

IN THE MATTER OF	*	BEFORE THE STATE BOARD
JOHN T. JENNINGS, III, D.C.	*	OF CHIROPRACTIC
License No. S01284	*	EXAMINERS
Respondent	*	Case Number: 04-47C

* * * * *

CONSENT ORDER

Based on information received and a subsequent investigation by the Maryland State Board of Chiropractic Examiners (the "Board"), and subject to Md. Health Occ. Ann. §§ 3-101 *et seq.* (2000 Repl. Vol.), the Board charged John T. Jennings, III, D.C. (the "Respondent"), License Number S01284, with violation of the following provisions of H.O. § 3-313:

Subject to the hearing provisions of §3-315¹ of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation with or without conditions, or suspend or revoke a license, or any combination thereof, if the applicant or licensee:

¹ §3-314 Penalty instead of suspension or in addition to suspension or revocation.

(a) *Imposition of penalty after hearing.* If after a hearing under § 3-315 of this subtitle the Board finds that there are grounds under § 3-313 of this subtitle to suspend or revoke a license, the Board may impose a penalty not exceeding \$5,000 for each violation:

- (1) Instead of suspending the license; or
- (2) In addition to suspending or revoking the license.

(b) *Imposition of penalty without hearing.* If, after disciplinary procedures have been brought against a licensee, the licensee waives the right to a hearing required under this subtitle and if the Board finds that there are grounds under § 3-313 of this subtitle to reprimand the licensee, place the licensee on probation, or suspend or revoke a license, the Board may impose a penalty not exceeding \$5,000 for each violation in addition to reprimanding, placing the licensee on probation or suspending or revoking the license.

- (8) Is unethical in the conduct of the practice of chiropractic;
- (12) Makes or files a false report or record in the practice of chiropractic;
- (16) Overutilizes health care services;
- (18) Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic;
- (19) Violates any rule or regulation adopted by the Board;
- (25) Submits false statements to collect fees for which services were not provided; and
- (28) Violates any provision of this title.

With regard to the use of chiropractic assistants, H.O. § 3-404 –

Delegation of duties to assistant; qualifications for assistant – provides:

A licensed chiropractor may delegate duties to an assistant to the extent permitted by the rules and regulations of the Board if the assigned duties do not require the professional skill and judgment of a licensed chiropractor. The rules and regulations shall also establish qualifications for the position of chiropractic assistant.

The Board further charges the Respondent with violating Code Md. Regs.

tit. 10, §§ 43.07.01 *et seq.* which provide in pertinent part:

10.43.07.01 B. Terms Defined

(3) "Chiropractic assistant" means an individual who is registered by the Board to perform the duties authorized under this chapter.

(4) "Direct supervision" means supervision provided by a supervising chiropractor who is personally present and immediately available in the treatment area where the procedures are performed to give aid, direction, and instruction when certain procedures or activities are performed.

10.43.07.02 Board Approval Required.

- A. A supervising chiropractor shall apply for and receive approval from the Board before undertaking to train or supervise a new applicant or chiropractic assistant.
- B. The Board shall provide an application form.
- C. The approval of an application by the Board for the training and supervision of an applicant and chiropractic assistant are subject to compliance with guidelines in this chapter.

10.43.07.03 Qualifications and Training

A. To qualify for registration, an applicant shall be an individual who meets the requirements of this regulation and the examination requirement of this regulation.

B. An applicant shall:

...

(3) Received, within 1 year, minimum training consisting of those activities and treatments under the regulations of this chapter, which include:

(a) 6 months in-service training of not less than 20 hours per week, under the supervising chiropractor in direct patient care or treatment of which the first 80 hours shall be observation of the procedures listed in Regulation .08B of this chapter; and

(b) 100 classroom hours that include:

(i) 24 classroom hours in anatomy and terminology, and

(ii) 76 classroom hours in physical therapy modalities indications and contraindications.

10.43.07.06 Responsibilities of the Supervising Chiropractor.

A. The supervising chiropractor is responsible for:

(1) The safe and competent performance of the assigned duties of the applicant and the chiropractic assistant[.]

...

E. The supervising chiropractor shall submit to the Board a notice of chiropractic assistant applicant training before any chiropractic assistant training.

10.43.07.07 Supervision Requirements.

A. The supervising chiropractor shall ensure that a chiropractic assistant or an applicant performs the authorized procedures or activities under the direct supervision of a licensed chiropractor.

...

