

By: Lilli Mhardt
Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Petitioner,

vs.

DOH Case No.: 2006-03224
DOAH Case No.: 07-2864PL

ROBERT PAUL CATANESE, D.C.
Respondent.

FILED
08 MAR 10 PM 2:16
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS MATTER came before the Board of Chiropractic Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on February 8, 2008, in Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (a copy is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Cecelia Jefferson, Assistant General Counsel. Respondent was not present or represented by counsel. 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.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated by reference herein.
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 by reference herein.

PENALTY

In this case, the Administrative Law Judge did not include a penalty recommendation. The Administrative Law Judge found that while the penalty recommendation of the Department, specifically, revocation, fell within the disciplinary guidelines, the Administrative Law Judge requested that the Board consider mitigating evidence concerning the penalty recommendation from Respondent. Respondent submitted a letter to the Board in which he requested that the Board wait until he was released from prison so that he could attend the Board meeting at which the Recommended Order was considered; however, Respondent did not include any mitigating circumstances or evidence in this correspondence.

The Board voted to accept the Department's penalty recommendation of **REVOCAION**. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

Respondent's license to practice chiropractic medicine in the State of Florida is **REVOKED**.

MOTION TO ASSESS COSTS

On December 28, 2007, the Department filed a Motion to Assess Costs. Respondent did not file objections to this Motion. After discussion of the Motion, the Board voted to impose costs in the amount of **nine thousand nine hundred ninety-one dollars and twenty-two cents (\$9,991.22)**. The costs shall be paid within **thirty (30) days** of the filing date of this Final Order.

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

DONE AND ORDERED this 5th day of March, 2008.

BOARD OF CHIROPRACTIC MEDICINE



Joe Baker, Jr., Executive Director
on behalf of Kenneth Dougherty, D.C., 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 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 Final Order has been provided by U.S. Mail to: **Robert Catanese, D.C.**, c/o Miami FCI, Post Office Box 779800, Miami, Florida 33177; **Larry J. Sartin**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to: **Deborah Bartholow Loucks**, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; and **Cecelia Jefferson**, Assistant General Counsel, Department of Health, Prosecution Services Unit, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265, on

March 7th

, 2008.

Rachel Brewer

Deputy Agency Clerk

3. On June 27, 2007, the case was filed with the Division of Administrative Hearings.

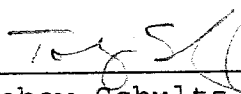
4. On September 6, 2007, the Administrative Law Judge issued an order stating that this case could be decided based solely on documentary evidence, and established timelines for the parties to submit exhibits for the parties to submit documents.

5. On December 19, 2007, the Administrative Law Judge issued a Recommended Order in the above-styled cause.

6. The Respondent has been advised by a copy of this Motion that the Board will consider the record that includes the following documents in this matter: Recommended Order, Petitioner's Proposed Recommended Order, Administrative Complaint, Motion to Assess Costs with attachments, and the entire DOAH Pleading File.

WHEREFORE, Petitioner would respectfully request that this Honorable Board enter a Final Order in this case.

Respectfully submitted,

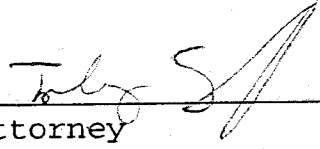


Tobey Schultz
Assistant General Counsel
Florida Bar No. 0542131
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(850) 245-4640 x. 8176 Business
(850) 245-4682 Facsimile

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Final Order has been provided to: Robert Catanese, 75488-004, FCI Miami, Federal Correctional Institution, P.O. Box 779800, Miami, Florida 33177, by U.S. mail this ^{27th} ~~28th~~ day of December 2007.



Attorney

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF CHIROPRACTIC MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Raeul*
DATE 12/28/07

DEPARTMENT OF HEALTH,

Petitioner,

Case Number: 2006-03224

vs.

ROBERT CATANESE, D.C.

Respondent.

MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4)

COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Chiropractic Medicine ("Board") for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2007). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2007),¹ states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant

¹ Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

to this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. Such costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. . . .

3. The investigation and prosecution of this case has resulted in costs in the total amount of **nine thousand nine hundred ninety-one dollars and twenty-two cents (\$9,991.22)**, based on the following itemized statement of costs:

Complaint:	\$	53.16
Investigation:	\$	1,393.41
Legal:	\$	8,032.65
Expenses:	\$	512.00

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of **nine thousand nine hundred ninety-one dollars and twenty-two cents (\$9,991.22)**, as evidenced in the attached affidavit. (Exhibit A).

4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs to be assessed based

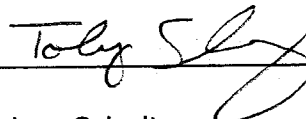
upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of **nine thousand nine hundred ninety-one dollars and twenty-two cents (\$9,991.22)**, as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2007).

WHEREFORE, the Department of Health requests that the Board enter a Final Order assessing costs against the Respondent in the amount of **nine thousand nine hundred ninety-one dollars and twenty-two cents (\$9,991.22)**,

DATED this 27th day of December, 2007.

Respectfully submitted,

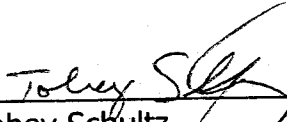


Tobey Schultz
Assistant General Counsel
Florida Bar Number #0542131
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin # C-65
Tallahassee, Florida 32399-3265
(850) 245-4640
(850) 245-4682 FAX

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been provided to: Robert Catanese, D.C., Miami FCI, P.O. Box 779800, Miami, Florida, 33177, by regular U.S. Mail this 27th day of December 2007.



