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STATE OF WISCONSIN

BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

ROBERT CARPENTER, D.C.,

FINAL DECISION

RESPONDENT.

Case No. LS-9807091-CHI

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Robert Carpenter, D.C.
10731 W. Forest Home Avenue
Hales Corners, WI 53130

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

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

This matter was commenced by the filing of a Notice of Hearing and Complaint on July 9, 1998. An Answer to the Complaint was filed on July 23, 1998. An Amended Answer was filed on August 10, 1998. A hearing was held in the above-captioned matter on October 22, 1998. Closing arguments were filed on January 4, 1999. Atty. James E. Polewski appeared on behalf of the Division of Enforcement. Attys. Mary H. Michal and Raymond M. Roder, Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C., appeared on behalf of Dr. Carpenter.

FINDINGS OF FACT

1. Robert Carpenter, D.C. (d.o.b. 06/07/50), is licensed as a chiropractor in the state of Wisconsin (license #1413, which was first granted on November 17, 1977). Respondent's most recent address on file with the Department of Regulation and Licensing is 10731 W. Forest Home Avenue, Hales Corners, WI 53130.

2. In 1989, Dr. Carpenter established a business called Vascular Associates, which he operated as a sole proprietorship. Vascular Associates was Dr. Carpenter's business and he was in charge of it. During calendar years 1990 and 1991, Dr. Carpenter operated Vascular Associates at the same location in Hales Corners, Wisconsin as his chiropractic clinic, Healthwise Chiropractic, S.C.

3. Vascular Associates provided services which involved the use of plethysmography, Doppler ultrasound, the drawing of blood for analysis as well as diet, exercise and nutrient recommendations.

4. The vast majority of patients of Vascular Associates were also patients of Dr. Carpenter's chiropractic practice. In such cases, each chiropractic patient file contained the results obtained from Vascular Associates.

5. All of the patients of Vascular Associates did not receive all of the services that were offered. There was a progression to the kind of services provided based upon the protocol utilized by Vascular Associates. First, the patients were told to set up an appointment. If the person arrived without a direct diagnosis or a pointed instruction to undergo a plethysmography test, such as an individual responding to an advertisement, the person would be required to sit down and fill out a questionnaire. The questionnaire, a one-page document labeled "Cardiac Screening Questionnaire", was designed to obtain information regarding personal and family history, as well as signs and symptoms of vascular disease. If the information in the questionnaire indicated that the person was fine, the individual would be screened out. If the information in the questionnaire indicated that the individual presented with a potential cardiovascular risk problem, it was recommended that the person continue on with other tests, such as a plethysmography, to objectively determine the function of the person's vascular system.
6. Between 1990 and 1991 plethysmography was used by Vascular Associates as a diagnostic tool to determine the existence of disorders of the circulatory system. It tests the blood volume in various extremities and veins and arteries. During that time period, plethysmography was an accepted tool used to diagnose vascular insufficiency. The tests were performed on most patients of Vascular Associates and were performed by technicians employed by Vascular Associates on equipment it owned.
7. On the basis of the plethysmography results, some patients were given a diagnostic Doppler ultrasound test. Doppler ultrasound measures, in part, the blood flow and the condition of the veins in the carotids.
8. As part of its diagnostic program, Vascular Associates also ran blood chemistry panels for most of its patients. The blood work was recommended, if a patient scored very high in the area of family history or if a patient completed a 3-day diet analysis, which indicated that the patient had either too high or too low nutrients. The blood work provided information about the chemical make-up of the blood and the various degrees to which specific levels of chemical components in the blood differed from the norm. Technicians discussed the results of the lab tests with the patients and gave suggestions as to what the tests and the plethysmography results taken together indicated about their vascular health.
9. Some patients made several visits to Vascular Associates that were at least two or three weeks apart. In between the time of the visits, some patients consumed nutritional supplements recommended by Vascular Associates. At the time of each visit, the patients saw a technician who repeated plethysmography tests and for some patients repeated Doppler ultrasounds and blood chemistry panels. The purpose of the repeat studies was to determine changes in the patients' blood vascular system.
10. Between April 1989 and October 1992 Vascular Associates employed four technicians, usually one at a time, to see patients for purposes of determining whether they were candidates for heart disease. The technicians performed plethysmography tests; made screening decisions on the basis of the plethysmography results; discussed the results of the plethysmography tests and blood chemical panel studies with patients and discussed with patients how they could avoid heart disease.
11. In July 1990, Dr. Carpenter retained the services of Dr. Jagmeet Soin, M.D., to read certain Doppler ultrasound studies at \$85 per interpretation. Dr. Soin is a physician licensed in Wisconsin to practice medicine and surgery.
12. In July 1990, Dr. Soin practiced nuclear medicine in Milwaukee under the name "Diagnostic Imaging Center". His practice consisted of outpatient nuclear medicine diagnostic imaging. He offered his services to various physicians in the area and to Health Maintenance Organizations. Patients were referred to his office by physicians. His services were primarily paid by third party payers such as Blue Cross Blue Shield, Medicare, Medicaid, HMOs and private insurance plans. He obtained approval as a Medicare provider in conjunction with his operation of Diagnostic Imaging Center.
13. Between June 1990 and April 1991, Dr. Soin was involved in the interpretation of at least 23 plethysmography studies for Vascular Associates. Those studies were recorded in a logbook by his technologist, Eva Johnson.
14. Dr. Soin's office staff sent a bill to Vascular Associates on a regular basis that included the number of plethysmography readings done times the flat fee for an amount due.
15. Between July 1990 and April 1991, four payments were made by Vascular Associates to Dr. Soin for at least 23 studies. The payments were made by checks written by Vascular Associates in the amount of \$510 (dated 10/3/90); \$680 (dated 11/30/90); \$510 dated 12/31/90) and \$850 (dated 4/11/91).
16. In 1990 and 1991, Healthwise Chiropractic used a system for billing in which a doctor's signature was photocopied for ease of use. When Dr. Carpenter started Vascular Associates, he used the same system for billing as he used for Healthwise Chiropractic.
17. In 1990, respondent submitted an application to Wisconsin Physicians Service Insurance Corporation ("WPS") for authorization to participate in the Medicare Program. The application included, but was not limited to, the Authorization to Pay Agreement, the Medicare Part B forms and the Compensation Agreement between Wisconsin

