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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.

IN THE MATTER OF AN INQUIRY

INTO THE CHIROPRACTIC PRACTICE

OF EARLE BRYAN, D.C.

LICENSED TO PRACTICE CHIROPRACTIC

IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

FINAL ORDER

This matter was presented to the New Jersey State Board of Medical Examiners by W. Cary Edwards, Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General, on inquiry into the chiropractic practice of Earle Bryan, D. C.,

License #1479, practicing at 38 Smith Street, Irvington, New Jersey 07111. Dr. Bryan is represented by Edward Harker, Esq. It appears that Dr. Bryan has signed some 24 orders for premarital blood testing and, upon receipt of the results, has signed the physician's certificates required by law to be affixed to marriage licenses.

Review of the laboratory orders reveals that Dr. Bryan typically placed the testing orders on a laboratory order form signed with his first and last name without adding any degree designation. The person tested generally informed the lab that he/she would pick up the results and deliver them to Dr. Bryan. The testing laboratories regularly assumed that Dr. Bryan was a medical doctor, and marked the results to him addressed to "Dr." and on occasion to "E. Bryan, M.D." and respondent was therefore aware of this misapprehension on the part of the laboratories.

When, however, a laboratory ascertained that the person tested positive for syphilis, then written notification was sent by the lab director to the referring physician. Upon checking for the purpose of making this notification, certain laboratories came to suspect that Dr. Bryan was not in fact a medical doctor. When inquiry was made of him, he apparently stopped referring test applicants to that particular lab, and

made referrals elsewhere.

Investigation of the tested persons known at this time to have been referred by respondent disclosed that, of the 3 persons referred to New Jersey Clinical Laboratories, one had a non-existent address, one was unknown at the address given, and the truthfulness of identity of the third was seriously in question. Of the 14 persons referred to HCO Pathology Laboratory, five had non-existent addresses and 9 were unknown at the addresses given. Of the seven persons referred to Physicians Clinical Laboratory, 6 were unknown at the addresses given and the seventh identity was questionable. These tests span a period of November 1983 through June 1985. Dr. Bryan states he used the addresses given to him by his patients.

In September 1986 Dr. Bryan was interviewed by a representative of the Enforcement Bureau. Dr. Bryan identified the New Jersey Pre-Marital Certificate Forms for each of the 24 persons, and acknowledged that all had sought pre-marital testing and none had any problems requiring chiropractic treatment. He disputed the report by one lab that his referrals were accompanied by the same individual because the persons to be tested could not speak English. Respondent claimed that he had examined each person by taking blood pressure, examining eyes, listening to hearts and lungs and palpating the abdomen. He admitted that only a few of the 24

ever returned to him with the lab test results.

Of the three persons who were reported by labs as having tested positive for syphilis, respondent claimed that he had instructed two of them to obtain venereal disease treatment at the City of Newark Clinic. (No such person is listed as ever having obtained such treatment). Respondent claimed that the third person with a positive test result had never returned to him. Of the three, one was known at the address listed, but could not be located during the investigation. The other two were unknown at the listed addresses.

The 24 patient records were subpoenaed and respondent was requested to appear before a Board Committee to address this matter. He claimed to have performed a chiropractic examination on each of the 24 persons, but admits he never examined the genitals - which examination would be critically important in a premarital test. Review of the records shows no documentation of any examination whatsoever; nothing appears but the word "Examination." He claims to have charged \$30 for each examination. He also insists he was unaware that 6 of the persons had given outright fictitious addresses and that 16 were reported as unknown at the addresses given. He admits that he made no effort to follow up the three positive tests beyond making the suggestion to two of the men to go to a clinic for treatment.

N.J.S.A. 45:9-14.5 defines the practice of chiropractic as a system of adjusting the articulations of the spinal column by manipulation thereof. The statute specifically prohibits a chiropractor from signing any certificate required by law or the State Sanitary Code concerning reportable diseases, or birth, marriage or death certificates. A chiropractor is forbidden to use the title doctor or its abbreviation unless it is qualified by the word "chiropractor" (or the appropriate degree designation).

