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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL
GREGORY R. DANIELS, D.C.	:	DECISION AND ORDER
RESPONDENT	:	Case No. LS0402191CHI
	:	

Division of Enforcement Case File Nos. 02CHI077, 03CHI024 and 03CHI043
PARTIES

The parties to this action for purposes of Wis. Stat. § 227.53, are:

Gregory R. Daniels, D.C.
2257 S. 108th St.
West Allis, WI 53227

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

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

PROCEDURAL HISTORY

A complaint in the above-captioned matter was filed on February 19, 2004. Respondent's answer is dated May 5, 2004. A hearing was held on March 14 and 15, 2005. [\[1\]](#) The Division of Enforcement appeared at the hearing by attorney Jeannette Lytle. Dr. Gregory R. Daniels appeared in person and by his attorneys Gimbel, Reilly, Guerin & Brown of Milwaukee by Raymond M. Dall'Osto. Final arguments were filed on March 24, 25 and April 6, 2005.

FINDINGS OF FACT

1. Gregory R. Daniels, D.C., (Dr. Daniels) whose birth date is August 29, 1957, is licensed to practice chiropractic in the State of Wisconsin, holding license number 1931. His license was first granted on July 19, 1984. Dr. Daniels practices chiropractic at 2257 S. 108th St., West Allis, Wisconsin 53227.
2. Daniels Chiropractic is a chiropractic clinic, owned and operated as a sole proprietorship by Dr. Daniels at 2257 S. 108th St., West Allis, Wisconsin. Dr. Daniels employs staff to assist in clinic operations, including patient scheduling, record keeping, and billing.
3. Christel Rische is a certified chiropractic technician and radiologist technician who works at the Daniels Chiropractic for her brother, Dr. Gregory Daniels. Christel Rische's duties include developing billing statements using the chiropractor's treatment notes and a computer program, taking patients to treatment rooms, answering telephones, taking and developing x-rays, making bank deposits, and responding to requests for copies of medical records.
4. Dr. Douglas Burson worked on a part-time basis as a chiropractor at Daniels Chiropractic during August 2001 through November 2001. Under the terms of the agreement between Dr. Burson and Dr. Daniels, Daniels provided patients, office space, equipment, and staff. Dr. Burson sometimes treated Dr. Daniels' patients when Daniels was out of the office. Billing of Dr. Burson's patients was done by Christel Rische of the clinic staff. Dr. Daniels was to pay Dr. Burson 50% of the fees Dr. Burson generated, but Dr. Burson did not know what rates were charged or what amounts were being billed to patients.
5. Dr. Paul Bateman worked on a part-time basis as a chiropractor at Daniels Chiropractic from August to December 2002. Under his agreement with Dr. Daniels, Dr. Bateman performed exams and adjustments at the clinic. The

amount of time he worked was about two hours, three times a week. Dr. Bateman worked independently of Dr. Daniels at the clinic. Dr. Daniels provided space, equipment and secretarial work at the front desk, including billing services. Dr. Bateman was paid 30% of the gross income of the clinic.

Count I: Felony Conviction for Tax Evasion

6. On or about December 11, 2002, Dr. Daniels was found guilty by the United States District Court for the Eastern District of Wisconsin on two counts of the crime of Knowingly Attempting To Evade And Defeat Personal Income Tax (tax evasion) under 26 U.S.C. § 7201 by failing to report income on his 1993 and 1994 tax returns. *United States v. Gregory Robert Daniels*, United States District Court for the Eastern District of Wisconsin. No. 00-Cr-186, Rudolph T. Randa, Chief Judge.^[2] Some of the income not reported was derived from Dr. Daniels chiropractic practice.^[3]

7. Dr. Daniels was sentenced to 15 months imprisonment on each count, the terms to run concurrently, commencing on January 10, 2003, to be followed by three years of supervised release and ordered to pay \$13,014.15 in restitution, and a \$200 special assessment. Dr. Daniels was incarcerated at Federal Correctional Institution – Oxford beginning January 10, 2003. Early in 2004 he was transferred to a halfway house for a period of 45 days. Dr. Daniels was released from the halfway house at the end of March, 2004.

8. The judgment of the federal district court requires Dr. Daniels to comply with terms of supervised release until March 2007. The supervised release terms include the following:

The defendant shall not hold employment having fiduciary responsibilities during the supervision term without first notifying the employer of her (sic) conviction. The defendant shall not hold self-employment having fiduciary responsibilities without consent of the supervising probation officer.^[4]

9. The circumstances of the licensed activity of a chiropractor include examining into the health and condition of patients and treating and advising patients using chiropractic principles and techniques. In connection with their diagnosis, analysis and treatment, chiropractors create and maintain patient records. Chiropractors prepare and submit bills and insurance claims and collect payment from patients, their insurers and others. Chiropractors prepare records and reports for claims and lawsuits and testify in court and administrative hearings as to their professional opinions concerning the condition of their patients. Chiropractors are limited in the scope of their practice and are prohibited from prescribing drugs, and from using certain devices and techniques, including invasive procedures such as surgery. Chiropractors are required to maintain liability insurance.^[5]

Count II: Failure to Notify Board of Conviction

10. Dr. Daniels knew after his December 11, 2002, criminal conviction for tax evasion that he had an obligation to notify the Chiropractic Examining Board (“Board”) of his conviction. Dr. Daniels did not personally notify the Board. Dr. Daniels did not request his lawyers to report his conviction to the Board.

11. Dr. Daniels sent a letter to the Department of Regulation and Licensing dated December 29, 2002, requesting an extension of time to complete continuing education hours. Dr. Daniels wrote that he had been mistaken as to the time for completing continuing education hours, that courses he had taken on accident reconstruction did not qualify as credit “. . . due to the instructor’s lack of proper notification to the State.” He concluded:

In addition, I am requesting to complete my hours through home study due to recent injury that I have suffered. I have at least two disc herniations and am in a great amount of pain. Please consider this a request for a hardship case.^[6]

12. The Board replied to Dr. Daniels in a letter, dated January 20, 2003, denying his requests and noting that, “. . . The Board considered the medical information you provided, but it also referred to a newspaper article that indicates you will be incarcerated for a period. . . .”^[7]

Count III: Obtaining Compensation by Fraud

13. At some time while Dr. Burson was working at the Daniels Chiropractic, Dr. Daniels instigated a “CareCredit” credit card for clinic patients and wanted Dr. Burson to participate. In late 2001, Dr. Daniels told Dr. Burson that all patients would have a choice to sign up with CareCredit to pay their bills in full.

14. Dr. Daniels told Dr. Bateman that, as a standard policy, he (Dr. Daniels) wanted all patients to sign up for credit through CareCredit.

Patient M.P.