Tobey Schultz
Assistant General Counsel

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Complaint Cost Summary

Complaint Number: 200603224

Complainant's Name: DOH/BOARD OFFICE

Subject's Name: CATANESE, ROBERT PAUL

	***** Cost to Date *****	
	Hours	Costs
Complaint:	1.00	\$53.16
Investigation:	21.00	\$1,393.41
Legal:	68.40	\$8,032.65
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	90.40	\$9,479.22
Expenses to Date:		\$512.00
Prior Amount:		\$0.00
Total Costs to Date:		\$9,991.22

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **JAMES R. COOKSEY**, who was sworn and states as follows:

- 1) My name is James R. Cooksey.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am a Operations Management Consultant for the Consumer Services Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75 Tallahassee, Florida 32399-3275.
- 4) As a Operations Management Consultant, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number(s) 2006-03224 (Department of Health v Robert Catanese D.C.) are Nine Thousand Nine Hundred Nine - One Dollars and Twenty – Two Cents (\$9,991.22)
- 6) The costs for DOH case numbers 2006-03224 (Department of Health v. Robert Catanese, D.C.) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case numbers 2006-03224 (Department of Health v. Robert Catanese, D.C.) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators and lawyers). A designated DOH employee in the Consumer Services

Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

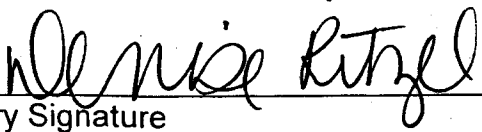
- 9) James R. Cooksey, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


James R. Cooksey, Affiant

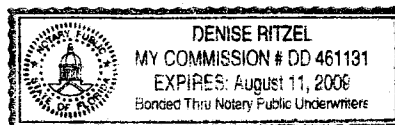
State of Florida
County of Leon

Sworn to and subscribed before me this 27th day of December, 2007,
by James R. Cooksey, who is personally known to me.


Notary Signature

DENISE RITZEL
Name of Notary Printed

Stamp Commissioned Name of Notary Public:



Complaint Cost Summary

Complaint Number: 200603224

Complainant's Name: DOH/BOARD OFFICE

Subject's Name: CATANESE, ROBERT PAUL

	***** Cost to Date *****	
	Hours	Costs
Complaint:	1.00	\$53.16
Investigation:	21.00	\$1,393.41
Legal:	68.40	\$8,032.65
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	90.40	\$9,479.22
Expenses to Date:		\$512.00
Prior Amount:		\$0.00
Total Costs to Date:		\$9,991.22

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**Time Tracking System
Itemized Cost by Complaint**

Complaint 200603224

Report Date: 12/27/2007

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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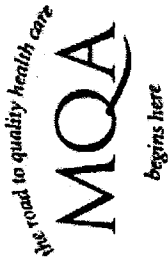
CONSUMER SERVICES UNIT

HA62	0.70	\$54.59	\$38.21	02/10/2006	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA22	0.30	\$49.83	\$14.95	08/08/2006	25	REVIEW CASE FILE
Sub Total	1.00		\$53.16			

INVESTIGATIVE SERVICES UNIT

WI36	1.00	\$66.35	\$66.35	02/14/2006	4	ROUTINE INVESTIGATIVE WORK
WI36	1.00	\$66.35	\$66.35	02/15/2006	4	ROUTINE INVESTIGATIVE WORK
WI36	0.50	\$66.35	\$33.18	02/22/2006	4	ROUTINE INVESTIGATIVE WORK
WI36	0.50	\$66.35	\$33.18	03/31/2006	4	ROUTINE INVESTIGATIVE WORK
WI36	1.00	\$66.35	\$66.35	05/11/2006	4	ROUTINE INVESTIGATIVE WORK
WI36	2.00	\$66.35	\$132.70	05/12/2006	76	REPORT PREPARATION
WI36	1.00	\$66.35	\$66.35	07/27/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	3.00	\$66.35	\$199.05	07/28/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	1.00	\$66.35	\$66.35	08/02/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	08/02/2006	58	TRAVEL TIME
WI36	1.00	\$66.35	\$66.35	08/03/2006	76	REPORT PREPARATION
WI36	0.50	\$66.35	\$33.18	08/14/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	1.00	\$66.35	\$66.35	08/23/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	1.00	\$66.35	\$66.35	08/29/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	09/05/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	09/19/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	09/21/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	09/28/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	1.00	\$66.35	\$66.35	09/29/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	10/03/2006	76	REPORT PREPARATION
WI36	0.50	\$66.35	\$33.18	11/16/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	0.50	\$66.35	\$33.18	11/29/2006	6	SUPPLEMENTAL INVESTIGATION
WI36	1.00	\$66.35	\$66.35	12/01/2006	6	SUPPLEMENTAL INVESTIGATION

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*** CONFIDENTIAL ***
 Time Tracking System
 Itemized Cost by Complaint

Complaint 200603224

Report Date: 12/27/2007

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
W136	0.50	\$66.35	\$33.18	12/05/2006	76	REPORT PREPARATION
Sub Total	21.00		\$1,393.41			

