

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

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

Please read this agreement prior to viewing the Decision:

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

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

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

STATE OF WISCONSIN

BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF : **FINAL DECISION**
DISCIPLINARY PROCEEDINGS AGAINST : **AND ORDER**
MICHAEL R. LA BLANC, D.C., :
RESPONDENT. : LS0209131CHI

PARTIES

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

Michael R. La Blanc, D.C.
3921 South 76th Street
Milwaukee, WI 53220

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin Chiropractic Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A Class II hearing was held in the above-captioned matter on October 28, 2002, at the offices of the Department of Regulation and Licensing, 1400 East Washington Avenue, Madison, Wisconsin. Dr. La Blanc appeared personally and by Attorney Daniel L. Icenogle, White Hirschboek Dudek, One East Main Street, Madison, WI 53703-3300. The Division of Enforcement appeared by Attorney James E. Polewski. Administrative Law Judge Wayne Austin presided at the hearing and filed a Proposed Decision on December 20, 2002. On January 2, 2003, Attorney Polewski filed the Division of Enforcement's Objections to the Proposed Decision. On January 8, 2003, Attorney Icenogle filed the Respondent's Response to the objections. On January 16, 2003, Mr. Polewski and Mr. Icenogle appeared before the Chiropractic Examining Board in open session and presented further argument.

The Board agrees with and adopts the ALJ's Findings of Fact and Conclusions of Law as presented in his Proposed Decision.

FINDINGS OF FACT

1. Michael R. La Blanc, D.C., 3921 S. 76th Street, Milwaukee, Wisconsin 53220, was born on February 25, 1954 and has been licensed to practice chiropractic in the State of Wisconsin pursuant to license #2037, first granted on July 18, 1985.

2. On June 24, 1998, patient A.C., a 12-year-old female, was seen by her family physician. A radiograph of A.C.'s spine revealed a 16 degree curve in her spine. The physician diagnosed moderate scoliosis of the spine and recommended that A.C. consult an orthopedist, and informed A.C. that she would probably need a back brace.

3. On July 17, 1998, A.C.'s mother took A.C. to see Respondent. A.C. did not want to wear a back brace, and A.C.'s mother believed that chiropractic treatments could prevent patient A.C.'s scoliosis from getting worse. Respondent informed A.C. and her mother that he had successfully treated patients who had worse cases of scoliosis. Respondent took a pelvic-lumbar radiograph of patient A.C. during this appointment and began chiropractic treatments.

4. Respondent treated A.C. for the next two years. Respondent did not take any radiographs at any time during this two year period to evaluate the condition, or the success of his treatment.

5. On February 24, 2000, A.C. presented to Respondent after her mother noted A.C.'s right shoulder blade to be elevated. A.C. was complaining of back pain. Palpation revealed muscle splinting and slight discomfort. Respondent treated the area, instructed the patient's mother to apply heat to the area, and to return if things did not improve.

6. On July 28, 2000, A.C. was seen by her family physician for a routine physical. The physician ordered a radiograph to check the curvature of her spine. The radiograph revealed a dramatic increase in the curvature of A.C.'s spine, compared to the radiograph taken on the physician's orders on June 24, 1998. The family physician referred patient A.C. to an orthopedic surgeon.

7. The orthopedic surgeon concluded that A.C.'s scoliosis was no longer treatable with bracing, and recommended surgical fusion and instrumentation along with a thoracoplasty to address the displacement.

8. When patient A.C.'s mother informed Respondent of the recommendation for spine fusion surgery, Respondent was surprised that A.C.'s curvature had worsened and now required surgery. Respondent advised A.C.'s mother that chiropractic treatment of the condition was still an alternative.

9. On October 19, 2000, spinal fusion surgery was completed on patient A.C.

10. The minimally competent practice of chiropractic in treating the adolescent scoliosis patient in A.C.'s circumstances requires radiographic evaluation of the patient's condition on a regular basis, not less than every six months.

11. The minimally competent practice of chiropractic in treating the adolescent scoliosis patient in A.C.'s circumstances requires that the chiropractor evaluate the patient for the existence of more than one curve in the spine.

CONCLUSIONS OF LAW

I. The Chiropractic Examining Board has jurisdiction in this matter pursuant to §§ 446.03 through 446.05, Stats.

II. Respondent's conduct in treating A.C. constitutes unprofessional conduct within the meaning of § Chir 6.02(3), Wis. Admin. Code, in that he failed to conduct the reasonably necessary evaluations of his patient's condition during the course of his treatment of his patient, thereby creating the unacceptable risk that he would be unaware of his patient's actual condition and response to his treatment, and the unacceptable risk of foreclosing other non-surgical interventions by delaying recognition that his chosen treatment protocol was ineffective.

