



COMMONWEALTH of VIRGINIA

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Director

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August 7, 2007

Eric Berg, D.C.
4609-C Pinecrest Office Park Drive
Alexandria, Virginia 22312

CERTIFIED MAIL

7160 3901 9849 9081 4650

RE: License No. 0104-001851

Dear Dr. Berg:

This letter is official notification that an informal conference of the Virginia Board of Medicine ("Board") will be held on **Tuesday, September 18, 2007, at 11 :00 a .m., at The Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.** The conference will be conducted pursuant to Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code").

A Special Conference Committee ("Committee"), composed of three members of the Board, will inquire into allegations that you may have violated certain laws and regulations governing the practice of chiropractic in Virginia. Specifically, from approximately 2000 to 2006, during the course of your chiropractic practice at The Health and Wellness Center, Alexandria, Virginia:

1. You may have violated former Section 54.1-2915.A(4) of the Code [as it existed prior to its amendment in 2003] and Section 54.1-2915.A(1) and (4) of the Code [formerly Section 54.1-2915.A(1) and (5)] for conduct in the practice prior to July 1, 2003; Section 54.1-2915.A(3) of the Code [formerly Section 54.1-2915.A(4) as amended in 2003] for conduct in the practice from July 1, 2003; Section 54.1-2915.A(13) of the Code [formerly Section 54.1-2914.A(8)]; and Section 54.1-2915.A(16) of the Code [formerly Section 54.1-2914.A(11)], in that, you utilized, in the care, diagnosis, assessment, and treatment of your patients, including Patients A-H, the following techniques, which are outside the scope of the practice of chiropractic; do not constitute acceptable standards of chiropractic care; and have no reasonable scientific or medical research, investigation, study, or data to support their efficacy or therapeutic benefit:

- a. The Body Restoration Technique ("BRT"), a procedure whereby vials containing distilled water are held over certain designated body organs or parts while acupuncture points on the hands or feet are accessed by the practitioner, allegedly to assist in restoring hormone balance and to address other symptoms;
- b. Nambudripad's Allergy Elimination Technique ("NAET"), a technique that uses pressure points in certain locations of the body allegedly to improve food allergies and environmental and chemical sensitivities;
- c. Contact Reflex Analysis ("CRA"), an alleged nutritional analysis that relies on muscle testing and acupuncture points; and
- d. Acoustic Cardiograph ("ACG"), an alleged nutritional evaluation based on heart sounds recorded and visualized on a graph.

2. You may have violated former Section 54.1-2915.A(4) of the Code [as it existed prior to its amendment in 2003] for conduct in the practice prior to July 1, 2003; Section 54.1-2915.A(3) of the Code [formerly Section 54.1-2915.A(4) as amended in 2003] for conduct in the practice from July 1, 2003; Section 54.1-2915.A(13) of the Code [formerly Section 54.1-2914.A(8)]; and Section 54.1-2915.A(16) of the Code [formerly Section 54.1-2914.A(11)], in that, contrary to acceptable standards of care:

- a. Your medical records for Patients A, C, D, F, G, H, and Z do not have signed consent forms for treatment.
- b. At their initial and/or subsequent visits, you failed to take adequate medical histories of Patients A-D, G, and H and failed to perform adequate physical examinations of Patients A-H.
- c. You did not properly manage patient records or maintain adequate, legible, and complete records for patients A-H. These records often lacked a description of patient complaints and symptoms, diagnosis, assessment, physical findings, treatment plan, description of treatment or services provided, and progress notes. In some instances, the records of office visits contain little or no information beyond the patient's name.
- d. You were unable to locate and provide the records for three (3) patients requested by a Department of Health Professions' ("DHP") Investigator on or about August, 2004.

