

**Board of Chiropractic Examiners**

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Sacramento, California 95833-2931  
Telephone (916) 263-5355 FAX (916) 263-5369  
CA Relay Service TT/TDD (800) 735-2929  
Consumer Complaint Hotline (866) 543-1311  
www.chiro.ca.gov



July 31, 2009

**VIA CERTIFIED MAIL**

Paul Whitcomb, DC  
961 Emerald Bay Road  
South Lake Tahoe, CA 96150

**RE: Administrative Case No. 2007-598**

Dear Dr. Whitcomb:

The Board members voted to adopt the enclosed Proposed Decision prepared by the Administrative Law Judge for the above-referenced matter.

Effective **August 31, 2009**, your chiropractic license number **DC 11681** is revoked. You are required to return your original 8½" x 11" wall parchment license and pocket license to the Board **within 10 days** of the effective date of this decision, at the address shown above. Failure to surrender these licenses to the Board is a violation of Business and Professions Code section 119(d) and is a misdemeanor offense. You can no longer identify yourself to the public as a licensed chiropractor in the state of California. By doing so, is a violation of law and a criminal offense.

You must also reimburse the Board its costs for enforcement in the amount of **\$23,502.50 within 180 days of the effective date of this decision**. Failure to pay the costs will result in your name being submitted to the Franchise Tax Board intercept program.

Please be advised that pursuant to California Code of Regulations section 312.1 the law prohibits you from owning a chiropractic practice. Therefore, if you currently own your chiropractic practice, you will need to dispose of the practice by the effective date of this decision and provide satisfactory proof to the Board that it has been divested.

If you have any questions, feel free to contact the Enforcement Unit (916) 263-6465.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lavella Matthews', with a horizontal line underneath.

Lavella Matthews  
Associate Analyst  
Compliance Unit

Enclosure

cc: Elena L. Almanzo, DAG  
Ann Elizabeth Sarli, ALJ  
Theodore Long, Esq.

**BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF CALIFORNIA**

In the Matter of the First Amended  
Accusation Against:

**PAUL WHITCOMB**  
961 Emerald Bay Road  
South Lake Tahoe, CA 96150

Chiropractic License No. DC 11681

Respondent.

Case No. 2007-598

OAH NO. 2008120168

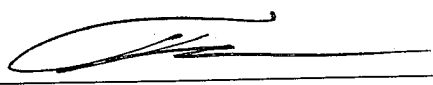
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby  
adopted by the Board of Chiropractic Examiners as its Decision in this matter.

This Decision shall become effective on \_\_\_\_\_

**AUG 31 2009**

It is so ORDERED **JUL 31 2009**

  
\_\_\_\_\_  
Frederick N. Lerner, D.C., Chair  
Board of Chiropractic Examiners

BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS

In the Matter of the First Amended  
Accusation Against:

PAUL WHITCOMB  
961 Emerald Bay Road,  
South Lake Tahoe, CA 96150

Chiropractic License No. 11681

Respondent.

Case No. 2007- 598

OAH No. 2008120168

**PROPOSED DECISION**

This matter was May 18, 2009 through May 26, 2009, before Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California.

Elena L. Almanzo, Deputy Attorney General, represented complainant Brian Stiger, Executive Officer of the Board of Chiropractic Examiners.

Theodore Long, Attorney at Law, represented Paul Whitcomb.

Evidence was presented, the matter was submitted and the record was closed on May 26, 2009.

**FACTUAL FINDINGS**

1. On November 24, 1976, the Board of Chiropractic Examiners (Board) issued Chiropractic License Number 11681 to Paul Whitcomb (respondent).

2. On April 29, 2009, Brian Stiger made and filed the First Amended Accusation in his official capacity. Respondent timely filed a Notice of Defense and Request for Hearing. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et.seq.

3. Respondent attended Fullerton Junior College for a half a year, and then attended California Mission Baptist Institute for a year and a half. He attended Cleveland Chiropractic College and graduated in 1975. He was licensed in 1976 and opened his first chiropractic office in 1976. He had a multidisciplinary practice, which he closed in 1995. He moved to South Lake Tahoe (Tahoe) in 1996 and opened an office in 2001.

4. At around the time respondent opened his Tahoe office, two patients came to him who had been in the same automobile accident three years earlier and who had been diagnosed with, in respondent's words, "early onset fibromyalgia." Each had full body pain and cognitive and emotional problems. Respondent decided to "compare" the two patients to try to see why they had similar symptoms. He discovered that they each had a "severely displaced atlas which had been shoved under the skull." He examined his other fibromyalgia patients and determined that they had the same condition. After thus having "discovered the cause" of fibromyalgia, and after three more years of working with his fibromyalgia patients, he "knew I had found something" and he opened a fibromyalgia clinic.

5. Respondent defined fibromyalgia as a wide-ranging set of physical, cognitive and emotional symptoms that he calls "meningial compression syndrome." Meningial compression syndrome is a set of symptoms that can arise when there is pressure on the meninges, the covering of the spinal cord, where the cord exits the cranium through the foramen magnum. When the foramen magnum (opening for the spinal cord) is not precisely aligned with the atlas (back of the first vertebrae) there is compression of the meninges, which in turn affects nerve roots, sending signals to the brain from all areas of the body and disrupting the sympathetic nervous system. As a result of the compression of nerve roots, "anything in the body can go wrong and absolutely positively, it starts from 'up there [the meninges]." In his opinion, meningial compression syndrome accounts for symptomology displayed in fibromyalgia patients; including extreme and pervasive pain, inability to use limbs, cognitive problems, emotional problems, forgetfulness, speech problems, convulsions or seizures and depression.

6. Respondent continued working with fibromyalgia patients and claimed to be able to determine whether the occiput was out of alignment with the first cervical vertebrae. He could make this determination through physical examination and examination of x-rays and MRIs. [Respondent is not a chiropractic radiologist.] He "developed a technique" for aligning the occiput (the back and the underside of the skull) with the first cervical vertebrae. Respondent has not explained the technique itself. But, a relief chiropractor respondent hired and trained to assist him testified that the "technique" consists of a standard occiput adjustment, but at a higher spinal level.

7. In 2001, respondent's friend, Dr. Cynthia Baird, a medical doctor, was involved in a serious automobile accident. She had severe cognitive problems and extreme pain throughout her body. She had terrible pain in her neck, upper and lower back, as well as radiating pain into her arms and legs. She was diagnosed with fibromyalgia. Dr. Baird was unable to practice medicine and unable to do much except lie on a hard wooden board. In early 2002, respondent flew to New Jersey to treat her. He adjusted the occiput and she

immediately felt better. However, the pain relief was temporary. For instance, he would adjust her neck and she would attempt to drive somewhere. Within a short time she was again in terrible pain and she asked for another adjustment. In response to her requests, he ended up adjusting her occiput about four times a day, and with this regimen she improved significantly. Respondent found a local chiropractor he felt could perform his technique. The local chiropractor treated Dr. Baird a few times. Dr. Baird also had ruptured multiple disks in her back from the accident. She had back surgery to repair those discs. Dr. Baird considers herself 100 percent better and is able to work again.

8. After seeing Dr. Baird recover from much of her symptoms, respondent was persuaded that multiple daily treatments could speed up recovery and achieve a more complete recovery. He also realized that with a new protocol of multiple daily treatments he could attract patients from outside of California and treat them in a six- to eight-week period.