EXPLANATION OF VARIANCE

The Board disagrees with and varies from the ALJ's recommendations for discipline.

However, since the ALJ's opinion contains a useful analysis of the issues in the case aside from the disciplinary recommendations, his opinion is appended in its entirety.

The ALJ recommended a reprimand for Dr. LaBlanc, stating: "Were deterrence an important factor here, then suspension of the license might be an appropriate remedy. There is satisfactory evidence, however, that the result here came as a result of a practice error rather than any intentional act by Dr. La Blanc, and deterrence is therefore no more than a minor factor." The Board instead imposes a 30-day suspension of Dr. La Blanc's license. Dr. La Blanc was guilty of a serious departure from the standard of care. Without necessarily disagreeing with the ALJ's conclusion that a suspension is unnecessary to deter Dr. La Blanc from repeating his mistake, the Board here takes notice of the second purpose of discipline, i.e. deterring other licensees from engaging in similar misconduct. A practice error such as Dr. La Blanc's must be seen by the profession as grave enough to warrant a suspension rather than just a reprimand. The order for the 30-day suspension will include a provision that it commence within 30 days of the date the order in this case becomes final, either the date of this Final Decision or the date on which this Final Decision is affirmed by Court action if appealed, in order to allow Dr. La Blanc to arrange for coverage and/or an orderly transition of his practice.

The ALJ accepted the diplomate program Dr. La Blanc has already begun through the National University of Health Sciences as sufficient education to address the practice mistake he made here. The Board acknowledges the value of Dr. La Blanc's diplomate program but based on its knowledge of the program, is unconvinced that it sufficiently addresses the particular issue of adolescent scoliosis that arose here. Consequently, in addition to the educational requirement imposed by the ALJ, the Board imposes an additional requirement that Dr. La Blanc complete an acceptable continuing education program, of a minimum of 12 hours in length, addressing the diagnosis and treatment of scoliosis, to be completed by December 31, 2003.

The ALJ recommended that one-half of the costs of the proceeding be assessed against Dr. La Blanc, reasoning that the Complainant's use of an expert witness was unnecessary, given that the Respondent admitted all material facts in his Answer. The Board agrees with this reasoning but modifies the amount based on information not available to the ALJ. During oral argument on January 16, 2003, Mr. Polewski presented a letter dated August 19, 2002 which supported his contention that he felt compelled to engage an expert witness to address some of the issues in the case. Mr. Icenogle referred to a June letter in which the respondent offered to stipulate to all issues but discipline, but the letter was not available and its exact content could not be determined. The Board accepts the ALJ's conclusion that the expert testimony at hearing "added

little to this record", and the Board accepts Mr. Icenogle's point in his Response that, contrary to Mr. Polewski's explanation of his need for an expert witness, the expert was never asked to comment on "how far below" the standard of care Dr. La Blanc's actions were. The Board therefore refuses to impose the cost of an expert witness on the Respondent except during the period between August 19, 2002 and September 18, 2002, the date on which Respondent's Answer was filed.

More detailed information regarding the expert's fees was presented by Mr. Polewski and accepted by the Board. The evidence showed that the expert was paid a total of \$502.77 and that \$206 of that total reflected work that was done between August 19, 2002 and September 18, 2002. The invoice for the \$206 was dated September 27, 2002, leading to the clear inference that \$296.77 was incurred after September 18, 2002. Time spent by Mr. Polewski or other DOE personnel preparing or otherwise working with the expert after September 18, 2002 should also be removed from the cost order. The Affidavit of Costs filed by the Division of Enforcement shows that Mr. Polewski spent 5 minutes on October 8, 2002, 10 minutes on October 9th, and an indeterminate portion of 2 hours on October 15th interacting with the expert. The same arbitrary percentage used by the ALJ will be adopted here on a much smaller scale, and 50% of the time on October 15th will be ascribed to Mr. Polewski's interaction with the expert witness. This leads to a further reduction in the cost order of \$67.14 (1 hour and 15 minutes times \$53.71/hour). The order contains a provision that Dr. La Blanc pay the costs of the proceeding minus \$363.91.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license to practice chiropractic in Wisconsin issued to Michael E. La Blanc, D.C. be suspended for a period of 30 days. Within 30 days of the date on which this Order becomes final, Dr. La Blanc must cease practice temporarily and observe the terms of section Chir 4.07, Wis. Admin. Code for a period of 30 days.

