

State Board of Chiropractic Examiners

Public Session Minutes Thursday, October 23, 2003

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

EXCUSED:

Drs. Stabile and Louro Public member Mr. Faulkner

ALSO PRESENT:

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

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF SEPTEMBER 25, 2003

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. SENATORE TO ACCEPT THE PUBLIC SESSION MINUTES OF SEPTEMBER 25, 2003 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. HONORING PAST BOARD MEMBERS

Former Board members, Drs. Robert Apuzzio, Lu Ann Guerriero, Thomas Sidoti and William Winters were presented with plaques commemorating their dedicated service as members of the Board of Chiropractic Examiners. Presenting the plaques to the former members was Division of Consumer Affairs, Deputy Director Anthony Miragliotta and President of the Board of Chiropractic Examiners, Mary-Ellen Rada.

Mr. Miragliotta thanked the former Board Members for their hard work, dedication and compassion not only to the profession but also to the consumers of New Jersey. Mr. Miragliotta expressed to all present the enormous contribution Board members bring to the Division through their expertise and knowledge in the field of chiropractic. Mr. Miragliotta then presented each member with a plaque in recognition of their service.

III. OLD BUSINESS

REGULATORY INITIATIVES

A. PROPOSED REGULATIONS ON INDEPENDENT CHIROPRACTIC EXAMINATIONS

The comment period for this proposed regulation expired on October 17, 2003. The Board can expect to be

able to review those comments at its November Board meeting at which time it will be required to prepare appropriate responses to comments and move forward on adoption.

THIS MATTER WAS ACCEPTED AS INFORMATIONAL.

B. USE OF ELECTRIC MUSCLE STIMULATORS AND TENS UNITS AND PRESCRIBING FOR HOME USE.

This proposed regulation will be published in the New Jersey Register on October 20, 2003 and will enter a 60 day comment period. Copies of the proposal will be distributed at the Board meeting.

THIS MATTER WAS ACCEPTED AS INFORMATIONAL.

C. SCOPE OF PRACTICE - NUTRITIONAL ADVICE

The Board reviewed recommended language approved by the Rules and Regulations Committee to a revision in the Board's Scope of Practice with respect to the offering of nutritional advice.

Regulatory Analyst Devon Graf was available for review of this language.

President Rada accepted public comment on this issue prior to Board review.

Dr. William Cirino thanked the Board for considering field doctors' ideas regarding clarification of this regulation. He did express, however, concern over whether there would be a problem if a chiropractor were to write down a specific product and whether it would be considered a prescription.

DAG Hugelmeyer advised Dr. Cirino that simply because a product is written does not make it a "doctor's order." He advised that as long as the doctor presents it as a recommendation and does not give the impression that the patient's condition will not improve or the patient will no longer be treated if they do not follow through with the advice. Writing the name of the product down for the patient may be viewed as more of a recommendation for the patient than a "doctor's order."

Dr. Senatore clarified the point by saying that the Board would be concerned with seeing prescription pads or stationary that resembles prescription pads or if the pad had an "Rx" emblem.

Concern was also raised as to whether giving nutritional advice could be billed separately.

Dr. Murphy responded by informing Dr. Cirino that the service should be included in the consultation or examination fee and should not be billed separately. Chiropractors should not hold themselves out to be nutritional consultants.

Dr. Rada reiterated that nutritional advice should be included within the chiropractic treatment and not treated as a separate service or billed as one.

Dr. Christopher Kent spoke in support of the regulation but expressed that chiropractors should be able to bill lawfully for this service.

Dr. Robert Apuzzio - questioned whether the new wording would be contradictory since the current regulation reads, "A licensee shall not offer nutritional advice as treatment for a specific disease, defect, or deformity." Dr. Apuzzio raised the issue of a patient coming in to a chiropractor's office with a specific condition and the doctor recommending a supplement specific to that condition. In this instance it would appear that the doctor would be in violation of the current regulation. DAG Hugelmeyer questioned whether in that instance the licensee would be offering the treatment for the specific condition or for the patients' overall well being.

