

CONNECTICUT STATE
BOARD OF CHIROPRACTIC EXAMINERS

In re: Jesse Jutkowicz, D.C.

MEMORANDUM OF DECISION

I. FACTS

1. Respondent, Jesse Jutkowitz, D.C., was at all times licensed in the practice of chiropractic by the State of Connecticut Department of Health Services.

2. Prior to the initiation of the instant charges, the Respondent was given the opportunity to show compliance with all lawful requirements for the retention of his license pursuant to Conn. Gen. Stat. § 4-182(c).

3. Hearings were held by the State of Connecticut Board of Chiropractic Examiners (Board) on September 19, 1985, November 14, 1985 and February 27, 1986.

4. The Department of Health Services presented the Board with a Statement of Charges issued on May 24, 1985 alleging violation of Conn. Gen. Stat. § 20-29 in 24 Counts.

5. The Department verbally withdrew Counts 3, 4 and 15.

6. Respondent and complainant Mark Spivey first met at the Milford Racquetball Club during the winter of 1983. They discussed Spivey's curvature of the spine.

7. On April 4, 1983, Spivey went to Respondent for treatment of his curvature of the spine (idiopathic scoliosis). During this initial office visit, Respondent performed a physical examination and took four sitting and standing full spine radiographs.

8. Respondent diagnosed Spivey as having lumbar intervertebral disc syndrome with uneven leg length, spinal cord stress syndrome, displacement of cervical disc, radicular neuralgia, cranial neuralgia-headache syndrome, cervical plexus compression syndrome, and kinesiologia.

9. At some point in the course of treatment, Respondent advised Spivey that he required the services of a psychologist and that treatment of the idiopathic scoliosis required psychological attention. Spivey did not comply with Respondent's advice. Respondent, nonetheless, continued his treatment of Spivey.

10. Subsequently, Spivey sought a second chiropractic opinion from Donald J. Lawlor, D.C.

11. On the basis of both Dr. Lawlor's diagnosis of his condition and evaluation of Respondent's diagnosis, Spivey terminated treatment with Respondent on June 3, 1983.

12. On May 23, 1984, Respondent initiated an action in Superior Court, Small Claims Division, for the recovery of the

balance due from Spivey, \$324.56. Spivey contested this claim on June 15, 1984.

13. Spivey swore a complaint against Respondent with the Department on June 22, 1984.

14. Cheryl Benham commenced treatment with Respondent, for the treatment of chronic migraine headaches, on February 18, 1982.

15. At Ms. Benham's initial office visit, Respondent performed a physical examination. Respondent then advised her that she had a heart murmur. He also advised Ms. Benham that he could cure migraine headaches and acne.

16. Respondent took standing and sitting full spine radiographs of Ms. Benham at her initial office visit and on two other occasions: March 22, 1982 and May 20, 1982. She was advised that the purpose of these later x-rays was to monitor the progress of the treatment.

17. In the course of diagnosing and treating Ms. Benham, Respondent administered the coccygeal-meningeal procedure, a manual intra-rectal examination and manipulation. This procedure was administered on at least five occasions.

18. Upon learning that Ms. Benham was planning to take a trip involving travel on a pressurized airliner, Respondent advised her to self-administer the coccygeal-meningeal procedure

while in-flight. She was instructed that the pressurized cabin would allow her to safely perform the procedure herself. Respondent gave her a rubber glove for this purpose.

19. Respondent advised Ms. Benham that her recovery depended upon the coccygeal-meningeal procedure and that proper chiropractic adjustment required this procedure.

20. Upon Ms. Benham's refusal to continue with the coccygeal-meningeal procedure, Respondent advised her that without them he could not continue to treat her. Nonetheless, he did continue treatment until July 21, 1982.

21. Richard Benham became acquainted with the services of Respondent in the course of the latter's treatment of his wife, Cheryl Benham.

22. On May 25, 1982, Mr. Benham initiated treatment for occasional back pain. At his initial office visit, a physical examination was performed and full standing and sitting spine x-rays were taken.

23. In the course of treatment, Respondent advised Mr. Benham directly, and indirectly through Mrs. Benham, to have the coccygeal-meningeal procedure. Respondent advised Mr. Benham that his health would suffer if he did not receive the procedure.

