

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	(92 CHI 067)
BRAD J. SMITH, D.C.,	:	
RESPONDENT.	:	

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Brad J. Smith, D.C.
122 East Olin Avenue
Suite 190
Madison, WI 53713

Chiropractic Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

FILE COPY

The parties to this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. That Brad J. Smith, hereinafter the Respondent, was at all times relevant to this complaint duly licensed as a chiropractor in the State of Wisconsin.
2. That the Respondent's license is #1372, granted November 18, 1976.
3. That the Respondent's current address is 122 East Olin Avenue, Suite 190, Madison, WI 53713.
4. That patient DGA was diagnosed by her medical doctor as having fibrocystic breast disease.
5. That on July 2, 1992 patient DGA was experiencing premenstrual syndrome and went to the Respondent for relief of pain in her left breast that was due to Fibric cysts.

6. That on 7/2/92 the Respondent performed a reflex technique on the left breast of the patient. The Respondent exerted pressure on the left breast by placing his hands one over the other and pressing down with both hands on the breast. The patient then felt something "break" in the breast, similar to a hard throb. It was at this point that the patient experienced a great deal of pain in the left breast.

7. That over the next five days the patient experienced breast tenderness, ingaugement, redness and extreme pain. The patient went to a medical doctor on the 5th day following the procedure with a temperature of 104 degrees, breast tenderness and swelling. The patient received an injection of penicillin. The patient was placed on antibiotics for approximately 6 weeks.

8. That the Respondent used the reflex technique on the patient for problems in the breast on April 13, 1992 and on July 2, 1992. The patient also used this technique on herself at home in the past.

9. That on each occasion that the Respondent utilized the reflex technique the patient was informed by the Respondent of exactly what he would be doing. This information was given each time before the reflex technique was actually done. The patient then had the choice to have the Respondent proceed with the reflex technique on her left breast or not. The patient chose to have the Respondent proceed with the technique. While the Respondent was doing the reflex technique he informed the patient again of exactly what he was doing.

CONCLUSIONS OF LAW

1. That by engaging in the conduct set forth in Finding of Facts 5 through 7 the Respondent has engaged in conduct which constitutes a substantial danger to the health, welfare or safety of a patient and in conduct which substantially departs from the standard of care ordinarily exercised by a chiropractor, contrary to Chir. sec. 6.02 (1) & Chir. sec. 6.02 (3), Wisconsin Administrative Code.

2. That the Board has jurisdiction to take disciplinary action against the Respondent pursuant to section 446.03, Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the attached Stipulation is approved and adopted.

IT IS FURTHER ORDERED that the Respondent's license shall be LIMITED under the following terms and conditions:

1. The Respondent must take and pass a refresher course of 12 hours in the Chiropractic Manipulative Reflex Technique particularly focusing on the lymphatic glands. These 12 hours should include contra-indications of this technique.

2. The refresher course shall be completed within 1 year of the date of this Board order and shall be in addition to the regular Continuing Education that is required by the Respondent.

3. The Respondent shall submit proof of successful completion of the course to the Chiropractic Examining Board.

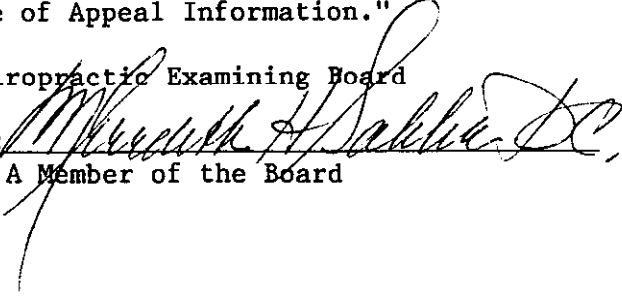
4. If the Respondent does not comply with the terms of this order, then the Respondent will be referred back to the Chiropractic Examining Board to determine an appropriate discipline.

5. Upon successful completion of the above terms and conditions this limitation shall expire.

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

Chiropractic Examining Board

By:


A Member of the Board

9-16-93
Date

DSW
4454

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : STIPULATION
 : (92 CHI 067)
BRAD J. SMITH, D.C., :
RESPONDENT. :

It is hereby stipulated and agreed, by and between, Brad J. Smith, D.C., Respondent; and Deborah S. Wright and Michael J. Berndt, attorneys for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation (file 92 CHI 067).

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to legal representation prior to signing this stipulation.

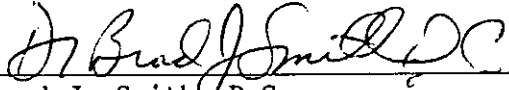
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Chiropractic Examining Board.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.


6. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

7. The parties to this Stipulation agree that the Respondent, and the attorneys for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.

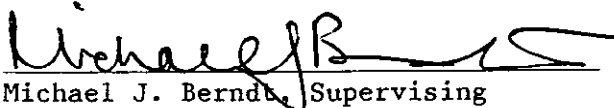
Dated: ~~August~~ ^{Sept.} 13, 1993


Brad J. Smith, D.C.
Respondent

Dated: ~~August~~ ^{Sept.} 13, 1993


Deborah S. Wright
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

Dated: ~~August~~ ^{Sept.} 13, 1993


Michael J. Berndt, Supervising
Attorney, Department of Regulation &
Licensing, Division of Enforcement

dsw
(4453)

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)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Chiropractic Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Chiropractic Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Chiropractic Examining Board.

The date of mailing of this decision is September 20, 1993.