

# State Board of Chiropractic Examiners

February 22, 2001

## Public Session Minutes

A meeting of the New Jersey State Board of Chiropractic Examiners was held on February 22, 2001 at the State Office Building, 124 Halsey Street, 6th floor, Newark, New Jersey. The meeting was convened in accordance with the provisions 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 9:50 AM by Board President William Winters.

**PRESENT:** Drs. Apuzzio, Atkisson, Murphy, O'Connor, Rada, Stetzel, Winters and Mr. Simmons

**ALSO PRESENT:** Executive Director Kevin B. Earle, Deputy Attorney General John Hugelmeyer, Deputy Attorney General Jodi Krugman, Regulatory Analyst Jake Gertsman, Board Paralegal James Rodriguez and recording secretary Nina Lado.

**EXCUSED:** Thomas Senatore, D.C. and Morton Blum

### I. APPROVAL OF THE MINUTES OF JANUARY 25, 2001

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE THE MINUTES OF JANUARY 25, 2001 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### II. ANNOUNCEMENTS

Dr. Winters announced that word had been received that Board member Lawrence O'Connor, D.C. has been appointed to the CIN-BAD Promotion Committee of the Federation of Chiropractic Licensing Boards by David Brown, D.C., President of the Federation. Executive Director Earle has also been appointed to the Continuing Education Task Force.

Executive Director Earle reported that he had made a presentation to a business practices class at the University of Bridgeport on January 30th. The class was well attended and included a Power Point presentation on licensure requirements, the structure and format of the regulation of chiropractic in New Jersey and elsewhere as well as information concerning typical types of activities which result in disciplinary action.

### III. OLD BUSINESS

#### 1. PROPOSED REGULATIONS ON PAPER RECORD REVIEWS

The Board began review on the 5,726 comments that were received on the Board's regulations on Patient Record Reviews. In addition, a public hearing on the proposed regulation was held on February 1, 2001. Mr. Earle explained that when the Board office receives a copy of the transcript of those proceedings it will be used in the preparation of a report by the Hearing Officer, Deputy Attorney General Phil Hopkins. All of the

comments the Board received were grouped according to content and all original copies of the comments were provided to the Board on the day of the Board meeting for their individual review if necessary.

Regulatory Analyst Jake Gertsman provided a summary of comments received in opposition to the proposal (a total of 16 comments were received against the proposal). The Board first considered comments made by Marilyn Dahl, Senior Assistant Commissioner, New Jersey Department of Health and Senior Services. Ms. Dahl comments that the rule doesn't explain the distinction which permits the determination that chiropractic care should continue would not require the examination of a patient but does not provide a rationale for proposing that record reviews are insufficient in the case where a determination is made to discontinue care. The Board discussed this issue extensively and emphasized that if a determination is made to discontinue care may result in potential harm to the patient. The Board also expressed a concern that the reviewer whose services are compensated by the insurer may have an economic incentive to discontinue care.

The Board also emphasized that the profession of chiropractic is one that is essentially palpitory in nature, to conduct a physical assessment of the patients condition at the time of the termination of treatment. In a case where the termination of benefits is a consideration, there is a professional dispute which arises in which the reviewer disagrees with an assessment made by the treating chiropractor that the patient requires continued care. Should the typical appeals mechanism come into place with any insurance carrier the findings made where a physical examination of the patient is performed by the reviewing chiropractor, would be compared with the findings made by the treating chiropractor in order to make an adequate assessment of the patient's need for continued treatment and continued benefits.

