

IN THE MATTER OF

NINA SHOWAN, D.C.

Respondent

License Number: S01216

* BEFORE THE STATE BOARD
* OF CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
* Case No. 08-47C

* * * * *

FINAL DECISION AND ORDER

BACKGROUND

On July 22, 2009, the Maryland State Board of Chiropractic Examiners (the "Board") issued charges against Nina Showan, D.C. (the "Respondent" or "Dr. Showan"), license number S01216, pursuant to its authority under the Maryland Chiropractic Act (the "Act"), Maryland Health Occ. Code Ann., ("H.O.") §§ 3-101 *et seq.*, (2005 Repl. Vol. and 2008 Supp.). Specifically, the Board charged Respondent with violating 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:

(18) Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic;

¹§ 3-314.

(a) 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) 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.

- (19) Violates any rule or regulation adopted by the Board;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic;
- (28) Violates any provision of this title.

The Board further charges the Respondent with violation of the following section of the Act:

§3-404.

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 also charged the Respondent with a violation of its Chiropractic Assistants regulations, Code Md. Regs, tit. 10, § 10.43.07 (June 9, 2003):

.01 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- 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 area where the procedures are performed to give aid, direction, and instruction when certain procedures or activities are performed.

(5) "Supervising chiropractor" means a chiropractor licensed by the Board in chiropractic with the right to practice physical therapy as set forth in Health Occupations Article, §3-301(c), Annotated Code of Maryland, and approved as a supervising chiropractor by the Board.

.02 Requirements for Achieving Supervising Chiropractor Status.

- A. Only a supervising chiropractor may work with or train a chiropractic assistant or applicant.

B. Only an active, licensed chiropractor who holds physical therapy privileges and has no outstanding disciplinary orders may qualify for supervising chiropractor status.

C. An applicant for supervising chiropractor status shall:

- (1) Submit to the Board the required application and fee; and
- (2) Successfully pass the Board supervising chiropractor examination and interview.

.03 Responsibilities of the Supervising Chiropractor.

The supervising chiropractor shall:

A. Submit:

(1) The required Board Notification of Employment form before undertaking any training of any chiropractic assistant applicant; and

(2) All other Board-required reports and forms in a timely manner;

B. Notify the Board and course instructor or instructors of any change in status of any chiropractic applicant or assistant within 10 days of the change, including:

- (1) Reasons for the change in status;
- (2) Training received by the applicant or assistant;
- (3) Hours completed by the applicant or assistant; and
- (4) The applicant's or assistant's forwarding address;

C. Maintain accurate, legible, and comprehensive records of all clinical training provided to the chiropractic applicant or assistant, including, but not limited to:

- (1) Dates and times and duration of training;
- (2) Modalities;
- (3) Equipment used; and
- (4) Any other information as directed by the Board;

D. Immediately produce the records described in §C of this regulation upon request or audit by the Board;

E. Promptly:

(1) Report a chiropractic applicant or assistant not making satisfactory training progress; and

(2) Report before the Board as directed regarding the details of the training program issue;

F. Maintain competency in knowledge of applicable laws and regulations and successfully complete any jurisprudence requirements that may be directed by the Board;

G. Ensure that all patient records accurately and legibly reflect the extent and degree of the involvement or assistance of the chiropractic applicant or assistant;

H. Submit the in-service training hours and verification of chiropractic applicant or assistant competency on a form provided by the Board within 30 days of completion of training or transfer of the chiropractic applicant or assistant to another supervising chiropractor;

I. Be fully responsible for the safe and competent performance of the chiropractic applicant or assistant at all times; and

J. Provide direct supervision to not more than two chiropractic applicants and three chiropractic assistants.

.04 Supervising Chiropractor Prohibited Acts.

A. The supervising chiropractor may not:

(1) Delegate responsibilities in any manner to anyone not holding supervising chiropractor status;

(2) Leave the treatment area when:

(a) Treating a patient; or

(b) A chiropractic applicant or assistant is treating a patient;

or

(3) Permit a chiropractic applicant or assistant to treat a patient without the presence of the supervising chiropractor in the treatment area.

B. The license of a licensee who violates this regulation shall be subject to the penalties set forth in COMAR 10.43.10.

.08 Activities That May Be Performed by Chiropractic Applicants and Assistants Without Direct Supervision.

