THE COLUMN

THE NEWSLETTER OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS

VOLUME 2 NEWSLETTER WINTER 2004

A MESSAGE FROM THE BOARD PRESIDENT MARY-ELLEN RADA, D.C.

Within the past three plus years of my tenure as a member of the State Board of Chiropractic Examiners, I have had the privilege of working with some of the most intelligent and dedicated individuals in our profession. This past year we have had to say good-bye to three extremely talented individuals as they have completed their terms as members of the Board - - Dr. Robert Apuzzio, Dr. Kim Stetzel and Dr. William Winters.

Why are these chiropractors so great? Their commitment to the profession, combined with the attributes of integrity, compassion, and selflessness served as an exemplary model for all of New Jersey's chiropractors. These chiropractors, like many before them, have given countless hours and "brain power" to the process of regulation in order to hold the profession to the highest of standards. Consistent with the Board's statutory mandate, these Board members have consistently spoken out and steadfastly performed their duties for the benefit of the patients and to further the good reputation of chiropractic on both the state and national levels.

Rarely have I seen the communion of all facets of philosophical perspectives come together in dialogue, discussion and even agreement as demonstrated by the work of these individuals with the rest of the Board. While there is much dichotomy inherent in our profession, there is hope for unity and uniformity in many areas of our profession. If chiropractors would follow the example and efforts of these fine individuals, we may yet see an incredible transformation.

I thank them for their tireless enthusiasm and dedication and extend to them the respect they have so deservedly earned. We miss you and wish you well.

This issue of *The Column* has particular emphasis on issues of ethics and professionalism. The articles contained in this newsletter are focused on a chiropractor's responsibilities to patients, and the standards and expectations placed on you as a licensed health care provider. We trust that this material will prove to be both interesting and enlightening.

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A MESSAGE FROM THE EDITOR –

Joseph J. Murphy, D.C.

Greetings Colleagues:

Welcome to our second issue of *The Column*, the official newsletter of the New Jersey State Board of Chiropractic Examiners. We are very excited about the feedback on our first issue (available online) at the Board's Web site: www.NJConsumerAffairs.com/medical/chiro.htm and look forward to the continued success of issues to come.

Let me start by welcoming our newest board members, public members Kenneth Faulkner and John Traier, and professional members Drs. Rosemary Calio, Joseph Louro and Albert Stabile. We appreciate their commitment and look forward to a productive year. We would like to thank the outgoing members Hadren Simmons, Drs. Robert Apuzzio, Kim Stetzel and William Winters for their fantastic service, commitment and time serving the Board. Finally, we regret the passing of former public member Morton Blum, whose long and dedicated service will be fondly remembered.

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State Board of
CHIROPRACTIC EXAMINERS NEWSLETTER

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Director

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This newsletter is published by the State Board of Chiropractic Examiners for its licensees. Inquiries should be addressed to: State Board of Chiropractic Examiners, New Jersey Division of Consumer Affairs, P.O. Box 45004, Newark, NJ 07101

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A Message from the Editor

At our April 17 meeting, we elected a new executive board which is as follows: president, Dr. Mary-Ellen Rada; vice president, Dr. Lawrence O'Connor; secretary, Dr. Joseph Murphy; and for treasurer, Dr. Brian Atkisson.

I would like to sincerely thank the fine work of two former presidents, Dr. Bill Winters and Dr. Brian Atkisson, for their leadership and service over the last few years. Both have done a fine job and exhibited extraordinary leadership.

Our 2003-2004 State Board of Chiropractic Examiners will continue under a new administration to protect the rights of consumers, who are your patients. We will police the profession and eliminate the "bad apples" who tarnish all of us. Dr. Atkisson began the work of putting together a bold and comprehensive plan of action, improvements and changes, many of which were put in place during his tenure. All were aimed at streamlining our ability to practice efficiently and allow us to better serve the public and profession with the highest degree of integrity, quality and value. Dr. Mary-Ellen Rada, as she takes the helm, will continue this proud record of leadership and success.

I would like to take a moment to thank the Board's ongoing executive director, Mr. Kevin Earle, as well as the Board's deputy attorney general, John Hugelmeyer. In the four years I have served on the Board, these two men have shown the utmost integrity, reason and intelligence. You should all be very proud to have these gentlemen available to assist the Board in its decision-making and regulatory capacity.

In this issue, we have messages from both Dr. Atkisson and Dr. Rada. We also have several articles on new ideas as well as plain text explanations of regulations that are, at times, misunderstood or misinterpreted. Finally, there is a message relating to issues of health care ethics from our executive director and a list of the current disciplinary activities that occurred since the last newsletter.

If you have questions or comments about the newsletter, feel free to write me care of The New Jersey State Board of Chiropractic Examiners or send an e-mail. We appreciate any comments that you may have. Comments are important in order to improve this and future newsletters and to make every newsletter more useful for you, the practitioner.

I hope you all have a great year and continue to serve the citizens of New Jersey in the best way possible with the highest degree of integrity and the greatest level of love and caring.

Thank you.

CONTACT WITH BOARD MEMBERS

The Board operates in a quasi-judicial capacity when regulating the practice of chiropractic. Contacting Board members directly on any matter that might potentially result in a disciplinary action against a licensee who has or will soon appear before the Board is considered, under the law, an *ex parte* communication, which is required to be reported to the attorney general and must be made a part of the public record. Ultimately, such communication may cause the Board member to be recused from consideration of a question or controversy that comes before the Board. Board members must provide the opportunity for individuals to present both sides of an issue before the Board can render an opinion. Licensees should direct any inquiry concerning a Board matter to the Board office for inclusion on a Board meeting agenda.

A Message from Brian Atkisson, D.C. Board President, 2002-2003

Welcome once again to the newsletter of the New Jersey State Board of Chiropractic Examiners. The Board trusts you found the first issue of *The Column* to be informative and helpful in your daily practice. Before I go any further, I would like to thank my predecessor, Dr. Bill Winters, for his service and dedication as president of the Board.