3. You may have violated Section 54.1-2915.A(1) of the Code; Section 54.1-2915.A(12), (15), (16) , and (18) of the Code [formerly Section 54.1-2914.A(7), (10), (11), and

(13)]; Section 54.1-2403 of the Code; and 18 VAC 85-20-30.E [as adopted in 1998 and as amended through 2005] of the Board's Regulations, in that, on multiple occasions in various media, including newspapers and magazines, flyers and brochures, correspondence with patients or prospective patients, and your website, you published or caused to be published advertisements or made or caused to be made statements and representations that were expressly or implicitly false, misleading and/or deceptive. Specifically:

a. Despite the lack of reasonable scientific or medical evidence to support the efficacy or therapeutic benefit of BRT or NAET, you repeatedly advertised or represented to patients and the public, either implicitly or expressly, that BRT and/or NAET were techniques that could be used to prevent, alleviate, diagnose, assess, treat, or otherwise ameliorate a variety of conditions and symptoms, to include, but not be limited to the following: allergies, thyroid problems, infertility, depression, migraines, fibromyalgia, PMS, blood sugar problems, arthritis, sciatica, prostate problems, skin-related symptoms, heart beat problems, stubborn metabolism, as stated in the following:

- i. Letter to Patient Z dated June 21, 2002;
- ii. Marketing advertisement in the October 2002 edition of *Dynamic Chiropractic*, entitled "Learn the Body Restoration Technique;"
- iii. Marketing advertisement in the August 14, 2005 edition of *Dynamic Chiropractic*, entitled "Get Faster & Longer Lasting Results with Tough Cases! Learn the Body Restoration Technique;"
- iv. Undated marketing advertisement to practitioners, entitled "Create HUGE effects in patient results BY RESTORING HORMONE BALANCE",
- v. As of December 2006, your website stated that "BRT gets Major Results With" a variety of medical conditions and symptoms, while also claiming that:

BRT is a specialized method of removing blockages originating from non-spine areas. It is a method of checking all the body's pathways with an emphasis on the endocrine system's acupuncture-like points ...If the right source is found and corrected results will be immediate, even within seconds after the correction.

b. Volume 1, Issue 1 of a publication from The Health and Wellness Center, dated August 2002 and sent to Patient Z, included the following claims which are not supported by reasonable scientific or medical evidence:

i. “My observation and clinical testing found that this synthetic estrogen is the main causative factor in sluggish thyroid cases as well as prostate enlargement, fibroids, ovarian cysts, fibrocystic breasts, adrenal burnout and high blood pressure.” However, you did not provide the DHP investigator with the clinical tests referenced in the preceding statement, and there is no reasonable scientific or medical evidence that BRT ameliorates these conditions or that synthetic hormones are the main causative factor in the conditions listed.

ii. “I would recommend a product called Cal Ma Plus for people who wanted to prevent osteoporosis.” However, the information sheet on Cal Ma Plus indicates that it is a supplement containing Bovine Parathyroid Gland, that it has not been evaluated by the Food & Drug Administration, and that it is not intended to diagnose, treat, cure or prevent illness.

iii. “The Body Restoration Technique will help ... strengthen the adrenals so they can do their job again ... and when you improve that area, the adrenal bounce back and menopausal symptoms greatly improve.”

iv. A 5-year old boy with a rare blood disorder, Idiopathic Immune Thrombocytopenic Purpura (“IITP”), received muscle testing which revealed that “his body was reacting with the chicken pox vaccine”, and, after treatment with NAET, the boy’s platelets shot up, he was energetic, and he had no further bruising. Further, the story of a 47-year old woman suffering from sluggish thyroid is described. Testing revealed that “she was weak on mumps” and she was successfully treated with BRT. However, there is no reasonable scientific or medical evidence of a causal connection between chicken pox vaccine and IITP or between mumps and sluggish thyroid.

c. In an undated flyer sent to Patient Z entitled “Long Time No See”, you stated that “Incidentally, one of the biggest known side effects of the mumps vaccine is diabetes (pancreas problem). . . .” However, there is no reasonable scientific or medical evidence supporting that claim.

d. On numerous occasions, you used the designation “Dr.” without clarifying that you are a doctor of chiropractic, including in correspondence to Patient Z dated June 21, 2002, in October 2002 and August 2005 advertisements in *Dynamic Chiropractic*, and on your website. In addition, on your letterhead and other documents, in advertisements, and on your website, you repeatedly identified your practice as The Health and Wellness Center, without clarifying that it is a chiropractic practice. Further, in an undated flyer sent to Patient Z, entitled “Long Time No See”, you used the designation “Dr.” with respect to four individuals in your practice who are certified in BRT, without clarifying that these individuals are doctors of chiropractic.

e. Your website claims that you developed BRT approximately 8 years ago. However, a letter from your counsel to the DHP investigator dated August 3, 2004, attributes your use of BRT to a continuing education seminar that you attended in 1998 entitled “Nambudripod Allergy Elimination Technique.”