IT IS FURTHER ORDERED that Dr. La Blanc's license is hereby limited to require that

(1) by December 1, 2005 he successfully complete the Illinois Chiropractic Orthopedics Diplomate program offered by the National University of Health Sciences, 200 East Roosevelt Road, Lombard, IL 60148, and (2) by December 31, 2003 he successfully complete a program that satisfies the requirements for a continuing education program approved by the Board, consisting of a minimum of 12 hours, that addresses the diagnosis and treatment of scoliosis. If Dr. La Blanc is unable to complete the second requirement by December 13, 2003 due to the unavailability of an appropriate program, he may apply to the Board for an extension of time in which to complete it.

IT IS FURTHER ORDERED that Dr. La Blanc shall refrain from the treatment of adolescent scoliosis until successful completion of the scoliosis program.

IT IS FURTHER ORDERED that pursuant to § 440.22, Stats., Dr. La Blanc shall be assessed the costs of this proceeding incurred by the Department minus \$363.91, the costs associated with the Complainant's expert witness after September 18, 2002.

Dated: January 22nd, 2003.

Dale Strama, D.C.

Chair

APPENDIX:

ALJ'S OPINION AS FILED IN THE PROPOSED DECISION

Dr. La Blanc's Answer to the Complaint in this matter admits all of the factual allegations of the Complaint except for paragraph #8. That allegation states as follows:

When patient A.C.'s mother informed Respondent of the recommendation for spine fusion surgery, Respondent was surprised that A.C.'s curvature had worsened and now required surgery. Respondent advised A.C.'s mother against surgery, and told her that he could correct the condition himself.

At hearing, the patient's mother, Jana Cleves, testified on that aspect of the matter as follows:

Q. (by Mr. Polewski) In July 2000, you took Dr. -- you took Amanda to Dr. Biagtan. Why did you do that?

A. She had to have another routine physical to enter high school to play sports.

Q. What happened at that appointment with Dr. Biagtan. Were you there?

A. Oh, yes.

Q. What happened?

A. He -- he had her do the same exercise where he bent over and he was very upset.

Q. Where she bent over?

A. Where she bent over, excuse me. Where she bent over and he said this has gotten considerably worse. He said you need to go down and get an x-ray immediately.

Q. Did you?

A. Yes, I did.

Q. And what was the result of that x-ray, if you know?

A. The curvature had gotten -- which we thought at that time to like a degree of a like a 35 or a 38, which when we had gone to Dr. La Blanc was only a 16. And I was very upset. And he said you need to go see the orthopedic surgeon.

Q. Did you?

A. Yes. We made an appointment. But I had -- on my way home I was very upset in the car with Amanda, and I called Dr. La Blanc's office.

Q. From your car?

A. Yes. Got his wife again. He was not in the office, and -- but by the time I had gotten home, Dr. La Blanc had called me.

Q. Did you have a conversation with Dr. La Blanc?

A. Yes, I did.

Q. Tell me about that conversation.

A. Well, I was sharing with him what I had found out on the x-ray, what they had found at the hospital. He was very surprised by that. And he did not think that the surgery was necessary and instructed that he thought that it might be a mistake if I did it, that he wanted me to consider that he could still treat her, and that he had a patient that had the shoulders that were off and that he would crack her back when she had to go to a party or whatever and where an evening dress so that it would be even.

Q. What was your feeling after he told you that?

A. I was upset.

Dr. La Blanc's recollection of the conversation was somewhat different. His testimony included the following:

Q. (by Mr. Icenogle) Now, there was the -- a statement that you suggested further chiropractic treatment even after the -- Mrs. Cleves had been told that the child needed to go in for a spinal fusion. Do you recall making any statement about that?

A. No.

Q. Do you recall telling her that she should not proceed with this -- with the spinal fusion?

A. No.

Q. (by Mr. Polewski) Doctor, would you kindly take a look at Exhibit 1 and page 2 of the document, about the middle of the page -- no, middle -- about a third: Amanda continued her scheduled care with me. Do you see that paragraph?

A. Mm-hmm.

Q. Do you agree that at the end of that paragraph it says: I discussed with Mrs. Cleves at that time that she could continue treatments with me or stay with their family doctor?

A. Yes, I've seen that.

Q. Okay, do you agree that you made that statement?

A. Yes.

Q. You agree then that there was a statement made by you to continue chiropractic care of Amanda's scoliosis in July of 2000?

* * * *

A. I believe what I said is that she could continue to see me or she could go back to her family doctor.

The document referred to in the foregoing excerpt is Dr. La Blanc's October 2, 2000, letter to the investigator for the Division of Enforcement, by which he responded to Ms. Cleve's complaint. It should be noted that there is a further reference to the July 28, 2000, conversation between Ms. Cleve and Dr. La Blanc contained in Dr. La Blanc's patient record (Exh. #1). The patient note states as follows:

Ms. Cleves calls office very upset over physical at family doctor. States that x-ray showed [increase] in curve.

