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BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

6 In the Matter of)
7) Case # 2000-3007
8 Allen Lee Burke)
9) FINAL DEFAULT
10) ORDER
11 D.C. Applicant.)
12)
13)

14 The Oregon Board of Chiropractic Examiners (hereafter "Board" or "OBCE") is the state
15 agency responsible for licensing, regulating and disciplining chiropractic physicians and certified
16 chiropractic assistants in the State of Oregon. Allen Lee Burke (hereafter "Applicant"), is an
17 applicant to the Board to practice as a chiropractic physician in Oregon.
18

19 Summary of Facts

20
21 1.

22 On February 16, 2000, the OBCE received Applicant's application for a license to
23 practice as a chiropractic physician in Oregon. All requirements of the application process were
24 met and the application was forwarded to the Oregon Board of Chiropractic Examiners for
25 review at their May 18, 2000 meeting.
26

27 2.

28 Applicant was convicted of a felony in the State of California on December 26, 1991 for
29 three (3) counts of Grand Theft and one (1) count of a violation of Section 556(a)(1) of the
30 Insurance Code of California by verdict of a jury.
31

32 3.

33 The California Board of Chiropractic Examiners (C.B.C.E.) proposed to revoke
34 Applicant's license to practice chiropractic on December 11, 1992. After administrative
35 hearing, the Administrative Law Judge proposed revocation of Applicant's license and the
36 C.B.C.E. revoked Applicant's license on May 11, 1996. Applicant applied to the C.B.C.E. for
37 reinstatement which was denied on December 20, 1999 effective January 21, 2000.
38

39 4.

40 On December 14, 2000, Licensee petitioned the California Board for Restoration of his
41 Revoked License and on May 21, 2001, the Board reinstated his license under the following
42 conditions:
43

- 44 1. Licensee is on probation for five years
45 2. He shall be supervised for the first two years of probation

- 1 3. He shall take and pass the California Law Exam.
- 2 4. He shall submit quarterly reports certifying he is in compliance with probation
- 3 5. He shall provide evidence of completion of continuing education
- 4 6. He must notify the board if he leaves the state within 10 days of departure
- 5 7. He shall notify employers and fellow employees of the California decision
- 6 8. Upon completion of probation his license will be fully restored
- 7 9. He is revoked, however the revocation is stayed. If Licensee violates probation in
- 8 any respect, the disciplinary order that was stayed may be carried out.

9
10 5.

11
12 On May 24, 2000, the Board issued a Notice of Proposed Denial of Licensure. On June
13 20, 2000 applicant requested a hearing. On November 25, 2002, an Amended Notice of
14 Proposed Denial of Licensure was issued and received on December 2, 2002 by applicant.
15 Thereafter, in the process of arranging a hearing date, Applicant indicated and signed on March
16 7, 2003, that it was his intent to withdraw his hearing request and that his appearance would be
17 treated as a waiver and the agency may proceed with a default order.

18
19 Conclusions of Law

20
21 6.

22
23 The Board finds the facts as determined in the felony conviction and subsequent
24 revocation and eventual restoration and probation of Applicant's California license, constitutes
25 grounds to deny the application for a license to practice as a chiropractic physician in Oregon. In
26 addition, the Board finds that the relationship to the patients and the patient's billings and the
27 facts supporting the conviction constitute ground to deny the application. Further, the California
28 license revocation was based on findings of unprofessional conduct that involved moral
29 turpitude, dishonesty or corruption and relied on convictions of fraud involving patient billing.
30 The denial is based on the following provisions of:

31
32 **ORS 684.100 (1)(d)**

33 (1) The State Board of Chiropractic Examiners may refuse to grant a license to
34 any applicant, or may discipline a person upon any of the following grounds:

35
36 (a) Fraud or misrepresentation.

37
38 (d) A conviction of a felony or misdemeanor involving moral turpitude. A copy of
39 the record of conviction, certified to by the clerk of the court entering the
40 conviction, is conclusive evidence of the conviction.

41
42 **ORS 684.040 (2)(a)**

43 (2) Each applicant shall furnish to the board:

44 (a) Evidence satisfactory to the board of the applicant's good moral character.

1
2 **OAR 811-010-0055 (3)**
3

4 (3) The Board may reject applications for good cause including evidence of
5 unprofessional conduct.
6

7 **OAR 811-035-0015 Unprofessional Conduct in the Chiropractic Profession**

8 Unprofessional conduct means any unethical, deceptive, or deleterious conduct or
9 practice harmful to the public; any departure from, or failure to conform to, the minimal
10 standards of acceptable chiropractic practice; or a willful or careless disregard for the
11 health, welfare or safety of patients, in any of which cases proof of actual injury need not
12 be established. Unprofessional conduct shall include, but not be limited to, the following
13 acts of a chiropractic physician:

14 (7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection
15 techniques;

16 (12) Perpetrating fraud upon patients or third party payors, relating to the practice of
17 chiropractic;

18 7.
19

20 The Board denies Applicant's application for a license to practice chiropractic in Oregon.
21 The Amended Notice of Proposed Discipline included in paragraph 9 language that indicated the
22 Board file is relevant to the subject and automatically became part of the evidentiary record for
23 purposes of default to prove a prima facie case.

24 8.
25

26 IT IS HEREBY ORDERED that the Applicant Allen Lee Burke, is found to be in default
27 and the license application is denied to practice chiropractic in the State of Oregon pursuant to
28 ORS 684.100(1)(d) in this matter.
29

30 DATED this 18th day of March 2003.
31

32 **BOARD OF CHIROPRACTIC EXAMINERS**
33 State of Oregon
34

35 Original Signatures on file
36 at the OBCE Office
37 By: _____
38 Dave McTeague, Executive Director

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VERIFICATION

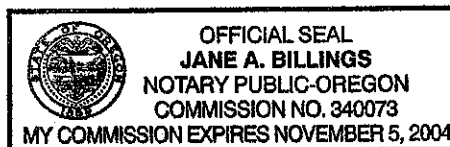
State of Oregon)
County of Marion) Case # 2000-3007

I, Dave McTeague, being first duly sworn, state that I am the Executive Director of the Board of Chiropractic Examiners of the State of Oregon, and as such, am authorized to verify pleadings in this case: and that the foregoing Notice is true to the best of my knowledge as I verily believe.

Original Signatures on file _____
at the OBCE Office _____
Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

SUBSCRIBED AND SWORN to before me
this 18th day of March, 2003.