9. Respondent hired an employee, Madsen Gram, as a public relations person. Gram's job was to contact newspapers, radio shows and other media outlets to promote respondent's clinic. Gram was also responsible for creating the video content on respondent's website and for creating a "documentary film" on fibromyalgia. Gram contacted the Tahoe Daily Tribune in March, 2005, and spoke to reporter Gregory Crofton. Gram asked Crofton to write an article on respondent's treatment of patients with fibromyalgia. Crofton interviewed respondent. Respondent told him that respondent was helping 95 percent of his patients to feel better and well enough to lead normal lives. Respondent told Crofton that many of these patients start to feel better in the first week of treatment and that treatment can take up to three months for more severe cases. Respondent told Crofton that the 5 percent of people he is not able to help either don't have fibromyalgia or didn't fully commit to the program. Respondent told Crofton that he had treated more than 100 people with fibromyalgia and that he can handle about 15 patients at his clinic at one time, with each paying about \$6,500 depending on the severity of their condition. Respondent also told Crofton that "Almost everyone gets well... If they come here and finish the treatment essentially they will get well." Crofton reported these statements in his article, which was published on April 18, 2005. The article was entitled "Grabbing a mystery disease by the neck... Chiropractor reports recovery rate of 95% for fibromyalgia patients." Respondent posted the Tahoe Daily Tribune article to his website, [www.stopfibro.com](http://www.stopfibro.com).

10. The home page of respondent's website was entitled "The Whitcomb Method non-surgical treatment of Fibromyalgia." There were links to multiple informational topics, video testimonials from patients, and a series of lectures and newsletters featuring respondent speaking on the topic of fibromyalgia, his explanation for the cause of fibromyalgia and his diagnosis and treatment. At the times relevant to this proceeding, the written materials on the website contained the following statements:

- The Whitcomb Procedure in most cases offers normal sleep and energy levels, absence of pain, and relief from depression in 1-2 months.

■ [Dr. Whitcomb] developed and performed the worlds (sic) first manipulative procedures for the non-surgical correction and reversal of the causes of fibromyalgia, and is presently doing clinical case studies on fibromyalgia and mimicking diseases.

■ The Cause of Fibromyalgia... I know what reverses the condition, in most cases...

■ Are there doctors in my area who can treat me? The Cause of Fibromyalgia was discovered by myself 3 years ago and has been researched since that time to prove and perfect this method. This website was just recently opened and this information is new. This is the first time this information has been released and I choose to release it to the public first. It will probably be one year or more before I start teaching seminars on this procedure.

■ The symptoms that make more severe spouses (sic) appear crazy usually resolve early in treatment.

■ We have seen most of our fibromyalgia patients recover from this condition that takes so many lives. [In a section entitled "Are you contemplating suicide?"]

11. Respondent's website also contained a link to an interview with Rosemary Roberts, host of the Internet radio show "The Patient's Voice." On May 6, 2005, Madsen Gram e-mailed Roberts from an e-mail address entitled "tips@publicus.com" and enclosed a link to the Tahoe Daily Tribune article "Grabbing a mystery disease by the neck." Gram's e-mail stated that he was with a media/outlet company and was doing a documentary on fibromyalgia. In the course of doing his documentary he "came across Dr. Whitcomb, who is having remarkable results with so many of his patients. And 90% restored to health with them." Gram suggested Roberts interview respondent on her web radio show. Roberts interviewed respondent, who stated in the interview that fibromyalgia is "actually upper neck problems, a misalignment with the first vertebrae which sits under the skull...It is always with C-1... that is the culprit." He stated that his patients often have an injury to this area which can be seen on imaging because respondent knows what to look for and "Even... radiologists don't know what to look for." Respondent stated that he is working with radiologists in an effort to standardize diagnosis. He stated that he is able to effectively manipulate the vertebrae and get it back into position. Respondent stated that his data is based on published statistics from the patients themselves.

12. On June 14, 2005, respondent was interviewed on another Internet radio show, NewsTarget.com., wherein he described his treatment of fibromyalgia. He stated that "... 90 percent [of his patients] will go home 80 to 100 percent symptom-free." When a host pointed out that "...anyone says that they can treat any condition with such a high rate of success is going to be treated with extra skepticism," respondent replied "It would be better if I said 50 percent, you know? It would probably be more believable." When a host said "The National Fibromyalgia Association president... says that controlled studies into your treatment will probably be needed before they can..." respondent replied "We're doing [controlled studies] now." A NewsTarget.com article dated August 31, 2005, states that respondent claims that

he has developed a chiropractic treatment that has been successful in treating 95 percent of his fibromyalgia patients.

13. While in respondent's employ, Gram set up a website entitled IFA (International Fibromyalgia Association). On November 26, 2005, the IFA website announced "New Scientific Research Data Re: Treatment For Fibromyalgia Is Now Available." The website promotes respondent's radio interviews, the "documentary" in progress and contains testimonials from respondent's patients.

14. Respondent made numerous video recordings of himself speaking about fibromyalgia and posted them on his website. The recordings contained representations regarding his discovery of the causes of fibromyalgia, his unique ability to diagnose fibromyalgia (the Whitcomb sign) and his high rate of success in getting patients better with his unique chiropractic technique (the Whitcomb method). He also made numerous representations about statistical and scientific data supporting his techniques and about ongoing research studies.

15. Respondent authored a pamphlet entitled "New Hope Treatment for Fibromyalgia." The subtitle was "Are you a victim? There is now effective treatment." The pamphlet stated that Dr. Whitcomb had "extensive research, soon to be published" and that "the remarkable results is (sic) producing a 95% restored to health rate with every patient that walks through Whitcomb's Lake Tahoe fibromyalgia center." Respondent also prepared a draft of a book entitled "Fibromyalgia, Finally Solving the Mystery," that states the "cause of fibromyalgia syndrome was discovered by [Dr. Whitcomb]" and that his patients have a "90 to 95% recovery rate."

16. Respondent contracted with patients to act as "patient care representatives" and paid them a fee for each patient they persuaded to attend his clinic. These persons made representations to potential patients regarding their own recovery and the recovery of other patients. As late as February 16, 2006, respondent's employees were making representations regarding the rate of recovery of respondent's patients. On that date, board employee, Special Investigator A.R. Dockus, who was investigating the complaints against respondent, received a telephone call from "Daniel" a representative of the "Fibromyalgia Relief Center," in Anaheim, California. Dockus had registered his name at [www.stopfibro.com](http://www.stopfibro.com) and Daniel said he was following up to see if Dockus wanted more information on Dr. Whitcomb's "groundbreaking discovery." Dockus asked what the success rate was for Dr. Whitcomb's treatment and he was told there was a "90 to 95 percent cure rate." Dockus said he was curious why Daniel was calling from Anaheim and when Dr. Whitcomb's clinic was located in the Lake Tahoe area. Daniel replied that the "relief center" was run by Dr. Whitcomb's son Eric and their main purpose was to follow up on patient inquiries, answer questions and do prescreening before referring prospective patients directly to Dr. Whitcomb's office. Then Daniel asked Dockus if he wanted to speak with Eric who had more information. Dockus spoke with Eric, told him his wife had fibromyalgia and questioned him about the cure rate of patients treated by Dr. Whitcomb. Eric replied that it was hard to say and that he couldn't legally give a percentage but that they were helping most of the people they see. Eric told

Dockus that most patients react pretty instantly and their pain goes away in a week and a half. About 15 minutes after Dockus hung up with Eric, Eric called back and told Dockus that the 90 to 95 percent cure rate that Daniel had given him was wrong. Eric said that Daniel was a new employee and had made a mistake by giving him that information.