Only a chiropractic applicant or assistant may perform the following activities without the direct supervision of a supervising chiropractor:

- A. Taking the height, the weight, and vital signs of a patient and recording them in the patient record;
- B. Assisting in the dressing, undressing, and draping of a patient;
- C. Removing and applying assistive and supportive devices; and
- D. Observing treatments and modalities as authorized by the supervising chiropractor.

.11 Practicing Without Registration.

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

B. A person may not serve as a chiropractic applicant or assistant unless approved by the Board

.12 Penalties for Violations of This Chapter.

A. Violations of these regulations may result in disciplinary action against the supervising chiropractor as set forth in Health Occupations Article, §3-313, Annotated Code of Maryland.

B. A person practicing as a chiropractic assistant without being registered, except as provided in these regulations, is guilty of a misdemeanor, and may be fined \$5,000 or imprisoned for 1 year, or both.

The Board further charges that the Respondent violated its Code of Code of Ethics, 10.43.14.

.03 Standards of Practice.

A. A chiropractor and chiropractic assistant shall concern themselves primarily with the welfare of the patient.

C. A chiropractor and chiropractic assistant shall:

(6) Practice chiropractic only as defined in the scope of practice set forth in Health Occupations Article, §3-101(f) and (g), Annotated Code of Maryland[;].

An evidentiary hearing on the merits of the case was held on June 17, 2010, before a quorum of the Board, pursuant to H.O. § 3-315(a). Preliminarily, Respondent moved that Dr. Stephanie Chaney be recused from the matter because she participated in the case resolution conference. After the Board deliberated on the matter, respondent was informed by the chair that Ms. Karen Biagiotti, LMT, had also participated in the CRC. At that point, respondent amended her motion to request that Ms. Biagiotti and Dr. Chaney recuse themselves from hearing this matter. There was no citation to any specific information or contact between the Board members and the respondent, therefore the motion was denied.

The Board issues this Final Decision and Order based upon its consideration of the entire record, including the exhibits, witness testimony and oral arguments. For the reasons set forth below, the Board unanimously approves and adopts this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents

The prosecution introduced the following exhibits:

- No. 1, Printout of Licensing Information,
- No. 2, Complaint dated 9/2/08
- No. 3, Transcript dated 10/15/08
- No. 4, Abosh Application for CA
- No. 5, Investigative Report
- No. 6A, Letter of Procedure dated 7/22/09
- No. 6B, Charges
- No. 6C, Notice of Hearing Revised

No. 7A, Notice of Employment of Chiropractic Assistant Applicant
No. 7B, Supervising Chiropractor Certificate
No. 7C, Supervising Chiropractor Application

The respondent introduced one exhibit.

No. 1, Prior Board Actions

B. Summary of Witness Testimony

Two witnesses, Former Employee A and David Ford testified on behalf of the prosecution.

Former Employee A

The prosecution's first witness was Former Employee A. Former Employee A testified that she was a formerly employed as a CA in the office of Dr. Showan. Former Employee A was not a licensed CA, while she was employed at Dr. Showan's office. Until Former Employee A starting working at another chiropractor's office, she was not aware of the fact that she might need to be registered to work as a CA.

Former Employee A was informed by her new chiropractic employer that all CA's had to be registered by the state of Maryland and that she had been practicing illegally. Further, her new employer requested that she fill out a complaint regarding Dr. Showan's use of her as an unregistered CA. (State's Ex. 2).

Former Employee A's testimony was consistent with her complaint and statement. She remained calm and composed during cross-examination. The Board found her to be a very credible witness.

David Ford

Mr. Ford testified that he has been employed as an investigator with the Board for

over ten years. He testified that when a complaint comes to the Board, the Executive Director assigns it to Mr. Ford for investigation. Mr. Ford testified that the Board received a written complaint from Former Employee A on September 4, 2008. (State's Ex. 2). When the Board received this complaint, it was assigned to Mr. Ford, and he was directed "to investigate the case".

