

**STATE OF CONNECTICUT
BOARD OF CHIROPRACTIC EXAMINERS**

In Re: ~~Jesse Jutkowitz, D.C.~~

Case No. 850726-07-006

MEMORANDUM OF DECISION

I. FACTS

1. Respondent, Jesse Jutkowitz, D.C., was at all pertinent 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. sec. 4-182(c).

3. The Department of Health Services presented the Board with a Statement of Charges issued on February 26, 1988, alleging violations of Conn. Gen. Stat. sec. 20-29 in seven counts. Record, Ex. D-1.

4. Pursuant to a Notice of Hearing dated March 10, 1988 (Record, Ex. D-1), a hearing was originally scheduled for May 5, 1988. At the Department's request the hearing was continued to August 25, 1988.

5. On March 29, 1988 the Respondent applied for a More Definite Statement. Record, Ex. R-B.

6. The Department issued a More Definite and Detailed Statement on April 6, 1988, which was technically corrected on April 14, 1988. Record, Tr. at 14-16; Ex. D-2.

7. Respondent has denied each and every allegation in the Statement of Charges. Record, Ex. R-A.

8. Counts Two, Three and Seven of the Statement of Charges were withdrawn by the Department. Record, Tr. at 9.

9. Respondent was present, with counsel, at the hearing.

As to the First Count:

10. From on or about October 26, 1984 until on or about November 5, 1984, Respondent treated one Jacqueline (Haeche) Gourdier.

11. Prior to her receipt of treatment from the Respondent, Jacquelyn (Haeche) Gourdier's case history was documented and made a part of her medical record maintained by the Respondent. Record, Tr. at 27; Ex. D-3.

12. Nowhere within Jacquelyn (Haeche) Gourdier's documented case history is discomfort to the tailbone indicated.

13. Jacqueline (Haeche) Gourdier's complaints to the Respondent included neck pain, shoulder pain, and mid- and lower-back pain. Record, Ex. D-3.

14. In the course of treating Ms. (Haeche) Gourdier, Respondent manipulated her coccyx, through a manual, intra-rectal procedure. Record, Tr. at 82.

As to the Fourth, Fifth and Sixth Counts:

15. From on or about February, 1982 through on or about May, 1983, Respondent treated one Charlotte Showalter.

16. During said period, Respondent took five full spine X-rays of Ms. Showalter. Record, Ex. D-6.

17. During said period, Respondent failed to keep clinical records of the patient's progress as of each visit. Record, Ex. D-4; Tr. at 181.

18. Nowhere within records which were kept by the Respondent concerning Charlotte Showalter is any discomfort to the tailbone mentioned. Record, Ex. D-4.

19. In the course of treating Ms. Showalter, Respondent administered an "intra-rectal meningeal adjustment" procedure on at least four occasions. Record, Tr. at 180.

DISCUSSION AND CONCLUSIONS

**As To Respondent's Application For
A More Definite Statement:**

Respondent's first contention concerns the adequacy of the Department's Statement of Charges in providing notice of the charges against him. Respondent claims that, upon receipt of his application dated March 29, 1988, the Department was obligated under sec. 4-177(b) to furnish a more definite and detailed statement as to each paragraph cited therein. The Department counters that, through its original Statement of Charges and its More Definite and Detailed Statement, the Respondent

was afforded sufficient notice under the law of the nature of and statutory authority for the charges which were brought.

The Board is convinced that through the Statement of Charges, combined with the More Definite and Detailed Statement dated April 14, 1988 (Record, Ex. D), the Department provided legally sufficient notice of the matters asserted and the statutory provisions involved. The Department's notice clearly informed the Respondent that he was being summoned for alleged violations of Conn. Gen. Stat. sec. 20-29, and it detailed the facts supporting those allegations. It is further noted that the Department referred in its Statement of Charges to secs. 19a-9 and 19a-14 of the General Statutes, which specifically authorize the Board to conduct disciplinary hearings presented by the Department.

The Department's specific reference to the statutory provisions involved, and its notification to the Respondent of the factual allegations concerning his professional conduct, sufficiently complied with the notice requirements of Conn. Gen. Stat. sec. 4-177(b). This determination is consistent with Connecticut caselaw on the application and interpretation of this section of the Uniform Administrative Procedure Act. Brazo v. Real Estate Commission, 177 Conn. 515, 418 A.2d 883 (1979).

The Board notes that much of Respondent's argument on this issue depends on his characterization of Conn. Gen. Stat. sec. 4-177(b)'s provision for the issuance of a more definite and detailed statement as mandatory, upon application. Record, Tr. at 20, Respondent's Memorandum of Law at p.2. Clearly, compliance with statutory provisions as to notice is a prerequisite to any valid action by an administrative

tribunal, and failure to give proper notice is a jurisdictional defect. Brazo v. Real Estate Commission, 177 Conn. 515. However, a statute should be construed so that all its parts have meaning, and so that it makes common sense. Eagle Hill Corp. v. Commission on Hospitals and Health Care, 200 Conn. App. 68, 477 A.2d 660 (1984).

The Board finds that Conn. Gen. Stat. sec. 4-177(b) is clear and unambiguous in its direction:

If the agency ... is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

Read in context, sec. 4-177(b)'s requirement that a more definite statement be furnished is dependent upon an initial failure by the agency to state the matters in the detail contemplated by sec. 4-177(b)(1)-(4). A review of the original Statement of Charges reveals no such failure with regard to paragraph 5 of the First Count and paragraph 4 of the Sixth Count. Therefore, the Department was not required to furnish a more definite and detailed statement as to those paragraphs.