f. An undated promotional flyer advertising a marketing seminar for practitioners states that “[i]t has been established that BRT gets an 84% success rate for most endocrine conditions.” However, there is no data to support the claim of an 84% success rate.

g. An undated advertisement in *The Washington Post*, entitled “Are Hormones Making You Fat & Tired?”, offering a free seminar states that the seminar “is based on several medical textbooks including a book called Dr. Berg’s Body Shape Diets.” However, describing your book as a medical textbook is false and/or misleading in that there is no evidence that this book has undergone the level of scientific scrutiny necessary to be considered a physician level healthcare medical text, rather than a lay publication.

Please see Attachment I for the name of the patients referenced above.

After consideration of all information, the Committee may:

1. Exonerate you;
2. Place you on probation with such terms it deems appropriate.
3. Reprimand you;
4. Impose a monetary penalty pursuant to Section 54.1-2401 of the Code.

Further, the Committee may refer this matter for a formal administrative proceeding when it has failed to dispose of a case by consent pursuant to Section 2.2-4019 of the Code.

You have the right to information that will be relied upon by the Committee in making a decision. Therefore, I enclose a copy of the documents that will be distributed to the Committee for its consideration when discussing the allegations with you and when deliberating upon your case. These documents are enclosed only with the original notice sent by certified mail, and must be claimed at the post office. These materials have been provided this date to your counsels, Jonathan W. Emord, Esquire, and Kathryn E. Balmford, Esquire.

To facilitate this proceeding, you must submit eight (8) copies of any documents you wish for the Committee to consider to Reneé S. Dixon, Discipline Case Manager, Virginia Board of Medicine, 6603 West Broad Street, 5th Floor, Richmond, Virginia 23230-1717, by **August 30, 2007**. Your documents may not be submitted by facsimile or e-mail. Should you or Assistant Attorney General Wayne T. Halbleib wish to submit any documents for the Committee's consideration after **August 30, 2007**, such documents shall be considered only upon a ruling by the Chair of the Committee that good cause has been shown for late submission.

A request to continue this proceeding must state **in detail** the reason for the request and must establish good cause. Such request must be made, in writing, to me at the address listed on this letter and must be received by **August 21, 2007**. Only one such motion will be considered. Absent exigent circumstances, such as personal or family illness, a request for a continuance after **August 21, 2007**, will not be considered.

The Board has engaged the services of Scott D. Banks, D.C., whose curriculum vitae and written report are included in the material enclosed with this letter. Dr. Banks will be present at the informal conference to serve as an expert.

Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of medicine and other healing arts in Virginia cited in this notice can be found on the Internet at <http://leg1.state.va.us>. To access this information, please click on the *Code of Virginia* for statutes and *Virginia Administrative Code* for regulations.

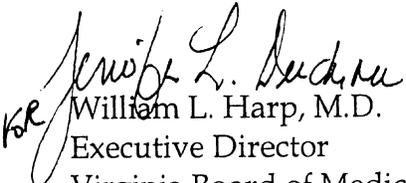
In its deliberations, the Committee may utilize the Sanction Reference Points System, as contained in the Sanction Reference Manual. The manual, which is a guidance document of the Board, may be accessed at <http://www.dhp.virginia.gov/medicine>. You may request a paper copy from the Board office by calling (804) 662-7009.

Please advise the Board, in writing, of your intention to be present. Should you fail to appear at the informal conference, the Board may proceed to a formal administrative hearing in order to impose sanctions.

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If you have any questions regarding this notice, please contact Assistant Attorney General Wayne T. Halbleib, at (804) 225-4878.

Sincerely,


for William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

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Enclosures:

Attachment I
Informal Conference Package
Map

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cc: Stephen Heretick, J.D., President, Virginia Board of Medicine
Sandra Whitley Ryals, Director, Department of Health Professions
Reneè S. Dixon, Discipline Case Manager, Board of Medicine
Wayne T. Halbleib, Assistant Attorney General
Julia K. Bennett, Adjudication Specialist, APD
Lorraine McGehee, Deputy Director, APD
Jonathan W. Emord, Esquire
Kathryn E. Balmford, Esquire
Tony Butera, D.P.M., Senior Investigator [87622, 88937]
Sue S. Zich, R.N., B.S.N., Senior Investigator [87622]