NOTARY PUBLIC FOR OREGON
My Commission Expires: 11-5-04



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CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on March 18, 2003, I served the foregoing Final Order of Default upon Allen Lee Burke, Applicant, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Allen Lee Burke, Applicant
188 W. Clover Road
Tracy, California 95376

Original Signatures on file
at the OBCE Office

Dave McTeague ✓
Executive Director
Oregon Board of Chiropractic Examiners

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BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

6 In the Matter of)
7) Case # 2000-3007
8 Allen Lee Burke)
9) **AMENDED**
10) **NOTICE OF PROPOSED**
11 D.C. Applicant.) **DENIAL OF LICENSURE**
12)
13)

14 The Oregon Board of Chiropractic Examiners (hereafter "Board" or "OBCE") is the state
15 agency responsible for licensing, regulating and disciplining chiropractic physicians and certified
16 chiropractic assistants in the State of Oregon. Allen Lee Burke (hereafter "Applicant"), is an
17 applicant to the Board to practice as a chiropractic physician in Oregon.

18
19 1.

20 On February 16, 2000, the OBCE received Applicant's application for a license to
21 practice as a chiropractic physician in Oregon. All requirements of the application process were
22 met and the application was forwarded to the Oregon Board of Chiropractic Examiners for
23 review at their May 18, 2000 meeting.

24
25 2.

26 Applicant was convicted of a felony in the State of California on December 26, 1991 for
27 three (3) counts of Grand Theft and one (1) count of a violation of Section 556(a)(1) of the
28 Insurance Code of California by verdict of a jury. (Attachment 1).

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3.

The California Board of Chiropractic Examiners (C.B.C.E.) proposed to revoke Applicant's license to practice chiropractic on December 11, 1992. (Attachment 2) After administrative hearing, the Administrative Law Judge proposed revocation of Applicant's license (Attachment 3) and the C.B.C.E. revoked Applicant's license on May 11, 1996. (Attachment 4.) Applicant applied to the C.B.C.E. for reinstatement which was denied on December 20, 1999 effective January 21, 2000. (Attachment 5)

4.

On December 14, 2000, Licensee petitioned the California Board for Restoration of his Revoked License and on May 21, 2001, the Board reinstated his license under the following conditions:

1. Licensee is on probation for five years
2. He shall be supervised for the first two years of probation
3. He shall take and pass the California Law Exam.
4. He shall submit quarterly reports certifying he is in compliance with probation
5. He shall provide evidence of completion of continuing education
6. He must notify the board if he leaves the state within 10 days of departure
7. He shall notify employers and fellow employees of the California decision
8. Upon completion of probation his license will be fully restored
9. He is revoked, however the revocation is stayed. If Licensee violates probation in any respect, the disciplinary order that was stayed may be carried out.

The California Board decision is attached as Attachment 6.

The Board finds the facts as determined in the felony conviction and subsequent revocation and eventual restoration and probation of Applicant's California license, constitutes grounds to deny the application for a license to practice as a chiropractic physician in Oregon. In addition, the Board finds that the relationship to the patients and the patient's billings and the facts supporting the conviction constitute grounds to deny the application. Further, the California license revocation was based on findings of unprofessional conduct that involved moral turpitude, dishonesty or corruption and relied on convictions of fraud involving patient billing. The denial is based on the following provisions of:

ORS 684.100 (1)(d)

(1) The State Board of Chiropractic Examiners may refuse to grant a license to any applicant, or may discipline a person upon any of the following grounds:

(a) Fraud or misrepresentation.

(d) A conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, is conclusive evidence of the conviction.

ORS 684.040 (2)(a)

(2) Each applicant shall furnish to the board:

(a) Evidence satisfactory to the board of the applicant's good moral character.

OAR 811-010-0055 (3)

(3) The Board may reject applications for good cause including evidence of unprofessional conduct.

OAR 811-035-0015 Unprofessional Conduct in the Chiropractic Profession

Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not

1 be established. Unprofessional conduct shall include, but not be limited to, the following
2 acts of a chiropractic physician:

3 (7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection
4 techniques;

5 (12) Perpetrating fraud upon patients or third party payors, relating to the practice of
6 chiropractic;

7 6.

8 The Board proposes to deny Applicant's application for a license to practice chiropractic
9 in Oregon.

10 7.

11 NOTICE OF RIGHT TO A HEARING

12 Applicant has the right, if Applicant requests, to a hearing as provided by the
13 Administrative procedures Act (ORS Chapter 183) before the Board or its hearing officer to
14 contest the matter set out above. At the hearing, Applicant may be represented by an attorney,
15 and may subpoena and cross-examine witnesses. A request for hearing must be made in writing
16 to the Board, and must be received by the Board within 30 days from the date of mailing of this
17 notice (or if not mailed, the date of personal service), and must be accompanied by a written
18 answer to the charges contained in this Notice. Upon receipt of a request for hearing, the Board
19 will notify Applicant of the time and place of the hearing. If Applicant requests a hearing,
20 Applicant will be given, prior to the commencement of the hearing, information on the
21 procedures, right of representation, and other rights of parties relating to the conduct of the
22 hearing as required by ORS 183.413(2).

23 8.

24 Applicant's answer shall be made in writing to the Board and shall include an admission
25 or denial of each factual matter alleged in this Notice, and a short plain statement of each
26 relevant affirmative defense Applicant may have. Except for good cause, factual matters alleged
27 in this notice and not denied in the answer shall be presumed admitted; failure to raise a
28 particular defense in the answer will be considered a waiver of such defense; and new matters

1 alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency, and
2 evidence shall not be taken on any issue not raised in the Notice and answer.

3
4 9.

5 If Applicant fails to request a hearing within 30 days, or fails to appear as scheduled at
6 the hearing, the Board may issue a final order by default and impose the above sanctions against
7 Applicant. Upon default order of the Board or failure to appear, the contents of the Board's file
8 regarding the subject of this case automatically becomes part of the evidentiary record of this
9 disciplinary action for the purpose of proving a prima facie case. ORS 183.415(6).

