

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : : FINAL DECISION
 : : AND ORDER
 KEVIN M. SERVI, D.C., : : LS0710123CHI
 RESPONDENT. : :

Division of Enforcement Case No. 03 CHI 061

The State of Wisconsin, Chiropractic Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Chiropractic Examining Board.

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

Dated this 18th day of August, 2009.

Wendy Hennrichs
Member
Chiropractic Examining Board

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST
KEVIN M. SERVI,
RESPONDENT.

PROPOSED DECISION
AND ORDER
Case No. LS-0710123-CHI

DOE case number 03 CHI 061

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53708-8935

Respondent:

Kevin M. Servi, D.C.
3975 North 68th Street, #204
Milwaukee, WI 53216

represented by

Attorney Mary Lee Ratzel
Peterson, Johnson & Murray, SC
733 N. Van Buren St., 6th Floor
Milwaukee, WI 53202

Disciplinary Authority:

Chiropractic Examining Board
1400 East Washington Ave.
Madison, WI 53703

represented by

Attorney Arthur Thexton
Division of Enforcement
Dept. of Regulation and Licensing

PROCEDURAL HISTORY

- A. On October 12, 2007, a disciplinary complaint was filed against Dr. Servi by Attorney Arthur Thexton of the Department of Regulation and Licensing, Division of Enforcement, and sent to Dr. Servi along with a notice of hearing. The case was assigned to Administrative Law Judge Colleen Baird for hearing.
- B. On October 24, 2007, an answer to the complaint was filed by Attorney Mary Lee Ratzel on behalf of Dr. Servi.
- C. A Prehearing Conference was held on January 11, 2008, various discovery dates were set, and a hearing was scheduled for July 18, 2008.
- D. A Scheduling Conference was held on May 29, 2008, at which time the hearing was rescheduled to August 12, 2008.
- E. A Scheduling Conference was held on July 21, 2008, at which time the hearing was rescheduled to September 11, 2008.
- F. A Scheduling Conference was held on September 4, 2008, at which time the hearing was adjourned.
- G. A Scheduling Conference was held on December 18, 2008, at which time the hearing was rescheduled to March 11, 2009.
- H. On January 7, 2009, the case was reassigned to Administrative Law Judge Nick Schweitzer.
- I. A Prehearing Conference was held on January 20, 2009, at which time the hearing was rescheduled to March 19, 2009.
- J. A Status Conference was held on March 10, 2009.
- K. The hearing was held as scheduled on March 19, 2009. Testimony was received from Joanne Franks, Departmental Investigator Lynn Bass, Dr. Servi, and his wife, Carol Servi.

ANALYSIS

This is a class 2 proceeding under the authority of chapter 227 of the Wisconsin Statutes and chapter RL 2 of the Wisconsin Administrative Code, which was initiated by the filing of a complaint that contained four allegations:

1. that Dr. Servi improperly delegated physiological therapeutics to an employee who did not have adequate training or supervision;
2. that Dr. Servi made false statements to a departmental investigator regarding the delegation of physiological therapeutics;
3. that Dr. Servi made false statements to a departmental investigator and failed to cooperate with an investigation by telling her he was unable to supply patient records to her on the day she visited;
4. that Dr. Servi falsified the patient records that were later supplied.

In his answer, Dr. Servi denied all of the charges.

Testimony regarding the first count was presented by Joanne Franks, a former employee, and by Dr. Servi and his wife, Carol Servi. Ms. Franks testified that Carol Servi showed her how to provide services to clients with hot packs, the massage table, and the hydrocollator [tr., pp. 28,44-45], and that she provided these services to clients at times when Dr. Servi was not in the office. The rules require that any person providing physiological therapeutics be adequately trained with a supervising chiropractor on-site. Any provision of physiological therapeutic services by Ms. Franks, with or without supervision, would have been a violation of sections Chir 10.02 and Chir 10.05 of the Wisconsin Administrative Code. Dr. Servi and Carol Servi denied that Ms. Franks was instructed to provide any therapeutic services or that she ever provided those services to patients, with or without supervision.

