

inadequate x-rays and utilizing them for subsequent treatment, had authorized, adopted and ratified the grossly incompetent or grossly negligent conduct of another. Respondent filed an answer denying all wrongdoing.

Following a plenary trial, Administrative Law Judge Weiss issued his initial decision which proposes to dismiss all counts of the complaint for failure to satisfy the complainant's burden of proof. The State filed exceptions to the proposed dismissal of Counts III, IV and V to which the respondent has countered. We have considered the written submissions and the arguments of the parties, the initial decision of Administrative Law Judge Weiss and have made our own review of the record, from all of which we make the following observations.

The allegations of the complaint all arise from the treatment of a patient named Joseph J. Cook. When the patient first presented himself to respondent's office complaining of pain in the hip, two radiographs were taken of the patient, both frontal views, one film being of the hips and lower back while the other was of the cervical spine and included the lower jaw. During the taking of both films the patient wore various items of clothing, jewelry and other artifacts, many of which are seen in the x-rays and obliterate areas of his anatomy. Neither radiograph was collimated to prevent parts of the patient's anatomy not being evaluated by these films from being needlessly subjected to x-rays and both films were underexposed,

thus reducing their diagnostic utility. There can be no doubt that the radiograph technique of the person taking these films is grossly deficient. Respondent claimed, though, at the hearing below that both radiographs were taken by Theresa Larsen, D.C., a chiropractor working out of respondent's office at that time as an independent contractor. At the hearings below respondent claims to have chastised Dr. Larsen for taking such deficient x-rays. It is interesting, however, to compare his testimony below with his statements made to the Executive Committee of this Board which held an investigative inquiry into this matter on August 3, 1982. During his appearance before the Committee, respondent stated that he had himself taken the radiographs in question and rather than finding any fault in these films, respondent sought to justify the radiographic technique employed as appropriate and standardly employed by chiropractors in this State. Although respondent's conflicting claims respecting these films raise doubts as to his credibility and veracity, the Administrative Law Judge who presided over the hearings below resolved the issue of credibility in favor of the respondent. We will not disturb that finding.

However, respondent claims to have utilized these inadequate radiographs in his treatment of this patient. Despite the fact that they were of little, if indeed any, diagnostic usefulness, respondent charged the patient his usual and customary charge of \$75 for the films. It is thus clear that respondent ratified and adopted the actions of Dr. Larsen in the taking of these woefully inadequate x-rays and their utilization for subsequent treatment.

With respect to the issue of respondent's patient treatment records, however, there is no attendant question of credibility. Respondent employed a white card which primarily listed the dates of patient visits. The card had only a limited history written on it and failed to contain any information regarding the extent of physical examination or any diagnostic tests performed, physical or x-ray findings, diagnosis, treatment plan, description of the type of adjustment given to the patient, results of the adjustments and remarks regarding the patient's progress between office visits. Although the card employed by respondent is the kind that is customarily used in many chiropractic offices, its primary usefulness is as a ledger of treatment dates without providing much further information. Thus, the use of this card as the complete patient record is totally inadequate. Respondent asked the Board at the final hearing to consider everything contained in this patient's folder as constituting the entire patient record, claiming that such review of the other items included in the folder will cure any deficiencies in the patient treatment card. We have reviewed the contents of this patient's record jacket, as maintained by respondent, and we find that the deficiencies as noted above are not cured by this review. In addition to the patient record card (hearing exhibit S-2) the record jacket contains various forms submitted by respondent for payment under Workers' Compensation for the treatment rendered. Although these forms contain some limited additional information not included on S-2, they do not cure the basic deficiencies noted above. After reviewing all the forms contained in the record jacket we still do not know the diagnosis made, the extent of the physical examination given, whether diagnostic

tests were administered, what findings respondent made from his physical examination or the radiographs, the treatment plan pursued for this patient, the type of adjustments given to this patient and progress or the lack thereof in the patient from one visit to another. Respondent's lame assertion that the decrease in the frequency of office visits over time necessarily bespeaks of an improvement in this patient's condition, actually concedes the point the Board is making, that there are no affirmative entries indicating the patient's response to treatment.

