

**STATE OF NEW JERSEY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF CHIROPRACTIC EXAMINERS**

**PUBLIC SESSION MINUTES  
OCTOBER 20, 2005**

A meeting of the New Jersey Board of Chiropractic Examiners was held on October 20, 2005 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, Kostinas, Louro, Murphy, O'Connor, Rada, Senatore Stabile, Mr. Faulkner and Mr. Traier

**ALSO PRESENT:** DAG John Hugelmeyer, Executive Director Kevin Earle, recording secretary Maria Lado and Venus Hall, Government Representative

**I. APPROVAL OF THE PUBLIC SESSION MINUTES OF SEPTEMBER 15, 2005**

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. SENATORE TO ACCEPT THE PUBLIC SESSION MINUTES OF SEPTEMBER 15, 2005 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

**II. OLD BUSINESS**

**A. NEW LICENSEE ORIENTATION PROGRAM**

Executive Director Earle discussed various issues related to the completion of the new licensee orientation program. Mr. Earle reminded the Board that the vendor that has been working on this project is under contract with the Division of Consumer Affairs. The project is about 85% complete and will entail the Executive Director to write certain instructions for the pages. The program will have several levels of security. A candidate identification number will be assigned by the Board office and electronically transmitted to the vendor. The vendor will have to maintain the website on an annual basis. The questions for the jurisprudence examination can be edited by the Board administrator.

The Board asked if there was any feasibility of using an examination vendor to provide this service. Executive Director Earle reported that in any computerized examination the charges for the examination are based upon the "seat time" that is used by the examination candidates. This would mean that the jurisprudence program, which runs three hours in length, would be absorbingly expensive for the candidates. Mr Earle reminded the Board that the purpose of this initiative was to have candidates complete the examination and orientation at their convenience.

Upon completion of the presentation the Board authorized the Executive Director to continue to complete the project in the next few months as it had been initially designed.

**B. DISCIPLINARY MATTERS**

**1. THOMAS HERCHAKOWSKI, D.C.**

The Board reviewed a quarterly status report submitted by the Professional Assistance Program of New Jersey concerning this licensee who was the subject of a Consent Order on April 21, 2005.

THE BOARD ACCEPTED THIS AS INFORMATIONAL.

## 2. NICHOLAS SOTTIRIOU, D.C.

Dr. Sottiriou was the subject of a Final Decision and Order entered on August 11, 1999. The Board reviewed the original Order entered on this matter. The Board reviewed correspondence submitted by E. Vicky Arians, Esq. on behalf of Dr. Sottiriou proposing that an Interim Order be entered permitting Dr. Sottiriou to be permitted to have some employed role in a chiropractic office and perform whatever functions would be permissible for unlicensed assistants. Ms. Arians states that Dr. Sottiriou's exposure to current chiropractic practice will assist him in successfully completing the SPEC Examination. She also asked if Dr. Sottiriou could have the opportunity to appear to discuss possible conditions of reinstatement.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. STABILE TO OFFER DR. SOTTIRIOU AN OPPORTUNITY FOR AN APPEARANCE BEFORE THE FULL BOARD TO DISCUSS CONDITIONS OF REINSTATEMENT. A VOTE WAS TAKEN BY A VOTE OF SEVEN MEMBERS IN FAVOR AND TWO OPPOSED (DRS. O'CONNOR AND RADA).

## III. MISCELLANEOUS MATTERS

### A. CCE ANNOUNCEMENT

The Board reviewed proposed revisions to the CCE Standards.

THIS WAS ACCEPTED AS INFORMATIONAL.

### B. FEDERATION OF CHIROPRACTIC LICENSING BOARDS DISTRICT MEETING

Dr. O'Connor reported on the District meeting which was held on September 30 to October 1, 2005 in Jersey City. Dr. O'Connor stated that he was extraordinarily pleased with the attendance and noted that all attendees seem to have greatly benefitted from the exchange of ideas that occurred at the meeting. Dr. O'Connor also expressed thanks to Director of Consumer Affairs Kimberly Ricketts and Deputy Director Anthony Miragliotta for welcoming all of the delegates to the meeting and spending a considerable amount of time participating in and observing the proceedings. He also thanked the Association of New Jersey Chiropractors and the Garden State Chiropractic Society for their support of the District meeting noting that representatives of both associations welcomed all the delegates.