PROSECUTION SERVICES UNIT

HLL36B	1.20	\$123.94	\$148.73	06/22/2006	25	REVIEW CASE FILE
HLL36B	1.60	\$123.94	\$198.30	07/26/2006	35	TELEPHONE CALLS
HLL36B	0.60	\$123.94	\$74.36	07/28/2006	6	SUPPLEMENTAL INVESTIGATION
HLL49B	0.20	\$126.00	\$25.20	08/08/2006	61	GENERAL INTAKE
HLL36B	1.30	\$123.94	\$161.12	08/14/2006	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL33B	0.90	\$123.94	\$111.55	08/16/2006	81	ESO/ERO
HLL36B	1.40	\$123.94	\$173.52	08/16/2006	81	ESO/ERO
HLL36B	1.20	\$123.94	\$148.73	08/17/2006	81	ESO/ERO
HLL36B	0.70	\$123.94	\$86.76	08/21/2006	70	CONFERENCES WITH LAWYERS
HLL36B	0.60	\$123.94	\$74.36	08/21/2006	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	1.40	\$123.94	\$173.52	10/05/2006	25	REVIEW CASE FILE
HLL5B	0.30	\$137.48	\$41.24	10/30/2006	26	PREPARE OR REVISE MEMORANDUM
HLL36B	0.90	\$123.94	\$111.55	11/06/2006	79	STIPULATION
HLL49B	0.30	\$126.00	\$37.80	11/20/2006	25	REVIEW CASE FILE
HLL49B	0.20	\$126.00	\$25.20	11/20/2006	35	TELEPHONE CALLS
HLL49B	0.10	\$126.00	\$12.60	11/21/2006	70	CONFERENCES WITH LAWYERS
HLL36B	0.40	\$123.94	\$49.58	11/27/2006	35	TELEPHONE CALLS
HLL36B	0.80	\$123.94	\$99.15	11/28/2006	36	PREPARATION OR REVISION OF LETTER
HLL36B	0.30	\$123.94	\$37.18	01/08/2007	91	BOARD MEETING PREPARATION
HLL36B	0.30	\$123.94	\$37.18	01/21/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.30	\$123.94	\$37.18	01/21/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.30	\$123.94	\$37.18	01/21/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.30	\$123.94	\$37.18	01/22/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.50	\$123.94	\$61.97	05/10/2007	35	TELEPHONE CALLS
HLL36B	0.60	\$123.94	\$74.36	05/10/2007	99	PREPARATION AND FOLLOW THROUGH OF CASES FOR EXPERT REVIEW
HLL36B	0.30	\$141.12	\$42.34	05/11/2007	70	CONFERENCES WITH LAWYERS
HLL36B	0.30	\$123.94	\$37.18	05/23/2007	99	PREPARATION AND FOLLOW THROUGH OF CASES FOR EXPERT REVIEW

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Time Tracking System
Itemized Cost by Complaint

Complaint 200603224



Report Date: 12/27/2007

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL36B	0.40	\$123.94	\$49.58	05/30/2007	102	REVIEW EXPERT WITNESS REPORT
HLL36B	0.40	\$123.94	\$49.58	05/30/2007	46	LEGAL RESEARCH
HLL36B	1.20	\$123.94	\$148.73	05/31/2007	31	PREPARE OR REVISE CLOSING ORDER
HLL36B	1.40	\$123.94	\$173.52	05/31/2007	47	TRIAL PREPARATION
HLL36B	0.70	\$123.94	\$86.76	05/31/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.30	\$123.94	\$37.18	05/31/2007	102	REVIEW EXPERT WITNESS REPORT
HLL36B	0.40	\$123.94	\$49.58	05/31/2007	36	PREPARATION OR REVISION OF LETTER
HLL22B	0.20	\$127.22	\$25.44	05/31/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	2.20	\$123.94	\$272.67	06/20/2007	39	PREPARE/RESPOND TO DISCOVERY
HLL36B	1.80	\$123.94	\$223.09	06/26/2007	25	REVIEW CASE FILE
HLL36B	0.80	\$123.94	\$99.15	06/27/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.50	\$123.94	\$61.97	06/28/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.60	\$123.94	\$74.36	06/29/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	2.00	\$123.94	\$247.88	07/02/2007	46	LEGAL RESEARCH
HLL36B	1.60	\$123.94	\$198.30	07/02/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL22B	0.40	\$127.22	\$50.89	07/03/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	1.20	\$123.94	\$148.73	07/05/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.80	\$123.94	\$99.15	07/06/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	1.20	\$123.94	\$148.73	07/09/2007	47	TRIAL PREPARATION
HLL36B	1.10	\$123.94	\$136.33	07/09/2007	39	PREPARE/RESPOND TO DISCOVERY
HLL36B	2.30	\$123.94	\$285.06	07/16/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.30	\$123.94	\$37.18	07/16/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL22B	0.40	\$127.22	\$50.89	07/16/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.30	\$123.94	\$37.18	07/30/2007	36	PREPARATION OR REVISION OF LETTER
HLL36B	0.30	\$123.94	\$37.18	07/30/2007	35	TELEPHONE CALLS
HLL22B	0.20	\$127.22	\$25.44	07/30/2007	37	REVIEW LETTER
HLL36B	0.30	\$123.94	\$37.18	08/09/2007	41	REVIEW PLEADING
HLL53A	0.40	\$123.32	\$49.33	08/10/2007	35	TELEPHONE CALLS
HLL53A	0.20	\$123.32	\$24.66	08/10/2007	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFF
HLL53A	0.20	\$123.32	\$24.66	08/10/2007	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFF
HLL36B	1.80	\$123.94	\$223.09	08/10/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.80	\$123.94	\$99.15	08/10/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL36B	0.60	\$123.94	\$74.36	08/13/2007	40	PREPARATION OF OR REVISION OF A PLEADING