Mrs. Franks was a weak witness. She testified [tr., pp. 25-47] that she had extensive experience as a medical secretary and that she was hired by Dr. Servi to handle reception and scheduling. She stated that she was not feeling well on the morning of the hearing [tr., pp. 26-27] and when asked when she resigned from Dr. Servi's office, she said, "I take so much pain medication, I can't remember ..." [tr., p. 31]. She thought she started working for Dr. Servi in 2004 [tr., p. 27], and that she resigned in 2006 or 2005 [tr., p. 31], but documents showed that she resigned in July of 2003 after working for him for about one year. She also repeatedly denied having filed for Unemployment Compensation benefits [tr., p. 37-39], but documents [exhibit 101] showed that she had. Some of Ms. Franks' specific recollections were inaccurate and her overall credibility was poor.

The fact that Ms. Franks filed for unemployment benefits is not particularly relevant in itself, but her denial of having filed affected her credibility, and the reason(s) she gave to the Unemployment Compensation Insurance office are of importance. In her resignation letter to Dr. Servi on July 28, 2003 [p. 2 of ex. 109], Ms. Franks said

"My resignation is based upon the unethical handling of privileged information from a medical source and the right to provide the information to a law office. This is not only a violation of patients rights to privacy which is protected by the law, but challenges the honesty due an individual patient."

This was also apparently her justification for claiming Unemployment Compensation benefits. Ms. Franks did not mention physiological therapeutics in her resignation letter nor, apparently, did she mention it in her application for unemployment compensation, because the Unemployment Compensation determination letter dated September 3, 2003 [p. 2 of ex. 101] states

"The employee quit because she felt she was asked to obtain a patient's medical records unethically. However it does not appear that any laws were broken or that the patient's right to privacy was violated."

Some additional solid evidence beyond Mrs. Frank's weak testimony is needed to support the alleged delegation of physiological therapeutics. Her allegation would have been more credible if she had put it on the UC form, and its absence from that form creates an inference, at least as strong as some of the other inferences in this case, that the delegation did not occur and that Mrs. Franks invented it only when she filed her complaint with this Department after she was denied unemployment benefits.

Dr. Servi denied that Joanne Franks was ever trained to perform physiological therapeutic services or that to his knowledge she ever performed them in his office, with or without supervision. He explained that the other employee in the office, Lynn Voeltner, was trained in physiological therapeutics and did perform them at times under supervision. He offered no motive for Joanne Franks to fabricate her complaint to the Department, and the closest he was able to come was the following [tr., pp. 161-164]:

"Well, there were problems from the beginning. She just was older. It was hard for her to get up and around I had a lot of complaints about her, but Joanne always wanted to be more important I often said Joanne's an older lady, she's got a good heart, just ignore it and try to get along with her. But as time went on, it just got harder and harder for me to run my office and deal with these problems that she was creating. ... On top of I guess wanting to do therapy, which she is here testifying she did today, she also wanted to be on our computer, and we didn't let her do that either. I think at some point with her lack of being able to do things and her frustration, you know, she -- this is the way I saw it at the time -- she decided to move on."

Dr. Servi's wife Carol Servi testified that one of Ms. Franks' job duties was "help with some of the patients to bring them to the therapy room to wait for Dr. Servi." [tr., p. 151]. She did say she "showed her what we did and how it was done just so she would get an idea the whole process of the office, paperwork, phones, therapies so she could get an idea what is done in the office" [tr., pp. 149-150] and "She would watch sometimes us put the patients on therapy. I mean, I don't know if she picked up on that or not, I don't know, but she was -- she watched a lot." [tr., p. 153]. Carol Servi denied that Joanne Franks was ever trained to perform physiological therapeutic services or that to her knowledge she ever performed them in the office, with or without supervision. Dr. and Mrs. Servi gave consistent and solid testimony, though it must be weighed in view of the fact that their self-interest is directly involved.

