

IN THE MATTER OF
BRIAN REGAN, D.C.,

License # 01350,
Respondent.

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

* * * * *

AMENDED FINAL ORDER

Pursuant to the Maryland Chiropractic Act ("Act"), Md. Code Ann., Health Occ. ("H.O.") §§3-101 *et seq.*, and in consideration of the April 1, 1998 decision issued by the Maryland Court of Special Appeals,¹ the State Board of Chiropractic Examiners ("Board") hereby renders the following Amended Final Order:

I. PROCEDURAL HISTORY

As a result of charges issued by the Board against Respondent Brian Regan, D.C. for alleged violations of the Act and a subsequent evidentiary hearing on the merits, on August 10, 1995, the Board issued its Findings of Fact, Conclusions of Law, and Order (hereafter "1995 Order"). In the 1995 Order, the Board found that Respondent violated Sections 3-313(8), (9), (12), (18), and (21) of the Act. As a result, the 1995 Order imposed the following sanctions, in pertinent part:

"ORDERED that the Respondent's license to practice chiropractic with the right to practice physical therapy be and is SUSPENDED for two years; and be it further

ORDERED that following the suspension, the Respondent shall be placed on PROBATION for three years, subject to the following conditions:

¹ See *Regan v. Board of Chiropractic Examiners*, 120 Md.App. 494, 524 (1998), *aff'd*, 355 Md. 397 (1999).

1. That the Respondent's practice be supervised by a mentor pre-approved by the Board from a list of three names submitted by the Respondent at least three months prior to the termination of the suspension period and that that mentor submit quarterly reports to the Board on the Respondent's practice according to terms set forth by the Board.
2. That the Respondent perform 100 hours of community service with an agency preapproved by the Board, which completion of service shall be documented to the Board.
3. That the Respondent pay a penalty of \$5000 to the general fund of the State of Maryland.
4. That in addition to any Continuing Education Units (CEUs) required for licensure renewal, the Respondent take 12 hours each in business ethics, medical ethics and patient relations.
5. That during the probationary period, the Respondent may not supervise any chiropractic assistants[.]”

On August 18, 1995, Respondent filed a Petition for Judicial Review of the 1995 Order in the Circuit Court for Baltimore City, requesting reversal and dismissal of the Board's decision on various substantive grounds. Respondent also filed an Emergency Motion for Stay Pending Appeal, requesting the Circuit Court to issue a stay of the 1995 Order pending appeal pursuant to Maryland Rule 7-205. On August 18, 1995, the Board filed a motion requesting the Circuit Court to deny Respondent's motion. On August 23, 1995, Respondent and the Board entered into a Consent Order which set forth the following terms:

“ORDERED that Petitioner's Emergency Motion for a Stay of the Board's Order is hereby GRANTED; and it is further

ORDERED that the [1995 Order] is hereby STAYED, *nunc pro tunc*, pending the final outcome and determination of all of Petitioner's appeal rights with respect to the Board's decision; and it is further

ORDERED that the Petitioner's practice be supervised, during the period of the stay, by Blaise LaVorgna, D.C., who shall act as a mentor in accordance with the terms of this Order. Dr. LaVorgna shall visit Petitioner's Bel Air office every two (2) weeks and will be compensated by Dr. Regan at the rate of Seventy Five Dollars (\$75.00) per hour (the rate charged by Dr. LaVorgna to the Board for expert witness services) for his mentoring time and his travel time. The areas of mentoring may include, without limitation, patient care, record-keeping maintenance, use of chiropractic assistants, and third party billing practices. Dr. LaVorgna will send the Board a monthly report of his observations and findings. Should the Board receive an unfavorable report from the mentor which is believed, in good faith, to be true, the Board shall seek to lift the stay and may, after notice and an opportunity to be heard, seek to take further

disciplinary action against the Petitioner's license[.]”

A Stipulation and a separate Order granting Respondent's motion to stay were filed consistent with the Consent Order.

