



the Board. In his testimony, respondent discussed the circumstances that lead to the entry of the OIFP Stipulation of Settlement. The Board carefully reviewed the papers submitted, respondent's testimony that he believed he had procured the appropriate insurance and submitted proper claims, and arguments of counsel, including the argument of respondent's counsel that discipline by the Board that included a suspension could have a negative impact on respondent's practice in the future.

Prior to making a final determination, the Board offered respondent an opportunity to resolve the matter by way of a consent order that would modify the sanction proposed in the Provisional Order to remove the three year suspension, which was to be a stayed suspension and served as a period of probation, to impose the other proposed sanctions, and to add a provision assessing costs and attorney's fees. Respondent and his counsel were provided full opportunity, outside the presence of the Board, to confer and to discuss the proposed consent resolution. After respondent consulted with his counsel, he agreed to the entry of a consent order as detailed above:

[As recorded in the transcript of proceedings from June 15, 2006]

MS. COSTELLO MILLER [DAG assigned to counsel the Board]: The board has considered the matter of the finalization of the provisional order of discipline, dated January 30, 2006, which has been before the board today. Having fully considered the written submissions, the testimony of Dr. Bakalian, and arguments of counsel, the board has determined that this matter may be finally and amicably resolved through the entry of a consent order, which will adopt the findings of fact and conclusions of law, in the provisional order of discipline, but will modify the proposed sanction to reflect the imposition of a reprimand, and require Dr. Bakalian to fully take and successfully complete the PROB [sic] course, and to

require the doctor to pay the costs of this hearing, and the attorney's fees of D.A.G., John Hugelmeyer, in this matter.

Dr. Bakalian, do you understand the terms of the proposed resolution, and do you accept that?

DR. BAKALIAN: I do, and I have to accept it.

Dr. O'Connor [Board president]: Do we have a motion, Dr. Murphy?

MR. [SIC] MURPHY: I have a motion.

MR. TRAIER: I second it.

DR. O'CONNOR: all in favor [?], unanimous.

[T41:1-T42:3].

In July 2006, the proposed consent order reflecting the settlement was forwarded to respondent's counsel. Respondent did not return the signed order and submitted a letter dated August 5, 2006, addressed to the president of the Board, criticizing the process and asking the Board to dismiss the charges. Respondent did not copy his attorney on the letter. On August 10, 2006, counsel for the Board provided a copy of the letter to Mr. Keoskey, respondent's counsel, with a copy to DAG Hugelmeyer, and asked whether the letter should be construed as respondent reneging on the agreed upon settlement. Mr. Keoskey, by letter dated August 17, 2006, responded that Dr. Bakalian "would like to follow through on the consent order" but sought modifications to the language of the order.

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\* By letter dated September 5, 2006, Mr. Keoskey forwarded a check in payment of the costs as set forth in the consent order. The check was returned to Mr. Keoskey by letter dated September 12, 2006, as the Board would not accept the check in the absence of a signed order. Counsel was again asked to advise the Board whether respondent would sign the order.

In the ensuing months, Board counsel had discussions regarding the need to finalize the matter with Susan Fruchtman, Esq., of DeCotiis, Fitzpatrick, Cole & Wisler, to whom the Bakalian file had been transferred.<sup>\*</sup> Counsel were advised that, due to respondent's failure to execute the consent order with the terms agreed to in June 2006, the Board of Chiropractic Examiners would deliberate and come to a final determination of the matter at its meeting on January 25, 2007.

On January 11, 2007, Ms. Fruchtman submitted a letter for the Board's consideration, asking for modifications to the terms of the order. DAG Hugelmeyer responded by letter dated January 16, 2007, asking the Board to finalize the Provisional Order as drafted. On January 24, 2007, Ms. Fruchtman submitted an additional letter and materials for the Board's consideration. DAG Hugelmeyer submitted a response dated January 24, 2007. Finally, on the morning of January 25, 2007, Ms. Fruchtman telephoned and asked that the Board be advised that Dr. Bakalian would agree not to renew his license for three years in exchange for a modification of the order.<sup>\*\*</sup> The Board was so advised.

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<sup>\*</sup>In September 2006, respondent's daughter was killed in an automobile accident and the parties agreed to permit respondent additional time to address the pending matter.

<sup>\*\*</sup> The Board notes that respondent did not renew his license for the current biennial period and as such, his license is suspended by operation of N.J.S.A. 45:1-7.1. This order does not address any issue related to reinstatement of respondent's license. While respondent is free to apply for reinstatement, at the time of his application he must comply with all applicable requirements for such reinstatement, including, but not limited to, paying all fees and undergoing the criminal history background check. The Board reserves the right to consider any relevant information at the time of his application for reinstatement.

Because respondent had failed to execute the consent order and sought to again negotiate terms to resolve the matter, the Board, at its meeting on January 25, 2007, considered the history of this matter and all materials submitted post appearance. After fully considering this matter, the Board, rather than finalize the Provisional Order as entered, has determined to enter a Final Order that reflects the terms of settlement agreed to by Dr. Bakalian on the record on June 15, 2006. The Board finds that on that date, respondent was represented by competent counsel, had adequate opportunity to discuss the matter, and agreed to a negotiated settlement that, as his counsel had urged, eliminated the three year stayed suspension of his license. Respondent, in addition to the other sanctions in the provisional order (reprimand, ethics course, cease and desist from violating N.J.S.A. 17:33A-1 et seq., and any other act or regulation administered by the Board) agreed to pay the Board's costs and attorney's fees.

