

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
DANIEL J. SODERHOLM, D.C., : FINAL DECISION AND ORDER
RESPONDENT. : 93 CHI 40

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Daniel J. Soderholm, D.C.
4101 East Towne Boulevard
Madison, Wisconsin 53704

Chiropractic Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Daniel J. Soderholm, D.C. (D.O.B. 02/25/56), the Respondent herein, is duly licensed in the state of Wisconsin as a chiropractor (license #1692). This license was first granted on September 3, 1981.
2. The Respondent's latest address on file with the Department of Regulation and Licensing is 4101 East Towne Boulevard, Madison, Wisconsin 53704.
3. On March 8, 1993, Rebecca B. was involved in a motor vehicle accident. During this collision, she struck her head on the vehicle's interior rear-view mirror. As a result, she began experiencing pain in her neck.
4. Later on the date of March 8, 1993, Rebecca B. sought care from the Respondent for the pain in her neck. As part of this care, the Respondent obtained x-ray films consisting of A-P and lateral views of her cervical spine.

5. The Respondent failed to obtain from Rebecca B. an oblique view of her cervical spine. An oblique view is part of the minimum standard of care ordinarily exercised by a chiropractor who treats cervical injuries.

6. The A-P and lateral x-ray films obtained from Rebecca B. by the Respondent suggested that Rebecca B. had suffered a fractured cervical vertebra. These films did not provide conclusive evidence of a fractured cervical vertebra.

7. The Respondent did not inform Rebecca B. that the x-ray films suggested she had suffered a fractured cervical vertebra. The Respondent also did not tell Rebecca B. that a fractured cervical vertebra is not treatable by chiropractic care. On March 9, the Respondent encouraged Patient A to consult with a medical doctor.

8. By failing to inform Rebecca B. that her x-ray films suggested she had suffered a fractured cervical vertebra and that a fractured cervical vertebra is not treatable by chiropractic care, the Respondent substantially departed from the standards of minimal care ordinarily exercised by a chiropractor.

9. On March 8 and 9, 1993, the Respondent treated Rebecca B. by performing a chiropractic treatment similar to a Grostic maneuver. This consisted of slight pressure to the C2 and C5 areas of Rebecca B.'s cervical spine.

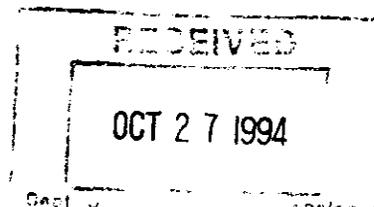
10. The Respondent's attempt to perform the aforementioned adjustment to Rebecca B.'s cervical spine was contraindicated and dangerous and fell beneath the minimum standard of care exercised by a chiropractor who treats cervical injuries. The Respondent's treatment of Rebecca B. did not aggravate her injury.

11. In response to the Board's concerns regarding his care of Rebecca B., the Respondent attended a continuing chiropractic education seminar that addressed the diagnosis of fractures. The Respondent earned twelve (12) continuing education credits at the aforementioned seminar. The Respondent had satisfied the Board's rules requiring continuing chiropractic education prior to attending the aforementioned seminar. The Respondent did not apply the twelve (12) credits earned during the aforementioned seminar toward satisfaction of the Board's rules requiring continuing chiropractic education.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondent is subject to disciplinary action against his license to practice as a chiropractor in the state of Wisconsin, pursuant to Wisconsin statutes section 446.03 and Wisconsin Administrative Code chapters Chir 1 and 6.

2. The Chiropractic Examining Board is authorized to enter into the attached Stipulation pursuant to Wisconsin Statutes section 227.44(5).



3. The Respondent's conduct described above violates Wisconsin Statutes section 446.03(5) and Wisconsin Administrative Code sections CHIR. 6.02(1), 6.02(3) and 6.02(9).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Stipulation of the parties is accepted.

IT IS FURTHER ORDERED that the Respondent is hereby reprimanded.

