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NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE APPLICATION :
OF : Administrative Action
: :
BRYAN K. BAJAKIAN, D.C. :
APPLICANT NO. 38MC00262100 :
: :
FOR REINSTATEMENT OF LICENSURE TO :
PRACTICE CHIROPRACTIC :
IN THE STATE OF NEW JERSEY :

ATTORNEY GENERAL'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR RECONSIDERATION

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PRELIMINARY STATEMENT

The Board of Chiropractic Examiners ("Board"), relying on a mistaken interpretation of the law and an unreliable psychosexual evaluation, granted Bryan Bajakian, D.C. ("Respondent"), a Megan's Law offender who is subject to parole supervision for life, the ability to reapply for his license to practice. The Attorney General was not put on notice that the Board was considering reinstating Respondent's license, and now requests that the Board reconsider its decision. Permitting Respondent to re-enter practice will pose a danger to public's health, safety and welfare.

The Board revoked Respondent's license in 2010 after he pleaded guilty to crimes involving moral turpitude and admitted luring minor females through telephone conversations and internet chat rooms with the intent of having sexual contact with them, as well as possessing an illegal firearm. The Board also found that he engaged in sexual misconduct toward an underage patient with whom he communicated on the internet; engaged in conduct of a sexual nature over the internet that would impair or debauch the morals of six children; possessed child pornography; and repeatedly violated the 2005 Interim Consent Order entered into with the Board by continuing to treat patients under the age of 18 without the presence of a Board-approved monitor.

After previously denying Respondent's requests, on October 24, 2019, the Board voted in favor of Respondent's most recent

request for an Order of Reinstatement because he received a low risk score on the psychosexual evaluation of Dr. Philip H. Witt, and completed technical educational requirements necessary to practice chiropractic.

The Board's decision, made without notice to or the input of the Attorney General through the undersigned prosecutor (nor anyone else representing the Professional Boards Prosecution Section of the Division of Law ("PBP")), is flawed. Not only did the Board apparently fail to appreciate that the law allows Respondent's 2010 revocation to be permanent but it also failed to recognize that Dr. Witt's psychosexual evaluation does not show that Respondent is now deserving of a license to practice. Dr. Witt failed to review the documents setting forth the circumstances of Respondent's prior crimes and the prior Final Board Order revoking Respondent's license, as specifically required by the Board. Instead, Dr. Witt relied on Respondent's half-truths about his criminal conduct to arrive at the unsound conclusions in his report.

In addition to the shortcomings of Dr. Witt's evaluation, Respondent did not appear before the Board in 2019, presented no evidence of rehabilitation, and provided no testimony to support the conclusion that he now possesses good moral character other than self-serving statements offered during his psychosexual evaluation. Yet, despite the absence of evidence, the Board

reversed course from its prior denials of reinstatement and decided that Respondent is fit to practice. Simply put, this was wrong: the risk to the public of allowing Respondent to regain his license is too great. Accordingly, the Attorney General respectfully requests the Board reconsider its decision to offer Respondent an Order of Reinstatement.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Respondent was licensed to practice chiropractic in the State of New Jersey holding license number 38MC00262100. Respondent's license was first suspended via an Interim Consent Order filed on September 15, 2005, following his indictment in Passaic County of multiple counts of attempted sexual acts toward children. (Interim Consent Order, filed on September 15, 2005, attached as Exhibit A to the Certification of Deputy Attorney General Nisha S. Lakhani ("Lakhani Cert.")) This Interim Consent Order required Respondent to have a monitor, pre-approved by the Board, during treatment of any patient under the age of eighteen. (Id.)

On June 16, 2008, the Attorney General filed an Order to Show Cause and Verified Complaint with the Board seeking a temporary suspension of Respondent's license based on the pending criminal charges and on Respondent's violation of the 2005 Interim Consent Order because he had continued to treat minor patients without the required Board-approved monitor. (Final Order Denying

Reinstatement, filed May 24, 2018, attached as Exhibit B to Lakhani Cert.)

The complaint, as later amended following Respondent's convictions, alleged that Respondent violated the Board's statutes and regulations by engaging in the following: (1) multiple attempts to lure or entice children; (2) multiple attempts to sexually assault children; (3) multiple attempts to commit criminal sexual contact upon children; (4) multiple attempts to impair or debauch the morals of children; (5) possession of child pornography; and (6) repeated violations of the 2005 Interim Consent Order. (Amended Verified Complaint, filed April 6, 2010, attached as Exhibit C to Lakhani Cert.)