The only other evidence related to the alleged delegation of physiological therapeutics is a possible inference based on Investigator Lynne Bass's testimony [tr., pp. 48-126, 212-215]. She testified that she visited Dr. Servi's office unannounced shortly after 1 P.M. on December 7, 2005 -- more than two years after Ms. Franks left Dr. Servi's employ -- and she observed the office

receptionist at the time, Lynn Voeltner, come out of Dr. Servi's office area with what appeared to be a patient [tr., p. 52]. She said that while she was waiting 35 minutes for Dr. Servi, she observed two people taken from the waiting room into Dr. Servi's office, and then return and leave 10 to 20 minutes later. Ms. Bass said [tr., p. 55]

"I've had chiropractic care myself, and I know that that's approximately how long it takes to have a treatment done so it appeared to be consistent with a treatment being rendered to the patient, and I'm fairly certain that they weren't like a sal rep or something like that because they were dressed very casually. They looked like many of the other patients sitting in waiting room."

This testimony creates the inference that one, two or three of the people were patients, and that one or more of them received therapy administered by Lynn Voeltner. The inference that all of them were patients is reasonable, but the inference that they received treatment, rather than just waiting for Dr. Servi and then leaving, is too tenuous. The inference would be much stronger -- even unnecessary -- if there were any direct evidence of what went on during the 10 to 20 minutes when the patients were in Dr. Servi's office, but there was no testimony from Lynn Voeltner or from any of the patients. Ms. Bass's surmise does not rise to the level of usable evidence, so overall, given Ms. Franks' weak testimony, and Dr. and Mrs. Servi's denials, there was insufficient evidence to prove the charge of improper delegation of physiological therapeutics to an employee who did not have adequate training or supervision.

Since the first charge was not proven to be true, Dr. Servi's denial of it to Ms. Bass cannot be found to have been a false statement to a departmental investigator.

Ms. Bass testified that when Dr. and Mrs. Servi arrived at his office on December 7, 2005, she gave him an investigative request for his treatment records for five patients [ex. 102]. The request was in letter form and not a subpoena, but it stated in print "I am requesting copies of those records in your possession regarding the patients listed above be given to me upon presentation of this request." Ms. Bass testified that Dr. Servi made no effort to locate the files in order to comply with the request [tr., pp. 58-59]:

"He told me he couldn't produce the records, and I asked him why. He said because his computer was out, and I asked what that had to do with the records, and he said he needed the computer to locate the records and where they were at, and I told him that I could help him look for the records, I could help him copy the records, and he said that wasn't acceptable. I told him I could wait all day if he needed me to. I took the whole day off and made sure there was nothing on my calendar so there was ample time on my part, and I could stay after hours if I needed, but that wasn't what he wanted me to do. He said some of them weren't even there; they were at another site. I asked what about the records you have here, and he said he couldn't locate them without the computer so he wouldn't give them to me. I informed him that it would be in his best interests to provide them for me when I requested them there then, not to send them later because it could look like he was being uncooperative and the board would not see that favorably, and I also indicated that it could look like he was trying to alter something or to be deceitful in some way, and he asked why he would do that, and just I told him I did not know but it was a possibility so it would be just best to give the records now what he could, and he said he wouldn't do that."

When Dr. Servi refused to produce or even look for the records, Ms. Bass told him to send a certified copy of the records by December 23, 2005, which he did. No charge related to those patients was included in the complaint.

In the hearing, Dr. Servi repeated the explanation he gave to Ms. Bass, but in addition, he stated "She wouldn't tell me what it was about, and she just told me that she needed the copies immediately; however, I've been in the business doing this for 20 years, and I'm also fully aware that a doctor has time to furnish records." [tr., p. 130], and "My understanding at the time was that, even if an investigator shows up with a subpoena, it is not against the law for me to not furnish those files at that time." [tr., p. 136], and "Again, my understanding, and I have received things, different newsletters from my malpractice company, that records do not have to be immediately produced. I'm entitled to legal counsel as to -- not being a lawyer myself, that I should be able to ask somebody what the legalities of that are, and quite frankly, from having looked at the state law and also the newsletter that I got from my malpractice company telling me that I had at least two weeks to furnish them, I didn't see any reason to have to get them out that day." [tr., p. 204] He did not state this to Ms. Bass as his reason for not complying with the request. [tr., pp. 214-215]

