

VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE: CHARLES F. WHITEHOUSE, D.C.

ORDER


Pursuant to §§ 9-6.14:12 and 54-318.3 of the Code of Virginia (1950), as amended, a formal hearing was held on February 27, 1980 through March 1, 1980, and on April 2, 1980 through April 4, 1980 in Norfolk, Virginia regarding the license of Charles F. Whitehouse, D.C. to practice chiropractic in the Commonwealth of Virginia. Hearing Officer, Charles E. Poston, Esquire, presided and heard the matter in the absence of the Board. Mr. Poston submitted a Decision containing Findings of Fact and Conclusions of Law to the Board. Neither party filed exceptions to said Decision.

By Notice of August 22, 1980, Dr. Whitehouse was advised that the Executive Committee of the Board, acting in accordance with § 54-290.1 of the Code of Virginia (1950), as amended, would meet on September 11, 1980, in Richmond, Virginia at the offices of the Board to consider the Decision submitted by the Hearing Officer. Dr. Whitehouse appeared at that time without counsel. Dr. Whitehouse and counsel to the Board provided oral argument on the recommendations of the Hearing Officer.

In consideration whereof, and upon due deliberation, the Board, by unanimous vote of the Executive Committee, hereby adopts and incorporates by reference herein, the Findings of Fact and Conclusions of Law of the Hearing Officer in the above-styled matter. Further, based upon said Findings of Fact and


Conclusions of Law and pursuant to a unanimous vote of the Executive Committee in accordance with § 54-290.1 of the Code of Virginia (1950), as amended, it is hereby ORDERED that the license #147 of Charles F. Whitehouse, D.C. to practice chiropractic in the Commonwealth of Virginia be and is hereby REVOKED effective September 11, 1980, pursuant to § 54-318.3 of the Code of Virginia (1950), as amended.

FOR THE BOARD

  
GEORGE J. CARROLL, M.D.  
SECRETARY-TREASURER

Entered: Sept 26, 1980

Subscribed and sworn to before me, a Notary Public, in and for the State at Large, Commonwealth of Virginia, on this 26 day of September, 1980, in the City of Richmond.

  
NOTARY PUBLIC

COMMISSIONED AS PAT BLANTON SMITH

My commission expires: 7-11-83

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BOARD OF MEDICINE**

**August 15, 1980**

**VIRGINIA STATE BOARD OF MEDICINE,**

**Complainant**

**v.**

**CHARLES F. WHITEHOUSE, D. C.,**

**Respondent**

**DECISION**

**The following Decision which contains Findings of Fact,  
Conclusions of Law, and Recommended Sanctions is respectfully  
submitted to the Virginia State Board of Medicine.**

Nichols; Mrs. Charles F. Whitehouse, wife of the Respondent; Anita Jahr; and Doris Peterson. Whitehouse, after having been advised by the Hearing Officer of his right under the Constitution of Virginia and of the United States to refuse to testify on matters that might tend to incriminate him criminally, testified in his own behalf.

The Board offered no case in rebuttal, and Whitehouse renewed his motion to strike the evidence regarding allegations of fraud. After argument, the motion was denied. Whitehouse then moved to strike paragraph 1c of the Statement of Particulars which reads as follows:

c. On or about October 25, 1975, you treated Billy A. Franklin through the employment of "color therapy"...

Because Billy A. Franklin himself testified that he was not treated with color therapy, the Hearing Officer, without objection by the Attorney General, granted the motion to strike paragraph 1c of the Statement of Particulars.

The Hearing Officer then addressed the question of whether or not he should recommend sanctions, if sanctions were found to be warranted. According to the instructions to the Hearing Officer stated in the Board's letter of October 2, 1979, the Hearing Officer was not authorized to recommend sanctions. Virginia Code §§ 9-6.14:12C reads in pertinent part:

Where subordinates preside, they shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by such presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion (emphasis supplied).

If a subordinate (i.e. hearing officer) is to recommend "findings and a decision," it seems obvious that recommended sanctions are included in that statutory mandate.

However, the Board has addressed this specific topic in §6.1 of the Rules and Regulations of the Healing Arts Licensed and Regulated by the Virginia State Board of Medicine, effective March 15, 1979, which reads in pertinent part:

In the event the Board delegates to the hearing officer authority to preside alone in a formal fact-finding proceeding, he shall exercise all powers relating to the conduct of the hearing and shall make a report of his findings of fact and conclusions of law thereupon, including a recommended sanction, to the Board (emphasis supplied).

The principle that an agency is bound by its own regulations is well established. 1A Michie's, Administrative Law § 5. A valid regulation cannot be altered by the promulgating agency unless the procedures prescribed in Virginia Code §§9-6.14:6 are followed. To be sure, public procedures prescribed by that section are not required to change procedural regulations. However, even a procedural regulation cannot be altered except by action of the Board. There having been no change to §6.1 of the Board's Regulations, the Hearing Officer ruled that he was required to recommend sanctions if warranted by the evidence.

