

FILED

JULY 1, 1985

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO. H83-5129

In the Matter of the Suspension)
or Revocation of the License of)

ANDREW M. RODGERS, D.C.)

To Practice Chiropractic in the)
State of New Jersey)

Administrative Action

FINAL DECISION
AND
ORDER

This matter was brought before the New Jersey State Board of Medical Examiners on the complaint of Irwin I. Kimmelman, Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General, which was filed with the Board of Medical Examiners on November 30, 1983. That complaint charged respondent with having engaged in numerous practices in violation of the Medical Practice Act and the regulations promulgated pursuant thereto. The matter was referred to the Office of Administrative Law on December 20, 1983. A supplemental complaint was filed on March 1, 1984, alleging additional violations. Hearings were held before Sybil R. Moses, Administrative Law Judge, on August 16, August 21, August 23, October 15, October 16 and October 25, 1984, at which respondent was represented by Anthony F. LaBue, Esq. Judge Moses' initial decision was issued on March 6, 1985, and is incorporated by reference, as if fully set forth herein. Exceptions to that initial decision were filed by respondent's counsel on March 29, 1985. Complainant's exceptions were filed on March 25, 1985. After due consideration of the Administrative Law Judge's decision, transcripts, exhibits and exceptions, the Board makes the following findings of fact and conclusions of law.

CREDIBILITY FINDINGS

The Board adopts virtually all of the findings of fact as set forth in the Initial Decision of the Administrative Law Judge in this matter. In some instances, we have found it necessary to supplement those findings by our own analysis and review of the evidence in this matter. We do, however, at the outset, specifically accept Judge Moses' findings with regard to the credibility of the witnesses. She found Dr. Fasulo, a witness testifying on behalf of the Attorney General, to be a credible witness (Initial Decision Page 8). Although Judge Moses expressed some reservations with regard to Dr. Litterer's testimony, she concluded that with regard to his testimony on the standard of chiropractic care in New Jersey, she found him to be credible (Initial Decision Page 10). She found the testimony of Norma Jean Cody to be credible and specifically noted that Ms. Cody "was sincere and firm in her voice and demeanor and her recollection was not shaken by cross-examination" (Initial Decision Page 11). Likewise, she made a finding that Mr. Marowitz was credible and "intimately familiar with his wife's activities."

With respect to Dr. Rodgers, Judge Moses noted that he was tense and nervous during testimony and, in many instances, he could not explain the failure to document services rendered and on too many occasions he cited clerical errors as an explanation for the discrepancies which were demonstrated in the evidence (Initial Decision Pages 14 and 15). Her overall impression of Dr. Rodgers' testimony was capsulized in her Initial Decision on Page 17 wherein she noted:

Unfortunately Dr. Rodgers, who appears amiable enough, was not candid on the witness stand. He could not explain the billing problems and could not explain, or did not understand, the necessity for keeping complete patient records. His credibility left a great deal to be desired, on its own, notwithstanding other witnesses.

In his appearance before the Board on April 10, 1985, Dr. Rodgers offered nothing to the Board which would have dissipated this impression.

Because of the complexity of this matter and the voluminous proofs, for purposes of analysis, the Board will be foregoing the chronology of the counts. In this Final Decision and Order, those counts which raise the same substantive issues, will be dealt with together.

FRAUDULENT BILLING PRACTICES
(Counts XIV, XV, XVI, I, V, XII)

FINDINGS OF FACT

In Counts XIV, XV, and XVI, the Attorney General alleged that respondent submitted bills to third party payors for services which he had not rendered to three individuals - Norma Jean Cody (Count XIV), Mark Marowitz (Count XV) and Deborah Marowitz (Count XVI). With respect to these counts, we make the following findings of fact:

COUNT XIV

1. Dr. Rodgers billed Ms. Cody for eight adjustments (S-8A-1) but only treated her four times. She did not type her own bill.
2. Dr. Rodgers did not get paid for the four adjustments he rendered Ms. Cody. She told him he would get reimbursed as a result of her Workers' Compensation claim. Dr. Rodgers sent a bill to her lawyer.
3. Ms. Cody's patient records contain no patient progress record, no kinesiological examination record and no treatment record. They only contain billing information.
4. Dr. Rodgers billed Ms. Cody for four adjustments not rendered.

COUNT XV

1. Dr. Rodgers and Marc Marowitz had an agreement that any care and adjustments rendered to the Marowitzes were in exchange for food delivered to Dr. Rodgers' office by Mr. Marowitz.
2. Marc Marowitz was treated at least four times in the

fall of 1982 by Dr. Rodgers and went for treatments more than four times over a period of four years. He paid with \$10 or \$15 worth of food. Mr. Marowitz never went to Dr. Rodgers for back problems, acute neck problems, back pain or headaches. He went for treatments for colds as a result of representations made by Dr. Rodgers that chiropractic care would alleviate his cold symptoms.

3. Mr. Marowitz's patient record, S-10, contains no evidence supporting any treatment, much less four, 11 or 12 treatments, other than the billing record. There is no patient history, no reports of kinesiological examinations, no Patient Treatment or Progress Record, no X-ray reports and no confidential case history.