0118

**Time Tracking System
 Itemized Cost by Complaint**

Complaint 200603224

Report Date: 12/27/2007

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL36B	0.40	\$123.94	\$49.58	08/13/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.90	\$123.94	\$111.55	08/16/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.40	\$105.87	\$42.35	09/06/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.60	\$105.87	\$63.52	09/07/2007	25	REVIEW CASE FILE
HLL36B	1.50	\$105.87	\$158.81	09/17/2007	25	REVIEW CASE FILE
HLL36B	0.50	\$105.87	\$52.94	09/17/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	1.00	\$105.87	\$105.87	09/25/2007	47	TRIAL PREPARATION
HLL36B	0.90	\$105.87	\$95.28	09/28/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	2.70	\$105.87	\$285.85	10/03/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	1.40	\$105.87	\$148.22	10/04/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	2.30	\$105.87	\$243.50	10/05/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	3.00	\$105.87	\$317.61	10/09/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL22B	0.60	\$112.43	\$67.46	10/10/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	3.80	\$105.87	\$402.31	10/11/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	1.80	\$91.00	\$163.80	11/05/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	1.10	\$91.00	\$100.10	11/08/2007	40	PREPARATION OF OR REVISION OF A PLEADING
HLL36B	0.90	\$91.00	\$81.90	11/27/2007	40	PREPARATION OF OR REVISION OF A PLEADING
Sub Total	68.40		\$8,032.65			

Total Cost	\$9,479.22
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00119

Time Tracking System Itemized Expense by Complaint

Complaint 200603224

Report Date: 12/27/2007

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
INVESTIGATIVE SERVICES UNIT				
WI36	11/22/2006	\$12.00	497000	MEDICAL RECORDS
	SubTotal	\$12.00		
PROSECUTION SERVICES UNIT				
HL34B	05/29/2007	\$500.00	131630	EXPERT WITNESS
	SubTotal	\$500.00		
	Total Expenses	\$512.00		

00120

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
CHIROPRACTIC MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 07-2864PL
)
ROBERT PAUL CATANESE, D.C.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This case came before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on a factual record based upon documents filed by the parties.

APPEARANCES

For Petitioner: Tobey Schultz, Esquire
Office of General Counsel
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Robert Paul Cantanese, pro se
#75488-004
Federal Correctional Institution Miami
Post Office Box 779800
Miami, Florida 33177

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Robert Paul Catanese, D.C., violated Section 456.072(1)(c), Florida Statutes (2001)-(2006), and Section 560.413(1)(c), Florida Statutes

(2001)-(2006), as alleged in the Administrative Complaint, filed by Petitioner, the Department of Health, on January 23, 2007, in DOH Case Number 2006-03224, and subsequently amended; and, if so, what disciplinary action should be taken against his license to practice chiropractic medicine in the State of Florida.

PRELIMINARY STATEMENT

On or about January 23, 2007, the Department of Health filed a two-count Administrative Complaint against Robert Paul Catanese, D.C., an individual licensed to practice chiropractic medicine in Florida, before the Board of Chiropractic Medicine, in which it alleged that Dr. Catanese had committed a violation of Section 460.413(1)(c), Florida Statutes (2001)-(2006) (Count One); and Section 456.072(1)(c), Florida Statutes (2001)-(2006) (Count Two). Dr. Catanese, through counsel, executed an Election of Rights form in which he disputed the allegations of fact contained in the Administrative Complaint and requested a formal administrative hearing pursuant to Section 120.569(2)(a), Florida Statutes (2007).

On June 27, 2007, the matter was filed with the Division of Administrative Hearings with a request that an administrative law judge be assigned the case to conduct proceedings pursuant to Section 120.57(1), Florida Statutes (2007). The matter was designated DOAH Case Number 07-2864PL and was assigned to the undersigned.

On July 6, 2007, in response to the Initial Order entered in this case, Petitioner suggested that no formal evidentiary hearing was necessary to resolve the matter. Petitioner argued that the case could be decided based solely upon documents filed by the parties. On July 10, 2007, in furtherance of Petitioner's suggestion, Petitioner filed Petitioner's Motion for Official Recognition. That Motion was granted by Order entered July 18, 2007.

On July 13, 2007, counsel for Dr. Catanese filed a Motion for Abatement, informing the undersigned that Dr. Catanese was presently incarcerated in a Federal prison, serving a 40-month sentence, and requesting that the case be held in abeyance until 30 days after Dr. Catanese's release. A Motion to Withdraw as Counsel for Respondent was also filed on the same date as the Motion for Abatement. That Motion was granted.

On August 9, 2007, after responsive pleadings had been filed by both parties, an Order on Motion for Abatement was entered. In the Order, the parties were informed of the following:

Having reviewed the Administrative Complaint, it appears that the issue raised can indeed be tried with documents alone, depending on how Petitioner intends to proceed. There are essentially two issues raised in the Administrative Complaint: (1) has Respondent been convicted of a crime (given his incarceration in Federal prison, it is doubtful that there is any dispute

about this issue); and (2) does the crime relate to the practice of chiropractic medicine OR to the ability to practice chiropractic medicine. As to the second issue, if Petitioner modifies its allegations to whether the crime relates to the practice of chiropractic medicine, that issue is likely to turn, not on testimony, but on the elements of the crime and the allegations of the indictment. If Petitioner does not amend its Administrative Complaint to eliminate the issue of whether the crime directly relates "to the ability to practice chiropractic medicine" then it appears that expert testimony will be necessary.

Based upon the foregoing, the following order was issued:

1. On or before August 24, 2007, Petitioner shall explain which specific issues it intends to pursue in this matter and specifically whether it believes that any testimony, live or by deposition or affidavit, is necessary; and

2. On or before August 24, 2007, Respondent shall explain fully what evidentiary issues he believes must be addressed by witnesses in this case.