Counsel then presented oral argument, the Attorney General arguing before and after the Respondent's argument. The Hearing Officer then established a schedule for submitting briefs pursuant to Virginia Code §§6 9-6.14:12 D and Rule 18. The hearing was then adjourned.

#### Summary of Evidence

Charles F. Whitehouse has practiced chiropractic in the City of Virginia Beach, Virginia, since 1971, under authority of a certificate to practice chiropractic issued by the Virginia State Board of Medicine (Board) under authority of Virginia Code §§ 54-309. Whitehouse attended the University of Arkansas in 1950, but took no degree from that institution.

In 1953, he entered the National College of Chiropractic, but dropped out of that institution in 1956 without taking a degree. In 1965, Whitehouse re-entered the National College of Chiropractic and graduated in 1969. Soon after his graduation, he was licensed to practice chiropractic in the State of Michigan.

In his practice Whitehouse engages in the manipulation of the spine, the provision of ultra sound therapy, and certain types of physiotherapy, all of which properly fall within the scope of the practice of chiropractic in the Commonwealth of Virginia according to the testimony of Henry Dodge, D. C., an expert witness called by the Board. It should be noted that Dr. Dodge served two five-year terms on the Board. He has practiced chiropractic in the City of Richmond for thirty years and is a member of the American Chiropractic Association and the Virginia Chiropractic Association, having served as President and chairman of the Legislative Committee of the latter organization. He is a graduate of the Lincoln Chiropractic College, which has now merged into the National College of Chiropractic. The Hearing Officer, having observed Dr. Dodge's demeanor, and having considered the testimony he offered in light of his experience and education, places great weight on the testimony he offered relating to the standard of practice in the Commonwealth of Virginia.

If Whitehouse's practice were limited to those chiropractic techniques which are mentioned above, this Hearing would have never commenced. However, Whitehouse has included in his practice certain techniques which are not commonly employed by chiropractors in Virginia. Whitehouse employs in his treatment of patients a method of treatment which he describes as "color therapy." Color therapy is administered,

to patients by having them sit on a swivel chair in front of a bank of lights which are affixed to a set of homemade shelves. The lights primarily visible are in cubicle boxes, five of which are on two lower shelves and emit various colors of light. On the top of the shelving apparatus are two so-called black lights which emit ultraviolet light. While sitting on the chair, the patient is exposed to light from the shelves. The light emitted from these cubicle boxes is directed through a series of lenses and filters which are commonly available from scientific supply houses.

Otis L. Updike, Ph.D., Professor of Biomedical Engineering and Chemical Engineering at the University of Virginia was qualified as an expert witness in the field of biomedical engineering, chemical engineering, and medical instrumentation. Dr. Updike testified that he had examined the colored light apparatus and, after examining the lights, the filters, and the lenses used determined that in his opinion, based upon his experience in reading literature in the area of medical engineering the colored light apparatus could not be used for a therapeutic effect in any human disease condition. Robert J. Kennedy, a physicist in the Division of Medical and Scientific Review of the Food and Drug Administration, was qualified as an expert in the evaluation of the efficacy of medical devices in conformity with the Food and Drug Act and, further, as an expert in the field of physics. Mr. Kennedy's testimony was in agreement with that of Dr. Updike.

Whitehouse called two expert witnesses who testified to the use of the colored lights. One of those witnesses was William

A. Tiller, Ph.D., a Professor of Material Science at Stanford University. Dr. Tiller was recognized an expert in the field of physics, material science and biomaterials. Dr. Tiller's testimony was most illuminating, and there is no doubt that his educational credentials and his research ability are well established. However, Dr. Tiller's testimony largely addressed the field of theoretical physics, and his testimony did not in any way show a therapeutic effect or any effect whatsoever of color therapy as practiced by Whitehouse. Whitehouse also called Albert Muller, who was qualified as an expert in the field of material sciences. Mueller testified at some length on the effect of light, but his testimony is not regarded as having cast any doubt on the conclusions of Dr. Updike and Mr. Kennedy concerning the lack of therapeutic value of the use of color therapy as practiced by Whitehouse. It should be noted that no medical doctors were called by Whitehouse, and the chiropractic expert he offered did not establish any beneficial effect of color therapy as practiced by Whitehouse in the treatment of any human condition.

