

DEPARTMENT OF HEALTH SERVICES
BUREAU OF HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

In Re: Jesse Jutkowitz, D.C. Petition No. 890103-07-001
499 Pine Tree Drive
Orange, CT 06477

MEMORANDUM OF DECISION

The Connecticut Board of Chiropractic Examiners (Board) was presented with a Notice of Hearing, dated March 8, 1991, prepared by the Department of Health Services (Department) against Jesse Jutkowitz, D.C. (Respondent). (Dept. Ex. 3) The Statement of Charges alleged in three counts that the Respondent had committed conduct which violated Connecticut General Statutes §20-29. (Dept. Ex. 3)

The Notice of Hearing and Statement of Charges were sent by Certified Mail - Return Receipt Requested to the Respondent and his attorney. An answer was filed on behalf of the Respondent. (Respondent's Ex. B)

The hearing scheduled for April 11, 1991, was continued at the Respondent's request. It was rescheduled May 16, 1991, and September 19, 1991. The Respondent appeared May 16, 1991 and the case proceeded. The Respondent requested a continuance of the September 16, 1991 date which was granted until December 5, 1991. (Board Ex. 2 and 6) The hearing concluded on March 26, 1992. At the hearings Jesse Jutkowitz, D.C., appeared and was represented by his attorney, Hanon W. Russell. The Department was represented by Stephen Varga.

Both parties presented testimony, documentary evidence, legal argument and were allowed the opportunity to cross examine witnesses.

Each member of the Board involved in this decision attests that he/she was present at the hearing or reviewed the record in its entirety, and this decision is based entirely on the record and the Board's specialized professional knowledge in evaluating the evidence. Dr. Marc Peyser recused himself from the decision-making process.

FINDINGS OF FACT

After consideration of the entire record, the findings of fact are the following:

1. Respondent Jesse Jutkowitz is and was licensed in the practice of chiropractic by the State of Connecticut, Department of Health Services at all times relevant to this action.
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 Connecticut General Statutes §4-182(c). (Record, Department Ex. 1, 2, 4.)

3. The Department of Health Services presented the Board with a STATEMENT OF CHARGES issued on February 25, 1991, alleging Respondent's violations of Connecticut General Statutes §20-29 in three counts. (Record, Dept. Ex. 3.)

4. Regarding the First Count
The Respondent admitted that at all times relevant to the STATEMENT OF CHARGES he is and was the holder of Connecticut chiropractic license No. 288 as alleged in paragraph 1. of each count of the STATEMENT OF CHARGES. (Record, Respondent's Ex. B.)

5. The Respondent admitted in his testimony and by way of his exhibits offered in evidence that on or about December 1 and 2, 1988 he examined, diagnosed and treated J. Timothy Oliver (hereinafter, "the patient"), as alleged in paragraph 2. of each count of the STATEMENT OF CHARGES.

6. Respondent denied the remaining allegations contained in the STATEMENT OF CHARGES. (Record, Respondent's Ex. B.)

7. Respondent took a medical history, obtained a statement from the patient as to his symptoms and examined the patient on or about December 1, 1988. (Tr. 5/16/91 pp. 50-55)

8. The patient complained of pain in both arms, with pain radiating down into the hands. (Record, Tr. 5/16/91, p. 37)
9. Respondent also took a total of four full spine x-rays of the patient on or about December 1, 1988.
10. Prior to administering the full spine x-rays, Respondent diagnosed the patient as having cervical ^{radicular} ~~reticula~~ neuralgia.
11. The Respondent's records fail to show that the Respondent touched or examined the patient's arms or hands in any manner on or about December 1, 1988.
12. Regarding the Second Count
The medical history taken by Respondent from the patient did not include significant information relevant to the patient's symptoms, such as details of the physical demands of the patient's occupation, and contained inaccurate information as to the symptoms reported by the patient which prevented an accurate diagnosis.
13. During his examination, diagnosis and treatment of the patient, Respondent did not perform any tests designed to determine whether the patient was suffering from carpal tunnel syndrome.

14. Regarding the Third Count

On or about December 2, 1988, Respondent reviewed with the patient the x-rays he had taken on or about December 1st.

DISCUSSION AND CONCLUSIONS OF LAW

In consideration of the above findings of fact, the following conclusions are rendered:

1. Jesse Jutkowitz, D.C., currently holds and held a valid chiropractic license at all times relevant to the proceeding.
2. The Respondent was provided with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license in accordance with Connecticut General Statutes §4-183(c).
3. The Notice of Hearing and Statement of Charges were properly sent to the Respondent and sufficiently provided information as mandated by Connecticut General Statutes §4-177 and §4-182.
4. The hearing was held in accordance with Chapters 54 and 372 of the Connecticut General Statutes and Sections 19-2a-1 through 19-2a-30 of the Regulations of Connecticut State Agencies.

5. The taking of four full spine x-rays of the patient was not consistent with the patient's chief complaint.
6. The taking of four full spine x-rays of a patient with the chief complaint of pain in his arms is excessive. The medical records introduced in this case, including both objective and subjective findings, do not warrant four full spine x-rays (A/P and lateral full spine).
7. The Respondent testified that he diagnosed the patient as having cervical radicular neuralgia. This diagnosis does not warrant the taking of A/P and full spine x-rays.
8. The patient was unnecessarily exposed to x-ray radiation.
9. There was insufficient clinical indication for the taking of four full spine x-rays of the patient. The diagnostic x-rays of the patient taken by the Respondent were not reasonable, customary or medically necessary, either as to kind or number. The Respondent's conduct in ordering and taking the x-rays did not meet minimally acceptable standards of professional competence for doctors of chiropractic, and constitutes incompetent and negligent conduct in the practice of chiropractic in violation of Connecticut General Statutes §20-29. There is sufficient evidence to support Count One.

10. The Board concludes that the medical history and records of the patient as documented by the Respondent were incomplete. The medical records fail to include a patient history as to how long symptoms have been present and what brought upon their onset, nor do they include significant information regarding the physical demands of the patient's occupation. The Board concludes that the failure to maintain proper chiropractic records was incompetent and negligent conduct in the practice of chiropractic in violation of Connecticut General Statutes §20-29. There is sufficient evidence to support Count Two.

11. The Board concludes that there is insufficient evidence to support Count Three and it is therefore dismissed.

SUMMARY

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

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

ORDER

Pursuant to its authority under Connecticut General Statutes §19a-17 and §20-29 the Board of Chiropractic Examiners hereby orders the following:

1. As to count one, the license of Jesse Jutkowitz to practice chiropractic is suspended for one year and he shall be assessed a civil penalty of one thousand dollars.
2. As to count two, the license of Jesse Jutkowitz to practice chiropractic is suspended for one year and he shall be assessed a civil penalty of one thousand dollars.
3. The suspensions shall be served concurrently for an aggregate suspension of one year.
4. The two thousand dollar (\$2,000.00) penalty shall be paid by certified check payable to the Treasurer, State of Connecticut and sent to Lynne Hurley, Division of Medical Quality Assurance, 150 Washington Street, Hartford, Connecticut 06106.

This Memorandum of Decision shall be effective on the forty-fifth (45th) day after the date of the signature of the chairperson of the Board.

6/17/93
Date / 93

J. P. Hearn, CFE Sec.
Connecticut State Board of Chiropractic Examiners