

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH 1/

Jesse Jutkowitz, D.C.
License No. 000288
499 Pine Tree Drive
Orange, Connecticut 06477

Petition No. 950505-07-011

MEMORANDUM OF DECISIONPROCEDURAL BACKGROUND

The Department of Public Health ("Department") presented the Connecticut Board of Chiropractic Examiners ("Board") with a Statement of Charges brought against Jesse Jutkowitz, D.C. ("Respondent") dated June 23, 1995. The Statement of Charges alleged that the Respondent violated the Board's Order, issued in their Memorandum of Decision for Petition Number 850726-07-006, whereby the Respondent's license to practice chiropractic was suspended for a period of one year, which suspension became effective on April 7, 1995. (Department Exhibit 1).

Prior to the initiation of the instant charges, the Department gave the Respondent the opportunity to attend a compliance conference scheduled on June 1, 1995 to show compliance with all lawful requirements for the retention of his license.

(Department Exhibit 2).

1/ Effective July 1, 1995, the Department of Public Health and Addiction Services became the Department of Public Health. 1995 Conn. Pub. Acts. No. 95-257.

The Department served the Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt requested to the Respondent and to William L. Wood, Esq., of Scarsdale, New York. (Department Exhibit 1). The hearing was originally scheduled for July 20, 1995.

On July 5, 1995, the Respondent's attorney, Mr. Wood, requested a continuance due a previously scheduled hearing in New York State on July 20, 1995. The Department objected to the Respondent's Request for Continuance because Mr. Wood was not licensed to practice law in Connecticut and therefore was not authorized to ask for a continuance. On July 6, 1995, Patrick G. Lyle, an attorney licensed to practice in Connecticut, requested a continuance from the July 20, 1995 hearing date, due to an unexpected conflict in his schedule. The Department objected to Attorney Lyle's Request for a Continuance stating that he had not provided compelling justification for his request. On July 11, 1995, the Board denied the Respondent's Request for a Continuance. On July 11, 1995, Attorney Lyle submitted Respondent's Request for Reconsideration for Motion to Continuance. The Department submitted a Non-Objection to Respondent's Request for Reconsideration. The Board granted the Continuance on July 13, 1995. The Notice of Continuance setting a new date of August 17, 1995, for the hearing was sent to the Respondent and Attorney Lyle on July 18, 1995.

On July 6, 1995, the Respondent filed a Motion for Admission Pro Hac Vice for William L. Wood of Scarsdale, New York, to serve as additional counsel with Patrick G. Lyle. On July 13, 1995, the Department submitted its Non-Objection to the Respondent's Motion for Admission Pro Hac Vice. The Board granted the Admission Pro Hac Vice on August 14, 1995. In a letter dated August 14, 1995, the Board was notified that Mr. Wood withdrew from representation of the Respondent, as well as the law firm of Patrick G. Lyle.

On August 1, 1995, Holly Abery-Wetstone, Esq., advised the Department that she had been retained by the Respondent as of that date, and requested a postponement of the August 17, 1995 hearing date due to the fact that two of her witnesses would be unable to be present on that date. The Department submitted an Objection to Respondent's Request for Continuance and the Respondent submitted a Response to Department's Objection to Request for Continuance. On August 2, 1995, the Board denied the Respondent's Request for a Continuance.

On August 17, 1995 and September 7, 1995, the Board held the administrative hearing to adjudicate the charges brought by the Department. On each hearing date, the Respondent appeared with his attorney, Holly Abery-Wetstone, Esq., of Farmington, Connecticut. Kathleen Vella, Esq., represented the Department. Both the Department and the Respondent presented evidence and conducted cross-examination of witnesses. Following the completion of the hearing, both the Department and the Respondent submitted post-hearing briefs.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 and the Regulations of Connecticut State Agencies §19-2a-1, et seq. All Board members involved in this decision attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Paul Grimmeisen, D.C., Chairperson of the Connecticut Board of Chiropractic Examiners, recused himself from the finding of facts and the final decision in this case.

On January 29, 1996, the Department submitted a Motion requesting the Board to order the chiropractic license of the Respondent to remain suspended pending the Board's Memorandum of Decision in the present case. The Board denied the Motion.

ALLEGATIONS

The Department alleged that the Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut chiropractic license number 000288.

The Department further alleged that on March 22, 1990, the Connecticut Board of Chiropractic Examiners issued a Memorandum of Decision in Petition Number 850726-07-006, whereby the Respondent's license to practice chiropractic was suspended for a period of one year. The suspension became effective on April 7, 1995.

The Department further alleged that the Respondent practiced chiropractic after April 7, 1995, when the suspension of his license became effective.