4. Dr. Rodgers billed Blue Shield for services rendered to Mr. Marowitz for which Marowitz had paid in kind (food from his delicatessen) or for services which he never rendered.

5. When Blue Shield sent checks to Mr. Marowitz to pay for Dr. Rodgers' treatment, he returned the checks. Blue Shield then sent the checks back to him. At that point, Mr. Marowitz deposited the checks to offset \$160 which Dr. Rodgers still owed for food.

6. Dr. Rodgers did pay the Morristown Delicatessen with six checks, dated December 22, 1982 through March 16, 1983. The services in question preceded these dates.

COUNT XVI

1. Dr. Rodgers billed Blue Shield for 10 treatments rendered to Deborah Marowitz. There is no evidence whatsoever in the record documenting any treatment which could be the basis

for the claim forms and bills Dr. Rodgers signed for treatment to Mrs. Marowitz. Dr. Rodgers billed Blue Shield for treatment never rendered to Deborah Marowitz.

2. Mrs. Marowitz did not testify at the hearing. Her husband said she only went to Dr. Rodgers four times and that she had no lower back problems, or arm or neck pain in 1982.

3. Dr. Rodgers had no recollection of any treatment given to Mrs. Marowitz.

CONCLUSIONS OF LAW

With respect to these counts, the submission of bills for services not rendered was alleged to constitute a violation of the following statutory or regulatory provisions:

N.J.S.A. 45:1-21(b) - use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

N.J.S.A. 45:1-21(e) professional misconduct.

N.J.S.A. 13:35-6.11 (since recodified at N.J.A.C. 13:35-6.4) rendering a bill for services not in fact rendered.

N.J.S.A. 45:1-21(h) - violation of a regulation administered by the Board.

N.J.S.A. 45:9-6 (which, by her exception, Deputy Attorney General Gelber advises, should have read N.J.S.A. 45:14.5. In fact, the pertinent provisions is N.J.S.A. 45:41.5 which requires chiropractors to be of "good moral character.")

We concur with Judge Moses' conclusions that billing for services not rendered, constitutes a violation of N.J.A.C. 13:35-6.4 and thus, pursuant to N.J.S.A. 45:1-21(h), a basis for disciplinary sanction. Unquestionably, such conduct is professional misconduct

in violation of N.J.S.A. 45:1-21(e). Moreover, we find that the submission of false bills to be not only "deliberate misrepresentation," but also a dishonest and fraudulent act in violation of N.J.S.A. 45:1-21(b). Like Judge Moses, we are shocked and appalled by respondent's conduct as evidenced by the proofs with respect to these three counts. The Board similarly expressly adopts Judge Moses' conclusion that "these acts show a course of conduct over a period of time that demonstrates a lack of good moral character." Contrary to respondent's contention in his exceptions, such a requirement continues throughout the period of licensure and the receipt of evidence demonstrating a lack of good moral character can be ~~the basis~~ for a disciplinary sanction. In re Polk, 90 N.J. 550, 576 (1982).

COUNT I

FINDINGS OF FACT

1. Blue Shield claim forms have a code number system which identifies the type of X-ray view taken of the patients. Some code numbers represent a series of X-ray views rather than just one view. Boxes are located next to the code numbers for billing. While the meaning of all of the codes may not be perfectly clear on the face of the claim form, it is apparent that some codes represent one film, some represent two, and some represent more. While the claim form indicates an AP and lateral view were billed, two films should have been taken.

2. Dr. Rodgers submitted claim forms with respect to thirteen patients, which if evaluated on the basis of the code numbers indicated, represent that he was billing for at least

sixty X-rays. The Chart below sets forth our observations regarding the discrepancies apparent with respect to patient X-rays.

<u>Patient</u>	<u>Number of X-rays represented by Codes</u>	<u>Number of X-rays charged</u>	<u>Number of X-rays Able to Produce</u>
ALEXANDER	4	4 at \$30 each	2
ARDOLINO	4	2 at \$30 each	2
GLUS	3 or 4*	2 at \$30 each	3
HANLON	4	3 at \$30 each	3
KENT	6	4 at \$30 each	4
DOO	6 or 7*	5 at \$25 each	None
LUCAS	6	3 at \$25 each	2
LUZZI	6	3 at \$25 each	3
MUNCEY	9**	5 at \$25 each	None
ORABY	4	2 at \$30 each	2
PRUDEN	4	4 at \$30 each	3
SCIOTINO	4	2 at \$30 each	
WINKLER	***	2 at \$30 each	2

*Due to the placement of the typed entry, between the code numbers, it is unclear as to which codes should be ascribed to these patients.

**One of the code entries for this patient represents a series of X-rays of five or more.

***A code "XB" is utilized on this form, the meaning of which is not clear on the face of the application.

Based on examination of the charges made, it appears that Dr. Rodgers billed for forty-one X-rays at either \$30.00 or \$25.00 a piece. In several instances, Dr. Rodgers was unable to produce the X-rays for which he had billed (Alexander, Doo, Lucas, Muncey, Pruden). A survey of these forms reveals that in many instances, the code for two films was noted, yet only one X-ray was billed at \$30.00. All of the forms reflect that two films were being billed by the use of the same code number (Alexander, Hanlon, Kent, Doo). In other instances Dr. Rodgers was unable to produce X-rays for which he had charged (Alexander, Lucas, Doo, Muncey, Pruden). The claim forms which had been prepared by respondent's office staff evidence their lack of understanding of the basics in preparing the billing statement and can hardly be viewed as an accurate representation of the services rendered. Moreover, respondent's patient records in many instances failed to reflect any information to corroborate that the X-rays billed were taken.

