

IN THE MATTER OF
STEVEN HORWITZ, D.C.

Respondent

License Number: S01402

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* BEFORE THE MARYLAND
* STATE BOARD OF
* CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
* Case Numbers: 2011-04C
2013-83C

FINAL ORDER OF REVOCATION OF LICENSE TO PRACTICE CHIROPRACTIC

PROCEDURAL BACKGROUND

On January 31, 2014, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") notified **STEVEN HORWITZ, D.C.** (the "Respondent"), License Number S01402, of its intent to revoke his license to practice chiropractic in the State of Maryland pursuant to the Maryland Chiropractic Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 3-101 *et seq.*, based on his violation of the Consent Order, dated October 10, 2013, under Board Case Number 2011-04C (the "Consent Order").

The Board based its action on the Respondent's violation of the following provision of the attached Consent Order:

ORDERED that the Respondent shall pay a fine in the amount of five thousand dollars (\$5,000.00), payable to the Board within sixty (60) days of the date the Board executes this Consent Order[.]

(Consent Order, p. 23.)

A hearing on the merits was held on May 8, 2014, before a full quorum of the Board. Present were the following board members: Michael Fedorczyk, D.C., Board President; Jonathan Nou, D.C., Board Vice-President; Robert Frieman, D.C., Board Secretary/Treasurer; Stephanie Chaney, D.C.; Michael Moskowitz, D.C.; Gregory

Lewis, D.C.; Karen Biagiotti, LMT; Gwenda Harrison, LMT; David Cox, LMT; Ernestine Jones Jolivet, Consumer Member; Gloria Boddie-Epps, Consumer Member. Also present were the following individuals: James J. Vallone, Executive Director; Adrienne Congo, Deputy Director; David Ford, Senior Board Investigator; Christopher Bieling, Board Investigator; Grant D. Gerber, Assistant Attorney General, Board Counsel; Robert Gilbert, Assistant Attorney General, Administrative Prosecutor. The Respondent was present and represented himself without counsel. The hearing was held in accordance with the Maryland Administrative Procedure Act ("APA"), Md. Code Ann., State Gov't § 10-201 *et seq.*

SUMMARY OF THE EVIDENCE

The Respondent called four (4) character witnesses to testify under oath: Father Patrick Conroy, Lieutenant Colonel Clifford Crow, Christopher J. Fox, D.C. and Edward J. Ryan, III. All of the Respondent's witnesses testified as to the Respondent's personal and professional character. None of the witnesses testified as to the Respondent's failure to abide by the terms of his Consent Order.

The Respondent testified on his own behalf. During his testimony, the Respondent stated that he provided "the kind of care that [his] patients deserve" and that he "conducted [his] office in a way that was fair to all [his] patients." (Transcript p.75). The Respondent admitted that he did not pay the fine as agreed upon in the Consent Order, with the explanation that he has relocated to Texas, and that because his Maryland chiropractic license expired September 1, 2013, there was "no license to take in the first place." (Transcript p. 75). The Respondent further stated that while he has no intent on returning to Maryland to practice chiropractic, the Board's decisions

have ramifications on his life. (Transcript p. 75). When questioned as to whether the Respondent planned on paying the fine, the Respondent answered that he did not intend to pay the fine. (Transcript p. 76).

FINDINGS OF FACT

Based on the evidence presented at the evidentiary hearing, the Board makes the following Findings of Fact:

1. The Respondent was initially licensed to practice chiropractic in Maryland on June 2, 1988, under License Number S01402.
2. The Respondent retained licensure in Maryland until September 1, 2013, when he failed to renew his license during the 2013 renewal period.
3. On or about October 18, 2002, the Board issued a letter of education to the Respondent for using an unauthorized assistant. The letter stated:

This letter of education formally advises you that ignorance of application laws and/or regulations is NOT an excuse for negligence or omission to follow laws and/or regulations. As intelligent professionals, all chiropractors hold advanced educational degrees and are fully expected to have a working knowledge and understanding of all laws and regulations applying to their profession. Enclosed herewith is a complete copy of the laws and regulations governing chiropractors, chiropractic assistants and massage therapists. The Board is surprised that a distinguished chiropractor with your credentials would be unaware of the application provisions of law and regulations. Accordingly, the Board expects that you familiarize yourself with all applicable provisions, particularly the provisions relating to the employment and training of chiropractic assistants.

4. The Board initiated an investigation of the Respondent in 2011 after receiving a complaint that the Respondent had employed a chiropractic assistant applicant who attended patients without his presence or supervision and without the supervision of a Board-authorized supervising chiropractor.

5. The Board then received a second complaint, dated December 2, 2011, from a chiropractor who formerly worked for the Respondent who alleged that in 2011, the Respondent instructed him to generate fraudulent chiropractic notes and allow the chiropractic assistant applicant referred to above perform physical therapy treatment without supervision.

6. Based on the above complaints, the Board sought an opinion from a chiropractor (the "Expert") to address the Respondent's compliance with the Act and applicable State regulations ("Md. Regs. Code" or "COMAR").

7. The Expert submitted a report, dated January 25, 2013, in which he concluded that in a series of cases reviewed, the Respondent violated the Act and supporting regulations. In his summary, the Expert concluded,

The overall trends...demonstrate a clear lack of appropriate documentation to support the services claimed as well as an overall lack of attention given to appropriate documentation of key factors in the patients' health records. It is the regulated standard in the State of Maryland that doctors of chiropractic maintain records which are accurate, verified, and reflect all data regarding a patient's condition (COMAR 10.43.15). Clearly, these files do not meet that standard. Additionally, several issues regarding inappropriate billing are also identified. Moreover, the records provided for this review do not support a claim that...[the chiropractic assistant applicant referred to above]...acted entirely independently of the Capital Sports Injury Center. Instead, these documents demonstrate a close integration of services, as it should. It does not make sense that an exercise practitioner/trainer would work inside a doctor's office, especially a doctor who is very knowledgeable in exercise, without working as part of a team. This would be a disservice to the patient/client and the doctor. Moreover, it would not be reasonable to accept that a doctor who is clearly involved in exercise to the extent that ...[the Respondent]..is and has been would allow his patients to receive exercise services, in his office, without any connection to his clinical goals. Further, the case files reviewed to date represent a small percentage of these practitioners' patient load. However, the problems identified occurred with sufficient consistency to predict errors/inconsistencies in other cases from these practitioners. As stated earlier in this report, there are no files provided for this review which are without substantive errors.

8. Board investigation determined that in numerous instances, the Respondent violated the Act and applicable COMAR regulations, which include but are not limited to the following:

- (a) Impermissible use of a chiropractic assistant applicant/impermissible billing for therapeutic exercises provided by an unsupervised chiropractic assistant applicant;
- (b) Billing for services not performed or for services that were not supported by chiropractic records;
- (c) Billing for services that were not provided or for which there was no supporting documentation;
- (d) Billing for other chiropractic services that were not provided or for which there was no supporting documentation;
- (e) Double-billing for services;
- (f) Chiropractic recordkeeping violations; and
- (g) Failing to cooperate with a lawful Board investigation.

9. As a result of this investigation, the Board, on March 13, 2013, charged the Respondent with violating provisions of the Act and supporting chiropractic regulations.

10. The Respondent resolved these charges by voluntarily entering into the Consent Order with the Board with the full assistance and advice of qualified legal counsel.

11. In the Consent Order, the Board found that as a matter of law, the Respondent violated the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-318(8); Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. §3-313(18); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. §3-313(19); Behaves immorally in the practice of

chiropractic, in violation of H.O. §3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. §3-313(21); Misrepresents qualifications, education, training, or clinical experience, in violation of H.O. §3-313(26); and Violated any provision of this title, in violation of H.O. §3-313(28).

12. The Board also found that as a matter of law, the Respondent violated the following provisions of Md. Regs. Code ("COMAR"): 10.43.07.11; 10.43.07.12; 10.43.14.03; 10.43.15.03A and C; 10.43.15.05 and 10.43.14.03C(8).

13. Pursuant to the Consent Order, the Board reprimanded the Respondent and placed him on probation for one year, subject to a series of terms and conditions, which included the following:

ORDERED that the Respondent shall pay a fine in the amount of five thousand dollars (\$5,000.00) payable to the Board within sixty (60) days of the date the Board executes this Consent Order[.]

(Consent Order, p. 23).

14. On or about December 3, 2013, the Respondent telephoned the Board President and requested an extension of time to pay the fine imposed under the Consent Order.

15. On or about December 4, 2013, the Board determined that it would not grant the Respondent any waivers or extension regarding payment of the fine and notified him by electronic mail communication, dated December 4, 2013, of his continuing responsibility to pay the fine in full by December 11, 2013. The Board concurrently notified the Respondent's attorney of record of the Board's position.

16. The Respondent did not respond to the Board's electronic mail transmission.

17. By letter to the Respondent, dated December 12, 2013, sent by certified and first class mail, the Board instructed him that it would give him an extension until January 2, 2014, to pay the fine in full.

18. The Respondent did not respond to the Board's letter or submit payment by January 2, 2014.

19. By letter dated January 3, 2014, sent by certified and first class mail, the Board notified him that he was in arrears as to the payment of the fine and as a result, it would consider further disciplinary action against him.

20. To date, the Respondent has not responded to the Board's January 3, 2014 letter, and has not paid the fine according to the terms set forth in the Consent Order.

21. The Respondents failure to pay the fine referred to above constitutes a violation of the Consent Order.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Regs. Code 10.43.10.06A by failing to pay the fine imposed by the October 10, 2013 Consent Order. While the Board appreciated the testimony provided by the Respondent's character witnesses, the Board did not find it relevant to the Respondent's failure to abide by the terms of the Consent Order he agreed to under advice of counsel. Additionally, the Respondent's statement during the evidentiary hearing that he will not pay the fine further confirms his intentional violation of the Consent Order and the applicable laws and regulations. The Board made this decision in accordance with its sanctioning guidelines. The Board did not find the character evidence particularly applicable to the Respondent's failure to abide by the terms of his Consent Order. The Board found the Respondent's failure to pay the fine a more than sufficient basis to revoke his license.

ORDER


Based on the foregoing Findings of Fact and Conclusions of Law, it is on this 9th day of Oct., 2014, by the majority of the Board, it is hereby:

ORDERED that the Respondent's license to practice chiropractic under license number S01402 is hereby **REVOKED**; and it is further

ORDERED that the Respondent may apply for reinstatement of his license upon meeting the extant terms of the Consent Order of October 10, 2013.

ORDERED that this is Final Order of the Board, and as such is a public document pursuant to the Maryland Public Information Act, Md. Code Ann., State Gov't §10-601 *et seq.* (2009 Repl. Vol.).

10/9/14
Date


Michael Fedorczyk, D.C., President
MD State Board of Chiropractic &
Massage Therapy Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., §4-319, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.