Investigator Ford investigated Former Employee A's complaint. He interviewed Former Employee A, Former Employee B and Dr. Showan. Former Employee B trained Former Employee B in some of her duties as a CA. Dr. Showan admitted to him that both Former Employee A and B removed patients from therapy, notwithstanding that neither was trained or registered as a CA. (T. 60-61.)

Three witnesses testified for the Respondent. Former Employee C and Former Employee D both testified. Dr. Showan, the Respondent testified on her own behalf.

Former Employee C

Former Employee C stated that she worked as a registered CA for Dr. Showan. She worked from 2000 to 2004 in Dr. Showan's office. As a CA in Dr. Showan's office, her duties were mainly clerical. She stated that she checked patient's hot and cold packs, but did not assist with therapy.

Former Employee D

Former Employee D stated that she worked as a registered CA for Dr. Showan. In April of 2006, she started working for Dr. Showan. She quit working for her in February of 2008. During her employment, she was trained and registered as a CA.

Dr. Showan

Dr. Showan has been licensed as a chiropractor in Maryland since 1983. She has had her own practice since 1985. Her father was chiropractor. Dr. Showan was a "Top Doc" in Baltimore Magazine and "Best Chiropractor" in the City Paper.

Dr. Showan explained that she allowed Former Employees A and B to work for her without being registered because she thought employers could use unregistered employees as CA for up to one year. Dr. Showan claims that she never let any unregistered employees set patients up for therapy at any time. Dr. Showan admitted that both Former Employee A and B performed minor CA duties in her office. (T. 180 – 181.) The Board did not find Dr. Showan's testimony to be credible. Dr. Showan both admitted and denied utilizing unlicensed chiropractic assistants.

FINDINGS OF FACT

Based upon the testimony and the exhibits presented at the evidentiary hearing, the Board finds the following facts to be true by a preponderance of the evidence:

1. At all times relevant to the charges herein, the Respondent was licensed to practice chiropractic in the State of Maryland. The Respondent was first licensed on November 10, 1983. The Respondent's license expires August 31, 2009. Dr. Showan became licensed to employ CA's on October 26, 2000, when she became a supervising chiropractor.

2. At all times herein, the Respondent operated a sole practice in Baltimore City, Maryland.

3. By documents dated September 2, 2008, the Board received a complaint

from one of the Respondent's former employers which stated the following:

A. Former Employee A² started working for the Respondent as a chiropractic assistant... and she didn't know about being registered when she first got the job;

B. When she discovered that she should have been registered, she informed the Respondent who made no comment.

4. Based upon this complaint, the Board opened an investigation which disclosed the following:

A. The Board's investigator determined that Former Employee A had worked for the Respondent from April-August 2008 or four months.

B. Former Employee A had been trained to perform unauthorized duties by Former Employee B, who was the Respondent's employee from January 2007-April 2008.

C. Former Employee B primarily did scheduling for the Respondent, but would occasionally take the Respondent's patients off of therapies that the Respondent had set up and placed the patients onto;

D. Former Employee A performed electrical muscle stimulation and traction therapy on the Respondent's patients, even though she was not registered as a Chiropractic Assistant (CA) to do so;

E. The Respondent acknowledged under oath that both Employees A and B would remove patients from physical therapy modalities, including diathermy,

²Employees' names are confidential, but may be disclosed to the Respondent or any other authorized person by contacting the Board.

anatometer, take electrodes off patients, and, remove hot/cold packs;

F. The Respondent further acknowledged under oath that she trained Former Employee A, but that Former Employee A also received some training from Former Employee B;

G. Neither Former Employee A or B were registered as CA's while they worked at Dr. Showan's office.

5. As set forth above, by allowing unauthorized persons to provide chiropractic treatment to her patients, the Respondent violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Summary of Evidence, Findings of Fact and Discussion, the Board concludes as a matter of law that Respondent has violated the following provisions of HO § 3-313:

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, with or without conditions, or suspend or revoke a license, or any combination thereof, 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[.]

Dr. Showan admitted that she did not comply with the Board's laws and regulations on chiropractic assistants. Therefore the Board finds that Dr. Showan utilized unlicensed personnel to perform duties that can only be performed by a licensed chiropractic

assistant. Further, the Board finds that Dr. Showan's actions were unprofessional. The Board charged Dr. Showan with additional violations of its laws and regulations, but is electing to sanction Dr. Showan exclusively for these two violations.