The Department further alleged that the Respondent violated the Board's order contained in the Memorandum of Decision in Petition Number 850726-07-006, by practicing chiropractic after April 7, 1995 when the Board's Order became effective, and that such violation constitutes grounds for disciplinary action pursuant to Connecticut General Statutes Sections 20-27 and 20-29.

ANSWER

The Respondent filed a response to the Statement of Charges in an Answer dated August 16, 1995 denying that he practiced chiropractic after April 7, 1995. He further denied that he was in violation of the Board's Order contained in the 1990 Memorandum of Decision and that there were grounds for disciplinary action pursuant to Connecticut General Statutes Sections 20-27 and 20-29.

The remainder of the allegations in the Statement of Charges were admitted.

FINDINGS OF FACT

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut Chiropractic License No. 000288. (Respondent's Answer).

2. On March 22, 1990, the Board issued a Memorandum of Decision in Petition Number 850726-07-006 ("1990 MOD"), whereby the Respondent's license to practice chiropractic was suspended for a period of one year. This suspension became effective on April 7, 1995. (Respondent's Answer).

3. Mr. Concezio DiNino and Ms. Sheri Jones are employed by the Department as investigators. They were assigned to investigate the possibility that the Respondent was practicing chiropractic after April 7, 1995. (Transcript 8/17/95 pp. 26-27, 131-132).

4. Pursuant to his investigation, Mr. DiNino telephoned the Respondent's office to make an appointment with the Respondent. An answering machine answered his call. The male voice on the recorded message, identified as "Dr. Jutkowitz," told the caller to follow a series of prompts to make an appointment. Mr. DiNino left a message that he wanted to see the Respondent on May 16, 1995. (Transcript 8/17/95 pp. 27-28).

5. Subsequent to leaving the message, Mr. DiNino received a telephone call from a woman who stated she was calling from the Respondent's office and wanted to verify Mr. DiNino's appointment with the Respondent. (Transcript 8/17/95 pp. 28-29, 120).

6. On or about May 16, 1995, the following events occurred:

a. Mr. DiNino, accompanied by Ms. Jones, went to the Respondent's office. (Transcript 8/17/95 29, 132).

- b. Once in the reception area of the office, Mr. DiNino was given a form to fill out with questions about his medical history and financial responsibility. (Department Exhibit 6; Transcript 8/17/95 29-31, 133).
- c. Thereafter, a man identified by the receptionist as "Dr. Jutkowitz," introduced himself to Mr. DiNino and Ms. Jones as "Dr. Jutkowitz." (Transcript 8/17/95 pp. 33, 135).
- d. Mr. DiNino, Ms. Jones and the Respondent went into an examining room. (Transcript 8/17/95 pp. 33, 44-45, 124, 135, 141).
- e. The Respondent reviewed the form Mr. DiNino had filled out and asked questions about his condition. The Respondent took notes. (Transcript 8/17/95 pp. 33-34, 126, 136).
- f. The Respondent conducted a physical examination:
- i. The Respondent felt along the right side of Mr. DiNino's spine, asking where Mr. DiNino felt pain. (Transcript 8/17/95 pp. 34, 98-99, 126, 136, 147).
 - ii. The Respondent told Mr. DiNino to stand up and sit down again. (Transcript 8/17/95 pp. 37, 116, 118).

iii. The Respondent pressed his hand on Mr. DiNino's right upper chest and asked Mr. DiNino if it hurt. (Transcript 8/17/95 pp. 35-36, 92, 137).

g. While pressing his hand on Mr. DiNino's right upper chest, the Respondent struck the area with his closed fist. The Respondent told Mr. DiNino that he had performed an adjustment. (Transcript 8/17/95 pp. 35-36, 90-92, 99, 124-125, 127, 137-140, 147-150).

h. The Respondent told Mr. DiNino that he wanted to take x-rays and start treating him. (Transcript 8/17/95 pp. 34-36, 123-124, 126-129, 137, 139-140, 162, 165).

i. The Respondent explained his treatment process to Mr. DiNino. He stated that treatment would take a number of sessions and he wanted Mr. DiNino to start treatment during that session. (Transcript 8/17/95 pp. 34-36, 46, 119, 123-124, 129).

j. The Respondent told Mr. DiNino that he would be his doctor and would be treating him. (Transcript 8/17/95 pp. 34-35, 98).

7. On or about May 30, 1995, the following events occurred:

a. Mr. Martin Hardiman contacted the Respondent's office after seeing the name in the telephone book. An appointment was made. (Transcript 9/7/95 pp. 5-6).