Ms. Dahl's second comment indicates that the petitioner in this case, the New Jersey Chiropractic Forum, expressed concern relating to personal injury protection benefits and workers compensation policies. The commentor made the point that the rule would have an impact on a broader scope of carriers. Ms. Dahl believes that the regulation would have an impact on general comprehensive health policies in the State that contract with HMOs on a risk basis or provide subsidized coverage through commercial policies. The Department of Health and Human Services believes that the rule impacts the independent health care appeals program which utilizes independent utilization review organizations to review utilization management appeals made by individuals covered under health insurance and HMO contracts. The Board noted that it does anticipate that the regulation would have an impact on other forms of health insurance carriers including indemnity carriers and managed care companies. The Board responds that it is its intention only to regulate the activities of its own licensees and emphasizes that its requirement that a licensee maintain professional standards in practice out-weighs any administrative burden on insurance carriers that may be imposed by the rule. The Board wished to emphasize that its jurisdiction clearly is tied to its requirement for licensees to maintain professional standards, consistent with its Scope of Practice as outlined in N.J.A.C. 13:44E-1.1. The Board notes that this Scope of Practice regulation indicates that a licensee shall "identify a clinical condition warranting chiropractic treatment." The Board opines that due to the nature of chiropractic practice a physical examination would be required. Of note is subsection 1.1(b) that indicates that a chiropractic diagnosis or analysis shall be based upon a chiropractic examination appropriate to the presenting patient. The third comment made by Ms. Dahl contends that compliance with the rule will be costly and time consuming for the non attending chiropractor to perform the physical examination. The Board responded that a hands on examination may result in less appeals and provide a better assessment of the patient which would carry more weight in the appeals process. Further, Ms. Dahl commented that carriers would need to have more chiropractors available to meet the timeliness requirements of utilization management decision and appeals. The Board noted that there does not appear to be a shortage of chiropractors available to perform such a service.

At this point in time the Board terminated further consideration of comments. Substantial time will be devoted to the consideration of comments during the next Board meeting on March 22, 2001.

\*\* Dr. Kim Stetzel left the meeting at 12:30 PM. \*\*

## **2. BOARD REGULATIONS - N.J.A.C. 13:44E-2.8 THE DELEGATION AND THE PERFORMANCE OF MASSAGE**

The Board reviewed the existing regulations on the delegation and performance of massage as well as a copy of the Statute which established a massage, bodywork and somatic therapy committee under the Board of Nursing and provides a vehicle for certification of massage therapists under that committee. After considering the matter it was determined to refer this question to the Rules and Regulations Committee to make a recommendation to the full Board.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. RADA TO REFER THIS MATTER TO THE RULES AND REGULATIONS COMMITTEE FOR ITS REVIEW. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **3. MD/DC/PT PRACTICES**

Although Dr. Senatore was not present Dr. Apuzzio was available to present recommendation concerning the Committee for multi-disciplinary practice issues. Dr. Senatore's report indicates that a meeting will be scheduled soon at which time the committee will organize, set its mission and determine what research and assistance must be utilized to accomplish the goals and educate consumers and practitioners on appropriate protocols and standards for multi-disciplinary practice.

## **4. BOARD WEB-SITE**

Dr. Rada presented a re-write of the consumer brief which appears on the Board's web-site. This had previously been brought to the attention of the Board by former Board President Bob Tarantino, D.C.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MR. SIMMONS TO REVIEW THE RE-WRITTEN INFORMATION FOR INCLUSION ON THE WEB-SITE.

## **5. DOMESTIC VIOLENCE**

A question was raised in the January Board meeting as to whether a licensee is required to report possible domestic violence. DAG Krugman did some research and determined that there does not appear to be an affirmative obligation under the law for a licensee to make a report to the police or other officials. Patient record regulations were cited noting that there is an exception to the Patient Records confidentiality provision if a licensee is a danger to him or herself or others.

## **IV. NEW BUSINESS**

### **1. PIP-TAC COMMITTEE REPORT**

Dr. Atkisson indicated that there was no PIP-TAC Committee during the month of January.

## **V. DISCIPLINARY MATTERS**

### **1. EMILIO GRUGNALE, D.C.**

This matter was moved into Executive Session.

### **2. JAY P. JACOBSON, D.C.**

On February 8, 1996 a Consent Order was entered which suspended the above captioned licensee from

practice for a five year period. On February 5, 2001 a letter was received by the Board requesting that the Board consider his re-entry into the active practice of chiropractic in New Jersey.

The Board determined that the information received from Dr. Jacobson was not sufficient to make a determination. The Board requested that Dr. Jacobson provide a curriculum vitae which would indicate what he has been doing since his suspension began and with information on how he has remained current in the practice of chiropractic during that period. The Board also suggested that it would be appropriate for Dr. Jacobson to take the SPEC exam as offered by the National Board of Chiropractic Examiners and appear before the full Board to answer questions before further consideration of his request for reinstatement is made.