10 DATED this 25th day of November, 2002.

11
12
13 **BOARD OF CHIROPRACTIC EXAMINERS**
14 State of Oregon

15
16
17 Original Signatures on file
18 at the OBCE Office
19 By: _____
20 Dave McTeague, Executive Director

1
2 **VERIFICATION**

3
4 State of Oregon)
5 County of Marion) Case # 2000-3007
6

7 I, Dave McTeague, being first duly sworn, state that I
8 am the Executive Director of the Board of Chiropractic Examiners
9 of the State of Oregon, and as such, am authorized to verify
10 pleadings in this case: and that the foregoing Notice is true to
11 the best of my knowledge as I verily believe.

12
13 **Original Signatures on file**
14 **at the OBCE Office**

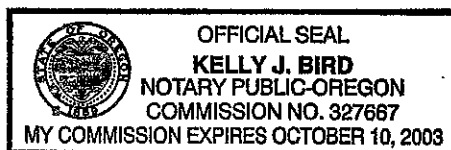
15 DAVE McTEAGUE, EXECUTIVE DIRECTOR
16 OREGON BOARD OF CHIROPRACTIC EXAMINERS

17 SUBSCRIBED AND SWORN to before me
18 this 25th day of November 2002.

19 **Original Signatures on file**
20 **at the OBCE Office**

21 W
22 NOTARY PUBLIC FOR OREGON

23 My Commission Expires: 10/10/03



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CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on November 25th, 2002, I served the foregoing Notice upon Allen Lee Burke, Applicant, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Allen Lee Burke, Applicant
C/o Oregon C.O.R.F.
871 Medical Center Dr. NE
Salem, Oregon 97301

Allen Lee Burke, Applicant
188 W. Clover Road
Tracy, California 95376

Original Signatures on file
at the OBCE Office

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

SUPERIOR COURT OF THE STATE OF CALIFORNIA DEPT. 32
IN AND FOR THE COUNTY OF ALAMEDA

Date: Feb. 14, 1992 Mon.

RONALD M. SABRA
R. Turner

Judge
Deputy Sheriff

Judy E. Phelps
Ava M. Dupre

Deputy Clerk
Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

Counsel appearing
for Plaintiff

Alice G. Sprague, Deputy
District Attorney

Attachment 1

Counsel appearing
for Defendant

Rand L. Stephens, Esq.
Richard D. King, Esq.
James J. Selzter, Esq.

ALAN L. BURKE

Defendant

Probation Officer
appearing

no appearance

NATURE OF PROCEEDINGS:

REPORT AND SENTENCE

ACTION No. 108589B

PEN. ATX333 CEN. 0233289

Defendant is present.

The defendant having been convicted on December 26, 1991 by

- () plea of guilty
- () nolo contendere
- () decision of Court
- (X) verdict of jury

of the offense 5 of felonies, to wit: three (3) counts of GRAND THEFT, a violation of Section 487 of the Penal Code of California, as charged in counts 3, 6 and 8 of the Information, one (1) count of a violation of Section 556(a)(1) of the Insurance Code of California, as charged in count 7 of the Information.

The defendant waives formal arraignment for sentence and has no legal cause to show why the judgment of this Court should not be pronounced against him/her. The Court pronounces judgment.

Defendant has been held in custody for 53 actual days plus 27 days good/worktime credit for a total of 80 days as a result of the same criminal act or acts for which he/she has been convicted.

It is ORDERED that said defendant be punished by imprisonment in state prison of the State of California for the middle term of Two (2) years as to the 3rd count, and Two (2) years as to the 6th count, and Two (2) years as to the 7th count, and Two (2) years as to the 8th count, for a TOTAL OF TWO (2) YEARS.

It is further ORDERED that sentences shall be served in respect to one another as follows:

The term imposed as to the 6th, 7th and 8th counts shall run immediately and concurrently to the term imposed as to the 3rd count.

and in respect to any prior incompletd sentence(s) as follows:

"THE COURT MAKES NO ORDER"

It is further ORDERED that the defendant is remanded to the custody of the Sheriff of the County of Alameda to be by him delivered to (X) Director of Corrections of the State of California at California Medical Facility, Vacaville, California () California Institution for Women at Fontana, California.

Defendant advised of his right to appeal.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
BRANCH Hayward

FILED
ALAMEDA COUNTY
FEB 20 1992
RENE G. DAVIDSON, County Clerk
By *Judy E. Phelps*

COURT ID
S 0 1 0 0 0 2

PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: ALAN L. BURKE
AKA: PFN: ATX333 CEN: 0233289

CASE NUMBER (S)
- A
108589 - B
- C
- D
- E

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT
AMENDED ABSTRACT

DATE OF HEARING (MO) (DAY) (YR) 02/14/92
DEPT. NO. 32
JUDGE RONALD M. SABRAW
CLEER Judy E. Phelps
REPORTER Ava M. Dupre
COUNSEL FOR PEOPLE Alice G. Sprague, DDA
COUNSEL FOR DEFENDANT Rand L. Stephens
PROBATION NO. OR PROBATION OFFICER n/a

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (ON ALTERNATE FELONY/MISDEMEANORS):

Table with columns: COUNT, CODE, SECTION NUMBER, CRIME, YEAR CONVICTED, DATE OF CONVICTION (MO, DAY, YEAR), CONVICTED BY (M, F, M, F, M, F), SENTENCE RELATION, PRINCIPAL OR CONSECUTIVE TERM IMPOSED (YEARS, MONTHS).

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC. For each count list enhancements horizontally. Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add up time for enhancements on each line and enter time total in right-hand column.

Table with columns: Count, Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Total.

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER. List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, report it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Table with columns: Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Enhancement, Yrs or 'S', Total.

4. INCOMPLETED SENTENCES CONSECUTIVE:

Table with columns: COUNTY, CASE NUMBER, CREDIT FOR TIME SERVED.

5. OTHER ORDERS Defendant ordered to pay \$500 restitution fine plus actual restitution in the amount of \$20,460.51.

Use additional sheets of plain paper if necessary.