Recently, I was sitting in a plane next to my five-year-old daughter when she set about to explain life and all it entails as she saw it. I was impressed by how directly and innocently she viewed life. Later, I recalled that I had similarly viewed chiropractic practice when I started 18 years ago. H.C.F.A., C.M.S., H.M.O., P.P.O., P.C.P. and H.I.P.A.A. are just a few of the acronyms we are inundated with on a daily basis in our practices.

The compartmentalization and layering of health care has not simplified things nor provided increased accessibility to patients as the pundits promised. Rather, it has created a mystical bureaucracy that would challenge even the most astute of philosophers. Despite it all, chiropractors must keep in mind that our first charge is to the patient.

A common misconception is that the Board is here to carry the standard for chiropractors. The Board's charge is to ensure that the citizens of New Jersey are protected from unscrupulous and sometimes misdirected chiropractors. In addition, the Board attempts to set a minimum standard of competency every citizen can be assured of receiving when visiting a chiropractic office. Even if the Board tried to be the standard bearer for chiropractic, we would be limited by the fact that we can only interpret specific statutes through regulations. The Board cannot pass regulations that encompass more than the charge permitted. Dr. Rada will explain this more thoroughly in another article.

Health care is becoming increasingly more complicated. In response,

the Board has chosen to become actively involved in national organizations that continually seek to address complicated issues. Four Board members and our executive director are currently attending various national and regional meetings at the Federation of Chiropractic Licensing Boards (F.C.L.B.) and the National Board of Chiropractic Examiners. Mr. Earle, Dr. O'Connor, Dr. Rada and I have all been appointed to national committees of the F.C.L.B. In addition, the Board is represented at the Banking and Insurance Commissioners Advisory Committee for P.I.P., formally known as "PIPTAC." Involvement in these groups is necessary to keep abreast of the latest regulatory trends and issues. I can assure you that the Board is at the forefront on both the state and national levels.

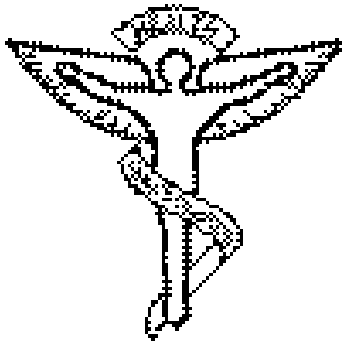
We will continue re-evaluating our current regulations to either eliminate or modify outdated regulations. We are also addressing new issues such as peer reviews, as we did with the record review regulation. We are currently working on a regulation that will establish a standard for the performance of independent chiropractic examinations, setting standards for professional practice structures, and we are also addressing the issues attendant to a multidisciplinary practice. The Board is taking steps to become more proactive. We will be trying to handle more issues through committees and to set aside time each month for long-term strategic planning.

The Board is also making a commitment to work more closely with other related health care boards in an effort to reduce conflicts, promote consistency in regulations, and build interdisciplinary trust and respect.

You are encouraged to attend Board meetings. They are both interesting and informative. The Board also encourages state and regional societies to have our executive director speak to their members about Board issues and functions.

Lastly, I would like to thank my fellow Board members and our Board staff, especially Executive Director Kevin Earle and Deputy Attorney General John Hugelmeyer. Their dedication, and especially the integrity of their opinions and intentions, have been essential in reaching fair and balanced Board decisions.

While I am no longer that naive, young chiropractor I was 18 years ago, I still believe that people of integrity and intelligence can fulfill their charge by collaborative and positive discussions and decision-making.



The Enforcement Process

A Discussion by Mary-Ellen Rada, D.C.

Many chiropractors are unaware of the role of the State Board of Chiropractic Examiners. The Board members are appointed to protect the public—not to protect the profession. The Board is part of a large complex of checks and balances within the Division of Consumer Affairs in the Department of Law and Public Safety. As a part of the executive branch, the Board and the Department are ultimately responsible to the Governor. The Board's primary responsibility is to hold chiropractors accountable for violations of Board regulations. These violations constitute professional misconduct, or gross or repeated acts of malpractice, negligence or incompetence, or other specific provisions of the law.

Some chiropractors might feel it is demeaning and presumptuous to assume that the public needs to be protected from chiropractic doctors. However, the significant workload of those who investigate fraud and other abuses suggests otherwise. Every profession has individuals who violate the law—either intentionally or unintentionally. There are numerous individuals or organizations countrywide selling seminars on ways to build or improve your practice. Sometimes, the agendas of these seminars can be misleading and may, under New Jersey law, be illicit.

The Board responds to every letter of complaint received. The staff initially reviews all letters to determine what course of action will initially be taken. In most cases, the executive director will direct a letter to the chiropractor in question for a written response, requesting all patient records and a response to the allegations. In cases with more serious allegations, complaints may be forwarded to the Enforcement Bureau of the Division of Consumer Affairs for further investigation. Oftentimes, complaints are coordinated with law enforcement officials, such as the Attorney General of New Jersey, a county prosecutor, the Office of the Insurance Fraud Prosecutor, the U.S. Attorney General, the Inspector General of C.M.S. or the F.B.I. When enough information is accrued, the issue is placed on the Board's agenda for the next available meeting. These meetings occur monthly. Frequently complaints involve false or misleading advertisements, insurance fraud or sexual misconduct.

At Board meetings, the Board reviews cases and determines whether further inquiry is necessary. If more information is needed, a chiropractor may be requested to appear before a Preliminary Investigative Committee. At these hearings, Board members can ask any pertinent questions. The Board may also request to see complete records of the patients in question. These forms of action are opportunities for the Board to gain as much information as possible about the entire situation, and for the chiropractor to explain his or her perspective. At these proceedings, licensees are entitled to be represented by counsel and will be required to testify under oath, so the Board members can rely upon their testimony. Often, the Board can determine immediately if there is no cause for further action. In the more egregious cases, the law mandates that the Board act promptly. The Board must follow all of the procedures dictated by the legal standards of due process. All of these procedures occur in closed or executive sessions. The final disposition of the matter, if it results in disciplinary action of any kind, is reported during a public session.