A MOTION WAS MADE BY DR. APUZZIO WHICH WAS SECONDED BY DR. O'CONNOR TO REQUEST THIS INFORMATION OF DR. JACOBSON AND SCHEDULE AN APPEARANCE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **VI. ENDORSEMENT**

### **GLEN C. SCARPELLI, D.C.**

Dr. Scarpelli is a 1990 graduate of Logan College of Chiropractic and holds a license to practice chiropractic in New York which he has maintained since September 27, 1990. There is no record of disciplinary action.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. APUZZIO TO APPROVE DR. SCARPELLI'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.

## **VII. MISCELLANEOUS**

### **1. NATIONAL BOARD OF CHIROPRACTIC EXAMINERS**

The NBCE is requesting the appointment of two Board members to participate in the administration of the PART IV Examination on May 18, 19 and 20, 2001. Dr. Winters indicated that he would like to participate and appointed Dr. Apuzzio to participate as well.

### **2. INQUIRY OF THOMAS J. BROPHY, D.C.**

An inquiry was submitted by Dr. Brophy to determine the allowable and billable services relative to chiropractic treatment of carpal tunnel syndrome within the State of New Jersey. Question number one; the patient presents with pain originating in the cervical spine which radiates to the wrist and/or hand. Dr. Brophy questions if chiropractors are able to render treatment to the articulation and or the soft tissue of the extremity along with the treatment to the cervical spine. The Board opined that the answer to this question was yes and noted that there always must be a spinal component to such treatment. Dr. Brophy was requested to refer to the Scope of Practice regulations. Question two; the patient presents with pain in the extremity only with no finding relating to the cervical spine. Dr. Brophy questions whether chiropractors are able to render treatment to the articulations and/or soft tissue of the extremity without treatment to the cervical spine. The Board's answer to this question was no and also noting a referral to the Scope of Practice regulation. Question three; relative to either of the above clinical scenarios Dr. Brophy questions whether chiropractors are able to write a referral for physical therapy. Dr. Brophy was referred to the Board regulations contained in N.J.A.C. 13:44E-2.14 which details the specific requirements for referrals to physical therapists by chiropractors.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO HAVE EXECUTIVE DIRECTOR EARLE RESPOND TO DR. BROPHY AND TO PROVIDE HIM WITH THE BOARD'S OPINIONS WITH RESPECT TO HIS QUESTIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **3. MARK SEMERARO, ESQ.**

Mr. Semararo inquires as to whether or not a chiropractic physician is permitted within current rules and statutes to employ a licensed and registered physical therapist, or refer his patients to a registered physical therapist and charge for the physical therapist services through the chiropractors office. The Board opined that Mr. Semararo should be directed to the provisions of N.J.A.C 13:44E-2.7 entitled "Referral Fees." The scenario described could be considered fee splitting as determined by that particular regulation. It was further suggested that the letter be referred to the Physical Therapy Board with respect to the employment regulations to determine whether or not a physical therapist employed in such a capacity would violate any regulations promulgated by the Board. Further research will need to be done in order to come up with a substantive answer to Mr. Semararo's inquiry.

## **VIII. FILED ORDERS**

Board members were provided with information concerning three filed Orders that were entered during the month of February as follows:

### **1. DARRYL CAMPANA, D.C.**

Final Order entered on February 14, 2001. License suspended for a period of three years and six months. Six months active beginning August 28, 2000 the remainder stayed to remain a period of probation. Respondent may resume active practice upon entry of the Order.

### **2. PAUL CAMPANA, D.C.**

Order entered February 1, 2001 permitting responded to resume the active practice of chiropractic but will remain on probation for the remainder of the suspension until February 23, 2004.

### **3. FREDERICK C. PADOVANO, D.C.**

Consent Order entered February 15, 2001 based upon the review of treatment records that demonstrated acts of incompetence and failure to comply with patient record keeping requirements. License is suspended for six months all of which is stayed with a requirement to complete 48 hours of continuing education which shall be pre-approved by the Board; penalties of \$2,000 and costs of \$330.

## **ADJOURNMENT**

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. RADA TO MOVE INTO EXECUTIVE SESSION TO CONSIDER PENDING DISCIPLINARY ACTIONS AND CONSUMER COMPLAINTS. 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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