3. Dr. Rodgers' staff prepared the claim forms with information provided by Dr. Rodgers, Dr. Pellino or other chiropractors who worked in his office or based on information in the file. The person who filled in the claim forms did not have any independent knowledge of the number of X-rays actually taken. Dr. Rodgers took no more than 25% of the X-rays. His office had a high rate of staff turnover during the period.

4. Dr. Rodgers signed each and every claim form submitted for the above captioned X-rays without reviewing the contents of the forms.

CONCLUSIONS OF LAW

Count I at Paragraph 6, charged:

Respondent billed for services not rendered, prohibited by N.J.A.C. 13:35-6.1, which constitutes a violation of N.J.S.A. 45:1-21(b), (e) and (h) and is a failure of the continuing statutory requirement of good moral character, N.J.S.A. 45:9-6. Each instance of false billing constitutes a separate offense. Alternatively, respondent failed to prepare and/or maintain a proper patient record in violation of N.J.A.C. 13:35-6.12 and N.J.S.A. 45:1-21(h).

Judge Moses concludes that the State failed to prove that Dr. Rodgers' actions as evidenced by the proofs with respect to this count were intentional. Thus, she concludes that his conduct does not constitute a violation of N.J.S.A. 45:1-21(b). Without reaching the question of whether the proof of "intent" is an essential element in the establishment of a violation of N.J.S.A. 45:1-21(b), we adopt Judge Moses' conclusions that the evidence established that Dr. Rodgers failed to adequately supervise the preparation of billing statements and that such failure amounts to repeated negligence in violation of N.J.S.A. 45:1-21(d), as well as professional misconduct. Similarly, the evidence adduced demonstrates that Dr. Rodgers' records were inadequate both insofar as they failed to corroborate that the X-rays billed were taken, and they failed to provide an appropriate record of chiropractic care.

COUNT V

FINDINGS OF FACT

In Count V, the State charged respondent with submitting false bills with respect to care rendered to Frank Luzzi, Sr. and Frank Luzzi, Jr.

We adopt Judge Moses' findings in their entirety, with respect to this count:

1. Dr. Rodgers treated Frank Luzzi, Sr. in 1981. He billed him for kinesiological examinations given on April 21, May 20, and October 26, 1981. Mr. Luzzi's patient chart contains no documentation of any kinesiological examinations. See, S-21P.
2. Luzzi's patient records, S-21, consist mainly of cards filled out by the patient himself (S-21D and S-2-E) and bills submitted by Dr. Rodgers or Mr. Luzzi. The Patient Progress and Treatment Record, S-10, contains one entry, dated May 5, 1981. There is no patient history or X-ray reports in the file.
3. Dr. Rodgers treated Frank Luzzi, Jr. in 1978 and 1979 and billed him for three kinesiological examinations in 1978, 11 kinesiological examinations in 1979 and for chiropractic treatments on September 3, September 14, October 25, November 9 and November 20, 1979. Mr. Luzzi, Jr.'s patient record contains no documentation of any kinesiological examinations or treatments. See, S-22.
4. Mr. Luzzi Jr.'s records consist of a patient introduction card, two patient histories and a series of bills and materials from Prudential and Blue Shield. The kinesiological examination chart (S-22D), the Patient Progress and Treatment Record (S-22E) and the Neurological, Orthopedic and

Physical Examination sheets are entirely blank. There are three X-rays in the file, S-21, marked F. Luzzi, dated March 29, 1978 and one dated September 19, 1978.

5. In October and December 1978, interim reports were sent to Mr. Luzzi's major medical insurance carrier, Prudential Insurance Company of America, listing dates and types of services rendered. None of the services are documented in the file. See, S-22F and G.
6. Mr. Luzzi, Sr. submitted an affidavit stating that he reviewed his insurance billing and patient records and that all dates coordinate with the services rendered to him and to his family. Mr. Luzzi thinks highly of Dr. Rodgers and feels that there was a decided improvement in his son's pitching arm as a result of Dr. Rodgers's treatment.

CONCLUSIONS OF LAW

Judge Moses appears to have concluded that the undated handwritten statement of Frank Luzzi, Sr. in which he corroborates the billing charges precludes a finding that Dr. Rodgers possessed a dishonest intent (Initial Decision p. 40). Thus Judge Moses declines to conclude that respondent engaged in fraud or misrepresentation as charged. She, nevertheless, concludes that because there were "no records documenting that the treatment billed was actually rendered," Dr. Rodgers "was negligent in not reviewing the bills filed and in not preparing and maintaining proper patient records." We concur and thus conclude that

the State has proven a violation of N.J.S.A. 45:1-21(e) (professional misconduct), N.J.S.A. 45:1-21(d) (repeated negligence and N.J.S.A. 45:1-21(h) (violation of a regulation administered by the Board) in that he failed to maintain proper patient records in violation of N.J.A.C. 13:35-6.5.