15. Patient M.P. received treatment from Dr. Paul Bateman at Daniels Chiropractic on November 13, 2002. Previously, Patient M.P. had been treated by Dr. Bateman at the Healthwise Neck and Back Center where her treatment costs were paid under her insurance contract.

16. During her appointment on November 13, 2002, Patient M.P. asked whether her health insurance covered treatment at Daniels Chiropractic. She was told by Dr. Bateman and the clinic staff that her insurance coverage did not include Dr. Bateman’s treatments at Daniels Chiropractic. While she was at the clinic on November 13, 2002, clinic staff arranged for her to complete an application for credit through CareCredit. The clinic staff did not explain the terms of the credit card to M.P and told her she would get information in the mail. M.P. signed the credit application form.^[8] She also signed a “CareCredit/Med Cash Sales Slip” for “Chiropractic Services Reference #0056” in the amount of \$5,000.^[9] On November 13, 2002, patient M.P. requested, but did not receive, information about fees charged at the clinic.

17. A statement dated 08-28-2003 of charges for chiropractic services performed for Patient M.P. shows the following charges for November 13, 2002:^[10]

Date	Description	Code	Charge	Credit	Adjust	Balance
11-13-2002	Confirmatory consultat	99273	262.00	.00	.00	262.00
11-13-2002	Spinal Adj 3-4	98941	68.50	.00	.00	330.50
11-13-2002	Hydrocollator appl	97010	34.00	.00	.00	364.50
11-13-2002	Interseg Traction	97012	40.00	.00	.00	404.50
11-13-2002	Myofascial Release	97140	65.00	.00	.00	469.50
11-13-2002	Wrist AP/Lat (Rt)	73100	103.00	.00	.00	572.50
11-13-2002	Cervical-7 view	72052	239.00	.00	.00	811.50
11-13-2002	Thoracic 2 views	72070	147.00	.00	.00	958.50
11-13-2002	Medical Nut Indiv	97802	313.00	.00	.00	1271.50
11-13-2002	Care Credit			4750.00	.00	-3478.50
11-13-2002	Care Credit Adj. Amt.			250.00	.00	-3728.50

18. Daniels Chiropractic staff obtained approval of the credit card application from CareCredit and transferred the sales slip information to the credit card company. On about November 20, 2002, M.P. received a statement from CareCredit with a closing date of November 16, 2002 and listing the transaction on November 13, 2002 as “Purchases/Other Charges” in the amount of \$5,000. The statement reported an annual percentage rate of 12.96%.^[11] Patient M.P. was billed on the CareCredit statement in the amount of the full line of credit of \$5,000, without regard for the specific chiropractic services provided to her. Patient M.P questioned the CareCredit billing with staff at Daniels Chiropractic, including Dr. Bateman, and with CareCredit, directly.

19. Patient M.P. continued to receive chiropractic treatment from Dr. Bateman at Daniels Chiropractic on November 15, 18, 20 and 22, 2002, after which she cancelled her treatments at the clinic. Patient M.P. testified she was charged approximately \$2,600 for all the chiropractic treatments at Daniels Chiropractic, including the November 13, 2002

appointment.^[12]

20. On about February 4, 2003, CareCredit reduced M.P.'s credit card balance to \$2,494.27. Patient M.P. paid this amount plus interest to CareCredit at a rate of \$135 per month.^[13]

Patient J.S.

21. Patient J.S. received chiropractic treatment from Dr. Bateman at Daniels Chiropractic beginning on October 16, 2002. She had been treated by Dr. Bateman twice previously at Healthwise Neck & Back Center. Patient J.S. told Dr. Bateman that her health insurance covered her treatment, but required her to make a co-payment. Dr. Bateman told her that the clinic offered a CareCredit account that would help with her co-payments. J.S. gave the clinic staff her insurance card and completed forms given to her by the clinic staff including an application for credit through a CareCredit credit card.^[14] At her next appointment at Daniel's Chiropractic, on October 21, 2002, she signed a "CareCredit/Med Cash Sales Slip" for "Daniels chiropractic reference #0050" in the amount of \$5,000.^[15] J.S. did not receive a copy of the sales slip for \$5,000 on October 21, 2002.

22. Daniels Chiropractic staff obtained approval from CareCredit of the credit card application and transferred the sales slip information to the credit card company. Subsequently Patient J.S. received a credit card by mail. On November 6, 2002 she received an account statement from CareCredit with a closing date of November 3, 2002 and listing the "CareCredit/Med Cash Sales Slip" transaction on October 21, 2002 as "Heath Care Services West Allis WI" in the amount of \$5,000. The statement reported an annual percentage rate of 12.96%.^[16] Patient J.S. was billed on the CareCredit statement in the amount of the full line of credit of \$5,000, without regard for the specific chiropractic services provided to her. Patient J.S. questioned the November 6, 2002, CareCredit statement with CareCredit, directly, and with Dr. Bateman and others at Daniels Chiropractic.

23. Patient J.S. received chiropractic treatment at Daniels Chiropractic on October 16, 21, 23, 25, 28 and 30 and November 1, 4, and 6, 2002. She was charged approximately \$5,036 for all chiropractic treatment at Daniels Chiropractic. These charges included \$300 for six telephone calls in which she questioned her bill, a \$250 charge for "CareCredit Adj. Amt." and \$195 for "Copy charge (X-Rays)." The clinic received payments from Patient J.S.'s insurance company in December 2002 and January 2003. Patient J.S.'s clinic statement shows a refund of \$2906.40 to her account at Daniels Chiropractic from CareCredit on January 21, 2003.^[17]

Count VI: Failure to Release Patient Records

24. Patient P.H. was injured in an automobile accident on November 19, 2001 and treated by Dr. Daniels beginning in January, 2002. Patient P.H. retained attorney Jeffrey D. Berlin of Mequon (Berlin) who wrote two letters dated October 25, 2002, to Dr. Daniels requesting medical records and a certified copy of billings. In a letter dated December 12, 2002, to Dr. Daniels, Berlin requested Dr. Daniels "final medical report" including a statement concerning any permanent disability. An authorization to release the records accompanied the letter.^[18]

25. A letter to Berlin from Daniels Chiropractic dated December 13, 2002 acknowledged Berlin's request for records, indicated that Patient P.H. "has completed care" and that,

... the cost of the Permanency Report is \$650.00. The cost of the copy of the file is \$55.00. We will be happy to comply with your request as soon as these fees are received in this office.^[19]

Patient P.H. paid Dr. Daniels \$650 for the permanency report on February 10, 2003.^[20]

26. A permanency report is a narrative report that addresses whether injury to a patient has caused any permanent problems from which the patient will suffer any disability, including pain or discomfort, for an indeterminate period of time.^[21] A permanency report dated January 9, 2003 for Patient P.H. is included in the hearing record.^[22]

