

**STATE OF FLORIDA  
BOARD OF CHIROPRACTIC MEDICINE**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**vs.**

**CASE NOS. 01-04888 & 01-07796**

**JAMES B. ADAIR,**

**Respondent.**

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**FINAL ORDER**

THIS MATTER came before the Board of Chiropractic Medicine (Board) at a duly-noticed public meeting on April 25, 2003, in Orlando, Florida, for a consolidated hearing not involving disputed issues of material fact pursuant to section 120.569, and subsection 120.57(2), Florida Statutes. Petitioner filed the attached Administrative Complaints against Respondent, in accordance with section 456.073, Florida Statutes. Assistant Attorney General Christine Thorson Messana represented the Petitioner. Respondent was present.

After hearing from the parties and a complete review of the record in this matter, the Board made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The Board adopted the statements of fact set forth in both Administrative Complaints as its findings of fact.

## CONCLUSIONS OF LAW

2. The Board adopted the conclusions of law as stated in the Administrative Complaints, which constitute violations of the act regulating the profession.

WHEREFORE,

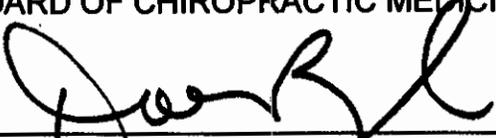
IT IS HEREBY ORDERED AND ADJUDGED that the appropriate penalty for violations of paragraphs 460.413(1) (j), (n), (t), and (x) Florida Statutes, is: 1) Respondent's license shall be placed on probation for a one year period during which the practice of Respondent shall be monitored by a Board approved monitor once every two months and the monitor shall review up to 10 patient files during each visit. The probation shall be tolled during any period over 45 days when Respondent is not seeing patients or is out of state and Respondent shall notify the monitor of such circumstances. Should the monitor's reports to the Board be less than favorable, the Board may extend the period of probation; 2) Within 30 days of the filing of this order, Respondent shall initiate contact with the Professionals Resource Network (PRN) for an evaluation. Respondent shall then comply with any PRN recommendations which may include the signing of a PRN monitoring contract; 3) Within the period of probation, Respondent shall complete 10 hours of continuing education with regard to record keeping and the laws and rules that govern the profession. These hours are in addition to those required to meet the continuing education licensure renewal requirements; 4) Respondent shall pay a fine of \$1,000 and administrative costs of \$4,403 and \$1,839 with the total \$7,242 to be paid in four equal quarterly payments, or sooner, within one year of the filing of this order. Payments shall be made to the Department of Health, Division of MQA,

Board of Chiropractic Medicine, BMS/Client Services Unit, Compliance Officer, P.O. Box 6320, Tallahassee, Florida 32314-6320.

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

DONE AND ORDERED this 8<sup>th</sup> day of May, 2003.

BOARD OF CHIROPRACTIC MEDICINE

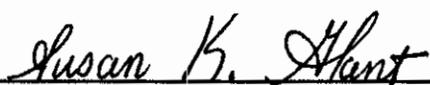
  
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Joe Baker, Jr., Board Executive Director for  
Wayne S. Wolfson, D.C., Board Chair

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.63, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. mail to James B. Adair, D.C., 106 Forest Avenue, Altamonte Springs, Florida 32701; and by interoffice mail to Assistant Attorney General Christine Thorson Messana, Attorney General's Office, The Capitol, PL -01, Tallahassee, Florida 32399-1050, and Donna Erlich, Assistant General Counsel, Department of Health, Prather Building, Tallahassee, Florida, this 9<sup>th</sup> day of May, 2003.

  
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STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

Vs.

Case no. 2001-04888

JAMES ADAIR, D.C.,

Respondent.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, hereinafter referred to as "Petitioner," files this Administrative Complaint before the Board of Chiropractic Medicine against JAMES ADAIR, hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Chapter 456 (formerly Chapter 455, Part II, Florida Statutes), and Chapter 460, Florida Statutes.
2. Respondent is, and has been at all times material hereto, a licensed chiropractor in the State of Florida, having been issued license number CH 0005075.
3. Respondent's last known address is 106 Forest Ave., Altamonte Springs, FL 32701.
4. On or about September 9, 1999, Patient B.G. presented to Respondent for evaluation and treatment of symptoms and/or injuries related to an automobile accident that occurred on or about July 31, 1999.
5. Patient B.G. continued treatment with Respondent until on or about November 11, 2000.

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6. The number of office visits and the fees charged were excessive based on the condition of Patient B.G.

7. On or about September 8, 1999, Patient R.D. presented to Respondent for evaluation and treatment of symptoms and/or injuries related to an automobile accident which occurred on or about July 31, 1999.

