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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY : PROCEEDINGS AGAINST	:	
DANNY B. FUTCH, D.C. RESPONDENT.	:	LS 9602161 CHI

FINAL DECISION AND ORDER

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

Danny B. Futch, D.C.

Chiropractic Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

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

The complainant has appeared in this action by attorney James Polewski. Respondent has appeared personally and by his attorney Ted Waskowski of Stafford, Rosenbaum, Rieser & Hansen. By order dated October 17, 1996, the Chiropractic Examining Board delegated the authority for making the Final Decision and Order to the Administrative Law judge. The parties agree to the terms and conditions set forth below as the final decision of this matter.

FINDINGS OF FACT

1. Respondent, Danny B. Futch, is licensed in the state of Wisconsin to practice chiropractic pursuant to license #2369. He was first granted a license to practice chiropractic by the State of Wisconsin on December 1, 1988.

2. On March 28, 1991, Dr. Futch saw Connie Upchurch as a patient at Group Health Cooperative. After performing an appropriate examination and assessment, Dr. Futch determined that chiropractic care would not be helpful at that time. Before seeing Dr. Futch, Connie Upchurch had seen a physician for similar complaints. The physician had prescribed Midrin and the use of ibuprofen. Dr. Futch suggested to Connie Upchurch that one alternative available to her was to follow her physician's orders.

3. On January 3, 1995, Dr. Futch saw Lynn Johnson as a patient at Group Health Cooperative. After performing an appropriate examination and assessment, Dr. Futch determined that chiropractic care would not be helpful at that time. Dr. Futch suggested to Lynn Johnson that there were other treatment alternatives available to him. One was to use the anti-inflammatory medication that had been prescribed by his physician. Another was to try over the counter medications, such as ibuprofen.

4. On September 21, 1994, Dr. Futch saw Collene Wilson as a patient at Group Health Cooperative. After performing an appropriate examination and assessment, Dr. Futch determined that chiropractic care would not be helpful at that time. Dr. Futch then consulted with a Group Health Cooperative physician, Ted Haglund, M.D. Following this consultation, Dr. Haglund wrote a prescription for Collene Wilson. Dr. Futch delivered Dr. Haglund's prescription to Collene Wilson.

5. Section Chir 4.05(1)(d) of the Wisconsin Administrative Code states that the following is beyond the scope of chiropractic practice - "the prescribing, dispensing, delivery or administration of drugs as defined in s. 450.01(10), Stats." The code section is based on the authority of s. 446.01, Stats., which provides that chiropractic is treatment of patients without use of drugs or surgery.

6. Neither the Wisconsin Administrative Code nor the Wisconsin Statutes define "prescribing." At the time Dr. Futch saw Connie Upchurch, Lynn Johnson and Collene Wilson, he believed in good faith that his treatment, including his discussions of treatment alternatives, did not constitute "prescribing" drugs and was not beyond the scope of chiropractic practice.

7. It is the Division of Enforcement's interpretation of Chir. 4.05(1)(d) that Dr. Futch's discussions of medications as a possible treatment alternative were technical violations of Chir. 4.05(1)(d).

8. Dr. Futch acknowledges that the Division is assigned the responsibility of enforcing the administrative code as it relates to the licensing of chiropractors.

9. Dr. Futch accepts the Division's interpretation of the Administrative Code as set forth in paragraph 7.

CONCLUSIONS OF LAW

10. The Chiropractic Examining Board has jurisdiction over this proceeding pursuant to section 446.03, Stats.

11. Dr. Futch's discussions of medications as a possible treatment alternative were technical violations of Chir. 4.05(1)(d).

ORDER

NOW, THEREFORE, IT IS ORDERED that this disciplinary proceeding and all claims against DANNY B. FUTCH, D.C. in cases 91 CHI 44, 94 CHI 92 and 95 CHI 5 shall be and hereby are resolved.

No discipline is imposed against Dr. Futch as a result of this proceeding. The prohibition against prescribing by chiropractors prohibits a chiropractor from suggesting that a patient use a drug to obtain relief from the condition for which the patient seeks chiropractic advice, but this is the first formal action to enforce this rule. The accepted principles of professional discipline do not require imposition of discipline against the licensee for unwitting and unintentional violations of the applicable codes.

It is further ordered that Danny Futch shall pay a portion of the out of pocket expenses incurred by the Division in this proceeding.

Date: January 15th, 1997.

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Danny B. Futch, D.C.
Respondent
Case No. LS 9602161 CHI

Stipulation

It is hereby stipulated between Danny B. Futch, D.C., personally and on his own behalf and Ted Waskowski, attorney for Dr. Futch, and James E. Polewski, Attorney for the Division of Enforcement, Department of Regulation and Licensing, as follows:

In resolution of these proceedings, Dr. Futch consents to the entry of the attached Final Decision and Order. Dr. Futch has read the attached Final Decision and Order with his attorney and understands it. Dr. Futch understands that by signing this stipulation he consents to the attached Final Decision and Order being the complete resolution of all claims arising out of cases 91 CHI 44, 94 CHI 92, and 95 CHI 5 between Dr. Futch and the Division of Enforcement, Department of Regulation and Licensing and the Chiropractic Examining Board.

Danny B. Futch — 1-10-97
Danny B. Futch, D.C. — Date

1/10/97
Ted Waskowski — Date
Stafford, Rosenbaum, Rieser & Hansen
Attorney for Dr. Futch

James E. Polewski — 1/14/97
James E. Polewski — Date
Attorney
Division of Enforcement

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

In the Matter of the Disciplinary Proceedings Against

Danny B. Futch, 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 16, 1997, I served the Final Decision and Order dated January 15, 1997 upon the Respondent Danny B. Futch, D.C.'s attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney 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 201 377 257.

Ted Waskowski, Attorney
3 S. Pinckney Street, Suite 1000
P.O. Box 1784
Madison WI 53701-1784

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me
this 16th day of January, 1997.

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 16, 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.)