27. The law firm of Safer & Stein of Milwaukee by Attorney Martin Stein (Stein) began to represent Patient P.H. in April, 2003, and received Berlin's file. Berlin advised Stein that the fees for copies of the records had been paid, but copies

of the records had not been provided.^[23] A form dated January 14, 2002 authorized Dr. Daniels to provide P.H.'s records to attorney Stein.^[24]

28. On May 14, 2003, attorney Martin Stein wrote to Daniels Chiropractic requesting a certified copy of Patient P.H.'s medical records, a permanency report and a certified copy of Daniels Chiropractic's itemized statement of services rendered. Stein noted that he had previously written and called Daniels Chiropractic. Stein noted that Patient P.H. had paid \$650 for a permanency report.^[25]

29. Stein received part of the records for Patient P.H. in early July or late June, 2003.^[26] X-ray reports and copies of x-rays taken by Dr. Daniels were not included in the records he then received.^[27] Subsequently, additional records were provided to Stein. However, Stein never received records for treatments at Daniels Chiropractic from January 2003 through April 16, 2003.^[28] Copies of certified mail receipts in the record indicate that mail deliveries were made from Daniels Chiropractic to Stein's office on July 8, 2003, and November 25, 2003.^[29]

CONCLUSIONS OF LAW

I. The Chiropractic Examining Board has jurisdiction over this matter under Wis. Stat. §§ 446.03 through 446.05.

II. Dr. Gregory Daniels owns and operates Daniels Chiropractic, a chiropractic clinic, as a sole proprietorship and is responsible for billing and record keeping services, as well as other services, provided at Daniels Chiropractic.

Count I: Felony Conviction for Tax Evasion

III. In having been convicted of tax evasion under 26 U.S.C. § 7201, as described in paragraphs 6. through 9. in the Findings of Fact, above, while holding a license as a chiropractor, Dr. Daniels was convicted in federal court of a felony.

IV. The circumstances of the crime of tax evasion under 26 U.S.C. § 7201 substantially relate to the circumstances of the licensed activity of a chiropractor.

V. Wis. Stat. §§ 111.321, 111.322 and 111.335, which generally prohibit discrimination in licensing on the basis of conviction record, do not prohibit the Chiropractic Examining Board from suspending, limiting or revoking the chiropractic license of Dr. Daniels on the grounds of his tax evasion conviction because the circumstances of the crime of tax evasion under 26 U.S.C. § 7201 substantially relate to the circumstances of the licensed activity of a chiropractor.

VI. The conviction of Dr. Daniels of tax evasion under 26 U.S.C. § 7201, as described in paragraphs 6. through 9. in the Findings of Fact, above, is cause for disciplinary action against Dr. Daniels under Wis. Stat. § 446.03(3).

VII. The conviction of Dr. Daniels of tax evasion under 26 U.S.C. § 7201, as described in paragraphs 6. through 9. in the Findings of Fact, above, is unprofessional conduct under Wis. Admin. Code § Chir 6.02(24) and is cause for disciplinary action against Dr. Daniels under Wis. Stat. § 446.03(5).

Count II: Failure to Notify Board of Conviction

VIII. Dr. Daniels' failure to notify the Chiropractic Examining Board of his December 11, 2002, criminal conviction for tax evasion as described in paragraphs 10. through 12. of the Findings of Fact, above, is unprofessional conduct under Wis. Admin. Code § 6.02(23) and is a cause for disciplinary action against Dr. Daniels under Wis. Stat. § 446.03(5).

Count III: Obtaining Compensation by Fraud

IX. In having patients M.P. and J.S. each sign sales slips for \$5000 and transferring the sales slip information to a credit card company in the circumstances described in paragraphs 13. through 23., Dr. Daniels obtained or attempted to obtain compensation for chiropractic services by fraud, specifically by billing for services not rendered, in violation of Wis. Admin. Code § Chir 6.02(14) and is thereby guilty of unprofessional conduct, a cause for disciplinary action under Wis. Stat. § 446.03(5).

Count IV: Aiding and Abetting Unlicensed Practice

X. Evidence in the record is insufficient to establish by a preponderance of the evidence that in or about the year 2001, Dr. Daniels knowingly allowed a formerly licensed chiropractor, whose license had been revoked by the Chiropractic Examining Board for unprofessional conduct, to perform adjustments in his office without a license, as alleged in Count IV of the complaint.

Count V: Failure to Supervise Staff Performing Adjunctive Sources

XI. Evidence in the record is insufficient to establish by a preponderance of the evidence that in or about the year 2001, Dr. Daniels knowingly allowed unlicensed staff members to provide adjunctive chiropractic services to patients without a chiropractor being present as alleged in Count V of the complaint.

Count VI: Failure to Release Patient Records

XII. Daniels Chiropractic had custody of health care records for Patient P.H. in 2002 and 2003 and had an obligation to provide copies of the records according to Wis. Stat. § 146.83.

XIII. Patient P.H. and her attorneys satisfied the conditions under Wis. Stats. § 146.83(1) (b) to receive a copy of P.H.'s health care records by submitting a statement of informed consent and paying the fees requested. In responding to the requests for records by Patient P.H. and her attorneys in the manner described in paragraphs 24. through 29, above, Daniels Chiropractic failed to release the health care records of Patient P.H. in accordance with Wis. Stats. § 146.83, in that the response of Daniels Chiropractic was untimely and incomplete.

XIV. The failure of Daniels Chiropractic to release requested patient health care records to patient P.H. in accordance with Wis. Stats. § 146.83, constitutes unprofessional conduct by Dr. Daniels pursuant to Wis. Admin. Code § Chir 6.02(28) and Dr. Daniels is subject to discipline under Wis. Stat. § 446.03(5).

Count VII: Failure to Prepare Permanency Report

XV. Evidence in the record is insufficient to establish by a preponderance of the evidence that Dr. Daniels failed to prepare a permanency report that a patient had paid for in advance, and failed to refund the patient's money, as alleged in Count VII of the complaint.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED, that license number 1931 of Gregory R. Daniels, respondent, to practice as a chiropractor in the State of Wisconsin, shall be, and hereby is, REVOKED.

COSTS OF THE PROCEEDING

IT IS FURTHER ORDERED that the costs of this proceeding shall be paid by Gregory R. Daniels, as provided in Wis. Stats. §440.22, payable to the Department of Regulation and Licensing. The conclusions that Counts IV, V, and VII were not supported by sufficient evidence shall be reflected in the costs assessed as follows: (1) Investigative and discovery costs directly related to Dr. Heine and any travel or witness fee costs to the Division of Enforcement related to Heine's appearance at the hearing shall not be assessed. (2) Costs related to investigating and proving Count V: Failure to Supervise Staff Performing Adjunctive Sources, and Count VII: Failure to Prepare Permanency Report, involve witness testimony and documentary evidence relevant to proven allegations in other counts. These costs may be assessed.