COUNT XII

FINDINGS OF FACT

1. Dr. Rodgers submitted bills to Allstate Insurance Company for services rendered to Lori Jean Taylor in varying amounts and with different entries. For example, the bill for March 5, 1983 had entries for services rendered on March 30, April 12 and April 14, whereas the bill for June 25, 1983 had no entry for March 30 or for April 12. These discrepancies are not solely the result of clerical errors or two different billing periods, pre- and post-accident.

2. On January 9, 1984, Dr. Rodgers submitted a bill to Allstate, total balance due, \$1,405 (S-6W). There are no other bills in the file reflecting total fees.

CONCLUSIONS OF LAW

In Count XII, Dr. Rodgers is charged with having submitted inaccurate or false bills for services allegedly rendered to Lori Jean Taylor since the records which respondent maintained with respect to her care failed to include entries for the dates on which he billed or included entries at variance with those billed. We concur with Judge Moses' conclusion that respondent's billing practices were "exceedingly negligent and clearly in violation of

INCOMPETENT X-RAYS
(Counts II and VIII)

COUNT II

FINDINGS OF FACT

1. There are uniform standards of chiropractic diagnosticity X-ray technique in New Jersey which include requirements that vertebrae in the area X-rayed be clearly articulated and that the patient be properly positioned. A proper X-ray has an appropriate label, including the name of the patient and the doctor, the date of the X-ray, the sex of the patient and a left-right marker.

2. An X-ray is taken to rule out pathology which may exist, to determine if the patient is acceptable for chiropractic treatment, through a determination of spinal misalignment, and/or to determine if the patient is making clinical progress.

3. A chiropractor must limit unnecessary radiation exposure by means of columnation, especially of the eyes and genital areas. A chiropractor must also utilize safety devices which intensify the X-ray image and absorb excess radiation. A chiropractor should avoid superimposing artifacts on boney areas of the body which have to be visualized and should utilize proper exposure times and dosages in order to avoid overexposure and/or underexposure

*Judge Moses concludes that respondent's conduct as evidenced by the proofs with respect to Count XII does not support a conclusion that he has engaged in professional misconduct. She holds that negligent billing is not necessarily the equivalent of professional misconduct. Because of our acceptance of Judge Moses' conclusion that Dr. Rodgers negligently prepared his bills and our analysis of how penalties can and should be assessed in this matter, we find it unnecessary to disturb this conclusion.

in relation to a particular part of the patient's body. An X-ray must be properly developed to avoid fogging, staining and other manual defects.

4. Male patients should disrobe to their shorts and female patients should be disrobed and gowned, wearing underpants, but removing clothing items with metal.

5. A Blue Shield update on chiropractic standards of diagnostic X-rays was issued in October 1983 after the X-rays in question were taken.

6. While it is unclear whether Dr. Rodgers or one of his associates took the X-rays detailed in Schedule B attached to the complaint, it is clear that all X-rays were taken at Morristown Chiropractic Center, which is owned by Andrew Rodgers, D.C., and that Dr. Rodgers signed all the certifications attached to the claim forms.

7. Christopher Pellino, D.C., was not an independent contractor. He was paid by Dr. Rodgers who signed and submitted claim forms to Blue Shield for X-rays taken by Dr. Pellino.

8. After a review of the testimony of Drs. Litterer and Koris, Judge Moses made the findings of fact as follows in regard to specific X-ray diagnosticity. After actually reviewing a number of the X-rays in question, we concur with these findings:

<u>Patient</u>	<u>X-ray</u>	<u>Diagnostic or Nondiagnostic</u>
Alexander, Patricia	S-13A	Nondiagnostic
	S-13B	Diagnostic
Ardolino, Joseph	S-15A	Diagnostic
Glus, Jack	S-16A	Diagnostic
	S-16B	Partially diagnostic

<u>Patient</u>	<u>X-ray</u>	<u>Diagnostic or Nondiagnostic</u>
	S-16C	Partially diagnostic
Hanlon, Vance	S-17A	Diagnostic (only for chiropractic purposes)
Kent, Chris	S-18B	Nondiagnostic
	S-18C	Nondiagnostic
Lucas, Ronald	S-19A	Nondiagnostic
	S-19B	Nondiagnostic
Luzzi, Frank	S-21A	Diagnostic
	S-21B	Diagnostic
	S-21C	Diagnostic
Oraby, Hesham	S-24A	Nondiagnostic
Pruden, Lucille	S-25A	Nondiagnostic
	S-25B	Nondiagnostic
	S-25C	Nondiagnostic

Of 18 X-rays reviewed, seven were diagnostic, two were partially diagnostic and nine were nondiagnostic, for a ratio of 50 percent nondiagnostic.

CONCLUSIONS OF LAW

While the Board adopts Judge Moses' conclusion that respondent's production of such a large number (both in relative and absolute terms) of X-rays of non-diagnostic quality constitutes repeated negligence, it rejects her conclusion that such conduct does not constitute gross negligence or incompetence. As Judge Moses notes, the Board is allowed great discretion in determining what constitutes gross negligence. We conclude that the taking of X-rays of non-diagnostic quality results in an unnecessary and unwarranted exposure of a patient to radiation and poses a threat to the health and safety of the patients.