8. Patient R.D. continued treatment with Respondent until on or about September 6, 2000.

9. The number of office visits and the fees charged were excessive based on the condition of Patient R.D.

10. During the course of Respondent's treatment of Patient B.G. and R.D., Respondent used a Computronix AcuPro II System for evaluation Patient B.G.'s and Patient R.D.'s condition.

11. The Computronix AcuPro II System is an experimental device that is not approved for use as a diagnostic tool under the Food and Drug Administration (FDA).

12. The Computronix AcuPro II System is an electroacupuncture device that delivers a small amount of current to acupuncture points in the body and records the body's response.

13. The Computronix AcuPro II System is an acupuncture device.

14. Utilizing the Computronix AcuPro II System in diagnosis and treatment, whether as an experimental device or not, is practicing acupuncture.

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15. Acupuncture within the practice of chiropractic medicine is a modality of diagnosing and treating disease, pain, or physical conditions by stimulating various points on or within the body as defined by Rule 64B2-17.003, Florida Administrative Code (amended 6-7-00).

16. Prior to any licensed chiropractic physician engaging in acupuncture, such physician must be certified by the Board of Chiropractic Medicine according to Section 460.403(8)(f), Florida Statutes (2000) which states in part: "A chiropractic physician may not use acupuncture until certified by the board."

17. Respondent is not certified by the Board of Chiropractic Medicine to practice acupuncture.

18. Respondent exercised influence over Patient B.G. for financial gain in that Respondent used excessive office visits and excessive fees not warranted by the condition of Patient B.G.

19. Respondent exercised influence over Patient R.D. for financial gain in that Respondent used excessive office visits and excessive fees not warranted by the condition of Patient R.D.

20. Respondent practiced or offered to practice beyond the scope permitted by law in that Respondent used an experimental acupuncture device and Respondent is not certified to practice acupuncture.

**COUNT ONE**

21. Petitioner realleges paragraphs one (1) through twenty (20) as if fully set forth herein this Count One.

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22. During the care of Patient B.G. and Patient R.D., Respondent ordered excessive tests and charged excessive fees not warranted by the condition of Patient B.G. and Patient R.D.

23. Based on the foregoing, Respondent violated Section 460.413(1)(n), Florida Statutes (1999), exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or a third party which shall include, but not be limited to, the promotion or sale of services, goods or appliances, or drugs.

### COUNT TWO

24. Petitioner realleges paragraphs one (1) through twenty (20) as if fully alleged herein this Count Two.

25. Respondent engaged in the practice of acupuncture while not certified to practice acupuncture according to the laws and rules that govern to practice Chiropractic Medicine.

26. Based on the foregoing, Respondent violated Section 460.413(1)(t), Florida Statutes, 1999, practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform.

### COSTS

27. Petitioner has incurred costs related to the investigation and prosecution of this matter.

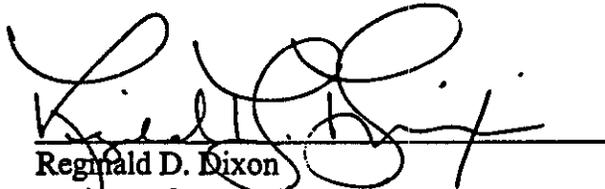
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28. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter on a respondent in addition to any other discipline imposed.

WHEREFORE, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order assessing administrative costs related to the investigation and prosecution of this case as provided for in Section 456.072(4), Florida Statutes, in addition to or as well as imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action and/or any other relief that the Board deems appropriate.

Signed this 19<sup>th</sup> day of December, 2002.

John O. Agwunobi, MD, MBA  
Secretary, Department of Health



Reginald D. Dixon  
Assistant General Counsel  
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DOH, Prosecution Services Unit  
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RDD/rdd

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK *Vicki R. Kenon*  
DATE 12/19/02

DOM: February 28, 2002  
Reconsideration: October 31, 2002

PCP Members: Per man / Glisson

Reviewed and approved by: DKK (initials) 12/19/02 (date)

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH

Petitioner

vs.

CASE NUMBER: 2001-07796

JAMES ADAIR, D.C.,

Respondent.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, hereinafter referred to as "Petitioner", files this Administrative Complaint before the Board of Chiropractic Medicine against JAMES ADAIR hereinafter referred to as "Respondent", and alleges:

1. Petitioner is the state agency charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Chapter 456 (formerly Chapter 455, Part II, Florida Statutes) and Chapter 460, Florida Statutes. Pursuant to the authority of Section 20.43(3)(g), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards.

2. Respondent is, and has been at all times material hereto, a licensed chiropractor in the State of Florida, having been issued license number CH 0005075. Respondent's last known address is 3765 N. John Young Parkway, Orlando, Florida 32804.