When the findings indicate that insufficient proof has been developed to initiate disciplinary action, a quick response is generated to both the doctor of chiropractic and the patient. Should evidence of a violation be developed, disciplinary actions can take a number of forms including:

- A penalty letter with a minor monetary fine
- A settlement agreeing to some specific terms
- A suspension of license, oftentimes in the form of a consent order
- A revocation of license.

Final decisions are subject to appeal to the Superior Court, Appellate Division.

Personally, I have witnessed this Board try to rehabilitate licensees who demonstrated competency problems by referring them to coursework and special seminars designed to enhance their practices while ensuring the safety of the public. Many cases that come before the Board involve violation of the Board's record requirements. This is not a trivial matter, as it is usually the patient's file which validates the case. The regulations regarding this issue are by no means excessively lengthy or overly detailed, but they provide the minimum standard of information needed for patient records.

Some of the cases that have come before the Board would make most prudent chiropractors blush with embarrassment. There are many cases of insurance fraud where chiropractors overcharge, overutilize care, or bill for services which were not provided. Cases of sexual misconduct will have serious personal and professional consequences. These are addressed in a separate article.

Being a member of the Board is a difficult job. There are reams of material to digest and research. It is an extraordinarily time-consuming task, as each and every Board member must scrutinize each case. It is not easy to sit in judgment of one's peers. Cases may be extremely difficult to hear, and the Board is sometimes put in a position where it has to make very difficult decisions. However, in my experience my colleagues have always been considerate, deliberate, and compassionate about their decisions.

Anyone can come to a public session of the Board to see how the Board operates. However, because of the sensitivity involved in the initial review of pending cases, they are discussed privately in executive session. These investigations are kept confidential until charges are brought. Board members may never discuss pending disciplinary actions outside of the executive session.

Please obtain a current Rules and Regulations booklet provided free of charge from the Board and follow the statutes and regulations to the best of your ability. By following the rules, a chiropractor will fare well, stay out of trouble and be able to provide excellent care to patients.

Notes From the Executive Director

Ethics and Professionalism by Kevin B. Earle

Last May, I had the privilege to attend, along with Board members Drs. Mary Ellen Rada and Larry O'Connor, the annual meeting of the Federation of Chiropractic Licensing Boards (F.C.L.B.) in Orlando, Florida. Inasmuch as the meeting was held in conjunction with a concurrent session of the World Federation of Chiropractic, delegates had the opportunity to spend time with chiropractors from all over the globe. The theme of the conference was "A World View of Ethics in the Chiropractic Profession."

The meeting gave delegates an opportunity to reflect on the current state of the chiropractic profession, our roles as professional regulators, and the questions of ethics and professional responsibility that are the underpinnings of so many of the cases reviewed by a professional licensing board. Most often, cases of fraud, alteration of records, misrepresentation, violations of patient boundaries and the like are the largest percentage of actions taken by chiropractic licensing boards. As reported by one presenter at the F.C.L.B. conference, in one major state cases of fraud and sexual misconduct made up a significantly larger percentage of the disciplinary sanctions meted out by the chiropractic board in comparison to the same state's medical board. More disconcerting was the fact that the greatest number of sanctions were imposed on practitioners who were between five and 10 years in practice.

Every day practitioners are faced with moral dilemmas that test a health care practitioner's ability to make ethical decisions. It requires that an individual first interpret a situation and understand that one's actions may affect the welfare of another. Health care practitioners are always faced with decisions to balance competing interests - - the interest of the patient; the interest of the patient's family or loved ones; one's own self interests (power,

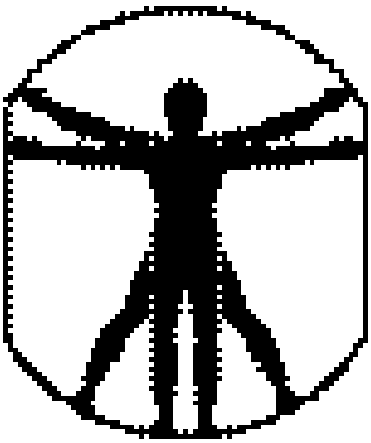
Executive Director Kevin Earle and Dr. Larry O'Connor

pride, monetary gain); laws, regulations and ethical codes of conduct; and third-party interests (insurance carriers, society). The challenge of course is to choose the morally and ethically correct course of action. In the final analysis, a health care professional needs to develop the ego strength and social skills to choose and commit to the correct action.

Other presenters noted that the activities of these practitioners reflect a lack of understanding of the basic underpinnings and application of the concepts of moral values and health care ethics. In those cases, in addition to the sanctions available to a licensing board, boards will most often seek opportunities for remedial education in these areas. Happily, for the last 10 or more years, several health care ethicists in New Jersey have been leaders in the development and implementation of such a curriculum, which has been a useful tool for licensing boards in this and many other states. The F.C.L.B. delegates were happy to have had the opportunity to hear a presentation about the successful New Jersey experience in this field.

Collectively, however, delegates questioned whether remedial activity is enough to address the problem. Should a comprehensive education in the area of moral values and ethics be more formally introduced during chiropractic education? If so, to what extent and what evidence is there that such educational endeavors have an effect on professional practice? Furthermore, to what extent should moral values and ethics be reinforced though continuing education offerings throughout a licensee's career? As licensing boards are mandated by statute to protect the health, welfare and safety of the public, what role should they play in the fields of moral values and professional ethics?

