

**State Board of Chiropractic Examiners
124 Halsey Street, 6th Floor
Newark, NJ**

**Public Session Minutes
June 19, 2003**

A meeting of the New Jersey Board of Chiropractic Examiners was held on June 19, 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, Louro, Murphy, O'Connor, Rada, Senatore and Stabile Mr. Faulkner and Mr. Traier

ALSO PRESENT:

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

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF MAY 22, 2003

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. TRAIER TO ACCEPT THE PUBLIC SESSION MINUTES OF MAY 22, 2003 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. OLD BUSINESS - PENDING DISCIPLINARY ACTIONS

A. GLEN S. POLLER, D.C.

On April 22, 2003 a Provisional Order of Discipline was filed with the Board and served on the attorney for the Respondent based upon a plea of guilty to the crime of employing a runner (N.J.S.A. 2C:21-22.1) in Superior Court, Hudson County. Dr. Poller was sentenced to a period of probation for a period of two years; 150 hours of community service; and a fine of \$1,000. The Provisional Order would suspend Dr. Poller's license for a period of two years, one year of which shall be stayed to become a period of probation. In addition, during the active suspension, Respondent is required to complete the ProBE ethics course. On May 28, 2003 Harry L. Starrett, Esq. on behalf of Dr. Poller submitted the attached packet of materials in mitigation of penalty.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY MR. FAULKNER TO GO INTO EXECUTIVE SESSION TO DELIBERATE ON THIS MATTER. A VOTE WAS

TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR WHEN THE BOARD RETURNED TO EXECUTIVE SESSION NO FINAL RECOMMENDATION WAS FORTHCOMING. ADDITIONAL INSTRUCTION WAS PROVIDED TO THE DEPUTY ATTORNEY GENERAL ON THIS MATTER.

** Deputy Attorney General John Hugelmeyer was recused during the Executive session in consideration of this matter. The Board was counseled by Deputy Attorney Susan Berger. **

B. MICHAEL LIO, D.C.

Dr. Michael Lio was the subject of a Final Order of Discipline entered by the Board of Chiropractic Examiners on November 19, 2002 which imposed a suspension for a period of three years, of which six months would be active commencing on November 19, 2003. The six month period has expired on May 19, 2003. Dr. Lio appeared with counsel, Daniel R. Guadalupe, Esq. who had previously submitted a package of materials for the Board's review. Dr. Lio was sworn in by the court reporter.

DR. LIO WAS QUESTIONED REGARDING REMEDIATION UNDERTAKEN UNDER HIS PERIOD OF ACTIVE SUSPENSION. UPON THE CONCLUSION OF HIS TESTIMONY, A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. SENATORE TO GO INTO EXECUTIVE SESSION TO DELIBERATE ON THIS MATTER. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

UPON RETURNING TO PUBLIC SESSION, A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. LOURO TO APPROVE DR. LIO'S RETURN TO THE ACTIVE PRACTICE OF CHIROPRACTIC. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR. DR. LIO WAS INFORMED OF THE OUTCOME OF THE BOARD'S VOTE.

C. LARRY CASE, D.C.

Dr. Case appeared without counsel requesting consideration of an opportunity for reinstatement. Dr. Case had allowed his license to lapse. After a Board investigation it was reported that his practice had been abandoned without the proper provision for patient records and allegations of possible substance abuse. Dr. Case had previously appeared before the Board on December 9, 1999 requesting reinstatement after which a Proposed Consent Order was provided to Dr. Case imposing certain conditions upon his return to practice. Dr. Case again requested reconsideration of this matter. Background material was provided to the Board for its review.

Dr. Case was sworn in by the court reporter. He reported that he was clean and sober and had gone through rehabilitation in one year of intensive counseling. He has an AA sponsor and regrets his activities of the past. He is currently working with his father in a family business doing tree surgery. He has not practiced on patients in over six years. He intended to re-enter chiropractic practice by doing temporary work in other offices and would like to eventually take over a retired doctor's practice. He reported that he attends AA meetings once a week. When asked, he offered to provide the Board with documentation on his attendance at AA. He has not attended any continuing education courses in the last six years but he does read journals. When asked if he was willing to do random drug or alcohol tests Dr. Case was agreeable to such restrictions. He stated that under the terms of the prior offered Consent Order he was not able to obtain a job working with another practitioner. Following Dr. Case's appearance, the

Board moved into executive session to consider this matter.

UPON RETURNING TO PUBLIC SESSION A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. CALIO TO TABLE THIS MATTER PENDING RECEIPT OF FURTHER INFORMATION FROM DR. CASE. PENDING THAT RECEIPT, DR. CASE SHOULD BE REQUIRED TO TAKE THE SPEC EXAMINATION OFFERED BY THE NATIONAL BOARD OF CHIROPRACTIC EXAMINERS AND COMPLETE THE JURISPRUDENCE EXAMINATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR

D. OTTAVIO NEPA, D.C.

The Board reviewed the completed essay and notice from the Ethics Group, LLC reporting that Dr. Nepa has successfully completed the ProBE Ethics program.

THIS WAS ACCEPTED AS INFORMATIONAL.

E. MATTHEW WELCH, D.C.

The Board reviewed the results of Dr. Welch's attendance of the PRIME Ethics course held on May 16-18, 2003. The report indicates that Dr. Welch passed the course.

THIS WAS ACCEPTED AS INFORMATIONAL.

