FILE COPY

# STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF<br>DISCIPLINARY PROCEEDINGS<br>AGAINST<br>**JOHN R. JAGUSCH, D.C.,**<br>RESPONDENT. | : | **FINAL DECISION AND ORDER**<br>Case No. LS-9608081-CHI<br>(96 CHI 029; 95 CHI 046) |

## 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
Madison, WI 53708-8935

Respondent:
John R. Jagusch
Waupun Correctional Institute
P.O. Box 351
Waupun, WI 53963

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

## PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Chiropractic Examining Board on August 8, 1996. A disciplinary proceeding (hearing) was scheduled for September 16, 1996. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on August 8, 1996 to John R. Jagusch at Dodge Correctional Institute, who received it on August 9, 1996 .

B. Dr. Jagusch filed an Answer to the complaint on August 18, 1996.

C. A prehearing conference was held by telephone on September 10, 1996, at which the hearing was rescheduled to October 8, 1996 at 10 A.M.

D. Another prehearing telephone conference was held on September 16. 1996, at which preparations were made for the hearing.

E. On September 24, 1996, Dr. Jagusch was transferred to Waupun Correctional Institute, and his hours of availability changed. The hearing was rescheduled to begin at 12:30 P.M.

F. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on October 8, 1996. Dr. Jagusch appeared by telephone. Despite some discussion regarding representation by the attorney who represented him in his criminal trials, that attorney was unavailable, and Dr. Jagusch elected to proceed without representation. The Chiropractic Examining Board was represented by Attorney Steven Gloe of the Department's Division of Enforcement. The hearing was recorded. The record was held open for 25 days, until November 4, 1996, for (1) Dr. Jagusch to arrange for the submission of a copy of a previously-performed mental health evaluation, and (2) Mr. Gloe to file any motions related to additional evidence of Dr. Jagusch's enrollment in medical schools in Santo Domingo. No report and no motion was received, and the record was closed on November 5, 1996. A transcript of the hearing was prepared and delivered on November 18, 1996. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

## FINDINGS OF FACT

1. The respondent, John R. Jagusch, is a chiropractor licensed in the state of Wisconsin, under license number 1273, which he has held continuously since it was originally granted on August 12, 1971.

2. At the time of the hearing, Dr. Jagusch resided at Waupun Correctional Institute in Waupun, Wisconsin. His previous address was Highway 63, P.O. Box 126, Clayton, WI 54004.

3. On February 27, 1996, Dr. Jagusch was found guilty by jury verdict in the circuit court for Polk County, Wisconsin, of one misdemeanor count of battery, a violation of sec. 940.19(1), Stats. The offense occurred on March 26, 1994, when Dr. Jagusch "intentionally caused bodily harm to" another person, Daniel Byrnes.

4. On June 7, 1996, Dr. Jagusch was found guilty by jury verdict in the circuit court for Polk County, Wisconsin, of two felony counts of attempted mayhem as a party to the crime, violations of sec. 940.21, Stats., and sec. 939.05, Stats. The offenses occurred on January 12, 1996, when Dr. Jagusch attempted to enlist another person (an undercover officer) to "mutilate the limbs or other bodily members of" two other persons, William Geipel and Robert Rasmussen, "with intent to disable".

5. As of July 31, 1996, Dr. Jagusch had not notified the Chiropractic Examining Board of the criminal convictions in #3 and #4 above.

## APPLICABLE STATUTE AND RULE

**446.03 Reprimand; license revocation, limitation or suspension.** The examining board by order may reprimand a licensee or registrant and may deny, limit, suspend or revoke any license or certificate of registration if the licensee or registrant:

...

(3) Is hereafter convicted in a court of competent jurisdiction, either within or without this state, or in federal court, of any violation of any law governing the practice of chiropractic or of any felony, subject to ss. 111.321, 111.322 and 111 335, a certified copy of the record of conviction to be conclusive evidence of such conviction;

...

(5) Is guilty of unprofessional conduct.

...

**Chir 6.02 Unprofessional conduct.** Unprofessional conduct by a chiropractor includes:

(1) Engaging in any practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public.

...

(23) Failing to notify the board of any criminal conviction, the circumstances of which relate substantially to the practice of chiropractic

(24) Being convicted of a crime substantially related to the practice of chiropractic.

...

(26) Violating a law, or aiding or abetting the violation of any law substantially related to the practice of chiropractic.

...

## CONCLUSIONS OF LAW

I. The Chiropractic Examining Board has personal jurisdiction over the respondent, John R. Jagusch, based on notice under sec. 801.04 (2), Stats., and based on his holding a credential issued by the board.

II. The Chiropractic Examining Board is the legal authority responsible for issuing and controlling credentials for chiropractors, under ch. 446, Stats, and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 446.03, Stats., and ch. Chir 6, Wis. Admin. Code.

III. Dr. Jagusch's conviction in Fact 3 above is substantially related to the practice of chiropractic, and constitutes unprofessional conduct under Wis. Adm. Code secs. 6.02(24) and (26). Discipline is therefore appropriate under sec. 446.03(5), Stats.

IV. Dr. Jagusch's convictions in Fact 4 above are substantially related to the practice of chiropractic and constitute unprofessional conduct under sec. Chir 6.02(24) and sec. Chir 6.02(26), Wis. Admin. Code, and discipline is appropriate under sec. 446.03(3) and sec. 446.03(5), Stats.

V. Dr. Jagusch's failure in Fact 5 above to notify the board of his convictions for battery and for attempted mayhem as a party to the crime constitutes unprofessional conduct under sec. Chir 6.02(23), Wis. Admin. Code, and discipline is appropriate under sec. 446.03(5), Stats.