On June 26, 2008, Respondent consented to the temporary suspension of his chiropractic license pending a plenary hearing or until further Order of the Board. (Interim Consent Order, filed June 26 2008, attached as Exhibit D to Lakhani Cert.)

On or about October 29, 2008, Respondent pled guilty to two counts of luring or enticing a child, in violation of N.J.S.A. 2C:13-6, a crime of the second degree. Respondent also pled guilty to illegal possession of firearms, in violation of N.J.S.A. 2C:39-5(f), a crime of the third degree. (State of New Jersey v. Brian Bajakian, D.C., Defendant, dated October 29, 2008, attached as Exhibit E to Lakhani Cert.)

During the plea hearing, Respondent admitted to multiple telephone and instant message conversations with underage females. (See Lakhani Cert. Ex. E at 25.) Specifically, he admitted to having telephone conversations with a female whom he believed to be age 16. (See id. at 26.) He further admitted to discussing a potential in-person meeting with her. (See id. at 27.) And Respondent admitted to intending to pick her up at her home and take her somewhere with the purpose of having sexual contact with her. (See id. at 28.)

Respondent also admitted to having instant message conversations over the Internet with a female whom he believed to be age 14. (See id. at 31.) Respondent admitted the purpose of the conversation was to potentially meet her in person. (Id.) Respondent admitted to discussing an in-person meeting with her at his Paramus, New Jersey office. (Id.) Respondent further admitted that it was his intent to take her someplace and engage in some form of sexual contact. (Id. at 32.)

On or about September 2009, Respondent was sentenced to prison for a concurrent term of five years for his convictions. (See Lakhani Cert. Ex. B.) He was ordered to register as a sex offender as required by Megan's Law and to comply with parole supervision for life. (Id.)

On April 6, 2010, the Attorney General filed an Amended Verified Complaint to include Respondent's guilty plea and conviction. (See Lakhani Cert. Ex. C.)

On October 19, 2010, the Board filed a Final Order by Default on Notice of Motion for Default and Entry of Default Judgment revoking Respondent's license to practice chiropractic in the State of New Jersey after finding that Respondent engaged in sexual misconduct toward a patient with whom he communicated over the Internet, that Respondent engaged in conduct of sexual nature over the Internet that would impair or debauch the morals of six minors, that Respondent pled guilty to crimes involving moral turpitude, that Respondent possessed child pornography, and that Respondent repeatedly violated the Interim Consent Order by continuing to treat minor patients without the presence of a Board-approved monitor as required. (Final Order by Default on Notice of Motion for Default and Entry of Default Judgment, filed October 19, 2010, attached as Exhibit F to Lakhani Cert.) The Final Order imposed costs and attorneys' fees in the amount of \$41,792.00. (See id.)

On or about November 1, 2010, Respondent was released from custody. (See Lakhani Cert. Ex. B at para. 10.) On or about December 2014, Respondent applied to the Board for reinstatement of his license to practice chiropractic. (See id. ¶ 11.) The costs assessed in the October 2010 order remained outstanding and the Board denied reinstatement. (Id.) Thereafter, Respondent's counsel

requested an appearance before the Board to present documentation and Respondent's testimony in support of his reinstatement application. (Id.)

On October 26, 2017, Respondent appeared before the Board for an Investigative Inquiry. (In the Matter of Bryan Bajakian, D.C., Transcript of Proceeding, dated October 27, 2017, attached as Exhibit G to Lakhani Cert.) Respondent testified that in the mid-1990s, he began communicating with others in adult Internet chat rooms as a form of entertainment. (See Lakhani Cert. Ex. G at 7:11-23 to Lakhani Cert.) He engaged in sexually explicit and graphic conversations in these Internet chat rooms with a female he believed to be fifteen years old. (See id. at 11-14.) Respondent was not aware that the individual he was having sexually explicit conversations with was an undercover law enforcement officer. (See id. at 10.) Respondent further testified that he never made any attempt to meet any individuals from the Internet chat rooms in person. (See id. at 20.)