### C. VAX- D

Drs. Senatore and Atkisson prepared a draft letter to be addressed to Donald Bryant the Commissioner of the Department of Banking and Insurance noting that the fee for spinal decompression services such as VAX-D or DRX have been inappropriately categorized as traction devices with a reimbursement for services equal to that of spinal traction.

The Board asked that the Department consider the devices differently. The devices are designed to create a negative intradiscal pressure in a method that involves severe interactive procedures not to be confused with axial distraction or conventional spinal traction which can only be performed as static or intermittent. The protocol of spinal decompression uses a logarithmic curve, unlike conventional spinal traction in which the tension has been applied to the patient is released in the reverse of this mathematical function in such a way as to prevent reflex muscle reaction. This can cause severe side effects such as those seen with conventional traction, thereby preventing the maximum therapeutic results.

The Board opines that these devices are very effective when the patient is selected appropriately and also help

prevent the patient from unnecessary spinal surgeries. As these devices are quite expensive and the proposed PIP fee schedule would hardly compensate the provided for his or her time let alone provide the provider to profit in a reasonable manner. The Board asks that the Department consider a more reasonable reimbursement for the use of these devices as their place in patient care, when medically necessary, has been properly established.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. CALIO TO APPROVE THE PROPOSED RESPONSE AS OFFERED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **D. INFRARED TREATMENTS**

Dr. Calio reported that she had done some research on infrared treatments and could not find sufficient information regarding their compensation. She will do additional research in the next month.

### **IV. GENERAL INQUIRIES**

#### **1. JOHN J. MAINIERO, D.C.**

Dr. Mainiero submitted information questioning whether or not the performance of the Bilateral Nasal Specific technique falls within the Scope of Practice in New Jersey.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. MURPHY TO NOTE THAT BOTH THE NASAL SPECIFIC AND NASAL LAVAGE TECHNIQUES DO FALL WITHIN THE SCOPE OF PRACTICE OF A CHIROPRACTOR WHICH PERMITS THE ADJUSTMENT OF THE SPINE AND RELATED STRUCTURES. BOTH PROCEDURES MUST BE DONE WITH THE PATIENT BEING PROVIDED WITH FULL INFORMED CONSENT. NO CHIROPRACTOR SHOULD PERFORM THE PROCEDURE UNLESS THEY HAVE TAKEN POST-GRADUATE TRAINING IN THE PROCEDURE.

THE CHIROPRACTOR SHOULD USE THE FULL GLOVE OR BALLOON TECHNIQUE.

WITH RESPECT TO THE NASAL LAVAGE TECHNIQUE, ONLY OVER THE COUNTER PREPARATIONS OR HOMEOPATHY PREPARATIONS MAY BE USED. NO DRUGS OR MEDICINES MAY BE EMPLOYED IN CONNECTION WITH THE PROCEDURE.

THE MOTION PASSED WITH EIGHT MEMBERS VOTING IN FAVOR AND TWO AGAINST (DRS. KOSTINAS AND RADA).

#### **B. ASSOCIATION OF NEW JERSEY CHIROPRACTORS**

The Board reviewed a letter from Sigmund Miller, D.C., Executive Director of the Association of New Jersey Chiropractors asking that the Board review the notation on the website which indicates "pending/final action" as misleading as it implies that members of the public who look up a licensee may think that there is a pending adverse entry against a licensee even if the matter had been concluded months or years before.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. CALIO TO RESPOND TO DR. MILLER TO INDICATE THAT THE BOARD AGREES THAT SUCH A LISTING IS MISLEADING TO THE PUBLIC AND TO COMMUNICATE TO THE OFFICE OF THE DIRECTOR OF CONSUMER AFFAIRS ITS CONCERNS REGARDING THIS MATTER FORMALLY REQUESTING THAT THE DIVISION CHANGE THIS NOTATION TO THE NOTATION "PUBLIC RECORD" WITH A YES OR NO NOTATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **V. APPLICATIONS**

#### **A. BENJAMIN DUNEVITZ, D.C.**

B. MICHAEL S. HYJECK, D.C.

C. LISA BETH MAISEL, D.C.

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY DR. O'CONNOR TO ADMIT THE ABOVE NOTED CANDIDATES 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.

## **VI. REINSTATEMENT APPLICATION**

KEITH M. LEWANDOSKY, D.C.

