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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

ALBERT F. CATTAFI, D.C.
License No. MC 1520

TO PRACTICE CHIROPRACTIC
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL DECISION AND ORDER
GRANTING SUMMARY DECISION

This matter was opened to the New Jersey Board of Chiropractic Examiners (hereinafter the "Board") on February 14, 2005, by the filing of a complaint by Peter C. Harvey, Attorney General of New Jersey, (Tara Adams Ragone, Deputy Attorney General, appearing), (hereinafter "Petitioner") against Albert F. Cattafi, D.C. (hereinafter "Respondent"), who was then represented by Jackie S. George, Esq. The complaint alleges in two counts that Respondent, who is the holder of a license to practice chiropractic in this State, co-admitted¹ patient M.P. to Meadowlands Hospital for treatment of injuries sustained in a motor vehicle accident. The co-admitting privileges held by Respondent at that institution required him to secure the agreement of a licensed medical doctor on the hospital's staff with whom to co-admit a patient to the hospital. Respondent co-admitted

¹Pursuant to the delineation of Respondent's privileges at Meadowlands Hospital, the scope of his practice there was limited to co-admitting patients with a member in good standing of the medical staff, rendering chiropractic adjustment and manipulation of the articulations of the spine and related structures, taking a patient history, conducting an examination appropriate to chiropractic practice, ordering x-rays limited to the osseous system, ordering bio-analytic laboratory tests consistent with chiropractic practice, ordering physical therapy procedures or rehabilitation procedures, and preparing proper patient records, all such activities being consistent with chiropractic practice as defined by law in this State.

M.P. to Meadowlands Hospital on or about January 3, 2001, with Edwin Gangemi, M.D., who was at that time on the hospital staff. Count I alleges that at about 12:00 p.m. on January 4, 2001, Respondent wrote an order for the administration of Valium IM 10 mg to patient M.P. at Meadowlands Hospital, ostensibly to enable M.P. to undergo an MRI, despite claustrophobia. As a result of the order, M.P. received an injection of 10 mg of Valium, a Schedule IV Controlled Dangerous Substance. Respondent's conduct is alleged to constitute a violation of N.J.S.A. 45:9-14.5, which prohibits the prescribing, administering, and/or dispensing of a drug or medicine by a chiropractor; and professional misconduct. These actions are alleged to form the basis for disciplinary action by the Board pursuant to N.J.S.A. 45:1-21(h) and (e).

Count II alleges that in carrying out the acts alleged in Count I, Respondent signed the name of Dr. Gangemi to the order for Valium to be administered to patient M.P., and did not sign his own name. It further alleges that at no time did Respondent obtain authorization from Dr. Gangemi to order Valium for patient M.P. Respondent's conduct is alleged to evince the use of dishonesty, fraud, deception, misrepresentation, false promise, and false pretense; and professional misconduct. It is therefore asserted that these actions may form the basis for disciplinary action by the Board pursuant to N.J.S.A. 45:1-21(b) and (e).

On March 21, 2005, an Answer was filed on behalf of Respondent admitting that Respondent had co-admitted patient M.P. to Meadowlands Hospital with Dr. Gangemi on or about January 4, 2001; but contending that Respondent had acted pursuant to a verbal telephone order from Dr. Gangemi to sedate patient M.P., and that he had consulted with the pharmacy, nursing staff, and Gina Puglisi, M.D. regarding the necessary prescribed amount of Valium to be administered, before writing the order for the administration of Valium to the patient.

On June 6, 2005, Petitioner filed a Motion for Summary Decision with the Board, relying almost entirely upon the September 10, 2001 certification of Respondent, which described the

events in question, and upon Respondent's own sworn testimony on the same subject given to a committee of the Board on March 25, 2004, in which Respondent consistently certified and testified that Dr. Gangemi could not be reached, and that Dr. Gangemi had not instructed Respondent or anyone else to administer Valium or any other medication to patient M.P.

