

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

In the Matter of the Accusation Against:

ANDREW TUTINO
7103 Broadway
Lemon Grove, CA 91945

Chiropractor License No. DC 20427,
Respondent.

Case No. 2020-1254

OAH No. 2021010309

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is adopted by the Board of Chiropractic Examiners, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 15, 2021.

IT IS SO ORDERED this September 15, 2021.

Signature on File _____

DIONNE MCCLAIN, D.C.

BOARD CHAIR

Board of Chiropractic Examiners
Department of Consumer Affairs

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Attorney General of California
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8
9 **BEFORE THE**
BOARD OF CHIROPRACTIC EXAMINERS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:
14 **ANDREW TUTINO**
15 **7103 Broadway**
16 **Lemon Grove, CA 91945**
Chiropractic License No. DC 20427
17 Respondent.

Case No. 2020-1254

OAH No. 2021010309

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Robert Puleo (Complainant) is the Executive Officer of the Board of Chiropractic
23 Examiners (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, and Daniel J. Cross, Deputy
25 Attorney General.

26 2. Respondent Andrew Tutino (Respondent) is represented in this proceeding by
27 attorney Ginger R. Kelley, 4121 Westerly Place, Suite 101, Newport Beach, CA 92660.

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1 3. On January 1, 1990, the Board issued Chiropractic License No. DC 20427 to
2 Respondent. The Chiropractic License was in full force and effect at all times relevant to the
3 charges brought in Accusation No. 2020-1254, and will expire on November 30, 2021, unless
4 renewed.

5 **JURISDICTION**

6 4. Accusation No. 2020-1254 was filed before the Board, and is currently pending
7 against Respondent. The Accusation and all other statutorily required documents were properly
8 served on Respondent on October 13, 2020. Respondent timely filed his Notice of Defense
9 contesting the Accusation.

10 5. A copy of Accusation No. 2020-1254 is attached as exhibit A and incorporated herein
11 by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 2020-1254. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 7. Respondent is fully aware of his legal rights in this matter, including: the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each right
24 set forth above.

25 **CULPABILITY**

26 9. Respondent understands and agrees that the charges and allegations in Accusation
27 No. 2020-1254, if proven at a hearing, constitute cause for imposing discipline upon his
28 Chiropractic License.

1 10. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that at a hearing Complainant could establish a factual
3 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
4 those charges.

5 11. Respondent agrees that his Chiropractic License is subject to discipline and he agrees
6 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

7 **CONTINGENCY**

8 12. This stipulation shall be subject to approval by the Board. Respondent understands
9 and agrees that counsel for Complainant and Board staff may communicate directly with the
10 Board regarding this stipulation and settlement, without notice to or participation by Respondent
11 or his counsel. By signing the stipulation, Respondent understands and agrees that he may not
12 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
13 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
14 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
15 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
16 be disqualified from further action by having considered this matter.

17 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
18 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
19 signatures thereto, shall have the same force and effect as the originals.

20 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes all prior or contemporaneous agreements, understandings, discussions, negotiations,
23 and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be
24 altered, amended, modified, supplemented, or otherwise changed except by a writing executed by
25 an authorized representative of each party.

26 15. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Chiropractic License No. DC 20427 issued to Respondent
3 Andrew Tutino is revoked. However, the revocation is stayed and Respondent is placed on
4 probation for five years on the following terms and conditions:

5 1. **Obey All Laws.** Respondent shall obey all federal, state, and local laws, and all
6 statutes and regulations governing the practice of Chiropractic in California. A full and detailed
7 account of any arrests and or convictions for any violations of law shall be reported by the
8 Respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of
9 compliance with this term, Respondent shall submit completed fingerprint cards and fees within
10 45 days of the effective date of this decision, unless previously submitted as part of the licensure
11 application process. Respondent shall submit a recent 2” x 2” photograph of himself within 45
12 days of the effective date of the final decision.

13 2. **Quarterly Reports.** Respondent shall submit quarterly reports under penalty of
14 perjury on a form entitled “Quarterly Probation Report” (No. QPR100 (Rev. 7/04)), certifying
15 and documenting whether there has been compliance with all conditions of probation. If the final
16 probation report is not made as directed, probation shall be extended automatically until such time
17 as the final report is made.

18 3. **Probation Monitoring.** Respondent shall comply with the Board's probation
19 compliance monitoring program. Failure to comply with probation monitoring shall be
20 considered a violation of probation.

21 4. **Interview with Board.** Respondent shall appear in person for interviews with the
22 Board's Enforcement staff, the full Board, or its designee upon request at various intervals and
23 with reasonable notice.

24 5. **Continuing Education.** Respondent shall provide evidence of continuing education,
25 required for license renewal, if requested by the Board.

26 6. **Reimbursement of Board Costs.** Respondent shall reimburse to the Board its costs
27 of investigation and enforcement of \$14,154.25. If Respondent fails to pay the costs as directed
28 by the Board and on the date(s) determined by the Board, it shall constitute a violation of

1 probation.

2 7. **Tolling of Probation.** If Respondent leaves California to reside or practice outside
3 the State, or for any reason should stop practicing chiropractic in California, Respondent must
4 notify the board in writing of the dates of departure and return or the dates of non-practice within
5 ten days of departure or return. Non-practice is defined as any period of time exceeding 30 days
6 in which Respondent is not engaging in the practice of chiropractic or any time the license is
7 inactive or in forfeiture status. Periods of temporary residency or practice outside the State or of
8 non-practice within the State shall not apply to reduction of the probationary period. It shall be a
9 violation of probation for Respondent's probation to remain tolled pursuant to the provisions of
10 this condition for a period exceeding a total, consecutive or combined period of one (1) year.

11 8. **No Preceptorships or Supervision of Interns.** Respondent shall not supervise any
12 chiropractic student (intern) participating in a preceptor program or any unlicensed chiropractic
13 graduate and shall not perform any of the duties of a preceptor.

14 9. **Violation of Probation.** If Respondent violates probation in any respect, the Board,
15 after giving Respondent notice and the opportunity to be heard, may revoke probation and carry
16 out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is
17 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
18 matter is final, and the period of probation shall be extended until the matter is final. If
19 Respondent has not complied with any term or condition of probation, the Board shall have
20 continuing jurisdiction over Respondent, and probation shall automatically be extended until all
21 terms and conditions have been met or the Board has taken other action as deemed appropriate to
22 treat the failure to comply as a violation of probation, to terminate probation, and to impose the
23 penalty which was stayed.

24 10. **Notification of Employment.** Within ten (10) days of a change in employment --
25 either leaving or commencing employment -- Respondent shall so notify the Board in writing,
26 including the address of the new employer.

27 11. **Notice to Employers.** Respondent shall notify all present and prospective
28 employers of the Decision in case No. 2020-1254 and the terms, conditions, and restrictions

1 imposed on by the Decision.

2 Within 30 days of the effective date of this Decision, and within 15 days of Respondent
3 undertaking new employment, Respondent shall cause his employer to report to the Board in
4 writing acknowledging the employer has read the Decision in case No. 2020-1254.

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

7 **12. Notice to Employees.** Respondent shall, upon or before the effective date of this
8 Decision, ensure that all employees involved in chiropractic operations are made aware of all the
9 terms and conditions of probation, either by posting a notice of the terms and conditions,
10 circulating such notice, or both. If the notice required by this provision is posted, it shall be
11 posted in a prominent place and shall remain posted throughout probation. Respondent shall
12 ensure that any employees hired or used after the effective date of this Decision are made aware
13 of all the terms and conditions by posting a notice, circulating a notice, or both.

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

16 Respondent shall, if requested, provide proof to the Board or its designee that all employees
17 are aware of the Decision in 2020-1254 since its effective date.

18 **13. License Surrender.** Following the effective date of this Decision, if Respondent
19 ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and
20 conditions of probation, Respondent may voluntarily tender his license to the Board. The Board
21 reserves the right to evaluate the Respondent's request and to exercise its discretion whether to
22 grant the request, or to take any other action deemed appropriate and reasonable under the
23 circumstances. Upon formal acceptance of the tendered license, Respondent will no longer be
24 subject to the terms and conditions of probation. Respondent shall relinquish his wall license and
25 pocket renewal license to the Board or its designee within 10 days from the date of acceptance.

26 **14. Completion of Probation.** Upon successful completion of probation, Respondent's
27 license will be fully restored.

28 **15. California Chiropractic Law Exam (CCLE).** Respondent shall take and pass the

1 CCLE within the first six months of the effective date of this Decision. If Respondent fails this
2 examination, Respondent must take and pass a re-examination. The Respondent shall pay the
3 cost of the examination and any subsequent re-examinations at the examination fee currently in
4 place. Failure to pass the CCLE within the first 6 months of the effective date of this Decision
5 shall constitute a violation of probation and automatically extend the period of probation.

6 **16. Special Purposes Examination for Chiropractic (SPEC).** Respondent shall take
7 and pass the SPEC examination administered by the National Board of Chiropractic Examiners
8 (NBCE) within the first six months of the effective date of this Decision. If Respondent fails this
9 examination, Respondent must take and pass a re-examination. Respondent is responsible to
10 provide proof to the Board of successful completion of this examination. Respondent shall pay
11 the cost of the examination and any subsequent re-examinations at the examination fee set by the
12 NBCE. Failure to pass the SPEC within the first 6 months of the effective date of this Decision
13 shall constitute a violation of probation and automatically extend the period of probation.

14 **17. Ethics and Boundaries Examination.** Respondent shall take and pass an Ethics and
15 Boundaries Examination via EBAS within the first six months of the effective date of this
16 Decision. The examination shall consist of five essay examination sections including, one section
17 addressing unprofessional conduct, two sections addressing professional standards, and two
18 sections addressing fraud. If Respondent fails this examination, Respondent must take and pass a
19 re-examination. The Respondent shall pay the cost of the examination and any subsequent re-
20 examinations at the examination fee currently in place. Failure to pass all five sections of the
21 Ethics and Boundaries examination within the first six months of the effective date of this
22 Decision shall constitute a violation of probation and automatically extend the period of
23 probation.

24 **18. Billing Monitoring.** Within sixty days of the effective date of this Decision,
25 Respondent shall submit to the board, for its prior approval, the name along with Curriculum
26 Vitae of a person to act as Respondent's monitor. The billing monitor can be one of the
27 following:

- A licensed Chiropractor, who is licensed in good professional standing and

1 licensed for at least five (5) years; or

- 2 • A Certified Professional Coder in good professional standing; or
- 3 • A Certified Medical/Healthcare Biller or Auditor in good professional
- 4 standing, or
- 5 • A Certified Public Accountant in good professional standing; or
- 6 • A Professional Bookkeeper in good professional standing

7 For purposes of this section, good professional standing means, that the billing monitor
8 cannot have his or her professional Chiropractic license or personal professional certification with
9 any history of administrative disciplinary action or probation or with any prior civil or criminal
10 action against them involving insurance fraud, or acts of moral turpitude or dishonesty. All
11 proposed billing monitors shall be independent, with no professional or personal relationship with
12 Respondent, including a familial relationship with or be an employee, partner, or associate of
13 Respondent. It is Respondent's responsibility to ensure their billing monitor has copies of the
14 Accusation in this matter along with the Decision and Order for reference.

15 Once the Board has approved a billing monitor, Respondent shall submit a plan or scope of
16 review by which the billing monitor will provide monitoring of Respondent's billing practices for
17 the first three years of probation. Respondent must have a continuous record of chiropractic
18 treatment of patients, which shall include billing, accounting, and payment records, to be
19 examined by the billing monitor. Pro bono treatment or trade for services will not be accepted.
20 Failure to treat patients on a fee for service basis will be considered non-compliance with this
21 term and Respondent's probation will be tolled until Respondent treats patients on a fee for
22 service basis.