We have reviewed the expert testimony presented in the hearing below and agree substantially with the judgments made by Dr. Sternbach respecting the maintenance of patient treatment record. We agree with his conclusion that the relevant patient record maintained by respondent is incomplete. We also agree with the several reasons advanced by Dr. Sternbach as to why a complete patient record must be maintained. We consider the failure to prepare and maintain a complete and comprehensive patient treatment record, including a full history, a description of the physical examination and diagnostic tests administered to the patient, a listing of all findings including x-ray findings, specific diagnosis or diagnoses made thereon, the treatment plan to be pursued, description of the adjustments or other treatment rendered to the patient on each occasion, and notations as to patient progress or lack thereof as the result of each treatment, to be a deviation from accepted standards of practice. The Administrative Law Judge in his initial decision addressed the issue of the incomplete patient record solely as a possible violation of N.J.A.C. 13:35-6.12. In doing so, he apparently overlooked the real thrust of the State's contention, that

the failure to prepare an adequate patient treatment record is a deviation from accepted standards of practice. There is no doubt that N.J.A.C. 13:35-6.12, by its express provisions, does not require the preparation of complete patient treatment records, containing all the information that the Board has hereinabove listed as minimally necessary. However, in our review of the record below from the perspective of practicing physicians and including the judgments made by the chiropractic member of this Board, we have no hesitancy in finding the record maintained by respondent to be a departure from accepted standards of practice.

On the basis of these facts, we make the following conclusions of law.

We adopt the proposed findings and conclusions of the Administrative Law Judge with respect to Counts I, II and III of the Complaint. With respect to Count IV, the Board rejects the proposed findings of fact and conclusions of law of the Administrative Law Judge. Instead, the Board finds that the failure of Dr. Cantor to record in his patient records a complete history, description of the examination rendered, physical and x-ray findings and a diagnosis made thereon, together with a treatment plan and a description of the treatment rendered during each patient visit with a notation of any progress made by the patient from one visit to another is a deviation from accepted standards of chiropractic practice, and constitutes repeated negligence and malpractice in violation of N.J.S.A. 45:1-21(b). With respect to Count V, the Board rejects the proposed findings and conclusions of law. Instead, the Board finds that Dr. Cantor adopted and ratified the actions of Dr. Larsen in

the taking of x-rays on this patient and their utilization for subsequent treatment. The single plate films taken of this patient are unsatisfactory and not of adequate diagnostic quality as to be the basis for subsequent treatment. The Board considers Dr. Cantor's actions in doing so to be a deviation from accepted standards of chiropractic practice. However, the Board does not consider this deviation to be so substantial as to constitute gross malpractice or gross negligence. Since the degree of deviation does not arise to the level of culpable conduct before the Board, the Board hereby dismisses the allegations of Count V.

On the basis of the violation found herein,
IT IS on this **30** day of JUNE, 1983,
ORDERED that:

1) Howard I. Cantor, D.C., is hereby reprimanded for his failure to maintain adequate records;

2) Howard I. Cantor, D.C., is directed to cease and desist from henceforth maintaining inadequate and incomplete chiropractic records and is hereby directed to take affirmative, corrective action to improve the quality of his patient records. To assist him in this effort and to assure that appropriate records are maintained in the future, the Board will refer its chiropractic assistant to Dr. Cantor who will monitor the forms and procedures employed in Dr. Cantor's office for the maintenance of patient records. Dr. Cantor is directed to cooperate with and scrupulously follow the recommendations of the chiropractic assistant in this regard;

3) Howard I. Cantor, D.C., shall pay to the Board a monetary penalty of \$500 and costs of \$500 within ten days of the entry hereof.

NEW JERSEY BOARD OF MEDICAL EXAMINERS

By 
Edwin H. Albano, M.D.
President, State Board of Medical
Examiners