The Board concludes that legally sufficient notice was provided to the Respondent.

As to the First Count:

Respondent is charged with having violated Conn. Gen. Stat. sec. 20-29, which provides, in pertinent part:

The board of chiropractic examiners may take any of the actions set forth in sec. 19a-17 for any of the following reasons: ... illegal, incompetent or negligent conduct in the practice of chiropractic.

Respondent is alleged to have engaged in negligent or incompetent conduct when, in the course of diagnosing and treating patient Jacqueline (Haeche) Gourdier, he manipulated her coccyx. According to the record, the Respondent administered a manual intra-rectal examination and manipulation of the coccyx. Record, Tr. at 31, 32.

In reviewing Ms. Gourdier's medical records (Record, Ex. D-3), and testimony presented at the hearing, the Board finds that no coccygeal adjustment of any kind was clinically substantiated. Despite Respondent's contentions that the coccygeal-meningeal manipulation at issue was a necessary treatment (Record, Tr. at 98), he fails to present convincing rationale supporting that determination. Contrary evidence as to the severity of pain upon palpation of the sacral area, upon which Respondent wholly relied in substantiating the manipulation procedure, is noted. Record, Ex. D-3; Tr. at 61-62, 95-96.

The Department's expert witness, Stephen Owens, D.C., testified that "there was not sufficient X-ray information to justify that examination or procedure", and further, that "none of the diagnoses given [on the record] would involve that kind of a procedure." Record, Tr. at 71, 75. Finally, Respondent admits that he never documented a diagnosis substantiating the procedure. Record, Tr. at 86.

Based on the evidence on the record, the Board finds that Respondent's manipulation of the coccyx in the case of Jacquelyn (Haeche) Gourdier constituted negligent or incompetent conduct in the practice of chiropractic, as alleged in the First Count.

As to the Fourth Count:

Respondent is charged with having engaged in negligent or incompetent conduct in violation of Conn. Gen. Stat. sec. 20-29, by taking five full spine X-rays of one Charlotte Showalter. The evidence establishes that between approximately February, 1982 and May, 1983, the Respondent did take five such X-rays of the patient. Record, Ex. D-6; Tr. at 160.

The Department's expert witness, Dr. Owens, testified that five full spine X-rays constituted "excessive exposure to the patient, producing minimal, incomplete and non-diagnostic information". The Board concludes that it was not medically necessary to take the five X-rays, as alleged in the Fourth Count, as amended by the Department's More Definite and Detailed Statement. While it is noted that Dr. Jutkowitz employed methods minimizing the patient's radiation exposure, any unnecessary radiation is excessive and inappropriate. See Respondent's testimony, Record, Tr. at 170. The Board therefore finds that the Respondent's conduct constituted negligent or incompetent practice in violation of Conn. Gen. Stat. sec. 20-29.

As to the Fifth Count:

According to the Department's expert witness, Charlotte Showalter's records do not meet the standards of care required of the chiropractic profession. Record, Tr. at 126. By Respondent's own admission, he was "wrong" in not making daily clinical notes. Record, Tr. at 181. The record supports that the Respondent failed to keep proper ongoing records of the patient's presence in the office, and specifically, of her

diagnoses and progress. The Board therefore concludes that this conduct constituted negligent or incompetent practice in violation of Conn. Gen. Stat. sec. 20-29, as alleged in the Fifth Count.

As to the Sixth Count

The record establishes that intra-rectal "meningeal adjustments" were performed on Charlotte Showalter on at least four occasions. Record, Tr. at 180. As in the First Count, the Board is concerned that the Respondent may have employed an internal adjustment method without sufficient clinical substantiation. Pain to the tailbone was not documented in this patient's case. Record, Ex. p. 4. However, in the absence of sufficient evidence defining the procedure charged in this count, or establishing the impropriety of the Respondent's performance of the same on Ms. Showalter, the record will not support a finding of guilt. No violation as alleged in the Sixth Count is found.

Summary

The Board members who have participated in the final decision of this case have either heard the case or read the record.

In formulating its decision and order, the Board has not considered any prior discipline ordered against the Respondent. The Board's decision and order in this case are directed toward protecting the public health and well-being in this State. The Board views the violations proved herein as serious, and finds that they warrant the disciplinary action detailed below.

ORDER

Pursuant to its authority under Conn. Gen. Stat. sec. 19a-17 of the Connecticut General Statutes, the Board of Chiropractic Examiners hereby orders the following:

1. As to each of Counts One, Four, and Five, the Respondent's license shall be suspended concurrently for a period of one year. Immediately upon completion of the one year suspension period, the Respondent shall be placed on probationary status for a period of three years. At the Board's request, during the period of probation the Respondent must appear before the Board with all current patient files, to allow the evaluation of Respondent's record keeping practices.

2. The Respondent is assessed a total civil penalty of \$3,000.00, representing a penalty of \$1,000.00 for each of Counts One, Four and Five. The civil penalty is to be paid by certified check, made out to Treasurer, State of Connecticut, and mailed or delivered to:

State of Connecticut
Department of Health Services
Hearing Office
150 Washington Street
Hartford, Connecticut 06106

3. This decision shall be effective, and the civil penalty paid in full, forty-five (45) days from the date of its mailing to the Respondent, which date is noted below. The suspension and probation ordered shall not run concurrently with any prior suspension or probation ordered by this Board against the Respondent.

Connecticut State Board
of Chiropractic Examiners

Date: 3-22-90

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

Date of Mailing of this
Decision to Respondent:

3-28-90