

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

Public Session Minutes

Thursday, October 24, 2002

A meeting of the New Jersey Board of Chiropractic Examiners was held on October 24, 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 9:40AM by Board President Brian Atkisson, D.C.

ATTENDANCE: Drs. Atkisson, Apuzzio, Louro, Murphy, O'Connor, Rada, Senatore and Stetzel

ALSO PRESENT: DAG John Hugelmeyer, Executive Director Kevin Earle, Paralegal James Rodriguez and recording secretary Nina Lado

ABSENT: Dr. Winters and Mr. Faulkner

Mr. Traier arrived at 10:30 AM

I. PUBLIC SESSION MINUTES OF SEPTEMBER 26, 2002

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. MURPHY TO APPROVE THE MINUTES AS CORRECTED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. OLD BUSINESS

A. PROPOSED REGULATIONS

1. INDEPENDENT CHIROPRACTIC EXAMINATIONS

The Board had the opportunity to review a draft regulation of the ICE regulation which incorporates recommendations made at the September 26, 2002 Board meeting. Regulatory Analyst Jake Gertsman was available to assist the Board in this process.

The Board addressed its attention to the definition section which defines a "Independent Chiropractic Examination." It was suggested that the definition read as follows:

An independent chiropractic examination means the taking of a history and the performance of a clinical examination of a patient conducted in this State by a chiropractor, other than the attending chiropractor, at the request of a third party, for the purpose of evaluating the patients current chiropractic condition and the preparation of a written report.

The Board then turned its attention to subsection (c)2 which describes the level of documentation that needs to be

maintained by an ICE chiropractor. It was suggested that this language require that the licensee document in the patient record and report the nature and extent of records reviewed including other information presented such as the results of diagnostic imaging and/or diagnostic testing.

Subsection (c)3 should read as follows:

Perform and document in the patient record and in any resulting report a history, clinical examination and a chiropractic analysis or diagnosis, pursuant to N.J.A.C. 13:44E-1.1(b), which includes the specific tests, examinations or observations performed, and the results and evaluations of these specific tests, examinations, or observations together with a review of patient's response to prior care;

Subsection (c)4 should read as follows:

Document the clinical rationale for an opinion expressed with respect to the patients present condition in the patient record and report.

Subsection (c)5 shall read as follows:

Not make any recommendations directly to the patient for alterations in care by the attending chiropractor, except to the advice required by N.J.A.C. 13:44E-2.2(f)3. If such advice of an abnormality of condition is given to the patient and referral to another healthcare professional is recommended, such findings shall be documented in the patient record and report;

A new subsection (c)6 shall be added which will prohibit the licensee from soliciting the patient for chiropractic care and subsection (c)7 will require that the individual performing the examination shall author and sign the independent chiropractic examination report.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MURPHY TO APPROVE THIS PROPOSED REGULATION FOR PUBLICATION AND COMMENT IN THE NEW JERSEY REGISTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

2. PROFESSIONAL PRACTICE STRUCTURES

The Board reviewed the approved draft of the Professional Practice Structures Regulation which are currently undergoing analysis with the Division of Law. The Deputy Attorney General outlined a number of questions which the Division of Law would like to be addressed by the Board considering practice in conjunction with plenary licensed physicians.

DAG Hugelmeyer asked if the Board wishes to add a definition of "affiliate" to be defined to be a closely allied healthcare professional who is an employee of the practice and cull out a separate definition of "associate" to include on those partners, shareholders or members who hold a financial interest in the practice. The Board was agreeable to this modification.

It was pointed out that among the definition of closely allied healthcare professionals the Board had noted "massage, bodywork or somatic therapists." The Professional Service Corporation Act does not identify this as a group of licensees who would be eligible to form a corporation under that Statute. Therefore it was recommended that this category be deleted from this subsection. The Board was agreeable to this change.

In subsection N.J.A.C. 13:44E-2.14(b) questions whether the aggregate interest of all partners, shareholders or members who have a more limited scope of practice than the plenary licensed physician comprise no more than 49% of the ownership of the entity. The Board of Medical Examiners draft regulation on Professional Practice Structures would require that plenary licensed physicians in a multi-disciplinary practice hold collectively at least 51% of the ownership. After some discussion on this matter the Board determined that percentages of ownership were business decisions and should not be addressed as part of this regulation. Should the Medical Board pursue with adoption of its regulation then that regulation would control the activities of its licensees in conjunction with other limited licenses.