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 200-A):
7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM LIMIT, ETC. (Do not include § 854 stays or discretionary stays of term for enhancements.)
8. TOTAL TERM IMPOSED: 2

9. EXECUTION OF SENTENCE IMPOSED:
A. AT INITIAL SENTENCING HEARING
B. AT RESENTENCING PURSUANT TO DECISION ON APPEAL
C. AFTER REVOCATION OF PROBATION
D. AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170(d))
E. OTHER

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR) 02/14/92
CREDIT FOR TIME SPENT IN CUSTODY 80
TOTAL DAYS INCLUDING: 80
ACTUAL LOCAL TIME 53
LOCAL CONDUCT CREDITS 27
STATE INSTITUTIONS DMH CDC

11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:
 FORTHWITH INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-BURDENANCE CENTER LOCATED AT:
 CALIF. INSTITUTION FOR WOMEN - FRONTIERA
 CALIF. MENAVAL FACILITY - VACAVILLE
 CALIF. INSTITUTION FOR MEN - CHICO
 DELIEL VOC. INST.
 SAN QUENTIN
 OTHER (SPECIFY):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE *Judy E. Phelps*

DATE February 20, 1992

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 CHRISTIANA TIEDEMANN
Deputy Attorney General
3 455 Golden Gate Avenue, Rm. 6200
San Francisco, California 94102
4 Telephone: (415) 703-2734

5 Attorneys for Complainant

6

7

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

8

9

10	In the Matter of the)	No. 1992-30
	Accusation Against:)	
11)	<u>ACCUSATION</u>
	ALAN LEE BURKE)	
12	4269 Hilltop Drive)	
	El Sobrante, CA 94803)	
13	License No. 11700)	
14	Respondent.)	

15

16 Complainant, Vivian Davis, charges and alleges as
17 follows:

18 1. She is the Executive Director of the Board of
19 Chiropractic Examiners, State of California (hereinafter "the
20 Board") and makes and files this Accusation solely in her
21 official capacity.

22 2. Respondent Alan Lee Burke (hereinafter
23 ("respondent") was issued License No. 11700 on or about May 19,
24 1977 by the Board. Said license was at all times mentioned
25 herein in full force and effect and is currently in good
26 standing.

27 //

1 RELEVANT STATUTES AND REGULATIONS

2 3. Section 1000-10 subdivisions (a) and (b) of the
3 Business and Professions Code¹ states, in pertinent part, that
4 the Board may, by rule or regulation, adopt rules of professional
5 conduct appropriate to the establishment and maintenance of a
6 high standard of professional service and protection of the
7 public and that the Board may take disciplinary action against a
8 licensee for a violation of the rules and regulations adopted by
9 the Board or for any cause specified in the Chiropractic Act.

10 4. Title 16, California Code of Regulations, section
11 317 constitutes part of the rules and regulations of the Board,
12 and, in pertinent part, states that the Board shall take action
13 against any holder of a license who is guilty of unprofessional
14 conduct. Unprofessional conduct is defined therein to include,
15 but not to be limited to:

16 (g) Conviction of a crime which is substantially
17 related to the qualifications, functions or duties of a
18 chiropractor.

19 (h) Conviction of a felony or of any offense,
20 whether felony or misdemeanor, involving moral
21 turpitude, dishonesty or corruption.

22 (j) The commission of any act involving moral
23 turpitude, dishonesty or corruption, whether the act is
24 committed in the course of the individual's activities
25 as a license holder, or otherwise.

26
27 1. All statutory references are to the Business and
Professions Code unless otherwise specified.

1 (k) Knowingly making or signing any certificate or
2 other document relating to the practice of chiropractic
3 which falsely represents the existence or nonexistence
4 of a state of facts.

5 (p) The participation in any act of fraud or
6 misrepresentation.

7 (s) The offering, delivering, receiving or
8 accepting of any rebate, refund, commission,
9 preference, patronage, dividend, discount or other
10 consideration as compensation or inducement for
11 referring patients to any person.

12 FIRST CAUSE FOR DISCIPLINARY ACTION

13 5. Respondent is subject to disciplinary action
14 pursuant to Title 16, California Code of Regulations sections
15 317(g) and 317(h) and Business and Professions Code section 1000-
16 10 in that he has been convicted of a felony, an offense
17 substantially related to the qualifications, functions and duties
18 of a chiropractor, and an offense involving dishonesty and
19 corruption as follows:

20 A. On or about January 24, 1991, a criminal complaint
21 was filed in the Municipal Court for the Berkeley-Albany Judicial
22 District, County of Alameda, State of California, against
23 respondent and others charging violations of Insurance Code
24 section 556(a)(1) (knowingly presenting or causing to be
25 presented false or fraudulent claims for the payment of a loss
26 under a contract of insurance); Penal Code section 487 (grand
27 theft); Business and Professions Code section 650 (offering or

1 delivering consideration as compensation or inducement for the
2 referral of patients); and Insurance Code sections 556(a)(3) and
3 556(a)(4) (unlawfully preparing or making a writing with the
4 intent to support a false insurance claim).

5 B. On or about December 26, 1991, in Case No. 1085898
6 before the Superior Court for the Hayward Branch, County of
7 Alameda, State of California, respondent was found guilty by a
8 jury of three felony violations of Penal Code section 487 (grand
9 theft) and one felony violation of Insurance Code section
10 556(a)(1) (knowingly presenting or causing to be presented false
11 or fraudulent claims for the payment of a loss under a contract
12 of insurance).

13 C. On or about February 20, 1992, in Case No. 1085898
14 before the Superior Court of the State of California, County of
15 Alameda, respondent was sentenced pursuant to his being found
16 guilty by a jury as follows:

- 17 1. To serve two years in State prison.
- 18 2. To pay a restitution fine of \$500.
- 19 3. To make actual restitution in the amount of
20 \$20,460.51.

21 D. The underlying circumstances of respondent's
22 conviction are as follows: In connection with various auto
23 accidents respondent prepared or caused to be prepared false and
24 fraudulent bills for submission to insurance companies which were
25 relied on by the insurance companies in evaluating the injuries
26 of respondent's patients and in settling their claims.
27 Respondent's bills included: (1) charges for patient

1 examinations and treatments which he did not provide; (2) charges
2 for longer physical therapy treatment for patients than was
3 actually given; (3) overbilling for massage treatments; and (4)
4 overbilling for a pain-relieving apparatus known as a "TENS"
5 unit.

6 SECOND CAUSE FOR DISCIPLINARY ACTION

7 6. Respondent is subject to disciplinary action
8 pursuant to Title 16, California Code of Regulations sections
9 317(j) and 317(p) and Business and Professions Code section 1000-
10 10 in that he was dishonest and engaged in misrepresentation in
11 deposition testimony as follows:

12 A. In sworn deposition testimony given by respondent
13 on January 14, 1987 in connection with the personal injury action
14 of one of his patients, respondent stated that he had no
15 ownership interest in Bay Area Medical-Legal Thermography, a lab
16 to which he had referred the patient for thermographic exams. In
17 truth and in fact respondent had an ownership interest in Bay
18 Area Medical-Legal Thermography in January of 1987. In sworn
19 deposition testimony given by respondent on October 21, 1991
20 respondent stated that he had an ownership interest in Bay Area
21 Medical-Legal Thermography commencing in 1982 and that in 1985 or
22 1986 he became sole owner of Bay Area Medical-Legal Thermography.