It must be noted that nothing in respondent's submissions, either pre or post appearance, has persuaded the Board that its preliminary findings of fact or conclusions of law as set forth in the Provisional Order, and as agreed to be adopted by respondent in June 2006, should be modified. Respondent entered into a Stipulation of Settlement with the Office of Insurance Fraud Prosecutor in which he acknowledged that he had knowingly and intentionally submitted false or misleading statements of material facts to an insurance company in support of his claim for disability benefits and agreed to pay a penalty of \$5000. The Legislature has determined that a violation of the N.J.S.A. 17:33A-1 et seq., is a basis for disciplinary action, N.J.S.A. 45:1-21(k). The Board's action here recognizes that its licensees must be held to the highest standards of conduct. The Board's

modification of its order reflects its willingness to hear mitigation offered and act in consideration of the licensee's circumstances and in the interests of the public.

Following the mitigation hearing conducted on June 15, 2006, the Board determined that it would accept respondent's representation that "...any kind of suspension would be very difficult, as far as applying for any kind of malpractice insurance or applying even for a renewal of my state application..." [T35-23-T36-1]. At that time, in light of respondent's entreaties, the Board was willing to modify the sanction. It found the terms of the settlement placed on the record were fair and appropriate. The Board again finds the disposition agreed to by respondent at that time would be a fair resolution to this matter and are sufficiently protective of the public health, safety, and welfare. In light of that determination, the Board will enter a final order modifying the sanctions in the Provisional Order, which modifications reflect the terms of the settlement placed on the record.

Therefore, the Board makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Respondent, Mihran G. Bakalian, D.C., is a chiropractic physician in the State of New Jersey and has been a licensee at all times relevant hereto.
2. On or about March 18, 2005, respondent entered into a Stipulation of Settlement with the State of New Jersey, Office of Insurance Fraud Prosecutor, pursuant to which he agreed to pay a civil penalty to the Commissioner, New Jersey Department of Banking and Insurance, in the amount of \$5,000 and an attorneys fee of \$1,250. Respondent has made the payments in accord with his settlement agreement.

3. In executing the aforesaid Stipulation of Settlement, respondent stipulated and acknowledged that he had knowingly and intentionally submitted false or misleading statements of material facts to Northwestern Mutual Life Insurance Company in support of his claim for benefits under Disability Income Insurance Policy No. D1006485, after becoming disabled on February 6, 1999.

4. Specifically, respondent had represented in his submissions to Northwestern Mutual Life Insurance Company that he was a co-owner of his then wife's practice, when he was in fact an employee. To buttress his assertions of ownership in order to qualify for benefits, respondent submitted to the insurance company an altered *Certificate of Incorporation* for Mary Swajian, P.C. in which paragraph #5 was changed from the original filed with the Treasurer of the State of New Jersey to falsely reflect that respondent was a Director of the corporation. The aforesaid conduct constitutes a violation of N.J.S.A. 17:33A-1, et seq.

#### CONCLUSION OF LAW

The above Stipulation of Settlement provides grounds for the imposition of a sanction against respondent's license to practice chiropractic in New Jersey pursuant to N.J.S.A. 45:1-21(k), in that respondent has stipulated and acknowledged in civil proceedings that he violated N.J.S.A. 17:33A-1, et seq.; and he has paid civil penalties under that act.

THEREFORE, IT IS on this 16<sup>th</sup> day of February, 2007,

ORDERED that:

1. Respondent be and hereby is formally reprimanded;

2. Respondent shall cease and desist from violating of N.J.S.A. 17:33A-1, *et seq.*, and/or violating or failing to comply with the provisions of any act or regulation administered by the Board.

3. Within twelve months of the entry of this consent order, respondent shall 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. Documentation of the successful completion with an “unconditional pass” of the course shall be provided to the Board within ten days of completion of the course.

4. Respondent shall pay costs of the hearing in this matter in the amount of \$436.50, within 30 days of the entry of this order. Payment for costs shall be made by certified check or money order payable to the State of New Jersey and forwarded to Kevin B. Earle, M.P.H., Executive Director, New Jersey State Board of Chiropractic Examiners, P.O. Box 45004, 124 Halsey Street, Newark, New Jersey 07101.

5. Respondent shall pay attorney's fees in this matter in the amount of \$1,732.50, which fees shall be paid in six installments: five payments of \$300, and a sixth payment of \$232.50. The first payment toward the award of attorney's fees shall commence on February 1, 2007. Subsequent payments shall be due on the first day of March 2007, April 2007, May 2007, June 2007, and July 2007. All payments shall be made by certified check

or money order payable to the State of New Jersey and forwarded to Kevin B. Earle, at the address in paragraph 4 above.

6. Failure to make any payment required by this consent order within ten days of its due date shall cause all unpaid sums due under this consent order to be immediately due and payable and shall cause the Board to file a certificate of debt.

7. Failure to comply with any provisions of this Order may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD OF  
CHIROPRACTIC EXAMINERS

By: 

Lawrence O'Connor, D.C.  
Board President