

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 :
 : FINAL DECISION AND ORDER
 : 95 CHI 078
JOHN L. SCHUETT, DC, :
RESPONDENT :
 :

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

John L. Schuett, DC
410 Genesee Street
Delafield, WI 53018

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. John L. Schuett (D.O.B. 01/21/59) is duly licensed in the state of Wisconsin chiropractic in the state of Wisconsin (license #2109). This license was first granted on September 1, 1983.
2. Dr. Schuett's latest address on file with the Department of Regulation and Licensing is 410 Genesee Street, Delafield, WI 53018.
3. On or about September 22, 1995, the Wisconsin Chiropractic Examining Board imposed disciplinary action against the license of Dr. Schuett. A true and correct copy of the Board's September 22, 1995 Order is attached and incorporated by reference into this document as Exhibit A.
4. Dr. Schuett has failed to comply with the terms of the Board's September 22, 1995 Order in the following respects:

- a. Dr. Schuett failed to file current releases for all his treatment providers with the Department Monitor [Order, ¶11];
- b. Dr. Schuett failed to submit a written quarterly report from an approved Supervising Health Care Provider to the Department Monitor [Order, ¶7] for the quarter ending December 21, 1995; and
- c. Dr. Schuett failed to timely designate an acceptable alternative Supervising Health Care Provider, in violation of the Board's 11/13/95 directive that Dr. Schuett continue his treatment and rehabilitation program under the direction of another Supervising Health Care Provider [Order, ¶9].

CONCLUSIONS OF LAW

By the conduct described above, John L. Schuett is subject to disciplinary action against his license to practice chiropractic in the state of Wisconsin, pursuant to Wis. Stats. §446.04(5), and Wis. Adm. Code §Chir 6.02(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

SUSPENSION

A. The license of John L. Schuett shall be **SUSPENDED** for an **INDEFINITE PERIOD** of time.

PETITION FOR STAY OF SUSPENSION

IT IS FURTHER ORDERED that

B. Dr. Schuett may petition the Board for a stay of the suspension of his licensure at any time. In conjunction with a petition by Dr. Schuett, the Board shall require:

- 1) A report from a current independent evaluation performed by a health care provider acceptable to the Board of Dr. Schuett's mental health status. Dr. Schuett shall obtain Board approval of the assessor prior to the assessment being performed. The assessor shall submit a written report of his or her findings directly to the Board, including: a diagnosis of Dr. Schuett's condition; recommendations for treatment; an evaluation of Dr. Schuett's level of cooperation in the assessment process; ability to work and work restriction recommendations; and Dr. Schuett's prognosis. The assessment shall reflect that the assessor has received and reviewed copies of this order and Division investigative materials regarding Dr. Schuett's behavior. In addition, the assessment

shall reflect that the assessor has consulted with Dr. Schuett's prior treatment providers in conjunction with the assessment. To be considered current, the assessment shall be conducted within not more than thirty (30) days from the date of the petition.

2) Documentation acceptable to the Board of continuous adherence to an appropriate medication regime for a period of at least thirty (30) days immediately prior to submission of the petition, including witnessed consumption of medication(s) as well as drug level screens;

3) Documentation of successful participation in an acceptable program of therapy on a minimum attendance basis of two times per week for a period of at least thirty (30) days immediately prior to the submission of the petition;

3) Acceptable documentation [from his treatment provider, local law and licensing authorities, and (if applicable) his employer and/or co-workers] that Dr. Schuett's mental condition has stabilized for a period of at least thirty (30) days prior to the submission of the petition.

Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

TERM OF STAY

D. A stay under the terms of this Order shall be for a period of three (3) months. If the Board issues a three month stay:

i. John L. Schuett may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon Dr. Schuett's practice during the prior three (3) month period.

ii. If the Board denies the petition by Dr. Schuett for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

iii. Dr. Schuett may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the conditions imposed upon his licensure. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

E.

CONDITIONS OF STAY

REHABILITATION, MONITORING AND TREATMENT

Treatment Required

1. Respondent shall continue successful participation in all components of a mental health treatment program at a treatment facility acceptable to the Board. As a part of treatment, Respondent must attend therapy on a schedule as recommended by his Supervising Health Care Provider; attendance however, shall be required at least four (4) times per month. Respondent shall in addition arrange for a program of witnessed medication consumption acceptable to the Board and take all medications prescribed for the management of his condition.