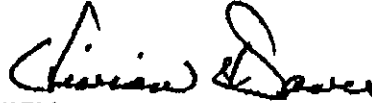
23 THIRD CAUSE FOR DISCIPLINARY ACTION

24 7. Respondent is subject to disciplinary action
25 pursuant to Title 16, California Code of Regulations section
26 317(s) and Business and Professions Code section 1000-10 in that
27 during calendar years 1987, 1988 and 1989 on dates unknown to

1 complainant but known to respondent, respondent offered to pay
2 and did pay compensation for the referral of patients to him.

3 WHEREFORE, complainant prays that the Board hold a
4 hearing on the matters alleged herein and following said hearing
5 issue a decision suspending or revoking the chiropractic license
6 issued to respondent Alan Lee Burke, D.C., and taking such other
7 and further action as the Board deems proper.

8 DATED: December 11, 1992



9
10 VIVIAN DAVIS
11 Executive Director
12 Board of Chiropractic Examiners
13 State of California

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22 Complainant

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03549110-
SF92AD0503

Attachment 3

**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
ALAN LEE BURKE, D.C.)
4269 Hilltop Drive)
El Sobrante, CA 94803)
License No. 11700)
Respondent.)

No. 1992-30
OAH No. N 9504128

PROPOSED DECISION

On February 13 and 14, 1996, in Oakland, California, Ruth A. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Christiana Tiedemann, Deputy Attorney General represented the complainant.

James J. Seltzer, Attorney at Law, 2200 Powell Street, Suite 1035, Emeryville, California, 94608, represented respondent.

Submission of the matter was deferred to March 1, 1996, for receipt of argument which was received and considered.

FINDINGS OF FACT

I

Vivian David made the Accusation in her official capacity as Executive Director of the Board of Chiropractic Examiners, State of California (Board) and not otherwise.

II

Alan Lee Burke (respondent) was issued License No. 11700 on May 19, 1977, by the Board. The license was at all times mentioned herein in full force and effect and is currently in good standing.

FIRST CAUSE OF ACTION:

III

On January 24, 1991, a criminal complaint was filed in the Municipal Court for the Berkeley-Albany Judicial District, County of Alameda, State of California, against respondent and others, charging violations of section 556(a)(1) of the Insurance Code (knowingly presenting or causing to be presented false or fraudulent claims for the payment of a loss under a contract of insurance); section 487 of the Penal Code (grand theft); section 650 of the Business and Professions Code (offering or delivering consideration as compensation or inducement for referral of patients); and sections 556(a)(3) and (4) of the Insurance Code (unlawfully preparing or making a writing with the intent to support a false insurance claim).

IV

On December 26, 1991, in Case No. 1085898 before the Superior Court for the Hayward Branch, County of Alameda, State of California, respondent was found guilty by a jury of three felony violations of Penal Code section 487 (grand theft) and one felony violation of Insurance Code section 556(a)(1) (knowingly presenting or causing to be presented false or fraudulent claims for the payment of a loss under a contract of insurance).

V

On February 20, 1992, in Case No. 1085898 before the Superior Court of the State of California, County of Alameda, respondent was sentenced as follows:

1. To serve two years in State Prison
2. To pay a restitution fine of \$500.
3. To make actual restitution in the amount of \$20,460.51.

VI

The underlying facts and circumstances of respondent's conviction are that in connection with various auto accidents respondent prepared or caused to be prepared false and fraudulent bills for submission to insurance companies which were relied on by those companies in evaluating the injuries of respondent's patients and in settling their claims. Respondent's bills included charges for patient examinations and treatments which he did not provide and/or were not necessary, charges for longer physical therapy treatment for patients than was actually given;

overbilling for massage treatments and changing the dates of the treatments; and overbilling for a pain-relieving apparatus known as a "TENS" unit.

VII

The convictions are felonies which are substantially related to the qualifications, duties and functions of a Chiropractor and which involve dishonesty and corruption.

SECOND CAUSE OF ACTION:

VIII

In a sworn deposition taken on January 14, 1987, testimony was given by respondent in connection with the personal injury action of one of his patients. Respondent stated that he had no ownership interest in Bay Area Medical-Legal Thermography, a lab to which he referred the patient for thermographic exams. In truth and in fact respondent had an ownership interest in that lab in January of 1987. In a sworn deposition given by respondent on October 21, 1991, respondent stated that he had an ownership interest in the lab commencing in 1982 and that in 1985 or 1986 he became sole owner of the lab. This testimony was dishonest and constituted misrepresentation in a sworn deposition.

THIRD CAUSE OF ACTION:

IX

During at least the calendar years of 1987, 1988 and 1989, respondent offered to pay and did pay compensation for the referral of patients to him. Respondent testified that he did not know this was contrary to the law and when he found out, he stopped the practice.

OTHER MATTERS:

X

Respondent has been licensed for 19 years and has had no previous disciplinary record.

XI

Respondent has been working as a Chiropractor since his release from the Half-Way House where he spent the last part of his prison sentence. Respondent has settled litigation against him by CSAA by agreeing to pay \$40,000. There is no evidence

that the respondent has made full restitution under the criminal conviction.

XII

Respondent, since his conviction, has engaged in billing practices designed to deceive the insurance carriers who receive his bills. He is billing for services that he has rendered to patients under the name of Dr. Mendenhall because insurance companies have been slow to pay him under his own name. Even a representative of respondent's own billing service testified that she would understand the billed procedures under Dr. Mendenhall's name would have been rendered by Dr. Mendenhall or under his direct supervision. It was clear that Dr. Mendenhall does not directly supervise the respondent in any way.

XIII

It was established by the evidence that respondent continues to engage in questionable and unnecessary treatment practices in vehicle accident cases. The respondent is operating at the fringes of his profession in the use of diagnostic and treatment practices that are not readily accepted by the general chiropractic community.