## ORDER

THEREFORE, IT IS ORDERED under sec. 446.03, Stats., that the license to practice chiropractic issued to John R. Jagusch be revoked, effective ten days after the Final Decision and Order is signed on behalf of the Chiropractic Examining Board.

IT IS FURTHER ORDERED that after Dr. Jagusch's license to practice chiropractic is revoked, the board under sec. 446.05(2), Stats., shall promptly reinstate said license if it receives proof that Dr. Jagusch's convictions for battery and for attempted mayhem as a party to the crime have been overturned.

IT IS FURTHER ORDERED that John R. Jagusch pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

## EXPLANATION OF VARIANCE

The Administrative Law Judge in this proceeding concluded that Respondent's conviction for battery of the attorney who provided legal representation in bankruptcy proceedings to a patient of the Respondent, which resulted in the discharge of a $2080 fee owed by the patient to Respondent, is not substantially related to the practice of chiropractic and therefore is not unprofessional conduct nor warrants disciplinary action under sec. 446.03(3), Stats. The Division of Enforcement filed objections to the Proposed Decision on this point, and also recommended correction of typographical errors in Conclusion of Law IV. Respondent also filed objections to the proposed decision, alleging mitigating factors and further explanation of the circumstances of the crimes for which he was convicted.

On the basis of the circumstances of this case, the Board is unpersuaded by Respondent's objections such that the Proposed Decision should be modified or reversed in his favor. Further, the Board disagrees with the ALJ's conclusion that the circumstances of Respondent's conviction for battery is not substantially related to the circumstances of the practice of chiropractic, and the Board accordingly reverses Conclusion of Law III. The Board modifies Conclusion of Law IV to correct citations to the Administrative Code. Finally, in accordance with reversing Conclusion of Law III, the Board modifies Conclusion of Law V consistent therewith, and modifies the second paragraph of the proposed Order to provide that Respondent's license shall be reinstated only if *both* the conviction for battery and the convictions for attempted mayhem as party to a crime are overturned on appeal.

Respecting Respondent's battery conviction, the Board agrees with the objection and argument of the Division of Enforcement, that the mere facts that the victim was not the

Respondent's patient but the patient's attorney, and that altercation was relatively spontaneous as opposed to premeditated as with the convictions for attempted mayhem as party to a crime, do not distinguish the battery conviction such that it should be found not substantially related to the practice of chiropractic. The battery in fact did have connection to Respondent's practice, involving a former patient's unpaid chiropractic fee. Moreover, the crime was against the bodily safety and security of another person which element, as the ALJ pointed out, is readily related to the practice of chiropractic in that it violates the basic tenet of the healing arts, to do no harm to another. As the ALJ stated, "The ability to disregard another's health and well-being is antithetical to a chiropractor's professional practice."

The Board is of the position, as argued by the Division of Enforcement, that it is improper and unprofessional to resolve or redress unpaid fees or vent anger, frustration or disagreement on how unpaid fees were avoided by resort to physical violence against the patient, his or her attorney, or anyone for that matter. All chiropractors, as a fact of professional life, face on a regular basis the problems and frustrations of unpaid fees, and disputes arising therefrom must be dealt with only by appropriate civil and legal means. The public should not be exposed to, and this Board must not tolerate, a chiropractor who assaults or batters another person as a result of a dispute about an unpaid fee. The Board concludes that the circumstances of Respondent's battery conviction are clearly related to the circumstances of the practice of chiropractic, and constitute unprofessional conduct.

Dated this 23 day of January, 1997.

WISCONSIN CHIROPRACTIC EXAMINING BOARD

Terry K. Freitag, D.C.

Terry K. Freitag, D.C., Chair

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE CHIROPRACTIC EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

John R. Jagusch, D.C.,

Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN )
)
COUNTY OF DANE )

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On January 24, 1997, I served the Final Decision and Order dated January 23, 1997, LS9608081CHI, upon the Respondent John R. Jagusch, D.C. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 377 272.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

John R. Jagusch, D.C.
Waupun Correctional Institute
P.O. Box 351
Waupun WI 53963

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 24th day of January, 1997.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

# 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:**

January 24, 1997

## 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.)

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST | : | ORDER FIXING COSTS |
| | : | LS9608081CHI |
| JOHN R. JAGUSCH, D.C., RESPONDENT. | : | |

On January 23, 1997, the Chiropractic Examining Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on or about December 2, 1996, the board received the *Affidavit of Costs* in the amount of $1,371.65, filed by Attorney Steven M. Gloe. On or about January 27, 1997, the board received the *Affidavit of Costs of Office of Legal Services* in the amount of $769.65, filed by Administrative Law Judge John N. Schweitzer. The board considered the affidavits on April 10, 1997, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of $2,141.30, which is 100% of the costs set forth in the affidavits of costs of John N. Schweitzer and Steven M. Gloe, which are attached hereto and made a part hereof, are hereby assessed against John R. Jagusch, D.C., and shall be payable by him to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before May 23, 1997, which is the deadline for payment established by the board, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the department or board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached *"Guidelines for Payment of Costs and/or Forfeitures"* should be enclosed with the payment.

