

ORIGINAL

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

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :

Administrative Action

SAMUEL SBARRA, D.C. :  
License No. 38MC00337900 :

ORDER DENYING STAY

**FILED**

JUN 25 2009

TO PRACTICE CHIROPRACTIC :  
IN THE STATE OF NEW JERSEY :

NEW JERSEY BOARD OF  
CHIROPRACTIC EXAMINERS

The New Jersey State Board of Chiropractic Examiners (Board) entered a Final Order of Discipline on April 23, 2009 against Samuel Sbarra, D.C. (Dr. Sbarra). On or about June 8, 2009, Dr. Sbarra filed a Notice of Appeal from that order. On June 15, 2009, Dr. Sbarra filed an application to Administrative Agency for Ad Interim Relief pursuant to R. 2:9-7, seeking a stay of the Board's order. By letter dated June 17, 2009, the Attorney General, by John Hugelmeyer, DAG, responded to the application objecting to the relief sought.

On June 25, 2009, at its regularly scheduled meeting, the Board considered the application. The Board is confident that it exercised its disciplinary responsibility in appropriate manner in imposing the sanctions in its order of April 23, 2009. Dr. Sbarra has admitted to engaging in deliberate acts designed to defraud an insurance company. He stands criminally convicted of that conduct. A suspension is appropriate, if lenient.

The Notice of Appeal cites two issues: that he was entitled to a hearing

and that the Board acted arbitrarily and capriciously in suspending Dr. Sbarra's license.

The Board agrees with the Attorney General's position that Dr. Sbarra has failed to demonstrate that he satisfies the standards for issuing a stay as set forth in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). While Dr. Sbarra will certainly feel the economic effects fo a suspension, the loss of a monetary benefit - particularly one brought on by his own behavior - does not constitute irreparable harm. The law is well settled, the facts are not disputed, and the need for public confidence in the delivery of chiropractic services free from fraud outweigh any harm that might befall Dr. Sbarra.

THEREFORE on this 25<sup>th</sup> day of June, 2009, it is

ORDERED that the application for Ad Interim Relief pursuant to R. 2:9-7 is denied.

NEW JERSEY STATE BOARD OF  
CHIROPRACTIC EXAMINERS

By 

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

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IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :

Administrative Action

SAMUEL SBARRA, D.C. :  
License No. 38MC00337900 :

SUPPLEMENTAL **FILED**  
ORDER

JUN 25 2009

TO PRACTICE CHIROPRACTIC :  
IN THE STATE OF NEW JERSEY :

NEW JERSEY BOARD OF  
CHIROPRACTIC EXAMINERS

The New Jersey State Board of Chiropractic Examiners (Board) entered a Final Order of Discipline on April 23, 2009 against Samuel Sbarra, D.C. (Dr. Sbarra). That order, which finalized the January 21, 2009 Provisional Order of Discipline, reflected the Board's review of the record and consideration of Dr. Sbarra's mitigation and arguments of counsel. On June 8, 2009, Dr. Samuel Sbarra filed a Notice of Appeal from the entry of the Final Order of Discipline. As permitted by R. 2:5-1, the Board files this supplemental order.

Dr. Sbarra pled guilty on September 26, 2007, to an accusation presented in Essex County Superior Court, charging one count of Attempted Theft by Deception, 3d degree. The accusation provided that between November 2, 2005 and November 18, 2005, Dr. Sbarra

did purposely attempt to obtain property of another in excess of \$500 by deception, that is [Dr. Sbarra] did purposely attempt to obtain payment for medical treatment rendered in excess of \$500 from the Chubb Insurance Company by creating or reinforcing the false impression that a claim submitted for payment accurately reflected the services provided to his patient R.S.,

WHEREAS, IN TRUTH AND IN FACT, as [Dr. Sbarra] well knew, he did not provide the claimed services to his patient, R.S., and was therefore not entitled to payment, contrary to the provisions of N.J.S.A. 2c:5-1 and N.J.S.A. 2C:20-4 against the peace of this State the government and dignity of the same.

By entering his plea, Dr. Sbarra waived his right to a trial by jury. The Court sentenced him to one year probation and 25 hours of community service.

