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STATE OF WISCONSIN

BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST

JOHN T. RIEGLEMAN, D.C.

FINAL DECISION

RESPONDENT

LS9809041CHI

The parties to this proceeding, for the purposes of sec. 227.53, Stats., are:

John T. Riegleman, D.C.

Mayville Chiropractic Center

19 South Main Street

Mayville, WI 53050

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

State of Wisconsin Chiropractic Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A Class II hearing was conducted in the above-captioned matter on April 5 and 13, 2000, at 1400 East Washington Avenue, Madison, Wisconsin. Respondent John T. Riegleman appeared in person and by Attorney Hal Harlowe. The Division of Enforcement appeared by Attorney James E. Polewski.

Based upon the entire record in this case, the Chiropractic Examining Board adopts as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. John T. Riegleman, respondent herein, 100 Highway East, Slinger, Wisconsin 53086, is licensed to practice chiropractic in Wisconsin by license # 2075, Granted on October 26, 1985, and he practices at Mayville Chiropractic Center, 19 South Main Street, Mayville, WI 53050.
2. Respondent first saw Donald Pfeifer as a patient on June 14, 1993. Mr. Pfeifer complained of chronic pain in his left hip and buttock. Respondent did not examine the area identified by Mr. Pfeifer as the area of his chronic pain on that occasion or on any subsequent occasion.
3. Mr. Pfeifer filled out a medical history form and he was examined by John Friedrichs, D.C., who was an extern

in respondent's office at that time. The examination summary in Mr. Pfeifer's patient record states in part "Lhip - gluteus region PSIS; no fall or accident; putting weight on left side increases discomfort . . . worse if sitting for long periods; better in a.m.; kyphotic appearance; . . ."

4. Respondent undertook to treat Mr. Pfeifer's complaint of pain in his left hip or buttock by means of spinal manipulation, for the purpose of locating and eliminating any existing vertebral subluxation complex. Between June 14, 1993, and March 7, 1994, Mr. Pfeifer made 63 visits to respondent for treatment.

5. Respondent's method of recording his assessment of the patient's symptoms during the period in question was to indicate that the symptoms were better, the same or worse, by inserting a check mark next to the appropriate notation on the patient's chart. Between June 15, 1993, and March 14, 1994, no assessment report was included for five of Mr. Pfeifer's visits. Of the remaining 58 assessment reports, 53 assessed Mr. Pfeifer's symptoms as "better." Three assessment reports, June 17, 1993, June 23, 1993, and December 29, 1993, assessed Mr. Pfeifer's symptoms as "same." Only two assessment reports, December 15, 1993, and January 19, 1994, assessed Mr. Pfeifer's symptoms as "worse."

6. Respondent's method of recording the patient's assessment of the patient's pain during the period in question was to circle a number between 1 and 10 on the assessment form, with 1 being the least pain, and 10 indicating the greatest pain. Between June 15, 1993, and March 14, 1994, no pain assessment report was included for 25 of Mr. Pfeifer's visits. Of the remaining 38 pain assessment reports, 36 assessed Mr. Pfeifer's pain at level 5. Two pain assessment reports, November 3, 1993 and November 10, 1993, assessed Mr. Pfeifer's pain at level 8 and 7, respectively.

7. Between June 14, 1993, and March 7, 1994, Mr. Pfeifer's symptoms steadily worsened. At the time he first received services from respondent, Mr. Pfeifer was walking unassisted. By January, 1994, he usually walked only with the assistance of a cane.

8. On three occasions, March 7, 1994, March 9, 1994, and March 14, 1994, respondent permitted a technician to perform ultrasound treatment on Mr. Pfeifer. There is not sufficient evidence to establish whether the ultrasound treatment was administered for the purpose of treating Mr. Pfeifer's underlying condition, or was instead for the treatment of sore ribs, and there is insufficient evidence to establish whether the technician in the course of providing the treatment noted discoloration and swelling in Mr. Pfeifer's left hip and buttock or whether she informed him of that finding.

9. In April, 1994, Mr. Pfeifer discontinued treatment with respondent and consulted a physician about the pain and swelling in his left buttock. The physician referred him to diagnostic imaging and an oncologist. Mr. Pfeifer's condition was diagnosed as multiple myeloma and plasmacytoma. Mr. Pfeifer ultimately succumbed to the disease.