Dated this 23RD day of APRIL, 1997 Jerry Freitag, D.C., Chair/a J.H.
A Member of the Board

g.\bdls\costs1

# Department of Regulation & Licensing

**State of Wisconsin**

P O Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416 ] hearing or speech
TRS# 1-800-947-3529 ] impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On January 23, 1997, the Chiropractic Examining Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $2,141.30 Case #: LS9608081CHI

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $ 2,141.30

The costs and/or forfeitures are due: May 23, 1997

NAME: John R. Jagusch, D.C. LICENSE NUMBER: 1273

STREET ADDRESS: Waupun Correctional Institute, P.O. Box 351

CITY: Waupun STATE: WI ZIP CODE: 53963

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

_____

**For Receipting Use Only**

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING**
**1400 E. WASHINGTON AVE., ROOM 141**
**P.O. BOX 8935**
**MADISON, WI 53708-8935**

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
G:\BDLS\FM2145.DOC

**Committed to Equal Opportunity in Employment and Licensing+**

# STATE OF WISCONSIN

BEFORE THE CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF<br>DISCIPLINARY PROCEEDINGS<br>AGAINST<br>**JOHN R. JAGUSCH, D.C.,**<br>RESPONDENT. | : | **AFFIDAVIT OF COSTS**<br>Case No. LS-9608081-CHI<br>(96 CHI 029; 95 CHI 046) |

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.

3. The expenses for the Office of Board Legal Services are set out below:

a. Administrative Law Judge Expense @ $26.29/hour.

| | | |
|---|---|---|
| 8-12-96 | Receive complaint, prepare file and documents | 1 hr. |
| 8-18-96 | Receive answer | 10 min. |
| 9-10-96 | Prehearing conference and order | 55 min. |
| 9-16-96 | Prehearing conference | 10 min. |
| 10-8-96 | Hearing | 2 3/4 hrs. |
| 11-19-96 | Reading, research, writing | 6 1/2 hrs. |
| 11-20-96 | Reading, research, writing | 3 1/2 hrs. |
| | Total: | 15 hrs. = $394.35 |

b. Court Reporter Costs, paid by the Office of Board Legal Services.

| | | |
|---|---|---|
| 10/8/96 | Attendance | $75.00 |
| | 91 pages of transcript | $300.30 |
| | Total: | $375.30 |

**Total allocable costs for Office of Board Legal Services = <u>$769.65</u>**

John N. Schweitzer
Administrative Law Judge

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

Sworn to and signed before me this 27th day of January, 1997.

Ruby Jefferson-Moore, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

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| | | |
|---|---|---|
| IN THE MATTER OF<br>DISCIPLINARY PROCEEDINGS AGAINST<br><br>JOHN R. JAGUSCH, D.C.,<br>RESPONDENT | :<br>:<br>:<br>:<br>: | COMPLAINANT'S<br>AFFIDAVIT OF COSTS<br>96 CHI 029/95 CHI 026 |

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STATE OF WISCONSIN )
) ss.
COUNTY OF DANE )

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

| Date | Activity | Time Spent |
|---|---|---|
| July 31, 1996 | Review file and complaint | 1 hour 00 minutes |
| August 26, 1996 | Review Answer | 0 hour 15 minutes |
| September 10, 1996 | Prehearing conference and follow-up | 1 hour 30 minutes |
| September 16, 1996 | Prehearing conference and follow-up | 0 hour 30 minutes |
| October 8, 1996 | Hearing preparation; attend Hearing | 5 hour 00 minutes |
| November 26, 1996 | Review proposed decision; prepare objections and affidavit of costs | 2 hour 00 minutes |
| TOTAL HOURS | | 10 Hours 15 Min. |

Total attorney expense for 10 hours and 15 minutes at $41.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals: **$420.25**

INVESTIGATOR EXPENSE

| Date | Activity | Time Spent |
|---|---|---|
| December 15, 1994 | Review files, correspondence | 1 hour 15 minutes |
| February 3, 1995 | Contact with Police Department | 0 hour 20 minutes |
| March 31, 1995 | Letter to Police Department | 0 hour 30 minutes |
| April 19, 1995 | Letters and telephone calls | 1 hour 15 minutes |
| May 2, 1995 | Telephone calls | 1 hour 30 minutes |
| May 16, 1996 | Telephone call | 0 hour 15 minutes |
| May 19, 1995 | Correspondence | 0 hour 30 minutes |
| May 22, 1995 | Correspondence | 0 hour 45 minutes |
| June 13, 1995 | Correspondence | 0 hour 30 minutes |
| July 3, 1995 | Correspondence | 0 hour 20 minutes |
| July 10, 1995 | Telephone contact | 0 hour 15 minutes |
| August 3, 1995 | Correspondence | 0 hour 25 minutes |
| August 7, 1995 | Telephone contact; file maintenance | 0 hour 50 minutes |
| August 18, 1995 | Telephone call | 0 hour 15 minutes |
| August 30, 1995 | Telephone call | 0 hour 15 minutes |
| September 13, 1995 | Telephone call | 0 hour 15 minutes |
| September 18, 1995 | Telephone call | 0 hour 15 minutes |
| September 22, 1995 | Telephone call | 0 hour 15 minutes |
| October 10, 1995 | Telephone call | 0 hour 15 minutes |
| October 24, 1995 | Correspondence | 0 hour 45 minutes |
| November 15, 1995 | Correspondence | 0 hour 30 minutes |
| December 14, 1995 | Case conference | 0 hour 20 minutes |
| December 18, 1995 | Case conference | 0 hour 15 minutes |
| December 19, 1995 | Case conference; file maintenance | 0 hour 20 minutes |
| January 11, 1996 | Case review | 2 hour 0 minutes |
| January 11, 1996 | Message to Bureau | 0 hour 15 minutes |
| January 23, 1996 | Telephone call | 0 hour 15 minutes |
| February 5, 1996 | Telephone call | 0 hour 15 minutes |
| February 12, 1996 | Telephone calls | 0 hour 45 minutes |
| February 23, 1996 | Interview | 7 hour 45 minutes |
| February 24, 1996 | Interview | 6 hour 15 minutes |
| March 13, 1996 | Telephone call | 0 hour 15 minutes |
| March 15, 1996 | Correspondence | 0 hour 30 minutes |
| May 8, 1996 | Telephone call | 0 hour 15 minutes |
| May 8, 1996 | Case conference | 0 hour 25 minutes |
| June 12, 1996 | Correspondence | 0 hour 15 minutes |
| June 25, 1996 | Case review | 2 hour 0 minutes |
| June 25, 1996 | Telephone call | 0 hour 15 minutes |
| June 25, 1996 | Review fax | 0 hour 30 minutes |