Thus this Board concludes that respondent has violated N.J.S.A. 45:1-21(c).

COUNT VIII

FINDINGS OF FACT

1. Five X-rays of Lori Jeanne Taylor were taken at Morristown Chiropractic Center, three on February 8 and two on March 28, 1983. They were all available for review. Dr. Rodgers signed the claim forms for the X-rays and the certifications attached to them, although Dr. Pellino probably took the X-rays.

2. The Board adopts the following findings made by Judge Moses in regard to these X-rays:

S-6A	Neurolateral X-ray-3/28/83	Nondiagnostic
S-6B	Neurolateral X-ray-3/28/83	Diagnostic
S-6C	Spinal X-ray 3/28/82	Diagnostic
S-6D	A/P lumbar-2/8/83	Nondiagnostic
S-6E	A/P cervical-2/8/82	Diagnostic

Of the five X-rays reviewed, two were diagnostic and three were nondiagnostic, for a ratio of 60 percent nondiagnostic.

CONCLUSION OF LAW

As with Count II, we adopt Judge Moses' conclusion that the taking of a number of X-rays of nondiagnostic quality constitutes repeated negligence or incompetence. We reject her conclusion that the conduct does not amount to gross negligence or incompetence, in violation of N.J.S.A. 45:1-21(c).

RECORD KEEPING

COUNT II (See also discussion
regarding Count I and V)

FINDING OF FACT

1. The accepted standard of chiropractic practice in New Jersey for content of appropriate patient records is that an appropriate record should include patient complaints and/or history, properly labeled diagnostic X-rays, progress or treatment notes, notes of a physical examination, a report of objective findings and a diagnosis.

2. Ms. Taylor's record did not contain complete progress notes, treatment notes, physical examination notes or reports of objective findings. This patient record does not fully meet the accepted standards.

CONCLUSION OF LAW

We hereby adopt Judge Moses' conclusion that Dr. Rodgers failed to prepare and maintain appropriate patient records for Lori Jeanne Taylor in that those records failed to include patient complaints and/or history, progress or treatment notes, notes of physical examination, reports of objective findings, diagnosis and properly labeled diagnostic labels. Such conduct constitutes a violation of N.J.S.A. 45:1-21(h), in that N.J.A.C. 13:35-6.5 was violated.

ADDITIONAL COUNTS

COUNT X

FINDINGS OF FACT

1. There is a standard and accepted range where chiropractic treatment is no longer effective for the type of injury suffered by Lori Jeanne Taylor. Such treatment should be given approximately three times a week for one month, then two times a week for the second month, and then once a week for the third month, Treatment generally will not

go beyond three months.

2. If the patient still has complaints and/or pain, re-X-raying is in order, and a fourth month of treatment is not objectionable if X-rays show continued vertebral subluxations.

3. Dr. Rodgers's diagnosis of Lori Jeanne Taylor was appropriate as of the time of the accident, March 1983, except for lumbar sprain, as Ms. Taylor did not remember any problem in the lumbar area. The only record of the 61 treatments rendered is on her financial card and/or billing statements.

4. Dr. Fasulo examined Ms. Taylor on October 13, 1983. She had no objective abnormal physical findings on that date. There is nothing in the patient records to support the necessity for 61 visits between March 28, 1983 and October 20, 1983. The number of visits is totally unwarranted given Dr. Rodgers's diagnosis, even assuming the diagnosis is correct.

5. The many problems on Ms. Taylor's billing statements cannot be blamed on clerical errors or on Ms. Cody's inefficiency.

CONCLUSIONS OF LAW

The Board adopts Judge Moses' conclusion that:

Sixty-one visits here were totally unwarranted given the fact that Ms. Taylor had no objective, abnormal physical findings when examined by Dr. Fasulo on October 13, 1984." Moreover, we reiterate her conclusion:

The encouragement of such multitudinous visits is outside accepted practice and is professional misconduct and is the equivalent of repeated acts of negligence or incompetence.

While we find it unnecessary to alter Judge Moses' conclusion that rendering unnecessary services constituted conduct amounting to fraud

or misrepresentation in this particular case, we do not mean to intend to enunciate a standard that such a conclusion could not be made.

Thus, the rendering of unwarranted service can, in our view, give rise to a finding that a licensee is engaged in fraud or misrepresentation.

COUNT XIII

FINDINGS OF FACT

1. Dr. Rodgers held himself out as a chiropractor authorized to offer maintenance care, which is treatment other than an active effort to correct a specific vertebral misalignment.

2. Dr. Rodgers offered maintenance care to Ms. Lucille Pruden, saying that it may take 12 to 15 months or once a month, for life, to have 100 percent health (see, S-25R) (emphasis added).