Not only does Whitehouse practice color therapy as discussed above, but he also practices a technique known as "radionics" or, in Whitehouse's term, "etheronics". An essential element of the use of radionics as practiced by Whitehouse is the use of a radionics machine, sometimes called a "computer analyzer". The machine is encased in a cabinet, the front of which is a terminal board with some 45 dials. Each dial is connected in series, and there is an indicator lamp which illuminates when the machine is turned on. The machine is plugged into a normal house current system. The machine also has a



round, highly polished rosewood disk, and a coil in which a photograph or some other item very personal to the patient is placed. The witnesses Updike and Kennedy testified that the only purpose served by the electrical current running through the machine was to illuminate the indicator lamp. The machine is described by Whitehouse as being a medium by which the practitioner may tune his mind to that of his patient. Once this is accomplished, the practitioner may measure vibration patterns of all organs of the human body and from those vibration patterns may diagnosis illnesses that exist or illnesses that are in a "pre-physical stage" which will manifest themselves in the future unless treated. The machine may also be used to establish a vibration pattern from the practitioner's mind to that of the patient for the purpose of treating illnesses. Whitehouse testified that there was no human condition which could not be alleviated by the practice of radionics and color therapy.

Whitehouse also uses what has been described as an ultraviolet wand. The ultraviolet wand, according to Whitehouse, is used to seal a patient's "aura", which Whitehouse describes as a subtle energy field surrounding the human body. The wand is a hand-held instrument which when plugged into a normal house current system, emits a blue light from a glass tube of approximately six inches in length. The wand also makes a buzzing sound.

Whitehouse testified that he first began to develop his theories of radionics and color therapy after reading some of the materials by Edgar Casey, a well-known psychic who lived in the City of Virginia Beach in the early part of the twentieth century. There is in the City of Virginia Beach an organization known as the Association for Research

and Enlightenment (ARE), an organization designed to further the work of Casey. ARE maintains a library which Whitehouse used extensively in developing his philosophy of healing.

Whitehouse's philosophy of healing, according to his own testimony, is largely based on the "radionic" theory. Whitehouse believes the word "radionics" to be a misnomer and prefers the term "etheronic." The Hearing Officer sees no difference between the terms and, for the sake of clarity, will use the term radionics henceforth. Whitehouse defined radionics as follows:

[Radionic] energy is the emanations [sic] from the spiritual forces through the active force of that which makes for matter [sic] being held in its position or in its space of activity. Hence thought as a body, whether an animal or a plant, and is shown as a plant [sic] receiving in its freshness of vigor influences that came from or through the etheric energy in its activity upon the body, in the expression or upon the plant as in its expression. Hence things that are equal to the same thing are equal to each other is basically what he is maintaining, and we maintain with this that everything in this universe is held together by this etheric force. It is from a higher level, a spiritual force, and the mind of man has the capability of utilizing this type of energy as it comes from the psychic down through his mental body and can be expressed out on to the physical plane. (Transcript, page 1023).

Whitehouse, further, testified that his reading of the Casey material introduced him into a world of metaphysics.

Whitehouse defined "aura" as an energy field extending about three feet around the body. It is probably egg shaped, he said, but there is some controversy as to the shape of the aura. It is possible for some persons to see auras with their eyes, and Whitehouse testified that he was able to see auras to some degree. He stated that colors as

manifested in auras of physical beings are keys to the diagnosing of the conditions of those bodies. Whitehouse testified that he first began to develop his theory of color therapy when he was in a dream state and experienced a vision of priests shuffling colored pieces around as if working a jig-saw puzzle. He further stated "when I have a problem, I go into a dream state and ask my subconscious mind to give me information that will help me solve my problem..." (Transcript, page 1042).

Whitehouse also explained his theory of entities, a most essential element in understanding the technique of his practice. Whitehouse stated that there are some fourteen positions on the body where "leaks" can occur in one's aura. These areas are closely related to a "chakra" system. A chakra was described by Whitehouse as being funnel shaped and tying into the nervous system. Discarnate entities often attach themselves to the human body through leaks in the human aura. Whitehouse explained that a discarnate entity is simply the energy field which moves out of the physical body. For all practical purposes, the discarnate entity is intact and carries with it what Whitehouse described as the "etheric duplicate", a duplicate of the physical body in the pre-physical dimension. He states that the discarnate entity may be analogized to the human soul which has failed to cross over into the hereafter or in Whitehouse's term, into the "light dimension." Discarnate entities are attempting to attach themselves to the human body so that they can continue to live in the human dimension. Whitehouse further testified that a discarnate entity, when attached to the human body, could cause the human body to experience the same

physical illnesses and ailments which affected the discarnate entity while it was living in the physical human state.

Whitehouse uses his radionic device to identify the number of leaks existing in his patients' auras and, further, to determine whether any entities are attached to that patient. Once these discarnate entities are located, he normally takes the patient to his color therapy room and uses the colored lights to open the patient's aura so that the discarnate entities can be removed. Once the entities are removed, Whitehouse then seals the patient's aura using the ultraviolet wand. It should be noted that the ultraviolet wand, when turned on, emits a blue light from an elongated glass tube. The ultraviolet wand also emits a buzzing sound, all of which presents a rather dramatic spectacle.