In response to the August 9, 2007, Order, Petitioner filed a Response to Order on Motion to Abate/Motion for Leave to Amend. Petitioner requested leave to amend the Administrative Complaint to eliminate allegations that Dr. Catanese's criminal activity was related to his ability to practice chiropractic medicine. No response to the Order on Motion for Abatement was filed by Dr. Catanese.

On September 6, 2007, an Order Establishing Schedule for Resolution of Case and Denying Motion for Abatement was entered. After summarizing the events which preceded entry of the Order, the Motion for Abatement was denied, Petitioner's Motion to Amend was granted, and the following procedures were established for disposition of this matter:

3. On or before September 28, 2007, Petitioner shall file any documents which it wishes to be considered in rendering a recommended order in this case;

4. On or before October 31, 2007, Respondent shall file any documents which he wishes to be considered in rendering a recommended order in this case;

5. On or before November 16, 2007, Petitioner shall file rebuttal documents;

6. On or before November 30, 2007, the parties may file proposed recommended orders; and

7. A recommended order will be entered in December 2007, based upon the documentary evidence filed by the parties.

Consistent with the Order Establishing Schedule, on September 6, 2007, Petitioner filed the following documents: an Affidavit by Robert Butler, D.C.; a certified copy the Judgment in a Criminal Case in United States of America v. Robert Catanese, Case Number 9:06CR80020-004, United States District Court, Southern District of Florida, West Palm Beach Division; and a certified copy of the Transcript of Plea Hearing Before

the Honorable Daniel T.K. Hurley in United States of America v. Joseph Sutura, Agustin Castellanos and Robert Catanese, Docket No. 06-80020-Cr-Hurley, United States District Court, Southern District of Florida, West Palm Beach Division.

Also consistent with the Order Establishing Schedule, Petitioner filed a proposed order for consideration in entering this Recommended Order. Petitioner's Proposed Recommended Order has been fully considered.

Dr. Catanese has not filed any documentary evidence or proposed recommended order. On September 27, 2007, he did, however, file a letter in which he again requests that the matter be held in abeyance. In his letter, Dr. Catanese states, in part:

I feel that my drug addiction was the true root evil of this issue. My rehabilitation to sobriety has both humbled and enlightened me as to the devastating effects of this disease on myself, my children, my wife, and family.

My rehabilitation is ongoing, as I am scheduled to start the 540 hour, Residential Drug & Alcohol Abuse Program here at this institution. My completion and release from the program and institution are scheduled to be complete around September, 2008.

While Dr. Catanese's comments relate to possible mitigating circumstances which the Board of Chiropractic Medicine can take into account in deciding appropriate punishment, his comments are not relevant to the issues to be decided in this forum.

Ultimately, as explained in an earlier Order, the only factual issues to be resolved in this case are, based upon the Administrative Complaint, as amended: (1) has Respondent been convicted of a crime; and (2) did the crime relate to the practice of chiropractic medicine. If the answer to these questions is "yes," which it is, why Dr. Catanese committed the crime is only relevant, if at all, in deciding the appropriate punishment.

The language of the statutory offenses Dr. Catanese has been charged with has not changed during the times relevant to this matter. Therefore, all future references to those statutory charges will be to the 2006 version of Florida Statutes.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, the Department of Health (hereinafter referred to as the "Department"), is the agency of the State of Florida charged with the responsibility for the investigation and prosecution of complaints involving chiropractic physicians licensed to practice medicine in Florida. § 20.43 and Chs. 456 and 460, Fla. Stat. (2006).

2. Respondent, Robert Paul Catanese, D.C., is, and was at all times material to this matter, a chiropractic physician

licensed to practice medicine in Florida pursuant to Chapter 460, Florida Statutes.

B. The Indictment and Conviction.

3. On or about February 2, 2006, Dr. Catanese was indicted in United States of America v. Joseph Sutera, Eric Ressler, Agustin Castellanos, Robert Catanese, and Stephanie Mirante, United States District Court, Southern District of Florida, Case No. 06-80020 CR, (hereinafter referred to as the "Indictment"). Dr. Catanese was charged with conspiracy to commit healthcare fraud in violation of 18 U.S.C. § 371.

4. Generally, the indictment alleges that Dr. Catanese, between June 2001 and September 2005, transferred private health insurance information concerning his patients to a co-conspirator, Joseph Sutera, knowing that the information would be used to submit false and fraudulent claims for reimbursements for Ketamine and other prescription medications.

5. As it relates to Dr. Catanese, the indictment was predicated upon the following allegations of "Background" fact:

Defendant **ROBERT CATANESE** was a licensed doctor of chiropractic and the owner Catanese Chiropractic Center, a clinic through which he offered chiropractic services and through which he employed licensed physicians, including defendant **AUGUSTIN CASTELLANOS**, to write prescriptions and provide other medical services for his patients.

6. Count One of the Indictment charges Dr. Catanese with conspiracy in violation of 18 U.S.C., § 347, alleging the following facts:

.....

22. Defendant **ROBERT CATANESE** transferred the private health insurance information of his patients to defendant **JOSEPH SUTERA** knowing the information would be used to submit false and fraudulent prescription drug claims for Ketamine HCL and other prescription medications through The Medicine Shoppe to The Private Health Insurance Companies.

.....

30. Defendant **ROBERT CATANESE** received approximately \$31,000 in the form of checks and additional amounts in cash from defendant **JOSEPH SUTERA** and The Medicine Shoppe which represented proceeds from the payments received from false and fraudulent prescription drug claims.

.....