D. A chiropractic assistant and an applicant shall perform without direct supervision, when carrying out the following activities:

(1) Non-treatment-related activities, such as:

- (a) Clerical,
- (b) Housekeeping duties, and
- (c) Secretarial;

(2) Patient related activities that do not involve treatment, such as:

- (a) Removing and applying assistive and supportive devices,
- (b) Transporting patients,
- (c) Taking the height, weight, and vital signs of a patient, and
- (d) Undressing and dressing patients.

10.43.07.08 Activities that May be Performed by Chiropractic Assistants and Applicants Under Supervision

A chiropractic assistant and an applicant may perform the following activities under direct supervision:

- A. Functional activities, such as activities of daily living;
- B. Gait practice and ambulation;
- C. Routine follow-up of specific exercise;
- D. Transfer;
- E. Contrast baths;
- F. Hot and cold packs;

- G. Hubbard tank;
- H. Infrared and ultraviolet irradiation;
- I. Muscle stimulation/electrotherapy;
- J. Paraffin baths;
- K. Traction therapy;
- L. Ultrasound;
- M. Whirlpool; and
- N. Diathermy.

10.43.07.09 Prohibited Acts.

A chiropractic assistant and an applicant may not engage in the following activities:

- A. Communicate an evaluation to a patient or other parties without the authorization of the licensed chiropractor;
- B. Perform an act that requires the professional skill or judgment of a licensed chiropractor[.]

10.43.07.10 Practicing Without Registration.

Except as otherwise provided in these regulations, a person may not practice, attempt to practice, or offer to practice as a chiropractic assistant in this State unless registered by the Board.

A Case Resolution Conference in this matter was held on November 16, 2006. Following the Case Resolution Conference, the parties and the Board ultimately agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice chiropractic in Maryland. The Respondent was initially licensed on January 6, 1986. The Respondent's license expires on September 1, 2007.

2. During all times relevant to these charges, the Respondent maintained an office for the practice of chiropractic at 5 Chester Plaza, Chester,

Maryland.

3. On September 23, 2004, the Maryland Insurance Administration's Insurance Fraud Division transmitted to the Board a copy of an anonymous written complaint it had received regarding the Respondent. The complaint included the names of 2 of the Respondent's former employees and the phrases, "upcoding" and "services never rendered."

4. Upon receipt of the complaint, the Board Investigator contacted one of the former employees who confirmed that the Respondent charges patients for services not rendered and, in addition, employs individuals who are not registered with the Board as chiropractic assistants ("CA") to perform treatment-related activities.

I. Findings of Fact Pertaining to Use of Unregistered Individuals to Perform Treatment-Related Activities

5. On December 8, 2004, the Board Investigator made an unannounced visit to the Respondent's office. The Board Investigator observed an individual ("Employee A"), whom he subsequently learned was unregistered by the Board, assist the Respondent treat patients. Specifically, the Board Investigator observed Employee A escort patients to a room that had a sign reading "Adjustment Room" and remain in the room with the patient for approximately 2 to 3 minutes, thereafter periodically checking on the patient for approximately 15 to 20 minutes. The Respondent was not in the Adjustment Room during the time that the Board Investigator observed Employee A.

6. During the December 8, 2004 visit, the Respondent admitted to the Board Investigator that he utilized Employee A to perform physical therapy on

patients. The Respondent informed the Board Investigator that he (the Respondent) thought that he could employ a CA for a year before the applicant was required to take a CA course or become registered. The Respondent further informed the Board Investigator that he was not aware that he was required to notify the Board prior to training and supervising a CA applicant. The Board Investigator advised the Respondent to submit to the Board the requisite application to train Employee A as a CA.

7. On December 22, 2004, the Board issued to the Respondent a "Cease and Desist Order" in which the Respondent was informed that the Board had knowledge that he was utilizing an unregistered individual to perform CA duties. The Respondent was instructed to immediately cease and desist from that practice. The Board further informed the Respondent that it had not yet received the Respondent's CA training documentation.

8. In furtherance of the Board's investigation, the Board Investigator interviewed 2 former employees of the Respondent, "Employee A" (the employee he had observed in the Respondent's office) and "Employee B."

Employee A

9. Employee A was employed by the Respondent in or around September 2004 through December 2004. The Respondent informed Employee A that it was not necessary that she be registered as a CA with the Board. Employee A confirmed that she was unregistered at all times relevant to her employment with the Respondent.

10. Employee A stated that other female office staff, whom she believed

were also unregistered, instructed her how to perform electrical stimulation, ultrasound, surface electromyography and mechanical traction therapy, as well as how to operate the various type of treatment tables. The instruction, as described by Employee A, was minimal; she was instructed that treatment modalities were to be applied uniformly to all patients, regardless of the patients' individual needs. For example, Employee A stated that office staff instructed her to place electrical stimulation pads on the areas where the patient reported discomfort and to set the machine for the same intensity and length of time for every patient.

11. Employee A stated that she responded to patient questions regarding the results of the surface electromyography she performed. Even a registered CA, which Employee A was not, is not permitted pursuant to Board regulations to perform surface electromyography, nor is a registered CA permitted to interpret and communicate to the patient the results of an electromyography.

12. Employee A further stated that the Respondent instructed her to document that he provided self-care/home management training to every patient. Patients were then billed for this service whether it was provided to the patient or not.

13. Self care/home management training (CPT Code 97535)² is defined

² Current Procedural Technology ("CPT") codes provide a uniform language that accurately describes medical, surgical and diagnostic procedures. According to the CPT Manual, CPT is "the most widely accepted nomenclature for the reporting of physician procedures and service under government and private health insurance programs. CPT is also useful for administrative management purposes such as claims processing and for the development of guidelines for medical care review."

in the CPT Manual as: training in activities of daily living and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive equipment. This code requires the therapist to have direct one-on-one contact with the patient for 15 minutes.

Employee B

14. Employee B was employed by the Respondent from April 2002 to October 2004.³ Employee B was not registered with the Board as a CA during her employment.

15. Employee B took x-rays of patients at the Respondent's direction.

16. Employee B also performed electrical stimulation and ultra-sound on patients at the Respondent's direction. Employee B trained Employee A to perform these duties.

17. The Respondent initially told Employee B to take CA courses so that she could become a registered CA; however, Employee B could not afford the courses and did not complete them. Nonetheless, the Respondent continued to direct her to provide physical therapy treatment to patients until replacing her with another unregistered individual.

18. Employee B informed the Board investigator that the Respondent did not employ a registered CA at any time she was employed by him.

19. Employee B further informed the Board Investigator that the

³ While employed by the Respondent, Employee B borrowed money from the Respondent to pay for her husband's medical bills because the family did not have medical insurance. Thereafter, the Respondent discovered that Employee B had also embezzled money from the practice. Employee B admitted to embezzling funds; she was not prosecuted and her current wages from other employment are garnished to repay the Respondent.

Respondent had engaged the services of a biller who told office staff that the practice's insurance reimbursements needed to be "beefed up" and self care/home management training was to be billed as a standard practice each visit for all patients. The Respondent also instructed office staff to document in patients' records that he provided therapeutic activities (CPT code: 97530) and neuromuscular re-education (CPT code: 97112), each of which requires 15 minutes of direct one-on-one contact with the patient. Initially, the Respondent instructed office staff to charge all patients under these codes; however, when long-time patients began to complain about the additional charges, the Respondent told office staff to charge only new patients under these codes.

20. Employee A and Employee B told the Board Investigator that the Respondent did not spend 15 minutes with patients who were charged under self care/home care management training, therapeutic activity and/or neuromuscular re-education codes.

Employee C

21. Employee C was employed by the Respondent from September 2003 through August 28, 2004. Employee C was not registered with the Board as a CA during her employment.⁴

22. The Respondent taught Employee C how to perform physical therapy modalities including electrical stimulation, ultrasound and traction therapy.

23. The initial 80 hours of Employee C's employment were not confined

⁴ Employee C obtained her CA registration effective April 16, 2005.

to observation of the Respondent, as required pursuant to Code Md. Regs. tit.10, § 43.07.03(3)(a). Rather, once the Respondent had taught Employee C to perform the above modalities, he directed her to provide those modalities to patients independently. The Respondent also directed Employee C to provide physical therapy to patients in his absence.

24. In or around August 2004, Employee C began attending CA classes. She learned that the duties the Respondent had directed her to perform did not conform to the Board's regulations governing the training and employment of CAs. Employee C told the Board Investigator that when she notified the Respondent of this, he did not appear to welcome the information.

II. Patient-Specific Findings of Fact

A. Patient A

25. Patient A, a female born in 1961, was treated by the Respondent on 11 occasions from November 8, 2004 through December 1, 2004 for complaints of back and shoulder pain. The Respondent sent Patient A's bills directly to her insurance company; Patient A did not receive billing statements from the Respondent.

26. With the exception of her first and last office visits, the Respondent billed Patient A for chiropractic manipulation (CPT code: 98941), self-care/ home management training (CPT code: 97535) and either electrical stimulation (CPT code: 97014) or neuromuscular re-education (CPT code: 97112) for all other office visits.

27. When requested by the Board Investigator to review her billing

statement, Patient A denied receiving self-care/home management training services and neuromuscular re-education on most of the dates billed by the Respondent. Patient A also stated that she was provided electrical stimulation on only one occasion.

Patient B

28. Patient B, a female born in 1966, was treated by the Respondent on 10 occasions from October 29, 2004 through November 16, 2004 for complaints of right leg pain. The Respondent sent Patient B's bills directly to her insurance company; Patient B did not receive billing statements from the Respondent.

29. On all but 2 visits, the Respondent billed Patient B for chiropractic manipulation (CPT code: 98941), electrical stimulation (CPT code: 97014) and self-care/home management training (CPT code: 97535). On 4 visits, the Respondent billed Patient B for neuromuscular reeducation (CPT code: 97112).

30. When requested by the Board Investigator to review her billing statement, Patient B agreed that the Respondent had provided chiropractic manipulations on each visit. She denied receiving self-care/home management training and neuromuscular reeducation services from the Respondent. Patient B recalled that Employee A had performed electrical stimulation services on her on her first few visits and that other office staff provided electrical stimulation for the remainder of her visits.

31. The Respondent prescribed foot orthotics to Patient B. Patient B was advised that she would have to pre-pay for the orthotics because her

insurance company would not cover this service. Patient B charged \$400.00 on her credit card on the day her foot imprints were taken. She subsequently cancelled the order after having failed to receive the orthotics for several weeks. She received a refund for the entire amount.

32. Patient B's billing statement reveals that on November 10, 2004, the Respondent billed Patient B's insurance company \$400.00 for the orthotics, which amount was eventually paid by the insurance company to the Respondent after it was clarified that the orthotics were custom inserts.

33. On August 15, 2006, after the Board had issued the Charges to the Respondent and at the request of Patient B's insurance company, the Respondent reimbursed to Patient B's insurance company for the cancelled orthotics in the amount of \$324.00.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds that the Respondent violated H.O. § 313 (8), (12), (16), (18), (19), (25) and (28). The Board further concludes that the Respondent violated Code Md. Regs. tit. 10, § 43.01.07.01B, .02, .03, .06, .07, .08, .09 and .10.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of MARCH, 2007, by a majority of a quorum of the Board,

ORDERED that the Respondent shall be suspended for **Thirty (30) Days**, which suspension shall commence within thirty (30) days from the date this

Consent Order is executed by the Board; and be it further

ORDERED that upon completion of the Respondent's suspension, he shall be placed on **PROBATION** for a **MINIMUM OF ONE (1) YEAR, AND** until he satisfactorily complies with the following conditions:

1. The Respondent shall take and pass a Board-approved course in documentation;

2. The Respondent shall take and pass a Board-approved course in billing and coding;

3. The Respondent shall engage at his own expense a Board-approved practice monitor who shall review the Respondent's practice and who shall focus on the Respondent's documentation and billing practices. The Respondent shall ensure that the practice monitor submits to the Board each quarter a written report regarding the Respondent's practice;

4. The Respondent shall pay to the Board a monetary penalty in the amount of two thousand dollars (\$2,000.00); and it is further

ORDERED that any violation of the terms and/or conditions of this Consent Order shall be deemed a violation of this Consent Order; and it is further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of chiropractic in Maryland; and it is further

ORDERED that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent, including suspension or revocation,

providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Consent Order, after providing the Respondent with notice and opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and it is further

ORDERED that the Respondent shall not petition the Board for early termination of the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent may petition for termination of probationary status without any further conditions or restrictions only if the Respondent has satisfactorily complied with all conditions of probation and has no outstanding complaints against him; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2004) and that the Board may disclose same to any national reporting bank to which it is mandated to report.

MAR 20 2007

Date



Marc M. Gamerman, D.C.,
President
Board of Chiropractic Examiners

CONSENT

I, John T. Jennings, III, D.C., acknowledge that I am represented by counsel and have consulted with counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have followed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

3-12-07

Date



John T. Jennings, III, D.C.
Respondent

STATE OF MARYLAND
CITY/COUNTY OF Queen Anne

I HEREBY CERTIFY that on this 12 day of March 2007,
before me, a Notary Public of the foregoing State and City/County personally
appeared John T. Jennings, III, D.C., and made oath in due form of law that
signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Bernadette Lambert
Notary Public

BERNADETTE LAMBERT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires October 1, 2010

My Commission expires: _____