SANCTION

Respondent is not an inexperienced chiropractor; she has been in active practice since 1983. Respondent's purported lack of knowledge of the Board's statute and regulations is troubling to the Board. By permitting two different office receptionists, who had little to no formal training in CA modalities, to function as a CA in her office was unacceptable and risked the health and safety of the patients. Respondent's behavior does not meet the standards that the public is entitled to expect from a licensed or registered professional healthcare practitioner.

Respondent did not fully acknowledge any error or misconduct on her part. On the contrary, she has said, or not said, whatever was needed to in order to avoid admitting any wrongdoing. Dr. Showan seems to believe that she can commit "minor" violations of the Board's laws and regulations. This is not the case.

In light of the Respondent's misconduct, the Board shall impose a public reprimand of her license, probation for two years, a fine of \$1,000.00 for each statutory violation. The Board issues this fine in accordance with COMAR 10.43.04(C)(9) and (11) and 10.43.05 (A) – (D).

The Board revokes Dr. Showan's license as a supervising chiropractor. After taking and passing the Board's jurisprudence examination, Dr. Showan can re-apply to become a

supervising chiropractor. In order to become a supervising chiropractor, she must meet all of the current requirements to be a Supervising Chiropractor and pass the Board's Supervising Chiropractor examination.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 3rd day of November, 2010, by a majority of the full authorized membership of the Board, hereby

ORDERED that Respondent, Nina Showan, D.C., is REPRIMANDED; and it is further

ORDERED that Respondent's license shall be placed on PROBATION for two (2) years, effective immediately; and it is further

ORDERED that, within six (6) months of the effective date of this Final Decision and Order, Respondent shall pay a fine to the Board in the amount of \$2,000.00, which shall be paid to the General Fund of the State of Maryland; and it is further

ORDERED that, within six (6) months of the effective date of this Final Decision and Order, Respondent shall fully reimburse the Board the Hearing costs in the amount of \$1,294.00; and it is further

ORDERED that Respondent shall take and pass the Board Jurisprudence Examination within 1 (one) year of the date of this Final Decision and Order; and it is further

ORDERED that Respondent's license to practice as a Supervising Chiropractor

is revoked and cannot be reinstated until she has taken and the passed the Board's jurisprudence and supervising chiropractor examinations; and it is further

ORDERED that there shall be no automatic termination of probation after two (2) years, and Respondent must petition the Board for termination of probation and full reinstatement of her license without restrictions or conditions. If Respondent has satisfactorily complied with all conditions of probation, and there are no outstanding complaints or other disciplinary action pending against Respondent, the Board shall terminate probation. If the Respondent fails to make any such petition, then the probationary status shall continue indefinitely, subject to the terms and conditions set forth in this Final Decision and Order; and it is further

ORDERED that this Final Decision and Order shall be effective from the date it is signed by the Board; and it is further

ORDERED that Respondent's failure to fully comply with the terms and conditions of this Final Decision and Order shall be deemed a violation of probation and of this Final Decision and Order, and that upon such violation the Board may impose any discipline which it might have imposed for Respondent's actions in this case; and it is further

ORDERED that the burden of proof shall be on Respondent to demonstrate compliance with this Final Decision and Order and the terms and conditions of probation; and it is further

ORDERED that Respondent shall abide by the laws and regulations regarding

the practice of chiropractic; failure to do so shall constitute a violation of probation and of this Final Decision and Order; and it is further

ORDERED that any violation of this Final Decision and Order by Respondent shall constitute unprofessional conduct; and it is further

ORDERED that Respondent shall pay all costs associated with carrying out the provisions of this Final Decision and Order; and it is further

ORDERED that this is a Final Order of the Maryland State Board of Chiropractic Examiners and, as such, is a PUBLIC DOCUMENT and is reportable to any entity to which the Board is obligated by law to report, and is disclosable under the Maryland Public Information Act, Maryland State Gov't Code Ann. §§10-611 *et seq.*



J. J. Vallone, J.D., Exec. Director
For: Kay B. O'Hara, D.C., President
Maryland State Board of Chiropractic &
Massage Therapy Examiners

NOTICE OF RIGHT TO APPEAL

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