

State of New Jersey
Division of Consumer Affairs
Board of Chiropractic Examiners

Public Session Minutes
Thursday, June 24, 2004

A meeting of the New Jersey Board of Chiropractic Examiners was held on May 24, 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 Thomas Senatore, DC, President of the Board, at 10:00 A.M.

ATTENDANCE

PRESENT:

Drs. Brian Atkisson, Rosemary Calio, Joseph Louro, Joseph Murphy, Lawrence O'Connor, Thomas Senatore, Albert Stabile and Public Members Kenneth Faulkner and John Traier

ALSO PRESENT:

Deputy Attorney General Susan Berger, Executive Director Kevin B. Earle, Paralegal Joshua Marzan, Recording Secretary Nina Lado, and Terri Goldberg, Assistant to the Executive Director.

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF MAY 20, 2004

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. LOURO TO APPROVE THE PUBLIC SESSION MINUTES OF MAY 20, 2004. A VOTE WAS TAKEN AND THE MOTION WAS PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. OLD BUSINESS

A. REGULATORY ISSUES - SCOPE OF PRACTICE/NUTRITIONAL ADVICE

The Rules and Regulation Committee reported to again propose an amendment to the scope of practice regulations which had been previously considered at the Board's January 29, 2004 meeting. Regulatory Analyst Devon Graf was available to assist the Board in the discussion of this matter. After discussion the following language was proposed: 13:44E-1.1(d):

A licensee may offer general nutritional advice to a patient when such advice is incidental to the chiropractic care being provided. This advice may include the recommendation of vitamins, minerals, food products or nutritional supplements which support the chiropractic care being provided. A licensee shall not offer nutritional advice as treatment for a specific disease, defect, or deformity outside of the scope of practice of chiropractic care. A licensee shall not, incidental to chiropractic care, prescribe, order, administer, sell, dispense, or derive financial benefit from the sale of vitamins, minerals, food products, [or] nutritional supplements, nutritional analyses, or nutritional counseling. A licensee shall not represent himself or herself as a nutritional consultant.

A MOTION WAS MADE BY DR. MURPHY WHICH WAS SECONDED BY DR. LOURO TO APPROVE THE ABOVE NOTED LANGUAGE FOR PUBLICATION IN THE NEW JERSEY REGISTER AS A PROPOSAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. ADJUNCTIVE THERAPY BY SLD DEVICES

The Board reviewed several submissions including peer review journal articles regarding the ethnicity of the above noted devices as an adjunctive therapy to be used in connection with chiropractic treatment.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. CALIO TO APPROVE THE USE OF SUPER LUMINESCENT LIGHT EMITTING DIODE DEVICES (BETWEEN 600-1000 NANOMETERS) TO BE USED AS AN ADJUNCTIVE THERAPY TO REDUCE PAIN AND SWELLING AND TO FACILITATE, ENHANCE, OR PROLONG THE EFFECTS OF A CHIROPRACTIC ADJUSTMENT. THE DEVICES USED MUST BE FDA APPROVED FOR APPLICATIONS CONSISTENT WITH CHIROPRACTIC SCOPE OF PRACTICE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. NEW BUSINESS

A. REGULATORY INITIATIVES - SCOPE OF PRACTICE

The Rules and Regulation Committee has recommended several changes to the scope of practice regulation to make it clear that the ordering and administering of physical modalities in conjunction with strengthening, rehabilitative, and conditioning exercises are within the scope of chiropractic practice. In addition, the committee has recommended an amendment to the delegable tasks or functions of unlicensed assistants regulation to state that an unlicensed assistant may not be delegated the task of the use of mechanical traction or decompression therapy devices, and may not administer strengthening, rehabilitative, or conditioning exercises.

