

# **State Board of Chiropractic Examiners**

## **Public Session Minutes Thursday, February 26, 2004**

A meeting of the New Jersey Board of Chiropractic Examiners was held on February 26, 2004 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, O'Connor, Rada, Senatore, Stabile, Mr. Faulkner and Mr. Traier

**ALSO PRESENT:** Deputy Attorney General Hugelmeyer, Executive Director Earle, Paralegal Joshua Marzan, Recording Secretary Nina Lado, Assistant to the Executive Director Terri Goldberg

**EXCUSED:** Dr. Louro

### **I. APPROVAL OF THE PUBLIC SESSION MINUTES OF JANUARY 29, 2004**

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. STABILE TO APPROVE THE PUBLIC SESSION MINUTES OF JANUARY 29, 2004 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH SEVEN MEMBERS VOTING IN FAVOR. MR. FAULKNER AND MR. TRAIER ABSTAINED FROM A VOTE IN THIS MATTER.

### **II. OLD BUSINESS**

#### **A. PETITION FOR RULE MAKING NEEDLE EMGS**

The Board reviewed correspondence submitted by the New Jersey Society of Physical Medicine and Rehabilitation commenting of the Petition for Rulemaking which was considered by the Board at its January meeting.

THIS WAS REFERRED TO THE RULES AND REGULATIONS COMMITTEE AND ACCEPTED AS INFORMATIONAL.

#### **B. NEW LICENSEE ORIENTATION AND JURISPRUDENCE PROGRAM**

The Board had an opportunity to view a demonstration of the new licensee orientation program and jurisprudence examination which will be offered on line once it is complete. Additional scripts for the presentation are currently in the editing stage with a goal of having the program ready by early May.

#### **C. INQUIRY OF LOUIS BARILE, D.C.**

This matter was tabled from the January meeting.

Dr. Barile had asked the Board if it is permissible for him to refer his patient to another chiropractor for the purpose of taking x-rays only. He contemplated billing at the PIP scheduled rate for the x-rays and paying the chiropractor taking the films 40% of the fee for the technical component.

After discussion with the Deputy Attorney General, it was recommended that a response to Dr. Barile be drafted noting that he may refer his patients to another chiropractor for x-rays only provided that:

1. He bills globally (i.e. one fee totalling the technical and professional components) for the service;
2. That the global fee does not violate N.J.A.C. 13:44E-2.11 (Excessive Fees); and
3. No patients are referred to Dr. Barile by the chiropractor or the office performing the x-rays.

The global fee will prevent the unbundling of fees because the payor will be cognizant of the total cost which would be the customary rate and there should be no potential for improper referral fees to be paid or received so long as Dr. Barile does not accept patient referrals from the chiropractor or the office which will perform the technical component of the x-rays on the patients. It should be noted that the x-rays should be limited to x-rays of the osseous system.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. CALIO TO RESPOND TO DR. BARILE AS NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **III. NEW BUSINESS**

#### **MEDEX HEALTH, INC. LOW LEVEL LASER PHOTOTHERAPY**

The Board reviewed correspondence from the above captioned company noting that the Medex LCX090 laser series was approved by the FDA for adjunctive use in pain therapy.

THIS WAS ACCEPTED AS INFORMATION NOTING THAT THE CONDITIONS OF THE USE OF THESE DEVICES WERE DEALT WITH AT A PREVIOUS MEETING OF THE BOARD.

### **IV. ENDORSEMENT APPLICATIONS**

#### **BARRY S. GOLDSTEIN, D.C.**

Dr. Goldstein is a 1984 graduate of New York Chiropractic College and completed parts I, II and III and was licensed and in good standing in the State of New York. CIN-BAD report is clear.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. SENATORE TO APPROVE DR. GOLDSTEIN'S APPLICATION FOR LICENSURE BY ENDORSEMENT SUBJECT TO THE SUCCESSFUL COMPLETION OF THE JURISPRUDENCE EXAMINATION. THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **V. GENERAL CORRESPONDENCE**

#### **A. INQUIRY OF MORGAN TABATABAI**

The Board reviewed correspondence received from Mr. Tabatabai asking for clarification as to whether a chiropractor can perform the following tests:

1. Dipstick urinalysis - permissible under the Scope of Practice.
2. Chest X-rays - are permissible but are limited to the osseous system.
3. Spirometry -a discussion ensued as to the appropriate use of spirometry testing. Some Board members noted that the use of this specific test would be consistent with chiropractic practice if it were performed with an

assessment of scoliosis particularly to determine whether there is any organic compromise, specifically a question of lung capacity. The use of this testing would be fact sensitive and could be either performed or ordered in cases that are consistent with chiropractic practice.

4. Echocardiogram - may not be ordered but not performed.

5. Bone Densitometry - may be ordered consistent with chiropractic practice.

6. Diagnostic ultrasound of cervical or lumbar tissue - diagnostic ultrasound is among the electro diagnostic tests at N.J.A.C. 13:44E-3.2(b) as a test that is determined to fail to yield data of sufficient clinical value in the development, evaluation or implementation of a plan or treatment.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO RESPOND TO MR. TABATABAI AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **B. NEW JERSEY CHIROPRACTIC SOCIETY**

The Board reviewed a letter submitted by Richard M. Alexander, D.C., Executive Director of the New Jersey Chiropractic Society requesting interpretation of the Board's Record Review Regulation at N.J.A.C. 13:44E-2.6A. The questions involve interpretations of the applicability of the regulation to review physicians operating in a pre-determination capacity. The question noted that reviewing doctors are recommending significant delays in testing without having reviewed supportive documentation and without basing their opinion on a review of a complete medical record, noting that certain tests or studies such as an MRI must be delayed for a time period that is "pre-determined."