OPINION AND EXPLANATION OF VARIANCE

Statutes and Rules Involved

The complaint alleges violations of Wis. Stat. § 446.03(1), (3), (4) and (5) and administrative rules of the Board. These subsections provide:

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:

- (1) . . .*
- (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;*
- (4) Has obtained or sought to obtain anything of value by fraudulent representation in the practice of chiropractic;*
- (5) Is guilty of unprofessional conduct;*
- (6)*

In its seven counts, the complaint alleges that Dr. Daniels is guilty of various types of unprofessional conduct. The Chiropractic Examining Board has defined unprofessional conduct in Wis. Adm. Code § Chir 6.02(1) through (30). The subsections of § Chir 6.02 cited in the various counts of the complaint are:

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

- (1) . . .*
- (14) Obtaining or attempting to obtain any compensation for chiropractic services by fraud, including billing for services not rendered or submitting a claim for a fraudulent diagnosis.*
- (15) . . .*
- (16) Aiding or abetting or permitting unlicensed persons in the practice of chiropractic.*
- (17) Failing to exercise a reasonable degree of supervision over subordinate employees.*
- (18) . . .*
- (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.*
- (25) Violating any provision of ch. 446, Stats., or any rule or order of the board.*
- (26) Violating a law, or aiding or abetting the violation of any law substantially related to the practice of chiropractic.*
- (27) . . .*
- (28) Failing to release patient health care records to a patient in accordance with s. 146.83, Stats.*
- (29)*

The crime of tax evasion is codified in 26 U.S.C. § 7201 as:

§ 7201 Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$ 100,000 (\$ 500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

The statutes prohibiting discrimination on the basis of conviction record include the following:

Wis. Stat. § 111.321:

Prohibited bases of discrimination. Subject to ss. 111.33 to 111.36, no . . . licensing agency . . . may engage in any act of employment discrimination as specified in s. 111.322 against any individual on the

basis of . . . conviction record, . . .

Wis. Stat. § 111.322(1):

Discriminatory actions prohibited. Subject to ss. 111.33 to 111.36, it is an act of employment discrimination to do any of the following:

(1) To refuse to . . . license any individual . . . because of any basis enumerated in s. 111.321

Wis. Stat. § 111.335(1) (c):

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to . . . license, or to bar or terminate from . . . 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; . . .

Access by patients to their health care records is required under Wis. Stat. § 146.83 which provides, in part:

146.83 Access to patient health care records.

(1) Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) . . .

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub. (3m).

(c) . . .

Count I: Felony Conviction for Tax Evasion

The Chiropractic Examining Board may discipline a chiropractor who is convicted of any felony, “subject to ss. 111.321, 111.322 and 111.335” and who is guilty of unprofessional conduct, including, “Being convicted of a crime substantially related to the practice of chiropractic.”^[30] Wisconsin’s Fair Employment Act^[31] generally prohibits discrimination, such as a license suspension, on the basis of conviction record.^[32] However, the Fair Employment Act includes an exception, permitting discipline of a licensee convicted of “. . . any felony, . . . the circumstances of which substantially relate to the circumstances of the . . . licensed activity. Wis. Stat. § 111.335(1) (c) 1.

As interpreted by the Wisconsin Supreme Court, the conviction-related discrimination provisions in the Fair Employment Act were intended to balance society's interests in rehabilitating convicted criminals and protecting them from employment discrimination, with its interest in protecting its citizens. *County of Milwaukee v. Labor & Industry Review Comm'n*, 139 Wis. 2d 805, 824 (1987).

It is highly desirable to reintegrate convicted criminals into the work force, not only so they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them. . . . However, the legislature has clearly chosen to not force such attempts at rehabilitation in employment settings where experience has demonstrated the likelihood of repetitive criminal behavior. . . .

In balancing the competing interests, and structuring the exception, the legislature has had to determine how to assess when the risk of recidivism becomes too great to ask the citizenry to bear. The test is when the circumstances, of the offense and the particular job, are substantially related.

Assessing whether the tendencies and inclinations to behave 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.^[33]

The test described in the *County of Milwaukee* case, is to be used in determining whether a substantial relationship exists between the circumstances of the crime and the circumstances of the licensed activity.

Circumstances of the Crime

Dr. Daniels was convicted of two counts of felony tax evasion under 26 United States Code § 7201. The elements of felony tax evasion are willfulness, the existence of a tax deficiency, and an affirmative act that is an evasion or attempted evasion of the tax.^[34] The conscious purpose to defraud that is illegal does not include negligence, carelessness, misunderstanding, or unintentional understatement of income.^[35] The willful attempt to evade tax requires voluntary, intentional violation of a known legal duty.^[36] An attempt to evade tax has occurred where there is knowing and intentional understatement of income resulting in an understatement of tax liability.^[37]

Circumstances of the Profession

The practice of chiropractic is a profession regulated by the state to protect the public health, safety and welfare.^[38] The potential of harm to patients caused by doctor misconduct is recognized in the requirement that chiropractors maintain professional liability insurance. Practicing chiropractors examine into the health and condition of patients, and treat and advise patients using the principles and techniques of chiropractic science. In connection with their diagnosis, analysis and treatment, chiropractors create and maintain patient records, reports and other patient information. Practitioners regularly obtain significant amounts of personal information about their patients relating to the patient's health. Chiropractors prepare and submit bills and insurance claims and collect payment from patients, their insurers and others. Chiropractors prepare records and reports for claims and lawsuits and testify in courts and administrative hearings as to their professional opinions concerning the condition of their patients. Chiropractors are limited in the scope of their practice and are prohibited from prescribing drugs, and from using certain devices and techniques, including invasive procedures such as surgery.^[39]

Many chiropractic patients trust and rely in their doctors to competently examine, diagnose, advise and treat. Patients, insurers and government agencies also trust chiropractors to be honest and truthful in professional representations and billing. Chiropractors usually practice independently of supervision and review by others. Their practice is in technical areas unfamiliar to the average patient.

Circumstances of Crime Related to Circumstances of Profession

The nature of the chiropractic profession is such as to foster criminal activity for a person who has shown a willfulness to violate a known legal duty. Dr. Daniels has shown he is capable of ignoring rules of practice and law in favor of his financial self-interest. Chiropractic practice offers the opportunity to falsify diagnosis and treatment records in order to increase bills and submit false claims. Unique access to private patient information and the ability to manipulate patient records and reports offers an exploitative chiropractor the means to create supporting evidence for inflated claims. The technical nature of the practice combined with the high level of trust usually placed by the patient in the professional may also facilitate criminal behavior by a corrupt practitioner.