Dr. Sbarra's conviction provided a basis for discipline by the Board. N.J.S.A. 45:1-21(f) as it is a crime involving moral turpitude and relates adversely to the practice of chiropractic. The Board also found that the conduct underlying the conviction constituted professional misconduct, providing a second basis for the imposition of a sanction. The Board's provisional and final determination to suspend Dr. Sbarra's license for two years, six months of which is active, assess a civil penalty of \$500, require Dr. Sbarra to complete an ethics course, and to cease and desist from submitting false claims for payment, reflects its critical evaluation of the record, including the circumstances that led to the conviction and the mitigation offered by Dr. Sbarra through his counsel. The Board is persuaded that Dr. Sbarra's conduct warrants an active suspension,

Based on a contact from a confidential informant, the State Division of Criminal Justice assigned an undercover investigator to contact Dr. Sbarra in November 2005. Pretending that she had fallen in front of a store in Newark, R.S., wearing a recording device, appeared at Dr. Sbarra's as a new patient. As shown in the transcript, over the course of the visit, Dr. Sbarra discussed the manner in which he could submit

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\* R.S., the undercover informant, is the individual referred to in transcript of the November 2, 2005 office visit as R.G.

claims for treatment of R.S. to her insurance company. He stated he would attempt to create treatment records for several visits beginning in September 2005, noting a potential problem as he had recently changed computer systems and may have to use his home computer to fabricate the records. He advised R.S. that if the insurance company asked why she hadn't had any x-rays taken at the time of the fall, she could say she thought she was pregnant. Further, Dr. Sbarra during that visit completed some of R.S.'s paperwork and coached her on how to answer any inquiries from the insurance company regarding why she had not submitted bills for treatment up to that date. Subsequent to that visit, several conversations between Dr. Sbarra and R.S. and Dr. Sbarra and a representative from Chubb Insurance Company were recorded and transcribed.

Dr. Sbarra created records that reflected that R.S. had 18 visits for treatment between September 25, 2005 and November 4, 2005. The charges for those visits totaled \$1844. Dr. Sbarra made several attempts to determine why the insurance company had not paid the claims, ultimately abandoning his efforts to collect the payment.

On July 14, 2006, two investigators from the Division of Criminal Justice appeared at Dr. Sbarra's office. After reading him his Miranda rights, Dr. Sbarra admitted that he had submitted claims for payment indicating that he had treated R.S. approximately 18 times. In fact, he had seen her once, on an initial visit, during which he took only a history. He admitted that he had faxed the claims to Chubb Insurance Company and then called the company to determine the status of the claims and/or to secure payment for himself. Having been caught in his scheme to defraud, Dr. Sbarra cooperated with the investigation and pled guilty to the accusation.

Before the Board, Dr. Sbarra cited to that cooperation and other stressors in his life as mitigation of a penalty to be imposed. That mitigation, however, does not alter the Board's determination that an active suspension is warranted. Dr. Sbarro deliberately and methodically engaged in a course of conduct designed to enrich himself and R.S. He did not treat R.S. even once, yet he submitted claims reflecting 18 different dates of service. That he did not receive the funds (thus the conviction for attempted theft by deception) does not alter the Board's disposition. The Board when it formulated its provisional order, considered the very mitigation Dr. Sbarra offered in response.

Moreover, nothing in Dr. Sbarra's submission has persuaded the Board that there is a need for a hearing in this matter, nor does the law require the Board to hold a hearing, provided that a respondent has been given an opportunity to be heard. Dr. Sbarra did not raise any factual issues and indeed admitted that he agreed to falsify chiropractic billing and treatment to support "a bogus slip and fall case." (Letter March 5, 2009, from counsel for Dr. Sbarra to Board, p.3). Dr. Sbarra's counsel detailed his client's financial situation at the time of the conduct (which he attributed to medical reasons) and asked the Board to dismiss or modify the order and asked for an evidentiary hearing on that request.

The Board did not seek a revocation fo Dr. Sbarra's license, see N.J.S.A. 52:14B-11, hearing required prior to revocation of a license, and the Board fully understood the nature of the conduct that lead to the conviction and sanction, see In re Fanelli, 174 N.J. 165 (2002) (discussing need for hearing where nature of conduct underlying criminal charge not clear from record). Moreover, Dr. Sbarra, who stands before the Board convicted of the crime of attempted theft by deception, may not go behind the conviction to challenge the basis of that conviction. State v. Gonzales, 142 N.J. 618 (1995). Finally,

professional boards may determine what constitutes professional misconduct. State v. Polk, 90 N.J. 550 (1982 ). Where, as here, a chiropractor engages in acts that are designed to defraud, acts that cast aspersions on the integrity of the profession, and which injure society as whole by contributing to the escalating cost of insurance, the Board should and must act with a significant sanction.

Dr. Sbarra, consistent with statutory and common law, and due process and fundamental fairness, was given an opportunity to be heard. The Provisional Order invited him to submit any information he wished the Board to consider. He did. The Board reviewed the record and submissions and deliberated. We are not persuaded that his assertion of cooperation with the investigation after he was caught on tape scheming with an undercover investigator to collect insurance payments for services not provided, on dates prior to his first meeting with that putative patient, and attempting to collect for those services, should eliminate the suspension of his license. The Board is aware that an active suspension has significant financial consequences for its licensees, but Dr. Sbarra would not be facing a suspension had he not violated the law. We are satisfied that the sanction imposed in the Final order of Discipline entered on April 23, 2009, is appropriate.

NEW JERSEY STATE BOARD OF  
CHIROPRACTIC EXAMINERS

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