Respondent testified that in February 2004, police officers arrested him and searched his home. (See id. at 16.) Police seized numerous illegal automatic weapons. (Ibid.) Respondent admitted in his testimony that on or about February 2016, he violated the terms of his Megan's law parole by joining an adult dating Internet site, for which he was immediately incarcerated until his release in February 2017. (See id. at 42-46.)

On May 24, 2018, the Board filed a Final Order denying Respondent's reinstatement application and prohibiting him from petitioning for reinstatement prior to April 26, 2019. (See Lakhani Cert. Ex. B.) The Order stated that the Board would not consider any further reinstatement requests unless Respondent underwent a comprehensive psychosexual evaluation by a Board-approved psychologist who was "fully aware of the circumstances of Respondent's arrest, convictions, and this Order." (Id.) In addition, Respondent had to successfully complete the Special Purposes Examination for Chiropractic ("SPEC") administered by the National Board of Chiropractic Examiners. (Id.)

On or about February 28, 2019, Respondent again requested an opportunity to reapply for his license. This request was not made known to the public or the undersigned at the time. During Executive Session, the Board voted in favor of approving Respondent's psychosexual evaluation by Phillip Witt, PhD., of Somerset Psychological Group, P.A. (Board Executive Session Minutes, dated February 28, 2019, attached as Exhibit H to Lakhani Cert.) Respondent ultimately submitted to the Board the psychosexual report by Phillip Witt, Ph.D., concluding that Respondent presented as a low risk individual. (Psychosexual Report by Phillip Witt, PhD, dated May 9, 2019, attached as Exhibit I to Lakhani Cert.)

In his report, Dr. Witt lists his sources of review as the following: (1) notice of parole violation 2016; (2) parole conditions 2010; (3) psychological evaluation by Douglas Martinez, PhD, dated December 19, 2018; (4) Creative Living Counseling Center reports of August 25, 2009 and June 9, 2010; (5) psychotherapy report by Melvin Rand, PhD, dated March 5, 2011; (6) ADTC evaluation by Mark Frank, PhD., dated April 27, 2009 and June 1, 2009; (7) psychological evaluation by James Reynolds, PsyD, dated November 15, 2010; and (8) Presentence Investigation Report (cover page only). (Ibid.) Of note, Dr. Witt did not review Respondent's criminal plea transcript, the body of the presentence report, prior Board Orders, and the Amended Verified Complaint (or the original).

During Respondent's interview with Dr. Witt, he misleadingly stated that he "never met anyone and never tried to meet anyone" and tries to pass off some of his actions as research for a book.

(Id. at 5.) Respondent, stated to Dr. Witt that:

So I went in this [AOL] chat room, and it said 18 and over. And I was freaked out at first at how blatant the discussion was about sex . . . *Eventually, I got desensitized to it over time.* I would talk about things that I was not even interested in just for entertainment. *I never met anyone and never tried to meet anyone.* . . . And I became skeptical of what people would say, for example a guy pretending to be a woman. It was just people exploring fantasies in an anonymous manner. It started as entertainment but it became fascination. *I have written books in the past and I was planning to write a book about this.* That's no excuse. Regardless of the book or not, it

was wrong. I got caught up in it and didn't think about it being wrong at the time. It was immoral, and people could be seeking approval for this behavior. I had no place in that.

[Id. (alterations in original; emphases added).]

Dr. Witt then used Respondent's misleading statement to assess his preferential pedophilic sexual interest pattern and states:

This possibility is the most difficult to assess, given that it relies heavily on [Respondent's] self-report. Given present information, I do not see evidence that [Respondent's] present Internet offense is preferentially pedophilic. Although admittedly he reportedly had a significant quantity of child pornography and chatted with ostensible minors, there are no indications or allegations that he has ever tried to engage in sexual behavior with minors. None of his inappropriate sexual chats on the Internet escalated to a meeting with any minors. All of his inappropriate sexual activity on the Internet appears to be what is called "fantasy-driven," rather than "contact-driven."

[Id. at 8-9.]

Dr. Witt further opined during his hypersexuality assessment of Respondent that "one would expect an absence of attempts to solicit sexual activity with minors, and there are no indications that [Respondent] has had or attempted to have sex with any minors." (Id. at 9.)

Yet, Respondent's statements during his criminal plea and the allegations in the Verified Complaint evidence a different reality. A reality that, according to Dr. Witt, Respondent has

Historically minimized and, in fact, denied any deviant sexual interest. He has consistently reported to prior evaluators-and continues to report during the present evaluation-that his illegal sexual behavior on the Internet was solely motivated by curiosity and fascination, forming material he was using to write a book.

