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**FILED**

DEC 03 2008

**NEW JERSEY BOARD OF  
CHIROPRACTIC EXAMINERS**

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

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IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
JAY M. PLOTKIN, D.C.	:	FINAL ORDER OF DISCIPLINE
License No. 38MC00376800	:	AFTER MITIGATION HEARING
	:	
TO PRACTICE CHIROPRACTIC	:	
IN THE STATE OF NEW JERSEY	:	

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This matter was opened to the New Jersey State Board of Chiropractic Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent, Jay M. Plotkin, 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 June 27, 2006, Respondent pleaded guilty to the crime of Health Care Fraud, in violation of 18 U.S.C. § 1347,

before the Hon. David D. Dowd, Jr., a United States Senior District Judge in the Northern District of Ohio. (Copy of the Judgment in a Criminal Case is attached as "Exhibit A" hereto, and incorporated by reference herein.)

3. Respondent was sentenced on December 20, 2006 to be incarcerated for a total term of 30 days, commencing on January 8, 2007. Thereafter, Respondent was to be on supervised release for a term of 2 years. Also, Respondent was ordered to pay restitution to six insurance companies in the aggregate amount of \$67,912.91.

#### CONCLUSIONS OF LAW

1. The aforesaid conduct provides grounds for the suspension or revocation of Respondent's license to practice chiropractic in New Jersey pursuant to N.J.S.A 45:1-21(f) and (k), in that Respondent has been convicted of an offense involving moral turpitude and which relates adversely to the practice of chiropractic; and has violated an insurance fraud prevention law of another jurisdiction.

Based on the foregoing findings of fact and conclusions of law, a Provisional Order of Discipline provisionally revoking Respondent's license to practice chiropractic in the State of New Jersey was issued on May 22, 2008, and a copy was forwarded to Respondent by means of both regular and certified mail. The Provisional Order was subject to finalization by the Board at 5:00

p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

By correspondence dated July 3, 2008, Respondent requested an extension of time to provide a response to the Provisional Order which proposed to revoke his license. The requested extension was granted so as to allow Respondent to obtain the full report of David J. Printz, M.D., Assistant Clinical Professor of Psychiatry, Columbia University, which Respondent wished to offer in support of his request for modification of the Provisional Order.

On November 20, 2008, Respondent appeared *pro se* before the full Board and was heard in response to the Provisional Order. Respondent did not dispute the Board's Findings of Fact or Conclusions of Law in any respect, but instead presented information solely for the Board's consideration in support of his request for mitigation of the proposed sanction.

Respondent read into the record his prepared statement and answered the questions put to him by members of the Board and its assigned deputy attorney general. In addition, the following documents were offered by Respondent for the Board's consideration:

- a. a complete copy of Respondent's prepared statement;
- b. documentation of continuing education taken by Respondent between June 2007 and June 2008, totaling 57 credit hours, and including the subjects of: billing, documentation, prohibited healthcare arrangements, ethics, case study, coding, and nutrition;
- c. note dated September 3, 2008, from Gregg H. Faiman, M.D., F.A.C.E. concerning Respondent's diagnosis, and the current status of Respondent's panhypopituitarism;
- d. a Clinical Summary Note, dated July 20, 2008, of David J. Printz, M.D., regarding his psychiatric diagnosis and clinical impression of Respondent's cognitive and emotional functioning; and
- e. a Neuropsychological Evaluation, dated March 22, 2005, by Elkhonon Goldberg, Ph.D., ABPP/ABCN, concluding that Respondent's cognitive profile is characterized by severe executive and attentional deficits.

Respondent asserted that although he does not deny his responsibility for the billing and coding improprieties which resulted in his federal conviction, he had relied upon an individual from a medical billing company whom he believed had expertise in these areas. He proffered that his own cognitive deficits, which stem from brain surgery he underwent as a child contributed to his unjustified reliance on this individual, and to his poor judgment in failing to recognize the incongruousness of the amounts he billed before and after engaging her.