3. Patient T.K., a 30 year old female, presented to Respondent for treatment following an automobile accident that occurred on or about March 26, 1997.

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4. Respondent treated Patient T.K. from on or about March 31, 1997 until about April of 1998, for injuries sustained as a result of the automobile accident.

5. Respondent conducted an examination of Patient T.K. by use of a computerized device called a Computronix Acupro II System (hereinafter referred to as "Acupro").

6. Acupro is a computer assisted experimental device that collects information on skin resistance by applying a probe to the skin that administers a small amount of pressure and electrical current. The data collected is represented by Respondent to provide information about the functional and energetic status of the body.

7. Respondent asked patients to sign a consent form for participation in research with the Acupro system. The consent explains that Acupro is never to be used as a means of diagnosis, but rather in conjunction with established diagnostic procedures.

8. On or about March 31, 1997, Respondent examined Patient T.K. with the use of the Acupro and billed Patient T.K. for an examination. No physical examination was conducted on Patient T.K. on that date.

9. Respondent billed Patient T.K., and her insurance, for services performed on dates when Respondent did not see Patient T.K.

10. Respondent dictated two different reports for a neurothermography examination conducted on June 26, 1997 that indicated two entirely different results. Respondent did not see Patient T.K. on June 26, 1997.

11. On or about June 13, 2001, Patient T. K. requested a copy of her medical records; no records have been provided to Patient T.K.

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12. Respondent used an experimental device as a substitution for a physical examination.

13. Respondent billed for services and treatments that were never performed and for dates when Patient T.K. was not in the office to see Respondent.

14. Respondent falsified at least one, if not both, neurothermography examination reports. Two reports for the same examination date indicate entirely different results.

15. Respondent failed to provide medical records to Patient T.K. as requested and as required by Section 456.057(4) Florida Statutes (2001), which states:

Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information.

#### COUNT ONE

16. Petitioner realleges paragraphs one (1) through fifteen (15) as if fully set forth herein this Count One.

17. Respondent billed Patient T.K.'s insurance for physical examinations and treatments that were never performed on Patient T.K.

18. Based on the foregoing, Respondent violated Section 460.413(1)(x), Florida Statutes (1997) by submitting to any third-party payor a claim for a service or treatment which was not actually provided to a patient.

#### COUNT TWO

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19. Petitioner realleges paragraphs one (1) through fifteen (15) and paragraph seventeen (17) as if fully alleged herein this Count Two.

20. Respondent falsified a neurothermography report and falsified insurance claim forms in order to receive reimbursement for services that were never provided.

21. Based on the foregoing, Respondent violated Section 460.413(1)(j), Florida Statutes (1997) making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity of a licensed chiropractic physician.

### COUNT THREE

22. Petitioner realleges paragraphs one (1) through fifteen (15) and paragraphs seventeen (17) and twenty (20) as if fully set forth herein this Count Three.

23. Respondent exercised influence for financial gain on Patient T.K. by submitting claims for treatments that were never provided, and by utilizing an experimental device in place of an actual physical examination.

24. Based on the foregoing, Respondent violated Section 460.413(1)(n), Florida Statutes (1997), exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods or appliances, or drugs.

### COUNT FOUR

25. Petitioner realleges paragraphs one (1) through fifteen (15) as if fully set forth herein this Count Four.

26. Respondent failed to provide medical records in a timely fashion as requested by Patient T.K.

27. Based on the foregoing, Respondent violated Section 460.413(1)(ff), Florida Statutes (2001) by violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto specifically by:

a) violating Section 456.057(4), Florida Statutes (2001), which states:

Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information.

b) violating Rule 54B2-17.0055, Florida Administrative Code, which states

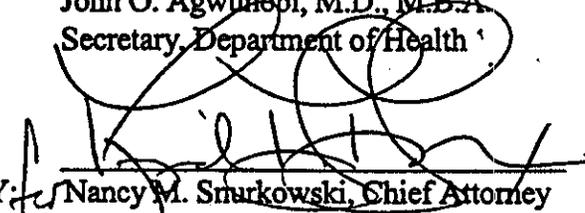
(1) Any person licensed pursuant to Chapter 460, F.S., is required to release copies of patient medical records upon request of the patient or his legal representative.

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

SIGNED this 25<sup>th</sup> day of March, 2002.

John O. Agwunobi, M.D., M.B.A.  
Secretary, Department of Health

BY:   
Nancy M. Smurkowski, Chief Attorney  
Agency for Health Care Administration  
Office of General Counsel- MQA  
Practitioner Regulation-Legal

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Vicki R. Keran  
DATE 4/1/02

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Case No. CH 2001-04888 (Admir)  
PCP: Perman, Glisson  
DATE: February 28, 2002

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