III. GENERAL INQUIRIES

A. SEAN M. ENGLISH, D.C.

Dr. English had submitted an inquiry concerning the performance of chest x-rays for a medical doctor who is located in his building who does not have x-ray equipment. Upon review of this matter, the Board determined that the chiropractic scope of practice limit the taking of x-rays to the osseous system and would be limited to conditions incidental to chiropractic care. The Board determined that the use of the chiropractor as a technician with a prescription from an MD for the completion of a chest film would be outside of the scope of practice and impermissible under Board regulations.

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

B. INQUIRY OF LAURA L. GRIBBIN, ESQ.

Ms. Gribbin submitted an inquiry dated May 1, 2003 regarding whether a chiropractor may employ physical therapists in a chiropractor's office for the purpose of performing VAX-D Therapy. The letter seeks to confirm the understanding that a chiropractor may employ physical therapists and that a physical therapist may perform VAX-D Therapy while under the employ of a chiropractor. After reviewing this matter it was determined that Ms. Gribbin should be referred to the provisions of N.J.A.C. 13:44E-2.12 which describes the referral of patients to physical therapists. It was noted that VAX-D Therapy is not considered a modality. Upon the referral to a physical therapist, the physical therapist is obligated to complete their own physical therapy examination and evaluation. A consultation with the chiropractor is required for both practitioners to coordinate care and treatment programs.

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

C. INQUIRY OF SEAN HAJO, D.C. - EMPLOYMENT OF PHYSICAL THERAPISTS BY CHIROPRACTORS

The Board reviewed a letter dated 4/16/03 from Dr. Hajo questioning whether it was legal for a chiropractor to form a DC/PT corporation which was solely owned by the chiropractor and the PT is only a salaried employee of the corporation. It was questioned whether the DC could hire the PT in this scenario and refer patients to the PT to evaluate and treat. Dr. Hajo is also questioning whether this would be considered self referral if the referral was made under the same tax id number.

The Board was advised that Dr. Hajo seemed to be seeking legal advice on this matter. He should be referred to the statute on self referral at N.J.S.A. 45:9-22.4 - 22.6 as well as the Board's regulations on referrals to physical therapist at N.J.A.C. 13:44E-2.12.

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

D. INQUIRY OF TIMOTHY J. HAYES, D.C.

Dr. Hayes provided copies of correspondence sent by him to a claims adjuster with Empire Blue Cross/Blue Shield in response to the denial of CPT 98943 based upon the fact the insurance carrier had determined this was a manipulation of an "extra spinal body region that fell outside the scope of a chiropractor's practice."

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY MR. TRAIER TO WRITE A LETTER TO DR. HAYES TO IDENTIFY THE SPECIFIC EXTRA SPINAL ADJUSTMENT REFERRED TO IN THE LETTER AS THE APPENDED MATERIALS DO NOT PROVIDE GUIDANCE ON THIS ISSUE . A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

E. INQUIRY OF CHARLOTTE WATTS, D.C./PARKER COLLEGE OF CHIROPRACTIC

Dr. Watts has forwarded a letter requesting information from the Board concerning whether there are any techniques that are explicitly excluded from chiropractic practice in the State of New Jersey.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. SENATORE TO RESPOND TO DR. WATTS PROVIDING HER WITH A COPY OF THE BOARD'S SCOPE OF PRACTICE AND NOTE THAT THE BOARD HAS NOT SPECIFICALLY IDENTIFIED ANY SPECIFIC TECHNIQUES PROHIBITED UNDER THE SCOPE OF PRACTICE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR..

F. INQUIRY OF NEW JERSEY MANUFACTURERS INSURANCE COMPANY

Ann J. Banks, special investigator with NJ Manufactures has questioned whether there are any physical modalities that a chiropractor is not permitted to do. Included with the inquiry was a copy of a claim form in which a chiropractor billed for CPT 97140 (mobilization). It was noted that mobilization is a form of manipulation and manual traction. It was further noted that there

are no physical modalities that are specifically prohibited as long as the modalities are rendered in conjunction with a spinal adjustment.

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

G. INQUIRY OF MICHAEL KNOX - STATE FARM INSURANCE COMPANY RE: SEQUENTIAL MUSCLE STIMULATION UNITS FOR HOME USE

Mr. Knox's letter makes note of the Board's previous position that EMS units were not appropriate for home use, however the Board's position on this matter has changed and has resulted in the Board's current proposal that would specifically define the conditions under which EMS and TENS units are prescribed for home use. The Board reviewed the background material on the "Sequential Muscle Simulator" which would appear to provide a therapy similar to interferential stimulation. The Board's new proposed regulation prohibits the prescription of interferential units for home use. It was recommend that Mr. Knox be provided with a copy of the minutes that outline the specific provisions of the Board's new proposal.

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

IV. ENDORSEMENT APPLICATIONS

DOUGLAS LLOYD DROBBIN, D.C.

Dr. Drobbin is a 1980 graduate of New York Chiropractic College and completed parts I and II of the National Boards. He is currently licensed in New York with no record of disciplinary action, however, Dr. Drobbin answered affirmatively to the question concerning malpractice suits and has provided background information. Both cases were filed in the early 1990's.

A MOTION WAS MADE TO REQUEST DR. DROBBIN'S APPEARANCE BEFORE A COMMITTEE OF THE BOARD BEFORE A DECISION IS MADE ON THIS APPLICATION. A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. O'CONNOR. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR..

ADJOURNMENT

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. O'CONNOR 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.. THE MEETING WAS ADJOURNED AT 12:15PM.