*Patient Walter S.<sup>1</sup>*

17. In 2004, Walter S. was in the Navy in San Diego when he began experiencing "weird symptoms" and one physician suggested he was suffering from "myofibro pain syndrome." He located respondent's website through a Google search. The website stated that Dr. Whitcomb had discovered the cause of fibromyalgia and his treatment had a 95 percent success rate. Walter S. saw the Tahoe Daily Tribune article linked to respondent's website as well as articles and testimonials. Walter S. called and spoke with respondent on the phone. Respondent told him he had a 95 percent success rate of getting patients 85 percent better, or more. Walter S. told respondent that he could only visit the clinic for a week because he was in the Navy and could not get leave. Respondent said he could come to the clinic for a week.

Walter S. visited respondent's clinic in Tahoe during Thanksgiving week in 2004. He brought MRIs with him. Respondent palpated his neck and asked a little bit about his symptoms. Respondent reviewed the MRIs and showed Walter S. an area where the C-1 vertebra was impinging on the meninges. Respondent told Walter S. that this was what was causing his symptoms. He told Walter S. that he had fibromyalgia and that he could help him. Walter S. had treatment during Thanksgiving week, two to three times a day, during which time respondent administered a rotary break of the neck. Each visit took less than five minutes. Respondent charged Walter \$60 dollars per treatment for the 14 treatments he received that week. Walter got no relief from the treatments.

Walter S. had to resign from the Navy due to his condition. He returned to respondent's clinic in April 2005. He stayed seven weeks and received the same treatment he had received in November. He felt no relief and his symptoms worsened in some aspects. At around the sixth or seventh week he decided that he was not getting better, others in the clinic did not appear to be getting better and he felt the treatment was "bunk." He told respondent he did not have relief and wanted to leave. Respondent dissuaded him and told him that based upon where he was now he had a 70 percent chance of getting better. At one point, respondent asked him "What are you going to do, kill yourself?"

While he was being treated, Walter S. met Robert F., whose wife was being treated at the clinic. Robert F. shared a business development plan for expansion of respondent's business, that respondent had developed. The plan projected earnings of \$3 million over the first year. Walter S. was dismayed because he was not getting better and it seemed to him that all respondent cared about was money. He demanded his chart and x-rays and left the clinic.

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<sup>1</sup> Initials are used in order to preserve patient confidentiality.



Walter S. paid respondent \$7,000 in advance for his treatments. Respondent refunded him \$1,100 because he had prepaid and had not completed the second month of treatment.

Although Walter S. had been to chiropractors before, respondent had told him that what he was doing was novel and that respondent was the only one who was able to do it. After Walter S. left the clinic and saw other chiropractors he described respondent's technique. They told him respondent was doing a simple rotary break, a technique taught in chiropractic school. Walter S. then got a contrast guided MRI of his upper cervical spine, which was normal.

Walter S. felt his symptoms were exacerbated by respondent's treatments. He filed a complaint with the board. He testified at the hearing of this matter and was an extremely credible and persuasive witness.

*Patient Julia F.*

18. Julia F. did not testify in this proceeding, nor was her declaration placed in evidence. Her consumer complaint to the board was placed in evidence but was admitted as hearsay evidence. Her consumer complaint is insufficient in itself to support a factual finding,<sup>2</sup> but may be used to support or explain findings. Juliet F. filed her consumer complaint with the board on August 17, 2005. She explained that she had fibromyalgia since her childhood. Her husband located the Whitcomb website and she called respondent's clinic. She was transferred to Gram. Gram told her that the fibromyalgia program was a proprietary development of Dr. Whitcomb and was not obtainable anywhere else, the cure rate was 95 percent of all patients, and that the residual 5 percent, although not cured, were helped beyond the pain and other fibromyalgia symptoms. He also told her there were three former patients with whom she should speak to confirm these representations. Gram told her that the fees were \$3,500 per month payable in advance, and the treatment period was from six to eight weeks long, consisting of three adjustments Monday to Friday and two on Saturday. He told her that if she would commit to treatment within two days he would hold open a cancellation slot he had available.

Julia F. stated in her complaint that she was not cured, nor were patients who were treated with her at the same time cured. The pain of her multiple treatments became so severe that she discontinued them after the first four weeks. Her husband had already paid for the second month of treatment. Respondent did not reimburse her for the unused treatments.

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<sup>2</sup> Government Code section 11513, subdivision (d) provides in pertinent part: Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but... shall not be sufficient in itself to support a finding...

*Patient Trina S.*

19. Trina S. did not testify in this proceeding. She filed a complaint with the board on May 19, 2005 and executed a declaration on March 23, 2009, which was admitted in evidence. Trina S. had been diagnosed with fibromyalgia, and in September of 2004 she was getting worse. She was desperate for help. When she was searching the Internet for support groups Dr. Whitcomb's website, stopfibro.com, popped up. She spoke with respondent over the phone and he explained that her atlas was the cause of her fibromyalgia and how he would cure it. She drove from her home in Glendale, Arizona to Tahoe.

The two to three adjustments per day caused her a great deal of pain. Her neck was "killing" her and she had very bad headaches. During the first month of treatment respondent also adjusted her mid-upper back, which caused her severe pain. She kept telling him she was not getting better and he would reassure her that by the third week she would improve and see a difference. She was incurring large bills from having to stay at a hotel and being unable to work. She had used all of her financial resources to "support the supposed cure." She kept telling him she still had back and neck pain and could not go home and couldn't go back to work and pay off the debt she had gotten herself into to fund his treatment. He kept reassuring her that if she hung on long enough she would get better. When she was in her seventh week of treatment, respondent told her that her atlas was back where it needed to be and that he had nothing else he could do to for her. He still asked her to stay another week so he could keep an eye on her atlas. She was despondent that she had gotten worse, not better, and she was mad that he would try to collect another thousand dollars from her for this additional week. She left, drove the 13 hours to get home and had to go to the emergency room because of back pain and depression. She was so disappointed and discouraged she "cried for a week straight." She has gotten worse and now takes pain medications. She had to see a neurologist for the headaches and had to take Tramadol for the back pain still in the area where he adjusted her. In total, she paid respondent \$5,643.20.

*Patient Barbara S.*

20. Barbara S. testified at the hearing and was a very persuasive witness. She had fibromyalgia for 17 years when she located respondent's website on the Internet in March 2005. The website stated that Dr. Whitcomb had found a cure for fibromyalgia and about 92 percent of his patients were cured. She contacted his clinic and spoke with the young man "in charge of sales." He told her that 92 percent of the patients were cured of fibromyalgia. He explained that treatment was three times a day and implied that Dr. Whitcomb did something special that no one else did.

Barbara S. spoke with respondent prior to coming to California and related her symptoms. He told her that he invented something that cures people of fibromyalgia. She was living in Cleveland, Ohio and decided to come out to his clinic. She did not even realize that respondent was a chiropractor, and there was no indication of this on his website.

Barbara S. treated with respondent for eight weeks and had "absolutely no results." She was treated three times a day, five days a week and once on Saturday. She paid him at least \$3,000, in advance of treatment and was surprised to find that the treatment lasted 30 seconds or so each time it was administered.

When Barbara S. filed her complaint with the board she indicated that she was filing a complaint, not only because respondent's treatment was ineffective, but because she was afraid respondent was going to hurt someone. During her eight weeks treating in respondent's office, she saw one woman whose rib was cracked during treatment and another who became hysterical and was trying to throw herself out a window.

Barbara S. testified that respondent "absolutely emphasized" that all the patients be positive about their treatment. He told them they should not talk to each other negatively and should encourage each other. He had group meetings with video cameras and they were encouraged to be positive. In her experience, if patients did not get better they were treated indefinitely as long as they were able to pay for treatment.