[Id. at 7.]

But the reality, which Dr. Witt was not privy to, is that Respondent did plan to meet and engage in sexual behavior with minors. Specifically he:

- Admitted to telling "yngcuriusgirle15", a female he believed to be fifteen years old, that he would pick her up at her home and take her somewhere with the purpose of engaging in sexual contact with her. (See Lakhani Cert. Ex. E at 25:22-27:19; 38:4-9.)
- Admitted to making plans with "CuteNorthernGirl17", a fourteen year old girl, to meet her at his chiropractic office in Paramus with the intent of taking her somewhere with the purpose of engaging in sexual contact. (See id. at 30:20-32:10; 37:22-38:3.)
- Discussed a plan to meet "yngcuriusgirle15" at the Garden State Plaza Mall, requested that she send him a photograph so he could identify her when they met, and reassured her that he had undergone a vasectomy and therefore could not impregnate her when they engaged in sexual intercourse. (See Lakhani Cert. Ex. C at 8.)

- Sent Instant Messages to "CuteNorthernGirl17" that he was a "doctor" and that they could meet in his office to engage in sexual contact. (See id. at 13.)
- Recommended and offered to provide therapy to "JennyHar1986", a seventeen year old girl. He offered to perform at his chiropractic office a "gentle internal massage" of her rectum under the guise of providing medical care for the injuries she sustained during a rape. Respondent intended to perform this anal massage as a means of sexual self-gratification. (See id. at 15-16.)
- Made plans with "JennyHar1986" to meet her at the Coffee Beanery at the Paramus Park Mall. (See id. at 18.)
- Offered to meet "KallieBabe50", a fifteen year old girl, in Boston. (See id. at 25.)

On October 24, 2019, during Executive Session, the Board voted in favor of offering Respondent an Order of Reinstatement. (Board Executive Session Minutes, dated October 24, 2019, attached as Exhibit J to Lakhani Cert.)¹ Though the Board decided on October 24, 2019, in closed executive session, to permit Respondent to apply for a reinstatement, as discussed below, that decision was never made publicly, nor has an Order embodying the decision been filed by the Board. Moreover, neither the undersigned prosecutor nor anyone representing PBP was asked to take a position on

¹ Executive Session minutes, and materials attached thereto, are no longer "confidential" once the Board has made its decision on a matter deliberated on in closed session, as any need for maintaining such confidentiality has passed (and the decision itself should be made in public.).

Respondent's request and in fact, the undersigned only became aware of the Board's October 24, 2019 decision last week.

ARGUMENT

In an administrative proceeding, in the absence of a specific rule, the Attorney General may proceed in accordance with the New Jersey Court Rules provided the rules are compatible with these purposes. See N.J.A.C. 1:1-1.3(a). Here, there is no specific administrative rule pertaining to motions for reconsideration and therefore, the Attorney General relies on New Jersey Court Rules in bringing forth the instant motion.

Reconsideration is appropriate under R. 4:49-2 when: (1) the court's decision is based upon a palpably incorrect or irrational basis; (2) the court failed to appreciate the significance of probative and competent evidence; or (3) there is a good reason for the court to consider new information which could not have been provided in the first application. Cummings v. Bahr, 295 N.J. Super. 374, 384-85 (App. Div. 1986) (citing D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990).) A motion seeking reconsideration of a prior order pursuant to R. 4:49-2 requires that the movant explicitly identify the grounds for the motion, "including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." Palombi v. Palombi, 414 N.J. Super. 274, 289 (App.

Div. 2010); see also Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 299, 310 (App. Div. 2008); Cummings v. Bahr, 295 N.J. Super. 374, 384-385 (App. Div. 1996). Furthermore, the magnitude of the error cited must be substantial for reconsideration to be appropriate. Palombi, 414 N.J. Super. at 289. In other words, "a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner" to grant reconsideration. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (1990).