The record of this case includes examples of the circumstances of the profession which offer opportunity for crime to a practitioner who has a conscious purpose to defraud. Patients trust their doctor and clinic to assist with medical and insurance forms. Some patients can be misled into signing forms and providing information that benefits the chiropractor to the disadvantage of the patient. In the matters involving M.P. and J.S., the signed forms enabled the clinic to receive immediate payment for work not done. A second example is represented by the permanency report prepared for Patient P.H.. Courts, insurance companies and others rely on professional opinions on the extent of impairment and the need for continuing care, such as expressed in Dr. Daniels report, State's Exhibit 4. No allegation was made or proven that Dr. Daniels conclusions in this permanency report were inappropriate. However it is evident that a dishonest chiropractor could use a diagnosis report as a means of extending treatment for the financial benefit of the practitioner.

The "fostering circumstances" of the medical profession with respect to tax evasion have been identified in case law. In *Windham v. Board of Medical Quality Assurance*,^[40] the California Medical Board disciplined a physician who had been convicted in 1973 of two counts of income tax evasion. The California board revoked respondent's license, but stayed the revocation, placing him on probation for three years. In upholding the board's discipline, the court wrote:

Respondent argues that while tax fraud may adversely reflect on his moral character, it is not the type of transgression which reflects on his professional qualifications, functions or duties. We disagree. First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$ 65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government -- state, local and federal -- in many ways that have nothing to do with his own personal tax obligation. We also point out that respondent's chosen specialty -- forensic medicine -- demands a high degree of honesty in reporting concerning examinations and in testifying, if called upon to do so.

Quite apart from these contacts with various governmental agencies, most practicing physicians deal with various private insurance carriers on a basis which demands utmost honesty in reporting. Above all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity.^[41]

A Washington state court upheld disciplinary action against a physician who had been suspended from practice for eight months after having pled guilty to tax evasion by filing a false and fraudulent return.

The daily practice of medicine concerns life and death consequences to members of the public. They have an understandable interest in the maintenance of sound standards of conduct by medical practitioners. The public has a right to expect the highest degree of trustworthiness of the members of the medical profession. We believe there is a rational connection between income tax fraud and one's fitness of character or trustworthiness to practice medicine, so that the legislature can properly make fraudulent conduct in such instances a ground for revoking or suspending the license of a doctor.^[42]

A 1963 case, *State v. Margoles*,^[43] involved a Wisconsin physician who filed fraudulent income-tax returns and corruptly endeavored to influence a judicial officer and obstruct justice. The Wisconsin Supreme Court referred to the crime as involving a physician who “. . . struck at the economic foundation of his government by fraudulent income-tax returns” The court questioned whether the “moral turpitude” shown by the physician’s crimes had permeated his character and would extend to the physician-patient relationship.^[44]

A recent Wisconsin disciplinary case involved a physician, Dr. James Flowers, who was convicted on a plea of guilty of two counts of filing false corporate income tax returns. The Medical Examining Board found that the crime was substantially related to the practice of a physician. The administrative law judge in the case, found a substantial relationship between the crime and the practice of medicine concluding that the “. . . conviction for filing false tax returns reflects that he is dishonest and untrustworthy and that, if permitted to continue to practice medicine and surgery without the imposition of corrective measures, is likely to cause injury and harm to his patients and the public in the future.”^[45]

In her analysis of whether there was a substantial relationship between Flowers’ convictions and professional practice, the administrative law judge for the Medical Examining Board noted the fraudulent intent inherent in the crime of filing false returns and its potential impact on professional practice. Dishonesty or untrustworthiness in a physician can be particularly injurious to patients as shown by the example of a physician who orders unnecessary tests or performs unnecessary procedures that may put patients at risk in order to enhance the physician's income.

Since 1963, in regulating the legal profession, the Wisconsin Supreme court has regularly disciplined attorneys for failure to file tax returns, tax evasion and related crimes.^[46]

Finally, under Wis. Stat. § 440.12,^[47] chiropractors and other professionals who are delinquent in state income taxes may lose their professional licenses. The legislature has determined that a professional who is delinquent in payment of income taxes should not be permitted to continue in professional practice. This statute makes payment of income taxes a “circumstance of the profession” suggesting that tax evasion is a crime substantially related to professional practice.

Paragraph 13 of the complaint alleges that the conviction of Dr. Daniels for tax evasion is unprofessional conduct

under both Wis. Admin. Code § Chir 6.02(24) and (26). Section Chir 6.02(26) prohibits, “Violating . . . any law substantially related to the practice of chiropractic.” Section Chir 6.02(24) prohibits, “Being convicted of a crime substantially related to the practice of chiropractic. The two charges overlap. The evidence offered proved a conviction in federal court of a crime rather than a violation of the federal statute. Although a violation may be inferred from the conviction, the unprofessional conduct charge based on Wis. Admin. Code § 6.02 (26) is not sustained as a conclusion of law because evidence proved a conviction and the cause for disciplinary action is more specifically described in Wis. Admin. Code § Chir 6.02(24).

Count II: Failure to Notify Board of Conviction

Under rules of the Chiropractic Examining Board, a chiropractor is required to notify the Board of any criminal conviction, the circumstances of which relate substantially to the practice of chiropractic. Neither the Board nor the Department of Regulation and Licensing received notification of Dr. Daniels conviction from either Dr. Daniels or his attorneys. At the hearing, after suggesting initially that his attorneys notified the Department, Dr. Daniels admitted that he was aware of the requirement to notify and that he had not notified the Board.^[48] Dr. Daniels failure to notify the Board of his conviction for tax evasion constitutes unprofessional conduct.

Following his December 11, 2002 conviction, Dr. Daniels sent a letter dated December 29, 2002, to the Department, claiming hardship due to a recent injury and requesting an extension of time to complete continuing education requirements. The Board’s response indicated the Board was aware through a newspaper article of Daniels pending incarceration.^[49]

Dr. Daniels now argues that because the Board indicated it was aware of his incarceration and because he was distracted and in shock as a result of the conviction, he should not be disciplined because he failed to report the conviction. He asserts that he is now contrite and wishes he had reported.

When Dr Daniels requested a hardship extension on December 29, 2002, his then recent conviction and pending prison sentence were certainly foremost in his mind, but were omitted from the letter. Dr. Daniels letter is clear evidence that he intended to mislead the Board and not report his conviction.

The Board’s reference to a newspaper article does not satisfy Dr. Daniel’s professional obligation to report. The press account is not a substitute for notification by Dr. Daniels. The press report may have been incomplete or inaccurate. The press information received by the Board may not have been forwarded to the Division of Enforcement for screening according to the standard procedures when conviction notices are received. (Department procedures for handling conviction notices were described in the testimony of Dave O’Connell).^[50]

Dr. Daniels may be contrite now, but in December 2002, as an alternative to reporting, he chose to mislead the Board.