24. Mr. Benham refused to undergo the procedure and terminated his relationship with Respondent.

25. Subsequently, Mr. Benham attempted to retrieve his x-rays from Respondent's office. Respondent required that Mr. Benham sign a form relieving Respondent of all responsibility and liability. In addition, he required the payment of a \$25.00 deposit for the x-rays. Mr. Benham refused to sign the form and make the payment. His x-rays were not released to him.

26. Richard Benham and Cheryl Benham subsequently commenced treatment with James Allen, D.C.

27. The members of the Board who have participated in this decision hereby certify that they have either heard the case or read the record of the proceedings.

II. DISCUSSION AND CONCLUSIONS COUNTS 21 and 22

Respondent is charged with improperly making a diagnosis without objective findings to substantiate it. Competent chiropractic practice requires that diagnoses be substantiated by objective findings, documented in the record. The Board has analyzed Respondent's records of the physical examination and radiographic studies of Mark Spivey in light of Respondent's diagnoses. These records fail to indicate significant signs or symptoms that are inherent to lumbar intervertebral disc syndrome. On the contrary, Mr. Spivey is recorded as normal in certain important areas such as reflexes and gait; there is also,

significantly, a lack of antalgia. Further, unless one has positive nerve root involvement demonstrated by orthopedic tests such as Lassegues and Braggard's, and/or accompanying neurological reflex abnormalities in the lower extremities, there can be no substantiation for a lumbar intervertebral disc syndrome diagnosis. Neither of these facts was demonstrated as to Mr. Spivey. Subjective reports of pain by the patient do not provide objective substantiation for a diagnosis. The Respondent at hearing emphasized the fact that the lumbar intervertebral disc syndrome was evident in the sedentary x-ray views. However, the demonstrated variances between the sedentary and standing views are normal positional and/or projectional distortions found in the sitting versus the standing x-rays. Respondent's diagnosis of cervical disc displacement is without orthopedic or neurologic substantiation. Indeed, there is even no indication as to which disc or segmental nerve root is involved. Moreover, such a diagnosis cannot properly be made without a myelogram and/or cat scan; neither was done in this case. Neither do Respondent's records provide an orthopedic or neurologic basis for the finding of radicular neuralgia. The records, too, fail to substantiate a diagnosis of cervical plexus compression syndrome, there being a want of neurologic and vascular corroboration. Further, the Board finds that spinal cord stress syndrome is not a diagnosis

which accords with the standard of care required of chiropractors in the state. It is a function of a procedure called "Stressology" which is an experimental procedure whose clinical effectiveness has not been proven. The Board agrees that "Spinal Stressology or Ward Stressology is nothing more than an internal coccyx adjustment with, as most entrepreneurial presentations, an elaborate but unfounded analysis." See Department Exhibit N, letter from North College of Chiropractic, dated July 18, 1983. Indeed, the evidence indicates that "Stressology" is not taught as part of the core curriculum of any chiropractic school or college approved by this Board. There can be no objective findings which substantiate an impermissible diagnosis. For the above reasons, it is found that the Respondent engaged in incompetent practice in rendering the above-referenced diagnoses as charged in the twenty first count.

The Board acknowledges that difficulties with athletically related movement provide a modicum of support for Respondent's diagnosis of cranial neuralgia-headache syndrome and kinesiologia, and thus finds the allegations of count twenty-one unproven as to this diagnosis.

The Board accepts Spivey's testimony that Respondent advised that his idiopathic scoliosis was caused by emotional or psychological factors and that its successful treatment required

concurrent psychological attention. Etiologically, idiopathic scoliosis is a condition congenital in nature for which psychological treatment has no demonstrated application. Consequently, the Board finds that Respondent acted incompetently in violation of § 20-29 as specified in Count 22.

COUNTS 1, 2, 5 and 6

The Board accepts the testimony of Cheryl Benham that Respondent led her to believe that he would cure her migraine headaches. Whether he meant to do so is not the point. It was incumbent upon Respondent to effectively and truthfully communicate his prognosis and the parameters of treatment. Respondent, however, failed to do so. Accordingly, the Board finds that Respondent acted incompetently in violation of Conn. Gen. Stat. § 20-29 as alleged in Count 2. The Board further accepts the testimony of Ms. Benham that the Respondent said he could cure acne. There is no known manipulative technique that is effective in treating acne. The Respondent's statement in this regard constitutes material deception as alleged in Count 1.

