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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JOHN A. NILSSON, D.C.,
RESPONDENT

FINAL DECISION
AND ORDER
LS 0509021CHI

Division of Enforcement Case File No. 03-CHI-059

PARTIES

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

John A. Nilsson, D.C.
PO Box 66
Grantsburg, WI 54840

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

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on January 20, 2006 before Administrative Law Judge Colleen M. Baird. The Division of Enforcement appeared by Attorney James E. Polewski. The Respondent, John A. Nilsson, appeared on his own behalf. Based on the evidence submitted in this case, the undersigned Administrative Law Judge recommends that the Chiropractic Examining Board adopt as its Final Decision and Order in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. John A. Nilsson, D.C., ("Respondent") was born on June 15, 1955, and was licensed to practice chiropractic in the state of Wisconsin pursuant to license number 1631, first granted on December 12, 1980.
2. On December 18, 2002, Respondent attempted to renew the registration of his license to practice chiropractic in Wisconsin at the biennial renewal period ending December 31, 2002.
3. On December 19, 2002, the Department of Revenue sent a "ten day" letter to the Respondent advising him that he was liable for delinquent state taxes and accrued interest as provided by law. The letter indicated that unless the Respondent resolved his delinquent tax account with the Department of Revenue within ten (10) days after the date of the notice, the Department would instruct the Department of Regulation and Licensing to deny issuance of his credential.
4. On February 5, 2003, the Department of Revenue filed a statement with the Department of Regulation and Licensing indicating that the Respondent remained liable for delinquent taxes and a certificate of delinquent taxes had been issued to the Respondent, and a hold had been placed on the renewal of his credential.
5. By letter dated March 14, 2003, the Department of Regulation and Licensing informed the Respondent that his application for renewal of his license registration was denied effective March 19, 2003, pursuant to Wis. Stat. § 440.12, on the basis that he had been determined liable for delinquent taxes under Wis. Stat. § Chapter(s) 71 and 77.
6. Respondent was informed of the denial of his renewal application by certified mail, return receipt requested, mailed to his address of record, on March 19, 2003, and received on March 21, 2003.
7. On April 18, 2003, the Respondent's license registration to practice chiropractic in Wisconsin expired and he was no longer eligible to practice chiropractic.
8. Between April 18, 2003 and June 15, 2005, Respondent practiced chiropractic in Wisconsin without a current license registration to do so.
9. The Chiropractic Examining Board had previously issued an Administrative Warning to the Respondent, on December 13, 2001, for practicing chiropractic without the proper licensing credentials between January 1, 1999, and September 14, 2000.

CONCLUSIONS OF LAW

1. The Chiropractic Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 446.02.

2. Respondent, by his practice of chiropractic without current license registration as described in paragraph 5 above, violated Wis. Stat. s. 446.02(1)(a).

NOW, THEREFORE, IT IS HEREBY ORDERED that

1. The chiropractic license of Respondent, John A. Nilsson, D.C., is hereby REVOKED.
2. Upon resolution of his tax delinquency, Respondent may petition the Board for reinstatement of his credential.
3. The respondent shall pay the full COSTS of this proceeding.

OPINION

The essential facts involved in this matter are not disputed. Respondent admitted that he did not pay his delinquent state taxes and that he continued to provide chiropractic treatment to patients after the expiration of his license registration. However, the Respondent contends that he was acting under the mistaken understanding that the tax delinquency was on hold because he was working with the Department of Revenue (Revenue) to resolve the delinquency. The Respondent has also claimed that he assumed that he could continue to lawfully practice because the Department of Regulation and Licensing (DRL) did not reimburse his renewal fee until September 2005. For these reasons, the Respondent maintains that he should be allowed to renew his registration and not be subject to discipline. The Respondent offered the following testimony at the hearing:

... Your Honor, in the interest of saving the Court's time, I will not contest the merits of the case. I would, however, beg the indulgence of the Court to address the issue of punishment at some length. In particular, I would like to discuss two specific issues that are, I believe, relevant to the issue. My personal character, which includes my history as a chiropractor. First, chiropractic is not my hobby; it's my livelihood in which I have been engaged for more than 23 years. During that time I have served over thousands of happy patients, clients, and I have never had an administrative complaint filed against me by any patient that I am aware of. In addition, I am a volunteer fireman for over 23 years in our community of Grantsburg, Wisconsin. On December 29th, '05, that was a 12 -year mark since I donated my left kidney to sister-in-law. So as you can see, I am here to serve and help others, it's my nature. In regards to my punishment for this matter, I choose to compare my complaint to that of Dr. Schott, which you have stated his case was similar to mine. [Transcript at pgs. 24-25]

The Respondent testified that he continued to work as a chiropractor because he was told not to be concerned about his license as long as he worked with agents to resolve the tax issues, that his license would be fine. The Respondent testified that he and his wife have

worked on this tax problem for over two years and they have not ignored it. The Respondent also testified that he was under a lot of stress, that he had a sick daughter, and that he had talked to two different revenue agents that told him not to worry about his license. He testified that he was told that if he worked with them and came to a resolution of the tax issue, that his license would be fine. [Transcript at pgs. 27, 28].

The gravamen of the Respondent's testimony throughout the hearing was that he had problems with the state taxing authority and the Internal Revenue Service (IRS) for years, and that he could not get a straight answer from these authorities regarding his tax problems. He presented himself as a well-intended person who had the misfortune of dealing with government officials who were not able to help him resolve his problems. The respondent also testified that he may have overlooked the notice in the certified letter sent to him by the DRL regarding the denial of his renewal. Respondent testified that he was confused about the status of his license and that he did not purposely treat patients knowing that this license was invalid. [Transcript at pgs. 42-44].

Although the Respondent's claims are superficially appealing, they are not borne out by the evidence in the record. There was no documentary or testimonial evidence to support the claim that the Respondent was cooperating with Revenue or that the prohibition on renewal of his license had been waived or excused. Nor was there any evidence to suggest that Revenue had any difficulty in determining the amount of taxes owed by the Respondent. A copy of the October 3, 2005, Statement of Delinquent Tax Account issued by Revenue showed the exact amount owed by the Respondent with interest calculated on a daily basis. [Ex. 6] The only other evidence submitted at the hearing relative to the issue of the Respondent's tax problems was a copy of a Wisconsin Circuit Court Access (WCCA) report which showed that the Respondent had a judgment of foreclosure, civil judgments for debts, and a federal tax claim by the IRS. [Ex. 5].

The Respondent's situation is different than that involved in the prior disciplinary order of the Board. *In the Matter of a Petition for Administrative Injunction Involving Dennis Schott, D.C.*, (LS0309232CHI). In that case, Dr. Schott had made a timely application for renewal of his credential, but it was denied on the basis that he had a state tax delinquency. Dr. Schott then paid his delinquent taxes and Revenue issued a notice indicating that he was no longer liable for unpaid taxes. Dr. Schott returned to practice but failed to file an application for renewal of his credential. The DRL commenced an action for an administrative injunction to prevent Dr. Schott from practicing until his credential was renewed. An injunctive action was commenced instead of a Class 2 disciplinary proceeding because Dr. Schott had failed to renew his credential within five years of the renewal date. The injunction, which was ultimately issued against Dr. Schott, carried a potential penalty of criminal prosecution and forfeitures for continued practice without a valid credential. The Respondent's situation is different; he has not satisfied his tax delinquency and he cannot renew his credential until such time as those taxes are paid. The Respondent was not required to obtain a new credential in 2003 because it has not been five years since the date of his last renewal. A Class 2 disciplinary action is the appropriate action for the Respondent's situation.

