

**STATE BOARD OF CHIROPRACTIC EXAMINERS
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS**

**PUBLIC SESSION MINUTES
NOVEMBER 18, 2004**

A meeting of the New Jersey Board of Chiropractic Examiners was held on November 18, 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, D.C., President of the Board at 10:00 AM.

ATTENDANCE

PRESENT: Drs. Atkisson, Louro, Murphy, O'Connor, Rada, Senatore, Stabile and Mr. Traier

EXCUSED: Dr. Calio and Mr. Faulkner

ALSO PRESENT: DAG John Hugelmeyer, Executive Director Kevin Earle, and recording secretary Shekenna Brown.

I. APPROVAL OF THE PUBLIC SESSION MINUTES OF OCTOBER 21, 2004

A MOTION WAS MADE BY MR. TRAIER WHICH WAS SECONDED BY DR. STABILE TO APPROVE THE PUBLIC SESSION MINUTES OF OCTOBER 21, 2004 AS AMENDED. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

II. OLD BUSINESS

A. NEW LICENSEE ORIENTATION PROGRAM

Dr. Rada reported that all segments of the online new licensee orientation and jurisprudence program have been filmed. Follow-up material is being supplied to the vendor to include the powerpoint slides and jurisprudence questions with a projected completion of early in calendar year 2005. Drs. Murphy, O'Connor, Stabile, Rada and Executive Director Earle participated in the filming process.

B. DANIEL S. FONTANELLA, D.C.

A Provisional Order of Discipline was filed on October 7, 2004 seeking to revoke Dr. Fontanella's license to practice chiropractic in the State of New Jersey based upon his plea of guilty to charges of theft by deception by creating and falsifying treatment and billing records to reflect that he performed examinations and rendered treatments to patients which were not done. He had been sentenced and has served a period of five years probation and 364 days in Passaic County Jail. A later Consent Judgment for restitution has been entered in the amount of \$500,000. Within the required time frames, Dr. Fontanella has submitted a letter for Board's consideration formally making a request that he have an opportunity to appear before the Board prior to any decision being rendered.

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY DR. LOURO TO SCHEDULE DR. FONTANELLA FOR A HEARING IN MITIGATION OF PENALTY TO BE SCHEDULED AT SOME FUTURE DATE. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

III. NEW BUSINESS

GENERAL INQUIRIES

A. ERIC GELLASCH, D.C.

Dr. Gellasch submitted a letter seeking the Board's interpretation of the appropriate CPT coding to be used for the billing of non-surgical spinal decompression procedures.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. O'CONNOR TO INFORM DR. GELLASCH THAT THE BOARD IS NOT IN A POSITION TO ADVISE ITS LICENSEES ON THE APPROPRIATE CODING FOR SUCH PROCEDURES, NOR DOES IT ADVISE LICENSEES ON ANY BILLING OR CODING ISSUES. HOWEVER, THE BOARD OPINES THAT THIS MODALITY IS CONSIDERED ADJUNCTIVE TO AN ADJUSTMENT PURSUANT TO THE BOARD'S SCOPE OF PRACTICE REGULATIONS AT N.J.A.C. 13:44E-1.1. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

A SECOND MOTION WAS MADE BY O'CONNOR WHICH WAS SECONDED BY DR. ATKISSON TO REFER THE ISSUE OF THE USE OF THESE TYPES OF MODALITIES TO THE RULES AND REGULATIONS COMMITTEE TO DETERMINE WHETHER ANY MODIFICATION NEEDS TO BE MADE TO THE REGULATIONS TO CLASSIFY IT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

B. STEVEN GOLDFARB, D.C.

Dr. Goldfarb is inquiring whether New Jersey Chiropractors are permitted to perform urine and hair tests or spirometry to rule out drug or alcohol use by a patient.

A discussion ensued concerning federal guidelines for examinations and clearance of truck drivers pursuant to US Department of Transportation regulations. DAG Hugelmeyer indicated that his research found that chiropractors were not among the permissible practitioners who could perform such examinations. This was disputed by several Board members who indicate that chiropractors are listed on the form that is used for such examinations. Further discussion ensued that the Board's scope of practice regulations indicate that bioanalytical laboratory tests may be ordered by a chiropractor so long as those tests were consistent with chiropractic practice.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY MR. TRAIER TO TABLE CONSIDERATION OF THIS MATTER SO THAT THE DEPUTY COULD CONDUCT FURTHER RESEARCH ON FEDERAL LAW AND REGULATION GOVERNING SUCH EXAMINATIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

C. PHILLIP KIM, D.C.

Dr. Kim has submitted a question regarding the billing of Nerve Conduction Velocity testing performed by a testing assistant. Dr. Kim reports that he does not have the training in nerve conduction velocity testing but was asking if he could hire a nerve technician with "years of experience and medical training in another country" to perform the test. Further he asked whether is able to order a nerve conduction velocity and have the assistant perform it and bill a third party carrier.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. ATKISSON TO REPLY TO DR. KIM THAT THE BOARD'S REGULATIONS ON ELECTRODIAGNOSTIC TESTING REQUIRE THAT THE CHIROPRACTOR HAVE APPROPRIATE TRAINING AND BE ISSUED A PERMIT TO CONDUCT NERVE CONDUCTION VELOCITY TESTING IN HIS OFFICE AND TO SUPERVISE A TESTING ASSISTANT. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

D. ROBERT G. ZUNIGA, D.C.

Dr. Zuniga has submitted a letter in reference to prepaid treatment plans, co-pays and co-insurance and has asked if by law are chiropractors required to have prepaid treatment plans, co-pays and co-insurance in separate escrow account.