Dr. Servi did not cite authority for his position in the hearing. I am not aware of any statute, rule, or ruling that interprets sec. Chir 6.02 (19) as authorizing a chiropractor to delay responding to a request for records, or granting two weeks or any other amount of time in which to produce the records. The second sentence of the subsection does not grant a chiropractor 30 days in which to respond; it merely says that a rebuttable presumption will be created if a chiropractor takes longer than 30 days. The cooperation requirement in subsection (19) should be seen as a test of reasonableness subject to circumstances. A request received by mail would not normally require documents to be sent by return mail the same day, unless so stated in the written request with some reason given. In this case, a personal visit by a Departmental investigator with a written request that certain documents be turned over "upon presentation of this request", with her statement that a failure to turn them over "could look like he was trying to alter something or to be deceitful in some way" required an immediate response. Dr. Servi's frustration at not being told the reason for the request does not justify an attitude of self-protective non-cooperation. I find that Dr. Servi was not nearly as forthcoming to the investigator as he could have been, or as he should have been. He should have made a good-faith effort to locate the files. He did not explain to her that he felt he had a legal right not to turn them over, but instead told Ms. Bass that he was physically unable to locate and copy the files at that time. I make a finding that he failed to cooperate and that he made a false statement to a Departmental investigator.

Ms. Bass later (on a date not in the hearing record) obtained a copy of Dr. Servi's patient log for the day of her visit,

December 7, 2005 [ex. 108], and on May 25, 2006 she requested [ex. 105] the files for the patients who signed in early that afternoon: James Donaldson, Larry Cobbins, and Lakieter Barnes at 1:00, Kent Parker at 1:15, and David Stokes and “Dathy” at 2:00. Dr. Servi through his attorney on June 14, 2006 [ex. 106] supplied photocopies of the files for James Donaldson, Larry Cobbins, Lakieter Barnes, Kent Parker, and David Stokes [ex. 103, 104, 107], but he was unable to identify the patient corresponding to the entry for “Dathy” on the sign-in sheet.

Ms. Bass reviewed the copies sent by Dr. Servi and developed the suspicion that various entries had been whited out and written over. This led to the fourth charge in the complaint, that Dr. Servi submitted falsified copies of the patient records. A surprising amount of effort was expended in the hearing by Dr. Servi’s attorney in an effort to avoid testimony about his original files, especially given the fact that Dr. Servi had a reasonable explanation for the changes he made to the files, but no conclusion is drawn from his attorney’s objections. [tr., pp. 68-88].

When Dr. Servi provided the original records in the hearing, the suspicion that certain entries had been whited out was easily confirmed, and there was an “ah-hah!” moment in the hearing. However, Dr. Servi was able to show two facts regarding the changes: first, that the changes were made in response to records requests from other entities long before Ms. Bass’s request for the files on May 25, 2006, and second, that the changes to the files were a direct result of Ms. Bass’s disruption of his office on December 7, 2005.

As a matter of economy, only two of the files were reviewed in detail in the hearing. The records for Lakieter Barnes [ex. 103] and Kent Parker [ex. 104] show that patients routinely signed in whenever they arrived at Dr. Servi’s office, that both patients signed in on December 7, 2005, and that Dr. Servi routinely filled out a treatment sheet and a billing record for each treatment, but that there was no treatment sheet or billing record for December 7, 2005.

The originals showed clearly what the copies had hinted at, that the “visit number” was whited out and changed for visits on or after December 7, 2005. An illustration using the records for patient Barnes will be the easiest way to explain this:

Dates on which Lakieta Barnes signed in	Visit numbers on notes and billing records prior to alteration	Visit numbers on notes and billing records after alteration
Line 1 - 11-22	“visit 1”	“visit 1”
Line 2 - 11-28	“visit 2”	“visit 2”
Line 3 - 11-30	“visit 3”	“visit 3”
Line 4 - 12-2	“visit 4”	“visit 4”
Line 5 - 12-7	(no notes or billing records)	(no notes or billing records)
Line 6 - 12-8	“visit 6”	“visit 5”
Line 7 - 12-12	“visit 7”	“visit 6”
Line 8 - 12-15	“visit 8”	“visit 7”
Line 9 - 12-22	“visit 9”	“visit 8”
Line 10 - 12-23	“visit 10”	“visit 9”
Line 11 - 12-27	“visit 11”	“visit 10”
Line 12 - 12-29	“visit 12”	“visit 11”
Line 13 - 1-4	“visit 13”	“visit 12”
Line 14 - 1-6	“visit 14”	“visit 13”
Line 15 - 1-9	“visit 15”	“visit 14”

In the absence of any explanation from Dr. Servi when he sent the records to the Department, this pattern naturally raised a suspicion that Dr. Servi had deleted and tried to hide the records of the December 7th office visits.