These are weighty questions indeed. Can ethics and moral values be tested? Can they be learned, and how can they be reinforced? During the F.C.L.B. conference, several chiropractic college presidents eagerly sought suggestions from licensing boards concerning how to bolster their curriculums to turn out practitioners who develop both an understanding of health care ethics and the skills to apply these concepts in everyday practice. New initiatives by licensing boards to conduct new licensee orientation programs and test knowledge of laws and regulations are meant to confirm and reinforce a licensee's professional obligations to patients, regulatory bodies and to society as a whole. Finally, on a national level, the concern over the acts of "ethically challenged" practitioners has given rise to a plethora of new initiatives to develop new remedial interventions in the areas of sexual misconduct, patient boundaries and fraud, as well as standardized testing methodologies in health care ethics. Collectively, it is hoped that such initiatives will have a positive and enduring impact on the profession.



PRACTICE ISSUES

Sexual Misconduct

A Discussion by Mary-Ellen Rada, D.C.

Allegations of sexual misconduct are by far the most difficult sort of violations to hear as a Board member. The allegation itself is both serious and sobering. One can only imagine the multitude of implications in one's professional practice which can arise should such an allegation from a patient or an employee be made or proven.

The Board's regulations are very clear (see the Board's regulations at N.J.A.C. 13:44E- 2.3). Among other specific prohibitions, a licensee is not permitted to:

- engage in, seek, or solicit sexual contact with a patient with whom he or she has a patient- physician relationship
- engage in discussions of an intimate sexual nature
- engage in sexual harassment
- engage in activity that would be construed by a reasonable person to serve the prurient interests of the licensee.

For a health care professional, there is a universally accepted obligation of moral constraint and trustworthiness. Professional integrity cannot and should not be jeopardized or compromised. Likewise, doctors are usually perceived as authority figures by their patients. The patient-physician relationship implies a differential in power. Unfortunately, some professionals abuse this power differential for their own gratification. Patients should be free to accept care without the chance, risk or fear of unwanted advances.

It is also a common occurrence that some patients develop an unnatural attraction and dependence on their health care providers. Chiropractors should be alert to such situations and take steps to maintain appropriate patient-physician boundaries. To avoid any misperceptions or allegations of inappropriate behavior, it is sometimes recommended that practitioners leave the door open during patient encounters or invite a staff member or assistant into the room during treatment.

The nature of the chiropractic profession puts practitioners in direct physical contact with the bodies of their patients. In addition, in the initial patient encounter, when taking a patient's history, chiropractors have access to many aspects of a patient's personal information. Patients may disclose intimate personal information.

In many cases, patients are asked to disrobe and don a gown. Chiropractors perform physical examinations and perform certain tests in order to assess the patient's condition. Chiropractors perform manual techniques which involve touching the patients. Certain adjusting techniques require chiropractors to lean over patients. Each of these encounters can be misperceived by the patient. Thus, your attention to providing the patient with a thorough and clear explanation of your examination and procedures will help to avoid situations that could be embarrassing to the patient or to you.

Allegations of sexual misconduct on the part of the chiropractor can easily become the subject of gossip in your community. Likewise, such allegations, if proven, can potentially be the subject of Board disciplinary action and have a ruinous effect on your reputation and professional career. Any health care professional should be alert to these considerations. Licensees should always consider the impression that such activity leaves on the general perceptions of the chiropractic profession.

The State Board of Chiropractic Examiners has witnessed several very sad and disturbing cases of full-blown sexual abuse of patients under the guise of chiropractic care. The Board has heard every possible scenario and excuse. Some licensees claim that it never happened, yet further investigation proves otherwise. Others claim that "it was consensual," but unless the chiropractor-patient relationship is actually terminated, this is not an appropriate defense to such allegations. In any case, the damage to one's personal life and career could not possibly have been worth it.

Licensees should take the time to review the Board's regulations on this subject. The Board's statutes and regulations are available upon request from the Board office or can be found on the Board's Web site at: http://www.NJConsumerAffairs.com/medical/chiro.htm.

NEW JERSEYANS ACTIVE AT THE FEDERATION OF CHIROPRACTIC LICENSING BOARDS

Representatives of the New Jersey Board of Chiropractic Examiners have taken active roles within the Federation of Chiropractic Licensing Boards (F.C.L.B.):

Dr. Larry O'Connor was elected to a two-year term as alternate District Director for District III at the F.C.L.B. Annual meeting on Orlando, Florida. Dr. O'Connor is also a member of the Nominating Committee and chairs the Government Affairs and Legal Advisory Committee.

Dr. Brian Atkisson is a member of the Clinical Competency Task Force.

Dr. Mary-Ellen Rada is a member of the Ethics Task Force.

Executive Director Kevin Earle is the "Executive Fellow" member of the F.C.L.B. Board of Directors and is a member of the Continuing Education Task Force.

LEGAL AND REGULATORY ISSUES

A Discussion by Mary-Ellen Rada, D.C.

The State Board of Chiropractic Examiners is one of 41 professional and occupational boards which fall under the Division of Consumer Affairs, in the Department of Law and Public Safety which is headed by the Attorney General. The Board is composed of eight chiropractors, two public members and one government appointee. Board members are nominated by the Governor and must be confirmed by the New Jersey Senate. All members have one vote each and serve for terms of three years. Traditionally, the regulation of chiropractic fell under the aegis of the State Board of Medical Examiners. In 1989, the State Legislature passed a new chiropractic statute which established a separate regulatory board. The bill became law after the Governor signed it.

The Board's legislative findings and declarations, contained in N.J.S.A. 45:9-41.18, clearly set forth the role of the State Board of Chiropractic Examiners:

"The Legislature finds and declares that it is a valid public purpose to establish a separate board to regulate the practice of chiropractic in this State to properly protect the citizenry who receive the services of a chiropractor by maintaining and ensuring standards of competency and integrity of the profession and preventing unsafe, fraudulent, or deceptive practices which may damage the health of those citizens, as well as the reputation of the profession in this State."