Drug screens

6. Respondent must arrange for and participate in a program acceptable to the Board of independently witnessed consumption of all medication(s) prescribed for the treatment or management of his mental health status.
7. Respondent must participate in a program of random witnessed monitoring for the presence of prescribed medications in compliance with his treatment program on a frequency acceptable to the Board. The Board, via its designated agent, shall determine an acceptable minimum frequency of screens. [It is anticipated that the Board will set an initial minimum frequency of screens of not less than four (4) times per month.] If the Board, via its designated agent, or the physician or therapist supervising Respondent's plan of care deems that blood or urine screens are warranted in addition to the base frequency established under this paragraph, Respondent shall submit to such additional screens.
 - a. Respondent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required and any other expenses associated with compliance with this Order.
 - b. Respondent shall keep his Supervising Health Care Provider and monitoring facility informed of Respondent's location and shall be available for contact by his Supervising Health Care Provider at all times.
 - c. All requested specimens shall be provided by Respondent within five (5) hours of the request for the specimen. All urine specimen collections shall be a split sample accomplished by dividing urine from a single void into two specimen bottles. The total volume of the split sample shall be at least 45 ml. of urine. All breath, split sample urine specimens, blood specimens and hair specimens shall be collected, monitored and chain of custody maintained in conformity with the collection, monitoring and chain of custody procedures set forth in 49 CFR Part 40. Urine specimen collections shall be by direct observation if:
 - i. The Respondent must provide an additional specimen because Respondent's initial specimen was outside of the normal

temperature range (32.5 - 37.7°C/90.5 - 99.8°F) and he refuses to have an oral body temperature measurement; or he does provide an oral body temperature measurement, and the reading varies by more than 1°C/1.8°F from the temperature of the urine specimen;

ii. Respondent's last provided specimen was determined by the laboratory to have a specific gravity of less than 1.003 and creatinine concentration below 0.2 g/l;

iii. The collection site person observes Respondent acting in such a manner to provide reason to believe that Respondent may have attempted or may attempt to substitute or adulterate the specimen. The collection site person, if he or she believes that the initial urine specimen may have been adulterated or a substitution made, shall direct Respondent to provide an additional observed urine specimen;

iv. The last provided specimen resulted in a negative or suspected negative test result for the presence of prescribed medications [hereinafter "negative test result"] for the presence of prescribed medications; or

v. The Chiropractic Examining Board (or any member of the Board), the Department Monitor, or Respondent's Supervising Health Care Provider directs that the urine specimen collection be by direct observation.

If either of the above conditions (i) or (iii) requires collection of an additional observed urine specimen, the collection of the subsequent specimen shall be accomplished within the required five (5) hours of the request for the initial specimen; the collection of the initial specimen shall not satisfy the requirement that the urine specimen be collected within five (5) hours of the request for the initial specimen.

e. Respondent's monitoring plan shall name a screening facility which at all times utilizes a United States Department of Health and Human Services certified laboratory for the analysis of all specimens collected from Respondent.

f. Respondent's monitoring plan shall utilize only those specimen collection sites for collection of Respondent's urine, blood and hair specimens as comply with the United States Department of Transportation collection and chain of custody procedures set forth in 49 CFR Part 40.

g. The Supervising Health Care Provider, treatment facility, laboratory and collection site shall maintain a complete and fully documented chain of custody for each specimen collected from Respondent.

h. Every urine specimen collected from Respondent shall be analyzed

at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of Respondent. Every urine specimen collected from Respondent shall be further analyzed at the laboratory for tampering by measuring the creatinine concentration and the specific gravity of the specimen. The laboratory may at its discretion or at the direction of a Supervising Health Care Provider or the Chiropractic Examining Board or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.

i. Unless otherwise directed by the Board, all specimens collected from Respondent shall be analyzed for the presence of medications prescribed to Respondent for the treatment of his mental health condition.

The laboratory shall conduct confirmatory tests of negative or suspected negative test results by appropriate scientific methods and instruments including, but not limited to, gas chromatography and mass spectrometry.

j. All specimens remaining after testing shall be maintained in a manner necessary to preserve the integrity of the specimens for at least seven (7) days; and all negative or suspected negative specimens remaining after testing shall be so maintained for a period of at least one (1) year. The Supervising Health Care Provider or the Chiropractic Examining Board or any member thereof may direct that the specimens be maintained for a longer period of time.

k. For the purpose of further actions affecting Respondent's license under this Order, it shall be presumed that all confirmed negative reports are valid. Respondent shall have the burden of proof to establish that the negative report was erroneous and that the Respondent's specimen sample did contain his prescribed medications or their metabolites.

l. If any specimen is negative or suspected negative for any of Respondent's prescribed medications, Respondent shall promptly submit to additional tests or examinations as the Supervising Health Care Provider shall determine to be appropriate to clarify or confirm the negative or suspected negative specimen test results.