- b. Mr. Hardiman went to the Respondent's office. Once in the reception area of the office, Mr. Hardiman was given a questionnaire which he filled out. (Respondent Exhibit C; Transcript 9/7/95 p. 6).
- c. Thereafter, a man who identified himself as "Dr. Jutkowitz," came into the reception area to speak with Mr. Hardiman. (Transcript 9/7/95 pp. 6-7).
- d. Mr. Hardiman was called to go into an examining room. The Respondent, the man who had identified himself as "Dr. Jutkowitz'" introduced Mr. Hardiman to a man identified as "Dr. Rosenbluth" and explained that Dr. Rosenbluth would be treating him. The Respondent never told Mr. Hardiman that his license was suspended. (Transcript 9/7/95 pp. 7-8, 15, 32).
- e. The Respondent did the following at this appointment:
- i. The Respondent asked Mr. Hardiman to bend over to see how far he could bend. (Transcript 9/7/95 pp. 12-13, 24, 38).
 - ii. The Respondent asked Mr. Hardiman where the pain was in his back. (Transcript 9/7/95 pp. 13, 31, 38).
 - iii. The Respondent recommended x-rays be taken. (Transcript 9/7/95 pp. 9, 21, 31-32).

iv. The Respondent reviewed the x-rays with Dr. Rosenbluth. (Transcript 9/7/95 pp. 10, 32).

v. The Respondent told Mr. Hardiman what his problem was. (Transcript 9/7/95 p. 10).

vi. The Respondent and Dr. Rosenbluth conferred about what the treatment would be. (Transcript 9/7/95 p. 11).

f. Dr. Rosenbluth did the following at this appointment:

i. Dr. Rosenbluth took the x-rays. (Transcript 9/7/95 pp. 10, 32, 184).

ii. Dr. Rosenbluth performed the treatment on Mr. Hardiman. (Transcript 9/7/95 pp. 11, 22, 25, 29, 38, 183-184).

8. Thereafter, Mr. Hardiman returned to the office for three or four more treatments. (Transcript 9/7/95 pp. 15, 21, 183).

9. Dr. Rosenbluth performed all the treatments on Mr. Hardiman. (Transcript 9/7/95 pp. 22, 25, 29, 183-184).

10. An expert witness for the Department, Dr. Jude Lombardi, testified that the Respondent practiced chiropractic on Mr. DiNino on or about May 16, 1995, and on Mr. Hardiman on or about May 30, 1995. (Transcript 9/7/95 pp. 89-93).

11. An expert witness for the Respondent, Dr. Brian Gross, testified that the Respondent did not practice chiropractic on either Mr. DiNino or Mr. Hardiman. (Transcript 9/7/95 pp. 210-258).

DISCUSSION AND CONCLUSIONS OF LAW

Connecticut General Statutes §20-29 provides in pertinent part:

The Board of Chiropractic Examiners may take any of the actions set forth in section 19a-17 for any of the following reasons: ... violation of any provisions of this chapter or regulations adopted hereunder

Connecticut General Statutes §20-27(a) provides in pertinent part:

No person shall engage in the practice of chiropractic in this state until he has obtained a license.

Both Mr. DiNino and Mr. Hardiman were credible witnesses. The Board relied heavily upon their testimony when determining the facts in this case.

The Board heard testimony from two expert witnesses, Dr. Jude Lombardi and Dr. Brian Gross, concerning whether the Respondent's conduct constituted the practice of chiropractic. Dr. Lombardi was a credible witness who testified that the Respondent's conduct with Mr. DiNino and Mr. Hardiman amounted to the practice of chiropractic. The Board, relying on its own expertise, came to the same conclusion.

The Board did not find Dr. Gross' opinion believable when he claimed that the Respondent's conduct with Mr. DiNino and Mr. Hardiman was not the practice of chiropractic. Furthermore, Dr. Gross' concern about the Respondent's duty not to abandon his patients was misplaced when applied to the facts of this case. Neither Mr. DiNino nor Mr. Hardiman were patients who had been seen by the Respondent before the suspension of his license. Since they were not existing patients of the Respondent, his refusal to see them in May 1995 could not be an abandonment of them.

The Department bears the burden of proof by a preponderance of the evidence in this matter. The Department met its burden of proof that the Respondent practiced chiropractic in May of 1995, during which time the Respondent's license to practice chiropractic was suspended by the Board's Order contained in the 1990 MOD, which had become effective April 7, 1995. By practicing chiropractic during the time his license was suspended, the Respondent violated the Board's Order. The violation of the Board's Order is grounds for further disciplinary action pursuant to Connecticut General Statutes Sections 20-27 and 20-29.

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ORDER

Pursuant to the authority vested in it by Connecticut General Statutes §19a-17 and §20-29, the Board orders the following in this case against Jesse Jutkowitz, D.C., Petition No.

950505-07-011, Chiropractic License No. 000288:

The Respondent's license to practice chiropractic shall be revoked. Reinstatement to be considered only after a minimum of two years, and at the discretion of the Board.

This decision becomes effective on May 26, 1996.

Connecticut Board of Chiropractic
Examiners

4/19/96
Date


by: Acting Chairperson Robert J. Porzio, D