Statutes establish how the scope of practice of chiropractic in the State is defined, who can be qualified to hold a license to practice, and the biennial renewal requirements. **The Board must enforce these statutes. The Board cannot add, delete or change statutes in any way**. The changing of statutes is a function of the New Jersey Legislature.

The State empowers the Board to develop regulations consistent with the Board's statutes. Regulations are also part of our legal authority. However, regulations generally clarify activities that take place on a daily basis in a chiropractor's office. Sometimes there is evidence that prevalent questions in chiropractic practice necessitate the consideration of new regulations. The Board will direct the Rules and Regulations Committee to consider an issue and develop and submit a proposed regulation to the Board for approval. Once approved for publication as a proposal, the draft goes through a number of reviews including the Division of Law, the director of the Division of Consumer Affairs, the Attorney General, the Governor's office, and the Office of Administrative Law. These reviews ensure that the regulation meets certain legal standards, does not conflict with the Board's enabling statute or other laws or regulations, or court opinions, and is consistent with the policies of the Division, the Department and the administration.

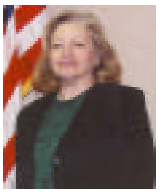
The public, which includes every resident of New Jersey including chiropractors, medical doctors and those employed by insurance companies, ultimately has a right to submit written comments on the proposal over a 60-day period, commencing after the proposal appears in the The New Jersey Register.

The Board is required to address all of the comments submitted on the proposal. The proposed regulation and the Board's responses to the comments are then reviewed by the Department and the Governor's office, and ultimately are published as an adoption in the New Jersey Register. The entire rule process may take a year or longer.

All of the statutes and regulations are printed in a booklet and distributed to chiropractors who are applying for a license in New Jersey. Applicants for licensure must pass the jurisprudence test regarding these rules. Since new regulations are adopted from time to time, it would be prudent to obtain a recent copy to make sure that your practice policies are in compliance with all of the statutes and regulations.

Please remember: Ignorance of the law is not a defense.

NEW BOARD MEMBERS



ROSEMARY CALIO, R.N.,D.

JOESEPH LOURO, D.C.

ALBERT STABILE, JR., D.C.

PICTURES NOT AVAILABLE FOR:

KENNETH FAULKNER
PUBLIC MEMBER

JOHN TRAIER, C.P.A.
PUBLIC MEMBER

BOARD ACTIONS

NOVEMBER 2001

Maro Bchakjian-Best, D.C.

Settlement in Lieu of Filing Formal Disciplinary Complaint filed in November 2001 for failure to maintain a contemporaneous, permanent patient record.

Cease and Desist from violations of patient record regulation, formal reprimand penalties and costs of $6,759.

Philip DiBartolo, D.C.

Consent Order entered on November 13, 2001, for billing for services not rendered, charging excessive fees for services rendered, failing to maintain adequate patient records, and engaging in the administration of physical modalities for which he failed to demonstrate adequate competence.

License is suspended for one year, the entirety of which is stayed to serve as probation provided that respondent completes Board-approved continuing education as outlined in the Order. Penalties and costs of $8,237.

Thomas Fallon, D.C.

Consent Order entered on November 13, 2001, based upon findings of gross incompetence and the charging of excessive fees. Respondent is to complete 100 hours of Board-approved continuing education rehabilitation and pay civil penalties and costs of $5,209.

FEBRUARY 2002

Michael Moore, D.C.

On January 30, 2002, a Consent Order of Voluntary Permanent Surrender to be Deemed a Revocation was entered in the above-captioned matter based upon findings that Dr. Moore permitted his practice to be run in absentia by his office manager. In his testimony he admitted that he was out of the office and even traveling out of the country during a period of at least two years during which time treatment records, bills and claim forms did not accurately reflect the treatment or services rendered, and that bills were submitted to insurance companies for services, goods and appliances that had not been rendered or supplied.

License is permanently surrendered with prejudice to any re-application. Effective with the Order, Dr. Moore permanently ceases and desists from the practice of chiropractic. Civil penalties in the amount of $25,000 and costs of $11,305 are imposed.

MARCH 2002

Peter Lowenstein, D.C.

On February 22, 2002, a Consent Order was filed with the Board based upon a finding that the respondent failed to maintain appropriate patient records which accurately and adequately documented the care provided to patients. The failure to maintain patient records was found to be the basis for disciplinary action.
Respondent shall complete and pass a 12-hour course in recordkeeping; cease and desist from violation of the Board's recordkeeping regulation and pay a civil penalty in the amount of $2,000 and costs in the amount of $159.

Alan Marcus, D.C.

On February 28, 2002, a Consent Order of Voluntary Surrender to be Deemed Revocation was entered on the above -captioned matter based upon a conviction in Passaic County Superior Court. On April 2, 2001, Dr. Marcus pled guilty in New Jersey Superior Court to child cruelty and neglect, in the 4th degree, and to five counts of criminal sexual assault, in the 4th degree.

License is surrendered to be deemed revocation. Dr. Marcus may not apply for reinstatement before a period of 10 years has elapsed from the date of the Order. Costs totaled $4,535.02, which is to be paid out over a period of 18 months. Prior to any reinstatement, the respondent is required to provide proof of psychiatric and psychological evaluation in compliance with treatment recommendations from a mental health facility to be approved in advance by the Board. The respondent must also provide proof of compliance with all terms of the criminal sentence imposed on May 25, 2002. Prior to any reinstatement, the Board may require an independent psychiatric or psychological evaluation. The Board reserves the right to place any restriction on the respondent's practice that it deems necessary to protect the public health, safety and welfare.

JUNE 2002

Louis D'Agostino, D.C.

A Final Order of Denial of Licensure was filed on June 17, 2002, based upon the applicant's failure to truthfully answer a question on an application for licensure regarding a previous denial of license in the State of Florida.

Philip Potacco, D.C.