Required reporting

m. The person or persons responsible for witnessing Respondent's consumption of medication(s) [hereinafter "medication witness(es)"] shall report **immediately** to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to take medications or to appear within one (1) hour of the time(s) arranged for witnessed consumption of medications.

- n. The Supervising Health Care Provider and Monitoring Facility shall report **immediately** to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to provide a specimen within five (5) hours from the time it was requested; or of any inability to locate Respondent to request a specimen. The laboratory shall **immediately** report all urine specimens suspected to have been tampered with and all specimens which are negative or suspected negative for Respondent's prescribed medications to the Department Monitor, and to the Supervising Health Care Provider.
- o. The laboratory shall within 48 hours of completion of each specimen analysis mail the report from all specimens requested of Respondent under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for Respondent's prescribed medications. Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of prescribed medications.
- p. The medication witness(es) shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor.
- q. The Monitoring Facility shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall summarize the results of the specimen analyses. The Monitoring Facility shall report **immediately** to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Chiropractic Examining Board's Final Decision and Order.
8. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in his mental health treatment program and (if applicable) summarize the results of the specimen analyses.

The Supervising Health Care Provider shall report **immediately** to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139]: 1) any change in Respondent's condition which would impair his ability to safely and competently practice his profession; or 2) any violation or suspected violation of the Chiropractic Examining Board's Final Decision and Order.

Reporting by Respondent

9. Respondent shall be responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, medication witness(es), treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

- 10 If the Chiropractic Examining Board determines that the Supervising Health Care Provider, treatment facility, monitoring facility, laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent continue his treatment and rehabilitation program under the direction of another Supervising Health Care Provider, treatment facility, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

Department monitor

- 11 The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows: Department Monitor, Department of Regulation and Licensing Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935. FAX (608) 266-2264 TEL. (608) 267-7139.

Releases

- 12 Respondent shall provide and keep on file with all treatment facilities and personnel, medication witness(es), laboratories, and collections sites current releases which comply with state and federal laws authorizing release of all of Respondent's drug screen results and his medical and treatment records and reports. In addition, these releases shall permit his treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation with the Chiropractic Examining Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Chiropractic Examining Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

SCOPE OF PRACTICE: LIMITATIONS AND CONDITIONS

Practice restrictions

- 13 Until such time as approved by the Board,
 - a. Respondent shall practice only in settings where he works in

conjunction with another chiropractor or other licensed health care professional acceptable to the Board; and

b. Respondent shall refrain from direct patient contact without the presence of a chiropractic assistant, nurse, or other office personnel acceptable to the Board.

14 If Respondent's Supervising Health Care Provider recommends work restrictions in the field of chiropractic in addition to the conditions included in this order, Respondent shall restrict his practice in accordance with such recommendations.

Required reporting

15 Office personnel and associate chiropractor(s) shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the monitor.

16 Respondent shall report to the Board any change in employment status, change of residence address or phone number, within five (5) days of any such change.

F. PETITIONS FOR MODIFICATION OF TERMS

Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

(D) SUMMARY SUSPENSION

Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Board in its discretion may in the alternative deny an extension of the stay of suspension or impose additional conditions and limitations other additional discipline for a violation of any of the terms of this Order.

(E) EFFECTIVE DATE OF ORDER

This Order shall become effective upon the date of its signing.

CHIROPRACTIC EXAMINING BOARD

By:

Terry K. Freitag, D.C.
On behalf of the Board

3-14-96
Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
JOHN L. SCHUETT, DC,	:	95 CHI 078
RESPONDENT	:	

It is hereby stipulated between John L. Schuett, personally on his own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into in resolution of the above-referenced proceedings against Dr. Schuett's Wisconsin license to practice chiropractic. This Stipulation and Order shall be presented directly to the Chiropractic Examining Board for its approval and adoption.

2. Dr. Schuett 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, the Wisconsin Administrative Code, and the Americans with Disabilities Act of 1990.

3. Dr. Schuett is aware of his right to seek legal representation and has obtained legal advice prior to signing this stipulation.

4. Dr. Schuett 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. Dr. Schuett further agrees that the Board may consider all of the allegations against him in conjunction with any petition under this Order for relicensure before the Board.

6. 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.

7. 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 Dr. Schuett in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.



John L. Schuett, DC

02/29/96

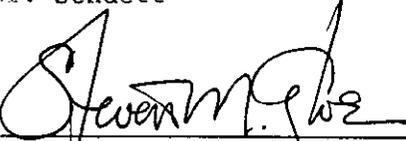
Date



Lester A. Pines, Attorney for
Dr. Schuett

3/1/96

Date



Steven M. Goe, Attorney
Division of Enforcement

3.4.96

Date

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:

STATE OF WISCONSIN CHIROPRACTIC EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

March 15, 1996

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.)