

Difficult Disciplinary Decisions

Salvatore LaRusso, D.C., Chair
Florida Board of Chiropractic Medicine



DOH vs Scott Drizin, D.C.

April 2006 Board Agenda

Administrative complaint (A/C) alleged:

- Respondent failed to practice chiropractic care with level of care, skill and treatment recognized by a reasonably prudent chiropractic physician
- Required patient to disrobe and pose for “biomechanical profile” photographs
- Failed to obtain written consent for photographs.



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Administrative Law Judge (ALJ) concluded that:

- Taking of photographs had no specific diagnostic or therapeutic value
- Recommended a \$2,500 fine



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Defense counsel objected to:

- Testimony of department's expert
 - Claimed that DC was not qualified as an expert witness
 - ALJ accepted the testimony and board overruled objection



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Defense counsel objected to:

- A/C alleging inducing or attempting to induce the patient to engage in sexual activity
 - Board overruled this objection



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Defense counsel objected, claimed:

- Patient's informed consent form should be considered to cover all actions performed by his client
 - indicated that his expert witness opined pictures were covered by informed consent
 - the board overruled this objection



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- In accepting the ALJ's conclusions of law, the board did alter the phrase "sexual relationship" to "sexual activity"
- Board voted to reject the ALJ's recommended penalty
 - Concerned about an evaluation being done thru Professional Resource Center (PRN)



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Final order:

- Reprimand
- \$2,500 fine
- 2 year probationary period
- Laws & rules affidavit
- PRN evaluation
- Payment of costs totaling \$6,655

DOH vs Leonard Kronen, D.C. – April 2007 Board Agenda

A/C alleged:

- DC failed to keep legibly written chiropractic medical records that clearly identify by name and credentials the licensed chiropractic physician rendering, ordering, supervising, or billing for each examination or treatment procedure and that justify the course of treatment of the patient
- Did not meet minimum standards for chiropractic record keeping
- Exploited a patient for financial gain



DOH vs Leonard Kronen, D.C. – April 2007 Board Agenda

Consent agreement presented to board called for

- Letter of concern
- \$2,500 fine
- Costs of \$3,755
- 10 add'l hrs of CE
- 1 yr of practice monitoring



DOH vs Leonard Kronen, D.C. – April 2007 Board Agenda

- Board reviewed Dr. Kronen's prior disciplinary history
- Considered his \$382 office visit charge

DOH vs Leonard Kronen, D.C. – April 2007 Board Agenda

- Board rejected consent agreement
- Counter-proposal included
 - Suspension until successful passage of SPEC exam
 - Followed by 2 yr probationary period with monitored practice (patient file review)
 - Reports from the monitor and Dr. Kronen
 - \$10,000 fine
 - Costs of \$3,755
 - 10 add'l hrs of CE



DOH vs Leonard Kronen, D.C. – April 2007 Board Agenda

- Defense counsel asked for 7 days from receipt of the final order to make a decision on accepting it or pursuing other options

DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

A/Cs alleged

- DC had exercised influence on patients in such a manner as to exploit them for financial gain
- Made misleading, deceptive, untrue or fraudulent representations in the practice of chiropractic medicine
- Failed to report a conviction for assaulting a police officer with violence



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

Consent agreement

- Reprimand
- \$15,000 fine
- Costs of \$4,848
- Monitoring agreement to look at the patient records and billing records with board approved monitor for specified period of time with terms and conditions.



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

Dr. McClerren provided the board with

- Brief synopsis of the services he provided
- How he developed relationships with the physicians to whom he offered services.

DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

- McClerren explained that although he was a Florida licensee at the time, he was not practicing or seeing patients and not working in his capacity as a treating DC so the brokering allegation really didn't apply
- He stated that he was solely working in the capacity as a marketing person for the diagnostic company and was marketing to other doctors for their diagnostic referrals
- He admitted he was paid \$300 per referral but claimed he never brokered any of his own patients since he was solely doing marketing at the time



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

- The record reflected McClerren was being paid \$300 for each MRI referral by shell diagnostic company set up to funnel money from MRI people back to the referrer -- who was Dr. McClerren.



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

Investigators recovered:

- Copies of accounting log for referral payments to Dr. McClerren
- Bank records connecting checks from the doctors and diagnostic company to Dr. McClerren.



