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10 **BEFORE THE**
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12

13 In the Matter of the Accusation Against:

Case No. 2007-598

14 PAUL WHITCOMB
961 Emerald Bay Rd.
15 South Lake Tahoe, CA 96150

A C C U S A T I O N

16 Chiropractic License No. 11681

17
18 Respondent.

19 Complainant alleges:

20 PARTIES

- 21 1. Brian Stiger (Complainant) brings this Accusation solely in his official
22 capacity as the Executive Officer of the Board of Chiropractic Examiners.
- 23 2. On or about November 24, 1976, the Board of Chiropractic Examiners
24 issued License Number 11681 to Paul Earl Whitcomb, D.C. (Respondent). Respondent's license
25 lapsed from March 31, 2005, to June 5, 2005 when it was renewed. Respondent's license will
26 expire on May 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Chiropractic Examiners, under the authority of the following sections of the Chiropractor Act (Act).¹

4. California Code of Regulations, title 16, section 355.1 states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by the board, or its suspension, or forfeiture by order of the board or by order of a court of law, or its surrender without the written consent of the board shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 10² of the Act states, in pertinent part, that the Board may suspend or revoke a license to practice chiropractic or may place the license on probation for violations of the rules and regulations adopted by the Board or for any cause specified in the Chiropractic Initiative Act.

6. Business and Professions Code section 725 provides in pertinent part: “(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.”

1. The Chiropractic Act, an initiative measure approved by the electors on November 7, 1922, while not included in the Business and Professions Code by the legislature, is set out in West's Annotated California Codes as sections 1000-1 to 1000-19, and is included in Deering's California Codes as Appendix I, for convenient reference.

2. The Chiropractic Act, an initiative measure approved by the electors on November 7, 1922, while not included in the Business and Professions Code by the legislature, is set out in West's Annotated California Codes as sections 1000-1 to 1000-19, and is included in Deering's California Codes as Appendix I, for convenient reference.

1 7. California Code of Regulations, Title 16, section 317, states in pertinent
2 part:

3 "The board shall take action against any holder of a license who is guilty of
4 unprofessional conduct which has been brought to its attention, or whose license has been
5 procured by fraud or misrepresentation or issued by mistake.

6 "Unprofessional conduct includes, but is not limited to, the following:

7 "(a) Gross negligence;

8 "(b) Repeated negligent acts;

9 "(c) Incompetence;

10 "(d) The administration of treatment or the use of diagnostic procedures which are
11 clearly excessive as determined by the customary practice and standards of the local community
12 of licensees;"

13 8. California Code of Regulations, Title 16, section 311 provides:
14 Constructive educational publicity is encouraged, but the use by any licensee of advertising
15 which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous
16 statements, or which is intended or has a tendency to deceive the public or impose upon
17 credulous or ignorant persons, constitutes grounds for the imposition of any of the following
18 disciplinary penalties:

19 (a) Suspension of said licensee's right to practice in this State for a period not exceeding
20 one (1) year.

21 (b) Placing said licensee upon probation.

22 (c) Taking such other action, excepting the revocation of said licensee's license, in
23 relation to disciplining said licensee as the board in its discretion may deem proper.

24 9. California Code of Regulations, Title 16, section 317.5, subdivision (a),
25 states, in pertinent part:

26 "In any order in resolution of a disciplinary proceeding before the Board of
27 Chiropractic Examiners, the board may request the administrative law judge to direct a licensee
28 found to have committed a violation or violations of the Chiropractic Initiative Act to pay a sum

1 not to exceed the reasonable costs of the investigation and enforcement of the case."

2 10. California Code of Regulations, Title 16, section 318, subdivision (a),
3 states, in pertinent part:

4 "(a) Chiropractic Patient Records. Each licensed chiropractor is required to maintain all
5 active and inactive chiropractic patient records for five years from the date of the doctor's last
6 treatment of the patient. Active chiropractic records are all chiropractic records of patients treated
7 within the last 12 months. Chiropractic patient records shall be classified as inactive when there
8 has elapsed a period of more than 12 months since the date of the last patient treatment."

9 "All chiropractic patient records shall be available to any representative of the Board
10 upon presentation of patient's written consent or a valid legal order. Active chiropractic patient
11 records shall be immediately available to any representative of the Board at the chiropractic
12 office where the patient has been or is being treated. Inactive chiropractic patient records shall be
13 available upon ten days notice to any representative of the Board. The location of said inactive
14 records shall be reported immediately upon request.

15 Active and inactive chiropractic patient records must include all of the following:

- 16 (1) Patient's full name, date of birth, and social security number (if available);
17 (2) Patient gender, height and weight. An estimated height and weight is acceptable
18 where the physical condition of the patient prevents actual measurement;
19 (3) Patient history, complaint, diagnosis/analysis, and treatment must be signed by the
20 primary treating doctor. Thereafter, any treatment rendered by any other doctor must be
21 signed or initialed by said doctor;
22 (4) Signature of patient;
23 (5) Date of each and every patient visit;
24 (6) All chiropractic X-rays, or evidence of the transfer of said X-rays."