Whitehouse has established an organization known as the Etheronic Research Foundation. He states repeatedly in his testimony that the primary purpose of the Foundation is to treat mentally retarded and learning disabled children with color therapy and radionic techniques, although he himself has no training at all in the diagnosis and treatment of mental illnesses. He states consistently that this treatment is experimental in nature and that all persons who subject themselves or members of their families to treatment are fully advised of the experimental nature of the treatment. Whitehouse also testified, as did several witnesses, that he does charge other patients on occasion for treatments with color therapy and radionics. He states that the charges to those patients, however, are used to subsidize the Etheronic Research Foundation. Significantly, Whitehouse admits that there is no difference between himself and the Etheronic Research Foundation, since he is the organizer and primary functionary of the Etheronic Research Foundation.

The Hearing Officer places absolutely no significance in the fact that the Etheronic Research Foundation is organized independently of the private chiropractic practice of Whitehouse, it being the Hearing Officer's express finding of fact that the difference, if any, is one of form and none of substance. Whitehouse's patients were not advised in writing of the experimental nature of radionics and color light treatments, nor was there any advice given to the patients in writing upon which a patient would give a voluntary consent described in Virginia Code §§ 37.1-234(6).

In treating patients who came to him for chiropractic adjustments, Whitehouse frequently introduced them to color therapy and radionic treatments. Testimony of several witnesses indicated that after Whitehouse had given them "adjustments," he would take their picture using a Poloroid camera. No patient testified that Whitehouse asked permission before taking the picture. He would then explain radionic and color therapy treatments to the patient and often would show the patient the radionic device. Often the patient would then agree to being diagnosed by the device and later submit to treatment. On many of the bills or other communications sent to patients by Whitehouse after evaluating them on the radionic device, he would write the statement "no cancer vibrations noted," or the like. Whitehouse often advised his patients to take vitamins, and, routinely told them to purchase vitamins and bring them to him so that he could tell them what dosage should be taken.

Further specific comment on the evidence is contained in the following Discussion of Issues.

### Discussion of Issues Presented

The evidence presents four major issues, each of which was framed by counsel in their briefs:

1. Has Whitehouse held himself out as being willing to treat human ailments under a system or school of practice other than that for which he holds a license granted by the Board?

2. Has Whitehouse been grossly ignorant or careless in his practice or has he committed gross malpractice?

3. Has Whitehouse committed fraud or deceit in his practice and has he performed dishonorable, unethical, unprofessional or unconscionable conduct likely to deceive, defraud or harm the public?

4. Has Whitehouse caused publication of statements suggesting cure or treatment of diseases by a secret method?

The Attorney General argues strongly that the use of "color therapy" and the radionic device is outside the scope of the practice of chiropractic as defined in Virginia § 54-273(6). That section reads as follows:

"Practice of chirporactic" means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy. It does not include the use of surgery, obstetrics, osteopathy, nor the administration nor prescribing of any drugs, medicines, serums or vaccines."

Whitehouse, in his memorandum, urges a liberal and broad construction of Virginia Code § 54-273(6) and asserts that the General Assembly intended the scope of chiropractic to be broad. According to Whitehouse, the definition consists of two separate and distinct parts, each of which is independent of the other: (1) adjustment of the

spinal vertebrae; and (2) assisting nature to normalize the transmission of nerve energy. The use of color therapy and radionics, he says, assists nature in normalizing nerve energy transmission.

As is so often the case in quasi-judicial administrative proceedings, the question posed is one of first impression in Virginia. The Attorney General offers a review of the legislative history of the statute and concludes that the comma in the first sentence of the statute was inserted merely for the purpose of breaking up the sentence. Whitehouse agrees and explains that the comma is essential to separate two independent clauses. Neither position is impressive, for punctuation is an extremely weak standard by which to interpret a statute. 2A Sutherland Statutory Construction, 4th Ed., § 47.15.

Dr. Henry Dodge, a chiropractor of thirty years experience in Virginia whose credentials are most impressive, testified that the standard of chiropractic practice in Virginia considers the adjustment of the spinal vertebrae to be the means by which the transmission of nerve energy is normalized. Testimony of Dr. Paul R. Thompson, a chiropractor called by Whitehouse, did not weaken the force of Dr. Dodge's testimony. However, the proper construction of the statute does not rise or fall on the testimony of either of these witnesses. Various references have defined chiropractic, and the great majority of them see the manipulation of the spinal column as the primary focus of chiropractic. Joyner v. State, 179 So. 573, 575 (Miss., 1938), Walkenhorst v. Kesler, 67 P.2d 654, 662 (Utah, 1937) State v. Boston, 284 N.W. 143, 144 (Iowa, 1939), Chiropractic Association of New York, Inc. v. Hilleboe, 228 N.Y. S.2d 358, 360, (1962), State Board of Medical Examiners v. McHenry, 69 So.2d 592, 596 (La., 1953).