Count III: Obtaining Compensation by Fraud

At some time in 2001, Dr. Daniels began using the CareCredit credit card in his clinic. He talked with Dr. Burson about encouraging patients to sign up for the credit card. Dr. Daniels told Dr. Bateman that he wanted all patients to sign up for the card as a standard policy.^[51]

Two patients testified that they were encouraged at Daniels Chiropractic to sign up for a CareCredit credit card with a \$5,000 credit limit. Daniels Chiropractic billed the two patients by having them sign a sales slip for \$5,000 in services during either the patient’s first or second appointment. The patients testified that the sales slips were blank when they signed them.^[52]

A few days later each received a credit card bill for the full \$5,000, although charges for services received were then substantially less than \$5,000. Daniels Chiropractic transferred the sales slip to the credit card company. After considerable effort at disputing the bill, the patients received refunds. The patients paid interest on the overcharges. Neither patient was provided a satisfactory explanation for the overcharge. Patient J.S. was charged \$50 per call for six telephone calls to Dr. Bateman seeking help to correct the over-billing.

Under Wis. Admin. Code § Chir 6.02(14), unprofessional conduct includes: “Obtaining or attempting to obtain any

compensation for chiropractic services by fraud, including billing for services not rendered or submitting a claim for a fraudulent diagnosis.” Fraud usually is defined to include an intentional misrepresentation.^[53] While Wis. Adm. Code § Chir 6.02 does not identify intent as an element of fraudulent billing for services not rendered, the evidence nonetheless supports a finding of intentional misrepresentation by Dr. Daniels and his clinic staff. “A person may be said to have intentionally caused the result where the result is substantially certain to occur from the actor's conduct.”^[54] Clinic staff understood that the consequence of having patients sign a CareCredit/Med Cash Sales Slip in the amount of \$5,000 and then submitting the sales slip to CareCredit would be full payment to the clinic of \$5,000 minus the amount owed to CareCredit for its services. The billing of the patients was not an oversight. Dr. Daniels stated his intention to promote CareCredit. Daniels Chiropractic had a financial incentive for using the credit card.

Count IV: Aiding and Abetting Unlicensed Practice

The complaint alleges in Count IV that in or about the year 2001, Dr. Daniels knowingly allowed a formerly licensed chiropractor, whose license had been revoked by the Chiropractic Examining Board for unprofessional conduct, to perform adjustments in his office without a license. In support of this allegation, the Division offered the testimony of Dr. Douglas Burson who worked at the clinic in 2001. Dr. Burson testified regarding Dr. Heine:

Q. Do you know who Dr. Thomas Heine is?

A. My understanding is that he was treating Christel or her family. I had seen him in the office come out of a treatment room with Christel. At one point and I asked Dr. Daniels about who he was and Dr. Daniels told me it was Dr. Heine and I said -- I asked him what he was doing there and Dr. Daniels told me don't worry about it, he treats Christel from time to time, and I looked at him inquisitively and he went into more explanation telling me that Dr. Heine used to have an office, doesn't have a place to treat anybody. He had an unfortunate incident with the state and had his license taken away but was the only one that could take care of Christel out of any of the doctors that she's seen. ^[55]

Dr. Burson stated that he never saw Dr. Heine treat Christel at the Daniels Chiropractic office in August 2001 through November 2001.^[56]

Dr. Thomas Heine testified that he was a patient of Dr. Daniels and had office visits in the latter part of 2001 and that he was introduced to another chiropractor at the Daniels Chiropractic. He denied that he ever treated anyone at the Daniels Chiropractic office in 2001. He testified that, “Since surrendering my license I have treated no one.”^[57] His testimony that he was a patient of Dr. Daniels was confirmed by Dr. Daniels. Dr. Daniels also testified that Dr. Heine was a friend of the family.^[58]

The complaint alleges in paragraph 10 that Dr. Daniels “. . . allowed a formerly licensed chiropractor . . . to perform adjustments in his office . . .” The only direct evidence of the charge is the statement of Dr. Daniels to Dr. Burson, as reported by Dr. Burson. The testimony of Dr. Burson lacks specificity, especially as to what was meant by the phrase “he treats Christel from time to time” in Dr. Daniels statement to Dr. Burson.

The Division questioned Christel Rische about Dr. Heine’s treatment records, for the apparent purpose of showing that no records exist that Dr. Daniels treated Heine. Rische’s testimony was inconsistent.^[59]

There is little basis in the record to find that Dr. Heine adjusted Christel Rische or that Dr. Daniels allowed Heine to perform a chiropractic adjustment in the clinic. The quantity and quality of the evidence supporting the charge is not a preponderance of evidence and insufficient to meet the burden in Wis. Stat. § 440.20(3).

Count V: Failure to Supervise Staff Performing Adjunctive Sources

The complaint alleges in Count V that Dr. Daniels allowed unlicensed staff to perform adjunctive chiropractic services without a chiropractor being present on the premises. This allegation was denied.

With regard to supervision of adjunctive chiropractic services, Dr. Burson testified:

Q. Was there ever an occasion when you think that any of the office staff at Daniels Chiropractic might have provided therapy to a patient when there was no chiropractor present?

A. One time I went into -- when I came into the office to talk to Dr. Daniels about the money that he owed me from one of the patients that was mine, his -- the only two office staff that were in there that day was Pam and Nicole and I was just curious as to what had been going on in the office and they talked about how they --
. . . Objection overruled . . .

A. And Nicole showed me this ABS decompression system which is an offshoot of an orthopedic decompression system and she said that they put patients on it and then I mentioned even when Dr. Daniels isn't in the office and she said, oh, yeah, we don't need him in the office. They just come in and we put them on. We can hook them up and then turn the music on and let it go.[\[60\]](#)

Nicole did not testify.

The Division points also to Dr. Bateman's testimony to support Count V.

Q. And what were the circumstances of your leaving?

A. I came in on a Monday morning and there was a cardboard box with my personal equipment in it and a note from or a letter from Dr. Daniels that my relationship with that office was severed and the technician or person that gave me the box told me that she was instructed to do so and that if I didn't leave or I didn't -- or I did come back, that she was to call the police.

Q. And who was that that gave you your box and told you these things?

A. I don't recall her name. She was on staff.

Q. Do you recall generally what she looked like?

A. She was heavyset, heavyset gal, and did all of the therapies.

Q. Who else was in the office at that time?

A. I don't think there was anybody in that office, but I do -- as far as work personnel, but there was a patient in there.