In addition, Respondent argued that his intense need for structure to compensate for his hidden medical condition, and his inability without it to "remain focused on details [he] may otherwise overlook," was at the center of his shortcomings in documentation of the care rendered to his patients during the period for which he was charged. Respondent assured the Board that if allowed to return to practice, he would secure the necessary tools, such as detailed examination forms, billing programs, and monitoring, essential to providing him with the structure he requires to document and bill the care he renders in an appropriate manner. He stated that he hopes to associate with "a chiropractor whose reputation in office documentation and billing is well respected." He also stated that he would "have a coding and compliance auditor in an ongoing manner," and that he had already contacted John Kelly, a certified professional coder and accredited healthcare fraud investigator.

#### Discussion

The Board has considered the evidence and the arguments of Respondent, and finds by a preponderance of the credible evidence that Respondent has been convicted of an offense involving moral turpitude and which relates adversely to the practice of chiropractic; and that Respondent has violated an insurance fraud

prevention law of another jurisdiction. - Indeed, Respondent does not dispute these facts.

The Board concludes therefore, that disciplinary sanctions are required and necessary in this case to deter conduct by Respondent and others which undermines the system of providing quality health care to the public, and denigrates the public's perception of the chiropractic profession.

The Board accepts that the cognitive deficits overcome by Respondent in attaining a doctor of chiropractic degree, despite brain surgery at age 13, were a contributing cause of his transgressions. The Board further accepts that Respondent has taken, and will further take, steps to compensate for his cognitive deficits, so as to continue providing competent chiropractic care in a manner consistent with the health, safety and welfare of the public; adequately documenting, and appropriately billing for that care.

Based on the foregoing findings of fact and conclusions of law, and for good cause shown, the Board therefore finds that it is consistent with the health, safety and welfare of the public that Respondent's license be suspended for a period of time; and that he thereafter be permitted to return to the practice of chiropractic with certain conditions.

ACCORDINGLY, IT IS on this 3<sup>rd</sup> day of December, 2008,

ORDERED that:

1. Respondent's license to practice chiropractic in the State of New Jersey shall be, and hereby is suspended for a period of two (2) years, except that the initial three (3) month period shall be an active suspension and the remaining twenty-one (21) month period of said 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. The running of the period of suspension shall be tolled by Respondent's practice of chiropractic in any other State or jurisdiction.

2. During the period of stayed suspension, Respondent shall practice chiropractic in this State only in association with another licensed chiropractor in good standing of this State. Prior to resuming practice in New Jersey as a solo practitioner, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate his fitness to do so; and any solo practice in this State prior to said appearance shall constitute non-compliance with this Order.

3. During the period of stayed suspension, Respondent shall arrange at his own expense for John Kelly, CPC, AHFI, or another certified professional coder approved in advance by the Board, to transmit a written report of his audit of Respondent's coding and billing, at no more than six (6) month intervals, to: Jonathan Eisenmenger, Executive Director, Board of Chiropractic Examiners, P. O. Box 45004, Newark, New Jersey 07101.

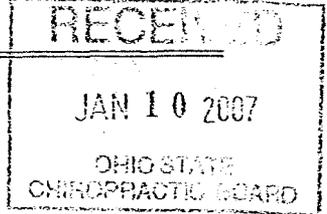
4. The Directives of the Board applicable to any Chiropractic Board licensee who is suspended, revoked or whose surrender of licensure has been accepted are incorporated by reference as though fully set forth herein, whether or not they are attached hereto.

NEW JERSEY STATE BOARD OF  
CHIROPRACTIC EXAMINERS

BY: 

Albert Stabile, Jr., D.C.  
Board President

EXHIBIT A



United States District Court  
Northern District of Ohio

UNITED STATES OF AMERICA  
v.  
Jay Michael Plotkin

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:06CR00196-001

USM Number: unassigned

James Wooley and Charles Ross  
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s): 1 of the Information.

The defendant is adjudicated guilty of these offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1347	Health Care Fraud, a Class C felony	March 2005	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in the defendant's economic circumstances.

December 13, 2006  
Date of Imposition of Judgment

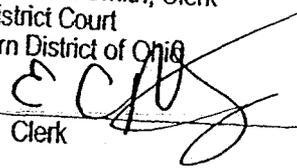
s/David D. Dowd, Jr.  
Signature of Judicial Officer

DAVID D. DOWD, JR., United States Senior District Judge  
Name & Title of Judicial Officer

December 20, 2006  
Date

I hereby certify that this instrument, document no. 34, filed on 12/20/06 is a true and correct copy of the electronically filed original.

