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JUN 02 2010

**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

ROBERT A. VALINOTI, D.C.
License No. 38MC00450000

TO PRACTICE CHIROPRACTIC
IN THE STATE OF NEW JERSEY

Administrative Action

AMENDED¹ FINAL DECISION AND
ORDER AFTER UPL HEARING

This matter was opened to the New Jersey Board of Chiropractic Examiners (hereinafter the "Board") upon the investigation of the complaint of State Farm Insurance Company against Robert A. Valinoti, D.C. (hereinafter "Respondent"). The investigation disclosed that State Farm Insurance Company was billed for sensory nerve conduction threshold testing performed upon numerous chiropractic patients insured by that company. The testing was performed at Tower West Chiropractic Association (hereinafter "Tower West") between July 2000 and at least February 2004. The sensory nerve conduction threshold testing (CPT Code 95904) was performed by Respondent on at least eleven (11) patients during that time period. Respondent certified his performance of the subject professional services with the knowledge that he did so to facilitate and enable the billing of those professional services, notwithstanding the fact that billing for sensory nerve conduction threshold testing by a chiropractic physician is violative of N.J.A.C. 13:44E-3.2(b)2.

On or about March 9, 2009, a Uniform Penalty letter (hereinafter "U.P.L.") was sent to Respondent setting forth the preliminary findings of the Board and offering Respondent the

¹Final Decision and Order issued on December 23, 2009 is hereby amended on motion of the Attorney General pursuant to R. 1:13-1 to correct a clerical mistake.

opportunity to settle this matter by acknowledging his responsibility for the violations, agreeing to cease and desist therefrom, accepting a formal reprimand, and paying a civil penalty in the amount of \$1,000.00. Alternatively, Respondent was given the options to request a hearing before the Board or to submit a written explanation and waive his right to a hearing.

Respondent chose to request a hearing before the Board, which took place on November 19, 2009. Bindi Merchant, Deputy Attorney General, presented the matter on behalf of the State. Jeffrey B. Randolph, Esq. represented Respondent. The following documents were introduced without objection:

- P-1 Pertinent patient record and billing for T.A.
- P-2 Pertinent patient record and billing for G.C.
- P-3 Pertinent patient record and billing for A.D.
- P-4 Pertinent patient record and billing for R.F.
- P-5 Pertinent patient record and billing for J.F.
- P-6 Pertinent patient record and billing for P.G.
- P-7 Pertinent patient record and billing for E.M.
- P-8 Pertinent patient record and billing for S.O.
- P-9 Pertinent patient record and billing for R.P.
- P-10 Pertinent patient record and billing for M.P.
- P-11 Pertinent patient record and billing for T.Y.

In addition, the State submitted a certification of Ms. Merchant seeking attorney fees pursuant to N.J.S.A. 45:1-25 in the amount of \$2,349.00, representing a total of 17.4 billable hours expended by her in this matter at the rate of \$135.00 per hour, as established by the Acting Director of the Division of Law, Department of Law & Public Safety, for attorneys with less than five years of experience. The certification was received into evidence with no comments or objections from Respondent.

Respondent testified that he was a per diem employee of another chiropractor who owned Tower West and controlled both the services performed there and the billing for those services. Respondent claimed that he had no influence over the billing for his services and that he executed billing verification documents for the sole purpose of certifying that he had performed the services

being billed. Respondent acknowledged that billing documents were attached to the verification of services he signed, and that he had read the certifications stating that they were a condition precedent to payment for the services he had rendered; specifically, for sensory nerve conduction threshold testing. He acknowledged an awareness that the billing for these services was taking place, but stated he was not aware that billing for sensory nerve conduction threshold testing was prohibited.

The Board has considered the evidence and makes the following findings:

1. Respondent is a chiropractic physician in the State of New Jersey and has been a licensee at all times relevant hereto.
2. Between July 12, 2000 and February 13, 2004, Respondent performed sensory nerve conduction threshold testing on at least eleven patients while working at Tower West.
3. Respondent executed a "Certification/Verification" in support of each claim filed with State Farm Insurance Company for payment for the sensory nerve conduction threshold testing that stated:

I have read the attached report and bill for services and/or materials rendered to [name of patient]. I declare that the treatments, services or materials rendered or provided by me or provided by my employee at my direction and under my supervision were reasonable, necessary, and were, in fact, furnished and provided the dates set forth. (sic)

I understand that any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

I further understand that the furnishing or (sic) verification is *a condition precedent to payment by the insurer or recourse against the insured person to whom, or for whom, the services, treatments, or materials were rendered or supplied.*

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. (emphasis supplied).

4. The regulations governing the practice of chiropractic in New Jersey at N.J.A.C. 13:44E-32(b) state:

(b) A chiropractic physician shall not bill for any diagnostic tests that have not been reliably demonstrated to identify conditions amenable to chiropractic care beyond the information ascertainable from the taking of a patient history and performance of a thorough clinical examination or that otherwise fail to yield data of sufficient clinical value in the development, evaluation or implementation of a plan of treatment, including the following:

* * *

2. *Current perception threshold tests*; (emphasis supplied).

5. With respect to the violations of N.J.A.C. 13:44E-32(b)2, the Board finds that Respondent was aware that his professional services with respect to sensory nerve conduction threshold testing were being billed by Tower West; that he did not object to the billing; and that he instead facilitated and enabled that billing by executing a certification/verification form for each claim.

6. The Board finds that the hours expended by Ms. Merchant in the preparation of this matter were ordinary and reasonable; and that when multiplied by the rate established for deputy attorneys general in her category of experience, produced an amount that is likewise reasonable; vindicating the statutory scheme of protecting the public from violations of those regulations governing billing for professional services.

Accordingly, the Board finds that Respondent failed to conform with statutory and regulatory obligations as set forth in the UPL; and thus it concludes that violations of N.J.A.C. 13:44E-3.2(b)2 occurred for which he is accountable. Licensees may not avoid accountability for the billing of professional services rendered by them while employed in a practice owned by another under circumstances demonstrating that they were fully aware of the billing. Both the owner of the practice and all chiropractors rendering professional services therein must comply with applicable regulations. As health care providers, they must be aware of all applicable regulations and conform to them.

Based on the foregoing:

IT IS on this 27th day of May, 2010

ORDERED that:

1. Respondent shall pay a civil penalty in the amount of \$1,000.00 for the violations as set forth in the U.P.L. Said payment shall be made by certified check or money order payable to the State of New Jersey and shall be delivered within thirty (30) days of service of this Order to Jonathan Eisenmenger, Executive Director of the Board of Chiropractic Examiners, P. O. Box 45005, Newark, New Jersey 07101. Failure to remit the payment required by this Order will result in the filing of a certificate of debt and may result in further disciplinary proceedings for failure to comply with an Order of the Board.
2. Respondent shall cease and desist from violations of N.J.A.C. 13:44E-3.2(b)2.
3. Respondent shall be issued a formal reprimand for violation of N.J.A.C. 13:44E-3.2(b)2.
4. Pursuant to N.J.S.A. 45:1-25(d), Respondent shall pay attorney fees incurred by the Board, together with transcript costs of \$146.00, in the total amount of \$2,495.00. Payment shall be made in the manner set forth in paragraph #1 above and shall be sent to Jonathan Eisenmenger at the address described in paragraph #1.

NEW JERSEY STATE BOARD OF
CHIROPRACTIC EXAMINERS

BY: 
Michael B. Krouse, D.C.
President