Bauer v. State, 227 S.E. 2d. 195 (S. C., 1976). The following definition of chiropractic appears to be consistent with the credible testimony of expert witnesses and with the foregoing citations:

A system of diagnosis and treatment of disease based on the belief that all diseases are caused through some fault of the nerves. The fault, it is said, may be due to an abnormal function of the nerves for which no other structures or tissues in the body are responsible, but more often the abnormality is explained by the believers of the system on the basis of pressures from nearby tissues, organs, and especially, bones. The most incriminated bone is the spinal column, and treatment, therefore, consists almost entirely of manipulating the spinal bones or vertebrae with the view of eliminating these pressures upon the nerves....  
1 Schmidt, Attorneys' Dictionary of Medicine, 1978 ed.

The definition of chiropractic found at 2 Corpus Juris 758 is in substantial agreement.

Virginia Code § 54-274(3) which defines the practice of medicine or osteopathy is most instructive. That definition reads:

"Practice of medicine or osteopathy" means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method."

When the definition of chiropractic given in the same statute is compared to that of medicine or osteopathy, it is impossible to escape the conclusion that the General Assembly intended the practice of chiropractic to be limited indeed. The Attorney General is correct in asserting that the phrase "and assisting nature for the purpose of normalizing the transmission of nerve energy" must be read in conjunction with the preceding phrase relating to the adjustment of the spinal vertebrae.



It is also appropriate to note that Whitehouse himself appears to believe his color therapy and radionics practice is separate from his chiropractic practice. His testimony on that point is very clear when he described his practice:

Our practice is set up, it is sort of a two-way system. We have people that come in strictly for chiropractic and that is all they get. After a time if I see that some of the strictly chiropractic techniques and system is not doing what it should do, it is on those occasions when I confer with the patient and give them an option either into the research aspect, and the majority of people that we treat on the research is at a non-cost basis, especially people with such things as cancer, mental problems, things of that nature. (Transcript, page 1155).

The evidence shows that Whitehouse's use of color therapy and of the radionics device does not relate to the adjustment of the spinal vertebrae. Furthermore, the credible evidence shows that the use of color therapy and of the radionics device has no relationship to normalizing the transmission of nerve energy. It must be concluded under either proposed interpretation of the statutory definition, that Whitehouse's use of color therapy in the treatment of patients is indeed outside the scope of the practice of chiropractic as defined in Virginia Code § 54-273(6).

Whitehouse, by his own admission, advertised, professed, and held himself out as being able and willing to treat human ailments by the use of color therapy. He purchased newspaper advertisements directed to mentally retarded children, and he freely granted television interviews during which he held himself out as being willing and able to treat human ailments by color therapy and radionics. He is, therefore,

guilty of unprofessional conduct as defined in Virginia Code § 54-317(6) which provides that one is guilty of unprofessional conduct if he:

Advertises or professes or holds himself out as being able and willing to treat human ailments under a system or school of practice other than that for which he holds a certificate or license granted by the Board.

Although the purpose of the proceeding was not to determine the efficacy of color therapy or radionics, it would appear that if those treatment techniques were beneficial for the treatment of the human ailments as claimed by Whitehouse, he could not be found to have made misleading, false, and fraudulent statements. Therefore, an examination of his claims and of the validity of those treatment techniques is essential to a resolution of this matter.

The uncontradicted evidence shows that Whitehouse made expansive claims for the effectiveness of color therapy. He testified that there is nothing which cannot be treated with color, and further, that "[t]here is absolutely no condition that you cannot improve with color." (Transcript, page 1210). He likewise ascribes almost limitless diagnostic and therapeutic qualities to his radionic device. It can be used, he claims, to diagnose subluxations, cancer, diabetes, and cirrhosis; to analyze the brain; to treat severe burns; to evaluate the conditions of all organs of the body; and for many other uses. Whitehouse has especially concentrated on the treatment of children who are mentally retarded or who have learning disabilities. He frequently gives information to patients concerning the absence or presence of cancer and even treats cancer in some patients. Treatment by radionics and color therapy, he says, is a "research aspect" of his practice.

Whitehouse, who has had no training in the diagnosis and

treatment of mental retardation, elected to specialize in the alleviation of the problems of the mentally retarded and children with learning disabilities. He advertised in the newspaper that he would treat such patients free. Whitehouse specifically told David Oller that he could treat and cure conditions in the mentally ill (Transcript, page 29). He told Mrs. Catherine Perry that through the treatments the brain cells of her mentally retarded son, Jack, Jr., would be regenerated (Transcript, page 350, 351).