Respondent and the Board subsequently filed a Joint Motion to Modify Consent Order, which was granted by the Circuit Court on May 30, 1996. The Court's resulting Order set forth the following:

“ORDERED, that this Court's Consent Order dated August 23, 1995 (the “Consent Order”), is hereby modified in that Dr. LaVorgna shall not be required to visit the offices of Petitioner, Brian Regan, D.C., twice per month. As of the date of this Order, Dr. LaVorgna shall be required to visit the offices of Petitioner, Brian Regan, D.C., at least once per month; and it is further

ORDERED, that all other terms and conditions of the Consent Order shall remain unchanged and in full force and effect.”

On February 6, 1997, the Circuit Court rejected Respondent's substantive arguments and affirmed the 1995 Order in its entirety. After a timely appeal by Respondent to the Court of Special Appeals on similar grounds, on April 1, 1998, the Court of Special Appeals affirmed the 1995 Order in all aspects except sanctions. With respect to sanctions, the Court vacated the 1995 Order and stated the following:

“Considering that Dr. Regan has already served what is in effect a probationary period almost equal to that ordered by the Board, apparently without incident, we are not affirming the Board's order as to sanctions. Because we have found no error, it is not our prerogative to consider whether the Board's order should be modified. We believe, however, that the Board should consider whether the sanctions previously imposed remain appropriate or should be modified. The Board should state the reasons for its conclusion. Consequently, we vacate the portion of the order regarding sanctions and remand this case for further proceedings.”

120 Md.App. at 524 (emphasis added).

Respondent filed a timely Petition for Writ of Certiorari to the Court of Appeals requesting review of the Court of Special Appeals' decision, which was granted on July 29, 1998.² After hearing oral arguments on the briefs submitted by the parties, on August 24, 1999, the Court of Appeals issued its opinion, which affirmed the Court of Special Appeals' decision. However, because the portion of the Court of Special Appeals' decision vacating the sanctions imposed by the 1995 Order was not an issue before the Court of Appeals, the Court of Special Appeals' order regarding sanctions, *i.e.*, for the Board to reconsider its sanctions, remains in effect. 355 Md. at 402 n.2.

Prior to considering whether to modify the sanctions imposed by the 1995 Order, on October 14, 1999, the Board held an informal meeting with Respondent during which Respondent's counsel addressed the Board and presented arguments in support of a reduction of the sanctions. Respondent's counsel argued that the conditions Respondent has been subject to since the 1995 Order, *i.e.*, the monitoring of Respondent's practice by Dr. LaVorgna, the bi-monthly and monthly reports submitted to the Board by Dr. LaVorgna,³ the majority of which have been favorable to Respondent, and the financial burden of paying for Dr. LaVorgna's mentor services since approximately August 1995, have substantially satisfied the ultimate purposes of professional discipline. In addition, during his presentation, Respondent's counsel

² Between June and September 1998, Respondent and the Board attempted to negotiate a Consent Order containing agreed-upon sanctions, in which case Respondent would have withdrawn his appeal to the Court of Appeals. However, such efforts were unsuccessful.

³ The Board takes administrative notice of its files, which contains the reports from Dr. LaVorgna submitted between September 21, 1995 through August 25, 1999.

represented in good faith, and requested the Board to consider, that in light of the Court of Appeals' August 24, 1999 decision, Respondent has not practiced under his license since September 1, 1999. The Board requested that Respondent submit written verification to the Board that he has not practiced since September 1, 1999. The Board subsequently received letters from Dr. LaVorgna and Respondent's counsel, but they did not clearly confirm that Respondent in fact has not practiced since September 1, 1999.⁴

On November 11, 1999, a majority of the full authorized membership of the Board met and, pursuant to the Court of Special Appeals' decision, considered modification of the sanctions imposed by the 1995 Order in light of the record and Respondent's submissions. The Board voted to modify the 1995 sanctions and to issue the sanctions set forth below.