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. ATKISSON TO APPROVE THE PROPOSED LANGUAGE FOR PUBLICATION IN THE NEW JERSEY REGISTER AS A PROPOSAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IV. LEGISLATIVE REVIEW SENATE BILL 310

The Board reviewed this legislation which would make a change to the Veterinarian Practice Act to permit doctors of chiropractic, who have successfully completed courses in animal chiropractic approved by the Veterinarian Chiropractic Association or a college of chiropractic, to treat animals for chiropractic conditions providing that the chiropractic physician does not represent himself as a veterinarian. There are several other amendments to the legislation as well.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. STABILE TO SUPPORT THIS LEGISLATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

V. GENERAL CORRESPONDENCE

A. PRESTON BARRY DEUTCH, DC

Dr. Deutch has requested an interpretation of the Board's patient review regulations at N.J.A.C. 13:44E-2.6 (b). Dr. Deutch poses the following question: If a chiropractic utilization review is being performed and the accompanying clinical records appear complete when they are provided by an insurance carrier review agency, is it still necessary for the reviewing chiropractor to make a formal request of records from the treating doctor? The Board opines the regulation requires that the reviewing chiropractor make a "reasonable and documented effort" to obtain all records and suggested that any reasonable way to do that would be acceptable to the Board. It is noted however that it is incumbent upon the reviewer to make certain that he or she has a complete record for their review.

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

B. DIAGNOSTIC TESTING IN A MULTI DISCIPLINARY PRACTICE INQUIRY OF JEFFREY S. BROWN, ESQ, AND STEVEN R. ENTINGO, ESQ.

This was accepted as informational. The Board was advised that the Division of Law would be responding to this inquiry.

VI. APPLICATION FOR CERTIFICATION TO PERFORM ELECTRODIAGNOSTIC TESTING

The Board received applications from the following individuals.

A. LAWRENCE P. CYRAN, DC

B. MICHAEL W. GOIONE, DC

C. ANTHONY J. NEARY, DC

D. AUGUST RICHARD POLINO, DC

E. LEONARD F. VERNON, DC

A MOTION WAS MADE BY DR. CALIO WHICH WAS SECONDED BY DR. O'CONNOR TO APPROVE ALL OF THE APPLICANTS FOR DIAGNOSTIC TESTING WITH A NOTATION THAT THOSE INDIVIDUALS WHO MAY HAVE BEEN TRAINED IN THE USE OF NEEDLE ELECTROMYOGRAPHY SHOULD BE ADVISED THAT NEEDLE EMG'S ARE NOT PRESENTLY WITHIN THE SCOPE OF PRACTICE OF CHIROPRACTIC IN NEW JERSEY. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VII. APPEARANCE

RICHARD COLLINS, DC

With Zulima Farber, Esq., and Deborah Holtzman, Esq. (for respondent)

Dr. Collins was requested to appear before the Board to discuss his compliance with the terms and conditions of a settlement letter entered before the Board on July 12, 2001 which specifically required Dr. Collins to complete 100 hours of training in the areas of record keeping, orthopedic and neurological testing, and x-ray interpretation within a three year period commencing at the start of a two year stayed suspension which commenced on August 2, 2001. Dr. Collins was to provide the materials regarding each proposed course to the Board for its approval prior to engaging in the educational program and was to submit written reports to the Board every six months detailing his progress. Dr. Collins was placed under oath. Counsel for Dr. Collins submitted information concerning the continuing education courses that Dr. Collins had undertaken. Dr. Collins was then questioned concerning the contents of those courses following his testimony.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. ATKISSON TO GO INTO EXECUTIVE SESSION TO RECEIVE ADVICE OF COUNSEL. UPON RETURNING TO PUBLIC SESSION, DR. COLLINS AND COUNSEL WERE ADVISED THAT THE BOARD WOULD CONSIDER DR. COLLINS' TESTIMONY AND WOULD GO IN TO EXECUTIVE SESSION TO DELIBERATE. COMMUNICATION OF THE BOARD'S DETERMINATION WOULD BE MADE THROUGH THE DEPUTY ATTORNEY GENERAL TO COUNSEL. A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. LOURO TO GO INTO EXECUTIVE SESSION TO DISCUSS THIS MATTER AND DELIBERATE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBER PRESENT VOTING IN FAVOR.