CONCLUSION OF LAW

The Board rejects Judge Moses' conclusion with regard to this count. While the Board concludes that the offering of maintenance care does fall outside of the scope of chiropractic, as authorized by N.J.S.A. 45:9-14.5 and that such offers do tend to lead patients to erroneously assume that they can derive a benefit from chiropractic care

we are not persuaded that Dr. Rodgers knew that the offer of such services contravened accepted standards. It is the Board's hope that with N.J.A.C. 13:35-7.1 now in place, all chiropractors will recognize and know what the Board will deem to be within the scope of chiropractic. We admonish Dr. Rodgers to bring his practice into compliance with standards set forth at N.J.A.C. 13:35-7.1. Thus, we are hereby dismissing Count XIII.

COUNT VII

FINDINGS OF FACT

1. On October 4, 1980, Dr. Rodgers was directed through the entry of a Consent Order to cease and desist disseminating any publication or advertisement which contained representations misleading to the public. The representation contained in the publication which gave rise to this Consent Order included an articulation of a variety of medical conditions, for which Dr. Rodgers was purporting to offer help through chiropractic care, which this Board did not then or now view as conditions amenable to chiropractic treatment.

2. In 1982-83, Dr. Rodgers either displayed or personally gave copies of a pamphlet, "Recommendations for Chiropractic Care" (S-15P), to his patients. There are many misrepresentations in this booklet, including a chart of "Effects of Spinal Misalignments," which links spinal misalignments to various diseases in a manner which we find to be misleading to the public.

3. The chart refers to permanent cure as the reason people seek chiropractic care. It also refers to effective adjustments for specific ailments, indicating that laryngitis, hoarseness and throat conditions, such as sore throat or quinsy, can be assisted by chiropractic care.

4. Display and use of "Recommendations for Chiropractic Care" is not peculiar to Dr. Rodgers. The preprinted pamphlet is issued by the Parker Chiropractic Research Foundation and is used by other chiropractors in the state.

5. While Dr. Litterer may not find the representations

fraudulent or misleading, we do not believe his testimony to be dispositive on this point.

CONCLUSIONS OF LAW

The Board adopts Judge Moses' conclusion that Dr. Rodgers engaged in professional misconduct in disseminating the pamphlet misrepresenting the purpose and abilities of chiropractic care. However, we modify Judge Moses' conclusion in that we find the assertion in the pre-printed pamphlet to be without scientific merit and thus misrepresentation and a basis for disciplinary sanction pursuant to N.J.S.A. 45:1-21(b).

COUNT VI

FINDINGS OF FACT

1. In 1978, Dr. Rodgers recommended nutritional supplements to Frank Luzzi, Jr. to aid in healing his pitching arm and suggested a company and health food store where the Luzzis could purchase the supplements.

2. We expressly reject Judge Moses' findings that the bill entry in 1978, \$20.50 for vitamins for Mr. Luzzi, Jr., was not for a sale of vitamins to Mr. Luzzi. Even though the entry appeared only once, it can form the basis for a disciplinary sanction.

CONCLUSION OF LAW

The sale of vitamins or nutritional supplements is, in our view, outside the scope of authorized practice for a chiropractor. Though an "isolated incident," we find that engaging in a practice outside of the authorized scope of practice, constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e). We hereby reprimand respondent for such conduct.

COUNT IX

FINDING OF FACT

1. In 1983 Dr. Rodgers charged \$30 per X-ray taken of Lori Jeanne Taylor and either \$30 or \$35 per visit.

2. A \$30 charge per X-ray in 1983 was not excessive.

3. The range of fees in 1983 for chiropractic treatments was \$15 to \$20 or \$25 per treatment.

4. Given Judge Moses' finding that the \$30 X-ray fee should not be deemed excessive and her finding that a range of office visit fees from \$15 - \$25 were acceptable in 1983, we conclude that the fees charged by Dr. Rodgers were not so excessive or unconscionable as to warrant disciplinary action. Accordingly, we deem it unnecessary to analyze the factors articulated at N.J.A.C. 13:35-6.11. While we agree with Judge Moses' findings 4 through 6, we find them unnecessary to our consideration of this count.

CONCLUSION OF LAW

We adopt Judge Moses' conclusion and accordingly dismiss Count IX.

COUNT IV

FINDINGS OF FACT

1. Every claim form submitted by Dr. Rodgers has printed on it

Dr. A.M. Rodgers, D.C.P.A.
188 Speedwell Avenue
Morristown, N.J. 07960

2. Judge Moses found that "every signature is followed by the initials "D.C." Although we are unable to decipher the 'D.C.' we do adopt her finding that Dr. Rodgers' signature is not easily legible.

3. Dr. Rodgers never intended to conceal the fact that he is a Doctor of Chiropractic. Dr. Rodgers' stationery has "Dr. Andrew M. Rodgers, D.C.P.A." printed at the top of the page and the typed name under his signature contains "D.C.P.A."

CONCLUSION OF LAW

We adopt Judge Moses' conclusions and accordingly dismiss Count IV.

COUNT III

1. Blue Shield representatives made a total of three requests to Dr. Rodgers for records and X-rays for their review.

2. The first request from the Utilization Review Program of New Jersey Blue Cross-Blue Shield was sent to Dr. Rodgers on March 23, 1982. In May 1982 and in July 1982, audits were made which resulted

in an agreement between Dr. Rodgers and Blue Shield for the payment of \$3,500 in weekly installments of \$100, to rectify any and all claims by Blue Shield for overpayment due to the processing of any subscriber's claim through October 1982.