| | | |
|---|---|---|
| July 18, 1996 | Telephone call | 0 hour 15 minutes |
| September 4, 1996 | Telephone Call | 0 Hour 15 minutes |
| September 15, 1996 | Telephone call | 0 hour 15 minutes |
| September 20, 1996 | Telephone call | 0 hour 15 minutes |
| September 15, 1996 | Review letter | 0 hour 15 minutes |
| September 25, 1996 | Telephone call | 0 hour 15 minutes |
| September 25, 1996 | Telephone call | 0 hour 15 minutes |
| September 25, 1996 | Review letter | 0 hour 15 minutes |
| September 26, 1996 | Telephone call | 0 hour 15 minutes |
| September 26, 1996 | Telephone call | 0 hour 15 minutes |
| October 3, 1996 | Telephone call | 0 hour 15 minutes |
| October 3, 1996 | Telephone call | 0 hour 15 minutes |
| TOTAL HOURS | | 37 hours 10 minutes. |

Total investigator expense for 37 hours and 10 minutes at $20.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: **$743.40**

EXPENSE FOR LEGAL ASSISTANT

| | | |
|---|---|---|
| July 31, 1996 | Correspondence | 0 hour 50 minutes |
| August 5, 1996 | Review documents | 0 hour 40 minutes |
| August 5, 1996 | Finalize complaint | 0 hour 40 minutes |
| August 10, 1996 | Review draft stipulation | 0 hour 30 minutes |
| August 11, 1996 | Finalize and serve stipulation | 0 hour 30 minutes |
| September 19, 1996 | Review files | 2 hour 0 minutes |
| October 7, 1996 | Research | 2 hours 0 minutes |
| October 8, 1996 | Research | 3 hour 15 minutes |
| TOTAL HOURS | | 10 hours 25 minutes. |

Total legal assistant expense for 10 hours and 25 minutes at $20.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: **$208.00**

| **TOTAL ASSESSABLE COSTS** | **$1,371.65** |
|---|---|

Steven M. Gloe, Attorney

Subscribed and sworn to before me this
2nd day of December, 1996

Notary Public

My Commission is permanent.

G:\JAGCOSTS.DOC

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
John R Jagusch, DC
Waupun Correctional Inst
PO Box 351
Waupun WI 53963

4a. Article Number
P 213 340 400

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1·28·97

5. Received By: *(Print Name)*

6. Signature: *(Addressee or Agent)*
X

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form **3811**, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

US Postal Service
**Receipt for Certified Mail**
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

P 213 340 400

Sent to: John R Jagusch
Street & Number: PO Box 351
Post Office, State, & ZIP Code: Waupun WI 53963

| | |
|---|---|
| Postage | $ .55 |
| Certified Fee | 1.10 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to Whom & Date Delivered | 1.10 |
| Return Receipt Showing to Whom, Date, & Addressee's Address | |
| TOTAL Postage & Fees | $ 2.75 |
| Postmark or Date | 1/27/97 Ltr with costs LS960809CHI |

Postal 171

Regular 1400 E Wash

PS Form **3800**, April 1995

BEFORE THE STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST | : | |
| | : | AFFIDAVIT OF SERVICE |
| JOHN R. JAGUSCH, D.C., RESPONDENT. | : | |

Pamela A. Haack, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on January 27, 1997, she served the following upon the respondent:

Letter dated January 27, 1997 and Affidavits of Costs, LS9608081CHI

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail, with a return receipt requested in an envelope properly addressed to the above-named respondent at:

Waupun Correctional Institute
PO Box 351
Waupun WI 53963
Certified P 213 340 400

Pamela A. Haack
Pamela A. Haack
Department of Regulation and Licensing

Subscribed and sworn to before me

this 27th day of January, 1997.

Donald R. Rettig
Notary Public
Dane County, Wisconsin
My Commission is Permanent

**State of Wisconsin** \ DEPARTMENT OF REGULATION & LICENSING

Marlene A. Cummings
Secretary

*Tommy G Thompson*
*Governor*

1400 E WASHINGTON AVENUE
P O BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

January 27, 1997

JOHN R. JAGUSCH, D.C
WAUPUN CORRECTIONAL INSTITUTE
PO BOX 351
WAUPUN WI 53963

RE: In The Matter of Disciplinary Proceedings Against John R. Jagusch, D.C., Respondent, LS9608081CHI, Assessment of Costs

Dear Dr. Jagusch:

On January 23, 1997, the Chiropractic Examining Board issued an order involving your license to practice chiropractic. The order requires payment of the costs of the proceedings.

Enclosed please find the Affidavits of Costs of the Office of Board Legal Services and the Division of Enforcement in the above captioned matter. The total amount of the costs of the proceedings is $2,141.30.

Under sec. RL 2.18, Wis. Adm. Code, objections to the affidavits of costs shall be filed in writing. Your objections must be received at the office of the Chiropractic Examining Board, Room 174, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before February 22, 1997. After reviewing the objections, if any, the Chiropractic Examining Board will issue an Order Fixing Costs. Under sec. 440.23, Wis. Stats., the board may not restore or renew a credential until the holder has made payment to the department in the full amount assessed.

Thank you.