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3 FIRST CAUSE FOR DISCIPLINE

4 11. Beginning in November of 2004, respondent rendered chiropractic
5 treatment to patient Walter S.³ Respondent treated Walter S. for approximately one week in
6 November of 2004, and Walter S. returned for treatment on or about March 21, 2005 until May
7 7, 2005. Respondent provided chiropractic treatment three times daily three times a week and
8 twice daily two times a week.

9 12. Respondent informed Walter S. that he had a 95% success rate of making
10 people feel better within two months of treatment using respondent's chiropractic technique.
11 Respondent is subject to disciplinary action pursuant to Business and Professions Code section
12 725 and 317 subdivisions (a) and (c) in that in the course of his care and treatment of Walter
13 S., respondent committed the following acts and omissions:

14 13. Respondent failed to provide any structural examination, and failed to
15 substantiate the medical necessity of repeated treatment with documentation of lasting
16 therapeutic benefit to patient Walter S.. Said failure constitutes gross negligence.

17 14. Respondent's treatment of patient Walter s. for Fybromyalgia consisted of
18 102 visits which constitutes excessive treatment.

19 15. Respondent failed to develop a treatment plan that was therapeutically
20 necessary or medically beneficial. Said failure constitutes incompetence.

21 16. Respondent failed to perform sufficiently detailed re-examinations for
22 each follow-up visit. Said failure constitutes unprofessional conduct.

23 17. Respondent's charting was deficient in that he failed to disclose who
24 provided care to patient Walter S. and he failed to record vital signs and height and weight in
25 violation of Title 16, California Code of Regulation section 318.

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3. Initials are used in order to preserve patient confidentiality. Full patient names will be disclosed pursuant to a request for discovery.

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1 omissions:

2 25. Respondent provided chiropractic treatment which consisted of three
3 adjustments per day three times a week and twice daily two times a week and a single adjustment
4 one day a week. Respondent treatment for Fybromyalgia consisted of 90 visits which constitutes
5 excessive treatment.

6 26. Respondent failed to record any diagnosis for patient Trina S. and there is
7 no documentation of lasting therapeutic benefit to substantiate the medical necessity of repeated
8 care provided to patient Trina S.. Said failures constitutes gross negligence.

9 27. Respondent failed to develop a treatment plan that was therapeutically
10 necessary or medically beneficial. Respondent failed to substantiate the need for on-going
11 Chiropractic Care. Said failure constitutes incompetence.

12 28. Respondent failed to disclose who provided care to patient Trina S. and
13 failed to record vital signs and height and weight in violation of Title 16, California Code of
14 Regulation section 318.

15 FOURTH CAUSE FOR DISCIPLINE

16 29. Respondent treated Barbara S. for Fibromyalgia from approximately
17 March 15, 2005 to May 9, 2005. Barbara S. found respondent from an Internet search.
18 Respondent is subject to disciplinary action pursuant to Business and Professions Code section
19 725 and 317 subdivisions (a) and (c) in that in the course of his care and treatment of Barbara
20 S., respondent committed the following acts and omissions:

21 30. Respondent provided chiropractic treatment three times daily three times a
22 week and twice daily two times a week. Respondent treatment for Fybromyalgia consisted of
23 108 visits which constitutes excessive treatment.

24 31. Respondent failed to substantiate the medical necessity of repeated care
25 provided to patient Barbara S.. Said failure constitutes gross negligence.

26 32. Respondent failed to make a treatment plan that was therapeutically
27 necessary or medically beneficial to patient Barbara S.. Said failure constitutes incompetence.

28 33. Respondent failed to perform sufficiently detailed re-examinations for

1 each follow-up visit. Said failure constitutes unprofessional conduct.

2 34. Respondent failed to disclose who provided care to Barbara S. and failed
3 to record vital signs and height and weight in violation of Title 16, California Code of
4 Regulation section 318.

5 FIFTH CAUSE FOR DISCIPLINE

6 35. Respondent treated Terri S. for Fibromyalgia from approximately April
7 27, 2005 to May of 2005. Terry S. found respondent from an Internet search. Respondent is
8 subject to disciplinary action pursuant to Business and Professions Code section 725 and 317
9 subdivisions (a) and (c) in that in the course of his care and treatment of Terri S., respondent
10 committed the following acts and omissions:

11 36. Respondent provided chiropractic treatment three times daily three times a
12 week and twice daily two times a week. Respondent treatment for Fybromyalgia consisted of 68
13 visits which constitutes excessive treatment.

14 37. Respondent failed substantiate the medical necessity of repeated care
15 provided to patient Terri S.. Said failure constitutes gross negligence.

