

FILED

MAY 21 2001

NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF A DISCIPLINARY
ACTION AGAINST THE LICENSE OF

VIRGINIA A. FATATO, D.C.
License No. MC 03124

TO PRACTICE CHIROPRACTIC
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL DECISION AND ORDER AFTER
GRANT OF SUMMARY DECISION AND
HEARING ON MITIGATION OF PENALTY

This matter was opened to the New Jersey Board of Chiropractic Examiners (hereinafter the "Board") on a complaint by JOHN J. FARMER, JR., Attorney General of New Jersey, by Doreen A. Hafner, Deputy Attorney General, against Respondent, Virginia A. Fatato, D.C., (hereinafter "Respondent"). The complaint alleged that pursuant to a May 7, 1997 Criminal Indictment filed with the Superior Court of New Jersey under the Docket Number 97-05-00013S, Respondent, on January 9, 1998, entered a guilty plea to two counts, to wit: Theft by Deception in the Third Degree and Falsifying Records in the Fourth Degree. The complaint further alleged that Respondent's resulting convictions on those counts constituted convictions for crimes involving "moral turpitude," as well as convictions for crimes "relating adversely to the activity regulated by the Board," pursuant to the provisions of N.J.S.A. 45:1-21(f). Such convictions are grounds under the statute for the suspension or revocation of a license to practice chiropractic in New Jersey.

The facts upon which said convictions were based, to wit: that Respondent had submitted billing records to insurance companies knowing that the patients on whose behalf the bills were submitted had not received the treatment; that Respondent had knowingly received payment of

approximately \$17,963.00, and had deposited the monies received into her account; and that Respondent had changed or altered patient records in furtherance of her fraudulent activity; were also alleged, in Count One of the complaint, to establish that Respondent had engaged in fraud, deception and misrepresentation in her practice of chiropractic, in violation of N.J.S.A. 45:1-21(b); that she had engaged in professional misconduct, in violation of N.J.S.A. 45:1-21(e); and that she had failed to maintain good moral character, as required for continued licensure by N.J.S.A. 45:9-41.5.

On October 26, 2000, the Board entertained a motion by the Attorney General for Summary Decision on the First Count of the complaint, which contained the aforesaid allegations. The Second Count of the complaint was withdrawn by the same motion. The motion was unopposed. By letter of October 20, 2000, counsel for Respondent, Benjamin Goldstein, Esq., advised the Board that Respondent stipulated to the factual allegations of liability as set forth in Count One of the complaint, but requested that a hearing be scheduled on the issue of mitigation of penalties. The motion for Summary Disposition was granted, and a hearing on mitigation was set down.

On January 25, 2001, Betsy Bisset, Esq. presented the case for mitigation on behalf of the Respondent. Deputy Attorney General Doreen Hafner presented the matter on behalf of the State. The following documents were introduced:

1. Letter of Anthony Calzaretto, D.C. dated December 5, 2000;
2. Letter of Anthony J. Maimone dated January 23, 2001;
3. Daily Progress Notes form.

Testimony was provided by: Virginia A. Fatato, D.C., Respondent

The Board has considered the evidence and makes the following findings:

Specifically, with respect to the charges that Respondent has been convicted of crimes involving moral turpitude, as well as crimes relating adversely to the practice of chiropractic, which are grounds for the suspension or revocation of her license to practice chiropractic, as specified by N.J.S.A. 45:1-21(f); the Board finds that the matter is not in dispute. Respondent stipulated, by letter of her counsel to the Board dated October 20, 2000, the factual allegations of liability set out in Count One of the complaint, and the Board finds them legally sufficient. In addition, the Board finds that those factual allegations constitute violations of N.J.S.A. 45:1-21(b) and N.J.S.A. 45:1-21(e); and that they demonstrate that Respondent failed to maintain the good moral character required, on an ongoing basis, by N.J.S.A. 45:9-41.5 for her continued licensure.