IT IS FURTHER ORDERED that the Respondent's license to practice chiropractic is limited according to the following terms and conditions:

1. The Respondent shall submit to the Board proof that he has undertaken and completed by April 30, 1995 a minimum of twenty-four (24) hours of continuing chiropractic education in x-ray protocol and the identification of fractures.
2. The aforementioned continuing education may not be used to satisfy the Respondent's continuing education requirement under Wisconsin Administrative Code section Chir 5.01.
3. The aforementioned continuing education must be in a program approved by the Wisconsin Chiropractic Association, the American Chiropractic Association, the International Chiropractic Association, or in a program offered by a Board-approved chiropractic college.
4. Any program not approved by any of the aforementioned organizations must be approved by the Board in order to satisfy this Order. The aforementioned continuing education need not be pre-approved by the Board. The Board shall have the sole discretion to reject as satisfaction of this order any credits that are not related to x-ray protocol and the identification of fractures.
5. If the Respondent does not complete the aforementioned continuing education requirement by April 30, 1995, or does not successfully achieve the objectives of such a program, the Respondent's license to practice chiropractic shall be suspended effective May 31, 1995, and shall remain suspended until the Respondent complies with the terms and conditions of this Order.

IT IS FURTHER ORDERED that the Respondent shall receive credit toward satisfaction of this order for twelve (12) credits of continuing chiropractic education that he earned on August 6 and 7, 1994.

IT IS FURTHER ORDERED that the expense of compliance with all of the terms and conditions of this Order shall be the responsibility of the Respondent.

IT IS FURTHER ORDERED that the Respondent shall pay to the Department of

Regulation and Licensing the costs of this investigation and proceeding pursuant to Wisconsin statutes section 440.22 in the amount of \$415.50, not later than thirty (30) days following the date of this Order.

Failure to comply with the terms and conditions of this Order is a violation of Wisconsin Administrative Code section Chir 6.02(25) and may be a basis for a separate disciplinary action.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

CHIROPRACTIC EXAMINING BOARD

By: Merrill A. Sauer, D.C. 11/10/94
A Member of the Board Date

ATY2-5996

OCT 27 1994
Dept. of Licensing

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

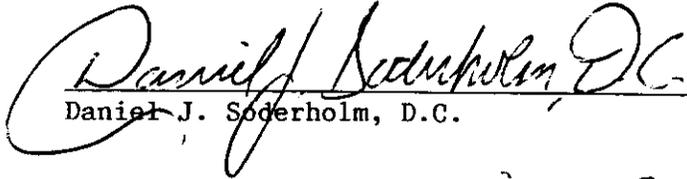
IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
DANIEL J. SODERHOLM, D.C.,	:	93 CHI 40
RESPONDENT.	:	

It is hereby stipulated between the Respondent, Daniel J. Soderholm, D.C., and Kevin F. Milliken, as Attorney for the Respondent and Peter Sammataro, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

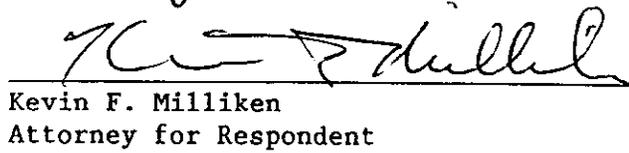
1. This Stipulation is entered into as a result of a pending investigation of the Respondent's licensure by the Division of Enforcement. The Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. The Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent is aware of his right to seek legal representation and has obtained legal advice prior to signing this stipulation.
4. The Respondent agrees to the adoption of the attached Final Decision and Order by the Chiropractic Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order. if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Chiropractic Examining Board

assigned as an advisor in this investigation may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

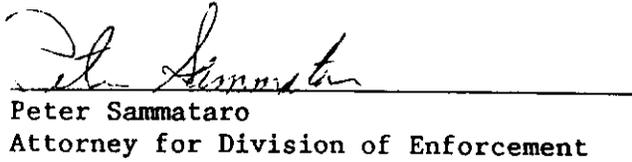
7. The Division of Enforcement joins the Respondent in recommending the Chiropractic Examining Board adopt this Stipulation and issue the attached Final Decision and Order.


Daniel J. Soderholm, D.C.

10-24-94
Date

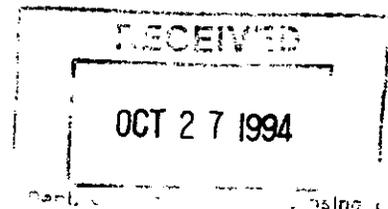

Kevin F. Milliken
Attorney for Respondent

10-24-94
Date


Peter Sammataro
Attorney for Division of Enforcement

11-03-94
Date

ATY2-5996



NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN CHIROPRACTIC EXAMINING BOARD.

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

NOVEMBER 11, 1994

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmation, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.