

The Respondent violated the Board's advertising regulations, Code Md. Regs. §10.10.43.03 (August 6, 2001):

.03 Prohibitions.

An advertisement may not contain statements that:

A. Contain a misrepresentation of facts or do not reasonably identify the practice as chiropractic;

B. Are likely to mislead or deceive because in context the statement makes only a partial disclosure of relevant facts;

F. Contain representations or implications that in reasonable probability can be expected to cause an ordinary prudent person to misunderstand or to be deceived [;].

The Respondent further violated the Board's Code of Ethics, Code Md. Regs. tit. 10 § 43.14. (January 9, 2000):

.03 Standards of Practice.

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

(4) Provide accurate fee information to the patient, the individual responsible for payment for treatment, and the insurer;

(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;

(7) Provide chiropractic assistance only within the parameters set forth in Health Occupations Article, §3-404, Annotated Code of Maryland, and COMAR 10.43.07;

D. A chiropractor... may not:

(1) Misrepresent credentials, qualifications, or affiliations and shall attempt to correct others who misrepresent the chiropractor's or the chiropractic assistant's credentials, qualifications, or affiliations;

- (2) Knowingly engage in or condone behavior that is fraudulent, dishonest, or deceitful, or involves moral turpitude[;].

.06 Records, Confidentiality, and Informed Consent.

A chiropractor shall:

- A. Respect and maintain the privacy and confidentiality of the patient;
- B. Disclose the patient's records or information about the patient only with the patient's consent or as required by law;
- D. Provide sufficient information to a patient to allow the patient to make an informed decision regarding treatment, including:
 - (1) The purpose and nature of an evaluation or treatment regimen;
 - (2) Alternatives to treatment;
 - (3) Side effects and benefits of a treatment regimen proposed and alternatives to that treatment;
 - (4) The estimated cost of treatment and alternatives to treatment[;]

The Respondent was given notice of the issues underlying the Board's charges by a letter dated September 18, 2008. Accordingly, a Case Resolution Conference was held on November 13, 2008, and was attended by Marc Gammerman, D.C., Board member, and Grant Gerber, Counsel to the Board.² Also in attendance were the Respondent, who knowingly and voluntarily waived his right to an attorney, and, Roberta Gill, Assistant Attorney General, the Administrative Prosecutor.

²Danielle Gonnelli was present as a student observer on behalf of the Board.

Following the Case Resolution Conference, the parties and the Board 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 to the charges herein, the Respondent was licensed to practice chiropractic in the State of Maryland. The Respondent was first licensed on May 9, 1985. The Respondent's license expires August 31, 2009.

2. At all times relevant hereto, the Respondent owned and operated a chiropractic practice in Bel Air, Maryland, in Harford County.³ The Respondent is a sole practitioner.

3. By a document dated 3/12/07, Patient A⁴ reported that she had seen the Respondent for treatment of migraines from August 15-December 4, 2006. Patient A further reported the following:

A. Prior to Patient A's first visit with the Respondent, she contacted his office to inquire whether he participated in Aetna insurance and provided her insurance information;

B. Patient A's first visit was on 8/15/06 and consisted of a lengthy interview, urinalysis and a requisition for over \$2000 in blood tests to determine the cause of her chief complaint;

C. On her second visit, 9/5/06, Patient A inquired about her first visit and

³The Respondent has since closed the office and works as an independent contractor for a health clinic in Baltimore.

whether the insurer had paid the bill, since she had not received a statement from it.

She was again assured that the Respondent participated with Aetna;

D. The third visit on 9/10/06 consisted of the Respondent recommending supplements and a diet based on the information obtained by her blood work;

E. Sometime prior to Patient A's fourth visit on 12/4/06, she received a bill from the Respondent showing that his claims had been processed as "out of network", resulting in Patient A's being billed 30% co-insurance, plus amounts above what Aetna considered reasonable and customary. Patient A contacted the Respondent's office and was told not to worry because the Respondent did participate in Aetna;

F. Patient A's final visit on 12/4/06 consisted of a total body plethysomography, CPT code 93720. She was given a request for blood work and was told that the Respondent would contact her via the telephone to recommend additional supplements once he reviewed the results of her laboratory results (labs);

G. On 1/2/07, when Patient A contacted the Respondent's office to inquire about her lab results and about the status of her bill, the Respondent's wife told her that she would not be getting any instructions over the telephone, but would have to come in to see her instead. She referred to herself as a "lifestyle educator";

H. On 2/11/07, Patient A received a bill from the Respondent indicating that her bill would be sent to collections within 10 days if she did not pay same within 10 days. Patient A contacted Aetna, which confirmed that the Respondent had never

