

FILED

October 16, 1985

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

IRWIN I. KIMMELMAN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Complainant

By: Joan D. Gelber
Deputy Attorney General
Division of Law - Room 316
1100 Raymond Boulevard
Newark, New Jersey 07102
(201) 648-2478

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO.

IN THE MATTER OF AN INQUIRY
REGARDING CHIROPRACTIC
PRACTICE OF

ERIC L. SCHMETTERLING, D.C.

Administrative Action

CONSENT ORDER

This matter was opened to the New Jersey State Board of Medical Examiners on inquiry into various aspects of the chiropractic practice of Dr. Schmetterling. He practices at the Burlington-Mount Holly Chiropractic Clinic, a solo practice of which he lists himself as "Director," located at 2709 Route 541, Burlington Township, New Jersey 08016. A former patient, Ms. J.C.R., has complained about the doctor's conduct of the examination, his billing, and his failure to complete a medical insurance form for her.

We have reviewed the doctor's records and interviewed him regarding this matter. It appears that Ms. J.C.R. consulted Dr. Schmetterling on November 27, 1984 with a complaint of lower back pain. Dr. Schmetterling took a history and performed an examination of the patient and took four lumbar x-rays of her. However, without awaiting the results of the x-rays, he administered what he described as two physiotherapy modalities and spinal manipulative therapy. He directed her to return the next day for the x-ray results, at which time he again performed what he described as two physiotherapy modalities and spinal manipulative therapy. He submitted to her a bill for \$205. The bill is itemized by reference to codes in both letter and number form.

Mrs. J.C.R. paid \$25 at the time of her first visit and was told by office staff that all other costs would be paid by her insurance carrier. However, Dr. Schmetterling refused to complete the insurance form she submitted when he learned that she had declined to return to him for any more treatment. His correspondence to her, dated January 29, 1985, addresses her as "Joyce" and claims:

I have found it impossible to submit the insurance forms from our office. The policy of our office is to process completed insurance forms for active patients. Since you took it upon yourself to discontinue care, we have been left without pertinent information in which to process your claim. We are returning the forms to you so that you may submit them to your insurance carrier personally. You have all your insurance information in order to do the claims properly.

However, the documents he sent to her, which now included a correction of the erroneous addition, could not possibly been used by the patient since none of the code information pertained to any identifiable service. Moreover, the codes as printed on the lower portion of the bill fail to relate to the codes as utilized by the doctor on his own bill. Further, the numbers that purport to refer to standard insurance codes for x-rays views do not in fact comport with that standard numerical code.

Review of the doctor's chiropractic record for this patient discloses additional problems. These included the following matters.

1) He failed to prepare an adequate chiropractic patient history including etiology of the patient's discomfort, specific examinations performed, and their findings.

2) Dr. Schmetterling has acknowledged he had applied spinal manipulation to the patient before waiting for development of the x-ray films. We note that this was quite inappropriate, especially in light of his making a positive finding on the Kemp test, which could have indicated a disc problem with his patient.

3) Inquiry was also made of Dr. Schmetterling regarding the "two physiotherapy modalities" he used on the patient on the two successive days of treatment. He explained that he applied an electric physical modality using both positive and negative modes in succession. The Medical Board notes that the positive and negative modes have different appropriate uses in therapy, and

since the two modes have opposite effects on a muscle spasm (which he claims to have been treating) they should not have been used in succession on the same patient. Dr. Schmetterling did not seem to understand this.

4) Review of the actual x-rays he took as well as his descriptions of them on the several bills, indicates that the x-ray view description is erroneous in each film.

5) Dr. Schmetterling has also admitted that he has his patients routinely sign insurance forms in blank, thereby requiring them to certify to a third party payor that they have received certain specified services from the health care provider, when no services had yet been performed or listed on the insurance claim form. This is highly improper and cannot be condoned.

6) We further note that Dr. Schmetterling should not have billed a separate fee for application of physical modalities. See N.J.A.C. 13:35-7.1.

7) We also note that he failed to include a degree designation on his business stationery as required by N.J.S.A. 45:9-14.5.

8) There is an overcharge of \$20 on the first bill.

9) N.J.S.A. 45:9-22.1 requires a chiropractor to complete, without charge, a health insurance form for a patient. Dr. Schmetterling's refusal to do this, allegedly because the patient ceased coming to him after two visits, and his contention that he could not complete the form because he did not have the

pertinent information to do so, was not only illogical and a gross misrepresentation to the patient, but was a violation of his professional responsibilities under the law.

In light of the circumstances shown here, including failure to take an appropriate history and examination before determining whether chiropractic care is appropriate; administering chiropractic care in those circumstances including the failure to await an x-ray interpretation; the inappropriate and illogical application of physiotherapy modalities; failure to properly designate himself for professional purposes on his stationery; billing for physiotherapy as such; designing and utilizing a misleading and deceptive billing form; careless overbilling; and failure to complete a medical insurance claim form report;

IT IS, on this 9th day of October, 1985,
ORDERED: that Dr. Schmetterling is hereby reprimanded.

He is further assessed a penalty of \$2,500 pursuant to N.J.S.A. 45:1-25.

He is directed to cease and desist from all of the above improper conduct and to forthwith correct his billing form so that his billing conforms with N.J.A.C. 13:35-7.1.

He is further directed to personally supervise the accuracy of the billing; and it is further

He is directed not to bill Mrs. J.C.R. for any sum greater than the \$109 that he has already received from her and from her insurance company; and it is further

ORDERED that he shall assure that his patient records shall henceforth contain a proper examination and documentation thereof, including report of subjective complaints, all examinations performed and the results thereof; accurate description of x-rays taken and interpretation thereof; diagnosis and treatment rendered on the occasion of each visit and progress notes. For the purpose of enforcement of this directive, he shall make his patient records available, on short notice, for inspection by a representative of the Board.

THIS ORDER IS EFFECTIVE UPON ENTRY.

STATE BOARD OF MEDICAL EXAMINERS

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

I consent to the terms and entry of the within Order.

Eric L. Schmetterling, D.C.
Eric L. Schmetterling, D.C.

Lori K. Colce
Witness

9/13/85
Date