

FILED

MARCH 2, 1984

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
DOCKET NO. H-83-5265

In the Matter of the Suspension)
or Revocation of the License of)

EVERETTE E. NELSON, D.C.)
License No. 1349)

To Practice Chiropractic in the)
State of New Jersey)

Administrative Action
FINAL DECISION AND ORDER

This matter was opened to the Board by Administrative Complaint filed December 14, 1983 by the Attorney General of the State of New Jersey, by Michael S. Karpoff, Deputy Attorney General, alleging that Everette E. Nelson, D.C. failed to make refunds to patients or provide the Board with proof of these refunds as was required by an Order of the Board filed April 13, 1981 following a contested case. By Order to Show Cause signed by Board President Albano and filed December 14, 1983, Dr. Nelson was directed to respond to the Administrative Complaint and explain why he failed to make restitution to his patients. By his attorney Grace T. Meyer, Esq., respondent submitted a written Answer and affidavits, but on February 8, 1984, the date of the hearing, the Board received information by telephone that there would be no appearance by respondent or his attorney. The hearing proceeded on that date, with Joan D. Gelber, Deputy Attorney General, presenting the case for the Attorney General.

In an Answer to the complaint, filed January 10, 1984 and a supplemental affidavit of January 27, 1984, respondent admitted his failure to make refunds of \$45 each to approximately 131 of 148 patients on a June 10, 1980 list of patients owed refunds (attached as Appendix A of this Order). However, he denied that his failure was the result of any willful immoral conduct. Instead he asserted financial hardship due to the previous suspension and bad publicity. He also submitted copies of returned envelopes indicating that refunds were undeliverable to forty-one patients in April 1983 at the addresses they had given him in 1980. Respondent stated that he "at all times intended to comply" with the Order of the Board but financially could not.

After deliberation the Board unanimously found that both Counts of the Administrative Complaint of December 14, 1983 were proven in that respondent, with very few exceptions, has failed to make patient refunds as required or to submit proof of said refunds. The Board found respondent's defense of financial hardship and outdated addresses unpersuasive, since he had ample time and opportunity to secure the funds or to timely petition the Board for relief, and to have timely notified his patients to keep him apprised of any new addresses. Instead of taking these responsible steps, respondent let matters slide until challenged by the Board. Respondent must remember that it was his misconduct, not any fault of the patients, which led to the original order of restitution. His failure to comply with the Board's Order, even after an appeal had been dismissed by the Appellate Division of Superior Court, bespeaks a disregard for the statutes and rules governing the practice

of chiropractic, professional misconduct within the meaning of N.J.S.A. 45:1-21(e), and a lack of good moral character within the meaning of N.J.S.A. 45:9-6.

In deliberating on the appropriate sanction in this matter, the Board particularly wished to encourage Dr. Nelson to make restitution to patients, as well as to penalize him for his previous noncompliance. Therefore, it is on this *23rd* day of *February*, 1984 hereby Ordered that:

1. Respondent Everette E. Nelson, D.C., shall within ten days of receipt of this Order pay to the Board a civil penalty of \$500.00 by certified check payable to the State Board of Medical Examiners.
2. Respondent shall continue to attempt to make restitution of \$45.00 per patient to the former patients whose names are listed at Appendix A of this Order, and shall submit to the Board cancelled checks as proof of restitution.
3. For each and every patient to whom \$45.00 is not restored by June 15, 1984, respondent shall pay to the Board a penalty of \$95.00 per unpaid patient in lieu of restitution, said penalty to be paid by certified check made out to the State Board of Medical Examiners, by July 1, 1984.
4. Should respondent fail to comply with this Order in all respects by July 1, 1984, his license to practice chiropractic in the State of New Jersey shall be suspended for one year, commencing July 1, 1984.

NEW JERSEY STATE BOARD OF MEDICAL
EXAMINERS

By *Joseph A. Riggs, M.D.*
Joseph A. Riggs, M.D., President
Pro Tempore