The Board reviewed an application for reinstatement from the above noted chiropractor who let his license expire in 1991. Dr. Lewandosky has not engaged in any chiropractic practice in any other jurisdiction during that time. Concern was expressed concerning the ability to assess Dr. Lewandosky's current competency.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. MURPHY TO REQUIRE DR. LEWANDOSKY TO COMPLETE THE SPEC EXAMINATION OFFERED BY THE NATIONAL BOARD OF CHIROPRACTIC EXAMINERS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **VII. APPEARANCES**

MICHAEL GARDINER, D.C. 11:00 AM

Dr. Gardiner was the subject of a Final Order on August 13, 2004 which suspended his license to practice chiropractic for a period of five (5) years retroactive to July 24, 2003, with the first two years to be served as an active suspension and the final three years to be stayed and serve as a period of probation. The Order also authorized the payment of the civil penalty in the amount of \$7,500, which was deferred until he is reinstated and will be paid out over a period of three years making monthly payments. Dr. Gardiner also completed the ProBE ethics course. He appeared pursuant to the terms of the Order which required such an appearance before reinstatement. Dr. Gardiner discussed what he has learned from the events associated with his suspension and conviction. He reported that he had been employed with a private company unrelated to chiropractic and had worked as a limousine driver. He is currently considering working as a practice associate and is not planning on ever owning a practice in the future. He is considering ultimately moving to the State of Florida.

UPON THE COMPLETION OF DR. GARDINER'S TESTIMONY, A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY MR. FAULKNER TO GO INTO EXECUTIVE SESSION TO DELIBERATE.

UPON RETURNING TO EXECUTIVE SESSION A MOTION WAS MADE BY MR. FAULKNER WHICH WAS SECONDED BY DR. ATKISSON TO APPROVE DR. GARDINER'S PETITION FOR REINSTATEMENT TO THE ACTIVE PRACTICE OF CHIROPRACTIC. DR. GARDINER IS TO REPORT TO THE BOARD WHEN HE HAS OBTAINED EMPLOYMENT IN THE CHIROPRACTIC PRACTICE. HIS EMPLOYER SHOULD BE AWARE OF HIS BACKGROUND AND THE CONDITIONS OF HIS REINSTATEMENT AND SHOULD REPORT TO THE BOARD ON A QUARTERLY BASIS. SHOULD DR. GARDINER DECIDE TO ENTER SOLO PRACTICE, ARRANGEMENTS SHOULD BE MADE TO OBTAIN A MENTORSHIP ARRANGEMENT WITH A PRACTICING CHIROPRACTOR TO BE APPROVED BY THE BOARD. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IMO SUSPENSION OR REVOCATION OF ALBERT CATTAFI, D.C. TO PRACTICE CHIROPRACTIC IN THE STATE OF NEW JERSEY 1:00PM Jackie George, Esq. on behalf of Respondent Tara Adams Ragone, DAG Attorney for the State

At its September 22, 2005 meeting the Board of Chiropractic Examiners voted unanimously to grant the Attorney General's Motion for Summary Judgment in the above captioned matter. Prior to the meeting the Board received a certification of Deputy Attorney General Ragone outlining the Attorney General's costs associated with this matter.

Procedural rules regarding the hearing were directed to both parties on September 23, 2005 and the Board was also provided with a transcript of the September 22 hearing.

**\*\*Dr. Senatore was recused in the consideration of this matter and left the room \*\*Deputy Attorney General Tobi Palan counseled the Board on this matter.**

This matter was opened and both Deputy Attorney General Ragone and Ms. George placed their appearances on the record. Ms. George informed the Board that the parties were involved in settlement negotiations during the prior evening. Following those negotiations Ms. George was informed by Dr. Cattafi that her services were terminated. Ms. George appeared at the scheduled hour of 1PM for the hearing to report that her services had been terminated and had provided notice to all scheduled witnesses that she would not be representing Dr. Cattafi. Dr. Cattafi was not present for the hearing. At approximately 1:50PM, Ms. George's services were again retained by Dr. Cattafi to continue settlement discussions.