7. On or about December 23, 2005, Dr. Catanese signed a Plea Agreement in which he agreed to plead guilty to one count of conspiracy, "in violation of Title 18, United States Code, Section 371, an object of which was to commit health care fraud, in violation of Title 18, United States Code, Section 1347."

8. On or about July 24, 2006, consistent with his Plea Agreement, Dr. Catanese pled guilty to one count of conspiracy to commit health care fraud.

9. During the plea hearing, the prosecutor described the factual basis for the plea as it relates to Dr. Catanese as follows:

Yes, Your Honor, had this gone to trial the Government would prove beyond a reasonable doubt that in or between June 2001 and September 2005, Palm Beach Gardens, Florida, Palm Beach County within the Southern District of Florida and elsewhere the defendants Joseph Sutera, Robert Catanese, Agustin Castellanos and others, Eric Ressler and Stephanie Mirante knowingly conspired to commit health care fraud through false and fraudulent prescription drug claims for the purpose of enriching or otherwise benefiting themselves.

The Government would prove that Joseph Sutera was a licensed pharmacist. As a licensed pharmacist, although he was licensed to dispense medication, he was not authorized to prescribe prescription medication including compounds, creams or other substances and was not authorized to dispense any prescription medications without a valid prescription from a licensed physician, prescription medications because of their toxicity and potential harmful effects deemed not for use to administer such drugs.

Augustine Castellanos was a medical doctor specializing in neurology and sleep disorders. Dr. Catanese was a doctor of chiropractic, and owner of Catanese Chiropractic Center. He employed Agustin Castellanos. His job was to write prescriptions and provide medical services for his chiropractic patients.

Mr. Sutera owned and operated a retail pharmacy called The Medicine Shoppe.

It was a franchise which was located [at] 3365 Burns road in Palm Beach Gardens, Florida. Through this pharmacy, Mr. Sutera submitted thousands of insurance claims to approximately 200 private health insurance companies, and these claims were false in that they were for prescription medications that were not prescribed, not requested, and, in many cases, not delivered.

Although these claims were for virtually every type medication that there is, the majority were for medications for which there was a high reimbursable from the insurance costs. These included things such as pain patches, a certain cancer drug called Levac, and claims for a drug called Ketamine. Ketamine is a Schedule III controlled substance controlled by the Drug Enforcement Administration. It is a prescription medication most often used as an anesthetic for children and as a battle field anesthetic in adults. It produces dissociative effect, for battle field purposes, when a limb is being taken off that is a good thing. Dissociative effect makes it popular for illicit purposes. It has become popular for a club drug, where it is used for purposes of getting high, so to speak.

In addition to these uses, the drug recently has also been found to have some pain applications and Mr. Sutera as a pharmacist helped develop a cream that had as its main ingredient Ketamine. He distributed this cream under a number of different names, including formula 2 and Ketazone.

What was attractive about this cream for insurance fraud purposes, was that the reimbursement for the jars of the cream or the tubes of the cream was rather high and could be as much as \$1,000 per claim.

In order to submit these claims, however, Mr. Sutera needed at least two things. He needed patient information. He needed names, addresses, and health insurance information for particular individuals, and he also needed the names of doctors who could be listed as the prescribing physicians.

It was important that, particularly, the doctors have some knowledge of what was happening because the private health insurance companies would regularly audit the distribution of drugs from the pharmacy and would send out letters to the prescribing physicians asking if, in fact, they had prescribed certain medications.

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For purposes of getting the patient health information, Mr. Sutera did that in a number of different ways.

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In addition to that, on at least three different occasions, Dr. Catanese who ran a chiropractic clinic as Your Honor is aware sold his patient list to Mr. Sutera.

When I say he sold his patient list to Mr. Sutera, he sold all of the patient lists and, in exchange, Mr. Sutera agreed to give Dr. Catanese \$100 per jar of the cream that was being prescribed by doctors through, Catanese's clinic. Dr. Catanese was aware at the time that, in fact, these names were going to be used to submit false claims, as well as, for the submission of any claims for patients that really did get the cream.

The quid pro quo, if you will, was at the time, Dr. Catanese had a drug problem as Your Honor is aware, and Mr. Sutera provided him with large amounts of Percocet.

In addition to that, Mr. Sutera also provided Dr. Catanese with cash and with at least \$31,000 in money in the form of checks, as well.

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10. The presiding judge specifically asked Dr. Catanese about his involvement in the acts described by the prosecutor:

BY THE COURT:

Q. Dr. Catanese, would you come to the lectern. Let me pose these questions to you. You had an opportunity to listen to what Ms. Bell had to say as pertains to your involvement. Do you agree you did and said the various things Ms. Bell suggested

A. Yes, Your Honor.

Q. Now, again, and I know you listened, and I am sure this is a matter of enormous concern to you, but this crime because the punishment is potentially longer than one year in jail, it is classified as a felony offense.

If the court concludes that you really know what you are doing, that you are making a voluntary and informed decision, what I would do is accept your plea, you see, and adjudicate you to be guilty.

The moment that happens, you are then classified as a convicted felon, and, of course, you will automatically lose those valuable civil rights, the right to vote, the right to possess a firearm or serve on a jury or run for public office.

Do you understand you will lose those civil rights?

A. Yes, sir.

Q. Now, again, I would imagine this also would have an impact on your medical license. Do you understand that as well?

A. Yes, sir.

Q. Knowing and understanding these things, I want to indicate I certainly have had an opportunity to observe you and talk with you. You are a highly intelligent person. I am satisfied you are competent to make the decision that you are thinking about making.

We've gone through the rights of trial by jury and all those other rights. We've gone through all of the provisions of the plea agreement.