Discussion on this matter noted that if the activity involved a chiropractic physician operating outside the borders of New Jersey, the Board would have no jurisdiction over the matter. It was noted that the Board must adjudicate each case based upon its own facts, and cannot respond to generic questions regarding interpretations as to whether certain activities would be violative of a rule. It was noted that if the activity is widespread among New Jersey licensees, the Board might consider promulgating a rule to deal with this matter. It was recommended that in specific instances where there appears to be a failure to review all relevant records when performed by a New Jersey licensee a complaint should be filed for the Board to review the particular facts.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. ATKISSON TO RESPOND AS NOTED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **C. INQUIRY OF ROBERT A. STEWART, ESQ.**

The Board reviewed a letter from attorney Stewart seeking an interpretation of the Board's regulations at N.J.A.C. 13:44E-3.9, "limitations on referrals." Mr. Stewart represents a medical doctor who rents office space in a building owned by a chiropractor who conducts his practice from an office space on a different floor in the same building. The chiropractor would like to refer the patients to the medical doctor for testing and other medical reasons. Mr. Stewart questions whether such referrals were prohibited by the rule.

During discussion of this matter it was necessary to draw the distinction between a referral to a medical doctor for the purposes of performing testing versus a referral to a medical doctor for a consultation. The purpose of the regulation as adopted was to prohibit the use of a medical doctor to perform specific testing without that physician conducting his or her independent examination and evaluation of the patient which would then determine which diagnostic test would be appropriate under the circumstances. The regulation prohibits a referral to a medical doctor with an order to perform a certain test without the medical doctor performing an independent examination as appropriate. It would appear that the circumstances outlined in Mr. Stewart's letter would not be prohibited under the rule.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. ATKISSON TO RESPOND TO MR. STEWART AS OUTLINED ABOVE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **D. KATS MANAGEMENT KEITH MAULE**

Keith Maule on behalf of Kats Management had provided the Board with a copy of a publication that is provided as part of their services to clients which on certain pages makes references to certain vitamins and nutritional supplements. It was noted that Kats Management typically does provide clients in other jurisdictions with a line of nutritional supplements. The Board noted that there did not appear to be information contained in the brochure that would be violative of the nutritional advice limitation as contained in the Scope of Practice, however, it was noted that Kats Management should be notified that any New Jersey clients should not derive any economic benefit from the sale, prescription or provision of vitamins and nutritional supplements and there should be no economic incentive built in for the referral of patients to any related companies providing vitamins and nutritional supplements.

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

#### **E. EMAD G. MISSAK**

Dr. Missak submitted an inquiry expressing some confusion over the delegation and use of modalities specifically the use of an electronic muscle stimulator to unlicensed assistants.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. ATKISSON TO PROVIDE DR. MISSAK WITH A COPY OF THE BOARD'S NEWLY ADOPTED REGULATIONS ON ELECTRIC MUSCLE STIMULATION DEVICES WHICH WOULD CLARIFY THAT ELECTRIC MUSCLE STIMULATION DEVICES MAY NOT BE DELEGATED TO UNLICENSED ASSISTANTS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

#### **F. SCOTT WALKER, D.C.**

Dr. Walker is a 1994 graduate of Pennsylvania College of Straight Chiropractic and is inquiring if it is possible for him to complete certain courses at a Board approved school in order to remediate the deficiency in his educational background.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. FAULKNER TO ADVISE DR. WALKER THAT HE MAY COMPLETE THOSE COURSES AS OUTLINED IN THE LETTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

### **VI. REQUEST FOR REINSTATEMENT**

#### **RICHARD HERBERT, D.C.**

Dr. Herbert was the subject of an Interim Consent Order filed on June 22, 2000 in which he surrendered his license to practice chiropractic based upon an arrest. Dr. Herbert was never indicted nor was there a trial on the issues that precipitated that action. It was noted that certain aspects of the arrest dealt with the passing of illegal prescriptions for controlled substances. Dr. Herbert testified that he is under close medical management for his underlying medical condition.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. CALIO TO APPROVE REINSTATEMENT OF DR. HERBERT'S LICENSE TO THE ACTIVE PRACTICE OF CHIROPRACTIC IN THE FORM OF A CONSENT ORDER IN WHICH DR. HERBERT AGREES TO CONTINUE TREATMENT BY HIS MEDICAL DOCTOR. THE ATTORNEY GENERAL WILL SEEK TO RESOLVE THE ISSUES SURROUNDING THE INITIAL COMPLAINT FILED IN THIS MATTER AND WILL RETURN TO THE BOARD AT A LATER TIME WITH A PROPOSED RESOLUTION. A VOTE WAS TAKEN AND THE

MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

## **MOTION TO GO INTO EXECUTIVE SESSION**

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. STABILE TO GO INTO EXECUTIVE SESSION TO REVIEW CONSUMER COMPLAINTS, PENDING INVESTIGATIONS AND TO DISCUSS INVESTIGATIVE TECHNIQUES. 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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