On August 29, 2005, Respondent filed opposing papers which argued that prior to the co-admission of patient M.P. to the hospital, Respondent had been instructed by Dr. Gangemi to "do what you have to do" to ensure that the patient underwent an MRI. Respondent also alleged that Dr. Gangemi had ulterior motives for not responding to Respondent's attempts to contact him for specific authorization for the administration of Valium to the patient. Respondent offered the affidavit of Dr. Puglisi, in which she repeats the claim that Respondent was given a non-specific verbal order to sedate the patient by Dr. Gangemi, and states that Respondent consulted her regarding the appropriateness of ordering Valium as an MRI sedative. While Dr. Puglisi's affidavit asserts that telephone orders are accepted practice at the hospital, it does not contradict Respondent's own testimony that he had no specific authorization from Dr. Gangemi to administer Valium or any other medication to M.P., nor does her affidavit assert that Dr. Puglisi herself had authorized the administration of Valium to patient M.P. It is not disputed that the name written on the order for Valium is Dr. Gangemi's, not Dr. Puglisi's.

On September 7, 2005, Petitioner replied to Respondent's opposition by letter listing the salient facts not in dispute, and pointing out that Respondent had admitted that any procedure in place at the hospital for processing telephone orders did not apply to the order for Valium in this case, because Respondent had not received a telephone order from Dr. Gangemi.

Argument on Petitioner's motion was held on September 15, 2005. Deputy Attorney General Ragone presented the matter on behalf of Petitioner. Respondent was represented by Ms. George. The following documents were introduced and admitted into evidence:

- P-1 Certification of Albert F. Cattafi dated 9-10-01
- P-2 transcript of Respondent's Sworn testimony on 3-25-04
- P-3 Administrative Complaint filed on 2-14-04
- P-4 Certification of Service dated 2-24-04
- P-5 Respondent's Answer filed 3-21-05
- P-6 Delineation of Privileges (Subdivision of Chiropractic Medicine, Meadowlands Hospital)
- P-7 Rules and Regulations (The Division of Chiropractic Medicine, Meadowlands Hospital)
- P-8 Admission Record for M.P. dated 1-3-01
- P-9 Orders for Valium and transfer to ICU dated 1-4-01
- P-13 Order for Valium dated 1-4-01

Petitioner argued that Respondent's own admissions in sworn testimony are compelling and conclusive evidence that he wrote an order for the administration of a controlled dangerous substance to a patient without the explicit authorization of a medical doctor. Such prescription of a drug by a chiropractor was in contravention of N.J.S.A. 45:9-14.5, which prohibits a chiropractor from prescribing, administering, or dispensing drugs or medicines for any purpose whatsoever. Petitioner further asserted that Respondent's conduct in signing a medical doctor's name instead of his own to an unauthorized order for the administration of a controlled dangerous substance to a patient had the capacity to mislead hospital staff into believing that Dr. Gangemi, and not Respondent, had given the order. Petitioner posited that in so doing, Respondent engaged in the use or employment of dishonesty, deception, misrepresentation and false pretense that is a basis for discipline pursuant to N.J.S.A. 45:1-21(b). Petitioner further asserted that both violations provide a basis for the Board to determine that Respondent has engaged in professional

misconduct, for which he may be disciplined pursuant to N.J.S.A. 45:1-21(e).

Respondent reiterated in opposition that a purported non-specific verbal order to “do what you have to do” to admit the patient and enable him to undergo the MRI had been given to Respondent by Dr. Gangemi, and that this direction was sufficient to authorize Respondent to write the order for the administration of Valium to the patient, after consulting with the pharmacy and with Dr. Puglisi. Respondent further argued that an issue of material fact was raised by his suggestion that Dr. Gangemi may have had an ulterior motive for failing to respond to Respondent’s efforts to contact him on the day in question. Respondent contended that he believed he was doing the right thing for the patient when he wrote the order for Valium.

Petitioner rejoined that whether Dr. Gangemi might have had an ulterior motive for not responding to Respondent’s telephone messages was not an issue of relevant or material fact. The fact that Respondent wrote an order for Valium without speaking to Dr. Gangemi was not in dispute. Petitioner further asserted that “do what you have to do” did not provide Respondent, a chiropractor, with authorization to decide that the administration of Valium was what he had to do; because such action was admittedly beyond his scope of practice. Petitioner also pointed out that Respondent had further admitted in sworn testimony, uncontradicted by his subsequent affidavit, that no telephone order from Dr. Gangemi for the administration of any medication had ever occurred. Because the suggestion in Dr. Puglisi’s affidavit that such a telephone order had been given was not purported to be of her personal knowledge, Petitioner averred that such a suggestion constituted hearsay so unreliable that it should be disregarded by the Board in the face of Respondent’s own admissions to the contrary.