The preponderance of the evidence presented shows that the Respondent has a history of financial problems associated with debts and tax delinquencies. The evidence also suggests that the Respondent has procrastinated in resolving his tax problems under the claims of being confused about his obligations. The claim that he "could not get a straight answer" from the agents at Revenue does not constitute a valid defense or excuse for his unpaid delinquencies. There was no evidence submitted that the Respondent had availed himself of the opportunity to enter into a repayment agreement with Revenue or that his tax delinquency was subject to a pending appeal or a stay from a court of competent jurisdiction.

Nor was the Respondent able to demonstrate a reasonable basis for his belief that he could continue to practice chiropractic after receipt of the DRL denial notice on March 14, 2003. The Respondent offered no evidence to support his contention, such as correspondence or communication from the DRL indicating that he could continue to practice. The delay in the return of the Respondent's renewal fee, (which was submitted on or about the same time of the notice of denial and may have crossed in the mail) does not constitute an approval to renew his credential.

The law is clear in regard to the preclusive effect of a tax delinquency on the renewal or issuance of an occupational credential. Under Wisconsin law, the DRL must deny an application for an initial credential or a credential renewal or revoke a credential if Revenue certifies that the applicant or credential holder is liable for delinquent taxes. Wis. Stat. § 440.12. The legislature has spoken; the failure to satisfy tax obligations will result in adverse occupational consequences. A credential holder is precluded by law from renewing their credential until tax obligations are satisfied.

COSTS OF THE PROCEEDING

The assessment of costs in Class 2 proceedings is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code. Section 440.22 (2), Stats., provides in relevant part as follows:

"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 presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the board and that the discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Chiropractic Examining Board has the discretion to impose all, some, or none of the costs of the proceeding. It is recommended by this Administrative Law Judge that the full costs of

this proceeding be assessed against the Respondent. This recommendation is based on two factors. First, the DRL is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Second, 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.

Although the imposition of costs will add to the existing financial burden facing the Respondent, it is also 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. The costs of this proceeding should not be passed along to the other members of the profession who abide by the rules of practice and follow the law. The recommended discipline and costs in this case will serve to deter the Respondent and others from practicing after denial of a credential, and to impress upon the Respondent the importance of following through and taking action to resolve his tax delinquencies. In this regard, the Respondent's delay and procrastination has only served to compound his problems. Under the terms of this order, the Respondent must satisfy his outstanding delinquency as a prerequisite for petitioning to reinstate his credential. Reinstatement of his credential shall be at the discretion of the Board, upon whatever terms and conditions it deems appropriate, given the circumstances of the Respondent's violations.

Based upon the record herein, the Administrative Law Judge recommends that the Wisconsin Chiropractic Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein. The rights of the a party aggrieved by this Decision to petition the Board for a rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal" information.

EXPLANATION OF VARIANCE

The board adopts the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge (ALJ). The board also adopts the recommended Order, as modified. The ALJ's recommended Order ¶ 2 proposed that:

Upon resolution of his tax delinquency, the Respondent may petition the Board for reinstatement of his credential. Acceptable form of resolution of the tax delinquency shall be payment in full of the outstanding arrearages or entry into a formal agreement with the Department of Revenue for repayment of an installment basis. The terms of the resolution shall be acceptable and satisfactory to the Department of Revenue and the Board.

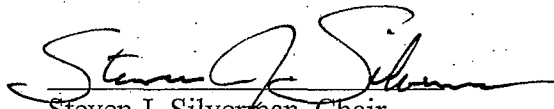
The Board has modified that portion of the Order to read:

Upon resolution of his tax delinquency, the Respondent may petition the Board for reinstatement of his credential.

The basis for this variance in the Order is as follows:

The board deleted the last two sentences from Order ¶ 2 to avoid confusion about the respective authority of the Department of Regulation and Licensing and the Department of Revenue. The manner in which Mr. Nilsson's tax delinquency can be resolved is set by statute. It falls within the province of the Department of Revenue, and the Board is not involved in that process. See Wis. Stat. §§ 73.0301(1)(c) and 440.12, and Wis. Adm. Code RL ch. 9.

Dated this 20th day of November, 2006.



Steven J. Silverman, Chair
Chiropractic Examining Board

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