In subsection N.J.A.C. 13:44E-2.14(c)2 and 4, specific medical or chiropractic settings are described as permissible for the employment of a chiropractor by a general business corporation. Question was raised as to whether a chiropractor could be employed in such a general business corporation within the settings if the medical director is plenary licensed but not a licensed chiropractor who would serve as a chiropractic director. Under subsection (d) permissible business structures which are not general business corporations permit the practice to be supervised or evaluated by at least one licensed chiropractor or a physician holding a plenary license in New Jersey. It was determined that these provisions should be consistent.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. O'CONNOR TO INCORPORATE THE ABOVE NOTED CHANGES AND APPROVE THE PROPOSAL FOR PUBLICATION AND COMMENT IN THE NEW JERSEY REGISTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. FCLB DISTRICT MEETING

The Board reviewed a report prepared by Dr. Lawrence O'Connor who attended the recent regional meeting of the Federation of Chiropractic Licensing Boards in Asheville, North Carolina in October 3-6, 2002. Specifically, Dr. O'Connor was complementary of a presentation made by the Massachusetts Board on record keeping and bringing an office into compliance with new requirements. A copy of the Powerpoint presentation was provided to the Board members for their review.

Dr. O'Connor also indicated that he is to be nominated as an Assistant District Director for FCLB District III. The election for this position will occur at the FCLB annual meeting. The Board congratulated Dr. O'Connor on his nomination.

Dr. O'Connor also reported that a presentation was made by Dr. Richard Cole, Vice-President of the Federation on the FCLB's proposed PACE program for continuing education. The report was very thorough and most of the Board members present were supportive of this initiative.

C. LIFE UNIVERSITY

It was reported to the Board that the Council on Chiropractic Education Committee on Accreditation had denied Life Universities appeal of the accreditation decision made in June 2002 which revoked the University's accreditation. Executive Director Earle reported that given this determination it was recommended that a site team be immediately dispatched to the University during the month of November. The Board was provided with a copy of a letter sent to Deborah A. Pogrelis, D.C., Dean of the College of Chiropractic notifying Dean Pogrelis of the scheduling of the site visit. The site team will consist of former Board President Anthony DeMarco, D.C., former Board member Robert Apuzzio, D.C., and current Board Member Lawrence O'Connor, D.C. The Board was also provided with a notice that has been posted on the Division of Consumer Affairs website to students of Life University explained the Board's position with respect to continued approval.

III. LEGISLATIVE ISSUES

A. ASSEMBLY BILL 2264

The Board was provided with a revised copy of this legislation which had been passed by the legislature and conditionally vetoed by Governor McGreevey. The Board reviewed Governor McGreevey's veto message. The Bill has passed the Assembly and is awaiting action in the Senate and is expected to be signed by the Governor.

THE BOARD ACCEPTED THIS AS INFORMATIONAL.

B. ASSEMBLY BILL 1378 AND SENATE BILL 660

The Board had an opportunity to compare and contrast these two legislative initiatives which would relate to

qualifications of individuals providing spinal manipulation or spinal adjustments. The Division has asked that the Board compare and contrast pieces of legislation and determine which of the Bills are supported by the Board.

After some discussion, the Board determined that S-660 more accurately describes the vertebral subluxation without infringing upon the rights of either medical or osteopathic physicians. The Board noted that the Assembly Bill 1378 sets forth minimal training standards but further review finds that the hours articulated in that Bill did not appear to have a basis in any national standards of training such as that used for the accreditation of chiropractic education programs under the Council of Chiropractic Education. It was also noted that the Medical Society would be most likely opposed to the provisions of A-1378 and thus the legislation would not have sufficient likelihood of passage.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. SENATORE TO EXPRESS SUPPORT FOR SENATE BILL 660. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. DEPARTMENT OF BANKING AND INSURANCE - BULLETIN 02-17-USE OF NETWORKS

The Board reviewed a recent bulletin issued by DOBI concerning the rights of automobile insurers to contract with certain networks of providers.