Q. And what was going on with that patient?

A. They were being treated.

Q. And there was no other chiropractor there?

A. Not -- not to my knowledge.[\[61\]](#)

On cross examination Dr. Bateman testified that on that Monday he did not go into the treatment areas of the clinic, did not see Dr. Daniels, was told that there was a patient in the treatment area, but did not see whether a patient was there and did not observe any treatment of patients.[\[62\]](#)

Dr. Burson's testimony is indefinite as to when his statement was made. Dr. Bateman's conclusions are questionable. Dr. Daniels may have been in the clinic, but did not want to see Dr. Bateman under the circumstances of his leaving. The testimony of Dr. Burson and Dr. Bateman do not establish specific facts that support finding a violation. Fundamental fairness requires greater specificity in the proof. The quantity and quality of the evidence supporting the charge is insufficient to meet the preponderance of evidence burden in Wis. Stat. § 440.20 (3).

Count VI: Failure to Release Patient Records

Patient P.H. had a statutory right to receive copies of her health care records and to have copies made for her attorneys within a reasonable time after her request. When Patient P.H.'s attorney paid the fees for the records in advance and provided a statement of informed consent, Daniels Chiropractic acquired a duty to see that he received a copy of the records within a reasonable time. Daniels Chiropractic's response to her request was untimely and incomplete.

Count VII: Failure to Prepare Permanency Report

Count VII alleges that by failing to prepare the permanency report that the patient had paid for in advance, and by failing to refund the patient's money, Dr. Daniels committed unprofessional conduct pursuant to Wis. Admin. Code § Chir 6.02(14) and is subject to discipline under Wis. Stat. §§ 446.03(4) and (5).

Count VII alleges no permanency report was prepared. Evidence in the record establishes that a permanency report was prepared. Copies are included in the record as exhibits.^[63] Patient P.H. testified that she never personally receive a copy of a permanency report from Dr. Daniels. She also testified:

Q. Could you take a look at State's Exhibit 4? Could you take a look at it and then tell me if you've ever seen this document before?

A. I believe I saw this after my lawyer received it. I got a copy from him.

Q. Any idea when that was?

A. I honestly don't remember the date.^[64]

The record does not support the Count VII allegation.

Order and Explanation of Variance

Dr. Daniels attempted to show at the hearing that others were responsible for the billing and records violations at Daniels Chiropractic. Under the regulatory structure for the chiropractic profession established in Wis. Stat. ch. 446 and administrative rules of the Board, the doctor has final authority and responsibility for compliance with professional standards, not the clinic staff. The extensive Board rules describing unprofessional conduct make it clear that billing practices and patient record access rights are within the scope of professional practice.^[65] Wis. Adm. Code § 6.02(17) requires chiropractors to exercise a reasonable degree of supervision over subordinate employees. Fraud in billing and denial of patient access to records constitute unprofessional conduct by the supervising chiropractor, in this case, Dr. Daniels. Dr. Daniels must bear professional responsibility for the violations. Dr. Daniels is the sole proprietor of the Daniels Chiropractic and the only person responsible to the Board for seeing that chiropractic practice at the clinic meets professional standards and that patients are protected.

Dr. Daniels was obligated to report his conviction to the Board. A licensee who notifies the Board of a conviction adheres to a standard of professional responsibility, expresses a willingness to comply with the law and acknowledges wrongdoing consistent with a program of rehabilitation. The fact that Dr. Daniels attempted to mislead the Board following his conviction is especially troublesome because it raises questions about Dr. Daniels' sincerity and commitment to rehabilitation.

The Administrative Law Judge recommended a suspension of license for a short period with license limitations imposed upon reinstatement.

The Board has determined that the violations proven warrant revocation. An exception in the Fair Employment Act permits the Board to take disciplinary action based on the felony conviction to protect the public welfare. Dr. Daniels' conviction was for tax evasion. The Division proved other instances of unprofessional conduct in practice, including fraud. The record suggests that the character trait that led to tax evasion also influenced Dr. Daniels in his chiropractic practice.

While Dr. Daniels' tax evasion conviction and the other violations do not show he is incompetent in treating patients, the violations proven reveal character traits, dishonesty and greed. If Dr. Daniels were to be permitted to continue practicing, he would continually be presented with opportunities to abuse his patient's trust and confidence for his own financial benefit.^[66]

Dr. Daniels has been found to be subject to discipline for four (4) separate violations. Those violations involve misconduct in his interactions with the Federal Government, misconduct and deceit towards this Board, misconduct and fraud in dealing with insurance carriers and misconduct towards patients in failing to release health care records. The Board has considered the number of Dr. Daniels violations, the broad range of people and entities adversely affected by the misconduct, the need to protect the public and the seriousness of the violations. It concludes that revocation of Dr. Daniels' license to practice as a chiropractor is necessary.

The risk of recidivism is too great to allow the respondent access to those entities that he has victimized in the past. The character traits revealed by the unprofessional acts committed by the respondent appear to be so deeply rooted that no amount of supervision or oversight will adequately protect society. He was convicted of fraud, the elements of which require lying with the intent that others rely upon the lies to their detriment. He then failed to disclose the conviction to the Board.

When confronted with this accusation he originally attempted to deceive by claiming that he thought his attorneys had notified the Board. He continued his deceitful ways by seeking an extension of time to comply with the continuing education requirement by use of yet another deceitful tactic, claiming health related conditions. When confronted with this deceit he attempted to shift the blame by downplaying the seriousness of his conduct. This pyramid of lies and deceit indicate an unduly high risk of recidivism. Where the Board would like to see remorse and rehabilitation, it sees resentment and recrimination. The Wisconsin Supreme Court has recognized that reviewing agencies such as this Board may review the acts to determine "whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based upon the traits revealed." See *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). The record here reveals that the respondent will engage in fraud and deceit to gain financial advantage and will engage in fraud and deceit to avoid responsibility for the original actions.

The respondent has demonstrated a character of dishonesty and greed directed at all who come in contact with him, whether patient, insurance company, the government or this Board. To request another chiropractor to monitor such a person to catch and prevent a return to his basic character would require a Herculean task beyond the ken of any one person. In addition to catching the lies, merely confronting the respondent with the lie is not likely to result in corrective behavior but is likely to result in additional lies and deceit in an attempt to justify the inappropriate behavior.

It is noteworthy that the federal court believed that the tax evasion offense required a sentence to prison. The federal courts sentence suggests that rehabilitation was not likely and that supervision in the community would be ineffective. This Board has similar concerns.

Given the broad scope of Dr. Daniels' misconduct, the deeply rooted character of deceit, and the broad spectrum of entities negatively affected by those lies, the Board cannot envision any discipline short of revocation that would adequately protect the public and send an adequate message of deterrence to its other licensees. This profession struggles daily in the court of public opinion, activities such as those engaged in by the respondent only compound that struggle. A message of deterrence to other practitioners is appropriate.