Physicians Service Insurance Corporation ("WPS") and Jagmeet S. Soin, M.D. (Vascular Assoc. Clinic). All three documents that Dr. Carpenter submitted to WPS contained Dr. Soin's facsimile signature. Dr. Soin did not authorize Dr. Carpenter to submit those documents to WPS and he did not authorize Dr. Carpenter to put his name or signature on the documents.

18. The Authorization to Pay Agreement which respondent submitted to WPS stated that Dr. Soin was a cardiologist and that he was certified in that specialty at Johns Hopkins University on March 1, 1972. Dr. Soin is not a cardiologist and is not certified in cardiology.

19. The Medicare Part B forms which respondent submitted to WPS stated that Dr. Soin graduated from medical school at Johns Hopkins University in 1982 and that he was certified in cardiology in 1972. Dr. Soin did not graduate from medical school at Johns Hopkins University and he is not certified in cardiology.

20. In 1990 and 1991, Vascular Associates maintained a fee schedule which listed the services which it provided and the fee for each service. After a patient completed a diagnostic workup, the technician provided the insurance department at Vascular Associates with a copy of the fee schedule that indicated what services the patient had received. The insurance department then attached that fee schedule to a Medicare claim form that was submitted to WPS for payment. The fee schedules submitted to WPS contained Dr. Soin's facsimile signature. Dr. Soin did not authorize Dr. Carpenter to place his signature on the fee schedules.

21. During 1990 and 1991, respondent submitted in excess of 90 claims for payment of plethysmography services on behalf of Medicare patients to Medicare over Dr. Soin's facsimile signature. Dr. Soin was involved in the interpretation of only 23-30 studies performed at Vascular Associates.

22. Dr. Soin did not authorize Dr. Carpenter to bill Medicare under his name for plethysmography services he was not involved with.

23. Medicare paid Vascular Associates for the 90 or more claims for plethysmography services which Vascular Associates submitted over Dr. Soin's facsimile signature.

24. During 1990 and 1991, Medicare did not authorize chiropractors to be providers of plethysmography services for Medicare patients.

25. Based upon the Medicare guidelines in effect in 1990 and 1991, the difference between Vascular Associates being eligible and being ineligible for payment for plethysmography services was participation or involvement by a medical practitioner. Such participation or involvement included, but was not limited to, providing medical authorization for medical services. Without participation or involvement by Dr. Soin or some other medical practitioner, Vascular Associates would not have been eligible to obtain Medicare payment for the plethysmography tests it conducted.

26. Dr. Soin did not provide medical authorization for at least 60 of the 90 or more plethysmography studies that Dr. Carpenter submitted for payment to Medicare under Dr. Soin's facsimile signature.

27. Between 1990 and 1991, respondent used Dr. Soin's facsimile signature to bill Medicare for plethysmography services performed by Vascular Associates' employees in instances in which it was not necessarily true that Dr. Soin was involved or participated in the services which were billed over his signature stamp.

28. At least on September 8, 1990, Vascular Associates had a batch of billings that were done prior to the time Dr. Soin agreed to interpret studies for Vascular Associates. That batch of billings was submitted to Medicare for payment under Dr. Soin's facsimile signature.

29. In 1990, Vascular Associates ran an advertisement which highlighted in bold print the terms "Arteriosclerosis" and "Heart Disease" and which read, in part: Vascular Disease is America's number one killer. Early Detection can prevent heart disease. Our Advanced noninvasive methods of testing will help determine if you are a candidate for heart disease or not.

30. In 1990, Vascular Associates ran an advertisement which highlighted in bold print the terms "Arteriosclerosis" and "Heart Disease" and which read, in part: Vascular disease is the #1 health problem in America. We will discuss the causes, methods of early detection, and the drugless/nonsurgical measures of its prevention. A live demonstration showing how we determine any potential circulatory problems will be given.