The Board has considered the evidence and the arguments of counsel and finds that there are no genuine issues of material fact in dispute which, even when considered in a light most favorable to Respondent, would permit a rational fact finder to reach a conclusion favorable to him;

and therefore, the Board **grants** the Petitioner's motion for Summary Decision with respect to the allegations of the Administrative Complaint. Specifically, with respect to the charge that at about 12:00 p.m. on January 4, 2001, Respondent wrote an order for the administration of Valium IM 10 mg to patient M.P. at Meadowlands Hospital, and that as a result of the order, M.P. received an injection of 10 mg of Valium, a Schedule IV Controlled Dangerous Substance, the Board **finds** that Respondent wrote the order without proper authorization from a medical doctor to do so, and acted beyond the scope of his authorized practice as a licensed chiropractor. Accordingly, the Board **finds** that Respondent failed to conform with statutory obligations as set forth in N.J.S.A. 45:9-14.5 and thus it concludes that violations of N.J.S.A. 45:1-21(h) and (e) occurred. Respondent not only placed in jeopardy the safety of his patient by engaging in an act beyond his scope of practice, but also dealt a serious blow to the efforts of the chiropractic profession to gain the trust essential for the discipline to be accepted as a valuable and non-threatening addition to the health care services rendered in hospital settings throughout the State.

In addition, with respect to the charge that Respondent, without authorization, signed the name of a medical doctor to the order for Valium to be administered to patient M.P., and did not sign his own name, the Board **finds** that Respondent engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, and false pretense, and engaged in professional misconduct as determined by the Board. Accordingly, the Board concludes that violations of N.J.S.A. 45:1-21(b) and (e) occurred. The public must be able to rely upon the truthfulness of patient records for reasons of patient safety, and the health care system must be able to rely upon the trustworthiness of those records to insure that the services billed are the services rendered by the individual health care providers whose names appear in the records. By signing the name of a medical doctor without authorization or attribution, Respondent undermined the trustworthiness of the records, and therefore compromised the system of delivery of health care services.

At the request of Respondent's counsel on September 15, 2005, the Board agreed to adjourn the mitigation of sanction aspect of the hearing. Respondent's counsel asserted that she had not understood that a hearing on the mitigation of sanction would follow immediately upon a decision on the motion which was adverse to her client. Therefore, Ms. George said she was not prepared to present witnesses in mitigation at that time. The adjournment was granted, with the condition that the mitigation hearing would take place on a peremptory basis on October 20, 2005, and no further adjournments would be granted. Ms. George agreed to the condition, and agreed to make herself available on the adjourned date to present Respondent's case in mitigation of sanction.

On October 20, 2005, at approximately 3:20 p.m., Ms. George appeared before the Board and represented that she was there to seek an adjournment because: Respondent had terminated her services the day before; he had contacted all but one of his proffered witnesses in mitigation of sanction and told them not to appear; and he had instructed her to contact the remaining witness to cancel his appearance. Ms. George also advised the Board that she had been re-hired that morning, but only for the purpose of conducting settlement negotiations; and that such negotiations had broken off when Respondent could no longer be reached by telephone. Ms. George expressed concern that Respondent may have been unable to continue negotiations due to a hypertension condition. She therefore also requested an adjournment to allow settlement negotiations to be continued. Petitioner opposed the request for an adjournment of the peremptory date based upon Respondent's unilateral and last minute decisions to terminate his representation and cancel his witnesses, and requested that Respondent be required to promptly submit substantiated medical evidence of his inability to proceed.

The Board denied Respondent's request to adjourn the peremptory date in the absence of any evidence that he was unable to proceed at the scheduled time, and in light of his having been

actively engaged in settlement negotiations at that time. Even if Respondent had later become incapable of continuing those negotiations, his determination that he would not appear or present witnesses in mitigation of sanctions had already been made. The Board made clear to counsel that there was nothing before it to excuse Respondent's failure to appear to present his case as scheduled, and the matter would proceed.