Dr. Cirino added to the discussion, indicating that if a chiropractor were to treat the patient for a condition,

the supplement offered would not necessarily be for the specific treatment of that condition but for the overall health of the patient.

This matter was then closed to public comment.

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY MR. TRAIER TO APPROVE THE LANGUAGE OF THE PROPOSED REVISION TO THE REGULATION AS SUBMITTED.

ON THE MOTION:

Dr. Calio agreed with the statement made by Dr. Apuzzio in that the regulation appears to contradict itself.

Dr. Atkisson also stated that he believed the wording should be made more clear and that the field chiropractor would not understand the intent of the Board. Dr. Atkisson suggested that the regulation be sent back to Committee to further refine the language. Dr. Atkisson also advised the Board that Dr. Louro who was not present at the meeting had called him expressing similar concerns. Dr. Atkisson informed the Board that he currently has some language that he believes may work and would provide it to the Committee should the Board decide to return the regulation there.

Dr. Murphy expressed concerns that by sending the regulation back to Committee it would take a great deal of time to return to the Board for final review.

Dr. Senatore suggested using the language "a licensee shall not offer nutritional advice solely . . .", however DAG Hugelmeyer said that would be contrary to the statute and the board cannot do that.

Question was also raised by Dr. Calio as to why the Board was even using a regulation which reflects the feelings of the Medical Board and indicated that New Jersey is the only State in the country with a regulation like this.

Dr. Calio stated that she is not happy with the new regulation and the restrictions it places on the doctors.

Dr. Murphy noted that if the new wording was sent back to committee, it would probably take another 2 - 3 years before the regulation came back to the Board.

DAG Hugelmeyer reminded the Board that the Rules and Regulations Committee had taken the time to review all aspects expressed by the Board and the public and had worked very hard to arrive at the wording change.

Anthony Miragliotta reminded the Board that the only licensees who can practice medicine are those of the Medical Board, and that the wording should go back to committee to refine the wording already in existence with the new wording.

A VOTE WAS TAKEN:

IN FAVOR OF THE MOTION: DRS. MURPHY, O'CONNOR AND RADA

IN OPPOSITION: DRS. SENATORE, CALIO, ATKISSON MR. TRAIER ABSTAINED FROM THE VOTE.

THE MOTION FAILED.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. SENATORE TO SEND THE REVISED LANGUAGE BACK TO COMMITTEE. A VOTE WAS TAKEN WITH THE FOLLOWING MEMBERS IN FAVOR: DRS. ATKISSON, RADA, O'CONNOR, SENATORE, CALIO

AND MR. TRAIER. DR. MURPHY WAS IN OPPOSITION TO THE MOTION.

IV. NEW BUSINESS

GENERAL INQUIRIES

A. LORETTA B. TODZIA, ESQ. - OWNERSHIP AND BILLING FOR MRI SERVICES

Ms. Todzia requested an explanation of the legal basis for the prohibition of billing a patient or a third party payer for MRI services. DAG Hugelmeyer advised the Board that a plenary licensed individual must supervise the use of an MRI service and that their license does not permit them to act as an independent contractor. This comes from the medical statutes and regulations.

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. ATKISSON DIRECTING DAG HUGELMEYER TO RESPOND TO MS. TODZIA AS INDICATED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. INQUIRY OF DR. KEVIN SHEEHAN

The Board reviewed correspondence from Dr. Sheehan who inquired as to the viability of bringing in a licensed neurologist to do consultations and testing on patients in his office.

DAG Hugelmeyer reminded the Board that in order for a neurologist to be able to conduct diagnostic testing in a chiropractic office, the neurologist must be a part of, or a shareholder of, the practice. If this is not the case, the testing should be referred out.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. O'CONNOR TO ADVISE DR. SHEEHAN THAT THE ARRANGEMENT CITED IN DR. SHEEHAN'S CORRESPONDENCE IS NOT PERMISSIBLE. THE BOARD NOTED, HOWEVER, THAT DR. SHEEHAN COULD ENTER INTO A PARTNERSHIP WITH A NEUROLOGIST. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. DRX 9000- DR. GOLDFARB

Dr. Goldfarb addressed the Board regarding DRX 9000 which he explained is a decompression table and not mechanical traction. He asked how the Board came up with the CPT code and why the Board does not recognize it as a decompression table. He added that Medicare accepts the 97530 code for kinetic therapeutic exercise. Dr. Goldfarb is concerned that a patient may complain of fraudulent billing.