3. As of October 6, 1982, Dr. Rodgers agreed to permit Blue Shield representatives to review his X-ray facilities and development processes and to question and instruct his staff, if necessary, on radiological needs and/or techniques.

4. Blue Shield made a third request to visit Dr. Rodgers' office to review and obtain records. The initial date for the visit was May 2, 1983, which was changed to May 18, 1983 for the convenience of Dr. Pellino.

5. Dr. Rodgers authorized Dr. Pellino to contact Blue Shield to arrange for the date and to be present when Ms. Weisheit, the Blue Shield representative, actually came. Dr. Rodgers asked Pellino to cooperate with Weisheit and to do photocopying for Blue Shield. Dr. Pellino was Dr. Rodgers' agent.

6. The analyst for the Utilization Review Department of Blue Shield had clearly specified which X-rays and records were wanted and that the documents would be picked up at Dr. Rodgers' office. (See, S-4F.) Dr. Rodgers agreed to this arrangement.

7. Ms. Weisheit came to Dr. Rodgers' office on May 18, 1983. She received Dr. Pellino's authorization to physically go through the patient files and to ask the staff to do photocopying. Dr. Pellino gave this authorization to expedite the review.

8. Dr. Rodgers entered the office just as Ms. Weisheit was about to leave with various files and X-rays. He was very upset because he thought that Dr. Pellino exceeded his authority.

9. Dr. Pellino's authority to cooperate with the Blue Shield representative included expediting the release of X-rays and records by allowing Ms. Weisheit physical access to the records and by having the office staff cooperate with her by copying records.

CONCLUSIONS OF LAW

We adopt Judge Moses' conclusion and accordingly dismiss Count III.

SUPPLEMENTAL FINDINGS OF FACT

The Board adopts the supplemental finding recited in the Initial Decision at pages 33 to 34, and amends paragraph 5 to read:

5. The costs incurred by the Board are as follows:
 - A. Expert testimony, Dr. Fasulo \$375.00
 - B. Expert testimony, Dr. Litterer \$843.75
 - C. Enforcement Bureau \$3,545.92
 - D. Transcript \$2,958.24*

DISPOSITION AND ORDER

Based on the foregoing analysis of testimony, Findings of Fact and Conclusions of Law, we modify the Disposition and Order made by the Administrative Law Judge in her initial decision as follows:

The Board concurs that the public interest will be served by the suspension of Andrew Rodgers' license for a period of three (3) years, the first year of which shall be served as an active suspension, the remainder of which shall be stayed on the condition that he complies with the other provisions of this order.

*We note respondent's objection to the inclusion of such charges. Since N.J.S.A. 45:1-25 authorizes the Board to recoup "costs for the use of the State," we believe the inclusion of such evidence to be entirely appropriate.

We concur with Judge Moses that the imposition of civil penalties is warranted, though we differ with her on the manner in which those penalties should be calculated. We hereby assess civil penalties as follows:

COUNT I	\$500.00
COUNT II	\$500.00
COUNT V	\$500.00
COUNT VII	\$500.00
COUNT VIII	\$500.00
COUNT X	\$500.00
COUNT XI	\$500.00
COUNT XII	\$500.00
COUNT XIV	\$2,500.00
COUNT XV	\$2,500.00
COUNT XVI	\$2,500.00

While we believe we are authorized by N.J.S.A. 45:1-25 to impose a civil penalty of \$2,500 for each count, we have chosen to impose the maximum penalty with respect to the final three counts which, in our estimation, represent the most egregious conduct. We deem the public interest to be served through the imposition of civil penalties in the amount of \$11,500.

We reject Judge Moses' construction of N.J.S.A. 45:1-25 which would preclude the Board from assessing additional penalties for multiple violations of the same statute. As the Supreme Court of New Jersey recognized in In re DeMarco, 83 N.J. 25 (1980),

the Board is authorized to impose multiple penalties for multiple instances of gross malpractice. Thus, Judge Moses' reliance on In re Suspension of Wolfe, 160 N.J. Super. at 121, 122 (App. Div. 1978) decided prior to DeMarco, appears misplaced. The logic of the DeMarco court seems to apply with equal force to the present situation. The proofs with respect to Counts XIV, XV and XVI demonstrate that respondent engaged in fraudulent billing with respect to all three. Certainly the Board should impose sanctions which correlate to the extent as well as the severity of the violation. Such an interpretation clearly is warranted so that the Board can effectively deter licensees from engaging in wrongful conduct.

We do concur with Judge Moses in holding that the Board has the authority to assess the costs attributable to the investigation and prosecution of this matter. We reject her conclusion that we lack the authority to order reimbursement to insurance carriers. N.J.S.A. 45:1-22 permits the Board to order restoration of monies to any person aggrieved by the unlawful conduct of a licensee. However, because of the substantial monetary penalties imposed herein, we have determined to adopt the cost figure which Administrative Law Judge Moses had assessed: \$4,764.67. For the same reasons, we are declining to order a restoration in this matter.