XIV

While respondent is sorry for the problems his conduct has created for his family and for himself, he does not seem to genuinely understand the serious nature of the dishonesty and corrupt practices in which he has engaged and continues to engage. Respondent blames the insurance companies for his problems. Respondent claims that he had an undiagnosed attention deficit disorder (ADD) which caused him to pay less attention to his business practices than he should have. He claims to now be on medication for his ADD. However, there was no expert testimony that his condition is in any way responsible for respondent's problems and that taking medication will assure that respondent will not engage in such practices in the future. In fact, the evidence is to the contrary.

XV

This situation has truly been a tragedy for respondent's family. However, the need for the public to be safe from dishonest, deceptive and corrupt practices must be paramount. The respondent did not demonstrate significant rehabilitation nor is there any assurance that such conduct will not occur again. It would not be in the public interest to issue a probationary license at this time.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Findings III through VII, cause for disciplinary action exists pursuant to sections 317(g) and 317(h) of Title 16, California Code of Regulations (Regs) and section 1000-10 of the Business and Professions Code (Code).

II

By reason of the matters set forth in Finding VIII, cause for disciplinary action exists pursuant to sections 317(j) and (p) of the Regs and section 1000-10 of the Code.

III

By reason of the matters set forth in Finding IX, cause for disciplinary action exists pursuant to section 317(s) of the Regs and section 1000-10 of the Code.

IV

The matters in Findings X through XV have been considered in making the following order.

ORDER

Chiropractic License No. 11700 issued to Alan Lee Burke, D.C. is hereby revoked pursuant to Determinations I, II and III separately and jointly.

DATED: March 11, 1996

Ruth S. Astle
RUTH S. ASTLE
Administrative Law Judge

BOARD OF CHIROPRACTIC EXAMINERS

2710 NORTH GATEWAY OAKS, SUITE 100

SACRAMENTO, CA 95833-3505

TELEPHONE (916) 263-5355



Attachment 4

**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA**

**IN THE MATTER OF THE
ACCUSATION AGAINST:**

**No. 1992-30
OAH No. N-9504128**

**ALAN LEE BURKE, D.C.
4269 Hilltop Dr
El Sobrante, CA 94803**

License No. 11700

Respondent.

ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Chiropractic Examiners as its Decision in the above-entitled matter.

The Decision shall become effective on May 11, 1996.

IT IS SO ORDERED April 11, 1996.

**Chairman, California State Board
of Chiropractic Examiners**

**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA**

In the Matter of the Petition for
Restoration of Revoked License of:

ALAN LEE BURKE, D.C.
188 West Clover Road
Tracy, California 95376

OAH No. N-1999110173

Petitioner.

DECISION

This matter was heard before a quorum of the Board of Chiropractic Examiners, on November 18, 1999, in Sacramento, California. The following members of the Board were present: Mr. Craig H. Missakian, Dr. Lloyd E. Boland, D.C., Dr. Stephen M. Foreman, D.C., and Dr. Jeffrey M. Steinhardt, D.C., Chairman, presiding. Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, sat with the Board.

Jana Tuton, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Alan Lee Burke, D.C., was present and represented himself.

Board member Stephen M. Foreman, D.C. participated in this reinstatement hearing and deliberations pertaining thereto with the full knowledge and consent of petitioner, notwithstanding the fact that Dr. Foreman was a witness for the Board in the underlying administrative hearing which led to the revocation of petitioner's license. Petitioner was given the option of postponing his reinstatement hearing until the next scheduled meeting of the Board, at which time a quorum of the Board could be achieved without the participation of Dr. Foreman. Petitioner waived his right to postpone the hearing and elected to proceed to hearing on November 18, 1999.

FACTUAL FINDINGS

1. The Board issued Chiropractic License no. 11700 to petitioner on May 19, 1977.
2. Effective May 11, 1996, petitioner's license was revoked by the Board after an administrative hearing in Accusation Case No. 1992-30. The Board's disciplinary action, pursuant to Business and Professions Code section 1000-10, was based upon its determination that petitioner committed acts of unprofessional conduct pursuant to Title 16, California Code of Regulations ("16 CCR"), sections 317(g) (conviction of a crime substantially related to the qualifications, functions and duties of a chiropractor), 317(h) (conviction of a felony and/or offense involving moral turpitude, dishonesty or corruption), 317(j) (the commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise), 317(p) (participation in any act of fraud or misrepresentation) and 317(s) (the offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person). Petitioner was convicted on December 26, 1991 of three felony violations of Penal Code section 487 (grand theft) and one felony violation of Insurance Code section 556(a)(1) (knowingly presenting or causing to be presented false or fraudulent claims for the payment of a loss under a contract of insurance). The activities underlying the convictions pertained to patient billings in his chiropractic practice. In addition, petitioner was found to have lied under oath in a sworn deposition concerning his ownership interest in a laboratory to which he referred patients for thermographic exams, and he was found to have inappropriately paid compensation for the referral of patients to him.
3. On September 28, 1999, petitioner signed a Petition for Restoration of Revoked License that was filed with the Board on September 30, 1999. Petitioner has not previously applied for reinstatement of his revoked license.
4. Following the revocation of his license, petitioner sold his practice to Dr. Patricia Lowry, D.C. Thereafter, Dr. Lowry employed petitioner as a chiropractic assistant and office manager. After a few months, petitioner purchased the practice back from Dr. Lowry and immediately closed the practice.
5. Petitioner has been unable to find steady employment since the revocation of his chiropractic license. Petitioner was on disability for depression for about a year, from October 1996 to October 1997. Petitioner collected unemployment insurance from October 1997 to about October 1998. Petitioner worked as a chiropractor in Mexico from October through December 1998. Beginning in January 1999, petitioner has worked as a volunteer at Comprehensive Outpatient Rehabilitation Facility, a chiropractic office run by petitioner's brother, E. Laramie Burke, D.C. Petitioner performs clerical work and marketing; he has no patient care responsibilities.

Petitioner has filled out numerous employment applications in the years since his chiropractic license was revoked. Petitioner has truthfully disclosed on these applications the fact that he has been convicted of a felony. Petitioner believes these disclosures have prevented him from obtaining employment. Petitioner stated at hearing that he has never lied about his criminal record on an application for employment because he feared the Board would somehow find out about it.

Petitioner obtained training in computers and as a phlebotomist, but has been unable to obtain work. Petitioner believes his age and health considerations (high blood pressure, heart problems) have contributed to his difficulty in finding employment outside the field of chiropractic.

6. Petitioner was ordered to pay restitution in connection with his criminal convictions, in the amount of \$15,000. In addition, petitioner agreed to pay \$40,000 in a settlement of a civil lawsuit with CSAA. Petitioner declared bankruptcy after the revocation of his license, and he has not made any payments to CSAA or to the court in restitution.

7. Petitioner has suffered with depression for nine years and is on medication. Petitioner was under the care of a psychologist in 1997 and 1998. Petitioner was diagnosed with Attention Deficit Disorder ("ADD") in 1993. Petitioner was originally placed on Ritalin, and he now takes Paxil. Petitioner feels he is much calmer and finds it easier to focus now that he is on medication.

8. Petitioner is moving to Oregon. His new address is as follows:

2175 James Howe Road
Dallas, Oregon

Petitioner is seeking the reinstatement of his California chiropractic license so that he can apply for a license to practice chiropractic in Oregon. Petitioner does not intend to practice chiropractic in California. He believes the chiropractic licensing board in Oregon will not consider licensing him unless his California chiropractic license is restored.

9. On November 13-14, 1999, petitioner attended a Recertification and Relicensing Seminar offered by the International Chiropractors Association of California, for a total of 10 hours. Petitioner has not attended any other continuing education since the revocation of his license.

10. Under all of the facts and circumstances herein, there is insufficient evidence to warrant restoration of petitioner's license at this time. Petitioner admitted that he has no intention of practicing in California and is using this reinstatement procedure solely to obtain a license in Oregon. The Board continues to believe the initial revocation of petitioner's license was warranted and that the Oregon licensing board is the appropriate body to determine petitioner's fitness to practice chiropractic in that state. By California standards,

petitioner has not met sufficient criteria of rehabilitation to justify reinstatement of a California license.

LEGAL CONCLUSIONS

Good cause does not exist at the present time to reinstate petitioner's license, with or without terms and conditions of probation.

ORDER

The petition of Alan Lee Burke, D.C. for restoration of his revoked chiropractor's license is DENIED.

This decision shall become effective on the 21st day of January, 2000

Dated: December 20, 1999

BOARD OF CHIROPRACTIC EXAMINERS

By: 

JEFFREY M. STEINHARDT, D.C.,
Chairman

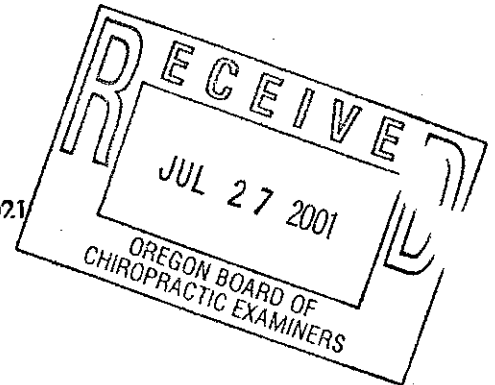
BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF CALIFORNIA

In the Matter of the Petition for
Restoration of Revoked License of:

ALAN LEE BURKE, D.C.
188 West Clover Road
Tracy, California 95376

Petitioner.

OAH No. N2001040021



DECISION

This matter was heard before a quorum of the Board of Chiropractic Examiners, on April 12, 2001, in Sacramento, California, Dr. Sharon B. Ufberg, D.C., Chairperson, presiding. Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, sat with the Board.

Jana Tuton, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Alan Lee Burke, D.C., was present and represented himself.

FACTUAL FINDINGS

1. The Board issued Chiropractic License No. 11700 to petitioner on May 19, 1977.
2. Effective May 11, 1996, petitioner's license was revoked by the Board after an administrative hearing in Accusation Case No. 1992-30. The Board's disciplinary action, pursuant to Business and Professions Code section 1000-10, was based upon its determination that petitioner committed acts of unprofessional conduct pursuant to Title 16, California Code of Regulations, sections 317(g) (conviction of a crime substantially related to the qualifications, functions and duties of a chiropractor), 317(h) (conviction of a felony and/or offense involving moral turpitude, dishonesty or corruption), 317(j) (the commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise), 317(p)

(participation in any act of fraud or misrepresentation) and 317(s) (the offering, delivering, receiving or accepting of any rebate, refund, commission, preference, patronage, dividend, discount or other consideration as compensation or inducement for referring patients to any person). Petitioner was convicted on December 26, 1991 of three felony violations of Penal Code section 487 (grand theft) and one felony violation of Insurance Code section 556(a)(1) (knowingly presenting or causing to be presented false or fraudulent claims for the payment of a loss under a contract of insurance). The activities underlying the convictions pertained to patient billings in his chiropractic practice. In addition, petitioner was found to have lied under oath in a sworn deposition concerning his ownership interest in a laboratory to which he referred patients for thermographic exams, and he was found to have inappropriately paid compensation for the referral of patients to him.

3. Effective January 21, 2000, the Board denied a Petition for Restoration of Revoked License that was filed by petitioner on September 30, 1999.

4. On December 14, 2000, petitioner signed a Petition for Reinstatement of Revoked License that was filed with the Board on January 22, 2001.

5. Petitioner has been unable to find steady employment since the revocation of his chiropractic license. At his reinstatement hearing before the Board on November 18, 1999, petitioner testified that he intended to leave California to practice chiropractic in the state of Oregon. Petitioner did move to Oregon, but was not successful in obtaining a license to practice chiropractic in Oregon. Petitioner worked in a temporary position as a park ranger aide in Oregon from June to October, 2000, and he also worked part-time as a phlebotomist. Petitioner was not able to earn enough to support himself, and he has returned to California.

Petitioner has filled out numerous employment applications in the years since his chiropractic license was revoked. Petitioner has truthfully disclosed on these applications the fact that he has been convicted of a felony. Petitioner believes these disclosures have prevented him from obtaining employment. In addition, petitioner believes his age and health considerations (high blood pressure, heart problems) have contributed to his difficulty in finding employment outside the field of chiropractic.

6. Petitioner has paid approximately \$32,000 of a \$45,000 debt to CSAA in connection with the settlement of a civil lawsuit with CSAA. On February 8, 2001, petitioner obtained a Certificate of Rehabilitation from the Superior Court of Stanislaus County, State of California, in connection with his criminal conviction.

7. Petitioner continues to take Paxil for treatment of Attention Deficit Disorder ("ADD"). Petitioner feels his ADD was a factor in the exercise of poor judgment in the past, including the actions that led to his criminal conviction and the revocation of his license. Petitioner feels he is much calmer and finds it easier to focus now that he is on medication. He believes that he would be much less likely to engage in inappropriate conduct now that his ADD is controlled by medication.

8. In connection with petitioner's attempt to be licensed as a chiropractor in Oregon, petitioner completed a state-mandated course in minor surgery (24 hours). In addition, petitioner completed a 12-hour course in worker's compensation in January of 2001. Petitioner reviews professional journals on a monthly basis.

9. Petitioner's brother, E. Laramie Burke, D.C., has a chiropractic practice in Tracy, California. Dr. Burke is willing to employ petitioner as an associate in his practice if petitioner's license is restored.

10. Petitioner is separated from his wife. His wife is a juvenile diabetic and was unable to relocate to Oregon. Petitioner and his wife are trying to reconcile and make their marriage work, now that petitioner has returned to California. Petitioner has five children. He has been unable to provide financial support for his children, and he is especially anxious to assist his three younger children with education expenses.

11. Petitioner expressed sincere remorse for his misconduct. He has paid a heavy price for his mistakes. He seeks the forgiveness of the Board and an opportunity to redeem himself by the responsible practice of the profession of chiropractic.

12. Petitioner has produced sufficient evidence of rehabilitation to demonstrate that he is capable of practicing chiropractic without harm to the public. It would not be contrary to the public interest to reinstate petitioner's certificate to practice as a chiropractor in California, with appropriate terms and conditions of probation to protect the public.

LEGAL CONCLUSIONS

Good cause exists to reinstate petitioner's license, with terms and conditions of probation as set forth below.

ORDER

The petition of Alan Lee Burke, D.C. for reinstatement of his revoked chiropractor's license is **GRANTED**. Chiropractic License No. 11700 issued to Alan Lee Burke, D.C. is hereby reinstated. Said license is immediately revoked; however, the revocation is stayed, and petitioner is placed on probation for five (5) years, subject to the terms and conditions set forth below.

1. Supervision of Practice

Petitioner's practice shall be supervised for the first two (2) years of probation. Within thirty (30) days of the effective date of this decision, petitioner shall submit to the board, for its prior approval, a plan of practice in which

petitioner's practice shall be supervised by another doctor of chiropractic including the name and qualifications of three proposed supervisors. Each proposed supervisor shall be a California licensed chiropractor, who shall submit written reports to the board on a quarterly basis verifying that supervision has taken place as required and including an evaluation of petitioner's performance. Petitioner shall not practice until he has received notification that the board has approved his supervisor. It shall be the petitioner's responsibility to assure that the required reports are filed in a timely fashion. Petitioner shall give the supervisor access to the petitioner's fiscal and patient records. The supervisor shall be independent, with no prior business professional or personal relationship with petitioner. If the supervisor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board. Petitioner shall not practice until a new supervisor has been approved by the board. All costs of the supervision shall be borne by petitioner. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. Failure to comply with this condition shall be considered a violation of probation.

2. Take and Pass Examination

Petitioner shall take and pass the California Law Exam. If petitioner fails this examination, petitioner must take and pass a re-examination. Petitioner shall pay the cost of the examination and any subsequent re-examinations at the examination fee currently in place. Failure to pass a required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

3. Obey All Laws

Petitioner shall obey all federal, state and local laws, and all statutes and regulations governing the practice of chiropractic in California.

4. Quarterly Reports

Petitioner shall submit quarterly reports under penalty of perjury on a form entitled "Quarterly Probation Report" (No. QPR100 (Rev. 1/99)), certifying and documenting whether there has been compliance with all conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made.

5. Probation Monitoring

Petitioner shall pay the costs associated with probation monitoring each and every year of probation. Petitioner shall comply with the board's probation

compliance monitoring program. Failure to pay costs or comply with probation monitoring shall be considered a violation of probation.

6. Interview with Board

Petitioner shall appear in person for interviews with the board's enforcement staff, the full board, or its designee upon request at various intervals and with reasonable notice.

7. Continuing Education

Petitioner shall provide evidence of continuing education, required for license renewal, if requested by the board.

8. Tolling of Probation

If petitioner leaves California to reside or practice outside this state, or for any reason should petitioner stop practicing chiropractic in California, petitioner must notify the board in writing of the dates of departure and return or the dates of non-practice within ten (10) days of departure or return. Non-practice is defined as any period of time exceeding thirty (30) days in which petitioner is not engaging in the practice of chiropractic as defined in section 302 of the California Code of Regulations. Periods of temporary residency or practice outside the state or of non-practice within the state shall not apply to reduction of the probationary period. It shall be a violation of probation for petitioner's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total, consecutive period of three years.

9. No Preceptorships or Supervision of Interns

Petitioner shall not supervise any intern and shall not perform any of the duties of a preceptor.

10. Violation of Probation

If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

If petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, and probation shall automatically be extended until all terms and conditions have been met or the

board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

11. Notification of Employment

Within ten (10) days of a change in employment -- either leaving or commencing employment -- petitioner shall so notify the board in writing, including the address of the new employer.

12. Notice to Employers

Petitioner shall notify all present and prospective employers of the decision in OAH Case No. N2001040021 and the terms, conditions and restrictions imposed on petitioner by the decision.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking new employment, petitioner shall cause his employer to report to the board in writing acknowledging the employer has read the decision in OAH Case No. N2001040021.

"Employment" within the meaning of this provision shall include any full-time, part-time or temporary service as a chiropractor.

13. Notice to Employees

Petitioner shall, upon or before the effective date of this decision, ensure that all employees involved in chiropractic operations are made aware of all the terms and conditions of probation, either by posting a notice of the conditions of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout probation. Petitioner shall ensure that any employees hired or used after the effective date of this decision are made aware of all the terms and conditions by posting a notice, circulating a notice, or both.

"Employees" as used in this provision includes all full-time, part-time, temporary and independent contractors employed or hired at any time during probation.

14. License Surrender

Following the effective date of this decision, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may voluntarily tender his license to the

board. The board reserves the right to evaluate the petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the rendered license, petitioner will no longer be subject to the terms and conditions of probation. Petitioner shall relinquish his wall license and pocket renewal license to the board or its designee within ten (10) days from the date of acceptance.


15. **Completion of Probation**

Upon successful completion of probation, petitioner's license will be fully restored.

This decision shall become effective on the 5th day of June, 2001.

Dated: May 23, 2001

BOARD OF CHIROPRACTIC EXAMINERS

By 
SHARON B. UFBERG, D.C.
Chairperson