*Patient Terri S.*

21. Terri S. testified at the hearing and was a very persuasive witness. She is from North Carolina and found respondent's website on the Internet in April 2005. She did not have a diagnosis of fibromyalgia but was suffering from general and occipital neuropathy, atypical facial pain and migraines. She e-mailed the website and respondent replied right away and then contacted her by telephone. He asked her a few questions about her condition and told her that it sounded like she did have fibromyalgia and he would not know for sure unless she came to his clinic in Tahoe. She told him that she was not financially able to pay his fees because her husband had lost his job and she had been off work for a while. Respondent told her that she would not have to pay for his services until her husband got a job or until she returned to work. At that time, she could make installment payments.

When she arrived for her first appointment on April 28, 2005, the receptionist at the front desk insisted that she pay the full amount for four weeks treatment in advance, despite the arrangements she had made with respondent. The receptionist told her that respondent would not see her unless she had paid. She had come all the way from North Carolina and she was "so desperate to find out what was wrong" with her that she put \$3,500 on her credit card.

Terri S.'s first consultation with respondent lasted no more than 15 minutes. He looked at an x-ray she had brought with her. He told her she had fibromyalgia. He had her lie on the table and he made an adjustment to her neck. This was the same adjustment she had previously received from several other chiropractors she had seen. After this first adjustment, her treatment consisted of an adjustment to either side of the neck lasting less than a minute, three times a day Monday, Wednesday and Friday, two times Tuesday and Thursday and once on Saturday.

Her headaches and facial pain began to improve after 2-1/2 weeks of treatment, but her neck did not improve. The left side of her neck and shoulders did not improve. She believes that her migraines may have lessened because she stopped taking narcotics and was starting to sleep, although she does acknowledge that respondent's treatments might have helped in this area. She told respondent she thought she should return home. She did not think respondent's treatment was making "that big of a difference" to justify the additional expense. Respondent told her that she needed to stay longer and insisted that she would not get better if she left treatment. He gave her a "long list of reasons why she should stay eight to 10 weeks" and told her that she would get 90 to 95 percent better if she did. She felt she was being pushed into additional treatment and when he told her that once she was pain-free she would have to stay another two weeks for observation, she felt deceived. She had difficulty asserting herself, so she began to tell him that she was doing better. He "reluctantly released" her from treatment and after she got home she was refunded \$1,198.28 for treatments she had paid for in advance.

Terri S. returned home on June 2, 2005. Respondent had told her that after her treatment he would be able to explain to her local chiropractor how to do the treatment so that she could have it done at home. She asked him to do that before she left and he did not do so. She had her local chiropractor call him and after respondent explained the procedure to him, her chiropractor told her that this was a standard chiropractic adjustment that any chiropractor could have done for her.

While Terri S. was at respondent's clinic, she was approached by Gram, who was making video testimonials for the website and other promotional purposes. When he found out that she was intending to go home, he pressured her to make a statement. Every time she came into the office he was there asking for video testimonial. She eventually succumbed because this pressure was causing her symptoms to flare up. She did not know what to say and felt she was required to say "something good" about her treatment. She was feeling better in certain areas at the time so she stated "I encourage all of you to give it a chance ... I am grateful and glad I came." She saw the video on the website after she got home, watched it a few times and decided it was not right to make these representations. She is "so frustrated with myself that I did it." She asked respondent's office to take the video off his website and after she requested this two or three times, they ultimately removed the video.

Since Terry S. has returned home, she's been diagnosed with multiple chemical sensitivities. She worked in a very large furniture store as an interior designer and had been exposed to multiple chemicals. She now believes that she began to feel better in Tahoe because she was away from the furniture store, and the petrochemicals, for a long period of time. When she returned to her job, her headaches and facial pain returned. She feels very well when she stays away from petrochemicals, but her neck continues to hurt.

*Patient Jeffrey C.*

22. Jeffrey C. testified in this proceeding. He was a very persuasive witness. He was living in Ontario, Canada at the time he found respondent's website. In the winter of 2004 / spring of 2005, he was doing an Internet search for fibromyalgia and was impressed with the testimonials in the Tahoe Daily Tribune article that appeared on the website. He called respondent's clinic and spoke with him. Respondent told them they were doing "fabulous work" and had a "fabulous success rate." He told Jeffrey C. that all those who have come before him had been cured. Jeffrey C. waited till June 2005 to go to Tahoe because of the weather.

On his first visit he was sent to another clinic for an x-ray of the neck. When respondent reviewed the x-ray, he told Jeffrey C. that he had fibromyalgia. He had Jeffrey C. lie on the table and he "cracked" his neck. Respondent did not ask any other questions or perform an examination.

Jeffrey C.'s condition did not improve. He stayed at the clinic until August 31, 2005, hoping to get better. Respondent told him it would take many adjustments and more time to unlock his neck, like he had done with everyone else. But Jeffrey C. observed the other 20 to 30 patients at the clinic and felt that they were not getting better either.

Jeffrey C. paid over \$7,000 for treatment. When he returned home he wrote a letter to respondent requesting reimbursement. He requested a copy of his medical records and received only a printout of the costs of all of his treatments. There were no chart notes or other medical records. He filed a complaint with the board in order to get reimbursement and to "castigate" respondent.

*Patient Sherry V.*

23. Sherry V. did not testify in this proceeding. Her declaration was admitted as administrative hearsay. Sherry V. found respondent's website on the Internet and telephoned his office in February 2005. Respondent told her over the telephone that "all of my patients get 95 percent well." She asked him about the other 5 percent and he told her that "They may not have fibromyalgia." She traveled to Tahoe and began treating with him on April 1, 2005. During her first consultation with respondent, she showed him an MRI that she had brought with her. He told her he could get her fibromyalgia "80 percent better."

Sherry V. did not receive any relief from the numerous adjustments she received from respondent. At some point toward the end of her treatment she asked him why he had told her he could get her 80 percent better. He denied he ever made that promise and told her that he had said she had "an 80 percent chance of getting 80 percent better."

Although Sherry V. paid respondent up front for her treatment, she submitted claims to her insurance company. Her insurance company paid respondent directly. She called him numerous times to be reimbursed for the monies. On January 23, 2006 she spoke with

respondent and he told her he would personally send her a check. However, he asked her to call him when she received the check to make sure there was money in the bank. Sherry V. filed a complaint with the board.

### *Standard of Care*

24. Complainant alleges that respondent's acts and omissions in respect to these patients violated the standard of care for chiropractic practice and constitute gross negligence and incompetence. Additionally, complainant alleges that respondent's charting not only violated the standard of care but was deficient under applicable regulations. Finally, complainant alleges that respondent engaged in sensational advertising and promotion intended to deceive the public.

### *Testimony of Robert L. Dobrow, M.D.*

25. Robert L. Dobrow, M.D. testified on behalf of complainant. Dr. Dobrow received his Doctorate of Medicine in 1980 from the University of Massachusetts medical school. He completed internships and residencies in internal medicine and a fellowship in arthritis and immunology. He is a diplomat of the National Board of Medical Examiners and American Board of Internal Medicine, Subspecialty Internal Medicine and the American Board of Internal Medicine, Subspecialty Rheumatology. He is an assistant clinical professor at the University of California San Francisco School of Medicine. He has a private practice of internal medicine and rheumatology in San Francisco and has numerous hospital affiliations. Dr. Dobrow reviewed the patient charts and complaints in this matter as well as respondent's extensive advertising materials.

Dr. Dobrow testified that fibromyalgia is defined by the rheumatology college as chronic widespread pain lasting more than three months with pain on the left and right side and pain above and below the waist and involving the axile spine. There must be the presence of 11 of 18 predefined tender points located throughout the body.

Dr. Dobrow explained that respondent had a hypothesis regarding the cause of fibromyalgia, which he arrived at after treating two people from an automobile accident. Neither had a diagnosis of fibromyalgia. The hypothesis was that the first and second vertebral bodies were malaligned (subluxation) and from this hypothesis he determined that all fibromyalgia was related to C 1 - C2 subluxation. According to an audio interview Dr. Dobrow reviewed, respondent acknowledged that these individuals were diagnosed within days to weeks of their auto accident and had neck and upper extremity pain but not pain below the waist line. There was no physical examination that documented the presence or absence of trigger points in these patients. Accordingly, respondent's hypothesis that he had determined the cause of fibromyalgia was erroneous.

Dr. Dobrow also opined that respondent's statements to the reporter and the Tahoe Daily Tribune violated laws for advertising. The statement that 95 percent of fibromyalgia patients get well with his treatment was not representative of any studies or information

related to fibromyalgia, and was not supported by any peer-reviewed literature. There is no scientific or peer-reviewed material that supports his claim. Studies regarding fibromyalgia show certain treatments are more effective than others. The more effective treatments include cognitive behavioral therapy, aerobic exercise, patient education and support as well as a number of medications. Fibromyalgia is a chronic disease, whose symptoms wax and wane.

Dr. Dobrow also opined that respondent's statements that he discovered the cause of fibromyalgia violates laws relating to advertising. It is accepted among experts in the field of fibromyalgia that the cause is as yet unknown although there are many theories. None of the theories are supported by peer-reviewed literature or documentation. Respondent's claim of a 90 to 95 percent cure rate is contradictory to the current body of scientific evidence regarding fibromyalgia. There are many theories, but presently the cause or causes are not yet known. He testified that 25 percent to 30 percent of persons in clinical trials comparing an active versus a placebo treatment demonstrate benefit without receiving active treatment. One would expect that a percentage of patients would receive a placebo effect.

Dr. Dobrow opined that the statements respondent made to patients, like Jeffrey C., that he had a cure for fibromyalgia and all who came to him for treatment got well, were misleading and incredulous.

Dr. Dobrow opined that respondent's book on fibromyalgia contains a chapter on statistics in which he claims that he administered a questionnaire to his patients before and after therapy and that this information substantiates his claims. Dr. Dobrow testified that this is not scientific research. There were only 15 patients included in the "study." They were volunteers and not representative of the patients treated. Respondent's "statistics" simply do not meet any scientific criteria for reliable scientific evidence. Dr. Dobrow identified multiple problems with respondent's survey techniques, including suggestions of the answers sought, asking patients retrospectively to comment on progress, bias in reporting, filtering of information from the patient to the worker and selective reporting.

Dr. Dobrow testified that education that is credible is acceptable and encouraged. But making false or misleading or incredible statements which are not supported by the community at large or peer-reviewed journals or studies violate the law. Here respondent's multiple claims to have discovered the cause and cure of a fibromyalgia violated the law against false and misleading claims in advertising.

#### *Testimony of Lewis Meltz, D.C.*

26. Lewis N. Meltz, D.C testified on behalf of complainant. Dr. Meltz obtained his Doctor of Chiropractic degree in 1983 from Los Angeles College of Chiropractic. He received his Bachelor of Science degree in biology in 1979 from California Polytechnic State University. He is a fellow of the Academy of Chiropractic Orthopedics, a diplomate of the American Board of Chiropractic Orthopedists, and a diplomate of the National Board of Chiropractic Examiners. He was licensed to practice chiropractic in California in 1983. He

has a private chiropractic practice in El Dorado Hills, California. He serves in a variety of consulting positions and has faculty appointments at the LACC Postgraduate School - Department of Orthopedics, Emperor's College of Traditional Oriental Medicine in West Los Angeles and Lerner Education Inc. in Santa Monica.

Dr. Meltz opined that the standard of care for chiropractors was quite broad in fashioning treatments for similar conditions. However, licensees were limited by the constraints of reasonableness and appropriateness of care. Dr. Meltz reviewed respondent's records of the patients at issue in this proceeding and reviewed respondent's website, its links and his promotional material. He also reviewed the patients' complaints to the board. His opinion was that respondent breached the standard of care in similar ways with all of the patients at issue.

Respondent's treatment and documentation of Walter S.'s care was characteristic of the other patients at issue in this proceeding. Dr. Meltz opined that respondent departed from the standard of care in providing 115 instances of occipital adjustment to Walter S. within a period of several weeks. The pattern of repeated adjustments was excessive and constituted gross negligence.

Dr. Meltz also found that respondent was below the standard of care in his chart documentation and that his deficiencies appeared in all of the patient records. In respect to Walter S., this patient began treatment November 22, 2004 and concluded November 27, 2004. There was a gap until February 2005, when he recommenced treatment. The standard of care requires a re-examination of a patient who has not been seen for 90 days. The number of adjustments within the time frame of Walter S.'s treatment grossly exceeded the number, frequency or scope established by the standard of care and constituted grossly excessive treatment.

Dr. Meltz also found respondent was below the standard of care in that the chart notes that served to document his examinations of Walter S. did not identify the patient, were undated and were unsigned. There is no information when these examinations were performed or if they were for patient Walter S. The chart records did not document the patient's condition or the affliction he presented with. His chart lacked measurements or estimates of height and weight. There is no indication in the chart of what was done on any visit. It was simply noted that there was a standard occipital adjustment. There was no way to tell from the chart notes what position the patient was in during adjustment, lying down in a chair, or how the occiput was adjusted. The chart does not describe what was done and in general the record was not accurate enough to determine what was done from visit to visit.

Dr. Meltz noted that charting is necessary for the patient's benefit, and so that the patient could have continuity of care. From the charts of Walter S., and all of respondent's patients at issue herein, a provider would "not have a clue" what was done. Additionally, Walter S.'s chart notes contain no information that would allow the treatment to be modified or changed if the patient was not responding. Dr. Meltz noted that respondent did not follow the standard SOAP format for charting. Respondent made no note of subjective or objective



factors, of his procedures or of his assessment or plan. Dr. Meltz opined that respondent's charting was incompetent and showed an inability or unwillingness to accurately document a treatment or a condition.

Dr. Meltz opined that respondent's treatment model of three times a day, five to six days a week is excessive and not within the standard care. The adoption of this model was based upon his unsupported belief that he discovered a cause and cure for fibromyalgia. It was characteristic of all of the patient records Dr. Meltz reviewed that respondent made the same diagnoses despite the myriad complaints presented, and that he employed the same treatments and treatment regimen to each patient. There was no diagnostic testing, such as laboratory testing for rheumatoid factor. There was no recognition or documentation of the standard testing for fibromyalgia which consists of testing for 18 points which evoke pain, 11 of which should be positive, and which should occur both above and below the waist.

In respect to patient Julia F., Dr. Meltz found she had been given at least 60 treatments within several weeks. There was no diagnostic explanation demonstrating medical necessity for the extent of these treatments. This was a gross deviation from the standard care and constitutes excessive treatment. There was no medical justification for this excessive amount of treatment. Julia F.'s chart stated she had 60 to 70 percent improvement. There was no context or measurement for this improvement in the chart. The chart refers to an x-ray which was not part of the chart, nor was the interpretation of the x-ray part of the chart. These are extreme departures from the standard care. Respondent failed to document Julia F.'s height or weight or identify her on most of the pages of the chart. On most of the chart notes there was no indication of who provided the care.

Julia F.'s chart notes showed an examination of the neck and reflexes, and identification of tender points throughout the neck and lower back. These findings give no indication of fibromyalgia, particularly caused by a first occiput subluxation causing impingement of the meninges. Moreover, Julia F. was an elderly patient and there should have been some indication in the chart of measurement of the range of motion of the spine. Dr. Meltz opined that nowhere in this patient's chart is there evidence that comes near documenting fibromyalgia.

Dr. Meltz opined that respondent was grossly negligent and incompetent in respect to his treatment and documentation of Julia F. and the other patients at issue in this proceeding. He merely administered an occipital adjustment over and over again without diagnosis or evaluation, or assessment of improvement or response and without accurately documenting what he was doing. He made no findings of subjective complaint or objective findings, did not establish a clinical plan, and made no assessment. There were no re-examinations of the patients. Dr. Meltz opined that it is the standard of care to re-examine patients and to continually assess and document their changes, improvement and responsiveness. This was not done in respect to Julia F. or any of the patients in this proceeding.

In respect to patient Trina S., Dr. Meltz again found repeated acts of gross negligence and incompetence in respondent's diagnosis, treatment and charting. There was excessive administration of chiropractic treatment, given the length of the treatment. This was a 36-year-old who received 91 "full-spine adjustments" over several weeks. This was the only instance among the patients at issue in this proceeding where treatment was not simply listed as an occipital adjustment. However, there was not sufficient information to indicate what kind of treatment this full spine adjustment consisted of. There are 28 vertebrae in the spine and one cannot discern from the chart which ones were adjusted. There was no examination and no information upon which to derive a treatment plan. There was no documentation of the medical necessity of care. Subjective complaints were listed as headaches, dizziness and neck pain. There is no patient history, no range of motion measurements, and the examination portion of the form was left completely blank. On every eighth or ninth visit, respondent's initials appeared indicating he had been the one that made the adjustment. Otherwise, there was no signature or indication as to who provided treatment.

In respect to patient Barbara S., Dr. Meltz again found extreme departures from the standard of care and incompetence. There were 108 separate occiput adjustments. There is no medical necessity supported by documentation or history for these adjustments. There was no clear diagnosis or treatment plan. The standard evaluation form contains no height or weight measurements, the patient was not identified and the form was completely blank except a notation that there were one or two tender points, complaints of insomnia and pain. There are no SOAP notes at all.

In respect to patient Terri S., Dr. Meltz again found extreme departures from the standard of care and incompetence. Terri S. received 68 adjustments. She did not have a medical diagnosis at the time and had complaints of anxiety and insomnia. There is no mention in the chart of fibromyalgia. There is no substantiation for the excessive treatment. Dr. Meltz opined that the chart notes indicated an inability or unwillingness to adequately document the treatment plan. There was no sufficiently detailed re-examination and no vital signs.

In respect to patient Jeffrey C., respondent was unable to produce a chart. Instead, he produced billings. The billings indicated that Jeffrey C. was adjusted 143 times in two months. Dr. Meltz opined that this was excessive treatment, and constitutes gross negligence and incompetence. Further, respondent violated regulations regarding keeping patient records for five years from the date of the last visit.

In respect to patient Sherry V., Dr. Meltz noted that she received 111 occiput adjustments based solely on complaints of depression and widespread pain from a car accident. There was no examination and no diagnostic testing. The charting had the same deficiencies noted for the other patients at issue in this proceeding. Dr. Meltz opined that this was excessive treatment and constitutes gross negligence and incompetence.

Dr. Meltz reviewed respondent's advertising regarding his treatments. He opined that the statements that patients would improve 85 to 90 percent were sensational and without basis. The statements were based on either conjecture or on a very small patient population. There was no scientific research to support these claims, not even the least rigorous research: case reviews.

*Testimony of Daniel Brady, D.C.*

27. Daniel Brady, D.C. testified on behalf of respondent. He received his degree in chiropractic in March 2000 from Palmer West chiropractic. He was licensed to practice chiropractic in the state of California in 2000. He has a bachelor's degree in biology. He has worked as an independent contractor for respondent. He has had about two full years of experience working as a chiropractor. It was clear that Dr. Brady had an inherent bias toward respondent and had no understanding of the community standard of care. He also lacked the knowledge or experience to testify as an expert on the standard of care.

Dr. Brady testified as to respondent's practices circa 2006, when he worked for him. He testified that respondent created a standard of care for fibromyalgia treatment. The standard of care was based on the current subjective complaints of the patient. Respondent and he had established standards for eight weeks duration of treatment because the structures they were working with have memory and work like rubber bands. If they only treat a few times, the patient's symptoms will come back almost immediately. They need to train the structures to stay in place and only multiple treatments every day would prevent relapse. He testified that one adjustment builds upon the other adjustment and results in improvement.

Dr. Brady reviewed the charts of the patients at issue in this proceeding. He pointed to the few and random notations regarding symptoms in the charts as evidence that there were regular assessments that documented the need for multiple treatments. He acknowledged that there needed to be documentation, but opined that since the doctor is seeing the patient more frequently there need not be as much documentation. "Otherwise [the doctor] would be charting all day." He explained that the charts only indicate an adjustment to the occiput, without further elaboration, because all patients were adjusted similarly and patients were advised of the style and technique at the beginning of treatment. SOAP notes were not necessary for the same reasons.

Dr. Brady testified that if the patient came in with MRIs and test results they would be returned to the patient but no notes were made in the charts regarding the fact these results were reviewed. He indicated that initial assessments were usually done but not indicated in the chart. When questioned why assessment forms were left empty, he admitted that this was an indication that assessments were not done at all. He acknowledged that no orthopedic examinations were done. He acknowledged that notations on the chart of "74% better" could be the patient's or the doctor's assessment, but when they use that phrase it refers to the patient's statement.

Dr. Brady acknowledged that the treatment plan is "set from when the patient arrives." The treatment plan is the same for all patients. The program is justified based on an "average of how patients respond." He testified that it would be "redundant" to put in daily chart notes information reflecting assessments and plans. He also admitted that "typically the assessment and plan are given to the patient verbally when they first start treatment." This is because for all patients "the plan is all the same." He also acknowledged that he and respondent received the patient's diagnoses directly from the patients.

*Testimony of Dominique G. Engel, M.D.*

28. Dr. Engle, a neurosurgeon, testified on behalf of respondent. She testified that she had no qualifications to offer opinions regarding the standard of care for chiropractic. She offered that in the course of her surgical interventions with persons requiring surgery in the upper cervical spine, she has learned that releasing the meninges and increasing the diameter of the opening into the cranium has resulted in alleviation of a multitude of seemingly unrelated symptoms.

*Testimony of Frank Anthony Shellenberger, M.D.*

29. Dr. Shellenberger did not offer an expert opinion. He merely stated that since June 2008, long past the dates at issue in this proceeding, he had seen 10 to 15 of respondent's fibromyalgia patients for nutritional therapies, hormonal therapies and injection work into areas where they were having pain. He felt some of them were making remarkable progress, showing improvement in pain and function. A few showed no improvement at all. Dr. Shellenberger's testimony was of no value in this proceeding.

*Respondent's Testimony Regarding the Standard of Care and Statutory Violations*

30. Respondent's position is that, through his work in this area, he is an expert on meningeal compression syndrome, which produces the symptoms that are commonly understood as fibromyalgia. He refers to his practice as a fibromyalgia practice, because this is the term that is commonly understood by the public. He maintains that he has discovered how the symptoms of fibromyalgia develop and has created a treatment protocol that is effective in releasing the pressure on the meninges and thus reducing or eliminating symptoms. Accordingly, he maintains that he has established the standard of care for the treatment of fibromyalgia. The treatment protocol is the same for all patients because the goal is to realign the vertebrae and hold the muscle ligaments in place so that they do not revert back to their deviant positions. The treatment protocol is three treatments a day for five days a week, and one or two treatments on Saturday for a period of eight to 10 weeks. The treatment protocol can be varied by decreasing treatments with patients who respond quickly. As noted above, respondent refrained from describing the standard treatment he administers, but did not dispute that the adjustment was a standard occiput adjustment.

Respondent maintains that the years of working with fibromyalgia patients have also made him an expert on diagnosing whether a person will benefit from his treatment. He refrained from describing the techniques he used to enable him to diagnose patients during the time period at issue in this proceeding. However, since the time at issue, he has developed a diagnostic test which he performs on persons in seminars throughout the country. The diagnostic test gives him a very good indication of whether the patient suffers from encroachment of the meninges and will benefit from his treatment protocol. Respondent declined to describe this test, citing copyright and trademark concerns.

Respondent acknowledges that there has been no scientific study to support the efficacy of his diagnosis and treatment protocols. However, he maintains that there are significant "statistics" which support the efficacy of his diagnosis and treatment protocols. The statistical information upon which respondent relies was excluded from this proceeding because of its invalidity and unreliability.

More importantly, respondent maintains that he has ample support for the efficacy of his diagnosis and treatment protocols, in that, with adherence to his protocols, his patients get well. Six of respondent's former patients testified on his behalf. And, respondent represented that many more patients would testify on his behalf, had the administrative law judge not limited the number of witnesses permitted to testify. These six witnesses gave compelling testimony. Some of them had been videotaped when they arrived at respondent's clinic and that videotape was shown at hearing. The patients had been very ill and disabled for many years. These patients suffered symptoms such as headaches, extreme body pain, inability to speak, cognitive confusion, inability to walk, and tremors. They made remarkable recoveries during their treatment and sustained the recovery for years thereafter, often without follow-up treatment.

Respondent maintains that most of his patients recover as these witnesses did. He discounts the complaints of the patients at issue in this proceeding. He maintains that some of them had significant improvement, but are members of a disgruntled group which Robert F. organized to retaliate against respondent after respondent declined to do business with Robert F. He maintains that other complaining patients have severe psychiatric problems that are coloring their perceptions. Still others failed to improve, although they were on the road to recovery, simply because they left treatment early without giving their ligaments the opportunity to hold the adjustments. Others simply saw an opportunity to get their money back, even though they had improved. The evidence was persuasive that none of these arguments had merit and that respondent was generally quick to discount and overlook evidence that did not support his theories.

Respondent's arguments are illustrative of the very reasons why subjective, anecdotal evidence is not sufficient to support diagnostic and treatment protocols. Although some of respondent's patients improved and recovered, there were multiple patients at issue in this proceeding who did not improve and were harmed physically and financially by his treatments. There was ample evidence that many more of respondent's patients claim his treatments harmed them or did not alleviate any of their symptoms. Two of these patients

testified persuasively at hearing, Debbie H. and Katherine Z. And, there was hearsay evidence from respondent's relief chiropractor, Michelle Hallam, board investigator Dockus, Radio Host Roberts and others that they received many complaints that respondent's treatments did not work.

An administrative hearing is not an appropriate forum for establishing a standard of medical care or conducting the scientific research necessary to support diagnoses and treatments. A hearing is not an appropriate forum for contrasting patient conditions or for comparing the numbers of patients who have improved against the numbers who have not improved. This is properly the subject of sound scientific research. And, to date, there is no sound scientific research supporting respondent's diagnosis or treatment protocols. Accordingly, the standard of care set forth by Dr. Meltz and Dr. Dobrow governs respondent's practice.

#### *Respondent's Testimony Regarding Advertising Violations*

31. Respondent testified that he never represented in any advertising or in any statement to a patient that his treatments offered a particular cure rate. Specifically, he denies telling patients he had a 90 to 95 percent cure rate, or placing this information on the Internet. He denies he told a reporter, Gregory Crofton, that he had a 90 to 95 percent cure rate. Respondent was completely incredible given the persuasiveness of the witnesses and the overwhelming written and recorded evidence of his making these statements.

Respondent testified that if he did make representations about a cure rate, they were in direct response to questions and thus were not advertising or promotional. As an example, he testified that his statements recorded by Rosemary Roberts in her audio interview were not advertising or promotional and were in direct response to questions. His position is without merit. The evidence is overwhelming that respondent was involved in a media blitz and attempting to recruit as many patients as possible. It is absurd that he would view a radio talk show as a private conversation with the host.

Respondent argued that even if he did make representations about a cure rate and about having discovered the cause of fibromyalgia, his statements were true and therefore could not constitute misleading advertising. The fact that respondent may believe his statements does not make them true or credible. As noted above, respondent had no scientific basis for his promotional statements. His subjective beliefs and intentions are irrelevant to whether he violated clear statutory guidelines regarding advertising.

#### *Prior Discipline*

32. On July 24, 2001, the Board issued citation No. CH 01-3220 to respondent for failing to complete continuing education requirements prior to the expiration of his license. On December 1, 2005, the Board issued citation No. CH 2006-6445 to respondent due to his continuing to practice when his license had expired on May 31, 2005.

### *Mitigation and Rehabilitation*

33. A board may not impose discipline upon a licensee without considering factors in mitigation and the licensee's evidence of rehabilitation. (Cf *Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* 90 Cal.App.3d 737 at p. 747.) It may be considered a factor in mitigation that respondent appears dedicated to relieving the suffering of fibromyalgia patients and feels that he holds the key to their recovery. Any mitigation from these noble feelings, though, is tempered by respondent's raging entrepreneurial spirit. He engaged in extensive and hyperbolic efforts to market his "discoveries;" he paid commissions to employees and former patients who brought in patients; he insisted that patients pay for treatments in advance and in cash; he charged patients \$62.50 for each of multiple daily adjustments; he was reluctant and slow to return monies when patients left before completing their treatment; and he charged patients approximately \$1,000 for a week of monitoring their conditions once he determined they were well. On balance, respondent's devotion to relieving the suffering fibromyalgia patients does not mitigate his conduct.

Respondent did not directly address rehabilitation. He maintains that he is conducting his own studies to support his diagnosis and treatment protocols and that he is trying to find an organization willing to conduct scientific research on his techniques. He maintains that his website, which is now shut down, contains neither references to cure rate nor any links to articles that cite a cure rate. He testified that he has closed his Tahoe fibromyalgia practice. Otherwise, respondent provided no information on how he has conformed, or plans to conform, his practice to the standard of care and laws governing the practice of chiropractic.

Respondent's counsel represented that respondent is willing to accept a probationary license if necessary. However, it is doubtful that the public would be protected if respondent was granted a probationary license. The factors that militate against granting a probationary license are the breadth of respondent's failures to abide by the standard of care, his hubris and zealotry, his inability to recognize that he has harmed patients and his contempt for these patients, his inability to recognize that his treatments have the potential to harm other patients and his inability to recognize the importance of routine responsibilities, such as appropriate charting. Essentially, respondent has indicated repeatedly, by word and conduct, that he has discovered a cure for fibromyalgia and that nothing should stand in the way of his disseminating information about this cure and profiting from his discoveries. It would be difficult, if not impossible, to fashion restrictions under a probationary license that would put these concerns to rest. Additionally, respondent has twice been disciplined: for failing to abide by board requirements to refrain from practicing with an expired license and for failing to accrue continuing education credits prior to license renewal. Although he characterizes these disciplines as minor, and not patient related, they demonstrate that respondent does not take his professional responsibilities seriously and is not likely to comply with probation.

Finally, respondent argues that revoking his license would have the effect of depriving suffering persons of relief. The witnesses respondent produced, who attributed their recovery to his treatments, also entreated the board not to revoke his license, so that other fibromyalgia sufferers would be relieved of their pain. While it is recognized here that

some, maybe many, of respondent's patients may have recovered their health as a result of his treatments, allowing respondent to continue with his diagnostic and treatment protocols harms other patients. The board cannot in good conscience sacrifice the health and welfare of some patients, so that other patients might benefit.

#### *Costs*

34. Complainant established that the reasonable costs of investigation and prosecution of this matter were \$23,502.50. Respondent failed to establish that he should be relieved of any of these costs pursuant to *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. Respondent testified unconvincingly that he has no funds and he may file for bankruptcy.

### LEGAL CONCLUSIONS

1. The Board of Chiropractic Examiners is vested with the authority to discipline a licensee for any cause specified in the Business and Professions Code or in the Chiropractic Initiative Act (Act). The Act is an initiative measure approved by the electors on November 7, 1922. Although the Act is not included in the Business and Professions Code by the legislature, it 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.

2. Section 10 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 Act.

3. The standard of proof which must be met in the discipline of professional licenses is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982), 135 Cal.App.3d 853). The burden rests with complainant to offer proof that is clear, explicit and unequivocal - so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal. App. 3d 478).

#### *Repeated Acts of Clearly Excessive Treatment*

4. Business and Professions Code (B&P) section 725, subdivision (a), provides in pertinent part:

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.

5. California Code of Regulations (CCR), title 16, section 317, subdivision (d) states in pertinent part:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct... Unprofessional conduct includes ... (d) the administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees...

6. As set forth in Legal Conclusions 1 through 5, and the Factual Findings, cause for discipline of respondent's license was established by clear and convincing evidence, in that respondent engaged in repeated acts of clearly excessive treatment of patients Walter S., Julia F., Trina S., Barbara S., Terri S., Jeffrey C., and Sherry V. Respondent's violations constitute seven separate violations of these statutes.

#### *Gross Negligence*

7. CCR, title 16, section 317, subdivision (a), states in pertinent part:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct... Unprofessional conduct includes... (a) Gross negligence.

8. "Gross negligence" is not defined in CCR, title 16. Nor is "Gross negligence" defined in the Act or the B&P. "Gross negligence" has however been defined by the Court of Appeal in *Kearl v. Board of Medical Quality Assurance*, as follows:

Gross negligence is "the want of even scant care or an extreme departure from the ordinary standard of conduct." (*Cooper v. Board of Medical Examiners* (1975) 49 Cal.App.3d 931, 941 [123 Cal.Rptr.[page 1053] 563], quoting from *Van Meter v. Bent Construction Co.* (1956) 46 Cal.2d 588, 594 [297 Cal.Rptr. 644].) The use of the disjunctive in the definition indicates alternative elements of gross negligence-both need not be present before gross negligence will be found. (*Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d

184, 196-197 [167 Cal.Rptr. 881].)<sup>3</sup> *Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal. App. 3d 1040, 1052-53.

9. As set forth in Legal Conclusions 1 through 3, 7 and 8, and the Factual Findings, cause for discipline of respondent's license was established by clear and convincing evidence, in that respondent committed multiple acts of gross negligence in his treatment of patients Walter S., Julia F., Trina S., Barbara S., Terri S., Jeffrey C., and Sherry V.

#### *Incompetence*

10. CCR, title 16, section 317, subdivision (c), states in pertinent part:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct... Unprofessional conduct includes... (c) Incompetence.

11. As set forth in Legal Conclusions 1 through 3, and 10, and the Factual Findings, cause for discipline of respondent's license was established by clear and convincing evidence, in that respondent was repeatedly incompetent in his treatment of patients Walter S., Julia F., Trina S., Barbara S., Terri S., Jeffrey C., and Sherry V.

#### *Deficient Charting*

12. CCR, title 16, section 318, subdivision (a), states in pertinent part:

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

All chiropractic patient records shall be available to any representative of the Board upon presentation of patient's written consent or a valid legal order. Active chiropractic patient records shall be immediately available to any representative of the board at the chiropractic office where the patient has been or is being treated. Inactive

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<sup>3</sup> The disjunctive definition set forth in *Gore* was also followed in *Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal. App. 3d 1040, 1058.

chiropractic patient records shall be available upon 10 days notice to any representative of the board. The location of said inactive records shall be reported immediately upon request.

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

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

13. As set forth in Legal Conclusions 1 through 3 and 12, and the Factual Findings, cause for discipline of respondent's license was established by clear and convincing evidence, in that respondent's charting was deficient for patients Walter S., Julia F., Trina S., Barbara S., Terri S., Jeffrey C., and Sherry V.

*Deceptive/Sensational Statements*

14. B&P section 651 provides in pertinent part:

- (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing products in connection with the professional practice or business, which includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

- (1) Contains a misrepresentation of fact.
- (2) Is likely to mislead or deceive because of a failure to disclose material facts.
- (3) (A) Is intended or is likely to create false or unjustified expectations of favorable results...  
[¶...¶]
- (5) Contains other misrepresentations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.
- (7) Makes a scientific claim that cannot be substantiated by reliable, peer-reviewed, published scientific studies.

15. CCR, title 16, section 311, provides:

Constructive educational publicity is encouraged, but the use by any licensee of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, constitutes grounds for the imposition of any of the following disciplinary penalties:

- (a) Suspension of said licensee's right to practice in this State for a period not exceeding one (1) year.
- (b) Placing said licensees upon probation.
- (c) Taking such other action, excepting the revocation of said licensee's license, in relation to disciplining said license as the board in its discretion may deem proper.

16. As set forth in Legal Conclusions 1 through 3 and 15 and 16, and the Factual Findings, cause for discipline of respondent's license was established by clear and convincing evidence, in that respondent disseminated and caused to be disseminated public communications containing false, fraudulent, misleading, and deceptive statements and claims, for the purpose of and likely to induce patients to engage his professional services.

*Costs*

17. CCR, title 16, section 317.5, subdivision (a), states, in pertinent part:

In any order in resolution of a disciplinary proceeding before the Board of Chiropractic Examiners, the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the Chiropractic Initiative Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

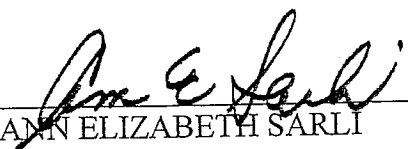
As set forth in Factual Finding 34, the reasonable costs of investigation and enforcement of this case were established as \$ 23,502.50.

ORDER

Chiropractic license No. 11681, issue to Paul Whitcomb is REVOKED pursuant to Legal Conclusions 4 through 11, separately and together. Respondent shall relinquish his wall license and pocket renewal license to the Board or its designee within ten (10) days of the effective date of this decision. Respondent may not petition the Board for restoration of his revoked license for two (2) years from the effective date of this Decision.

Paul Whitcomb shall pay the Board, or its designee, \$23,502.50 within 180 days from the effective date of this decision. At the Board's discretion, Paul Whitcomb, may make installment payments on a schedule and in an amount determined by the Board.

DATED: June 26, 2009

  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings