

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE ADMINISTRATION,)
BOARD OF CHIROPRACTIC,)
)
Petitioner,)
)
vs.) DOAH NO. 95-2881
) DBPR NO. 92-5288
CURTIS J. MCCALL, D.C.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Notice was provided and on September 20, 1995, a formal hearing was held in this case. The authority for conducting the hearing is set forth in Section 120.57(1), Florida Statutes. The hearing location was Panama City, Florida. The hearing officer was Charles C. Adams.

APPEARANCES

For Petitioner: Jon M. Pellett, Staff Attorney
Medical Quality Assurance-Allied Health
Agency for Health Care Administration
Northwood Centre, Suite 60
1940 North Monroe Street
Tallahassee, Florida 32399-0792

For Respondent: Curtis J. McCall, Jr., D.C. (Pro Se)
514 North Bonita Avenue
Panama City, Florida 32401

STATEMENT OF ISSUES

Should Respondent be disciplined for practicing beyond the scope of his license or by accepting and performing professional responsibilities which he knows or has reason to know that he is not competent to perform? See Section 460.413(1)(t), Florida Statutes, formerly Section 460.413(1)(u), Florida Statutes.

PRELIMINARY STATEMENT

On May 16, 1995, Petitioner issued an administrative complaint to Respondent for allegedly violating the aforementioned statute. Respondent answered the complaint, contesting its factual allegations. Consequently, on June 7, 1995, Petitioner requested that a hearing officer be assigned from the Division of Administrative Hearings to conduct a formal proceeding in accordance with Section 120.57(1), Florida Statutes. The case was assigned to the undersigned and the hearing was conducted on September 20, 1995.

Petitioner moved to take official recognition of certain statutes and administrative rules as follows:

1. Chapter 92-178, Laws of Florida resulting in repeal of Section 460.413(1)(k), Florida Statutes and substantial renumbering of Section 460.413, Florida Statutes.
2. Rule 59N-17.002, Florida Administrative Code (formerly Rule 21D-17.002 and Rule 61F2-17.002, Florida Administrative Code).
3. Rule 59N-17.0025, Florida Administrative Code (formerly Rule 21D-17.0025 and Rule 61F-17.0025, Florida Administrative Code).
4. Section 499.003(11), Florida Statutes (1993) and Section 499.003(19), Florida Statutes (1993).
5. Chapter 455 and 460, Florida Statutes (1991).

Petitioner's motion was granted at the commencement of the hearing.

Although Respondent's motion to take official recognition was not discussed at the formal hearing, those statutes and rules and the United States Constitution as addressed in Paragraphs 2, 3, 4, 5, 6 and 8 to the motion are officially recognized. The remaining requests are denied.

On September 13, 1995, Respondent moved to dismiss the administrative complaint based upon grounds that were similar to those arguments set forth in the answer to the administrative complaint. Given that the Petitioner had not had an adequate opportunity to address the motion to dismiss and in recognition that the motion to dismiss was fact dependent, ruling was reserved on the motion pending the conduct of the hearing and the opportunity for the parties to submit additional written argument in proposed recommended orders. Having considered the motion, the hearing record, and further written argument contained in the proposed recommended orders, the motion is DENIED. In so ruling, it is found that Respondent was not treating C. L. and James Cooksey, Petitioner's investigator who assumed the fictitious name James Stark for investigative purposes, accompanying or coincidental to treatment of AIDS but constituted direct treatment of AIDS; was performing treatment separate and apart from any domestic administration of recognized family remedies; that Petitioner did not abuse its discretion in pursuing the administrative complaint; that Respondent untimely alleged impropriety concerning the probable cause panels determination to find cause to bring the administrative complaint; that no competent proof was offered concerning the actions of the probable cause panel should the issue of timeliness be found in favor of the Respondent; that Respondent's license to practice chiropractic had not been revoked in the past; that Respondent's actions to the extent contemplated by the administrative complaint were contrary to Section 460.413(1)(t), Florida Statutes, and that Petitioner through its undercover investigation did not entrap Respondent.

In its case, Petitioner offered the testimony of James Cooksey, Tom Willoughby, Michael Smith, D.C., and Ann Broome. Testimony of Marianne Gengenbach, D.C. and Paul Doering, M.S. was by deposition. Petitioner's 19

exhibits were admitted. Respondent testified in his defense. Respondent's exhibits 1 through 3 and 5 through 7 were admitted. Respondent's exhibit No. 4 was admitted in part.

The hearing transcript was filed on October 19, 1995. Within the time allotted, the parties filed proposed recommended orders. The facts found in those proposed recommended orders are discussed in an appendix to the recommended order.

FINDINGS OF FACT

1. Petitioner is charged with regulating the practice of chiropractic pursuant to Sections 20.165, 20.42, Florida Statutes and Chapters 455 and 460, Florida Statutes.

2. Respondent is a Florida licensed chiropractic physician. His license number is No. CH-0001538. He was issued that license on September 21, 1968.

3. Respondent practices chiropractic at the McCall Chiropractic Clinic located at 811 Grace Avenue in Panama City, Florida.

4. Respondent is not licensed as an osteopathic or allopathic physician as recognized by the Florida Board of Osteopathic Physicians or the Board of Medicine respectively.

5. In 1992 Respondent sent Micheal Smith, D.C., a chiropractic physician practicing in Panama City, Florida, information described as an invitation for Dr. Smith to join Respondent in clinical research "designed to test the effectiveness of Scalar E.M. Technology upon AIDS-CANCER opportunistic organisms falling within the meaning of chapter 460.403(3)(a)(b)(c)(e), and Rule 21D-1702, Florida Statutes." The correspondence went on to describe some details about the research. In particular, Respondent stated that "preliminary field data suggest that Scalar E.M. TENS Technology is effective in 47 pathological conditions including AIDS-Cancer disease." The correspondence also set forth information concerning patients who wished to contribute to the research by making financial contributions to the "Allaganey Occupational Development Foundation, 22 Floor Pacific First Center, 1425th Avenue, Seattle, Washington 98101-2333".

6. Respondent provided Dr. Smith a sheet on the McCall Chiropractic Clinic letterhead related to purported medical research at Stanford University in 1988 studying "the Biological Interactions with the Scalar Energy Cellular Mechanisms of Action" in response to weak ELF electromagnetic (EM) radiation and the claimed results. That sheet describes how the McCall Chiropractic Clinic would be "conducting private research into the effectiveness of Scalar E.M. Technology upon the following conditions, for a two-year period of time."

1. Arthritis
2. Arm Pains
3. Angina Pectoras
4. Arethemia
5. Asthma
6. Allergies
7. Bacterial Infection of the Lung
8. Carple Tunnel Syndrome
9. Cancer of the: Bone, Brain, Bladder,
Bowell, Lungs, Liver, AIDS

10. Colon Polyps
11. Cholitis
12. Candidia Albicans
13. Deafness
14. Diabetes Neuropathy
15. Emphysema
16. Eckcemia
17. Ear Infection
18. Epstine Barr Infection
19. Exothalamic Goider
20. Feavers
21. Fungus of the skin
22. Fibrosis of the Lung
23. Gout
24. High Blood Pressure
25. Herniated disc
26. Herpes B infection
27. Hemrroids
28. Hardening of the arteries
29. Herpes of the Genitals
30. Hypertrophy of the Prostate
31. Inflimation of the joints
32. Nectniuria
33. Kendidia Albicans
34. Leg Pains
35. Multipleschlerosis
36. Musculardistrohy
37. Neuropathy
38. Nose bleads
39. Premenstral Syndrome
40. Paracititis of digestive track
41. Phlebitis
42. Sinus Infection
43. Tumors of the Eye
44. Varicose Veines
45. Warts
46. Leupus Erethematosis
47. Parkinsons Disease

7. Dr. Smith was also provided with a copy of an advertisement which stated:

ATTENTION:
Aids - Cancer Patients
Dr. Curtis J. McCall, Jr.
Chiropractor

Research program utilizing scalar tens antineoplastic technology is available through the provisions of Chapter 460.403(3)(a)(b)(c)(e) Rule 21D-1702 Florida Statutes. Patients suffering with Aids - Cancer disease who would like to participate in the research program should call 769-1708 for an appointment or come by the office: 811 Grace Ave., P.C., Fla. 32401

8. In the 1993 yellow pages for the Panama City, Florida, telephone book, Respondent placed an advertisement to this effect:

MCCALL CHIROPRACTIC CLINIC

PEOPLE HAVE TRUSTED THE HANDS
OF DR. McCALL SINCE 1968
-- TENS AIDS -- CANCER THERAPY --
811 Grace Av Panama Cy769-1708

9. In the July 8, 1993 advertising service in the "Thrifty Nickel" circulated in Panama City, Florida, Respondent placed the following advertisement:

NOTICE:

The McCall Chiropractic Clinic has on display a 1953 classified federal document that discloses successful treatment for cancer. Patient response indicates this technology is effective in the treatment of 47 conditions. This technology is available through the provisions of Chapter 460-1403(3), (a), (b), (c), (e). Rule 210-1702 Florida Statutes. Phone 769-1708 for appointment, 811 Grace Avenue, Panama City, Florida 32401. F24

10. On July 19, 1993, Respondent, on stationary from McCall Chiropractic Clinic, wrote to TCRS, Inc., in Tallahassee, Florida, asking that company to place McCall Chiropractic Clinic on its list of AIDS/Cancer Therapeutic Center listings for national referrals. That correspondence gave a brief description of the service that Respondent intended to provide. It indicated that the therapy to be provided would cost the patient \$18.00 per 20 minutes.

11. Through Respondent's activities that have been described, Respondent directly held himself out to the public as having the ability to treat persons with AIDS.

12. In furtherance of his intentions, Respondent developed a treatment protocol consisting of approximately 55 weeks of treatment to be monitored initially by Respondent at his chiropractic facility. That protocol required the patient to receive TENS therapy for two hours each day. The TENS device is designed to deliver transcutaneous electrical nerve stimulation. Its principal chiropractic use is for pain control. However, Respondent, in his intended care, contemplated that the device would stimulate "T-Cells" in combatting AIDS. In the protocol, Respondent also required monthly blood tests to monitor the patient's "T-Cell" counts. The protocol required the patient to be free from all other drugs, in particular, the AIDS treatment medication "AZT". Under the protocol, the patient was required to receive a weekly injection of a compound identified as "chondriana", in amounts determined by Respondent. Finally, the patient was to ingest a compound identified by Respondent as "life crystals".

13. On or about February 4, 1994, Respondent began to care for the patient C.L. That care ended on September 29, 1994. In this arrangement Respondent and C.L. had a chiropractic physician-patient relationship.

14. Patient C.L. died on August 18, 1995.

15. Respondent made a diagnosis, proposed a course of treatment and directly treated C.L. for AIDS.

16. In this treatment Respondent maintained a patient record for C.L.

17. In an effort to secure reimbursement for the services provided to C.L., Respondent prepared insurance claim forms, affixing a diagnosis of AIDS to the claim forms and had C.L. assign benefits to the Respondent from the insurance policy. In this connection Respondent had C.L. execute a sworn statement describing the services received from Respondent. It was Respondent's expectation that the claim forms would be honored by the insurance carrier and that Respondent would be paid for the services rendered to C.L. With one exception, Respondent's billings to the insurance carrier for C.L.'s visits to Respondent's office were all for the treatment of AIDS.

18. An investigation was instituted by the State of Florida, Department of Business and Professional Regulation/ Agency for Health Care Administration to ascertain whether Respondent was offering patient treatment for AIDS. James Cooksey, an investigator with the regulator, performed that investigation in conjunction with Tom Willoughby, investigator for the Bay County, Florida, Sheriff's Office. James Cooksey is an insurance fraud/medical malpractice investigator.

19. To conduct the investigation Mr. Cooksey assumed the fictitious name James Stark. The reason for assuming the name was to present James Stark as a patient suffering from AIDS.