Consent Order entered on May 15, 2002. License is voluntarily surrendered to be deemed revocation for a period of five years from the date of the Order. Respondent shall cease and desist from the practice of chiropractic and pay costs in the amount of $24,884.24 and civil penalties in the amount of $20,000. Action is based upon Dr. Potacco's continued practice of chiropractic while suspended by a previous Board order.

Larry Sabel, D.C.

A Consent Order was entered on April 25, 2002, based upon Dr. Sabel's plea of guilty to one count of willfully evading personal income tax which constitutes a basis for disciplinary action pursuant to N.J.S.A. 45:1-21b [engaging in the use of fraud] and N.J.S.A. 45:1- 21f [conviction of a crime involving moral turpitude or relating adversely to the practice of chiropractic]. Respondent's license is suspended effective April 15, 2002, for a period of three years, six months of which shall be served as a period of active suspension and the remainder shall be stayed to serve as a period of probation. Respondent shall successfully complete and pass the Professional Problem Based Ethics (ProBE) course and is assessed costs of the investigation.

JULY 2002

Michael Sherman, D.C.

Settlement Letter in Lieu of Filing Formal Disciplinary Action filed on June 13, 2002, for overutilization of S.E.M.G.s; failing to document orders for testing; failure to incorporate the results into the patient record; failure to document physical therapy consultations and instructions in the patient record.

Formal reprimand; cease and desist in violations; penalties of $9,000 and costs of $287.50.

DECEMBER 2002

Richard Finder, D.C.

Final Order for Revocation of Licensure entered on December 5, 2002, for an outstanding complaint for the continued practice of chiropractic while suspended. Said complaint alleged that Richard Finder, D.C., following the entry of a disciplinary order on April 22, 1999, which, among other things, imposed an active suspension of licensure for a six-month period, violated said order during the period of license suspension by: (1) being on his office premises on various dates; (2) engaging in the practice of chiropractic on two occasions; (3) performing various practice-related administrative functions; and (4) deriving substantial financial remuneration from fees paid for chiropractic services.

Dr. Finder's license is suspended to be deemed revocation. Dr. Finder is to pay penalties and costs totaling $80,000.

Doris Hartell, D.C.

An Offer of Settlement in Lieu of Filing a Formal Disciplinary Action was filed with the Board on November 8, 2002, for failure to prepare and maintain a contemporaneous, permanent patient record.

Assessed a penalty in the amount of $500 as well as costs to the State of $425. Dr. Hartell must also successfully complete and pass a 12-hour course in the area of recordkeeping.

Howard Tornopsky, D.C.

A Consent Order filed on November 19, 2002, regarding information received that Dr. Tornopsky billed for services not documented in his patient records.

Dr. Tornopsky's license to practice chiropractic is suspended for one year from the date of the Order; the suspension will be stayed to serve as a period of probation providing that he adhere to all of the terms and conditions. Dr. Tornopsky must also complete and pass 12 hours of continuing education in the area of recordkeeping. A civil penalty of $2,500 was assessed as well as the costs to the State in the amount of $7591.44.

continued on the next page

BOARD ACTIONS

JANUARY 2003

Andrew Sechtin, D.C.

On January 15, 2003, a Consent Order was filed with the State Board of Chiropractic Examiners upon receipt of information that Dr. Sechtin failed to disclose past D.W.I. convictions in applications for registration filed periodically with the Board.

Dr. Sechtin shall be subject to random urine monitoring two times a week; shall attend A.A. meetings daily for 90 days, followed by attendance at A.A. mettings not less than three times weekly; shall participate with the Physicians Health Program; is hereby reprimanded for his use of an illegal substance in violation of N.J.S.A. 45:1-21a; respondent's license to practice chiropractic shall be suspended for six months which shall be stayed as a period of probation.

Michael Manno, D.C.

On February 11, 2002, Dr. Manno pled guilty in a United States District Court to the crime of Conspiracy to Distribute and to Possess with Intent to Distribute, Ketamine, a Schedule III narcotic.

Dr. Manno's license to practice chiropractic is revoked as of January 23, 2003. The Board will not entertain an application for reinstatement for a period of at least five years.

Daniel J. Catanzaro, D.C.

Final Order by Consent entered on January 30, 2003. License suspended for five years, three of which shall be active and the remainder to serve as period of probation; penalties of $5,000 and costs of $10,000. Complaint alleged that respondent engaged in professional misconduct by establishing a sham medical entity designed to utilize a medical doctor as the nominal provider of services, when if fact the medical entity was under respondents' control. Other forms of misconduct were alleged to constitute misrepresentation, as well as other violations of Board regulations.

MARCH 2003

Ottavio Nepa, D.C.

On March 17, 2003, a Consent Order was filed with the State Board of Chiropractic Examiners for violations of the Board's sexual misconduct regulation at N.J.A.C. 13:44E-2.3(c)by engaging in a consensual relationship with an adult female patient..

Dr. Nepa's license to practice chiropractic is suspended for a period of three years. Suspension is stayed to serve as a period of probation. Dr. Nepa is required to attend, successfully complete, and pass the ProBE course and appear before the Board prior to applying for re-admission into practice. Dr. Nepa was also assessed a civil penalty of $5,000.

Albert Rose, D.C.

Settlement in Lieu of Filing a Formal Disciplinary Complaint was filed on July 31, 2002. Dr. Rose was reprimanded and ordered to Cease and Desist from prescribing or dispensing supplements or nutritional products as part of his chiropractic practice; from offering nutritional advice for specific defects; and from benefitting financially from the sale of supplements or nutritional products. A civil penalty of $2,500 was assessed.

Matthew Welch, D.C.

On March 17, 2003, a Consent Order was filed with the State Board of Chiropractic Examiners. Dr. Welch was issued a reprimand for using unsubstantiated claims in reports and advertisements, exaggerating qualifications, and using testimonials from people who were not his patients. Dr. Welch must attend and successfully pass the ProBE ethics course and pay a civil penalty of $3,000.