Finally, we deem there to be a need for Dr. Rodgers to undertake a re-education program. Specifically we direct him to take and successfully complete two semesters of X-ray technique and positioning, a course in chiropractic diagnosis and a course in office management, all at a recognized school of chiropractic approved by the Board.

Accordingly, we modify the Order as presented in the initial decision as follows, and on this 25th day of June, 1985, it is

ORDERED:

1. Respondent's license to practice chiropractic in the State of New Jersey is hereby suspended for three (3) years effective on the date of the entry of this Order, the first one (1) year of which shall be active suspension, and the remaining two (2) years of which shall be stayed, if all other terms of the within Order are met. During the period of active suspension, respondent shall be enjoined and restrained from the practice of chiropractic pursuant to the terms of this Order. The terms of the annexed document entitled Future Activities of Medical Board Licensee Who Has Been Disciplined are incorporated herein and made applicable to respondent during the period of active suspension of licensure.

2. Respondent shall surrender his engrossed certificate and current registration to the Board of Medical Examiners within ten (10) days of the entry of this Order.

3. Upon the completion of the period of active suspension, respondent shall be required to appear before the Board or a committee of the Board for the purposes of the conduct of a status conference.

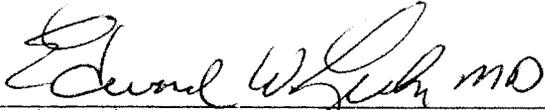
4. Respondent shall pay to the Board of Medical Examiners penalties in the amount of Eleven Thousand Five Hundred (\$11,500) Dollars and costs in the amount of Four Thousand Seven Hundred Sixty-four Dollars and sixty-seven cents (\$4,764.67), which payments shall be made within thirty (30) days of the entry of this order. The payments shall be made by money order or certified check payable to the State of New Jersey.

5. Prior to respondent's resumption of active practice,

the respondent shall demonstrate to the Board that he has successfully completed two courses in X-ray technique and positioning, a course in chiropractic diagnosis and a course in office management at a recognized school of chiropractic approved by the Board.

6. Failure of the respondent to comply with the terms of this order shall constitute grounds for the imposition of additional disciplinary sanctions against him including, but not limited to, a vacation of the stay of suspension or revocation of his license to practice chiropractic.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: 
Edward W. Luka, M.D.
President.

JDG

RODGERS, Andrew, D.C., License #1411
PENALTY # 86-1564

DATE EFFECTIVE: July 1, 1985 (filed)

ACTION: #1. License suspended for 3 years, the first year active, remaining 2 years stayed upon compliance with all terms.

#2. Upon completion of active suspension, respondent is required to appear before Board for status conference.

#3. Penalty of \$11,500.00 plus costs of \$4,764.67 assessed. Total of \$16,264.67 due within 30 days.

#4. Prior to resumption of active practice, respondent shall demonstrate to Board that he has successfully completed two courses in X-ray technique and positioning, a course in chiropractic diagnosis and a course in office management at a recognized school of chiropractic approved by Board.

OK
Completed
11/86

FUTURE ACTIVITIES OF MEDICAL BOARD LICENSEE WHO HAS BEEN DISCIPLINED

a) A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board:

1) Shall desist and refrain from the practice of the licensed profession in any form either as principal or employee of another.

2) Shall not occupy, share or use office space in which another licensee practices the profession.

3) Shall desist and refrain from furnishing professional services, giving an opinion as to the practice or its application, or any advice with relation thereto; or from holding himself or herself out to the public as being entitled to practice the profession or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice the licensed profession.

4) Shall not use any sign or advertise that such person, either alone or with any other person, has, owns, conducts or maintains a professional office or office of any kind for the practice of the profession or that such person is entitled to practice, and such person shall promptly remove any sign indicating ability to practice the profession.

5) Shall cease to use any stationery whereon such person's name appears as a professional in practice. If the practitioner was formerly authorized to issue written prescriptions of medication or treatment, such prescriptions shall be destroyed if the license was revoked; if the license was suspended, the prescriptions shall be stored in a secure location to prevent theft or any use whatever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed of, transferred, or safeguarded.

6) Shall promptly notify by telephone or mail all patients who have been under such practitioner's care within the preceding six months of his inability to provide further professional services and shall advise said patients to seek health care services elsewhere. When a new professional is selected by a patient, the disciplined practitioner shall promptly deliver the existing medical record to the new professional, or to the patient if no new professional is selected by the patient, without waiving any right to compensation earned for prior services lawfully rendered.

7) Shall not share in any fee for professional services performed by any other professional following this suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf, prior to the effective date of the suspension, revocation or surrender.

8) Shall promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.

2
A practitioner whose license is surrendered, revoked, or actively suspended for one year or more:

1) Shall promptly require the publishers of any professional directory and any other professional list in which such licensee's name appears, to remove any listing indicating that the practitioner is a licensee of the New Jersey State Board of Medical Examiners in good standing.

2) Shall promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

c) With respect to all Board licensees whose practice privileges are affected by sections (a) or (b) above, such practitioner:

1) Shall within 30 days after the effective date of the practitioner's suspension, revocation or surrender of license, file with the Secretary of the Board of Medical Examiners a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person; any change in the residence address or telephone number shall be promptly reported to the Secretary.