20. In furtherance of the investigation Mr. Cooksey went to the Tallahassee Memorial Regional Medical Center and obtained a fictitious positive AIDS test in the name James Stark.

21. On May 16, 1994, Mr. Cooksey initiated contact with Respondent. The investigator traveled from Tallahassee to Panama City. When he reached Panama City he called Respondent and told Respondent that he needed to come and talk to him. Respondent invited Mr. Cooksey to come by that afternoon.

22. On May 16, 1994, Mr. Cooksey met with Respondent at Respondent's office. At that meeting Mr. Cooksey told Respondent that the investigator understood that Respondent could possibly cure AIDS. Mr. Cooksey further stated that he had seen something in a newspaper article that Respondent was treating AIDS patients and explained to Respondent that Mr. Cooksey had contracted AIDS and was interested in being cured. Mr. Cooksey provided Respondent with the results of the fictitious blood test.

23. When Mr. Cooksey presented to Respondent he did not complain of any condition other than AIDS. Respondent did not physically examine Mr. Cooksey.

24. Respondent explained to Mr. Cooksey about the nature of Respondent's treatment in which the TENS unit, also known as a Rife machine, chondriana and life crystals would be used. To demonstrate the treatment Respondent took Mr. Cooksey into a room in the back of his office, a treatment room, and had Mr. Cooksey take his shoes and socks off and place his feet on a metal pad associated with the TENS unit. When the unit was turned on Mr. Cooksey could feel tingling inside his feet.

25. On this occasion Respondent told Mr. Cooksey that, he, Mr. Cooksey could get injections of chondriana and then the machine would be turned on and Cooksey would receive stimulation to fight the infection associated with AIDS.

26. Respondent told Mr. Cooksey that the initial treatments for AIDS would have to be done at his office where Respondent would monitor the investigator. Respondent indicated that a nurse would come to the office and give the injections of chondriana and that Mr. Cooksey would be monitored concerning those injections until Mr. Cooksey's "system built up a little". Mr. Cooksey understood that he was to receive those injections and use the TENS unit and was not to take other forms of medication during the treatment. Respondent gave Mr. Cooksey a card with the name of a blood test that would need to be obtained and the results reported to Respondent. Mr. Cooksey was responsible for paying for the blood test.

27. Respondent told Mr. Cooksey that the life crystals were to be taken in orally as a drink and they were described as being part of the AIDS treatment.

28. On this date Respondent gave the investigator an estimate of the costs of this treatment, constituted of \$2,000 for the TENS unit and \$2,925 for chondriana and life crystals.

29. Subsequent to that date Respondent called Mr. Cooksey and left a message on Cooksey's telephone. Respondent also wrote the investigator on May 23, 1994, providing the investigator more information concerning Respondent's treatment for AIDS.

30. The investigator then went to the state attorney's office in Panama City and informed the state attorney of the nature of the administrative investigation and the belief that the activities by Respondent might constitute a criminal law violation. The state attorney represented to the investigator that he concurred. The state attorney then had Mr. Cooksey contact the Bay County Sheriff's office. Following that contact Mr. Cooksey took up a joint investigation between Mr. Cooksey and Bay County Sheriff's investigator Tom Willoughby.

31. On October 18, 1994, Mr. Cooksey placed a call to Respondent and told the Respondent that he was in Panama City and would like to come by and meet with the Respondent and that he would be accompanied by a friend who might be able to "come up" with the money that was required to purchase the chondriana and life crystals and TENS unit. The part of the friend was to be played by Officer Willoughby.

32. Mr. Cooksey and Officer Willoughby then went to Respondent's office where Respondent again explained the nature of the AIDS treatment. Officer Willoughby asked the Respondent questions concerning the nature of the treatment and how much the treatment would cost. Respondent explained that the treatment involved injections of the chondriana, drinking the life crystals and using the TENS machine for two hours a day to treat James Stark for AIDS.

