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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
: :
JACK W. SCHERMERHORN, Jr., D.C., : LS0708235CHI
RESPONDENT. :

Division of Enforcement Case #05 CHI 11

The parties to this action for the purposes of Wis. Stat. § 227.53, are:

Jack W. Schermerhorn, Jr., D.C.
2517 South Ave.
La Crosse, WI 54601

Wisconsin 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

PROCEDURAL HISTORY

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. Respondent Jack W. Schermerhorn, Jr. (dob 5/7/51) is and was at all times relevant to the facts set forth herein a chiropractor licensed in the State of Wisconsin pursuant to license #1676, first granted on 6/4/81.
2. On 3/3/03, Respondent was consulted by patient M.O., a man born in 1951. The patient had previously been seen for a series of adjustments of his mid and lower back vertebrae, for pain associated with a work injury, and had been a patient for at least eight years. On this occasion, following the adjustments, the patient complained of other symptoms. Respondent's chart reads, in part:

Patient did get nausea after laying on his stomach, dizzy. We did have him sit up, did not have dilation of either eye, nausea and dizziness decreased significantly after 10-15 minutes. Patient was observed for 20-25 minutes and then was allowed to go home. Treatment was terminated for today's care and patient was advised to call when he got home. He called and said that he had the flu, his niece had it 2 days before. Patient was tested for upper cervical subluxation at c1, found c1 right lateral, when patient was positioned for cervical adjusting. Maign test was done and neg and vestibular basilar test was also neg. There was negative for nystagmus.

3. In a 3/21/05 statement to the Board's staff regarding this case, Respondent wrote:

After I had him get up to walk around he got dizzy. I had him go face down and checked for motion at c1 and c2 and he had restrictive range of motion at these areas and I adjusted him in sitting posture and he was better for a few minutes and

then got worse again. At which time, I stopped adjusting him and I looked for Nystagmus and he was negative. He did have a headaches that decreased over the next few minutes. He didn't have dysarthria, dysphasia, and paresis or drop attacks. He had full function of his arms and legs. He did continue to have vertigo and balance impairment. I then took him in the back room and had him lay[sic] down and monitored the patient for ½ hour. The patient started to feel better but I did recommend that the patient see a medical doctor but he insisted on going home. The patient left here against my recommendation and went home instead of the doctor. The patient was informed to call us when he returned home which is about 15 miles form here and he did call us when he got home and informed us that time that he threw up and was feeling much better. He had indicated while in the office that he had been drinking heavily the night before.

4. The patient states that Respondent's usual practice was to adjust the lower and mid back while the patient was prone on the table, and then to have the patient sit in a chair while Respondent adjusted the upper back and neck. The patient then resumed a prone position on the table, while leg lifts were performed, and further adjustments were done if indicated. The patient was then asked to walk away from, and then toward, Respondent, and then further adjustments were done, if indicated. On this occasion, the patient states that he was adjusted initially as usual, including while sitting, and that the patient first felt dizzy after lying down the second time on the table. The patient asked Respondent not to adjust or touch him while he recovered from his feeling of dizziness; Respondent then asked the patient to get up and walk. The patient attempted to do so but immediately fell into a partition, and was then escorted to another room where the patient laid down and was permitted to rest and recover. The patient states that at no time was he advised not to leave, or not to drive, or that he should seek attention from a medical doctor or hospital.

5. There is no indication in the chart that Respondent evaluated the patient prior to delivering the cervical adjustment to determine any non-structural factors related to the dizziness, especially since there was no cervical complaint during the current course of treatment, which was for lower back strain. There is no indication in the chart that Respondent asked the patient about any history of the dizziness (e.g.: did you have it when you came in, when did start, have you had this before, have you had any headaches or blurred vision, numbness or tingling?). There is no indication that a neurological examination was performed, or the patient's blood pressure taken. There is no indication in the chart that Respondent informed the patient of the possible causes of dizziness and that it may not be treatable by chiropractic.