Reconsideration is warranted here for several reasons addressed below. As noted, at no time following the Board's May 24, 2018 filed Order denying Respondent reinstatement, was PBP, or the public, made aware that the Board was further considering Respondent's reinstatement request. Not only was PBP never asked to submit its position on such a request, which it strongly opposes, but the Board's October 24, 2019 decision to offer Respondent reinstatement was made and voted upon only in a closed executive session of the Board. No public vote on that decision was recorded in the public meeting minutes, and those public minutes do not even indicate that the Board moved into executive session. Indeed, it does not appear that any proceedings or decisions taken with respect to Respondent's reinstatement request at any point following the May 2018 Order were ever voted upon in a public session or even listed in a published agenda for a meeting

of the Board (regardless of whether that matter was to be heard in a public or a closed session), all of which raise questions under New Jersey's Open Public Meetings Act. N.J.S.A. 10:4-6 to -21. The Board should take corrective action and vote on Respondent's reinstatement in public, but, for all the reasons stated below, the Board should reconsider the actual substance of its decision and deny reinstatement.

I. The Board revoked Respondent's license to practice chiropractic in the State of New Jersey and the Board erred in affording Respondent the opportunity to reapply for his license.

The Board is a professional licensing board charged with the duty and responsibility of regulating the practice of chiropractic in the State of New Jersey pursuant to N.J.S.A. 45:9-41.17 to - N.J.S.A. 45:9-41:36 and N.J.S.A. 45:1-14 to - N.J.S.A. 45:1-32. The Board has the authority to act in this matter in accordance with its basic interest in preserving and protecting the public health and welfare. State Bd. Of Medical Examiners v. Weiner, 68 N.J. Super 486 (App. Div. 1961).

Here, the Board revoked Respondent's license to practice chiropractic with the filing of the Final Order of Default on Notice of Motion for Default and Entry of Default Judgment on October 19, 2010. Specifically, paragraph 1 of the Order states "Respondent's license to practice chiropractic in the State of New Jersey be, and hereby is, revoked." It is explicitly clear from

the language of the Order that the Board did not authorize Respondent a right to reapply for his license or a pathway back for reapplication.

There is no dispute that the power of the Board, vested by statute pursuant to N.J.S.A. 45:9-14.5 to N.J.S.A. 45:9-14.6 includes the "incidental authority" to do that which is "fairly and reasonably necessary or appropriate to implementation of the function expressly authorized." Id. at 496 (citing Lane v. Holderman, 23 N.J. 304 (1956); Cammarata v. Essex County Park Commission, 26 N.J. 404, 411 (1958)). But in this instance the Board erred by overlooking and failing to appreciate relevant law and evidence in the record in granting Respondent's petition for reinstatement and the subsequent opportunity to reapply for his license.

This decision is in direct conflict with the terms of a filed Consent Order specifically revoking Respondent's license with no time period for reapplication. (See Lakhani Cert. Ex. F., p. 3 ("Respondent's license to practice chiropractic in the State of New Jersey be, and hereby is, revoked.")) In 1999, in an effort to increase uniformity of license revocation procedures regarding the various professions and occupations subject to Title 45, the Legislature repealed several sections of law outlining the grounds for revocation in different professions, and replaced the repealed laws with N.J.S.A. 45:1-21. Senate Commerce Committee, Statement

to S.1807 (May 6, 1999); L. 1999, c. 403, §§ 2, 12. Nowhere in N.J.S.A. 45:1-21 is there any provision addressing reinstatement of a "revoked license." Moreover, several sister states have held that their boards have the power to specify that a revocation is permanent and that a physician subject to such a revocation is forever ineligible to hold a license. See Citronenbaum v. New York State Dept. of Health, 303 A.D.2d 855 (3rd Dept. 2003); Clark v. State Med. Bd. of Ohio, 2015-Ohio-251, 2015 Ohio App. LEXIS 208 (10th Dist., January 27, 2015); In re Friedenson, 574 N.W.2d 463 (Minn. App. 1998) (affirming a permanent revocation of a physician for sexual contact with patients.)

Here, Respondent's license was not suspended or revoked for a limited period of time. It was "revoked." This implies permanency. As such, the Attorney General contends that the Board should reconsider granting Respondent the opportunity to apply for reinstatement. The Board made a unilateral decision, devoid of statutory authority and unsupported by case law, by granting Respondent's request to reapply for licensure thereby setting a problematic and dubious precedent for other revoked licensees.

II. The Attorney General is entitled to reconsideration of the Board's October 24, 2019 minutes offering Respondent an Order of Reinstatement of his license because the Board's determination is based on Dr. Witt's flawed psychosexual evaluation report.