Sincerely,

Pamela A. Haack

Pamela A. Haack
Administrative Assistant
Office of Board Legal Services

Enclosures

cc: Chiropractic Examining Board
Department Monitor

BEFORE THE STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST | : | |
| | : | AFFIDAVIT OF MAILING |
| JOHN R. JAGUSCH, D.C., RESPONDENT. | : | |

Pamela A. Haack, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on April 24, 1997, she served the following upon the respondent:

Order Fixing Costs dated April 23, 1997, Case No. LS9608081CHI

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail, with a return receipt requested in an envelope properly addressed to the above-named respondent at:

Waupun Correctional Institute
P.O. Box 351
Waupun, WI 53963
Certified P 213 340 418

an address which appears in the files and records of the Chiropractic Examining Board as the respondent's last known address.

Pamela A. Haack
Pamela A. Haack
Department of Regulation and Licensing

Subscribed and sworn to before me
this 25th day of April, 1997.

Donald R. Rittel
Notary Public
Dane County, Wisconsin
My Commission is Permanent

Reg + Lic 1400 E Wash

PS Form 3800, April 1995

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

P 213 340 418

71 Pah

| | |
|---|---|
| Sent to | John R Jagusch DC |
| Street & Number | Waupun Corr Inst |
| Post Office, State, & ZIP Code | Waupun WI 53963 |
| Postage | $ .78 |
| Certified Fee | 1.10 |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to Whom & Date Delivered | 1.10 |
| Return Receipt Showing to Whom, Date, & Addressee's Address | |
| TOTAL Postage & Fees | $ 2.98 |
| Postmark or Date | 4/24/97 order fixing costs LS 96080 CHI |

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

John R Jagusch, D.C.
Waupun Correctional Inst
PO Box 351
Waupun WI 53963

4a. Article Number: P 213 340 418

4b. Service Type

☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery: 4-25-97

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

X

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST | : | NOTICE OF FILING PROPOSED DECISION |
| JOHN R. JAGUSCH, D.C., RESPONDENT. | : | LS9608081CHI |

TO: John R. Jagusch
Waupun Correctional Institute
P.O. Box 351
Waupun, WI 53963
Certified P 213 148 688

Steven M. Gloe, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Chiropractic Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. Your objections and argument must be received at the office of the Chiropractic Examining Board, Room 174, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before December 11, 1996. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Chiropractic Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Chiropractic Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 20th day of November, 1996.

John N. Schweitzer
Administrative Law Judge

# STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

| | | |
|---|---|---|
| IN THE MATTER OF<br>DISCIPLINARY PROCEEDINGS<br>AGAINST<br>**JOHN R. JAGUSCH, D.C.,**<br>RESPONDENT. | : | **PROPOSED DECISION**<br>Case No. LS-9608081-CHI<br>(96 CHI 029; 95 CHI 046) |

## 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
Madison, WI 53708-8935

Respondent:
John R. Jagusch
Waupun Correctional Institute
P.O. Box 351
Waupun, WI 53963

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

## PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Chiropractic Examining Board on August 8, 1996. A disciplinary proceeding (hearing) was scheduled for September 16, 1996. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on August 8, 1996 to John R. Jagusch at Dodge Correctional Institute, who received it on August 9, 1996 .

B. Dr. Jagusch filed an Answer to the complaint on August 18, 1996.

C. A prehearing conference was held by telephone on September 10, 1996, at which the hearing was rescheduled to October 8, 1996 at 10 A.M.

D. Another prehearing telephone conference was held on September 16, 1996, at which preparations were made for the hearing.

E. On September 24, 1996, Dr. Jagusch was transferred to Waupun Correctional Institute, and his hours of availability changed. The hearing was rescheduled to begin at 12:30 P.M.

F. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on October 8, 1996. Dr. Jagusch appeared by telephone. Despite some discussion regarding representation by the attorney who represented him in his criminal trials, that attorney was unavailable, and Dr. Jagusch elected to proceed without representation. The Chiropractic Examining Board was represented by Attorney Steven Gloe of the Department's Division of Enforcement. The hearing was recorded. The record was held open for 25 days, until November 4, 1996, for (1) Dr. Jagusch to arrange for the submission of a copy of a previously-performed mental health evaluation, and (2) Mr. Gloe to file any motions related to additional evidence of Dr. Jagusch's enrollment in medical schools in Santo Domingo. No report and no motion was received, and the record was closed on November 5, 1996. A transcript of the hearing was prepared and delivered on November 18, 1996. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

## FINDINGS OF FACT

1. The respondent, John R. Jagusch, is a chiropractor licensed in the state of Wisconsin, under license number 1273, which he has held continuously since it was originally granted on August 12, 1971.

2. At the time of the hearing, Dr. Jagusch resided at Waupun Correctional Institute in Waupun, Wisconsin. His previous address was Highway 63, P.O. Box 126, Clayton, WI 54004.

3. On February 27, 1996, Dr. Jagusch was found guilty by jury verdict in the circuit court for Polk County, Wisconsin, of one misdemeanor count of battery, a violation of sec. 940.19(1), Stats. The offense occurred on March 26, 1994, when Dr. Jagusch "intentionally caused bodily harm to" another person, Daniel Byrnes.

4. On June 7, 1996, Dr. Jagusch was found guilty by jury verdict in the circuit court for Polk County, Wisconsin, of two felony counts of attempted mayhem as a party to the crime, violations of sec. 940.21, Stats., and sec. 939.05, Stats. The offenses occurred on January 12, 1996, when Dr. Jagusch attempted to enlist another person (an undercover officer) to "mutilate the limbs or other bodily members of" two other persons, William Geipel and Robert Rasmussen, "with intent to disable".

5. As of July 31, 1996, Dr. Jagusch had not notified the Chiropractic Examining Board of the criminal convictions in #3 and #4 above.