A MOTION WAS MADE BY DR. LOURO WHICH WAS SECONDED BY DR. O'CONNOR TO ADVISE DR. ZUNIGA THAT THE BOARD DOES NOT HAVE SPECIFIC REGULATIONS OR STATUTES THAT DEAL WITH THIS PARTICULAR PRACTICE. THE BOARD SUGGESTS THAT HE PROVIDE FULL DISCLOSURE TO ANY PATIENTS THAT WOULD OUTLINE THE VARIOUS POSSIBILITIES, PARTICULARLY CONDITIONS UNDER WHICH ANY PREPAYMENT MIGHT BE REFUNDED TO THE PATIENT IF HE OR SHE DISCONTINUES TREATMENT. DR. ZUNIGA SHOULD BE ADVISED TO CONSULT AN ATTORNEY FOR THE PREPARATION OF SUCH A DISCLOSURE AND TO DISCUSS ANY OTHER LAWS OR REGULATIONS THAT MIGHT GOVERN SUCH ACTIVITY. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

The Board noted that this activity appears to be fairly common in chiropractic practice. Some members suggested that the Board might want to consider some prophylactic regulation that would protect consumers in such instances.

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

VI. MISCELLANEOUS MATTERS

A. THE COUNCIL ON CHIROPRACTIC EDUCATION

The Board reviewed announcements reporting on new board members of both the Council of Chiropractic Education and the Commission on Accreditation of the CCE.

THIS WAS ACCEPTED AS INFORMATIONAL.

B. AMERICAN CHIROPRACTIC ASSOCIATION COUNCIL ON NEUROLOGY

The Board reviewed a document regarding the specialty of Neurology in the Chiropractic profession noting that the American Chiropractic Neurology Board is recognized as the sole authority in credentialing for the specialty of Neurology in the chiropractic profession. Noting that the Board is fully accredited by the National Commission for Certification Agencies (NCCA), the accreditation body of the National Organization for Competency Assurance (NOCA).

THIS WAS ACCEPTED AS INFORMATIONAL.

C. ALDO R. SCOPELLITI, D.C.

The Board reviewed a letter sent to Oxford Health Plans from the above captioned licensee which was an appeal addressing billing and coding for certain services noting that it was his opinion that all of the codes were included in the scope of practice of chiropractors in New Jersey.

THIS WAS ACCEPTED AS INFORMATIONAL.

D. RAYMOND A. BONGIOVI, JR., D.C.

The Board reviewed a letter Dr. Bongiovi in response to a previous communication from Virgil Chrane of the International Alphabiotic Association which had alleged that Dr. Bongiovi was teaching or plan to teach

Alphabiotics principals and procedures as if they were chiropractic.

The Board deemed this matter to be a legal issue over which it has no jurisdiction. Furthermore continuing education is not required in New Jersey and therefore any continuing education course taught by Dr. Bongiovi would fall outside of the Board's jurisdiction at this time.

V. ENDORSEMENT APPLICANT

A. MARIANNE MESSINA, D.C.

B. GUY F. MARGOLIN, D.C.

A MOTION WAS MADE BY DR. STABILE WHICH WAS SECONDED BY DR. LOURO TO ACCEPT THE ABOVE TWO APPLICANTS 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.

VI. ELECTRODIAGNOSTIC TESTING PERMITS

A. DAVID GLICK, D.C. (Dr. Atkisson was recused in the consideration of this matter)

A MOTION WAS MADE BY DR. RADA WHICH WAS SECONDED BY MR. TRAIER TO APPROVE DR. GLICK'S PERMIT FOR ELECTRODIAGNOSTIC TESTING AND SPECIAL EXAMINATIONS. A VOTE WAS TAKEN AND THE MOTION PASSED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

VII. DISCIPLINARY COMPLIANCE ISSUES

A. DAVID HARRIS, D.C.

The Board received a report of Dr. Harris' completion of the ProBE ethics course. The Board noted that the provider had reported that Dr. Harris' essay was "disappointing" yet Dr. Harris was given an unconditional pass for the course. Executive Director Earle was directed to contact Joseph d'Oronzio, PhD, M.P.H., of the Ethics Group to discuss this matter.

VIII. PUBLIC COMMENT

Drs. Kathleen Belco and Margaret Bannich both made comments indicated that they were encouraged, by the activity and the discussion observed by them during the course of the meeting.

ADJOURNMENT

A MOTION WAS MADE BY DR. O'CONNOR WHICH WAS SECONDED BY DR. LOURO 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 11:20AM.

Respectfully Submitted,

Kevin B. Earle, M.P.H.
Executive Director