Jack Perry, Jr., was seen in April, 1971, by James E. Etheridge, Jr., M.D., who is Chairman of the Department of Neurology at Eastern Virginia Medical School, Chief of the Neurological Section at Children's Hospital of the King's Daughters, and consultant neurologist for St. Mary's Infant Home and the Southeastern Training Center. He is certified by the American Board of Pediatrics, by the American Board of Psychiatry and Neurology in neurology, and by the American Board of Psychiatry with special competent in child neurology.

When Dr. Etheridge first examined Jack, Jr., the child was three years old. Dr. Etheridge offered the following diagnosis which was made in 1971:

Well, we diagnosed him as being mentally subnormal, having psycho motor delay in his development, and the hypotonia at this age usually is a reflection when there is no evidence of peripheral nerve or muscle disease of the central nervous system of brain disease that will later become apastic rather than just sort of floppy thin.

He was incredibly hyperactive, extremely hyperactive. (Transcript, page 361).

Dr. Etheridge saw Jack, Jr., again in 1973 and was convinced that the child was indeed retarded. (Transcript, page 379). In February, 1980, Dr. Etheridge examined Jack, Jr., once more and found that he had progressed since 1971 as anticipated for a child with his degree of mental retardation. (Transcript, page 369). Jack, Jr., had also experienced color therapy and radionics treatment from Whitehouse from March through August, 1975.

Jack, Jr.'s case is of great importance for it is the only mentally retarded patient presented who had been examined by an eminently qualified physician before and after his treatment by Whitehouse. He showed no unexpected improvement from 1971 until 1980, even though he had been treated by Whitehouse's techniques. Further, although Whitehouse had told Mrs. Perry that Jack, Jr.'s brain cells would be regenerated, Dr. Etheridge, who has had extensive training and experience in diagnosing and treating neurological problems in children, testified unequivocally that brain cells cannot be regenerated. Whitehouse relies on the testimony of Dr. Tiller to dispute this point; but although Dr. Tiller's testimony about theoretical physics and subtle energy fields was fascinating, it was not related at all to Whitehouse's practice.

Whitehouse, in his effort to develop a practice with mentally retarded children, contacted some federal governmental agency, probably the President's Committee on Mental Retardation, to demonstrate his method of treatment by color therapy and radionics. As a result, Mrs. Patricia Byrne of the Southeastern Virginia Training Center contacted him to investigate his treatment program. Whitehouse explained his

philosophy and methods of treatment in some detail and then asked her to give him pictures of retarded children for whom no further progress was likely. He proposed to treat the children with the radionics instrument so that the effect of his treatment techniques could be documented. Mrs. Byrne suggested that a better approach would be a "blind study." She proposed giving Whitehouse pictures of several children, some of whom would be normal, others with diagnosed physical problems, and others with diagnosed mental problems. It was thought that Whitehouse's radionic diagnoses of these children could then be evaluated by comparison with readily available medical reports. Whitehouse refused to participate in this proposed blind study.

Whitehouse consistently asserts that treatment by radionics and color therapy is a "research aspect" of his practice. Indeed, he has established the Etheronic Research Foundation to further his work in those fields. Whitehouse agrees that he and the Foundation are, in fact, one and the same. It is likewise freely admitted that the research involves human research. However, there is absolutely no evidence showing that Whitehouse even attempted to comply with Title 37.1, Chapter 13 of the Virginia Code which prescribes the methods by which human research may be conducted (Virginia Code § 37.1-234, et seq). He has not:

1. Provided the Information to his patients upon which they might give their voluntary informed consent to treatment (Virginia Code § 37.1-234 (6)).
2. Obtained a written memorandum of the voluntary informed consent from the patients or their legally authorized representatives (Virginia Code § 37.1-235).

3. Affiliated himself with any institution or agency having a research review committee as required in Virginia Code § 37.1-236.

There is no excuse for such an extensive research program in which according to his own testimony, Whitehouse treated at least 2000 patients, without having even attempted to comply with the Human Research Act.

Whitehouse has not taken the most basic steps to evaluate effectively his techniques. He refuses to participate in blind studies. He does not attempt to compare the progress of his patients with that of others afflicted with similar maladies. He does not attempt to correspond with medical doctors who may have treated or examined his patients. In short, he has established a technique that can only be evaluated in his own terms by his own standards.

Whitehouse cites Meadows v. Meadows, 143 Va. 98, for the proposition that fraud consists of fraudulent representations with an intent to deceive. He further urges that damages must result from the fraudulent representations. Whitehouse's position is conceived to be an accurate statement of the law. However, the existence of fraud, which is a question of fact, 37 Am. Jur. 2d. Fraud and Deceit, § 19, need not be proved by direct evidence. Because of the very nature of fraud, it is often proved by circumstantial evidence:

The circumstances attending and following a transaction are often of such character as to leave not even a shadow of a doubt as to the real object and motive of the parties engaged in it. Experience attests that in a majority of cases, fraud can only be established by circumstances. The motives and intentions of the parties can only be judged of by their actions and the nature and character of the transaction which they are engaged. They often furnish

the more conclusive guidance than the most direct testimony. Strickland v. Ayers, 159 Va. 311 (1932).