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

- McClerren admitted he currently owns multiple clinics that employ MDs/DCs
- He also now owns his own MRI and diagnostic testing facility



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

- Board rejected consent agreement as presented
- A motion to revoke the license died on a 2/2 vote
 - 1 board member was absent
 - 2 were recused on the cases



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

- Dr. McClerren asked for a chance to prove to the board that he's a good practitioner and not involved in any fraudulent activity in his multiple-clinic practice

DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

Board issued a counter-proposal [3/1 vote]

- Former board member to evaluate Dr. McClerren's multiple-discipline & multi-clinic practice
- License to be suspended until that report is provided to the board
- Imposition of a \$15,000 fine
- Costs of \$4,848
- Appearance when the report is provided
 - Board retained jurisdiction to impose reasonable terms of reinstatement at the time of the appearance



DOH vs Todd McClerren, D.C. – April 2007 Board Agenda (2 cases)

- Defense counsel asked for 7 days from receipt of the final order to make a decision on accepting it or pursuing other options



EMERGENCY SUSPENSION / RESTRICTION ORDERS

- Secretary of Health has authority to issue emergency suspension or restriction of a practitioner's license if she determines there is an immediate serious danger to the public health, safety, or welfare.



EMERGENCY SUSPENSION / RESTRICTION ORDERS

- Attorneys in Prosecution Services Unit charged with responsibility for managing all high-priority administrative cases against healthcare practitioners in which the individual practitioner's ability to safely practice his or her profession is at issue
- These attorneys draft emergency suspension (ESO) and restriction orders (ERO) for the Secretary

EMERGENCY SUSPENSION / RESTRICTION ORDERS

- ESO cases tend to be very high profile cases
- Identify practitioners who present a possible danger to the public
- Attorneys evaluate cases to determine whether a particular practitioner is an immediate, serious danger to the public
- Majority of these cases are sexual misconduct or impairment because of alcohol or drugs
- Attorneys work closely with the state's Professional Resource Network (PRN) to ensure that Florida licensed practitioners are safe to practice

EMERGENCY SUSPENSION / RESTRICTION ORDERS

Violations that require that an ESO be issued:

- If practitioner pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to a felony under Medicare / Medicaid fraud, criminal fraud and drug abuse statutes

EMERGENCY SUSPENSION / RESTRICTION ORDERS

Violations that require that an ESO be issued:

- If practitioner tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug

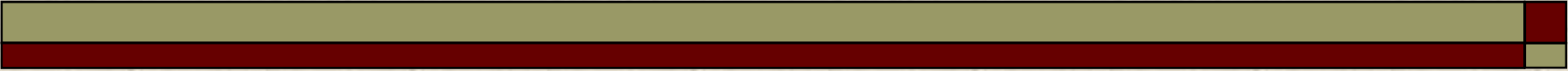
EMERGENCY SUSPENSION / RESTRICTION ORDERS

Violations that **require** that an ESO be issued:

- When a Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government

EMERGENCY SUSPENSION / RESTRICTION ORDERS

- Because they are “emergency” type cases, there is a shorter investigation time and Respondents are entitled to a prompt hearing
- Once an ESO or ERO is issued, the ESO/ERO is served on the Respondent and the suspension or restriction is immediately placed upon the practitioner’s license
- The Department then has only twenty (20) days to file an Administrative Complaint
- During this short timeframe, the case must be considered by the Probable Cause Panel and Probable Cause must be found



EMERGENCY SUSPENSION / RESTRICTION ORDERS

- The license stays suspended or restricted until the case is settled and presented to the Board, and the Board determines that the practitioner is safe to practice, or until the suspension or restriction is lifted by the Secretary.

EMERGENCY SUSPENSION / RESTRICTION ORDERS

FY 06-07 ESOs for the Florida Board

Respondent Name	ESO Date	Case No.	Prof. Code	License No.
DAVID GUERRIERO	10-Jul-2006	200606336	501	6373
ALEX PETRO	25-Jul-2006	200604095	501	7765
DANIEL SCHOENMAN	25-Sep-2006	200623081	501	4061
SCOT SLOAN	9-Oct-2006	200616892	501	6367
RODNEY FOUNTAIN	7-Mar-2007	200701998	501	4734

- They relate to student loan defaults, sexual misconduct and being charged with certain crimes related to the practice of chiropractic medicine.