At the hearing, however, Dr. Servi testified that he received requests from other entities such as attorneys’ offices or insurance companies for documentation of his services to various patients in early 2006 well before Ms. Bass’s request of May 25, 2007, that he reviewed the records before sending them, and that it was at that time that he noticed mistakes with regard to the visit number for patients who had signed in on the afternoon of December 7, 2005 and left without treatment. In other words, patient Lakieter Barnes had signed in on line 5 on December 7th and on line 6 on December 8th. When Dr. Servi prepared his notes and billing record for December 8th, he labeled them “visit 6”, corresponding to the sign-in line number for that date. In reviewing the records prior to sending them to an insurance company or attorney, he noticed that there were no records for visit 5, that in fact visit 5 had resulted in no treatment, so he renumbered all the visits from that point on, changing “visit 6” to “visit 5”, etc. This explanation was supported by documents in the files to and from attorneys’ offices and insurance companies.

The explanation that the changes were made only because people signed in on December 7, 2005 and left without treatment, was further reinforced by the fact that changes were made in only 4 out of the 5 files that were requested. David Stokes [exhibit 107] apparently received treatment as he was one of the later-scheduled patients, and no changes were made to the visit numbers in his file. There were no other changes apparent on any of the records (other than the correction of the year 2005 to 2006 in a date written in the first week of the new year).

The investigation of Dr. Servi on December 7, 2005 disrupted his practice in a way that can best be explained by a principle of physics, the Observer Effect -- often referred to as part of the Heisenberg Uncertainty Principle -- whereby the

very fact of observing a system affects the system itself. I conclude that Dr. Servi did indeed alter his files, but that he did so for a legitimate reason, and that he did not falsify any information.

Finally, there was some discussion in the hearing about Dr. Servi's practice of initially recording information about the client, including areas of pain, etc., on a master treatment sheet for each patient and using photocopies of that master for subsequent visits until something changed, but no charge of unprofessional conduct related to that practice was included in the complaint, so it is not dealt with here.

Under sec. 440.22, Stats., when discipline is imposed on a credential-holder, the Department has the authority to impose all or part of the costs of a proceeding on the credential-holder. The Board is directed to exercise discretion in its imposition of costs by considering certain factors, including the number of counts charged, contested, and proven; the nature of the misconduct; the level of discipline; the respondent's cooperation with the disciplinary process; prior discipline; and other relevant circumstances. In this case, although only two of four counts were proven, and the recommended discipline is relatively light, it is reasonable to conclude that if Dr. Servi had simply cooperated with Investigator Bass when she made her initial request for information, this case would never have turned into a formal prosecution with four counts. His initial failure to cooperate justifies the imposition of the Department's full costs.

APPLICABLE SECTIONS OF THE WISCONSIN ADMINISTRATIVE CODE

Chir 1.02 Definitions.

As used in chs. Chir 1 to Chir 11:

...

(3) "Direct supervision" means that the treating chiropractor has ordered a specific patient care function to be performed by a specific person, and is present in the treatment facility while the patient care function is being performed, and is immediately available to exercise personal supervision of the patient care function if the person performing the function requests.

Chir 6.02 Unprofessional conduct.

Unprofessional conduct by a chiropractor includes:

...

(12) Knowingly falsifying patient records.

...

(17) Failing to exercise a reasonable degree of supervision over subordinate employees.

...

(19) Refusing upon request to cooperate in a timely manner with the board's investigation of a complaint lodged against a licensee. Licensees taking longer than 30 days to respond shall have the burden of demonstrating that they have acted in a timely manner.

(20) Knowingly providing false information to the board or its representative.

...

Chir 10.02 Delegation of adjunctive services to unlicensed persons.