16 38. Respondent failed to develop a treatment plan that was therapeutically
17 necessary or medically beneficial to patient Terri S.. Said failure constitutes incompetence.

18 39. Respondent failed perform sufficiently detailed re-examinations for each
19 follow-up visit. Said failure constitutes unprofessional conduct.

20 40. Respondent failed to disclose who provided care to Terri S. and he failed
21 to record vital signs and height and weight in violation of Title 16, California Code of
22 Regulation section 318.

23 SIXTH CAUSE FOR DISCIPLINE

24 41. Respondent treated Jeffrey C. for Fibromyalgia from approximately June
25 13, 2005 to August 11, 2005. Jeffrey C. found respondent from an Internet search and articles
26 which indicated that respondent had a cure for Respondent is subject to disciplinary action
27 pursuant to Business and Professions Code section 725 and 317 subdivisions (a) and (c) in that
28 in the course of his care and treatment of Jeffrey C., respondent committed the following acts

1 and omissions:

2 42. Respondent provided chiropractic treatment three times daily three times a
3 week and twice daily two times a week. Respondent treatment for Fybromyalgia consisted of
4 143 visits which constitutes excessive treatment.

5 43. Respondent failed substantiate the medical necessity of repeated care
6 provided to patient Jeffrey C.. Said failure constitutes gross negligence.

7 44. Respondent failed to develop a treatment plan that was therapeutically
8 necessary or medically beneficial. Said failure constitutes incompetence.

9 45. Respondent failed to perform sufficiently detailed re-examinations for
10 each follow-up visit. Said failure constitutes unprofessional conduct.

11 46. Respondent failed to disclose who provided care to Jeffrey C. and he failed
12 to record any chart notes in violation of Title 16, California Code of Regulation section 318.

13 SEVENTH CAUSE FOR DISCIPLINE

14 47. Respondent treated Sherry V. for Fibromyalgia from approximately April
15 1, 2005 to May 23, 2005. Sherry V. found respondent from an Internet search. Respondent told
16 Sherry V. that his patients "usually get 95% well." Respondent is subject to disciplinary action
17 pursuant to Business and Professions Code section 725 and 317 subdivisions (a) and (c) in that
18 in the course of his care and treatment of Sherry V., respondent committed the following acts
19 and omissions:

20 48. Respondent provided chiropractic treatment to patient Sherry V. three
21 times daily three times a week and twice daily two times a week. Respondent treatment for
22 Fybromyalgia consisted of 111 visits which constitutes excessive treatment.

23 49. Respondent failed substantiate the medical necessity of repeated care
24 provided to patient Sherry V.. Said failure constitutes gross negligence.

25 50. Respondent failed to develop a treatment plan that was therapeutically
26 necessary or medically beneficial. Said failure constitutes incompetence.

27 51. Respondent failed to failed to perform sufficiently detailed re-
28 examinations for each follow-up visit. Said failure constitutes unprofessional conduct.

1 52. Respondent failed to disclose who provided care to Sherry V. and failed to
2 record vital signs and height and weight in violation of Title 16, California Code of Regulation
3 section 318.

4 EIGHTH CAUSE FOR DISCIPLINE

5 Respondent is subject to discipline pursuant to California Code of Regulations, Title 16 ,
6 section 311 in that his website and other advertisements provide that he has a "cure" for
7 Fybromyalgia. Respondent's claims that 90 % of his patients go home 80-100% symptom free.
8 Said claims constitute sensational statements which are intended to deceive the public.

9 OTHER MATTERS

10 53. In order to determine the degree of penalty to be imposed, if any, complainant
11 alleges the following as factors in aggravation:

12 a. On or about July 24, 2001, the Board issued citation No. CH 01-3220 to
13 respondent for failure to complete continuing education requirements prior to the
14 expiration of his license.

15 b. On or about December 1, 2005, respondent was issued citation No.
16 CH 2006-6445 in that he continued to practice when his license expired on May 31, 2005.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein
19 alleged, and that following the hearing, the Board of Chiropractic Examiners issue a decision:

20 1. Revoking or suspending issued License Number 11681 to Paul Earl
21 Whitcomb, D.C.

22 2. Ordering Paul Earl Whitcomb to pay the Board the reasonable costs of the
23 investigation and enforcement of this case, pursuant to Title 16, California Code of Regulations,
24 section 317.5;

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4 3. Taking such other and further action as deemed necessary and proper.

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DATED: November 10, 2008

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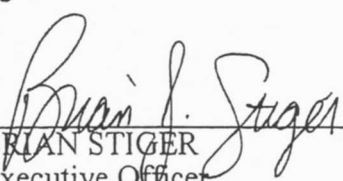
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BRIAN STIGER
Executive Officer
Board of Chiropractic Examiners
State of California
Complainant