## APPLICABLE STATUTE AND RULE

**446.03 Reprimand; license revocation, limitation or suspension.** The examining board by order may reprimand a licensee or registrant and may deny, limit, suspend or revoke any license or certificate of registration if the licensee or registrant:

...

(3) Is hereafter convicted in a court of competent jurisdiction, either within or without this state, or in federal court, of any violation of any law governing the practice of chiropractic or of any felony, subject to ss. 111.321, 111.322 and 111.335, a certified copy of the record of conviction to be conclusive evidence of such conviction;

...

(5) Is guilty of unprofessional conduct.

...

**Chir 6.02 Unprofessional conduct.** Unprofessional conduct by a chiropractor includes:

(1) Engaging in any practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public.

...

(23) Failing to notify the board of any criminal conviction, the circumstances of which relate substantially to the practice of chiropractic.

(24) Being convicted of a crime substantially related to the practice of chiropractic.

...

(26) Violating a law, or aiding or abetting the violation of any law substantially related to the practice of chiropractic.

...

## CONCLUSIONS OF LAW

I. The Chiropractic Examining Board has personal jurisdiction over the respondent, John R. Jagusch, based on notice under sec. 801.04 (2), Stats., and based on his holding a credential issued by the board.

II. The Chiropractic Examining Board is the legal authority responsible for issuing and controlling credentials for chiropractors, under ch. 446, Stats, and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 446.03, Stats., and ch. Chir 6, Wis. Admin. Code.

III. Dr. Jagusch's conviction in Fact 3 above is not substantially related to the practice of chiropractic, and does not constitute unprofessional conduct.

IV. Dr. Jagusch's convictions in Fact 4 above are substantially related to the practice of chiropractic and constitute unprofessional conduct under sec. Chir 6(24) and sec. Chir 6(26), Wis. Admin. Code, and discipline is appropriate under sec. 446.03(3) and sec. 446.03(5), Stats.

V. Dr. Jagusch's failure in Fact 5 above to notify the board of his convictions for attempted mayhem as a party to the crime constitutes unprofessional conduct under sec. Chir 6.02(23), Wis. Admin. Code, and discipline is appropriate under sec. 446.03(5), Stats.

## ORDER

THEREFORE, IT IS ORDERED under sec. 446.03, Stats., that the license to practice chiropractic issued to John R. Jagusch be revoked, effective ten days after the Final Decision and Order is signed on behalf of the Chiropractic Examining Board.

IT IS FURTHER ORDERED that after Dr. Jagusch's license to practice chiropractic is revoked, the board under sec. 446.05(2), Stats., shall promptly reinstate said license if it receives proof that Dr. Jagusch's convictions for attempted mayhem as a party to the crime have been overturned.

IT IS FURTHER ORDERED that John R. Jagusch pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

## OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Chiropractic Examining Board alleging that the respondent, John R. Jagusch, was convicted of crimes, that the circumstances of those offenses were substantially related to the practice of chiropractic, and that he failed to report those convictions to the Chiropractic Examining Board.[1] The burden of proof was on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Dr. Jagusch did not dispute that he was convicted of one misdemeanor count of battery and two felony counts of attempted mayhem as a party to the crime (although the convictions are on appeal), nor did he dispute that he failed to notify the board of his convictions (although he cooperated once the board initiated the communication), but the burden is still on the Division of Enforcement to prove the relationship of those convictions to chiropractic. I conclude that the evidence is insufficient with regard to the battery conviction, but that under controlling case law, the evidence establishes a substantial relationship between the convictions for attempted mayhem as a party to the crime and the practice of chiropractic, and therefore that Dr. Jagusch's failure to report the latter convictions violated sec. Chir 6.02(23), Wis. Admin. Code.

### The "Substantial Relationship" Test.

The major purpose of regulating any profession is to protect the public, and it is natural for a regulatory authority, on that basis, to wish to exclude from the profession any person who has committed a crime. On the other hand, the public interest is also served by rehabilitating criminals

[1] The complaint also alleged that one or more of those offenses violated Chir 6.02(1), Wis. Admin. Code, which prohibits "engaging in any practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public". I interpret that language as referring to actions which are within, or ostensibly within, a respondent's professional practice, such as manipulating a patient's spine. The acts which led to Dr. Jagusch's convictions were not part of his practice, and I therefore find no violation of Chir 6.02(1).

and assisting them to become productive members of society. Allowing a person to work in a field for which he or she has special skills furthers the goals of rehabilitation and contribution to society. The difficult balancing of interests underlying the issue of whether to allow a convicted criminal to practice a profession which is regulated for the protection of the public is described in the "Declaration of Policy" of the Fair Employment Act, sec. 111.31, Stats.

> ... It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of ... conviction record .... It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employee or applicant for employment based upon the employee's or applicant's individual qualifications rather than upon a particular class to which the individual may belong. In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of this state to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of ... conviction record .... This subchapter shall be liberally construed for the accomplishment of this purpose.

Section 111.321, Stats. generally prohibits employment discrimination on the basis of conviction record. An exception exists, however, in sec. 111.335, which says "notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to suspend from employment or licensing, any individual who: 1. has been convicted of any felony, misdemeanor or other offense **the circumstances of which substantially relate to the circumstances of the particular job or licensed activity ...**" [emphasis added].

The Chiropractic Examining Board has explicitly adopted this approach in sec. 446.03, Stats., which says that the board may impose discipline if a licensee is convicted of a felony "subject to ss. 111.321, 111.322 and 111.335". The same statute also authorizes discipline for unprofessional conduct, which is further defined in sec. Chir 6.02, Wis. Admin. Code, to include "being convicted of a crime substantially related to the practice of chiropractic".