UPON RETURNING TO PUBLIC SESSION, THE MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO DISAPPROVE THE COURSES ENTITLED "CONTACT REFLEX ANALYSIS" AND "THE CARL PARKER SEMINAR" NOTING THAT THEY DO NOT APPEAR TO FALL WITHIN THE CATEGORIES REQUIRED BY THE SETTLEMENT LETTER. ANY ADDITIONAL COURSES MUST BE PRE-APPROVED BY THE BOARD. TWENTY FIVE ADDITIONAL HOURS WILL BE REQUIRED IN ORDER TO SATISFY THE SETTLEMENT LETTER. DR. COLLINS WILL HAVE AN ADDITIONAL YEAR COMMENCING AUGUST 1, 2004 TO COMPLETE THE ADDITIONAL 25 HOURS OF TRAINING. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VIII. HEARING

IMO GEORGE P. NAJEMIAN, DC
With Pamela Mandel, Esq. (for respondent)

Megan Matthews, DAG (for the Attorney General)

On August 4, 2003, an Administrative Complaint was filed by the Attorney General seeking suspension of respondent's license to practice citing an alleged failure to cooperate with the Board's regulations on Duties to Cooperate, at N.J.A.C.13:45C-1.2. An Answer had been filed by Ms. Mandel on behalf of Dr. Najemian. Deputy Attorney General Matthews reported that the parties had agreed to a settlement of this matter. The matter involved an investigation into professional practices engaged in by Dr. Najemian between 1996 and 2001. A Final Order of Permanent Retirement will be entered in which a finding will be made. It appears to the Board that Dr. Najemian engaged in professional practices which fail to conform to accepted standards of practice in violation of N.J.S.A.45:1-21 (b), N.J.S.A.45:1-21 (e), and N.J.S.A.45:1-21(h). In addition, a further finding is made with respect to the resolution of cooperation with the Board's investigation. Dr. Najemian will neither admit nor deny any wrongdoing or violation of any rule or law and seeks an amicable settlement of this matter. The order will grant Dr. Najemian to voluntarily surrender his license to practice chiropractic in the State of New Jersey. The surrender will be deemed a permanent retirement of license and respondent agrees not to reapply for licensure in the State of New Jersey. Respondent shall cease and desist in the practice of chiropractic in the State of New Jersey and shall pay costs incurred by the Board in the amount of \$28, 252.15. An initial payment of \$2,500 shall be paid within 15 days of the entry of the order and the remaining amount is to be paid at the court rule rate of 2% annual interest in consecutive monthly installments of no less than \$750.00 per month, which shall be due on the 15th of each month. Respondent agrees to provide a copy of this order to every licensing body in which he is currently licensed to practice and will include a copy of the order in all applications for licensure which he might submit to any jurisdiction in the future. Dr. Najemian was sworn. He was questioned by Ms. Mandel for the purposes of confirming that he agrees to the terms and conditions of the Order.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. STABILE TO APPROVE THE SETTLEMENT OF THIS MATTER AS OUTLINED ABOVE AND THE ENTRY OF A FINAL ORDER OF PERMANENT RETIREMENT AS PROPOSED BY THE ATTORNEY GENERAL. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

IX. ENDORSEMENT

ANTHONY J. VIGORITO, D.C.

The Board reviewed an explanation to an issue related to a previous arrest.

A MOTION WAS MADE BY DR. ATKISSON WHICH WAS SECONDED BY DR. O'CONNOR TO ACCEPT DR. VIGORITO'S APPLICATION FOR LICENSURE BY ENDORSEMENT SUBJECT TO SUCCESSFUL COMPLETION OF THE STATE'S JURISPRUDENCE EXAMINATION. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

ADJOURNMENT

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. MURPHY TO GO INTO EXECUTIVE SESSION TO DISCUSS PENDING DISCIPLINARY MATTERS 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