With regard to the assertions of mitigating circumstances presented at the hearing on January 25, 2001, the Board finds that the offenses to which Respondent pleaded guilty were extremely serious, not only as to the moral turpitude they displayed, but most significantly as to the considerable adverse impact such crimes, when committed by chiropractors, have upon the chiropractic profession as a whole. The Board finds that this aggravating circumstance far outweighs the assertions concerning Respondent's subsequent clinical training and social involvement, which are set forth in the letter of Dr. Calzaretto provided by the Respondent to the Board. Likewise, the Board finds that it is not in the best interest of the profession, or the public, to allow Respondent's acts to go without redress by this Board, as suggested by the other letter submitted on Respondent's behalf. The Board further notes from her testimony, that Respondent has not made full restitution pursuant to her criminal sentence. Nevertheless, the Board has determined, based on the record, that it should suspend, rather than revoke, Respondent's license to practice chiropractic pending her satisfaction of certain remedial requirements.

The Board further finds that Respondent's testimony demonstrated a lack of proper recognition of her responsibilities, and a concomitant lack of diligence in taking affirmative steps to prevent further occasions for fraudulent billing as part of her chiropractic practice. Her assertion, in mitigation of penalty, that she had taken steps to insure the accuracy of her current billings was greatly undermined by her admissions that she continues to rely on billing agents over whom she exerts no supervision or control, and that she takes no affirmative steps to check the accuracy of the billing being done, except to document her treatment should a subsequent dispute arise.

Moreover, Respondent's testimony before the Board demonstrated an inadequate knowledge of the regulations governing the scope of chiropractic practice in New Jersey, especially with regard to the rendering of physical modalities not administered in conjunction with a spinal adjustment. When asked if she adjusted patients on every visit, Respondent testified that she sometimes provided passive therapy, exercise, or therapeutic exercise without adjustments. She acknowledged that she is not licensed as a physical therapist, or as anything other than a chiropractor. The Board finds that Respondent requires remedial education, not only as to her ethical and billing responsibilities, but also with regard to jurisprudence, before being permitted to continue her practice of chiropractic in this State.

Based on the foregoing:

IT IS on this 21ST day of May, 2001

ORDERED that:

1. Respondent's license to practice chiropractic shall be suspended for a period of five (5) years, of which two (2) years shall be active, and three (3) years shall be stayed as a period of probation. The period of suspension shall be effective thirty (30) days from the entry of this order.

2. Respondent shall successfully complete and pass the ProBE (Professional Problem Based Ethics) course offered by: The Ethics Group, 89 Summit Avenue, Suite 185, Summit , New Jersey 07901, within the period of active suspension, and prior to being reinstated to active practice.

3. Respondent shall successfully complete and pass the following continuing education requirements: 24 credit hours of Record keeping and Documentation. These courses shall be completed within 24 months of the entry of the within Order and prior to being reinstated to active practice. Respondent shall secure prior approval of the Board for the specific courses proposed to satisfy this requirement. Respondent shall complete and submit the attached Continuing Education Course Pre-Approval Sheet at least 30 days prior to the course date of each course for which he seeks approval. The attached form is made a part of the within Order, and a separate form is to be used for each course.

4. Respondent shall take and pass the Board's jurisprudence examination, and shall be required to appear personally before the Board, prior to reinstatement of her license.

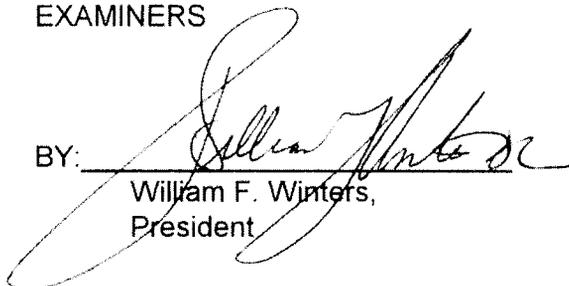
5. Respondent shall comply with all of the Directives for Disciplined Licensees which are attached to, and made part of, the within Order.

6. Respondent is hereby assessed the costs to the State in this matter in the amount of \$ 1145.96. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board no later than twenty-one days from the entry and service of this Order. Payment shall be sent to: Kevin B. Earle, Executive Director, Board of Chiropractic Examiners at 124 Halsey Street, Sixth Floor, P.O. Box 45004, Newark, New Jersey 07101.

7. Failure to comply with any provisions of this Order or remit any and all payments required by this Order will result in the filing of a certificate of debt and may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD OF CHIROPRACTIC
EXAMINERS

BY: _____

A handwritten signature in black ink, appearing to read "William F. Winters", is written over a horizontal line. The signature is fluid and cursive, with a large initial "W".

William F. Winters,
President