**MS. GEORGE MADE A MOTION REQUESTING THE BOARD TO ADJOURN THE PRESENT HEARING SO THAT DR. CATTAFI COULD HAVE ADDITIONAL TIME TO OBTAIN FURTHER REPRESENTATION.**

**A SECOND MOTION WAS MADE BY MS. GEORGE TO ALLOW THE BOARD ADDITIONAL TIME TO PREPARE AND PURSUE SETTLEMENT NEGOTIATIONS. THE BOARD WENT INTO EXECUTIVE SESSION TO DELIBERATE UPON A MOTION BY MR. TRAIER WHICH WAS SECONDED BY DR. KOSTINAS ALL MEMBERS PRESENT VOTING IN FAVOR.**

**THE BOARD RETURNED TO PUBLIC SESSION, A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. KOSTINAS TO DENY THE REQUEST FOR ADJOURNMENT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.**

**A MOTION WAS THEN MADE BY MR. TRAIER WHICH WAS THEN SECONDED BY DR. CALIO TO DENY THE REQUEST FOR ADDITIONAL TIME TO PURSUE SETTLEMENT NEGOTIATIONS NOTING THAT DR. CATTAFI WAS UNABLE TO PROCEED DUE TO AN UNSTATED MEDICAL CONDITION. A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. CALIO TO DENY THE REQUEST.**

The Board then proceeded with mitigation. Ms. George indicated that she had already provided papers to Deputy Attorney General Ragone and was unfortunately not able to provide witness and therefore could not proceed under the circumstances. Deputy Attorney General Ragone indicated that the following costs were submitted with her certification: Attorneys fees \$14, 647.50, transcript fees of \$409.50 and investigative costs of \$7,525.29.

Ms. Ragone argued that the Board's granting of the Summary Judgment in this matter was based upon Dr. Cattafi's own sworn statements in which he admitted to having written and order for the administration of Valium to a patient that was undergoing a MRI procedure and having forged the name of another physician in that patient record therefore Dr. Cattafi should be held liable for having violated the provisions of the Board's statutes at N.J.S.A 45:9-14.5 which prohibits a chiropractor from prescribing, administering or dispensing drugs or medicines for any purpose whatsoever.

**A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. O'CONNOR TO GO INTO EXECUTIVE SESSION FOR THE PURPOSES OF DELIBERATION.**

**UPON RETURNING TO PUBLIC SESSION, A MOTION WAS MADE BY MR. TRAIER WHICH WAS**

SECONDED BY DR. CALIO TO IMPOSE A ONE YEAR SUSPENSION ALL OF WHICH SHALL BE STAYED TO SERVE AS A PERIOD OF PROBATION. TO IMPOSE COSTS OF \$22,582.29; TO IMPOSE A CIVIL PENALTY IN THE AMOUNT OF \$10,000.00 AND TO COMPLETE A BOARD APPROVED ETHICS COURSE. NEW COUNSEL WILL HAVE TEN (10) CALENDAR DAYS FROM OCTOBER 20, 2005 TO SUBMIT EVIDENCE TO THE BOARD THAT DR. CATAFFI WAS UNABLE TO CONTINUE SETTLEMENT NEGOTIATIONS DUE TO A MEDICAL ISSUE. NEW COUNSEL MAY PETITION THE BOARD TO REOPEN THE ISSUE OF PENALTY UPON THE SUBMISSION OF APPROPRIATE MEDICAL EVIDENCE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Deputy Attorney General Palan asked Ms George to repeat the Board's findings and requested that transmission of the Board's determination be made to Dr. Cattafi in writing and that written confirmation be provided to the Board office that the Board's disposition has been transmitted to him. Ms. George agreed to do so. The hearing was ended.

THOMAS LEE, D.C. 2:00 PM

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY DR. ATKISSON THAT THE PROVISIONAL ORDER OF RESCISSION SHOULD BECOME FINAL. THE BOARD WILL STAY ITS ORDER FOR A PERIOD OF 90 DAYS FROM THE ENTRY OF ITS FINAL ORDER, WHICH ORDER WILL SET FORTH AT LENGTH THE BOARD'S REASONS FOR ITS DECISION. IN THE EVENT RESPONDENT FILES AN APPEAL FROM THE BOARD 'S ORDER, THE BOARD WILL ENTERTAIN AN APPLICATION FOR FURTHER STAY OF ITS ORDER AT THAT TIME.

#### **ADJOURNMENT**

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. ATKISSON TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING BOARD INVESTIGATIONS, CONSUMER COMPLAINTS AND DISCIPLINARY MATTERS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

Respectfully Submitted,

Kevin B. Earle, MPH  
Executive Director