33. At the October 18, 1994 meeting between the investigators and Respondent, Respondent stated that a nurse practitioner with whom he was friends would administer the chondriana and that activity would be monitored by Respondent in Respondent's office.

34. Officer Willoughby asked Respondent if there would be side affects to the injections. Respondent indicated that there would be sweating and that

Respondent would monitor Mr. Cooksey for whatever period of time would be necessary for the side affects to subside.

35. The investigators watched a video tape explaining the treatment for AIDS which Respondent intended to employ. The injections of chondriana would be given monthly.

36. Respondent indicated to the investigators that he would instruct Mr. Cooksey on how many of the life crystals to take.

37. Respondent told the investigators that the cost of the TENS unit was \$2,000.00 and that the unit would be used to spread the impulses through out the body. Respondent indicated to the investigators that the nature of the treatment would form new T-cells to replace T-cells containing the AIDS virus or which were cancerous.

38. Respondent had stated in Officer Willoughby's presence that the TENS unit cost \$500.00 to produce.

39. Respondent and the two investigators then went to a local health food store, known as the Olive Leaf, to ascertain the amount of money needed to pay for chondriana which the health food store would provide. There, the attendant at the store indicated that he could arrange to provide the chondriana and life crystals for a price approximating \$2,800.00.

40. After leaving the health food store the investigators told the Respondent that they would come back with the necessary money on October 21, 1994.

41. The investigators returned to Respondent's office on October 21, 1994, after obtaining warrants to search the office and arrest the Respondent. Before Respondent was arrested and the search made, the investigators asked Respondent to again explain the nature of the treatment that would be provided to Mr. Cooksey and paid Respondent \$1,700.00 for the TENS unit from funds belonging to the Bay County Sheriff's Office. Respondent gave the investigators a receipt for the \$1,700.00 payment. Respondent was then arrested for practicing medicine without a license.

42. On one occasion Respondent explained to the investigators that the procedures that were used to treat Mr. Cooksey for AIDS were not condoned by the FDA, but that it was working in other places where it had been tried and that three patients treated in another location had gained remission from the AIDS.

43. Based on the proof, it is found that Respondent diagnosed Mr. Cooksey as having AIDS and developed a course of treatment for that condition.

44. Paul Doering, M.S., is a registered pharmacist in the State of Florida. He is also licensed as a consultant pharmacist in the State of Florida. He is a Distinguished Service Professor of Pharmacy Practice at the University of Florida. He is accepted as an expert pharmacist.

45. Mr. Doering established that the drug AZT is an antiviral drug designed to address the HIV virus associated with AIDS.

46. Mr. Doering established that AIDS is an acronym for acquired immuno-deficiency syndrome, "a disease that affects the immune system caused by a virus or different types of viruses which attack the immune system in the body

rendering the body unable to effectively mount an immune response when it comes into contact with certain types of infectious organisms."

47. Mr. Doering established that drugs are divided into two basic groups, one group which is sold without prescription and the other group requiring a doctor's prescription. The latter category of drugs are known as Federal Legend Drugs.

48. Mr. Doering established that there is no reference to a medication known as "chondriana" in any directory of medications which he was familiar with. As he established, chondriana does not constitute a food because foods are not generally injected into the human body.

49. Mr. Doering established that chondriana has not been approved to be used as a drug in the United States, nor is it an experimental drug, based upon his research of sources that list drugs or experimental drugs.

50. Marianne Gengenbach, D.C., is licensed to practice chiropractic in Florida and is an expert in chiropractic practice. She established that chiropractors are limited to using proprietary drugs, and then only where the chiropractor has passed a specific exam and obtains a proprietary drug license. Proprietary drugs are "over the counter drugs" not prescription drugs. Absent such as a license to prescribe proprietary drugs chiropractors may only make recommendations, educate patients and prescribe nutritional supplements.

51. Dr. Gengenbach established that Respondent had diagnosed C.L. for AIDS and had treated C.L. for that condition. The treatment was directly related to the condition AIDS, and Dr. Gengenbach established that the treatment was outside the accepted standard of care for chiropractic and exceeded the scope of authorized practice from the view point of a practitioner. As Dr. Gengenbach established, Respondent also exceeded the proper scope of practice in caring for C.L. by recommending that C.L. discontinue the AZT therapy. Those same perceptions were held for treatment of Mr. Cooksey and are accepted.