Is there anything out there I haven't touched on, any questions or concerns you have that you wanted to raise?

A. Not at this time, Your Honor.

Q. Is it your desire, then, to continue forward and enter the pleas we have been discussing?

A. Yes, sir.

THE COURT: Mr. Lubin, would you do that for the doctor?

MR. LUBIN: Yes, Your Honor.

On behalf of Robert Catanese, we would withdraw previously entered plea of not guilty and enter a plea of guilty to Count 1 which is the conspiracy count.

THE COURT: Doctor, is that what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: 06-80020, United States versus Robert Catanese, it is the finding of the

court that Dr. Catanese is fully competent and capable of entering an informed plea.

I find his plea is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of this particular offense, therefore, I accept the doctor's plea and I now adjudicate him to be guilty of the crime of having knowingly and willfully conspired to commit health care fraud in violation of Title 18, United States Code, Section 371.

11. On November 7, 2006, United States District Judge Daniel T.K. Hurley adjudicated Dr. Catanese guilty of one count of conspiracy to commit health care fraud in violation of 18 U.S.C. § 371, a felony. Judge Hurley sentenced Dr. Catanese to serve 40 months imprisonment, followed by three years of supervised release, and required that he forfeit \$31,000.00.

C. The Relationship of Dr. Catanese's Convictions to the Practice of Medicine.

12. In light of Dr. Catanese's guilty plea to Count One of the indictment and his agreement with the prosecutor's summary of the factual basis for his plea, it is concluded that Dr. Catanese engaged in the activities alleged in the indictment and summarized by the prosecutor for purposes of this proceeding. All of those activities related to the practice of chiropractic medicine.

13. But for Dr. Catanese's license to practice chiropractic medicine in Florida, Dr. Catanese would not have

been able to commit the crime for which he was found guilty. It was his license to practice chiropractic medicine that facilitated his ability to open the Catanese Chiropractic Clinic and to obtain the private health insurance information of his patients which was provided to his co-conspirator for use in committing health care fraud.

14. The crime for which Dr. Catanese was convicted is a crime that "directly relates to the practice of chiropractic medicine."

CONCLUSIONS OF LAW

A. Jurisdiction.

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569, 120.57(1), and 456.073(5), Florida Statutes (2007).

B. The Charges of the Administrative Complaint, as Amended.

16. Section 460.413(2), Florida Statutes, authorizes the Board of Chiropractic Medicine (hereinafter referred to as the "Board"), to impose penalties ranging from the issuance of a letter of concern to revocation of a physician's license to practice medicine in Florida if a physician commits one or more acts specified therein.

17. Section 456.072(1)(c), Florida Statutes, also provides authority for the Board and other regulatory boards to impose similar penalties for one or more specified acts.

18. In its Administrative Complaint, as amended, the Department has alleged that Dr. Catanese has committed the acts described in Sections 456.072(1)(c) and 460.413(1)(c), Florida Statutes. The acts defined in those provisions are the same. Therefore, only the offense described in Section 460.413(1)(c), Florida Statutes, which applies specifically to chiropractic licensees, will be further addressed in this Recommended Order.

C. The Burden and Standard of Proof.

19. The Department seeks to impose penalties against Dr. Catanese through the Administrative Complaint, as amended, that include suspension or revocation of his license and/or the imposition of an administrative fine. Therefore, the Department has the burden of proving the specific allegations of fact that support its charge that Dr. Catanese violated Section 460.413(1)(c), Florida Statutes, by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3d DCA 1998); and Section 120.57(1)(j), Florida Statutes (2007) ("Findings of fact shall be based on a

preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute.").

20. What constitutes "clear and convincing" evidence was described by the court in Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), as follows:

. . . [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

See also In re Graziano, 696 So. 2d 744 (Fla. 1997); In re Davey, 645 So. 2d 398 (Fla. 1994); and Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652 (Fla. 5th DCA 1998) (Sharp, J., dissenting).

D. Section 460.413(1)(c), Florida Statutes.

21. Section 460.413(1)(c), Florida Statutes, defines the following disciplinable offense:

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of chiropractic medicine or to

the ability to practice chiropractic medicine. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

22. In paragraph 9 of the Administrative Complaint, as amended, it is alleged that Dr. Catanese's felony conviction relates to his practice of chiropractic medicine.

23. The evidence has clearly and convincingly proven that Dr. Catanese has been convicted of a crime that relates to his practice of chiropractic medicine as alleged in the Administrative Complaint, as amended, and described in the Findings of Fact. Dr. Catanese's conviction for conspiracy to commit health care fraud involved Dr. Catanese's use of his chiropractic license to obtain, and then sell to a co-conspirator, private health insurance information of his patients knowing that the information would be used to submit fraudulent prescription reimbursement claims. His status as a chiropractic physician allowed him to open the Catanese Chiropractic Clinic, through which he then obtained the patient insurance information necessary to submit the fraudulent claims. These were the facts that were the basis for Dr. Catanese's guilty plea and conviction, and they clearly related to his practice of chiropractic medicine.

24. The evidence proved clearly and convincingly that Dr. Catanese has violated Section 460.413(1)(c), Florida Statutes.

E. The Appropriate Penalty.

25. In determining the appropriate punitive action to recommend to the Board in this case, it is necessary to consult the Board's "disciplinary guidelines," which impose restrictions and limitations on the exercise of the Board's disciplinary authority under Section 460.413, Florida Statutes. See Parrot Heads, Inc. v. Department of Business and Professional Regulation, 741 So. 2d 1231 (Fla. 5th DCA 1999).