Attest: Geri M. Smith, Clerk  
U.S. District Court  
Northern District of Ohio

By:   
Deputy Clerk

AO 245B (Rev. 6/05) Sheet 2 - Imprisonment

CASE NUMBER: 1:06CR00196-001  
DEFENDANT: Jay Michael Plotkin

Judgment - Page 2 of 6

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 30 days.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.  
 at \_\_\_ on \_\_\_\_.  
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 before 2:00 p.m. on January 8, 2007.  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

AO 245B (Rev. 6/05) Sheet 3 - Supervised Release

CASE NUMBER: 1:06CR00196-001

Judgment - Page 3 of 6

DEFENDANT: Jay Michael Plotkin

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 Years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- ~~3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;~~
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B (Rev. 6/05) Sheet 3 - Supervised Release

CASE NUMBER: 1:06CR00196-001  
DEFENDANT: Jay Michael Plotkin

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### SPECIAL CONDITIONS OF SUPERVISED RELEASE

The defendant shall participate in a Home Confinement Program with electronic monitoring for a period of 5 months, to commence no later than 30 calendar days from release from confinement. The defendant required to remain at residence unless given written permission to be elsewhere. The defendant may leave his residence to work, to receive medical treatment and to attend religious services. The defendant shall wear an electronic monitoring device, follow electronic monitoring procedures, and submit to random drug/alcohol tests as specified by the probation officer. The defendant may participate in the Earned Leave Program. Further, the defendant will be required to pay for the daily cost of electronic monitoring services.

The defendant shall participate in a substance abuse treatment program, either inpatient or outpatient, at the direction of the probation officer, which may include testing to determine if the defendant has reverted to substance abuse.

The defendant shall be prohibited from incurring any new credit or establishing any additional lines of credit without approval of the probation officer.

The defendant shall provide the probation officer access to all requested financial information.

The defendant shall submit his/her person, residence, place of business, computer, or vehicle to a warrantless search, conducted and controlled by the U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

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AO 245B (Rev. 6/05) Sheet 5 - Criminal Monetary Penalties

CASE NUMBER: 1:06CR00196-001  
 DEFENDANT: Jay Michael Plotkin

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### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 100.00	\$	\$ 67,912.91

- The determination of restitution is deferred until \_\_. An amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified otherwise in the priority order of percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>*Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
State Farm Insurance C/O Patrick Vickery 25001 Emery Road Suite 250 Warrensville Heights, Ohio 44128		\$50,723.82	
USAA		\$1,739.00	
Farmers		\$3,500.00	
Safeco Insurance C/O Ralph Franks National Insurance Crime Bureau PO Box 383 Burton, Ohio 44021		\$2,452.69	
Anthem Blue Cross and Blue Shield 4361 Irwin Simpson Mail Location OH 0101-CC225 Mason, Ohio 444040		\$7,307.51	
UnitedHealth Group C/O Donald Olson, GCA Manager MN002.025 12125 Technology drive Eden Prairie, MN 55344		\$2,189.89	
<b><u>TOTALS:</u></b>		<b><u>\$ 67,912.91</u></b>	

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

AO 245B (Rev. 6/05) Sheet 6 - Criminal Monetary Penalties

CASE NUMBER: 1:06CR00196-001  
DEFENDANT: Jay Michael Plotkin

Judgment - Page 6 of 6

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ due immediately, balance due
  - not later than or
  - in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C  D, or  F below); or
- C  Payment in equal installments of \$ over a period of , to commence days after the date of this judgment; or
- D  Payment in equal installments of \$ over a period of , to commence days after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:
  - A special assessment of \$100.00 is due in full immediately as to Count I.  
PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT
  - After the defendant is release from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the restitution. The Court will enter an order establishing a schedule of payments.

~~Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.~~

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several (Defendant name, Case Number, Total Amount, Joint and Several Amount and corresponding payee):
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest; (4) fine principal; (5) fine interest; (6) community restitution; (7) penalties; and (8) costs, including cost of prosecution and court costs.