The Board also accepts Ms. Benham's testimony that the Respondent advised her that she could have damage to her heart. Inasmuch as there was no evidence based upon Respondent's physical examination to conclude that Ms. Benham might have damage to

her heart, the Respondent acted incompetently in so advising her. Accordingly, the Board concludes that the violation alleged in Count 6 has been proven. Based upon the evidence presented, the Board cannot find that material deception or fraud was present in this connection. Accordingly, Count 5 is dismissed.

COUNTS 7, 14 and 18

Respondent is charged with improperly x-raying Cheryl Benham in an excessive amount in the course of diagnosing or treating her. On three occasions, he performed standing and sitting full-spine x-rays on Ms. Benham. He is also charged with x-raying Richard Benham where not clinically indicated and in an excessive amount in the course of diagnosis or treatment. The allegations regarding Mr. Benham refer to standing and sitting full-spine x-rays taken at Respondent's direction on May 25, 1982, on the occasion of his initial office visit.

Standing and sitting full spine radiography is normally not an indicated chiropractic technique due to the inordinate exposure to radiation that results. The Board finds that the use of such radiographs as a method of monitoring treatment as in the case of Ms. Benham, is incompetent practice. Their use, in the case of Ms. Benham, for an initial symptomatic complaint of chronic migraine headache is itself excessive, and their

repetition in that case was thus particularly improper. The Board similarly finds that the use of such x-rays was also excessive in the case of Mr. Benham given his initial symptomatic complaint of occasional back pain. Respondent, therefore, is found to have engaged in incompetent conduct in violation of Conn. Gen. Stat. § 20-29 as alleged in Counts 7 and 18. Count 14 essentially restates Count 18 on a slightly different theory and is dismissed.

COUNTS 8, 13, 16 and 17

The Respondent is charged with using, in the course of diagnosing Cheryl Benham, a diagnostic manipulation which is not taught in any school or college of chiropractic which has been recognized and approved by the Board. Respondent admits that, on five occasions, he administered the coccygeal-meningeal manipulation to Ms. Benham. It appears from the evidence that the manipulation was used at least in part for diagnostic purposes. The coccygeal-meningeal manipulation was not part of the core curriculum^{1/} of any school or college of chiropractic approved by the

1/ Conn. Gen. Stat. § 20-28(2) provides that a Connecticut licensed chiropractor may:

(e)xamine, analyze and diagnose the human living body and it's diseases, and

(footnote cont'd)

Board at any relevant time in this case. As such it is a diagnostic technique forbidden by the terms of Conn. Gen. Stat. § 20-28(b)(2). The Respondent's use of it constituted illegal conduct as charged in Count 8.

Additionally, Respondent is charged with having advised Ms. Benham that he would be unable to perform adjustments on her without doing the coccygeal-meningeal manipulation. The Board accepts Ms. Benham's testimony that Respondent initially presented her with this either-or situation. As any licensed chiropractor, Respondent was fully capable of performing adjustments on Ms. Benham without employing the coccygeal-meningeal manipulation technique. His statement to the contrary constituted material deception in that it was obviously geared to convince Ms. Benham to accede to the technique. The Respondent is thus found to have committed the violation alleged in Count 17. Count 16

(footnote cont'd from previous page)

use for diagnostic purposes the x-ray or any other general method of examination for diagnosis and analysis taught in any school or college of chiropractic which has been recognized and approved by the state board of chiropractic examiners.

The Board has consistently interpreted this statute as requiring that a diagnostic technique we may be employed only if it is taught as part of the core curriculum of an approved school or college.

which alleges the same offense on a different theory is dismissed.

Respondent is also charged with having improperly advised Ms. Benham to self-administer this procedure. The Board accepts Ms. Benham's testimony that Respondent did so advise her. The coccygeal-meningeal manipulation is a procedure whose effectiveness is questionable and not a usual and customary procedure recognized by colleges approved by the Board. This approach is considered experimental and lacking current substantiation in the scientific literature. As a result, the use of this technique constitutes incompetent conduct. It was similarly incompetent for the Respondent to advise a patient to self-administer this technique. The violation alleged in Count 13 has been proven.