THIS WAS ACCEPTED AS INFORMATIONAL.

IV. DISCIPLINARY MATTERS

A. DANIEL FONTANELLA, D.C.

The Board reviewed a copy of a request from Dr. Daniel Fontanella dated September 23, 2002 which asked to be considered for reinstatement to the active practice of chiropractic following the surrender of his license in a Consent Order entered on December 23, 1998 which related to issues of impairment. Subsequent to the surrender of his license Dr. Fontanella pled guilty in Superior Court, Passaic County, to a charge of theft by deception pursuant to a plea arrangement which resolved charges following an indictment in Passaic County. Pursuant to the plea arrangement, Dr. Fontanella was sentenced to a term of incarceration of three years which was begun on October 24, 2001.

After reviewing the matter it was suggested that Dr. Fontanella provide more specific information concerning his activities including evidence of rehabilitation, evidence that he has paid restitution, abstained from the use of controlled dangerous substances and undergo an assessment by specialists in the field of addiction as well as a psychological evaluation.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. SENATORE TO COMMUNICATE THIS INFORMATION TO DR. FONTANELLA FOR HIS FOLLOW-UP. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. MICHAEL LIO, D.C.

The Board reviewed a response submitted by counsel for Dr. Lio to a Provisional Order of Discipline issued in the above captioned matter. Dr. Lio was convicted of a crime of third degree arson on June 1, 2001 and was placed on probation for three years. The Board deliberated in Executive Session and reported the following disposition:

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. RADA TO ISSUE A FINAL ORDER OF DISCIPLINE SUSPENDING DR. LIO'S LICENSE FOR A PERIOD OF THREE YEARS OF WHICH SIX MONTHS SHALL BE AN ACTIVE SUSPENSION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

V. HEARING

RICHARD FINDER, D.C.

THIS MATTER WAS ADJOURNED AT THE REQUEST OF THE PARTIES.

VI. ENDORSEMENT

A. PHILIP JOHN CILIO, D.C.

The Board reviewed an application of the above captioned licensee who is a graduate of New York Chiropractic College and a licensee of New York and Virginia. Both licenses are current and active and there is no record of disciplinary action.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. STETZEL TO APPROVE DR. CILIO 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. GREG TODD TROTTA, D.C.

Dr. Trotta is a graduate of Life College graduating in 1993. Dr. Trotta holds licenses in both Florida and South Carolina which are both active and in good standing.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE DR. TROTTA 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. EXAMINATION APPLICANTS

JOSHUA DUFFY, D.C.

Dr. Duffy is a graduate of Life University in September 2002. A review of the application finds recent arrests for driving while impaired.

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY DR. MURPHY TO REQUIRE DR. DUFFY'S APPEARANCE BEFORE THE DECEMBER 5TH BOARD MEETING. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VIII. MISCELLANEOUS MATTERS

Dr. Atkisson noted three areas of interest which he suggests the Board explore.

1. The Board should explore whether or not the Board should establish a preceptorship program for chiropractic students in the final semesters of their education.
2. The Board should explore the issue of chiropractic technicians and perhaps pursue a legislative initiative to establish some form of education requirements to serve in this capacity
3. Dr. Atkisson has suggested that the issue of rehabilitative exercise be explored more extensively in the role of chiropractors incorporating rehabilitative exercise into their practice.

These issues should be referred to the Rules and Regulations Committee for follow-up.

IX. DISCIPLINARY ACTIONS FILED

CHARLES NICOLA, D.C.

A Settlement Letter was filed with the Board of Chiropractic Examiners on October 15, 2002 for violations of the patient record rules. Dr. Nicola was required to take a 12 hour course in record keeping. A civil penalty of \$1000 plus costs was imposed.

ADJOURNMENT

A MOTION WAS MADE BY DR. SENATORE WHICH WAS SECONDED BY MR. TRAIER TO ADJOURN THE PUBLIC SESSION OF THE BOARD MEETING TO GO INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY MATTERS AND CONSUMER COMPLAINTS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBER PRESENT VOTING IN FAVOR.

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