The New Jersey Premarital Certificate Form requires that a "physician" refer the applicant for marriage license to a laboratory approved to perform serological tests for syphilis, and that the physician complete the following statement on the form:

"THIS IS TO CERTIFY that on(date) I examined the person named in the above laboratory certificate and, in my opinion, this person either is not infected with syphilis or is not in a stage of that disease which is likely to become communicable. I also certify that this person submitted to an approved serological test for syphilis, a report of which I have received and examined. I am a physician licensed to practice medicine and surgery in all its branches in the State or Territory of . . . or a commissioned medical officer on active duty with the armed forces of the United States or with

the Public Health Service.

(Signature and office address of Physician)"

Although respondent has claimed that he performed a chiropractic examination on each of these persons, he had admitted to the Enforcement Bureau that none had consulted him for anything other than premarital testing. That is clear, as well, from the patient records, none of which include any report of patient complaint. Indeed, the records are virtually blank. If he had in fact performed a chiropractic examination, he is in violation of N.J.A.C. 13:35-6.5 and of 13:35-7.1 and of accepted standards of practice by failing to have prepared a proper patient record for each of the 24 patients. We find it more probable, however, to conclude that there was no attempt to provide chiropractic care at all; rather, each contact was solely for the purpose of the premarital testing which Dr. Bryan claims he thought he was allowed to do, notwithstanding the specific wording on each Certificate he signed and notwithstanding the clear language of the Chiropractic Practice Act. He has thus violated N.J.S.A. 45:9-14.5 on 24 occasions, and has engaged in misrepresentation and deception to each of the laboratories, and professional misconduct; N.J.S.A. 45:1-21(b), (e) and (h), and N.J.A.C. 13:35-7.1. The conduct found herein is serious, and obviously thwarts the highly

important public health function of requiring persons to be fully and competently examined for identification of venereal disease at a particularly critical point in their lives - not only for their own medical treatment but preparatory to marriage which exposes the spouse and infants borne of an infected mother to the ravages of the disease. These dangers are dramatically shown in that three of the persons tested were found - not by respondent's "examination" but by the laboratory - to be infected with the disease, and yet no proper follow-up treatment was provided.

Notwithstanding this, the Board takes into account the fact that this is the first time respondent's practice has come to the attention of the Board, and also his representations that this unlawful conduct has ceased. In light of all the circumstances,

IT IS, ON THIS ^{9th} DAY OF *November* 1987,

ORDERED:

That Earle Bryan, D.C. is hereby reprimanded for 24 instances of misrepresentation and deception, engaging in conduct beyond the scope of chiropractic as licensed in this State, professional misconduct, and failing to maintain proper patient records. He is directed to immediately cease and desist from the said conduct and to comply henceforth with all laws and rules and accepted standards of practice governing the

practice of chiropractic in this State, including but not limited to declining to accept requests for pre-marital testing of any kind. Based on the significant peculiarities disclosed in this investigation, he shall require reasonable proofs of identity and residence of all patients in accordance with accepted standards of practice. He shall make referrals for lab testing only as permitted by N.J.A.C. 13:35-7.1 and shall make active and diligent efforts to follow up any positive lab reports which he is permitted to order; he shall send written notices to such patients at the address given. He shall identify himself professionally at all times as Earle Bryan, chiropractor or D.C.. He shall promptly correct any lab which inadvertently addresses him as M.D.. He shall perform and document in the patient record a proper chiropractic examination on all persons consulting him for conditions amenable to chiropractic care.

Respondent is assessed penalties of \$100 for each of the 24 instances, totalling \$2400, and costs of investigation of \$4,327.44. The total of costs and penalties, \$6,727.44 shall be paid to the New Jersey State Board of Medical Examiners in twelve equal monthly installments of \$560.62 each on the first day of each month commencing November 1, 1987, the final payment to be made November 1, 1988. The Board shall file a certificate of debt to evidence this obligation.

This Order is effective upon entry.

STATE BOARD OF MEDICAL EXAMINERS

BY Frank J. Malta

FRANK J. MALTA, M.D., PRESIDENT

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

Earle Bryan

Earle Bryan, D.C.

Edward W. Harker

Edward W. Harker,
Attorney for Dr. Bryan