[Recommendation] to Mrs. Cleves that she can seek [treatment] from family Dr. if she chooses for Amanda and to get second opinion for sure.

There is satisfactory evidence that Dr. La Blanc offered Ms. Cleve the alternative of continuing treatment with him. There is not satisfactory evidence that he actually recommended against the surgical intervention. Finding of Fact #8 thus reads as follows:

When patient A.C.'s mother informed Respondent of the recommendation for spine fusion surgery, Respondent was surprised that A.C.'s curvature had worsened and now required surgery. Respondent advised A.C.'s mother that chiropractic treatment of the condition was still an alternative.

Respondent in his Answer also admitted the allegation at paragraph #12, containing the conclusion of law that his actions in this case violated § Chir 6.02(3), Code. That paragraph therefore appears herein as Conclusion of Law #2.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

In his closing argument, Mr. Polewski recommended that Dr. La Blanc's license be suspended for an indefinite period "until such time as the Chiropractic Examining Board is satisfied that he has retrained appropriately to do physical diagnosis and monitoring at least of adolescent scoliosis conditions." Turning to the subject, Mr. Polewski suggested that training beyond the area of adolescent scoliosis may be appropriate.

In his *Brief in Support of Reprimand as Appropriate Discipline* filed prior to hearing, respondent argues as follows:

In the matter at hand, Dr. Le Blanc performed an adequate initial assessment, including a history, physical examination and radiographs. In fact, he documented a thorough pre-treatment evaluation of the patient and informed consent discussion with the patient's mother in the chiropractic record. In sum, he properly evaluated the patient and properly discussed the risk of therapy prior to initiating treatment. There is no allegation that he continued treatment despite evidence that the treatment was ineffective; in fact, he had reason to assume the treatment was effective. Thus he felt justified in continuing the therapy. Furthermore, the complaint makes no allegation of fraud, abuse or unethical behavior. Instead, the fact is he made an error in chiropractic judgment and failed to order proper testing to monitor the patient, which is what led to his failure to detect the progress of the scoliosis.

* * * *

It is also important to note that Dr. Le Blanc's care of this patient occurred between two and four years ago, and that Dr. La Blanc has continued to practice without incident since that time. This is not to say that Dr. La Blanc has not learned from this case. He has refrained from further treatment of adolescents with scoliosis pending further continuing education into the treatment of scoliosis and has already entered into an advanced training program that includes the proper management of scoliosis. The program, the Orthopedic Diplomat program, is sponsored by the National College of Chiropractic of Lombard, Illinois, and consists of a total of 30 seminars offered over a three year period of time.

The ALJ accepts respondent's argument that a suspension of the license is not necessary in this case to fulfill the disciplinary objectives. Were deterrence an important factor here, then suspension of the license might be an appropriate remedy. There is satisfactory evidence, however, that the result here came as a result of a practice error rather than any intentional act by Dr. La Blanc, and deterrence is therefore no more than a minor factor.

Rehabilitation, on the other hand, is a legitimate consideration, and it is deemed that limiting Dr. La Blanc's license to prohibit him from treatment of adolescent scoliosis until he has received further training in management of that condition will ensure that he will not repeat his error during the period until his rehabilitation through remedial education has been completed. Respondent's brief indicates that he is already participating in the Illinois Chiropractic Orthopedics Diplomat program, offered by the National University of Health Sciences, Lombard, Illinois. That program, which is scheduled to conclude in October, 2003, appears to fulfill the requirements for appropriate remedial education, and appears also to include a scope of instruction far beyond the subject of adolescent scoliosis. It is concluded that if Dr. La Blanc satisfactorily completes that program, any concerns regarding his rehabilitation will have been satisfied.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

There is another relevant factor bearing on the assessment of costs in this case, however. With the exception of the disagreement over Dr. La Blanc's reaction to the news that the patient's scoliosis had advanced, every allegation of the Complaint, including the allegation that respondent's actions constituted practicing in a manner which substantially departs from the ordinary standard of care, were admitted by the respondent. Nonetheless, complainant called an expert to confirm what respondent had already admitted to. That testimony added little to this record, and Dr. La Blanc should not be asked to pay for that testimony, or for the time spent by the expert and enforcement personnel in preparing for that testimony. Accordingly, it is recommended that Dr. La Blanc be assessed only one-half of the costs of this proceeding.