DAG Hugelmeyer explained that the Board does not assign nor control CPT codes, rather they are promulgated by the AMA in consultation with other specialties.

Dr. Senatore clarified that it is the insurance company that will not accept the DRX 9000 with a kinetic code, which usually bills at \$120. The insurance companies will accept a mechanical traction code which bills out as \$30.

DAG Hugelmeyer further explained that the Board has been concerned with seeing advertisements that advertise the DRX 9000 without mentioning that the table is used in conjunction with chiropractic adjustments. The Board is concerned when Dr.'s advertise the DRX 9000 as a stand alone treatment.

D. FEDERATION OF CHIROPRACTIC LICENSING BOARD REGIONAL MEETING

Drs. O'Connor and Rada reported

Drs. O'Connor and Rada reported on the Regional meeting of the Federation of Chiropractic Licensing Boards which was held on October 3, 2003 in Annapolis, MD. The Board reviewed a copy of the minutes that were prepared by Dr. Rada. Highlights of the program included a report on the status of the PACE program for approval of continuing education providers which projects that the program should be launched in May 2004; the group reviewed a draft position statement on veterinary chiropractic which is currently under consideration by the American Association of Veterinary State Boards and the Federation of State Boards of Physical Therapy in conjunction with the Federation of Chiropractic Licensing Boards. The group also heard presentations on multi-disciplinary practices in which Executive Director, Kevin Earle, participated as a panel participant. Various committee reports were considered including the Government Affairs Legal Advisory Committee Report chaired by Dr. O'Connor and an Ethics Committee Report in which Dr. Rada has been heavily involved. The combined districts also had reviewed issues related to the proposed ethics and boundaries examination to be prepared by the National Board of Chiropractic Examiners and New Jersey representatives took a lead role in expressing concerns over this new examination.

V. DISCIPLINARY MATTERS

A. EMILIO A. GRUGNALE, D.C.

The Board reviewed a letter from Paul W. Bergrin, Esq. requesting that the Board write his client a letter giving approval to dispense from any restrictions on his practice.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. SENATORE TO REQUEST A LETTER OF CONFIRMATION FROM THE PHYSICIANS HEALTH PROGRAM WITH A FINAL REPORT AS TO THE PROGRESS OF DR.GRUGNALE. THE BOARD HAS ALSO REQUESTED THE APPEARANCE OF DR. GRUGNALE BEFORE THE FULL BOARD. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. OCTAVIO NEPA, D.C.

The Board reviewed correspondence from Ronald S. Fava on behalf of Dr. Nepa requesting the Board's consideration of a re-characterization of the basis for the Consent Order filed on March 17, 2003.

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY DR. MURPHY TO CHANGE THE WORDING OF THE DESCRIPTION TO READ: ". . . SEXUAL MISCONDUCT BY ENGAGING IN A RELATIONSHIP WITH AN ADULT FEMALE PATIENT." A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

MR. TRAIER ABSTAINED FROM THE VOTE IN THIS MATTER.

VI. ENDORSEMENTS

VINCENT F. SCELFO, D.C.

The Board reviewed an application for licensure through endorsement from Vincent F. Scelfo, D.C. Dr. Scelfo is a 1982 graduate of Life College of Chiropractic. He currently practices in Michigan. Dr. Scelfo also holds a license in New Mexico and South Carolina.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. O'CONNOR TO ACCEPT DR. SCELFO FOR LICENSE 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.

ADJOURNMENT

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. ATKISSON 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.

Respectfully Submitted,

Kevin B. Earle, Executive Director

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