A number of reported cases have dealt with the question of how to establish whether the "circumstances" of a particular offense are "substantially related." In Law Enforce. Stds. Bd. v. Lyndon Station, 101 Wis.2d 472, 305 N.W.2d 89 (1981), the Wisconsin Supreme Court affirmed the denial of employment as a police chief to a person convicted of falsifying traffic citations, and it held that employers or licensing authorities, in making an employment or licensing decision, are required only to consider the "circumstances" of the conviction rather than to investigate all the facts of a conviction. The next year, the Supreme Court in Gibson v. Transp. Comm., 106 Wis.2d 22, 315 N.W.2d 346 (1982), affirmed the denial of a school bus driver's license to a person convicted of armed robbery, and it said that in an employment decision, an agency need not inquire into the specific facts of a conviction where the "circumstances" of the crime itself are substantially related to the type of employment, with "circumstances" interpreted as meaning only "the elements of the offense." This distinction between "facts" and "circumstances" was restated in County of Milwaukee v. LIRC, 139 Wis.2d 805, 407 N.W.2d 908 (1987). The court in that case affirmed the

denial of employment as a crisis intervention specialist to a person convicted of twelve misdemeanors related to his former position as a nursing home administrator, and it stated at 824: "Assessing whether the tendencies and inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. ... It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person."

Dr. Jagusch's Offenses.

The disciplinary complaint in this matter alleged, and Dr. Jagusch's answer admitted, that he was convicted on February 27, 1996 in Polk County, Wisconsin, of one misdemeanor count of battery. The offense took place on March 26, 1994, when Dr. Jagusch encountered attorney Daniel Byrnes as Mr. Byrnes was getting into his car in a parking lot. A discussion ensued, and Dr. Jagusch dragged Mr. Byrnes from his car. Mr. Byrnes ended up on the ground, with a dislocated shoulder and scrapes on his forehead, knees, and hand, and with Dr. Jagusch over him. Dr. Jagusch testified in explanation of his conviction that he was upset with attorney Byrnes for assisting a former patient to file bankruptcy and thereby discharge a $2,080 debt owed to him. Some years earlier attorney Byrnes had assisted another person (not a patient) to file bankruptcy, thereby leaving Dr. Jagusch responsible for $4,000 from a note he had co-signed with the person, plus $2,800 in attorneys fees. Dr. Jagusch considered attorney Byrnes' actions to have been unethical at best, and possibly illegal.

The disciplinary complaint in this matter also alleged, and Dr. Jagusch's answer also admitted, that he was convicted on June 7, 1996 in Polk County, Wisconsin, of two felony counts of attempted mayhem as party to the crime. The offenses took place on January 12, 1996, when Dr. Jagusch spoke to an undercover officer and offered him $3500 to break William Geipel's knees, teeth, and jaw, and another $4500 to do the same to Robert Rasmussen. Dr. Jagusch had mentioned this subject to a cellmate, who reported it to the Polk County Sheriff's Office, which then arranged the meeting with the undercover officer. Dr. Jagusch testified in explanation that he was upset with Robert Rasmussen, the judge in his battery case, because (1) although he had not yet been sentenced on the battery charge, "the word around town" was that he would get a stiff sentence, (2) he had filed an appeal of his battery conviction but Judge Rasmussen "was holding back the appeal papers", and (3) Judge Rasmussen had him arrested for violating terms of his release as he prepared to fly to Santo Domingo in the Dominican Republic, even though he claimed to have notified all the necessary authorities of his trip, which was to take medical school exams. Dr. Jagusch stated that this failure to take exams cost him, or at least jeopardized, his medical school investment of $200,000 [transcript, p. 45]. No explanation was offered of Dr. Jagusch's motive for wanting to injure and disable William Geipel.

I have focused on three elements in Dr. Jagusch's offenses. The first is whether his crimes were against persons or property. The second is whether the crimes involved his professional (chiropractic) relationship to the victims. The third is whether the crimes showed premeditation..

All of Dr. Jagusch's crimes were against persons, and the relationship of this element to chiropractic is readily seen. As pointed out by Mr. Gloe, chiropractic is a healing art, and the

Hippocratic Oath enjoins healers to do no harm. The ability to disregard another's health and well-being is antithetical to a chiropractor's professional practice.

Dr. Jagusch's crimes did not involve his professional relationship to the victims. Although the debt discharged in bankruptcy which led to Dr. Jagusch's battery conviction came from a misdirected insurance payment for client services, Dr. Jagusch confronted not the client but the client's attorney, who had prepared not only that bankruptcy filing but another one a few years earlier which was unrelated to client services. The convictions for attempted mayhem as a party to the crime did not in any way involve the provision of chiropractic services by Dr. Jagusch.

The crimes differ on the element of premeditation. Although the confrontation between Dr. Jagusch and Mr. Byrnes may have been inevitable, and the "bodily harm" inflicted was "intentional", there is no proof that the incident and the injuries were premeditated. On the other hand, the attempted mayhems clearly were planned in advance, and I find that the two convictions for attempted mayhem as a party to the crime fit easily within the analysis provided by the case law set out above, especially Gibson and County of Milwaukee.

In Gibson, the court found that a conviction for armed robbery was substantially related to employment as a school bus driver. The court heard testimony that the duties of school bus drivers include maintaining discipline without resort to corporal punishment and functioning as a substitute parent, and that the job requires a great deal of patience and self-control. The court declined to go beyond the elements of Mr. Gibson's conviction for armed robbery to listen to his offered testimony that he was only a party to the crime and was not the person holding the gun. The Supreme Court's analysis, at p.28 of the reported case, is as follows:

> A conviction of armed robbery under Indiana law requires that the person be found to have participated in the taking of another's property by threatening to harm them with a dangerous weapon. It thus indicates a disregard for both the personal and property rights of other persons. It also indicates a propensity to use force or the threat of force to accomplish one's purposes. The armed robbery conviction indicates personal qualities which are contradictory to the extreme patience, level-headedness and avoidance of the use of force which ... are essential in a school bus driver.

