

IN THE MATTER OF
STEVEN HELSCHEIN
license no.S01146

* BEFORE THE STATE BOARD
* OF CHIROPRACTIC
* EXAMINERS
* 95-BP-081

Respondent

* * * * *

NOTICE OF CHARGES AND CONSENT ORDER
UNDER THE MARYLAND CHIROPRACTIC ACT

The Maryland State Board of Chiropractic Examiners (the "Board") hereby charges Steven Helsehein (the "Respondent"), with violation of certain provisions of Md. Code Ann. Health Occupations §3-313 (1994).

Specifically, the Board charges the Respondent with violation of the following provisions:

Subject to the hearing provisions of §3-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (18) Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic [.]

The Board, the Respondent, and the Office of the Attorney General enter into this pre-charge Consent Order to resolve the issues and to avoid further litigation.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant to the charges herein, Respondent

was licensed to practice chiropractic in the State of Maryland.

2. Following the receipt of several complaints to the Board, the Board investigated the complaints and reviewed the treatment records of twenty-four (24) patients of the Respondent.

Colonic irrigation of Patient A

3. In or about October 1985 Patient A¹ presented to the Respondent's clinic with back pain due to an accident in 1977 at Patient A's former place of employment. The Respondent diagnosed Patient A as having an impacted colon and recommended colonic therapy. Patient A was treated on approximately two hundred forty-two (242) visits between 10/17/85 and 6/12/90. During this time period she had thirty-nine (39) different diagnoses. Six of these diagnoses were primary complaints and the remainder were variations of these diagnoses. Patient A received colonic therapy, also known as "colonics" or "colonic irrigation" over the next four (4) years.

4. The Respondent admitted to the Board's investigator that Patient A was given colonic irrigations in his office over a lengthy course of time. Patient A complained that the colonics resulted in her having bowel and colon damage and dependency on enemas.

5. The frequency and duration of Patient A's colonic

¹ Patient names are confidential and are referred to by letter in this document. The Respondent may obtain a list of the patient names which correspond to the letters by contacting the administrative prosecutor.

irrigations by the Respondent is in violation of the Act in that it is below the standard of care. The recommended duration of a course of colonics irrigation is six (6) weeks.

6. The Respondent has stopped the use of colonic irrigation in his office. Additionally, the Respondent states that he has instituted a more rigorous use of referrals to other medical providers where he does not see an improvement of patient symptoms after a specified period of time. Further, at the time that Patient A was a patient, the Respondent's office was a multi-disciplinary practice and according to the Respondent allowed the patients a lot of freedom in the scheduling of appointments and the practitioners that the patient saw on any given day. The Respondent stated that some patients over-used some therapies and that he has dissolved the multi-disciplinary practice to prevent patients from over utilizing procedures.

Documentation

7. Of the approximately two hundred forty-two (242) office visits of Patient A only five (5) dates had narrative reports. Two of these reports were for days when Patient A was not seen in the office. In addition, the Respondent dictated a comprehensive medical report to Patient A's insurance company summarizing Patient A's medical treatments. The Respondent's reports on Patient A lacked sufficient detail regarding the history and physical examination of Patient A to substantiate the number of treatments rendered to Patient A. Further, the reports failed to

support the six (6) primary diagnoses or the variations of diagnoses of Patient A. The Respondent failed to sign or initial the few reports which were typed with respect to Patient A.

8. Patient A filled out a personal history form on which she indicated a number of conditions which were not addressed by the Respondent in the few reports which he dictated. Some of these conditions were addressed while other Patient-reported symptoms, which potentially could have had serious health consequences, were not addressed. The Respondent did not document that he addressed these symptoms in an appropriate manner. Additionally, these symptoms could indicate contraindications for various procedures such as spinal manipulation, colonic irrigation, and various physiotherapy modalities and nutritional supplements, which the Respondent prescribed for Patient A.

9. The Respondent noted that there were positive orthopaedic tests on Patient A. However, he failed to fully document the tests which were administered to Patient A. Additionally, the Respondent failed to note the location and severity of Patient A's pain. At one time the Respondent stated "physical therapy" as a plan for Patient A, without further explanation of which area was to receive treatment or the extent of the treatment which was to be rendered. This note failed to address the frequency of the physical therapy to be given to Patient A.

10. On 5/19/87 Patient A presented with complaints relating

to the neck and upper extremity areas. According to the treatment notes, there is no follow-up examination, by the Respondent, regarding these areas. The Respondent took very little additional history according to the treatment note. The Respondent's treatment plan for Patient A on this date of service addressed cervical treatment. However, the Respondent assigned a diagnosis code for this visit which did not reflect either presenting complaint of the patient. Patient A was also being seen by occasion by other chiropractors in the Respondent's office. Patient A's treatment record for dates around the 5/19/87 reflect that treatment notes were recorded on the superbills which, in part², addressed Patient A's complaint of neck and upper extremity discomfort.

11. On 9/30/87 Patient A presented with complaints relating to the cervical area and the left arm. The Respondent's treatment note failed to document any additional history or examination of these areas. The diagnosis the Respondent assigned on this date does not relate to Patient A's presenting complaint on this visit.

12. On sixty-two (62) occasions the Respondent billed two (2) insurance companies for care provided to Patient A on the

² On occasion, Patient A's treatment record contains some notations made by other personnel in the Respondent's practice. While these notes are substandard, the Respondent is not being charged with the failure of these individuals with respect to their documentation deficiencies.

same date. For example, on November 30, 1987, Patient A was charged for two office visits, both of which were billed simultaneously to Patient A's two insurance carriers for the same date. Respondent states that if the bills were simultaneously sent to two companies, it was a result of anticipated subrogation. The remaining records reviewed on Patients B³ through X did not demonstrate double billing occurring in these records. According to the Respondent, he did not intentionally receive overpayment.

13. The twenty-three (23) remaining patient treatment records contain grossly inadequate documentation by the Respondent to substantiate the diagnoses and/or frequency of care provided. Their treatment records consist almost entirely of nothing more than bills.

14. Additionally, on occasion, the Respondent's dictated reports which do appear in the records of Patients B through X have the notation "dictated but not read." The Respondent failed to read over dictated notes which indicates that the Respondent did not meet the minimum standard of care, as reading typed dictation is an integral part of patient care.

15. The Respondent has taken steps to correct his level of documentation in the treatment records and has expressed his willingness to obtain additional training in this area. Further,

³ These patients will be referred to as patients B through X.

the Respondent states that he will counsel others in his office regarding the level of documentation needed.

16. The Respondent presented several recent treatment records to the administrative prosecutor to demonstrate his changes to the level of documentation that he now maintains. Two (2) of these records were examined by the reviewer. The reviewer stated that the treatment records were much improved, however, there were several aspects of the Respondent's documentation which still need improvement⁴. The Respondent has agreed to work in a mentoring relationship to improve the quality of his documentation.

Unauthorized persons administering chiropractic treatments

17. On treatment dates 12/14/87, 2/10/88, 2/18/88 and 6/20/88 Patient A's record contains the name "Kay" as the treating health care provider and this person signed on the line "Physician Signature." Three of these four signatures have the initials "D.C." following the signature of Kay. Robert Kay attended Life Chiropractic College. He reported to the Board's investigator that he had taken the Maryland Chiropractic Licensing examination on three occasions, failing the licensing exam each time. According to the Respondent, at one point, Robert Kay misrepresented to the Respondent that he was licensed

⁴ The reviewer found that the documentation shows improvement, however, the Respondent needs training in "SOAP" note content, needs to initial narrative reports, and the patients need to initial acceptance of the treatment.

by the Board and the Respondent then permitted Robert Kay to treat patients. However, the Respondent later learned that Robert Kay had not been licensed by the Board and Robert Kay's employment was immediately terminated .

18. According to the Respondent has corrected this problem by requiring that each employee have in his or her personnel file a copy of their license prior to assisting in or providing chiropractic care. The chiropractors' licenses are displayed on the wall in the office where they can be seen by patients.

19. Between 12/12/95 and 4/17/96 the Respondent employed Joo Cha. Joo Cha was permitted to assist with patient therapy. Joo Cha's area of training is reportedly in the area of radiation technology. The Respondent permitted Mr. Cha to administer ultrasound, heat treatment, and traction. Mr. Cha was not a chiropractic assistant. According to the Respondent, the Respondent obtained an application for Mr. Cha to become a licensed chiropractic assistant. The Respondent also states that he provided Mr. Cha with a list of the course work which was required. The Respondent stated that he telephoned the Board of Physicians Quality Assurance regarding the use of a "rad tech" to perform ultrasound, and that based on the information that he received, he permitted Mr. Cha to perform therapeutic ultrasound. According to the Respondent he was under the belief that Mr. Cha had become an applicant by mailing to the Board the application. Mr. Cha never mailed in the application and did not take the

required courses. The Respondent violated the Act by permitting Mr. Cha to administer ultrasound when Mr. Cha was neither a chiropractic assistant or an applicant.

20. Eric Pierce was employed from about March 1988 until and through January 1997. Mr. Pierce was trained by the Respondent and became licensed as a chiropractic assistant in 1995. The Respondent permitted Mr. Pierce to perform range of motion function tests and to make all preliminary arrangements for the taking of patient X-rays, which included a comprehensive set up of the patient prior to the actual exposure of the x-ray. Under the Act, a chiropractor can only delegate those duties to a chiropractic assistant which do not require the skill or judgement of a chiropractor. (See COMAR 10.43.07.09 Prohibited Acts). The Respondent violated the Act by delegating duties to Mr. Pierce which required the skill or judgement of a chiropractor.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact the Board finds that the Respondent violated Md. Code Ann. Health Occupations §§3-313 (18) and (21) by: failing to properly document patient treatment records; allowing unauthorized persons to administer chiropractic care; and over-utilizing chiropractic treatment on Patient A.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15th day of December, 1998, by a majority of the Board, hereby

ORDERED that Respondent is **REPRIMANDED**; and be it further

ORDERED that the Respondent is assessed a **monetary penalty**, in the amount of seven hundred fifty dollars (\$750.00) for the Respondent's unprofessional conduct in the practice of chiropractic and the Respondent's use of unauthorized persons in the practice of chiropractic. The monetary penalty is to be paid by the Respondent to the Board prior to conclusion of the probationary period. And be it further

ORDERED that the Respondent be placed on **PROBATION** for a period of two (2) years, subject to the following conditions:

1. The Respondent agrees to **cease** the active practice of chiropractic for a period of six (6) months beginning December 15, 1998. The reprimand, probation, and cessation of practice will begin simultaneously. During this six month cessation period, the Respondent shall not provide patient care, shall not perform any professional consultation of patients, and shall not supervise clinical staff. On June 15, 1999, the Respondent may return to the active practice of chiropractic.

2. During this six month cessation period, the Respondent shall take a Board-approved course in documentation,

3. During this six month cessation period, the Respondent

shall take a Board-approved course in risk management.

4. During this six month cessation period, the Respondent shall shadow a Board-approved mentor for the purpose of observing the mentor's documentation technique in the following manner:

a. After the Respondent has taken both the documentation course and the risk management course, the Respondent shall arrange to spend two full office days observing a mentor in a clinical setting;

b. The mentor shall be selected by the Respondent from a list of three potential chiropractors provided and approved by the Board.

c. The Respondent is prohibited on these two (2) occasions from rendering chiropractic care to the mentor's patients. The only role of the Respondent on these two occasions is to be that of an observer of the documentation technique of the mentor;

d. It is anticipated that the mentor will explain his or her documentation technique throughout the office day and that the mentor will be paid by the Respondent for two (2) hours of consultation on each date of shadowing. The mentor will be paid a fee not to exceed \$175.00 per hour.

5. After the return to active chiropractic practice on June 1, 1999, the Respondent shall have two random record reviews during the probationary period under the following circumstances:

a. The Board's investigator will randomly select from

the Respondent's office calendar, a date after the Respondent has completed the course in documentation referred to in paragraph 2 above and has returned to active practice;

b. The Respondent shall then have his office staff copy all of the treatment notes of the patient who are identified as being seen in the office on that date;

c. The reviewer shall be selected by the Respondent from a list of three potential chiropractors approved and provided by the Board.

d. The investigator shall mail or deliver the treatment notes to the reviewer;

e. The reviewer shall read the treatment notes and prepare a report;

f. The report shall be forwarded simultaneously to the Board and the Respondent;

g. The Respondent shall pay the reviewer a fee not to exceed \$175.00 per hour for a reasonable number of hours for his or her time spent reading the treatment records and preparing the report;

h. The Respondent shall reimburse the reviewer for any postage fees incurred as a result of returning the copied records to the Board;

i. A second review of the Respondent's treatment records in the same manner detailed in paragraphs 5(a) through 5(h) above will occur subsequent to the Respondent's completion

of the Board-approved courses under paragraphs 2 and 3, and the Respondent's completion of the requirements under paragraph 4(a) through 4(d) above.

6. The Respondent shall provide a written statement of understanding to the Board on the proper use of chiropractic assistants;

7. The Respondent shall continue to require the presentation of all licenses of employees prior to the employee rendering any patient care;

8. At the end of the probationary period the Respondent shall petition the Board in writing, to be released from the probationary conditions.

BE IT FURTHER ORDERED that in the event the Board finds for any reason that the Respondent has substantially violated any provision of Title 3 of the Health Occupations Article, Annotated Code of Maryland or the regulations thereunder, or if the Respondent violated any of the foregoing conditions of Probation, the Board, *after notification to the Respondent, and an opportunity to be heard*, may take immediate action or impose any lawful disciplinary sanction it deems appropriate, including but not limited to revocation or suspension of Respondent's license to practice chiropractic; and be it further

ORDERED that the conditions of the Consent Order be, and the same hereby are, effective as of the date of this Order; and be it further

ORDERED that for purposes of public disclosure, as permitted by Md. Code Ann. State Government §10-617 (h) this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order, resulting from formal disciplinary proceedings.

Dec 15, 1998

Date

Howard F. Lewis

Howard F. Lewis, D.C.
President

CONSENT of Steven Helsehein, D.C.

I, Steven Helsehein, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney and have had an opportunity to consult with her;
2. I am aware that without my consent, my license to practice chiropractic care in this State cannot be limited, except pursuant to the provisions of §3-315 of the Act and §10-201 et seq. of the Administrative Procedure Act, Md. Code Ann. State Government Article.
3. I am aware that I am entitled to a formal evidentiary hearing before the Board or an Administrative Law Judge.
4. By this Consent Order, I hereby consent and submit to the foregoing Findings of Facts, Conclusions of Law, and Order provided the Board adopts the foregoing Final Consent Order in

its entirety. By doing so, I waive my right to a formal hearing as set forth in §3-315 of the Act and §10-201 et seq. of the Administrative Procedure Act except on connection with any alleged violation of this Order. I waive any appeal right under Md. Code Ann. State Government §10-222.

5. I acknowledge that by failing to abide by the conditions set forth in this Order, I may, after an opportunity to be heard, suffer disciplinary action, including revocation of my chiropractic license in the State of Maryland.

6. I understand that this Consent Order is a public document, disclosable under Md. Code Ann. State Government Article §10-617 (h)(2)(vi).

7. I sign this Order without reservations, and I fully understand its meaning.

Steven H. H.

Steven Helsein, D.C.
18N H

December 8, 1998

DATE

STATE OF MD

CITY/COUNTY OF: Baltimore

I HEREBY CERTIFY that on this 8th day of December, 1998, a Notary of the State of Maryland and (City/County), Baltimore, personally appeared Steven Helsein, D.C. License No.

S01146, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.

Paula J. Jungschilder

Notary Public

My commission expires: May 1, 2002