On May 9, 2019, Dr. Witt issued a report following a psychosexual evaluation, including an interview and assessment, of

Respondent. (See Lakhani Cert. Ex. I.) According to Dr. Witt, he reviewed only the following in evaluating Respondent: (1) notice of parole violation 2016; (2) parole conditions 2010; (3) psychological evaluation by Douglas Martinez, PhD, dated December 19, 2018; (4) Creative Living Counseling Center reports of August 25, 2009 and June 9, 2010; (5) psychotherapy report by Melvin Rand, PhD, dated March 5, 2011; (6) ADTC evaluation by Mark Frank, PhD., dated April 27, 2009 and June 1, 2009; (7) psychological evaluation by James Reynolds, PsyD, dated November 15, 2010; and (8) Presentence Investigation Report (cover page only). (Ibid.)

These documents do not even meet the minimum requirements set forth by the Board in its Final Order Denying Reinstatement, filed May 24, 2018, requiring that Respondent must "submit to a comprehensive psychosexual evaluation by a Board-approved licensed clinical psychologist or similarly-credentialed professional experienced in the evaluation and treatment of sex offenders and/or psychosexual disorders, and who is fully aware of the circumstances of Respondent's arrest, convictions, and this Order." See Lakhani Cert. Ex. B (emphasis added).) Notably missing in Dr. Witt's review are the Plea Transcript, the body of the presentence report, Prior Board Orders, and the Verified Complaint.

Because he did not review these documents, Dr. Witt was not, in fact, fully aware of the circumstances of Respondent's arrest and convictions. In Respondent's plea hearing transcript,

Respondent made numerous substantial admissions demonstrating multiple attempts to meet underage females outside of the internet chat rooms. (See Lakhani Cert. Ex. E.) Specifically, Respondent admitted to offering to pick up an underage female from her house and take her somewhere else with the intent to have sexual contact with her. (Id.) He also admitted to offering to meet an underage female at his office in Paramus, New Jersey with the intent to have sexual contact with her. (Id.) These admissions unequivocally demonstrate that, contrary to Dr. Witt's conclusion, Respondent's illegal internet behavior was in fact "contact-driven" rather than "fantasy-driven" because Respondent actively attempted to meet these underage girls at physical locations to engage in sexual contact.

Dr. Witt also did not review the Board's Final Order which, in addition to the criminal convictions, found that Respondent engaged in sexual misconduct toward "JennyHart1986", a patient with whom he communicated on the Internet. (See Lakhani Cert. Ex. B at 2.) Specifically, Respondent offered to perform at his chiropractic office a "gentle internal massage" of this seventeen year old's rectum under the guise of providing medical care for the injuries she sustained during a rape. Respondent intended to perform this anal massage as a means of sexual self-gratification. (See Lakhani Cert. Ex. C at 15-16.) The Board further found that Respondent attempted to lure children to him via the Internet to

meet with him for the purpose of engaging in sexual contact. (See Lakhani Cert. Ex. B at 2.) Specifically, he made plans to meet "JennyHar1986" at the Coffee Beanery at the Paramus Park Mall; "youngcuriousgirle15", a 15-year old, at Garden State Plaza; and "CuteNorthernGirl17", a 14-year old, at his chiropractic office. (See Lakhani Cert. Ex. C at 18, 8, 13). Finally, the Board found that he engaged in conduct of a sexual nature over the Internet that would impair or debauch the morals of six children. (See Lakhani Cert. Ex. B at 2.) This conduct included soliciting and sending sexually explicit photographs to these children as well as describing sexual acts that he would perform and that he would like them to perform to him. (Ibid.)

Dr. Witt's failure to review Respondent's criminal documents, particularly the plea hearing transcript and the Final Order of the Board, renders his psychosexual evaluation incomplete, unreliable, and palpably incorrect because he was not fully aware of the circumstances surrounding Respondent's arrest and convictions, as well as the other conduct which led to the revocation of his license. Instead, Dr. Witt relied on the half-truths and self-serving testimony given to him by the Respondent. Specifically, during the interview, Respondent falsely claimed that he "never met anyone and never tried to meet anyone." (See Lakhani Cert. Ex. J at 5.)