The authorities are in agreement that the physician-patient relationship is a fiduciary relationship. It is certainly one of the most personal of all relationships, for the patient entrusts his health and at times his very life to one in whom great trust and confidence is placed by reason of the physician's education, knowledge, and ability. Whitehouse's patients justifiably relied on his diagnoses and treatment recommendations. He held himself out as being able to diagnose and treat any human condition or ailment. The overwhelming evidence shows that color therapy and radionics as practiced by Whitehouse is of no therapeutic value in the treatment of human illnesses. It is concluded that Whitehouse knew his representations concerning the efficacy of color therapy and radionics to be false.

However, Whitehouse asserts that if there are fraudulent misrepresentations, damage must result to sustain an action in fraud. This is not a suit for damages, and perhaps that element is not essential to a finding of fraud under Virginia Code § 54-316 (1). Nevertheless there were damages, damages much more frightening than loss of money or property. Whitehouse has been a vendor of false hope to those desperately in search of help. He has very possibly delayed ill persons from seeking competent medical care when time may have been of the very essence to their survival.

There is, further, no merit to Whitehouse's assertion that no harm resulted from his treatment techniques. This very question arose in Drown v. United States, 198 F.2d 999 (9th Cir., 1952), cer. den. 344

U. S. 920. That case concerned prosecution of a chiropractor under the Federal Food, Drug, and Cosmetic Act for false and misleading labelling of radionics devices. To Drown's argument that the use of her instruments could not harm any human being, the Court replied:

While the instruments may be harmless in themselves, their danger lies in the possibility that "ignorant and gullible persons are likely to rely upon them instead of seeking professional advice for conditions they are represented to relieve or prevent." (cites omitted) In this broader sense [Drown's] instruments cannot be considered harmless. Id. at 1006.

There is, then, no question but that Whitehouse has been guilty of fraud in the practice of chiropractic.

Gross malpractice as used in Virginia Code § 54-316 (4) is, in essence, gross negligence. Malpractice is simply negligence in the practice of a profession. The Supreme Court of Virginia defines gross negligence as

...that degree of negligence which shows an utter disregard of prudence, amounting to complete neglect of safety of another, such as to be shocking to reasonable man. Duncan v. Cox, 209 Va. 649 (1969), citing Rigney v. Neuman, 203 Va. 822.

Gross negligence is akin to fraud, and its existence is a question of fact. Dawson v. Fusco's Auto Service, 178, Va. 350 (1941).

Whitehouse's absolute failure to observe the minimal precautions for his patients' safety in the conduct of the "research aspect" of his practice is in itself gross malpractice. The absolute worthlessness of color therapy and radionics as practiced by Whitehouse leads to the inescapable conclusion that he has committed gross malpractice.

The Attorney General also states that Whitehouse has caused publication of statements suggesting cure and treatment by a secret



method. In support of his position, the Attorney General urges that because only Whitehouse is familiar with his procedures, they are, ipso facto, secret. That is an untenable position. Whitehouse has given wide dissemination to his theories and has even trained others in his techniques. The fact that the techniques are fraudulent and misleading does not make them secret. Both the Attorney General and Whitehouse cite Stammer v. Board of Regents, 39 N.E. 2d 913 (N.Y., 1942) in support of their positions. That case defines "secret" as meaning "something intentionally and studiously concealed." Id. at 916. The evidence does not support the Attorney General's position on this point.

#### FINDINGS OF FACT

The evidence, as judged by the clear and convincing standard, leads to the following findings of fact:

1. Charles F. Whitehouse, D. C., is and at all times pertinent to this matter was licensed by the Board to practice chiropractic in the Commonwealth.

2. Whitehouse has utilized in his practice of chiropractic the shining of different colored lights on his patients for the purposes of removing discarnate entities from their "auras," sealed the patients' auras by means of waving an "ultraviolet wand" over their bodies without touching the skin, and then shining the same different colored lights on the patients.

3. Whitehouse has stated that the purpose of this procedure is to remove these entities or spirits from the person in order that their "energy" would not be drained away by the entities.

4. Whitehouse has stated to various patients and to the

public at large that by utilization of the procedure known as color therapy, there is absolutely no human condition that cannot be improved.

5. Whitehouse stated to Mrs. Catherine Perry that through the utilization of color therapy the brain cells of her mentally retarded son would be regenerated.