II. FINDINGS OF FACT

The Board incorporates by reference, and adopts in their entirety, the Findings of Fact set

⁴ On October 14, 1999, Dr. LaVorgna faxed a letter to the Board, with a courtesy copy to Respondent, advising that after August 25, 1999, "I have attempted to contact Dr. Brian Regan's office throughout the month of September and early October to schedule any additional mentor visits. It is my understanding he has not been practicing" On October 15, 1999, Respondent's counsel sent a letter to the Board stating the following:

I will not be sending you an affidavit by Dr. Regan to the effect that he has not been practicing chiropractic since September 1, 1999. As I believe I told the Board yesterday, he has not consulted with, examined, diagnosed or treated any patients, nor has he personally supervised these activities since September 1, 1999. However, there are a managed care contract and a tax I.D. number in his name, and he does not wish to make any statement to the Board which could by even the remotest possibility be construed as less than 100% complete and accurate.

The Board takes administrative notice of its files, which contain Dr. LaVorgna's October 14, 1999 letter and Respondent's counsel's October 15, 1999 letter.

forth in the Board's 1995 Order.

III. OPINION REGARDING SANCTIONS

The Chiropractic Act authorizes the Board to impose a wide range of sanctions against licensed chiropractors who engage in conduct that violates the grounds for discipline set forth in H.O. §3-313. Such sanctions include issuing a reprimand to the chiropractor, placing the chiropractor on probation, and/or suspending or revoking the chiropractor's license. *Id.* In addition, the Act specifically authorizes the Board to impose a monetary penalty not exceeding \$5,000 for each violation of the Act, either in lieu of or in addition to suspending or revoking a chiropractor's license. The Board's regulations provide guidance on how to arrive at the amount of a monetary penalty. COMAR 10.43.10. Ultimately, the level of sanctions imposed is within the sound discretion of the Board. *See Board of Social Work Examiners v. Chertkov*, 121 Md.App. 574, 585 (1998).

Maryland courts have opined that the purpose of professional discipline is "not to punish the offender but rather a catharsis for the profession and a prophylactic for the public." *Banks v. Board of Physician Quality Assurance*, 116 Md.App. 249, 262 (1997) (quoting *McDonnell v. Commission on Medical Discipline*, 301 Md. 426, 436 (1984)) (emphasis added), *aff'd in part, rev'd in part*, 354 Md. 59 (1999); *Blaker v. Board of Chiropractic Examiners*, 123 Md.App. 243, *cert. denied*, 351 Md. 662 (1998); *Attorney Grievance Comm'n v. Goldsborough*, 330 Md. 342, 356-57 (1993); *Unnamed Physician v. Commission on Medical Discipline*, 285 Md. 1, 8-9 (1979). When the Board issued its original sanctions in the 1995

Order, it did so in the context of cleansing the chiropractic profession of individuals who violate the Act, and of protecting current and prospective patients from Respondent's dangerous and fraudulent practices. Now, in reconsidering those sanctions in 1999 pursuant to the Court of Special Appeals' decision, the Board must consider whether the sanctions still achieve the purpose of professional discipline after the four years since the original Order was issued. Thus, the Board must weigh Respondent's clear right to engage in the appellate process against the Board's obligation to enforce the Act through professional discipline.

In 1998, the Court of Special Appeals opined that Respondent "has already served what is in effect a probationary period almost equal to that ordered by the Board, apparently without incident. . . ." 120 Md.App. at 524. In addition, during Respondent's October 14, 1999 presentation to the Board, Respondent's counsel submitted that Dr. LaVorgna's monitoring and Respondent's payment to Dr. LaVorgna of \$600 per visit, qualifies as "time served." Respondent's counsel further submitted that no other sanction, with the exception of an additional two years of monitoring by Dr. LaVorgna, would be appropriate.

The Board acknowledges that the period of monitoring of Respondent's practice by Dr. LaVorgna, which was only a part of the original probationary conditions, now has exceeded the original three-year probationary period. However, the Board does not consider the simple monitoring of Respondent's practice and payment to Dr. LaVorgna--for any period of time--to constitute a sanction that is proportionate to the Findings of Fact and Conclusions of Law set forth in the 1995 Order, which were affirmed at every stage of the appellate process.

At the outset of the appellate process, the Board took the interim measure of entering into the Consent Order with Respondent in Circuit Court, which stayed the 1995 Order and ordered that Dr. LaVorgna would monitor Respondent's practice pending his appeal. When Respondent took the risk of appealing the Board's 1995 Order, he could not reasonably expect that, if his appeals failed, the sanctions imposed by the Board would not be waiting for him upon his return from the appellate process. In the Board's view, reducing Respondent's sanctions to effectively the "time served" during the appellate process would not only frustrate the purpose of professional discipline, but also would encourage the profession to utilize, and potentially abuse, the appellate process as a means of reducing or eliminating the Board's disciplinary sanctions.

Nonetheless, in its deliberations on the appropriate sanctions to impose at this time, the Board considered that Dr. LaVorgna has submitted favorable reports to the Board for an extended period of time. These reports outlined Dr. LaVorgna's observations of Dr. Regan's practice, and reported continued and marked improvements in the office's recordkeeping and billing practices. As a result, the Board voted to issue the sanctions set forth below.

IV. CONCLUSIONS OF LAW

The Board incorporates by reference, and adopts in their entirety, the Conclusions of Law set forth in the Board's 1995 Order.

V. ORDER

Upon consideration of the 1995 Order and of the foregoing, it is this ^{6th} 15 day of November 1999, hereby

ORDERED that Respondent's license to practice chiropractic with the right to practice physical therapy be and is SUSPENDED for 1 year; and be it further

ORDERED that following the suspension, Respondent shall be placed on PROBATION for 1 year, subject to the following conditions:

- (1) That Respondent shall submit to unannounced visits by a Board-approved mentor, who shall review and monitor Respondent's delegation and supervision practices regarding chiropractic assistants and other unlicensed staff working in Respondent's office, under the following conditions:
 - (a) The mentor shall visit Respondent's office at least four (4) hours every three months and submit reports to the Board on or before the following dates: February 15, 2001; May 15, 2001; August 15, 2001; and November 15, 2001; and
 - (b) Respondent shall be responsible for all costs associated with the monitoring;
- (2) That Respondent shall successfully complete a course in professional ethics, pre-approved by the Board, that consists of a minimum of 25 credit hours; and
- (3) That Respondent shall perform one hundred (100) hours of community service, with an agency pre-approved by the Board;

and be it further

ORDERED that upon completion of the one-year probationary term and Respondent's

demonstration of his satisfaction of said probationary conditions. Respondent must petition the Board for release from probation; and be it further

ORDERED that Respondent pay a FINE of \$5000 within thirty (30) days of the date of this Order; and be it further

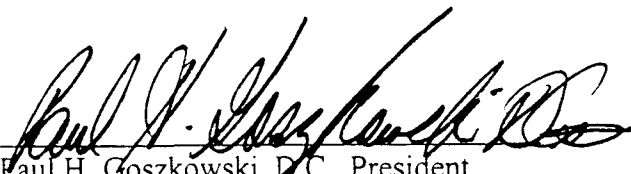
ORDERED that upon receipt of this Amended Final Order, Respondent shall immediately deliver to the Board his wall certificate and wallet-sized license to practice chiropractic with physical therapy privileges issued by the Board; and be it further

ORDERED that should Respondent further violate the Act, the conditions of probation, or any other terms of this Amended Final Order, the Board may, after notice and an opportunity to be heard, take further disciplinary action, including revocation, against Respondent's license; and be it further

ORDERED that with the exception of the "Order" section of the Board's 1995 Order, the 1995 Order remains in full force and effect; and be it further

ORDERED that this Amended Final Order is PUBLIC and, as such, may be disclosed pursuant to the Public Information Act, Md. Code Ann., State Government §§10-611 *et seq.*

Nov 15, 1999
Date


Paul H. Goszkowski, D.C., President
State Board of Chiropractic Examiners

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., H.O. §3-316, you have a right to take a direct judicial appeal of this Order. A petition for judicial review must be filed within thirty (30) days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision under the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.