26. The Board's guidelines for a violation of Section 460.413, Florida Statutes, are set out in Florida Administrative Code Rule 64B2-16.003. As it relates to Dr. Catanese's violation of Section 460.413(1)(c), Florida Statutes, Florida Administrative Code Rule 64B2-16.003(1)(k), provides the following:

. . . . misdemeanor: from a minimum fine of \$1,500 and six months probation, up to a fine of \$5,000 and a year's suspension with conditions; felony: from a minimum of a fine of \$7,500 and two years probation, up to a fine of \$10,000 and revocation.

27. Florida Administrative Code Rule 64B2-16.003(2), provides that, in applying the penalty guidelines, the following

aggravating and mitigating circumstances are to be taken into account:

- (a) The danger to the public;
- (b) The number of unrelated and distinct offenses;
- (c) The actual damage, physical or otherwise, to the patient(s);
- (d) The length of time since the date of the last violation(s);
- (e) The length of time the licensee has practiced his or her profession;
- (f) Prior discipline imposed upon the licensee;
- (g) The deterrent effect of the penalty imposed;
- (h) The effect of the penalty upon the licensee's livelihood;
- (i) Rehabilitation efforts of the licensee including remorse, restitution, and corrective actions;
- (j) Efforts of the licensee to correct or stop violations or failure of the licensee to correct or stop violations;
- (k) Related violations against the licensee in another state, including findings of guilt or innocence, penalties imposed and penalties served;
- (l) The actual negligence of the licensee pertaining to any violation;
- (m) Any other mitigating or aggravating circumstances.

28. In Petitioner's Proposed Recommended Order, the Department has suggested that Dr. Catanese's license to practice chiropractic medicine be revoked. In support of this recommended penalty, it has been suggested that Dr. Catanese failed to present any mitigating factors but that there existed aggravating factors which the Board should consider.

29. The difficulty with the Department's suggested penalty is that, while it is within the Board's guidelines, Dr. Catanese has not had a full opportunity to present mitigating factors, other than to suggest that drug addiction contributed to his criminal activities, a suggestion supported by comments made during his plea hearing. Therefore, before deciding the ultimate penalty to be imposed upon Dr. Catanese, the Board should give him an opportunity to be heard on the sole issue of mitigating and aggravating factors.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the a final order be entered by the Board of Chiropractic Medicine finding that Robert Paul Catanese, D.C., has violated Sections 456.072(1)(c), and 460.413(1)(c), Florida Statutes, as described in this Recommended Order; and imposing discipline consistent with the Board's guidelines after giving Dr. Catanese an opportunity to address any additional mitigating factors which he wishes to present to the Board.

DONE AND ENTERED this 19th day of December, 2007, in
Tallahassee, Leon County, Florida.

S

LARRY J. SARTIN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of December, 2007.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in these cases.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2006-03224

ROBERT CATANESE,

RESPONDENT,

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Chiropractic Medicine against Respondent, Robert Catanese, D.C. and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of Chiropractic Medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 460, Florida Statutes.

2. At all times material to this Complaint, Respondent was a chiropractic physician within the state of Florida, having been issued license number CH 6539 on or about December 3, 1992.

3. Respondent's address of record is 14147 U.S. Highway 1, Juno Beach, Florida 33408.

4. On or February 2, 2006, the United States Attorney a filed an indictment in Case No. 2006-80020 in the U.S. District Court for the Southern District of Florida. The Indictment charged Respondent with healthcare fraud and conspiracy to commit

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healthcare fraud in violation of 18 U.S.C. §§ 2, 371, and 1347. According to the indictment, sometime between June 2001 and September 2005, Respondent transferred the private health insurance information of his patients to a co-conspirator, Joesph Sutera, knowing the information would be used to submit false and fraudulent drug claims for Ketamine HCL and other prescription medications.

5. On or about December 23, 2005, Respondent signed a plea agreement in which he agreed to plead guilty to one count of conspiracy, in violation of Title 18 United States Code, Section 371, the object of which was to commit health care fraud, in violation of Title 18, United States Code, Section 1347.

6. On or about July 24, 2006, Respondent pled guilty to one count of conspiracy to commit health care fraud.

Count One

7. Petitioner re-alleges and incorporates paragraphs one (1) through six (6) as if fully set forth herein.

8. Section 460.413(1)(c), Florida Statutes (2001)-(2006), subjects a chiropractic physician to discipline for being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of chiropractic medicine or to the ability to practice chiropractic medicine.

9. Respondent was found guilty of a crime that either directly relates to the practice of chiropractic medicine or the ability to practice chiropractic medicine when he pled guilty to conspiracy to commit healthcare fraud on or about July 24, 2006.

10. Based on the foregoing, Respondent has violated Section 460.413(1)(c), Florida Statutes (2001)-(2006), by being convicted or found guilty, regardless of

adjudication, of a crime in any jurisdiction which directly relates to the practice of chiropractic medicine or to the ability to practice chiropractic medicine.

Count Two

11. Petitioner re-alleges and incorporates paragraphs one (1) through six (6) as if fully set forth herein.

12. Section 456.072(1)(c), Florida Statutes (2001)-(2006), subjects a licensee to discipline for being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

13. Respondent was found guilty of a crime that either relates to the practice of his profession or the ability to practice his profession when he pled guilty to conspiracy to commit healthcare fraud on or about July 24, 2006.

14. Based on the foregoing, Respondent has violated Section 456.072(1)(c), Florida Statutes (2001)-(2006), by being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

WHEREFORE, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 21st day of January, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

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DEPUTY CLERK
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DATE 01-23-07

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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

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