31. In 1990 and 1991, Vascular Associates offered a class for its patients and distributed materials to them relating to how they should eat so as to prevent heart disease. During the class presentations, information about how to have a healthier life, exercise, diet and nutrition were discussed. Individuals that attended that class would have heard that information and also would have received similar information one-on-one.

32. In 1990 and 1991, Vascular Associates recommended vitamins and other nutritional supplements to its patients to prevent arteriosclerosis and heart disease. The supplements, which were referred to as "VRP" were recommended and sold to patients as part of a program offered by Vascular Associates. VRP consisted of a

"proprietary nutritional supplement" which was a combination of nutrients, vitamins and minerals that helped improve the elasticity of the arteries.

CONCLUSIONS OF LAW

1. The Chiropractic Examining Board has jurisdiction in this matter pursuant to s. 446.03 Stats., and ch. Chir 6, Wis. Adm. Code.
2. Respondent's conduct as described in Findings of Fact 17-28 herein constitutes conduct of a character likely to deceive or defraud the public in violation of s. 446.04 (1), Stats.
3. Respondent's conduct as described in Findings of Fact 21-28 herein constitutes misappropriation of a license to practice medicine and surgery in violation of s. 446.04, Stats.
4. Respondent's conduct as described in Findings of Fact 5-10 and 29-32 herein constitutes practice beyond the scope of practice of chiropractic in violation of s. Chir 6.02 (4), Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#1413) of the respondent, Robert Carpenter, D.C., to practice chiropractic be, and hereby is, suspended for a period of one year.

IT IS FURTHER ORDERED that pursuant to s. 440.22, Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Board.

EXPLANATION OF VARIANCE

The Chiropractic Examining Board accepts the ALJ's findings of fact, her analysis of the evidence as contained in her opinion which is included here as an appendix, and the conclusions of law, with the one exception explained below. This Final Decision differs from the ALJ's Proposed Decision in two ways.

First, the ALJ included as Conclusion of Law 5 that "The vitamins contained in the VRP formula which were recommended to patients by Vascular Associates, as described in Findings of Fact 32 herein are drugs for purposes of ss. Chir 4.05 (1)(d) and Chir 6.02 (4) Code." The board eliminates this Conclusion of Law for two reasons:

- a) Because Dr. Carpenter promoted and sold nutritional supplements for the purpose of preventing arteriosclerosis and heart disease, the ALJ concluded that the nutritional supplements therefore fit the definition of drugs, which chiropractors are prohibited from prescribing or dispensing. This conclusion is unnecessary. The ALJ determined in Conclusion of Law 4 that the promotion and sale of nutritional supplements for the specific treatment of a disease is beyond the scope of practice of chiropractic, contrary to sec. Chir 6.02 (4), Wis. Admin. Code, and the board agrees with that determination. (The ALJ's Conclusion of Law 4 contained a reference to a non-existent section of the administrative code, Chir 6.04 (4), and that typographical error is corrected.)
- b) The complaint filed in this matter did not allege a violation of sec. Chir 4.05 (1) (d), Wis. Admin. Code. Although the issue of nutritional supplements was addressed to some degree in the hearing, basing a disciplinary outcome on an unpled violation may violate due process. Bracegirdle v. Board of Nursing, 159 Wis.2d 402, 464 N.W.2d 111 (Ct.App. 1990).

Second, the ALJ recommended a suspension of 90 days, although at one point in her opinion she referred to a suspension of "a period of not less than 90 days". The Chiropractic Examining Board imposes a period of suspension of two years. Other disciplinary cases handled by the Chiropractic Examining Board involving false or fraudulent activities within the past few years include the following:

In the Matter of Disciplinary Proceedings Against Jaskowiak, in which the board in 1996 suspended Dr. Jaskowiak's license for 30 days for filing a total of 17 false claims for two patients.

In the Matter of Disciplinary Proceedings Against Jacober, in which the board in 1996 suspended Dr. Jacober's license for 30 days for filing one false claim for one patient.

In the Matter of Disciplinary Proceedings Against Esenberg, in which the board in 1996 revoked Dr. Esenberg's license for filing fifteen fraudulent claims, for failing to cooperate with the board, for practicing without required

insurance, for failing to obtain adequate x-rays, and for criminal convictions based on the fraudulent claims.

The two-year suspension in this case is based on the seriousness of Dr. Carpenter's violations over a period of time which lasted at least 10 months and for some purposes as long as three years and six months. The violations consisted of submitting more than 60 false claims for reimbursement, the fraudulent misuse of Dr. Soin's signature, including its use to obtain reimbursement for tests which were performed before Dr. Soin was even associated with Dr. Carpenter, and Dr. Carpenter's practice beyond the scope of chiropractic over an extended period of time in promoting and selling nutritional supplements for the specific treatment of a disease.

Signed and dated on June 17th, 1999, on behalf of the Chiropractic Examining Board.

Terry Freitag, D.C., Chair of the Board