Costs

Wis. Stat. § 440.22(2), provides in part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The recommendation that the costs of the proceeding be assessed, except for those investigative and discovery costs related to Dr. Heine, is based primarily on fairness to other members of the profession. 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. Licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. The costs of prosecuting cases for a particular licensed profession are 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. 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.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist.^{[\[67\]](#)}

Dated this 22nd day of June, 2006.

CHIROPRACTIC EXAMINING BOARD

Steven J. Silverman

On behalf of the Board

[1] References to the record are noted as follows: Pages of the transcript for March 14, 2005 are identified as “T1:page” and for March 15, 2005, and “T2:page.” Exhibits are State’s Exhibit #, offered by the Division of Enforcement and Respondent’s Exhibit R#, offered by Dr. Daniels.

[2] State’s Exhibit 19. Judge Randa’s decision was appealed and affirmed. The United States Supreme Court denied certiorari. *United States v. Daniels*, 387 F. 3d 636; (7th Circ., 2004) cert. den., 2005 U.S. LEXIS 2336 (U.S., Mar. 7, 2005).

[3] The complaint alleges in paragraph 3. that Dr. Daniels failed to report over \$260,000 in income on his 1993 and 1994 tax returns. The answer admits the allegations in paragraph 3. of the complaint “. . . in that he was found guilty of the offense described above after a second jury trial.”

[4] Paragraph 4., “Additional Supervised Release Terms” Judgment, *United States v. Gregory Robert Daniels*, United States District Court for the Eastern District of Wisconsin. No. 00-Cr-186, p.4. State’s Exhibit 19.

[5] The circumstances of chiropractic practice are described throughout Wis. Stat. ch. 446 and the administrative rules regulating the practice, especially Wis. Stat. §§ 446.01(2), 446.02, 446.03(3) and Wis. Adm. Code ch. Chir 4.

[6] Copies of the letter are in State’s Exhibit 22 and Respondent’s Exhibit R5.

[7] State’s Exhibit 27, Respondent’s Exhibit R5.

[8] State’s Exhibit 9.

[9] State’s Exhibit 10.

[10] State’s Exhibit 12.

[11] State’s Exhibit 11.

[12] T1:101, 102. The statements for services submitted as State’s Exhibit 12 and Respondent’s Exhibit 1 are inconsistent.

[13] State’s Exhibit 11.

[14] State’s Exhibit 13.

[15] State’s Exhibit 14.

[16] State’s Exhibit 16.

[17] State’s Exhibit 15.

[18] State’s Exhibit 23, pp. 000122 and 000123.

[19] State’s Exhibit 23, p. 000124.

[20] State’s Exhibit 5.

[21] T1:58.

[22] States Exhibit 4, States Exhibit 23, pp. 000127 - 000134 and 000238 - 000245.

[23] T1:32.

[24] State’s Exhibits 7.

[25] State’s Exhibit 1.

[26] T1:36.

[27] State’s Exhibit 3.

[28] T1:39.

[29] State’s Exhibit 23, pp. 000144, 000145.

[30] Wis. Stat. § 446.03(3) and (5), Wis. Adm. Code § Chir 6.02(24).

[31] Wis. Stat. §§ 111.31 through 111.395.

[32] Wis. Stat. § 111.322.

[33] *County of Milwaukee* at 823, 824.

[34] *Spies v. United States*, 317 U.S. 492 (1943), *Lawn v. United States*, 355 U.S. 339, 361 (1958), *Sansone v. United States*, 380 U.S. 343, 351 (1965).

[35] *United States v Duran*, 208 F Supp 890 (1962, ND Ill), affd 324 F2d 859 (1963, CA7 Ill), cert den 377 US 906 (1964).

[36] *United States v Pallan*, 571 F2d 497 (1978, CA9 Cal), cert den 436 US 911(1978).

[37] *United States v Ratner*, 464 F2d 101 (1972, CA9 Cal).

[38] *Strigenz v. Department of Regulation*, 103 Wis. 2d 281, 286 (1981); *Gilbert v. State, Medical Examining Bd.*, 119 Wis. 2d 168 (1984).

[39] Wis. Stat. §§ 446.01, 446.02, Wis. Adm. Code ch. Chir 4.

[40] *Windham v. Board of Medical Quality Assurance*, 104 Cal. App. 3d 461, 464-465 (Cal. Ct. App., 1980).

[41] *Windham* at 470.

[42] *In re Kindschi*, 52 Wn. 2d 8, 12 (Wash., 1958).

[43] *State v. Margoles*, 21 Wis. 2d 224, 230 (1963).

[44] *Margoles* at 230.

[45] *In The Matter Of Disciplinary proceedings Against James L. Flowers, M.D, Respondent*, Case No. LS0208062MED, <http://drl.wi.gov/dept/decisions/docs/0503030.htm>.

[46] See, for example, *In the Matter of Disciplinary Proceedings Against Joseph F. Paulus*, 2004 WI 71; 272 Wis. 2d 143 (2004); *In the Matter of Disciplinary Proceedings Against Theodore A. Miller*, 58 Wis. 2d 396 (1990); *State v. MacIntyre*, 41 Wis. 2d 481 (1969); *State v. Roggensack*, 19 Wis. 2d 38, 119 N.W.2d 412 (1963).

[47] Wis. Stat. § 440.12 provides: “Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).”

[48] T1:208, 209; T2:176.

[49] State’s Exhibit 22 and 27, Respondent’s Exhibit R5.

[50] T1:70-79.

[51] T1:249; T2:66, 87.

[52] T1:86 and 136.

[53] See, for example, Wis. Stat. § 943.20(1) (d), Theft by Fraud and § 49.49(1), Medical Assistance Fraud.

[54] *Strenke v. Hogner*, 2005 WI 25, 35 (2005).

[55] T2:68, 69.

[56] T2:92.

[57] T2:100 - 102.

[58] T2:187 - 190.

[59] T2:120, 164, 165.

[60] T2:67, 68.

[61] T2:254, 255.

[62] T2:270, 271.

[63] State's Exhibit 4 and State's Exhibit 23, pp. 000127-000134 and 000248-245.

[64] T1:64.

[65] Wis. Adm. Code § Chir 6.02.

[66] It was not alleged nor is it found that the billing process at Daniels Chiropractic involving the use of a "travel card" was manipulated for Dr. Daniels benefit. However, the billing procedures offer a potential for abuse. Patients who are unfamiliar with the technical terms or codes for the chiropractic services are unable to verify the accuracy of a bill. Accuracy in billing requires the chiropractor and the clinic staff to be scrupulous.

[67] *In the Matter of Disciplinary Proceedings against M. Joanne Wolf*, 165 Wis. 2d 1, 12 (1991); *In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III*, 116 Wis. 2d 380, 385 (1984).