52. Dr. Gengenbach established that Respondent proposed a course of treatment for Mr. Cooksey related to the condition AIDS, without reference to any other complaints by the patient. As a consequence the course of treatment which Respondent planned for Mr. Cooksey was directed solely to the HIV infection as established by Dr. Gengenbach. Dr. Gengenbach established that the use of the chondriana and life crystals was intended to treat Mr. Cooksey for AIDS. Dr. Gengenbach established that even should the substances chondriana and life crystals be considered food or nutritional supplements, there proposed use for Mr. Cooksey would not meet the prevailing standard of care for chiropractic, in that they would be employed for the treatment of AIDS.

53. Respondent intended that the chondriana and life crystals be used in the cure, treatment, therapy and prevention of AIDS in C.L. and Mr. Cooksey. Respondent intended that those substances affect the structure and function of the bodies of those patients.

54. In proposing and carrying out the treatment that has been described directed to AIDS, Respondent did so mindful that chiropractic physicians in Florida are prohibited from directly treating the AIDS condition.

55. Respondent's treatment of C.L. and proposed treatment of Mr. Cooksey violated the standards of practice acceptable to a reasonably prudent

chiropractic physician under similar conditions and circumstances and exceeded the scope of his chiropractic license.

56. In the past Respondent has been disciplined by the Board of Chiropractic on three separate occasions. Two of those cases involve the receipt of a reprimand and in the third case Respondent's license was suspended and he was required to pay an administrative fine. Respondent was also required to cease and desist the activities described in these facts based upon action taken by the Board of Medicine, which was persuaded that Respondent was engaging in the treatment of AIDS without benefit of a medical license.

CONCLUSIONS OF LAW

57. The Division of Administrative Hearings has jurisdiction over this subject matter and the parties to this action in accordance with Section 120.57(1) and 455.225, Florida Statutes.

58. Petitioner seeks to impose discipline which includes the possibility of suspension or revocation of Respondent's license to practice chiropractic. Therefore, Petitioner must prove its allegations by clear and convincing evidence. See *Ferris v. Turlington*, 510 So.2d 292 (Fla. 1987); *Slomowitz v. Walker*, 429 So.2d 797 (Fla. 4th DCA 1983) and *Nair v. Department of Business and Professional Regulation*, 654 So.2d 205 (Fla. 1st DCA 1995).

59. Respondent is charged with practicing chiropractic beyond the scope permitted by law or by accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform in violation of Section 460.413(1)(t), Florida Statutes, formerly 460.413 (1)(u), Florida Statutes. Petitioner has proven that violation by clear and convincing evidence. His treatment of C.L. and his arrangement to treat Mr. Cooksey exceeded the scope of practice permitted by his license, in an instance where Respondent knew or should have known that he was not competent to perform the treatment or intended treatment of AIDS or HIV infection.

60. Rule 59N-17.002, Florida Administrative Code, expressly prohibits a chiropractic physician from treating AIDS. Respondent treated and offered to treat AIDS in violation of that rule, thereby exceeding the scope of authorized practice, constituting a violation of Section 460.413(1)(t), Florida Statutes. In addition, Respondent generally offered the public a treatment for AIDS and cancer therapy, as prohibited by Rule 59N-17.002, Florida Administrative Code, and in violation of Section 460.413(1)(t), Florida Statutes.

61. Section 460.403(3)(a), Florida Statutes, defines practice of chiropractic as:

a noncombative principle and practice consisting of the science of the adjustment, manipulation, and treatment of the human body in which vertebral subluxations and other malpositioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body, thereby causing disease, are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health.