10. Notwithstanding respondent's representation that he does not treat pain, respondent has placed numerous advertisements in a Mayville periodical advertising treatment for back pain, neck pain, headaches of all types, hip pain and painful joints, among others. Those advertisements also extol the benefits of chiropractic care over medical care, though there is insufficient evidence to establish that respondent did not refer Mr. Pfeifer for medical care on January 5, 1994, and February 7, 1994, as is reflected in Mr. Pfeifer's chart.

11. Respondent's treatment of Mr. Pfeifer was completely ineffective with regard to Mr. Pfeifer's complaint of chronic pain; and respondent knew or should have known that his treatment of Pfeifer was ineffective.

CONCLUSIONS OF LAW

1. The Chiropractic Examining Board has jurisdiction in this matter pursuant to sec. 446.03, Stats.

2. By continuing to treat Mr. Pfeifer from June 14, 1993, until March 7, 1994, when he knew or should have known that such treatment was ineffective in regard to Mr. Pfeifer's complaint of chronic pain in the left hip and buttock area, respondent engaged in excessive treatment of a patient, in violation of sec. Chir 6.02(8), Code, and engaged in a practice which constituted a substantial danger to the health, safety and welfare of the patient, in violation of sec. Chir 6.02(1), Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of John T. Riegleman, D.C. be, and hereby is, suspended for a period six months, commencing 14 days from the date of the Final Decision and Order of the Chiropractic Examining Board and continuing thereafter for 180 consecutive days.

IT IS FURTHER ORDERED that the costs of this proceeding shall be assessed against Dr. Riegleman, pursuant to sec. 440.22, Stats.

EXPLANATION OF VARIANCE

The Board accepted the Findings of Fact and Conclusions of Law proposed by the administrative law judge, but

has modified the term of suspension from 30 days to 6 months. The 6-month suspension is based on the seriousness of respondent's violation.

The Wisconsin Supreme Court set a new standard of care for Wisconsin chiropractors in *Kerkman v. Hintz*, 142 Wis. 2d 404, 421 (1988).

In summary, we hold that a chiropractor has duty to (1) determine whether the patient presents a problem which is treatable through chiropractic means; (2) refrain from further chiropractic treatment when a reasonable chiropractor should be aware that the patient's condition will not be responsive to further treatment; and (3) if the ailment presented is outside the scope of chiropractic care, inform the patient that the ailment is not treatable through chiropractic means.

Respondent's conduct was unreasonable and unprofessional in the circumstances of this case. In continuing to provide chiropractic treatment after it was clear that the patient was not benefiting from that treatment, respondent violated a professional duty specifically identified in *Kerkman*. This case demonstrates the importance of the duty.

The purposes for imposing discipline are to: 1) rehabilitate the licensee, 2) protect the public from incompetent or unethical practices, and 3) deter other licensees from engaging in similar misconduct. *Galang v. Medical Examining Board*, 168 Wis.2d 695, 700 (Ct.App. 1992); *State v. Aldrich*, 71 Wis.2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis.2d 481 (1969). The Board concluded that a 30-day suspension is insufficient to protect the public, to rehabilitate the respondent, and to deter respondent and the chiropractic profession from similar conduct. The proposed order for a 30-day suspension is rejected as unduly minimizing the seriousness of respondent's behavior. A longer suspension is necessary to impress upon the respondent and upon other licensees the need to adhere to professional obligations, especially the responsibilities that chiropractors have to their patients.

The law in Wisconsin mandates that a chiropractor shall refrain from further chiropractic treatment when the chiropractor knows or should know that the patient's condition will not be responsive to further treatment. In the circumstances of this case respondent should have known, if he did not actually know, that the condition of his patient was deteriorating and would not be responsive to further treatment.

Respondent's violation is aggravated by his claim that he was not treating the painful condition that the patient presented, contrary to type of practice advertised publicly by respondent. Respondent advertisements are part of his practice. His patients have a right to rely on the claims he makes in his professional advertising. Respondent may not assert his theories of professional practice as a basis for avoiding promises he makes in advertising or a professional responsibility set by law.

Because it contains a useful analysis of the facts and the issues, the ALJ's original opinion is appended to this Final Decision and Order.

Respondent is reminded of the provisions of sec. Chir 4.07 on concerning suspensions.

Dated this 3rd day of October, 2000.

Chiropractic Examining Board

by: Bevier Slieght, III, Vice-chairperson