

STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

In re: George Zabrecky, D.C.
158 Danbury Rd.
Ridgefield, CT 06877

Petition No. 880223-07-002

MEMORANDUM OF DECISION

The Connecticut Board of Chiropractic Examiners (Board) was presented with a Notice of Hearing, dated 11/15/90, and a Statement of Charges, dated 11/9/90, prepared by the Department of Health Services (Department) against George Zabrecky, D.C. (Respondent). (State's Ex. 1) The Statement of Charges alleged in one count that the Respondent had committed conduct which violated Connecticut General Statutes §20-28, §20-29, and/or §20-45.

The Notice of Hearing and Statement of Charges were sent by Certified Mail - Returned Receipt Requested to the Respondent and his attorney. A motion for More Definite Statement (Respondent's Ex. A) was made and was replied to by the Department, (State's Ex. 2) before and at the hearing, (Tr. 12/6/90, p. 12-20) but otherwise denied by the Board (Tr. 12/6/90 pp. 19, 118-119). An answer was filed on behalf of the Respondent. (Respondent's Ex. A)

The hearing was held as scheduled on 12/6/90. At the hearing George Zabrecky appeared with his attorney, Anthony DePanfillis. The Department was represented by Atty. Stephen Varga, and Atty. David Pavis.

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

Each member of the Board involved in this decision attests that he/she was present at the hearing or reviewed the record in its entirety, and this decision is based entirely on the record and their specialized professional knowledge in evaluating the evidence.

FINDINGS OF FACT:

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

1. George Zabrecky is and was at all times referenced in the Statement of Charges, the holder of Connecticut chiropractic license number 000196. (Answer)
2. The Respondent was offered the opportunity to discuss the allegations at an informal meeting prior to the commencement of the formal hearing. (State's Ex. 1.)
3. From May of 1987 until December of 1987, the Respondent provided care and treatment to Donald Pereyra. (Answer).

Regarding Paragraph 3.a. of the Statement of Charges:

4. Credible testimony was received from the patient's wife, who was with the patient in the Respondent's office, that the Respondent advised and instructed the patient in the use of the substance "Neythymine" as alleged. (See Tr. 12/6/90 pp. 43, 53) Further support for this finding is

based on the schedule set up by the Respondent for the taking of this substance as well as the Neytumorin. (Ex. 9).

Regarding Paragraph 3.b. of the Statement of Charges:

5. Credible testimony was received from the patient's wife, who was with the patient in the Respondent's office, that the Respondent provided the substance Neythymin (Tr. 12/6/90, p. 53). The Board finds that the Respondent dispensed the substance as alleged.

Regarding Paragraph 3.c. of the Statement of Charges:

6. The Respondent advised and instructed the patient in the use of the substance Neytumorin as alleged. The Board makes this finding based on the testimony of the Respondent, wherein he acknowledges prescribing it, (Tr. 12/6/90 pp. 95-96, p. 104); based on the testimony of the patient's wife, (Tr. 12/6/90 pp. 40, 43-48); and based on the Respondent's notes (Ex. 7) and the schedule set up by the Respondent for the taking of this substance as well as the Neythymin (Ex. 9).

Regarding Paragraph 3.d. of the Statement of Charges:

7. The Board finds that there was insufficient evidence to establish that the Respondent provided hypodermic needles to the patient for the purpose of injection of the substances Neytumorin and/or Neythymin.

Regarding Paragraph 3.e. of the Statement of Charges:

8. The Respondent's testimony indicates that he instructed the patient on the use of hypodermic needles for the injection of Neytumorin, (Tr. 12/6/90 pp. 99-101, 105). Credible testimony of Barbara Maccarella also supports the Board's finding that the Respondent instructed the patient on the use of the needles (Tr. 12/6/90 pp. 48-50) for injection of the prescribed substances.

DISCUSSION AND CONCLUSIONS OF LAW:

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

1. George Zabrecky currently holds and held a valid chiropractic license at all times relevant to the Statement of Charges.
2. The Respondent was provided with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license in accordance with Connecticut General Statutes §4-182(c).
3. The Notice of Hearing was properly sent and sufficiently provided information as mandated by Connecticut General Statutes §4-177 and §4-182.
4. The hearing was held in accordance with Chapters 54, 372 and 374 of the Connecticut General Statutes and Sections 19-2a-1 through 19-2a-30 of the Regulation of Connecticut State Agencies.

5. The answer filed complied with Section 19-2a-18 of the Regulation of Connecticut State Agencies.
6. The prescription of the substance Neythymin was an inappropriate form of chiropractic treatment for any of the Respondent's diagnoses, and therefore negligent or incompetent care of the reported conditions in violation of Connecticut General Statutes §20-29. This treatment was outside the scope of practice of a chiropractor and in violation of Connecticut General Statutes §20-28.
7. Dispensing the medication Neythymin was negligent or incompetent as it was not appropriate treatment for the conditions diagnosed by the Respondent and a violation of Connecticut General Statutes §20-29. On and after the diagnosis of the cancerous condition by the Respondent, the dispensing of the Neythymin was outside the scope of practice of a chiropractor in violation of Connecticut General Statutes §20-28.
8. The Respondent's prescription of the substance Neytumorin was inappropriate for the chiropractic conditions he had diagnosed. Therefore the conduct was negligent or incompetent care in violation of Connecticut General Statutes §20-29.
9. The Board concludes the Department failed to satisfy its burden of proof with regard to paragraph 3.d. of the Statement of Charges and dismisses this charge.

10. The Respondent instructed the patient to inject the substances he prescribed and dispensed. The Board finds that this conduct is outside the scope of practice of chiropractics.

ORDER:

Pursuant to its authority under Connecticut General Statutes §19a-17, §20-29 and §20-45, the Board hereby orders the following:

A. The Respondent shall be assessed a civil penalty as follows:

1. One thousand dollars per violation for the four violations reflected in the findings of fact above for a total of four thousand dollars (\$4,000.00);
2. the four thousand dollar (\$4,000.00) penalty shall be paid by certified check payable to Treasurer, State of Connecticut and sent to Lynne Hurley, Division of Medical Quality Assurance, 150 Washington Street, Hartford, CT 06106;
3. the four thousand dollars (\$4,000.00) penalty is due within thirty (30) days of the effective date of the Memorandum of Decision and failure to timely submit the penalty will result in revocation of the Respondent's license.

- B. The Respondent's chiropractic license is suspended for six (6) months.
- C. The SIX (6) month suspension shall be followed by a ONE (1) year probation with the following conditions:
1. The Respondent will successfully complete a pre-approved course in Chiropractic Principles at an accredited school of chiropractic at his own expense;
 2. the Respondent must submit information (i.e. catalog, pamphlet etc.) about the course he intends to take that describes the course to the Board within 60 days of this ORDER. This material should be sent to Celia B. Carroll, Board Liaison, Division of Medical Quality Assurance, 150 Washington Street, Hartford, CT 06106;
 3. he must have written approval of this Board before he takes the course;
 4. he must submit documentary evidence (i.e. certificate of completion) prior to the expiration of the one year probation. This material should be sent to Lynn Hurley, Division of Medical Quality Assurance, 150 Washington Street, Hartford, CT 06106.

CT Board of Chiropractic Examiners

4-4-91

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Marino R. Passero D.C.
by: Marino R. Passero, D.C., Chairperson