⁴Patients' names are confidential and may be disclosed by to the Respondent by contacting the

participated in Aetna. The rep also informed her that they would not pay for the CPT code 93720, which the Respondent told the patient was to measure her body fat—a test that did not appear to support the Respondent's diagnosis of migraine;

I. On 3/1/07, Patient A contacted the Respondent's office and informed the Respondent's wife that she had contacted Aetna and had it put in writing that the Respondent did not participate in Aetna. The Respondent's wife indicated that the office participated in American Specialty Health, which Aetna contracts with, but not for Maryland;

J. At no point during the four visits, did the Respondent ever mention to Patient A the need to see his wife, although the Respondent related to Patient A that his wife suffered from migraines and, that, consequently, he helped her dye her hair using natural hair dye, and other anecdotes;

K. In addition, Patient A stated that the Respondent used the credentials "C.C.S.P." (Certified Chiropractic Sports Physician") when he was no longer so certified.

4. As a result of the above complaint, the Board conducted an investigation which disclosed the following:

A. The Respondent claimed that, when his office contacted Patient A's insurer, it received only an automated system which advised of the effective date of coverage and the co-insurance amounts. The Respondent failed to mention that he knew that he has never been an Aetna participant in Maryland and that all charges to Patient A would be billed as "out of plan";

B. The Respondent stated that he performed plethysomography on the patient to determine her body composition, fluid balance and cellular performance, as an imbalance would indicate an increase in toxic load and/or joint pain, both of which could correlate with Patient A's migraine symptoms;⁵

C. The Respondent's wife stated that she was a "Certified Therapeutic Lifestyle Educator", and that her role in the patient's health care was to support Patient A in implementing therapeutic lifestyle changes. The Respondent's wife further explained that, based on the results of Patient A's health history, blood test results and symptoms, the Respondent was recommending diet modifications, exercise and nutritional therapies for management of Patient A's migraines and healthy blood chemistries. The Respondent's wife also explained that she, Patient A and the Respondent would be working together under the Respondent's protocols;

D. The Respondent stated that he researched the matter of the C.C.S.P. credentials and was advised that re-certification with continuing education credits was not required until 2001 and that he was originally certified in 1992. He further stated that, in order to re-certify, he would have to pay \$735, and, that instead, he decided to remove the C.C.S.P. from his advertisements;⁶

E. The Respondent explained that his wife had attended Therapeutic Lifestyle Education through Metagenics' Firstline Therapy Certification Program from 10/12-15/06, and that all fees related to encounters between her and patients were

⁵There is no scientific evidence supporting this claim for the use of the machine to diagnose migraines.

⁶The Respondent's advertisement as a C.C.S.P. appears in his website and on his letterhead. Under Maryland law, chiropractors cannot advertise as "physicians." *Beverungen v. Briele*, 25 Md. App. 233, 333 A.2d 664 (1975). The Respondent claimed that he later notified the Board when he removed that

that organization.

5. As set forth above, the Respondent is in violation of the Act and the regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §3-313 (7), (13), (18), (19), (25), and (26).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 30th day of December, 2008, by a majority of a quorum of the Board,

ORDERED that the Respondent is hereby **REPRIMANDED** ; and it is hereby further

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

- A. The Respondent shall take and pass the Board's jurisprudence examination within the first year of Probation;
- B. The Respondent shall pay a \$2500 fine, payable to the Board by the end of the first year of Probation.

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive a report that the Respondent's practice


⁷Regardless of whether the patient returned for her next appointment, before billing for a procedure, the

has violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

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

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on his license, provided that he can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

ORDERED that, for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 2004), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.



Duane Sadula, D.C., President
State Board of Chiropractic and Massage
Therapy Examiners 12/30/08

report should have been written, as required.

CONSENT OF WAYNE SODANO, D.C.

I, Wayne Sodano, by affixing my signature hereto, acknowledge that:

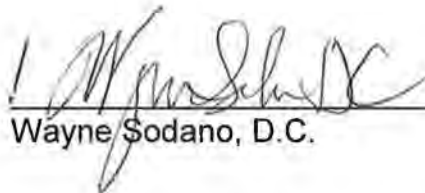
1. I am not represented by an attorney and have knowingly and voluntarily given up my right to an attorney;

2. I am aware that without my consent, my license to practice chiropractic in this State cannot be limited except pursuant to the provisions of § 3-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2004 Repl. Vol.).

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing 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 APA, and any right to appeal as set forth in § 3-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice chiropractic in the State of Maryland.

12-23-2008
Date


Wayne Sodano, D.C.

STATE OF Maryland :

CITY/COUNTY OF Baltimore :

I HEREBY CERTIFY that on this 23rd day of December, 2008, before me, Dorise L M. Taylor, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Wayne Sodano, License No. S01265, 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.


Notary Public

My Commission Expires: 2/1/2009