously considered an application for licensure by Endorsement by Dr. Skjaveland who is a licensee of the Province of Saskatchewan in Canada and has taken Canadian National Boards. The Board reviewed information concerning the Canadian National Boards. Telephonic contact with the examinations Director of the Canadian Board notes that any individual seeking licensure in Canada would be required to take the Canadian Boards despite having successfully passed National Board's Parts I-IV. The Board was advised by the Attorney General that it does not have the authority to endorse a candidate for licensure without examination who is not licensed in another State of the United States.

A MOTION WAS MADE BY DR. WINTERS WHICH WAS SECONDED BY DR. LOURO TO DENY THE APPLICATION FOR LICENSURE BY ENDORSEMENT AND INFORM THE APPLICANT THAT SHE MUST COMPLETE THE NATIONAL BOARDS PART I THROUGH IV. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. DAVID LEE DRIER, D.C.

The Board reviewed an application for licensure by Endorsement by David Lee Drier, D.C. who holds licenses in New York and Pennsylvania. A CIN-BAD search reveals no derogatory information.

A MOTION WAS MADE BY DR. WINTERS WHICH WAS SECONDED BY DR. STETZEL TO APPROVE DR. DRIER'S APPLICATION 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.

VIII. DISCIPLINARY MATTERS

MICHAEL LIO, D.C.

RESPONSE TO PROVISIONAL ORDER OF DISCIPLINE

The Board had available a response submitted by Daniel Guadalupe, Esq. on behalf of Dr. Lio to a Provisional Order of Discipline issued on June 28, 2002 based upon Dr. Lio's conviction of a crime of third degree arson in New Jersey Superior Court Passaic County. Due to the lateness of the hour and the unavailability of a counseling deputy in this matter, this matter was tabled until the Board has appropriate counsel at the October 24, 2002 meeting.

IX. MISCELLANEOUS MATTERS

A. DEPUTY ASSIGNMENT - VICTORIA MANNING, DAG

Victoria Manning who has been assigned to assist in counseling the Board, introduced herself to the Board.

B. ELECTRODIAGNOSTIC COURSES

The Board reviewed an electrodiagnostic course offered through the post-graduate training department in New York Chiropractic College which was evaluated by Dr. Atkisson and recommends approval.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. STETZEL TO APPROVE THE COURSE AS RECOMMENDED BY DR. ATKISSON. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

ADJOURNMENT

A MOTION WAS MADE BY DR. STETZEL WHICH WAS SECONDED BY DR. SENATORE TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS AND INVESTIGATIVE REPORTS. 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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