23 If at any time during the first three years of probation, the billing monitor quits or is
24 otherwise unavailable to perform his or her monitoring duties, within fifteen calendar days of the
25 same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of
26 one or more persons to be the billing monitor. The billing monitor shall submit written reports to
27 the Board on a quarterly basis during the first three years of probation verifying that monitoring
28 has taken place as required. It shall be Respondent's responsibility to ensure that the required

1 reports are filed in a timely manner. Respondent shall give the monitor access to all of
2 Respondent's chiropractic practice business records including financial and patient records.
3 Monitoring shall consist of at least four hours, per quarter, of review of Respondent's records.
4 This review shall take place in Respondent's office or Respondent's place of employment. If any
5 patient records will be reviewed by the 3rd party billing monitor related to required monitoring or
6 audit activities, Respondent must notify his or her patients of this purpose and also ensure notified
7 patients submit a signed authorization release of records in accordance with privacy law (HIPPA)
8 for this purpose. If the monitor prepares a quarterly report to the Board that finds substantial
9 errors or omissions in, or questionable billing practices, monitoring may be increased at the
10 discretion of the Board and Respondent shall immediately comply therewith. All costs of
11 monitoring shall be borne by the Respondent.

12 **19. Notification to Patients.** Pursuant to Business and Professions Code section 1007,
13 Respondent shall provide a separate disclosure that includes Respondent's probation status, the
14 length of the probation, the probation end date, all practice restrictions placed on Respondent by
15 the Board, the Board's telephone number, and an explanation of how the patient can find further
16 information on Respondent's probation on Respondent's profile page on the Board's online
17 license information Internet Web site, to a patient or the patient's guardian or health care
18 surrogate before the patient's first visit following the probationary order while Respondent is on
19 probation. Respondent shall obtain from the patient, or the patient's guardian or health care
20 surrogate, a separate, signed copy of that disclosure. Respondent shall submit satisfactory
21 evidence of compliance with this term and condition of probation upon request by the Board.

22 Respondent shall not be required to provide a disclosure pursuant to this term and condition
23 of probation if any of the following applies: (1) the patient is unconscious or otherwise unable to
24 comprehend the disclosure and sign the copy of the disclosure and a guardian or health care
25 surrogate is unavailable to comprehend the disclosure and sign the copy; (2) the visit occurs in an
26 emergency room or an urgent care facility or the visit is unscheduled, including consultations in
27 inpatient facilities; (3) the licensee who will be treating the patient during the visit is not known to
28 the patient until immediately prior to the start of the visit; or (4) Respondent does not have a

1 direct treatment relationship with the patient.

2 **ACCEPTANCE**

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Ginger R. Kelley. I understand the stipulation and the effect it will
5 have on my Chiropractic License. I enter into this Stipulated Settlement and Disciplinary Order
6 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
7 Board of Chiropractic Examiners.

8
9 DATED: 7-13-21 Signature on File
10 ANDREW TUTINO
Respondent

11 I have read and fully discussed with Respondent Andrew Tutino the terms and conditions
12 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
13 its form and content.

14 DATED: 7/13/2021 Signature on File
15 GINGER R. KELLEY
Attorney for Respondent

16
17 **ENDORSEMENT**

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Chiropractic Examiners.

20
21 DATED: 7/13/21 Respectfully submitted,
22 ROB BONTA
Attorney General of California
23 GREGORY J. SALUTE
Supervising Deputy Attorney General
24
Signature on File
25 DANIEL J. CROSS
Deputy Attorney General
26 *Attorneys for Complainant*

27 SD2020800498/ 82937882.docx

Exhibit A

Accusation No. 2020-1254

1 XAVIER BECERRA
Attorney General of California
2 THEODORE S. DRCAR
Supervising Deputy Attorney General
3 DANIEL J. CROSS
Deputy Attorney General
4 State Bar Number 203017
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9 **BEFORE THE**
10 **BOARD OF CHIROPRACTIC EXAMINERS**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case Number 2020-1254

14 **ANDREW TUTINO**
15 **7103 Broadway**
Lemon Grove, CA 91945

ACCUSATION

16 **Chiropractic License Number DC 20427**

17 Respondent.

18
19 **PARTIES**

20 1. Robert Puleo (Complainant) brings this Accusation solely in his official capacity as
21 the Executive Officer of the Board of Chiropractic Examiners (Board), Department of Consumer
22 Affairs.

23 2. On January 1, 1990, the Board issued Chiropractic License Number DC 20427 to
24 Andrew Tutino (Respondent). The Chiropractic License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on November 30, 2020, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 sections of the Chiropractic Act (Act).¹

4 4. Section 10 of the Act provides that the Board may suspend or revoke a license or
5 place a license on probation for violations of the rules and regulations adopted by the Board.

6 **REGULATORY PROVISIONS**

7 5. California Code of Regulations, title 16 (CCR), section 317 provides that the Board
8 shall take action against a licensee who is guilty of unprofessional conduct, which includes:

9 (a) Gross negligence;

10 (b) Repeated negligent acts;

11 (c) Incompetence;

12 (d) Administering clearly excessive treatment or using clearly excessive
13 diagnostic procedures;

14 (e) Conduct that endangered or is likely to endanger the health, welfare, or
15 safety of the public;

16 . . .

17 (k) Any act involving moral turpitude, dishonesty, or corruption;

18 (l) Knowingly making or signing a document relating to the practice of
19 chiropractic that falsely represents the existence or nonexistence of a state of facts;
and

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21 (q) Participating in any act of fraud or misrepresentation.

22 6. CCR section 318 provides that a licensed chiropractor is required to ensure accurate
23 billing of his services.

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27 ¹ The Chiropractic Act, an initiative measure approved by the electors on November 7,
28 1922, while not included in the Business and Professions Code by the legislature, is set out in
West's Annotated California Codes as sections 1000-1 to 1000-19, and is included in Deering's
California Codes as Appendix I, for convenient reference.

1 **COST RECOVERY**

2 7. CCR section 317.5, subdivision (a), provides that the Board may request an
3 administrative law judge direct a licensee to pay the reasonable costs of the investigation and
4 enforcement of a case.

5 **FACTUAL ALLEGATIONS**

6 8. An investigation of a consumer complaint submitted by patient AT revealed that
7 Respondent violated multiple rules and regulations adopted by the Board.

8 9. Respondent treated AT over a 14-month period for three separate incidents. The first
9 incident occurred on December 10, 2014 when AT fell backward to the ground (Case 1). The
10 second incident occurred on May 15, 2015 when AT was involved in a rollover car crash that
11 resulted in severe force to her head, neck, and back (Case 2). The third incident occurred on
12 January 9, 2016 when AT was involved in a rear-end car accident that had tremendous potential
13 for neck injury and mild traumatic brain injury (Case 3). Respondent's treatment of AT for Case
14 2 and Case 3 overlapped by more than a month.

15 10. In addition to these three incidents, AT had a previous history of serious spinal
16 trauma that required surgical fusion of the cervical spine at C6, and surgery of the lumbar spine.
17 AT disclosed her back injury history in her intake documentation,² and Respondent noted
18 evidence of both surgeries in his review of radiographic reports. The surgeries and the underlying
19 injuries warranted serious consideration when AT presented for treatment with Respondent. The
20 lumbar injury was a major factor contributing to AT's history of low back pain, and both
21 surgeries presented significant potential contraindications to chiropractic spinal adjustments and
22 other manual therapies.

23 11. However, it does not appear that Respondent discussed AT's history of injuries and
24 surgeries with her or seriously considered them in developing AT's treatment plan. The medical
25 records do not mention any communication with AT regarding the injuries and surgeries, discuss

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27 ² Although AT responded "no" to an intake question regarding whether she had surgery in
28 the past 5 years, both of these surgeries occurred before that timeframe. 5 years is an arbitrary
time-period lacking clinical rationale, limiting the disclosure of information regarding relevant
surgical history new patients may provide.

1 the impact they may have had on her presenting complaints, or analyze the effect they would have
2 on developing AT's immediate and future treatment plan. Moreover, Respondent's treatment
3 documentation does not contain any warning or notation to avoid chiropractic manipulative
4 therapy techniques and other treatment that could aggravate the C6 fusion or the site of the
5 lumbar spine surgery. Instead, Respondent's treatment plans expressly include spinal adjustments
6 and other manual therapies to the cervical and lumbar spine.

7 12. Consistent with the treatment plans, Respondent performed the contraindicated spinal
8 adjustments at AT's C6 level on at least six different occasions from January through March
9 2016. AT experienced increasing neck pain during this time but Respondent failed to modify the
10 adjustment treatments to avoid aggravating the C6 fusion. As Respondent's treatment continued
11 AT's pain increased, ultimately requiring spinal injections to control the pain.

12 13. During her initial intake for all three Cases, AT reported headaches, insomnia,
13 dizziness, nervousness, loss of balance, anxiety, depression, memory loss, mood swings, and
14 emotional difficulty. These are common symptoms of post-concussion syndrome and mild
15 traumatic brain injury, both of which are potential results of the accidents involved in Case 2 and
16 Case 3. A patient presenting with these symptoms should undergo a thorough neurological
17 examination but Respondent does not appear to have performed one. AT's headaches continued
18 throughout her treatment and at times became "a lot more frequent," but Respondent did not refer
19 her for alternative medical consultations or treatments and continued ineffective, contraindicated
20 chiropractic treatments.

21 14. Notwithstanding AT's extensive injury and treatment history, there is no indication
22 Respondent requested AT's medical records or ever spoke to any of her previous providers.
23 Although Respondent did not review AT's past medical records, he billed for a high level of
24 evaluation and management services that normally includes such review. Billing for a higher,
25 unsupported level of service constitutes a fraudulent billing practice referred to as "up coding."

26 15. Respondent's daily progress and procedural notes and itemized billing statements
27 show that Respondent also double billed on numerous occasions. On 14 separate dates,
28 Respondent billed a total of 43 services to both Case 2 and Case 3. The charges for these services

1 should have been apportioned between the two cases. Moreover, it appears Respondent
2 attempted to disguise the double billing by using different phrases and descriptions for the same
3 services billed to the two different cases.

4 16. Finally, Respondent preformed evaluation and management services at a much higher
5 frequency than warranted, resulting in excessive treatment.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct – Gross Negligence)

8 17. Respondent is subject to disciplinary action for unprofessional conduct under CCR
9 section 317, subsection (a), in that Respondent committed acts of gross negligence in connection
10 with his treatment of AT, as described above.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct – Repeated Negligence)

13 18. Respondent is subject to disciplinary action for unprofessional conduct under CCR
14 section 317, subsection (b), in that Respondent committed repeated acts of negligence in
15 connection with his treatment of AT, as described above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct – Incompetence)

18 19. Respondent is subject to disciplinary action for unprofessional conduct under CCR
19 section 317, subsection (c), in that Respondent demonstrated incompetence in his treatment of
20 AT, as described above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct – Excessive Treatment)

23 20. Respondent is subject to disciplinary action for unprofessional conduct under CCR
24 section 317, subsection (d), in that Respondent administered clearly excessive treatment to AT, as
25 described above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Endangered Health, Welfare, and Safety of Public)

3 21. Respondent is subject to disciplinary action for unprofessional conduct under CCR
4 section 317, subsection (e), in that Respondent’s conduct in treating AT endangered her health,
5 welfare, and safety, as described above.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct – Dishonesty)

8 22. Respondent is subject to disciplinary action for unprofessional conduct under CCR
9 section 317, subsection (k), in that Respondent committed acts involving dishonesty in
10 connection with his treatment of AT when he up coded services and repeatedly double billed
11 services, as described above.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct – False Representation)

14 23. Respondent is subject to disciplinary action for unprofessional conduct under CCR
15 section 317, subsection (l), in that Respondent knowingly created and signed daily progress and
16 procedural notes and knowingly created itemized billing statements reflecting services he up
17 coded or double billed, as described above.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct – Fraud/Misrepresentation)

20 24. Respondent is subject to disciplinary action for unprofessional conduct under CCR
21 section 317, subsection (q), in that Respondent committed acts of fraud or misrepresentation in
22 connection with his treatment of AT when he up coded services and repeatedly double billed
23 services, as described above.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Chiropractic Examiners issue a decision:

27 1. Revoking or suspending Chiropractic License Number DC 20427 issued to Andrew
28 Tutino;

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2. Ordering Andrew Tutino to pay the Board of Chiropractic Examiners the reasonable costs of the investigation and enforcement of this case pursuant to CCR section 317.5; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 10/12/2020

Signature on File

ROBERT PULEO
Executive Officer
Board of Chiropractic Examiners
Department of Consumer Affairs
State of California
Complainant

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