Seth Rossinow, D.C.

A Settlement in Lieu of Filing a Formal Disciplinary Complaint was filed with the Board on February 25, 2003, concerning an advertisement. Dr. Rossinow was assessed a penalty of $750 for violations of N.J.A.C. 13:44E-2.1(c)9, engaging in the use of advertising which contains a guarantee that services provided will result in a cure; N.J.A.C. 13:44E-2.1(g), offering free services without stating their value; and N.J.A.C. 13:44E-2.1(i), publishing an advertisement which does not contain the practitioner's name or the name of the practice.

MAY 2003

William Gannon, D.C.

The Board finds that Dr. Gannon has engaged in multiple recordkeeping violations, contrary to N.J.A.C. 13:44E-2.2 and 2.8 and thus in violation of N.J.S.A. 45:1-21h.

Dr. Gannon is reprimanded for his failure to adhere to accepted standards of good chiropractic practice in recordkeeping during his period of employment. Dr. Gannon shall enroll in and successfully complete a 20-hour Board-approved recordkeeping

continued on the next page

course within six months of this Order. Successful completion means that all sessions were attended, all assignments were properly and appropriately completed, and a passing grade was achieved that was unconditional and without reservation. Dr. Gannon shall pay a civil penalty of $3,000 to the Board including costs incurred by the Board in the amount of $2,566.60.

JULY 2003

John Bilic, D.C.

A Consent Order was filed on July 1, 2003, imposing a reprimand for failure to adhere to accepted standards of chiropractic practice. Dr. Bilic is required to complete a 20-hour Board-approved recordkeeping course within six months of the Order; Dr. Bilic is to pay a civil penalty of $3,000 and costs incurred by the Board totaling $2,517.60.

Glen Poller, D.C.

On July 24, 2003, a Consent Order was filed with the State Board of Chiropractic Examiners. On October 15, 2002, Dr. Poller pled guilty in New Jersey Superior Court to employing a "runner" in violation of N.J.S.A. 2C:21-22.1. Dr. Poller's license to practice chiropractic is suspended for two years, one year of which shall be active, the balance stayed to serve as a period of probation; and is assessed a penalty of $5,000. Dr. Poller is required to attend, successfully complete and pass the ProBE course and appear before the Board prior to applying for re-admission into practice.

AUGUST 2003

Costontino Giordano, D.C.

On August 8, 2003, an Interim Consent Order was filed with the State Board of Chiropractic Examiners based upon a criminal complaint originating from Passaic County.

Pending a formal court proceeding, Dr. Giordano is ordered to engage the use of a Board-approved female monitor who must be present during the treatment of female patients and provide status reports to the Board every 30 days.

SEPTEMBER 2003

Roland Evans, D.C.

On March 11, 2003, Dr. Evans pleaded guilty in Superior Court in Somerset County to one count of health care claims fraud in that between January 1996 and May 2000, he made false statements of material fact in health care claims that his office submitted to insurance carriers for payment or reimbursement for health care services when such services had not been provided, contrary to the provisions of N.J.S.A. 2C:21-4.2 and N.J.S.A. 2C:21-4.3.

Dr. Evans's license to practice chiropractic in the State of New Jersey is suspended for a period of two years, except that the first year shall be an active suspension and the final year shall be stayed as a period of probation. During active suspension, Dr. Evans shall not practice chiropractic and shall successfully complete and pass the ProBE (Professional Problem Based Ethics) course or the PRIME (Professional Renewal in Medicine through Ethics) course. Dr. Evans shall pay a civil penalty, pursuant to N.J.S.A. 45:1-22 and N.J.S.A. 45:1-25, in the amount of $5,000 for engaging in acts constituting a crime involving moral turpitude and relating adversely to the practice of chiropractic, contrary to N.J.S.A. 45:1-21f. Prior to resuming active practice, Dr. Evans shall be required to appear before the Board to demonstrate fitness to resume practice. The Board reserves the right to place restrictions on Dr. Evans's practice should his license be reinstated.

Samuel Evenstein, D.C.

Dr. Evenstein's license is suspended pursuant to N.J.S.A. 45:1-21f in that Dr. Evenstein failed to pay income taxes due to the State of New Jersey pursuant to N.J.S.A. 54A:8- 1 for the years of 1997, 1998 and 1999. Such an act constitutes a crime or offense involving moral turpitude and relating adversely to the practice of chiropractic. On January 24, 2003, an Order was entered by the Superior Court of New Jersey ordering Dr. Evenstein to the following conditions: 24 months of supervision, 50 hours of community service, and $71,748.70 restitution to the State of New Jersey and applicable fees. Dr. Evenstein's license to practice chiropractic in the State of New Jersey is suspended for a period of three years with the first six months active and the final 30 months stayed to be a period of probation. Dr. Evenstein shall successfully complete and pass the ProBE or PRIME course. Prior to resuming active practice in New Jersey, Dr. Evenstein shall be required to appear before the Board to demonstrate fitness to resume practice.

Eric Rodriguez, D.C.

Settlement in Lieu of Filing a Formal Disciplinary Complaint entered on September 19, 2003. Reprimand for engaging in a sexual relationship with a patient without properly terminating the chiropractic care of the patient. Respondent shall successfully complete the (ProBE) or Prime ethics course within six months; penalty of $2,500 and costs of $6,453.

