

STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-50267
DOAH CASE NO.: 06-0664PL
LICENSE NO.: CH 2601

JAMES HETHER, D.C.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF CHIROPRACTIC MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 25, 2006, in Orlando, Florida, for the purpose of considering the ALJ's (ALJ) Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Tobey Schultz, Assistant General Counsel. Respondent was present and was represented by Michael R. D'Lugo, Attorney at Law.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

The Board reviewed and considered Respondent's Exceptions and Petitioner's Response to Respondent's Exceptions and ruled as follows:

Exception 1: Respondent took exception to Paragraph 4 of the ALJ's Recommended Order. The Board finds that the factual finding is based on competent and substantial evidence in the record and that Respondent's exception is denied because Respondent asks the Board to improperly reweigh the evidence presented before the ALJ at the final hearing and to improperly judge the credibility of witnesses.

Exception 2: Respondent took exception to Paragraph 6 of the ALJ's Recommended Order. The Board finds that the factual finding is based on competent and substantial evidence in the record and that Respondent's exception is denied because Respondent asks the Board to improperly reweigh the evidence presented before the ALJ at the final hearing and to improperly judge the credibility of witnesses.

Exception 3: Respondent took exception to Paragraph 7 of the ALJ's Recommended Order. The Board finds that the factual finding is based on competent and substantial evidence in the record and that Respondent's exception is denied because Respondent asks the Board to improperly reweigh the evidence presented before the ALJ at the final hearing and to improperly judge the credibility of witnesses.

Exception 4: Respondent took exception to Paragraph 8 of the ALJ's Recommended Order. The Board finds that the factual finding is based on competent and substantial evidence in the record and that Respondent's exception is denied because Respondent asks the Board to improperly reweigh the evidence presented before the ALJ at the final hearing and to improperly judge the credibility of witnesses.

Exception 5: Respondent took exception to Paragraph 11 of the ALJ's Recommended Order. The Board finds that the factual finding is based on competent

and substantial evidence in the record and that Respondent's exception is denied because Respondent asks the Board to improperly reweigh the evidence presented before the ALJ at the final hearing and to improperly judge the credibility of witnesses.

Exception 6: Respondent took exception to Paragraph 12 of the ALJ's Recommended Order. The Board finds that the factual finding is based on competent and substantial evidence in the record and that Respondent's exception is denied because Respondent asks the Board to improperly reweigh the evidence presented before the ALJ at the final hearing and to improperly judge the credibility of witnesses.

Exception 7: The Board reviewed and considered Respondent's Exception to paragraph 21 of the Recommended Order and Petitioner's Response to Respondent's Exceptions to such paragraph. The Board finds that there was competent and substantial evidence in the record to support the ALJ's Conclusion of Law that clear and convincing evidence was presented proving that Respondent violated the practice act as stated in paragraph 21, and therefore, the exception is denied.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 460, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

Upon a complete review of the record in this case, the Board determines that the disposition recommended by the Administrative Law Judge be ACCEPTED.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall receive a reprimand from the Board of Chiropractic Medicine.

2. Respondent shall pay an administrative fine in the amount of \$2,500.00 to the Compliance Officer for the Board of Chiropractic Medicine within **six (6) months** from the date that this Final Order is filed.

3. Respondent shall document the completion of **five (5) hours** of continuing education in the areas of boundary issues and ethics within **one (1) year** from the date that this Final Order is filed. These hours shall be in addition to those hours required for license renewal. Said continuing education courses must be pre-approved by the Board and shall consist of a formal live lecture format.

4. Respondent shall undergo an evaluation by the Professional Resources Network (PRN) or its successor agency. Respondent shall comply with any and all recommendations of PRN or its successor agency.

5. Respondent shall be placed on probation for a period of **two (2) years** subject to the following terms and conditions:

a. **APPEARANCES REQUIRED.** Respondent shall appear before the Board at the last meeting of the Board preceding termination of probation and at all such other times as requested by the Board. Respondent shall be noticed by Board staff of the date, time, and place of the Board meeting where Respondent's appearance is required. Failure of Respondent to appear as requested or directed shall be considered a violation of the terms of probation and shall subject Respondent to disciplinary action.

b. **PRACTICE RESTRICTION.** Respondent shall not treat any female patients without another licensed health care professional in the room.

c. **TOLLING PROVISIONS.** In the event that Respondent leaves the State of Florida for a period of 30 days or more or otherwise does not or may not engage in the active practice of chiropractic medicine in the State of Florida, then certain provisions of the requirements in the Board's Order shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of chiropractic medicine in the State of Florida. Respondent shall notify the Compliance Officer 10 days prior to his return to practice in the State of Florida. The following requirements shall be tolled until Respondent returns to active practice:

A. The time period of probation shall be tolled.

B. The practice restriction shall be tolled.

d. **ACTIVE PRACTICE.** In the event that Respondent leaves the active practice of chiropractic medicine for a period of one (1) year or more, Respondent may be required to appear before the Board and demonstrate the ability to practice chiropractic

medicine with reasonable skill and safety to patients prior to resuming the practice of chiropractic medicine in the State of Florida.

RULING ON MOTION TO ASSESS COSTS

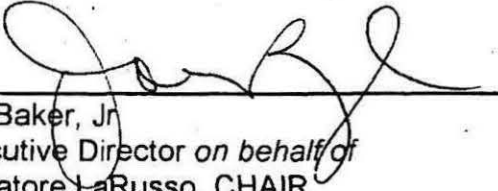
The Board reviewed Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of two thousand seven hundred thirteen dollars and fifty-two cents (\$2,713.52). Said costs are to be paid within **six (6) months** from the date this Final Order is filed.

COMPLIANCE ADDRESS: The address for submission of monetary payments (including fine and costs) and continuing education completion documents is: DOH/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attn: Board of Chiropractic Medicine Compliance Officer.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 13th day of July, 2006.

BOARD OF CHIROPRACTIC MEDICINE



Joe Baker, Jr.
Executive Director *on behalf of*
Salvatore LaRusso, CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF

APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **James Hether, D.C.**, by mailing same to his attorney of record, **Michael R. D'Lugo**, Attorney at Law, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., Post Office Box 2753, Orlando, Florida 32802-2753; and by interoffice mail to **Deborah Bartholow Loucks**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Tobey Schultz**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, on 13 September, 2006.



Deputy Agency Clerk