These dissembling statements, proven to be so by Respondent's own prior testimony, led Dr. Witt to make unsubstantiated and uninformed conclusions. First, Dr. Witt concluded that Respondent's egregious conduct was limited to "illegal Internet chats." (Id.) Second, in his assessment of Respondent's preferential pedophilic sexual interest pattern, Dr. Witt reasons:

This possibility is the most difficult to assess, given that it relies heavily on [Respondent's] self-report. Given present information, I do not see evidence that [Respondent's] present Internet offense is preferentially pedophilic. Although admittedly he reportedly had a significant quantity of child pornography and chatted with ostensible minors, there are no indications or allegations that he has ever tried to engage in sexual behavior with minors. None of his inappropriate sexual chats on the Internet escalated to a meeting with any minors. All his inappropriate sexual activity on the Internet appears to be what is called "fantasy-driven," rather than "contact-driven."

[Id. at 8-9.]]

Third, Dr. Witt opined during his hypersexuality assessment of Respondent that "one would expect an absence of attempts to solicit sexual activity with minors, and there are no indications that [Respondent] has had or attempted to have sex with minors." (Id. at 9.) This is incorrect and Dr. Witt would have known it had he been "fully aware of the circumstances" of Respondent's misconduct as directed by the Board.

The evidence overwhelmingly demonstrates that Respondent, on more than one occasion, attempted to have sex with minors given his multiple suggestions of coordinating pick-ups and meeting locations - even if none of those attempts proved successful. (See Lakhani Cert. Ex. E.) Further, Respondent's conduct went beyond the Internet chat room universe because he admitted to speaking to underage females over the telephone. (Id.) Respondent's deliberate omissions and skewed testimony coupled with Dr. Witt's failure to review all pertinent documents prior to his assessment caused Dr. Witt to rule out the more serious motivators, those being either an antisocial personality or a preferentially pedophilic sexual interest. As such, his opinion is fatally flawed because it relies upon the recounting of the acts by Respondent who continues, time and again, to under-report and under-appreciate the seriousness and extent of his bad acts. One just has to look to paragraph 13 of the 2018 Final Order Denying Restatement (See Lakhani Cert. Ex. B), where Respondent was found to have given contrary testimony before the Board regarding his multiple attempts to meet underage females outside of the Internet chat rooms.

Accordingly, the Attorney General requests the Board reconsider its decision to allow Respondent to apply to reinstate his license because that decision was based on palpably incorrect information and a flawed report inadequate to find Respondent fit to resume chiropractic practice.

III. The Board's October 24, 2019 determination to offer Respondent an Order of Reinstatement of his license must be reconsidered based upon the Board's failure to appreciate the significance of probative and competent evidence demonstrating Respondent's lack of good moral character.

The Board should also reconsider its decision to offer Respondent an Order of Reinstatement because it failed to appreciate the significance of Respondent's multiple transgressions before the Board, including his active attempts to mislead the Board and Dr. Witt during his psychosexual evaluation. In conjunction with his underlying egregious conduct, this evidence demonstrates that Respondent lacks the requisite good moral character and fitness to enjoy the privilege of being a licensed chiropractor in the State of New Jersey and would pose a danger to the public if re-instated.

Pursuant to the Board's October 24, 2019 Executive Session Minutes, the Board considered the following in determining whether Respondent could reapply for licensure: (1) his outstanding payments of Board costs totaling \$39,392; (2) his successful completion of the SPEC examination; and (3) Dr. Witt's psychosexual evaluation report. (See Lakhani Cert. Ex. J.) The Board then voted in favor of offering Respondent an Order of Reinstatement. Ibid.

While Respondent satisfied the technical requirements for licensure to practice chiropractic in New Jersey, these technical requirements do not negate the longstanding history of

Respondent's misconduct before the Board which clearly demonstrates that Respondent lacks the requisite moral character to be a licensed chiropractor. Nothing presented to the Board by Dr. Witt, nor the fact that Respondent belatedly made payments of monies long overdue to the Board, changes that.