Officers of the State Board of Chiropractic Examiners

From left to right: Dr. Joseph Murphy, Dr. Lawrence O'Connor, Dr. Mary-Ellen Rada and Dr. Brian Atkisson

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Permits for Electrodiagnostic Testing and Special Examinations

Board regulation N.J.A.C. 13:44E-3.5 requires that chiropractors utilizing electrodiagnostic tests and special examinations detailed in the regulation be issued a permit for the performance of the following procedures:

- Nerve conduction velocity testing (repetitive stimulation studies including reflex latency measurements such as F-wave studies);
- H-reflexes and sympathetic skin responses;
- Somatosensory-evoked potentials (S.E.P.);
- Auditory-evoked potentials (A.E.P.);
- Brainstem-evoked potentials (B.A.E.P.);
- Dermatome-evoked potentials;
- Brain-evoked potentials (B.E.P.) where the extent of response to treatment is not otherwise ascertained from subjective reports and by objective findings and other tests;
- Thermography, only when used to evaluate pain associated with reflex sympathetic dystrophy (R.S.D.) in a controlled setting; and
- Videofluroscopy only in the evaluation of hypomobility syndrome and wrist/carpal hypomobility, where there are findings of no range or aberrant range of motion or dyssymetry of facets.

The regulation sets forth specific requirements for the performance and documentation of such testing and may be found on pages 70-80 of the Board's Statutes and Regulations booklet. An application for a permit may be found on the next two pages.

NEW JERSEY STATE BOARD OF CHIROPRACTIC EXAMINERS

APPLICATION
FOR CERTIFICATION IN ELECTRODIAGNOSTIC TESTS AND SPECIAL EXAMINATIONS

PURSUANT TO N.J.A.C. 13:44E-3.5

INSTRUCTIONS: Complete this application in its entirety. Attach the documentation (transcripts or course completion certificates) for the required education. You must sign and date the application. Submit the application, a $50 one-time application fee and all supporting documentation to: State Board of Chiropractic Examiners, P.O. Box 45004, 124 Halsey Street, 6th Floor, Newark, NJ 07101. The check or money order should be made payable to the New Jersey State Board of Chiropractic Examiners. (If you use a check and the check is returned by the bank due to insufficient funds, the certification process will be delayed.)

I. APPLICANT's INFORMATION:

Name: _____
(Last) (First) (Middle) (Maiden)

License number: MC_____

Name of Professional Practice: _____

Address of Professional Practice: _____

City, State: _____

ZIP code: _____ Email address: _____

Telephone number (include area code): (Office) _____ (Home) _____

II. TEST(S) FOR WHICH APPLICANT IS SEEKING CERTIFICATION: (CHECK ALL THAT APPLY)

NERVE CONDUCTION TESTING	S.S.E.P.	B.E.P. A.E.P.
B.A.E.P.	V.E.P.	THERMOGRAPHY
VIDEO FLUOROSCOPY	OTHER (SPECIFY)_____	

III. EDUCATION AND TRAINING:
Board regulations require successful completion of educational and training courses pertinent to each test. Training courses must include specific programs reviewed, recognized and approved by the State Board of Chiropractic Examiners OR offered in a postgraduate training program sponsored by a Council on Chiropractic Education (C.C.E.) accredited college of chiropractic*. Please attach course completion documentation to the application.

Complete the following for each test area being certified.

1.	TEST:	
a.	TRAINING PROGRAM	
b.	SPONSOR*	
c.	DATES OF ATTENDANCE	
e.	NUMBER OF HOURS	

State Board of Chiropractic Examiners, P.O.BOX 45004, 124 Halsey Street, 6th Fl. Newark, NJ 07101

State Board of Chiropractic Examiners
Electrodiagnostic Tests and Special Examinations
APPLICATION FOR CERTIFICATION
PAGE TWO

Applicant's Name: _____D.C. License No.: MC_____

2.	TEST:	
a.	TRAINING PROGRAM	
b.	SPONSOR*	
c.	DATES OF ATTENDANCE	
e.	NUMBER OF HOURS	

REPEAT AND COMPLETE PAGE TWO FOR ADDITIONAL TEST CERTIFICATIONS. If you have been performing Electrodiagnostic tests prior to March 1999. Attach a statement of your training background and experience.

CERTIFICATION OF RECORDS

I, _____D.C., do hereby certify that the foregoing statements are true, complete and correct to the best of my knowledge.

_____ _____
Signature of Applicant Date

I am enclosing with the completed application:

- the processing fee of $50.00 and
- the required supporting documents.
-

FOR BOARD USE ONLY:

The above- requested certification has been:

_____ DISAPPROVED by the State Board of Chiropractic Examiners

_____ APPROVED by the State Board of Chiropractic Examiners as indicated:

Date **APPROVED** or **DISAPPROVED:** _____ Initials: _____

COMMENTS: _____

_____

Where are you?

With every renewal period, the Board office receives hundreds of returned renewal forms because a chiropractor has changed his or her address, or the forwarding time of the address has expired, or the forwarding address has not been provided. Licensees should be aware that the laws and regulations governing the practice of chiropractic require that they send a change of address notification to the Board office within 10 days. This insures that any important Board communications, such as renewed licenses, will reach you in a timely fashion. The failure to notify the Board office of a change of address as soon as possible could subject you to monetary penalties for a violation of subchapter one of the Uniform Regulations: "Licensee Duty to Cooperate and to Comply with Board Orders."

Licensees should be reminded that insurance and managed care companies regularly check with the Board office for current and active licenses. Under the law, any license that is not renewed within the requisite time frame is automatically suspended. Licensees may subject themselves to serious financial penalties by failing to adhere to this simple requirement.

The statute governing chiropractic practice also requires that you notify the Board office of your practice location and/or employment. To facilitate this reporting, you may send the form below to the Board office.

Return to: **State Board of Chiropractic Examiners**
P.O. Box 45004
Newark, NJ 07101

(Please type or print all information)

_____ MC _____
Name License number

_____
Address of record

_____

_____
Employer or Practice name

_____ _____
Home telephone number (include area code) Office telephone number (include area code)

N.J. Department of Law and Public Safety
Division of Consumer Affairs
State Board of Chiropractic Examiners
124 Halsey Street
P.O. Box 45004
Newark, N.J. 07101

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New Jersey Department of Law & Public Safety

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visit our Web site at *www.NJConsumerAffairs.com*