COUNTS 9, 10, 11, 12 and 20

The Board accepts the testimony of Cheryl Benham that she was advised by Respondent on several occasions that chiropractors who did not administer the coccygeal-meningeal procedure were not practicing proper chiropractic. As stated earlier, the use of this technique constitutes incompetent practice. Thus it can hardly be the case that chiropractors are practicing improperly by virtue of their non-use of this technique. Accordingly, Respondent is found to have engaged in material deception

in violation of Conn. Gen. Stat. § 20-29 as alleged in Count 9. Count 10 is therefore dismissed. For the reasons set forth above, it is found that the Respondent also engaged in incompetent conduct as alleged in Count 20. See Findings of Fact No. 23.

The allegation that Respondent improperly advised Ms. Benham that coccygeal-meningeal treatment is a necessary component of the treatment of a person in poor shape is not substantiated by the record. Accordingly, the Board finds Respondent not guilty of the allegations in Counts 11 and 12.

COUNT 19

Respondent is alleged to have improperly placed conditions upon the release of Richard Benham's x-rays. The record shows that as late as June 9, 1983, Respondent required Mr. Benham to sign a statement releasing the former from all responsibility and liability. The Board finds that Respondent's activities in this regard constitute "business practices" within the meaning of Conn. Gen. Stat. § 19a-19. As such, they are not properly before this Board but instead are within the province of the Consumer Protection Department.

COUNTS 23 and 24

Respondent admits to having practiced as a chiropractor

under the name "Back Pain Clinic" in violation of Conn. Gen. Stat. § 20-32. He alleges that the name of his clinic was changed to the Jutkowitz Chiropractic Office sometime between February and August 1983.^{2/} The Board, therefore, finds Respondent to have violated Conn. Gen. Stat. §§ 20-29 and 20-32, as alleged in Count 23. Count 24 is essentially duplicative of Count 23 and is therefore dismissed.

III. ORDER

It is the Order of the Connecticut State Board of Chiropractic Examiners that:

1) As to each of Counts 7 and 18, the Respondent's license be suspended for a period of one year, that Respondent pay a civil penalty of \$500 and that Respondent be placed on probationary status for a period of three years, commencing upon completion of the one year suspension period referenced herein. During the period of probation, the Respondent is ordered to submit quarterly reports to the Board listing, by assigned patient number, each patient that the Respondent has x-rayed within the

^{2/} Respondent agreed, at the February 26, 1986 hearing, to forward to the Board copies of his letterhead stationery, a professional card, and a photograph of the sign that appears outside his office. The Board has received the stationery but it is not in receipt of the photograph.

preceding quarter, the dates of the x-rays, and the precise views taken. If no patients are x-rayed within the quarter, the report shall so indicate.

2) As to each of Counts 8, 9, 13, 17, 20 and 21, the Respondent's license be suspended for a period of one year and that Respondent pay a civil penalty of \$500.

3) As to each of Counts 1, 2, 6 and 22, the Respondent's license be suspended for a period of two months and that Respondent pay a civil penalty of \$250.

4) As to Count 23, the Respondent is hereby reprimanded by the Board.

5) All periods of suspension shall be concurrent and all periods of probation shall be concurrent. All civil penalties shall be consecutive.

6) The total effective disposition of the charges is, therefore, as follows: The Respondent's license to practice chiropractic is suspended for a period of one year, and he is ordered to pay a civil penalty of \$5,000. The period of suspension shall commence forty-five days from the date of the mailing of this decision to the Respondent, which date is indicated below. The civil penalty shall be payable to the "State of Connecticut" and shall be received by the Board at the Department of Health Services, 150 Washington Street, Hartford, Connecticut, no.

later than forty-five days from the date of mailing of this decision to the Respondent. At the conclusion of the one year (365 day) period of suspension, Respondent is placed on probationary status for a period of three years. The Respondent is ordered to submit to the Board quarterly reports during the period of probation, listing by assigned patient number, each patient he has x-rayed during the preceeding quarter, the dates of the x-rays, and the precise views taken. The Respondent is also reprimanded as to Count 23, effective immediately.

SO ORDERED.

THE CONNECTICUT STATE BOARD OF
CHIROPRACTIC EXAMINERS

July 10, 1987
Date

Marino R. Passero, D.C.
BY: Marino R. Passero, D.C.
Chairman

July 23, 1987
Date

Mary Coman
BY: Mary Coman
Member

Decision mailed to Respondent Jessie Jutkowicz, D.C., and copy to his counsel Hanon W. Russell, Esq. on July 29, 1987 by

Celia B. Carroll
Celia B. Carroll
Health Board Liaison