A chiropractor licensed under ch. 446, Stats., may delegate the performance of adjunctive services to an unlicensed person only if all of the following conditions are met:

(1) The chiropractor maintains records by which the chiropractor has verified that the unlicensed person has successfully completed a didactic and clinical training program approved by the board and covering the performance of the delegated service. Successful completion of a training program is demonstrated by attaining proficiency in the delivery of that service to minimally competent chiropractic practice standards as measured by objective knowledge and skills testing.

(2) The chiropractor exercises direct supervision of the unlicensed person performing the delegated service.

(3) The chiropractor retains ultimate responsibility for the manner and quality of the service.

Chir 10.05 Physiological therapeutics.

A chiropractor may delegate the performance of patient services through physiological therapeutics that include but are not limited to heat, cold, light, air, water, sound, electricity, massage, and physical exercise with and without assistive devices to an unlicensed person only if the delegation is consistent with s. Chir 10.02 and the unlicensed person has adequate training, education and experience to perform the delegated function to minimally acceptable chiropractic standards.

FINDINGS OF FACT

1. The respondent, Kevin M. Servi, D.C., is licensed as a chiropractor in Wisconsin with license number 3203, first issued December 8, 1994.
2. Dr. Servi's address of record is 3975 North 68th Street, #204, Milwaukee, WI 53216.
3. There was insufficient proof that as a matter of routine in 2001-2003, or on either December 5 or December 7, 2005, D

- Servi allowed unlicensed staff to conduct physiological therapeutic treatment upon patients when he was not on the premises.
4. There was insufficient proof that Dr. Servi made a false statement when he told Departmental Investigator Lynne Bass that he never permitted staff to treat patients when he was absent.
 5. On December 7, 2005, Investigator Lynne Bass presented Dr. Servi with a request for copies of records for five named patients.
 6. Dr. Servi did not attempt to comply with the investigative request. Dr. Servi stated to Investigator Bass that he was physically unable to provide any of the records requested, that some of the names appeared not to be his patients, that he lacked office staff to help him locate the records, that he had patients waiting for him, that some records were at another location, and that a computer virus made them entirely unavailable. Investigator Bass offered to wait as long as necessary and to help him copy the files, but Dr. Servi declined the offer.
 7. Although some of Dr. Servi's statements may have been true, including the statements about patient names he did not recognize, about his malfunctioning computer, and about some files being at another location, he nevertheless made no effort to locate any of the files, which may have been readily available in the office filed in alphabetical order, and the statement that he was physically unable to provide any of the requested records was not true.
 8. Dr. Servi was later presented with another investigative request for records of patients whose names appeared on the office sign-in log for December 7, 2005. When Dr. Servi submitted those records to the Department, they had been altered but not falsified.

CONCLUSIONS OF LAW

- I. The Chiropractic Examining Board is the legal authority responsible for issuing and controlling licenses for chiropractors in Wisconsin, under chapter 446, Stats., and it has jurisdiction over this hearing regarding an allegation of unprofessional conduct, under sec. 446.03, Stats., and sec. Chir 6.02, Wis. Admin. Code.
- II. The Chiropractic Examining Board has personal jurisdiction over the respondent, Kevin M. Servi, based on his holding a credential issued by the Chiropractic Examining Board, and based on notice under sec. 801.04 (2), Stats.
- III. By making no attempt to comply with a valid request for information from the Department of Regulation and Licensing, as described in Finding of Fact 6 above, Dr. Servi engaged in unprofessional conduct as defined by sec. Chir 6.02 (19), Wis. Admin. Code.
- IV. By stating that he was unable to locate or provide information requested by the Department, as described in Finding of Fact 7 above, Dr. Servi engaged in unprofessional conduct as defined by sec. Chir 6.02 (20), Wis. Admin. Code.

ORDER

THEREFORE, IT IS ORDERED that the respondent, Kevin M. Servi, D.C., is hereby reprimanded.

IT IS FURTHER ORDERED that the respondent, Kevin M. Servi, D.C., pay the costs of the Department's investigation and prosecution of this matter. Payment shall be made by certified check or money order and sent to:

Department Monitor
Department of Regulation and Licensing,
PO Box 8935, Madison, WI 53708-8935.
Fax (608) 266-2264
Tel. (608) 267-3817.

Dated and signed: May, 2009

Nick Schweitzer
Administrative Law Judge
Department of Regulation and Licensing