Petitioner then offered into evidence Exhibit P-10, Petitioner's Certification of attorney fees, investigative and transcript costs, which was admitted into the record. The Board heard argument from Ms. George regarding the appropriateness of the fees and costs documented in P-10, which argument incorporated by reference her certification in opposition to fees and costs, dated October 18, 2005.

After deliberating in closed session, the Board returned to open session and announced its determination, which is set out below. Notwithstanding that determination, the Board announced that it would afford Respondent ten calendar days within which to present medically documented evidence that he had been physically unable to continue discussions of settlement between the hours of 2:00 p.m. and 4:00 p.m. on October 20, 2005. If submitted, the Board would review such evidence within the context of a petition from Respondent to re-open the record, but only with regard to mitigation of sanctions.

A telephone call was received by counsel to the Board on the deadline, October 31, 2005, from the office of Anthony J. Fusco, Jr., Esq., seeking an extension of time to make a submission regarding Respondent's medical condition at the time in question. The requestor was advised to file expeditiously and request the Board's consideration of a submission out-of-time. No written substitution of counsel or submission of any kind has been received by the Board to date, and the time has now long passed for the Board to entertain any medical documentation as a basis to reopen the record in this matter as to mitigation of sanctions.

Based on the foregoing:

IT IS on this 5th day of December, 2005,

ORDERED that:

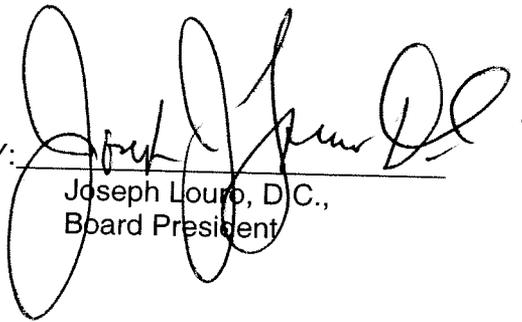
1. Respondent's license to practice chiropractic in the State of New Jersey be and hereby is suspended for a period of one (1) year, which suspension shall be stayed and become a period of probation. Such stayed period of suspension shall be activated upon a showing of Respondent's non-compliance with any of the terms and conditions set forth herein.
2. Respondent shall be, and hereby is formally reprimanded for the aforesaid violations of N.J.S.A. 45: 9-14.5 and N.J.S.A. 45:1-21(b).
3. Respondent shall fully attend, successfully complete and unconditionally pass the ProBE (Professional Problem Based Ethics) course offered by: The Ethics Group, 89 Summit Avenue, Suite 185, Summit, New Jersey 07901, or the PRIME (Professional Renewal in Medicine through Ethics) course offered by the Center for Continuing Education in the Health Professions at UMDNJ-Robert Wood Johnson Medical School, 97 Paterson Street, Room 124, New Brunswick, New Jersey 08903, and appear before the Board prior to applying for re-admission into practice.
4. Respondent is hereby assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount of \$10,000.00. Said payment shall be made by certified check or money order payable to the State of New Jersey and shall be delivered within ten (10) days of service of this order to Kevin B. Earle, Executive Director, Board of Chiropractic Examiners, P. O. Box 45004, Newark, New Jersey 07101. Subsequent violations will subject Respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.
5. Pay costs incurred by the Board in the amount of \$22,582.29. Payment for the costs shall be made by certified check or money order payable to the State of New Jersey and shall be delivered within ten (10) days of service of this order to Kevin B. Earle, Executive Director, Board of Chiropractic Examiners, at the address described in paragraph 4.

6. 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.

7. The Directives of the Board applicable to any Chiropractic Board licensee who is suspended, revoked or whose surrender of licensure has been accepted are incorporated by reference as though fully set forth herein, whether or not they are attached hereto.

NEW JERSEY STATE BOARD OF CHIROPRACTIC
EXAMINERS

BY:

A handwritten signature in black ink, appearing to read "Joseph Louno, D.C.", written over a horizontal line.

Joseph Louno, D.C.,
Board President