62. Notwithstanding the limitations imposed by Section 460.403(3)(a), Florida Statutes, the licensed chiropractic physician may:

adjust, manipulate, or treat the human body by manual, mechanical, electrical, or natural methods; by the use of physical means or physiotherapy, including light, heat, water, or exercise; by the use of acupuncture; or by the administration of foods, food concentrates, food extracts, and proprietary drugs and may apply first aid and hygiene, but . . . [a chiropractic physician is] expressly prohibited from prescribing or administering to any person any legend drug, from performing any surgery except as stated herein, or from practicing obstetrics. Fla. Stat. Section 460.403(3)(c).

63. In this instance Respondent's express purpose was the treatment of AIDS in violation of Section 460.413(1)(t), Florida Statutes. Respondent in his treatment and proposed treatment for AIDS was not undertaking a treatment for other conditions outlined in Chapter 460, which he was authorized to treat or proposed to treat as those conditions might accompany, or by coincidence be present with AIDS. See Rule 59N-17.002, Florida Administrative Code.

64. Chondriana and life crystals which Respondent used or contemplated for use in the treatment of AIDS are not Legend, prescription or medicinal drugs as defined by Section 499.003(19), Florida Statutes.

65. Those compounds used by Respondent are drugs within the definition set forth at Section 499.003(11)(b)(c), Florida Statutes, because they were:

- (b) intended for use in the . . .
cure, mitigation, treatment, therapy
or prevention of disease . . . ;
- (c) intended to affect the structure
or any function of the body of man . . .

66. It was not shown that Respondent's activities involved prescribing or administering of a Legend drug. Chondriana and life crystals were not proven to be Legend drugs. Therefore, Respondent has not been shown to have violated Section 460.403(3)(c), Florida Statutes, in using those compounds.

67. Contrary to Respondent's argument, he treated C.L. and took action that would lead to treatment for Mr. Cooksey directed to the AIDS disease. He did those things as a chiropractic physician, not as a private citizen. Considering that Rule 59-17.002, Florida Administrative Code, prohibits chiropractic physicians from treating AIDS, Respondent's activities constituted the practice of medicine as defined at Section 458.305(3), Florida Statutes, and the practice of osteopathic medicine as defined at Section 459.003(3), Florida Statutes.

68. For violating Section 460.413(1)(t), Florida Statutes, Respondent is subject to discipline consistent with Section 460.413(2), Florida Statutes, to include revocation or suspension of his license.

69. Rule 59N-16.003(1)(bb), Florida Administrative Code, formerly Rule 21D-16.003(1)(cc), Florida Administrative Code, and Rule 61F2-16.003(1)(cc),

Florida Administrative Code, allow the imposition of a penalty for a violation of Section 460.413(1)(t), Florida Statutes, of a minimum of 5 years probation, up to a maximum of revocation of the license.

RECOMMENDATION

Based upon the facts found and the conclusions of law reached, given the severity of the offense and the danger posed to the public, it is,

RECOMMENDED:

That a final order be entered which revokes Respondent's license to practice chiropractic medicine in Florida.

DONE and ENTERED this 21st day of November, 1995, in Tallahassee, Florida.

CHARLES C. ADAMS, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of November, 1995.

APPENDIX
CASE NO. 95-2881

The following discussion is given concerning the proposed findings of fact of the parties:

Petitioner's Facts:

Paragraphs 1 through 4 are subordinate to facts found.
Paragraphs 5 and 6 constitute conclusions of law.
Paragraphs 7 through 13 are subordinate to facts found.
Paragraph 14 is not necessary to the resolution of the dispute.
Paragraphs 15 through 35 are subordinate to facts found.
Paragraphs 36 through 40 are conclusions of law.
Paragraph 41 is subordinate to facts found.
Paragraphs 42 and 43 are conclusions of law.
Paragraphs 44 through 51 are subordinate to facts found.

Respondent's Facts:

Paragraphs 1 through 5 constitute legal argument as reported at pages 2 through 5.

The proposed facts 1-3 found at pages 15 and 16, Paragraph 1 is contrary to facts found. Paragraph 2 is rejected as a discussion of activities of the Probable Cause Panel, not a proper subject for consideration. Paragraph 3 constitutes a conclusion of law.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.