

FILED

JUL 04 2002

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

DAVID G. HARRIS, D.C.  
License No. MC 5084

TO PRACTICE CHIROPRACTIC  
IN THE STATE OF NEW JERSEY

Administrative Action

ORDER

This matter was opened to the New Jersey Board of Chiropractic Examiners (hereinafter the "Board") pursuant to a Verified Complaint and application for the temporary suspension of the license to practice chiropractic of David G. Harris, D.C. (hereinafter "Respondent"). The application was predicated upon allegations that Dr. Harris had knowingly submitted false bills to insurance carriers for care not rendered to three undercover investigators in the aggregate amount of \$3,500. It was also alleged that Dr. Harris had unlawfully made use of a "runner," who brought the three "patients" to his office for a fee.

A hearing was held on March 21, 2002, at which Deputy Attorney General Eleanor G. Bernstein presented the matter on behalf of the State. Respondent was represented by Andrew J. Karas, Esq. The following documents were introduced:

1. Five Certifications of George Wall, Senior Investigator;
2. Certification of Investigator Luz Escobar;
3. Certification of Investigator Virginia Navarro;
4. Certification of Investigator Antonio B. Ureno;
5. Portions of Grand Jury Transcript; and
6. Inventory Receipt for Search Warrant.

No live witnesses were presented by either party. The Deputy Attorney General argued that the evidence presented demonstrated an intricate scheme by Respondent to defraud insurance carriers through the use of false patient records and fraudulent billings. Certifications of three undercover investigators, which alleged that they were billed for certain services not rendered over months of treatment and totaling \$3,500 in the aggregate, were argued to be an adequate basis upon which the Board should infer a large pattern of ongoing fraudulent conduct. Taken together with the evidence presented of Respondent's use of a "runner" to procure patients, the Deputy Attorney General argued that this pattern demonstrated a clear and imminent danger to the public by virtue of both the gross dishonesty and flawed judgment displayed by Respondent, and by his knowing diversion of dollars from the legitimate health care system through a large scale economic fraud. She suggested that such fraud would continue absent suspension of his license.

Respondent rejoined that the complaint was insufficient because it was not truly verified, as required for temporary suspension pursuant to N.J.S.A. 45:1-22. The complaint lacked the verifying certification of a person with personal knowledge of the factual allegations it contained. Moreover, Respondent challenged the credibility of the investigators asserting in their certifications that he had billed for dates of service on which they did not appear in his office. He pointed out that even though the chief investigator had testified before the Grand Jury that no sign-in sheets were found during the search of his office, the search warrant inventory listed four binders of sign-in sheets which would exculpate him.

Respondent also argued that no evidence at all had been presented in support of the allegation that he had knowingly engaged in false billing, since it was uncontroverted that it was his office staff, and not Respondent, who had recorded modalities rendered to patients on their travel cards, and had processed the billing from those travel cards.

Respondent further argued that there had been no palpable showing of imminent harm to the public justifying temporary suspension of his license because there was no allegation of improper treatment being rendered to any patient and because such relief would be grossly disproportionate to the economic impact to the health care system caused by alleged over billing of \$3,500 in the aggregate. Respondent asserted that the entirety of the evidence offered by the Deputy Attorney General was hearsay, which although admissible in an administrative forum, was too unreliable in this case to provide an adequate basis for such drastic relief at this juncture of the proceedings.

The Board has considered the evidence presented and makes the following preliminary findings: With respect to charges that Respondent over billed an insurance carrier in the aggregate of approximately \$3,500.00, the Board concludes at this juncture of the proceedings that there is evidence this occurred; however, the Board finds insufficient proof presented to conclude at this time that such over billing was a pervasive practice of the Respondent sufficient to palpably demonstrate a clear and imminent danger to the public health, safety and welfare by undermining the integrity of the public health care system.

The Board is also concerned that four binders of patient sign-in sheets which were apparently seized pursuant to a search warrant were unavailable, either to corroborate the certifications of the investigators regarding the frequency of their patient visits, or to support a potentially broader allegation of improper billing. Senior Investigator Wall was also not available to explain his apparently inaccurate testimony before the Grand Jury that no sign-in sheets were seized, or to be cross-examined.

With regard to the allegation that Respondent unlawfully used a "runner," who cooperated with the investigation, the Board likewise concludes at this juncture of the proceedings that there is evidence that this occurred on at least one occasion; but again, the Board finds at this time that

such an occurrence would not suffice to justify temporary suspension of Respondent's license as a palpable demonstration of a clear and imminent danger to the public health, safety and welfare.

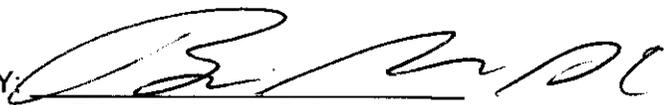
Based on the record presently before it, the Board is unwilling to curtail Respondent's practice on an interim basis.

IT IS THEREFORE on this 17<sup>th</sup> day of June, 2002

ORDERED that:

1. The application of the State for temporary suspension of Respondent's license pursuant to N.J.S.A. 45:1-22 is denied; and that
2. This matter shall be referred to the Office of Administrative Law to be scheduled for plenary hearing.

NEW JERSEY STATE BOARD OF  
CHIROPRACTIC EXAMINERS

BY: 

Brian Atkisson, D.C.  
President