6. It is not possible to regenerate human brain cells.

7. Whitehouse has utilized in his practice devices which have been known variously as radionics or etheronics devices or a computer analyzer [hereinafter referred to as a radionics device].

8. Whitehouse has utilized the radionics devices as both a diagnostic and therapeutic tool in his practice.

9. Whitehouse has claimed that the radionics devices when operated by him are capable of picking up the "energy fields" from the pictures of patients placed in the device, measuring the "vibratory rates" of every organ, gland and tissue of the patient, and transmitting "mind energy" to the various organs of the patient in need.

10. Whitehouse has claimed that through utilization of radionics devices in his practice of chiropractic he is able to diagnose and treat virtually any human disease condition or ailment, and has specifically utilized said devices in treatment of mental retardation in children and in diagnosis and treatment of cancer.

11. Whitehouse has caused his claims regarding his radionics devices and color therapy to be published and/or broadcast in various newspapers and on television stations throughout the Tidewater region of Virginia.

12. The radionics devices and color therapy lights of Whitehouse have been examined by qualified experts, and there is no reasonable

basis for believing that said devices and lights are capable of performing the therapeutic effects claimed by Whitehouse.

13. Whitehouse has ignored the commonly accepted scientific method in his research program to establish or refute his theories before experimenting with those theories on his patients.

14. Whitehouse has not attempted to comply with the requirements of the Human Research Act (Virginia Code § 37.1-234, et. seq.).

15. Whitehouse has refused to engage in a "blind" research study proposed by a representative of the Southeastern Virginia Training Center affiliated with the Department of Mental Health and Mental Retardation of Virginia designed to test the validity of his claims.

16. Whitehouse, through the diagnosis and treatment of human ailments by utilization of color therapy and radionics devices, has exceeded the scope of his license to practice chiropractic in violation of §§ 54-274, 54-316 (3), 54-317 (6), and (16) of the Code of Virginia (1950), as amended.

17. Whitehouse, through the diagnosis and treatment of human ailments by utilization of color therapy and radionics devices in conjunction with his claims as to their therapeutic effect, is engaged in fraud in the practice of chiropractic, and which constitutes unethical, unprofessional and unconscionable conduct and further is likely to deceive, defraud or harm the public in violation of §§ 54-316 (1); 54-316 (3); and 54-317(14) of the Code of Virginia (1950), as amended.

18. Whitehouse, by utilization of color therapy and radionics devices, engaged in experimentation on his patients for diagnosis and treatment of cancer, mental retardation and other human disease conditions

without any reasonable basis for believing that said treatment would have any therapeutic effect, and is guilty of gross carelessness and gross malpractice in the practice of chiropractic in violation of §§ 54-316(4) of the Code of Virginia (1950), as amended.

19. Whitehouse has NOT claimed to treat diseases by a secret method.

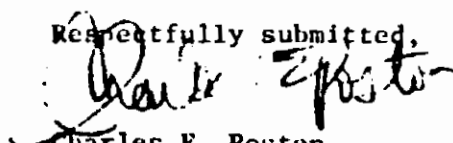
20. That Whitehouse's use of color therapy and radionics in the treatment of his patients constitutes an obvious and immediate danger to the public health and safety.

#### RECOMMENDED SANCTIONS

While any one of the violations of statute of which Whitehouse has been found guilty warrants revocation of his certificate, the cumulative effect of these violations demands revocation. It is, therefore, respectfully recommended that Whitehouse's certificate to practice chiropractic in the Commonwealth of Virginia be revoked forthwith. The welfare of the public requires no less.

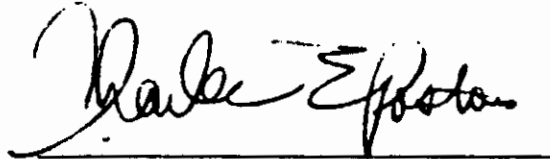
It is further recommended that the Board meet promptly to consider this matter and that Whitehouse be advised of his right to appeal the Board's decision, if adverse to him, to the Circuit Court of the City of Norfolk. It should be noted that venue was changed to Norfolk by agreement of the parties on October 30, 1979, pursuant to Virginia Code §§ 9-6.14:5.

Respectfully submitted,

  
Charles E. Poston  
HEARING OFFICER

CERTIFICATE OF SERVICE

I certify that pursuant to Virginia Code §§ 9-6.14:12 E and Rule 20 of the Agency Rules of Practice, I have on August 14, 1980, delivered a true copy of this Decision to Gregory M. Luce, Assistant Attorney General, Suite 1100 Madison Building, 109 Governor Street, Richmond, Virginia, 23219, and to William P. Williams, Esquire, 210 Atlantic National Bank Building, 415 St. Paul's Boulevard, Norfolk, Virginia, 23510.

A handwritten signature in cursive script, appearing to read "Charles E. Poston", written over a horizontal line.

Charles E. Poston