The Board failed to consider that Respondent flagrantly disregarded the Board's 2005 Interim Consent Order. Respondent continued to treat patients under the age of 18 despite explicit terms of the 2005 Interim Consent Order requiring he first request a Board-approved monitor. Further, the Board failed to appreciate that Respondent lied to the Board during his Investigative Inquiry. Respondent testified that he "never solicited anyone to physically meet outside of the Internet chat rooms," when in fact, during his plea hearing, Respondent admitted to, on multiple occasions, discussing possible in-person meetings with underage females, even offering to pick up an underage female from her home and suggesting his Paramus office location as a meeting place. See Lakhani Cert. Exs. E & G.) Finally, the Board failed to consider that in 2016, Respondent violated the terms of his Megan's law parole by joining an adult internet site. Lastly, but most importantly, the Board failed to give sufficient consideration to Respondent's underlying egregious criminal conduct of luring minors for his deviant prurient interests. Respondent's litany of blatant transgressions

establish his unfitness to bear the responsibilities of and enjoy the privileges of being a licensee of this Board.

The Legislature has established the demonstration of good moral character as a basic requirement of licensure as a chiropractor. N.J.S.A. 45:41.4 & 5, N.J.A.C. 13:44E-1A.1(a)(2). This requirement is a continuing requirement for licensure. See Matter of Polk, 90 N.J. 550 (1982); Matter of Jasclevich, 182 N.J. Super. 455 (App. Div. 1982). The rationale for this requirement stems from the premise that "patients rightfully may fear entrusting a deceitful physician with their lives" as it is "difficult to compartmentalize dishonesty." In Re Zahl, 186 N.J. 341, 355 (2006). Further, the character attributes of honesty, integrity, and lawful conduct are the fundamental qualities which society and individual patients are entitled to expect of a licensee who provides care and treatment. In Re Fanelli, 174 N.J. 165 (2002).

Here, Respondent's criminal conduct, coupled with his multiple deceitful acts towards the Board, demonstrate that he is the antithesis of a licensee with good moral character. Significantly, the Board expressed the same concerns regarding Respondent's character in the 2018 Final Order Denying Reinstatement by stating:

The nature of the profession renders the Board extremely reluctant to reinstate Respondent's license to practice in New Jersey. Although

Respondent demonstrated remorse for and some insight into the deleterious effects of his actions, the Board is not persuaded Respondent possesses good moral character...The Board finds that Respondent has failed to sufficiently demonstrate rehabilitation and concludes he cannot be entrusted with the responsibilities and privileges of chiropractic licensure.

[See Lakhani Cert. Ex. B.]

The Board has the duty to protect the public from an immoral licensee such as Respondent and to protect the standards of the chiropractic profession in the public's eye. Fanelli, 174 N.J. at 179-80. During his depraved communications with these minors, Respondent represented that he was a "doctor" and had an office in which to provide treatment. Respondent used the fact that he was a chiropractor to further his debauched scheme to have sexual contact with minors. There is absolutely no evidence before the Board that Respondent will put his patients' best interests before his own moral depravity. The public has the inalienable right to expect a Chiropractic Board licensee to be of unassailable good moral character deserving of their confidence and trust. Respondent is not that licensee. Respondent should never regain the privilege of holding a chiropractic license.

Showcasing his lack of self-awareness, Respondent testified before the Board that his plan for reentry into the practice of chiropractic would be to convert a bus into a mobile chiropractic office. (See Lakhani Cert. Ex. G at 77.) He explained the necessity

of having a mobile practice because as news of his past "spread around" in one location he could then drive to another location. (Id. at 78.) It is unfathomable that a licensing authority would condone such a practice that has as its only goal to allow a licensee to duck and dive from his past bad conduct as he travels from one unsuspecting community to another. Such conduct simply does not live up to the Board's duty to protect the public.

The Board must assess the totality of circumstances before granting Respondent the ability to reapply for licensure. As such, the Attorney General respectfully requests the Board reconsider its position as evidenced in the October 24, 2019 minutes.

CONCLUSION

The Board should reconsider and deny Respondent's request for reinstatement. Pursuant to N.J.S.A. 45:1-21(b), the Board may refuse to reinstate Respondent's license upon proof he engaged in the use of dishonesty, misrepresentation and deception. In accordance with N.J.S.A. 45:1-21(f), the Board may also refuse to reinstate Respondent's license upon proof he has been convicted of a crime involving moral turpitude. Further, the Board may refuse to reinstate Respondent's license upon determining he lacks good moral character, which is an ongoing requirement for licensure. N.J.A.C. 13:44E-1A.1(a)(2).

For these reasons, the Attorney General's motion for reconsideration of the Board's decision to offer Respondent an Order of Reinstatement should be granted.

Respectfully submitted,

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By: /s/ Nisha S. Lakhani

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