This ruling in particular suggests that protection of the public can ultimately be part of the "substantial relationship" analysis, even if the only "elements" in common to both the offense and the profession are the qualities of "patience, level-headedness and avoidance of the use of force". In Dr. Jagusch's case, a similar element of "the avoidance of the use of force to harm another" is essential to the practice of chiropractic.

In County of Milwaukee, the court found a substantial relationship between employment as a crisis intervention specialist and conviction of twelve misdemeanors related to the person's former position as a nursing home administrator. The Supreme Court said, at p. 828 of the reported case:

> The County argues that the "circumstances" of the offense and the job are similar since in both contexts Serebin was in a position of exercising enormous responsibility for the safety, health, and life of a vulnerable, dependent segment of the population. The twelve misdemeanors indicate a pattern of neglect of duty for the welfare of people unable to protect

themselves. The propensities and personal qualities exhibited are manifestly inconsistent with the expectations of responsibility associated with the job.

I find no less of a relationship here, where Dr. Jagusch's offense went well beyond a "neglect of duty for the welfare of people" to an active attempt to injure and permanently disable two people, and I conclude that the circumstances of Dr. Jagusch's convictions for attempted mayhem as a party to the crime are substantially related to the circumstances of the practice of chiropractic.

The distinction between the attempted mayhem convictions and the battery conviction is slight, but after reviewing the record in this case, I am convinced that the former should be considered substantially related to chiropractic, while the latter should not be. The element of premeditation to cause injury adds another dimension to the felony offenses which seems to violate the healer's oath far more seriously than an offense which might be described as a brawl or an argument which got out of hand. The distinction is reinforced by the nature of the injury which was, or was to be, inflicted: the attempted mayhem was intended to permanently disable the victim, whereas the battery was intended to hurt or cause harm to the victim, but not to permanently disable him. I recognize that the comparison of these offenses is finely balanced, and that the board may disagree with me on this point. However, by the less-serious nature of the offense and by the absence of proof of premeditation, I am less convinced that Dr. Jagusch's actions in the battery are substantially related to his professional responsibilities, and I find that the level of proof on this issue did not rise to "a preponderance of the evidence". It is therefore not a ground for imposing discipline, although the battery is a fact which can be considered in determining what discipline is appropriate.

Discipline.

The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5) and in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). SCR 21.03(5) states: "Discipline for misconduct is not intended as punishment for wrongdoing, but is for the protection of the public, the courts and the legal profession." The Supreme Court in Kelsay extended this by saying that the protection which is intended for the public, the courts and the legal profession is "from further misconduct by the offending attorney, to deter other attorneys from engaging in similar misconduct and to foster the attorney's rehabilitation." That reasoning has been extended by regulatory agencies to disciplinary proceedings for other professions.

Given Dr. Jagusch's attempt to use force to harm other persons, as shown by all three convictions, a severe restriction on his ability to practice is necessary in order to protect both the public and the profession. Significant discipline is also necessary to impress upon other members of the profession the seriousness of Dr. Jagusch's actions, to emphasize the heightened responsibilities which are associated with the grant of any professional license (especially one in the healing arts), and to demonstrate that the commission of a serious crime jeopardizes not only one's liberty, but one's right to practice a licensed profession. Finally, in my reading of the cases, the term "rehabilitation" means what is necessary to make a person conform his or her behavior to the requirements of the profession, and it covers both positive and negative reinforcement to deter the offender from similar behavior in the future. See, for example, State v. Postorino, 53 Wis.2d 412,

193 N.W.2d 1 at 4 (1972). Thus, even though the purpose of discipline is not to impose punishment *per se*, appreciating the unpleasant consequences of unprofessional behavior is part of rehabilitation. Revocation of Dr. Jagusch's chiropractic license is appropriate under the circumstances.

Character evidence was offered by Dr. Jagusch from his son-in-law, James Monson, who described him as professional, honest, trustworthy, and extremely intelligent. A professional colleague, Dr. Lawrence Miller, described Dr. Jagusch as an excellent chiropractor. Dr. Jagusch's professional skills are not in issue and, unfortunately, the character evidence is of little assistance in determining what discipline should be imposed for acts which contradict so completely the impression which those witnesses have of him.

Dr. Jagusch pointed out that his convictions are on appeal [transcript, p. 54], and some provision should be made for the possibility that they will be overturned. The board's statutes effectively cover this situation. Section 446.05(2)., Stats., says, "Upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the examining board may reinstate any license or registration suspended or revoked by it." If Dr. Jagusch is exonerated by appellate review, his license should be reinstated by the board upon his filing a copy of the decision overturning his convictions (although I am not convinced that his failure to report the convictions would also automatically be wiped out). If the convictions are not overturned and Dr. Jagusch remains in prison, upon his release from prison and/or from parole, the board could consider an application for reinstatement and take into account the rehabilitative effect of having served his sentence, although the issue of maintaining competence will have to be considered.

Costs.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. A common approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole, and this is the approach taken by the Supreme Court in attorney discipline cases. Dr. Jagusch stated that he is "broke", adding "I don't have anything. I gave everything away" [transcript, p. 86]. However, at another point he referred to having purchased an airplane [transcript, p. 34], and an inference might be drawn that he has purposely (and perhaps wisely) divested himself of his property to avoid losing it. Dr. Jagusch is responsible for his present financial and residential situation, and I am not convinced that his misfortune is a sufficient reason to impose the cost of this action on the profession as a whole. An order for costs is included in this Proposed Decision.

Dated and signed: November 20, 1996

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing