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STATE OF WISCONSIN

BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST

RICHARD GOLDE, D.C.,
RESPONDENT

FINAL DECISION AND ORDER
LS9810302CHI

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

Richard Golde, D.C.
2403 London Road
Eau Claire, WI 54701

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 2 hearing was held in the above-captioned matter on February 8, 9 and 10, 2000, at 1400 East Washington Avenue, Madison, Wisconsin. Respondent Richard Golde appeared personally and by Attorney John B. Wolfe. The Division of Enforcement appeared by Attorney Arthur Thexton.

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

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FINDINGS OF FACT

1. Richard H. Golde, D.C., respondent herein, 2403 London Road, Eau Claire, WI 54701, is licensed to practice chiropractic by license # 1568, granted on July 30, 1980. Dr. Golde practices chiropractic at Golde Chiropractic Center, at the London Road Address.
2. Respondent was a member of the Wisconsin Chiropractic Association (WCA) through calendar year 1991 and 1992, and from January 1, 1993 until March 31, 1993. At that point, respondent's membership lapsed for failure to pay dues. At no time after March 31, 1993, has respondent been a member of WCA.

3. Respondent placed advertisements in the yellow pages of the Ameritech telephone directory for Altoona/Chippewa Falls/ Eau Claire area in the 1993-94 edition, issued September, 1993; in the 1994-95 edition, issued September, 1994; and in the 1995-96 edition, issued September, 1995. Each of those advertisements falsely indicated that respondent was a member of the Wisconsin Chiropractic Association.
4. Respondent was a member of the American Chiropractic Association (ACA) from April 1, 1993 through September 30, 1993. At no time after September 30, 1993, has respondent been a member of ACA.
5. The advertisements respondent placed in the yellow pages of the Ameritech telephone directory for Altoona/Chippewa Falls/ Eau Claire area in the 1993-94 edition, in the 1994-95 edition, and in the 1995-96 edition, falsely indicated that respondent was a member of the American Chiropractic Association.
6. Respondent entered into a social and sexual relationship with Ms. Schmidt in 1980. Approximately six months later they began living together as domestic partners. Respondent thereafter hired Ms. Schmidt to work in his chiropractic office, where she was employed between March, 1981, and December 29, 1993. Their sexual relationship included occasional sexual intercourse in the office.
7. Respondent treated Ms. Schmidt as a chiropractic patient between January, 1981, and June 14, 1981; and between April 4, 1985, and April 28, 1986. Services provided in 1985 and 1986 were for injuries suffered by Ms. Schmidt in an automobile accident occurring on April 4, 1985.
8. On October 22, 1985, respondent prepared a four page document which purported to be a chiropractic evaluation of Ms. Schmidt. The purpose of this document was to be used in settling an auto accident claim, which occurred on April 4, 1985. There are no contemporaneous clinical notes in respondent's records for Ms. Schmidt which support the evaluation. The report says nothing about the fact that the patient was respondent's domestic partner, and appears to be written by a practitioner who has only a professional relationship with the patient, although it does disclose that the patient is an employee of the office.
9. On December 29, 1993, in respondent's chiropractic office, while Ms. Schmidt was still employed by him, respondent struck Ms. Schmidt in the face with his fist multiple times, causing multiple injuries to her facial area. Respondent was convicted of battery on his plea of no contest on February 10, 1994, and placed on probation for 18 months. Conditions of probation included that he have no contact with Ms. Schmidt, and that he participate a program of education for persons involved in domestic violence. Respondent did not report the fact of the conviction to the Chiropractic Examining Board.
10. Respondent met Ms. Smith in April, 1994. Between that date and approximately November, 1995, respondent and Ms. Smith had a sexual relationship, and they cohabited at various times during that period. Respondent provided chiropractic services to Ms. Smith between July 13, 1994, and September 27, 1995.
11. Between May, 1994, and November, 1995, respondent regularly physically and psychologically abused Ms. Smith. Physical abuse included slapping her, spitting on her, choking her, kicking her, gagging her by sticking his fingers down her throat and, on at least one occasion, slamming her head against a wall until she was rendered unconscious. Psychological abuse included regularly berating her for consuming a medication prescribed for anxiety, insulting her appearance, and insulting her intelligence.
12. Respondent did, from October 29, 1990, to April 7, 1992, treat patient Jayson Scholtz and simultaneously bill three third party payors, General Casualty, State Farm, and Wausau Insurance, for the same services, without informing any of them that the others were being billed or might provide coverage. Respondent received payments from both General Casualty and Wausau Insurance, in an aggregate amount exceeding the amounts billed for the services to the patient. Respondent kept the excess money received from the insurance companies in the amount of at least \$579.20, without their knowledge or consent. Some monies received from insurance companies for payment on this patient's account were transferred by respondent to apply to amounts due on the patient's father's account, without consent of the payer.
13. Respondent did, on and between September 24, 1993 and May 24, 1995, forgive the patient co-pay for patient Teresa Scholtz, without reducing his own claim to Travelers Insurance Company, the third party payor which paid for the services rendered to the patient during this period, by an equal proportion.
14. Respondent treated patient Krista Haase between December 12, 1993, and June 21, 1995, and simultaneously billed third party payors Wisconsin Medical Assistance program, American Family Insurance, and/or Midwest Security Insurance, for the same services and without informing any of them that the others were being billed.
15. Respondent failed to keep contemporaneous clinical notes for patient Krista Haase while treating her. When the patient's records were requested pursuant to the patient's authorization, respondent wrote several years' worth of chart notes on a single occasion, representing them as having been made contemporaneously with the services provided.
16. Respondent treated Carol Burlum from September 8, 1992, until September 18, 1995. During the period from

January 3, 1994, until October 25, 1994, Ms. Burlum received both Medicare and Medicaid benefits, and respondent was therefore required to "accept assignment," whereby whatever benefit Medicare paid was required to be accepted by him as payment in full, without any patient co-pay. Notwithstanding that requirement, respondent accepted co-payments from Ms. Burlum throughout the period in which she was on both Medicare and Medicaid.

17. Respondent failed to keep contemporaneous clinical notes for Carol Burlum while treating her as described in the previous paragraph. Respondent wrote what purport to be such notes on a later occasion, dating them in a manner as to represent that they were made contemporaneously with the services provided.

18. Respondent treated Annette Hayden between July 1, 1991 and August 10, 1994. During this period, he billed three third party payors, Allstate Insurance, Integrity Insurance, and a law firm, for the same services rendered to the patient, all without informing any of them that the others were being billed.

19. Respondent treated patient Annette Hayden from May 15, 1991, to January, 1995, and failed to keep contemporaneous clinical notes. All entries in the clinical notes, except the last, were written on a single occasion, although dated to appear as if they were created on the date of each treatment.

20. Respondent billed third party payors Allstate Insurance, Wausau Insurance, Secura Insurance, and a law firm for the same services rendered to patient Laverne Hayden from January 5, 1994 to August 23, 1994, without informing any of them that the others were being billed or might provide coverage.

21. On October 26, 1994, an attorney for LaVerne Hayden requested Mr. Hayden's treatment records from respondent pursuant to sec. 146.83, Stats. The records were not provided for approximately four months.

22. Respondent treated patient Laverne Hayden from May 15, 1991, to January, 1995, and failed to keep contemporaneous clinical notes. All entries in the clinical notes, except the last, were written on a single occasion, although dated to appear as if they were created on the date of each treatment.

23. Respondent treated patient Jennifer Lium on and between September 7, 1993 and August 23, 1995. During this period, he billed third party payors Heritage Insurance, General Casualty Insurance, and a health insurance plan sponsored by the Wisconsin Sheet Metal Workers union, for the same services and without informing any of them that the others were being billed.

24. Respondent treated, and failed to keep contemporaneous clinical notes for, patient Cari Horton between February 5, 1992, and September 24, 1992. Respondent then wrote the chart notes on a single occasion so they could be sent to a requester pursuant to the patient's authorization, and dated them to appear as if they were created on the date of each treatment.

25. On January 17, 1996, Respondent received a request from Wayne Scholtz's Workers' Compensation carrier for Wayne Scholtz's records. Respondent failed to send those records until February 28, 1996, after writing all the clinical notes in a single session. Respondent failed to keep clinical notes contemporaneous with the services provided. All entries in the clinical notes were written on a single occasion, although dated to appear as if they were created on the date of each treatment.

26. Between July, 1994 and June, 1995, Respondent instructed employee staff to bill patients John McLaughlin and Wayne Scholtz's insurance companies for services not rendered, in that the patient had an appointment with respondent to be provided services, but then canceled or failed to appear. The bills were never actually sent.

27. Respondent failed to keep contemporaneous clinical notes for patient Margaret Smith between August 3, 1994 and September 27, 1995. He then wrote all the clinical notes on a single occasion, and dated them to appear as if they were created on the date of each treatment.

28. In having been convicted of battery on his plea of no contest on February 10, 1994, for having struck Ms. Schmidt in the face with his fist multiple times, causing multiple injuries to her facial area, in respondent's chiropractic office while Ms. Schmidt was still employed by him, respondent has been convicted of a crime the circumstances of which substantially relate to the circumstances of the practice of chiropractic.

CONCLUSIONS OF LAW

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

2. In having placed advertisements in the yellow pages of the Ameritech telephone directory for Altoona/Chippewa Falls/ Eau Claire area in the 1993-94 edition, in the 1994-95 edition, and in the 1995-96 edition, falsely indicating that respondent was a member of the Wisconsin Chiropractic Association and of the American Chiropractic Association, respondent has advertised in a manner that is false, deceptive or misleading by containing a misrepresentation of fact, in violation of sec. Chir 6.02(15)(a), Code; has obtained or attempted to obtain a thing of value by fraudulent representation in the practice of chiropractic, in violation of sec. 446.03(4), Stats.; and has used professional advertising containing a statement of a character tending to

deceive or mislead the public, in violation of sec. 446.04(5)(a), Stats. Respondent has thereby engaged in unprofessional conduct, within the meaning of sec. 446.04, Stats., and sec. Chir 6.02, Code.

3. In preparing the October 22, 1985, chiropractic evaluation of Ms. Schmidt, respondent obtained or sought to obtain a thing of value by fraudulent representation, in violation of sec. 446.03(4), Stats., and engaged in conduct of a character likely to deceive or defraud the public, in violation of sec. 446.04(1), Stats.

4. In having had sexual contact and intercourse with Ms. Smith between 1989 and December, 1993, including occasional sexual contact and intercourse with Ms. Smith in his chiropractic office between 1981 and May, 1993, respondent did not engage in sexual intimacies with a patient in the office, within the meaning of sec. Chir 6.02(7), Code, as it existed prior to July 1, 1993, and did not engage in sexual contact with a patient, within the meaning of sec. Chir 6.02(7), Code, as it existed after July 1, 1993.

5. In having been convicted of battery, in violation of sec. 940.19(1), Stats, based upon his having struck Ms. Schmidt in the face with his fist multiple times, causing multiple injuries to her facial area in respondent's chiropractic office, while Ms. Schmidt was still employed by him, respondent has been convicted of a crime the circumstances of which substantially relate to the circumstances of the practice of chiropractic, within the meaning of, and in violation of, sec. Chir 6.02(24).

6. In having failed to report his conviction for battery, respondent violated sec. Chir 6.02(3), Code.

7. This tribunal does not have jurisdiction to decide whether respondent, in having regularly physically and psychologically abused Ms. Smith between may, 1994, and November, 1995, is guilty of battery, in violation of sec. 940.19(1), Stats., or of disorderly conduct, in violation of sec. 947.01, Stats. Accordingly, there is not a basis for finding that the respondent was convicted of a crime substantially related to the practice of chiropractic, in violation of sec. Chir 6.02(24), or that he violated a law substantially related to the practice of chiropractic, in violation of sec. Chir 6.02(2), Code. Finally, the conduct in question did not constitute a substantial danger to the health, welfare or safety of patient or the public, within the meaning of sec. Chir 6.02(1), Code.

8. In having simultaneously billed three third party payers, General Casualty, State Farm, and Wausau Insurance, for the same services in his treatment of Jason Scholtz, without informing any of them that the others were being billed, and in having received payments from both General Casualty and Wausau Insurance in an aggregate amount exceeding the amounts billed for the services to the patient, and in having kept the excess money received from the insurance companies in the amount of at least \$579.20, without their knowledge or consent, and in having transferred some of the monies received from insurance companies for payment on this patient's account to apply to amounts due on the patient's father's account, without consent of the payer, respondent has violated secs. 446.03(4), 446.03(5), and 446.04(1), Stats, and sec. Chir 6.02(14), Code.

9. In having forgiven the patient co-pay for patient Teresa Scholtz, on and between 9/24/93 and 5/24/95, without reducing by an equal proportion his own claim to Travelers Insurance Company, the third party payor which paid for the services rendered to the patient during this period, respondent has violated sec. Chir 6.02(29), Code.

10. In having treated patient Krista Haase between 12/12/93 and 6/21/95, and simultaneously billing third party payers, the Wisconsin Medical Assistance program and American Family Insurance, and/or Midwest Security Insurance, for the same services and without informing any of them that the others were being billed, respondent has violated sec. 446.03(4), Stats., and sec. Chir 6.02(14), Code.

11. In having failed to keep contemporaneous clinical notes for patient Krista Haase while treating her, and in writing several years' worth of chart notes on a single occasion, representing them as having been made contemporaneously with the services provided, respondent has violated sec. 446.02(7m)(a), Stats., and sec. Chir 11.02, Code.

12. In having treated Carol Burlum from January 3, 1994, until October 25, 1994, at a time when Ms. Burlum received both Medicare and Medicaid benefits, and by accepting co-payments from Ms. Burlum throughout the period in which she was on both Medicare and Medicaid, respondent has violated sec. 446.03(4), Stats.

13. In having failed to keep contemporaneous clinical notes for Carol Burlum while treating her, and by writing what purport to be such notes on a later occasion, dating them in a manner as to represent that they were made contemporaneously with the services provided, respondent has violated sec. 446.02(7m)(a), Wis. Stats., and sec. Chir 11.02, Code.

14. In having treated Annette Hayden and billing three third party payors, Allstate Insurance, Integrity Insurance, and a law firm, for the same services rendered to the patient, all without informing any that the others were being billed, respondent has violated sec.446.03(4), Stats.

15. In having treated patient Annette Hayden from 5/15/91 to 1/95, and in failing to keep contemporaneous clinical notes, and by writing all entries but the last entry on a single occasion, although dated to appear as if

they were created on the date of each treatment, respondent has violated sec. 446.02(7m)(a), Wis. Stats., and secs. Chir 11.02 and 11.04, Code.

16. In having billed third party payers Allstate Insurance, Wausau Insurance, Secura Insurance, and a law firm for the same services rendered to patient Laverne Hayden from 1/5/94 to 8/23/94, without informing any of them that the others were being billed or might provide coverage, respondent has violated sec. Chir 6.02(14), Code, and secs. 446.03(4), 446.03(5), and 446.04(1), Stats.

17. In having treated patient Laverne Hayden from 5/15/91 to 1/95 and failing to keep contemporaneous clinical notes, and by writing all entries in the clinical notes on a single occasion, although dated to appear as if they were created on the date of each treatment, respondent has violated sec.446.02(7m)(a), Stats., and secs. Chir 11.02 and 11.04, Code.

18. In having treated patient Jennifer Lium on and between 9/7/93 and 8/23/95, and billing third party payors Heritage Insurance, General Casualty Insurance, and a health insurance plan sponsored by the Wisconsin Sheet Metal Workers union, for the same services and without informing any of them that the others were being billed, respondent has violated sec. Chir 6.02(14), Code, and secs. 446.03(4) 446.03(5), and 446.04(1), Stats.

19. In having failed to keep contemporaneous clinical notes for patient Cari Horton between 2/5/92 and 9/24/92, and by writing the chart notes on a single occasion so they could be sent to a requester pursuant to the patient's authorization, and by dating them to appear as if they were created on the date of each treatment, respondent has violated secs. Chir 6.02(28), 11.04 and 11.02, Code, and sec. 446.02(7m)(a), Stats.

20. By having failed to provide records in response to the 1/17/96 request from patient Wayne Scholtz's Workers' Compensation carrier until February 28, 1996, and by writing all the clinical notes in a single session rather than keeping the clinical notes contemporaneous with the services provided, although dated to appear as if they were created on the date of each treatment, respondent has violated secs. Chir 6.02(28), 11.04 and 11.02, Code, and sec. 446.02(7m)(a), Stats.

21. In having instructed employee staff to bill patients John McLaughlin and Wayne Scholtz's insurance companies for services not rendered, in that the patient had an appointment with respondent to be provided services, but then canceled or failed to appear, respondent has violated sec. Chir 6.02(14), Code, and sec. 446.03(4), Stats.

22. In having failed to keep contemporaneous clinical notes for patient Margaret Smith between 8/3/94 and 9/27/95, and by writing all the clinical notes on a single occasion and dating them to appear as if they were created on the date of each treatment, respondent has violated sec. Chir 6.02(28), 11.04 and 11.02, Code, and sec. 446.02(7m)(a), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Richard Golde, D.C., be, and hereby is, REVOKED, effective on the tenth business day following the date of this Final Decision and Order.

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

EXPLANATION OF VARIANCE

The Proposed Decision presented to the board by Administrative Law Judge Wayne Austin included 28 findings of fact. All of the findings of fact are adopted.

The Proposed Decision included 22 conclusions of law. One was a statement of jurisdiction. In 13 of the other 21, the ALJ concluded that Dr. Golde had violated one or more rules or statutes, and the Proposed Decision contained a recommendation that Dr. Golde's license be suspended for three months with a provision for reinstatement. The board determined that even those violations justified more significant discipline than a three-month suspension. However, the board reached six different conclusions of law and found additional violations by Dr. Golde in numbers 3, 6, 10, 14, 16, and 18. Based on the additional violations and the board's appraisal of the seriousness of all of the violations, the board revokes Dr. Golde's license.

The board determines that Dr. Golde falsified client records and omitted a material fact when he prepared the four-page chiropractic evaluation of Ms. Schmidt on October 22, 1985, to be used in settling an auto accident claim. This is based on the fact that there are no contemporaneous clinical notes in Dr. Golde's records for Ms. Schmidt which support the evaluation, and the fact that Dr. Golde made the report appear to be written by a practitioner who has only a professional relationship with the patient by saying nothing about the fact that the

patient was his domestic partner although he did disclose that she was an employee of the office. He therefore violated various rules and statutes: he obtained or sought to obtain a thing of value by fraudulent representation, in violation of sec. 446.03(4), Stats., and he engaged in conduct of a character likely to deceive or defraud the public, in violation of sec. 446.04(1), Stats.

The board determines that Dr. Golde violated sec. Chir 6.02(3), Code by having failed to report his February 10, 1994, conviction for battery, which was a crime committed in his chiropractic office against a person who was an employee of the office as well as his domestic partner, and who had earlier been a patient. Dr. Golde may not justify his failure to report by alleging that he did not consider the crime to be substantially related to the practice of chiropractic. By failing to report the conviction, he disregarded his obligation to the board and to the profession. The board does not accept the ALJ's reasoning that "The substantial relationship concept is obviously not a simple one to analyze; it took the Wisconsin Supreme Court three tries before the court decided that it had finally gotten the test right. Respondent may be forgiven for viewing his conduct as not sufficiently related to his professional practice to require that he report it." Although the analysis of whether a crime is substantially related to the practice of chiropractic may ultimately be a legal one, that analysis is for the board, not for the individual practitioner, and failing to report such a conviction may result in a violation of sec. Chir 6.02 (3) (the duty to report), as well as a violation of sec. Chir 6.02 (24) (being convicted of a crime substantially related to the practice of chiropractic). As a practical matter, any conviction should be reported. If the crime is substantially related, it must be reported; if it is not, the board will take no action on it.

The board disagrees with the ALJ's conclusions and determines that Dr. Golde violated rules of professional conduct by billing multiple third party payors for services provided to patients Krista Haase, Annette Hayden, Laverne Hayden, and Jennifer Lium without informing any of the third party payors that the others were being billed. Dr. Golde's attempt to obtain compensation by fraud was not negated by the fact that he failed to recover the multiple payments, and the board considers such fraudulent billing practices to be extremely serious.

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.

Dated this 7th day of September, 2000.

Dale Strama, D.C.,

Chair