6. The patient suffered a serious stroke within 2 hours of the treatment provided by Respondent, and as a result is permanently and totally disabled. The cause of the stroke was vertebral arterial insufficiency.

7. Following his learning of the patient's stroke, Respondent added material to the patient's chart, but did not indicate that the added material was a "late entry" or otherwise clearly label the material as having been added at a time other than when the original chart entry was made.

CONCLUSIONS OF LAW

A. The Wisconsin Chiropractic Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 446.03, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

B. The conduct described in ¶2-7, above, violated Wis. Stat. § 446.03(5) and Wis. Adm. Code §§ Chir 6.02(1) and (3), 6.03(3), and 11.02(5) and (8). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

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

IT IS FURTHER ORDERED, that Jack W. Schermerhorn, Jr., D.C., is REPRIMANDED for his unprofessional conduct in this matter, as set forth in pars. 5 and 7, above.

IT IS FURTHER ORDERED, that the license to practice chiropractic of respondent is LIMITED in the following respects:

1. Respondent shall not treat or adjust any portion of the neck until he has successfully taken and complete 12 hours of continuing education in the area of cervical adjustment, stroke prevention, and vertebral arterial insufficiency, and he shall complete such continuing education no later than 12/31/07.
2. Respondent shall successfully taken and complete a course of continuing education in the area of chiropractic charting no later than 12/31/07.
3. The continuing education shall be pre-approved by the Board or its designee. When Respondent has successfully completed all the pre-approved continuing education, this limitation shall be terminated by staff, without further action of the Board.
4. Respondent shall not act as a preceptor under Wis. Adm. Code ch. Chir 9, at any time while his license is limited.

IT IS FURTHER ORDERED, that the license to practice chiropractic of respondent is LIMITED in the following respects:

1. Respondent shall obtain a Professional Mentor acceptable to the Board. The Professional Mentor shall be the individual responsible for reviewing Respondent's practice of chiropractic during the time this Order is in effect. A Professional Mentor shall have no prior or current business or personal relationship with Respondent, or other relationship the could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Department (including but not limited to any bartering relationship, mutual referral of patients, etc.). A Professional Mentor shall be actively practicing in Respondent's field of practice, hold a valid Wisconsin license, and shall have read this Final Decision & Order and agree to be Respondent's Professional Mentor.
2. Supervision shall include monthly meetings, review of no fewer than 12 charts selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that Respondent is practicing and charting in a professional and competent manner. The Professional Mentor may designate another qualified chiropractor acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Board may in its sole discretion select a successor Professional Mentor.
3. The Professional Mentor shall have no duty or liability to any patient or third party, and the Mentor's sole duty is to the Board.
4. Respondent shall arrange for his Professional Mentor to provide 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 professional performance and chart quality.
5. Respondent's Professional Mentor shall immediately report to the Department Monitor and the Respondent's Supervising Health Care Provider any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient.
6. If the Professional Mentor does report any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or patient, the Board may order additional continuing education and/or that Respondent take and pass the Special Purpose Examination in Chiropractic, after offering Respondent the opportunity to respond to any such report.
7. The Board shall review the required frequency of meetings after six months, and may decrease or increase them, based on the reports received. Respondent may petition the Board for termination of the requirement for a Professional Mentor after two years of positive reports.
8. Respondent shall not act as a preceptor under Wis. Adm. Code ch. Chir 9, at any time while his license is limited.

IT IS FURTHER ORDERED, that respondent shall pay the COSTS of investigating and prosecuting this matter of \$1,750 within 120 days of this Order.

IT IS FURTHER ORDERED, that pursuant to Wis. Stats. § 227.51(3), violation of any of the terms of this Order may 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 impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit full payment of the costs as set forth above, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent

has complied with the terms of this Order.

Dated this August 23, 2007.

WISCONSIN CHIROPRACTIC EXAMINING BOARD

by: Steven J. Silverman DC
a member of the Board