

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
DAVID L. HAGEN, D.C., : LS0810161CHI
RESPONDENT. :

[Division of Enforcement Case # 04 CHI 056]

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

David L. Hagen, D.C.
58 Cherokee Circle #103
Madison, WI 53704

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

Wisconsin Chiropractic Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

An Informal Settlement Conference was held before the Board on August 14, 2008. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Chiropractic Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. David L. Hagen, D.C., Respondent, date of birth July 25, 1931, is licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the state of Wisconsin, pursuant to license number 1225, which was first granted January 25, 1962.

2. Respondent's last address reported to the Department of Regulation and Licensing is 58 Cherokee Circle, #103, Madison WI 53704. Respondent does not have his own chiropractic practice. He works part-time as a relief chiropractor in the offices of other chiropractors in Wisconsin.

PRIOR WISCONSIN DISCIPLINE OF AUGUST 17, 2000

1999 California Convictions

3. In August 1998, Respondent was charged in Municipal Court of California, County of Contra Costa, with 9 felony counts of submitting fraudulent claims to an insurance company for payment of a health care benefit (with a penalty enhancement based on the total amount exceeding \$50,000), 3 felony counts of unlawfully paying individuals for referring patients and 2 felony counts of conspiracy to commit a felony. The alleged conduct took place from 1989 through 1996.

4. On October 7, 1999, as a result of a plea agreement in the criminal matter:

a. Twelve felony counts were dismissed.

b. One felony count was reduced to a misdemeanor.

c. Respondent pled no contest and was convicted of one felony violation of Penal Code Section 550(a)(6) [submission of a false and fraudulent claim for insurance reimbursement]; and one misdemeanor violation of Business and Professions Code 650 [unlawful payment of consideration for referral of patients].

d. Respondent was placed on three years probation, fined \$2,500, ordered to pay restitution of \$16,500 and ordered to honor any civil judgments obtained by insurance companies.

5. On February 9, 2007, pursuant to California penal Code § 17, the felony charge upon which Respondent was convicted was reduced to a misdemeanor. The order of the court states that the reduction does not relieve Respondent of the obligation to disclose the conviction in response to a question on an application for licensure from any state or local agency.

6. It is Respondent's contention that he did not commit the felony offense for which he was convicted as set forth in paragraph 4.c, above, and that he entered into the no contest plea to the felony count based on the advice of his attorneys.

2000 California Discipline

7. On November 11, 1999, Respondent signed and entered into a stipulation for proposed decision with the California Attorney General's Office. On December 24, 1999, the California Board of Chiropractic Examiners accepted the stipulation and issued the Order accepting the surrender of Respondent's license to practice chiropractic in the state of California, effective January 5, 2000. The Order was based on Respondent's October 7, 1999 criminal conviction.

8. Respondent's California license remains surrendered.

2000 Wisconsin Discipline

9. On January 5, 2000, the California Board sent a copy of its December 24, 1999 Order to this Board. That Order included information about the California convictions. Case 00CHI002 was opened for investigation and assigned to the HBX team in the Division of Enforcement (DOE), which at that time processed out of state discipline and criminal conviction cases for all the health boards.

10. On August 17, 2000, Respondent signed and entered into a stipulated resolution with DOE. On September 21, 2000, the Wisconsin Board accepted the Stipulation and issued a Final Decision and Order in the Disciplinary Proceedings against David L. Hagen, D.C., case number LS-0009211-CHI. The Final Decision and Order did not mention Respondent's failure to notify this Board of the California convictions and discipline, but:

a. Found that the acceptance of the surrender of Respondent's license to practice as a chiropractor in the state of California by the California Board of Chiropractic Examiners was a disciplinary action and unprofessional conduct in violation of Wis. Admin. Code § Chir 6.02(22).

b. Ordered that Respondent's Wisconsin license be limited by prohibiting him from practicing chiropractic in the state of Wisconsin until such time as Respondent:

- 1) Successfully completed a state law examination on the provisions of the Wisconsin statutes and administrative rules relating to chiropractic; and
- 2) Appeared before the Board and satisfactorily answered questions regarding his proposed practice in Wisconsin, including but not limited to his billing practices and anticipated advertising and/or other promotional campaigns relative to his contemplated Wisconsin practice.

2000 Arizona Discipline

11. During the time Respondent was in contact with DOE in 2000, Respondent knew that the Arizona Board had issued a disciplinary complaint against him. The complaint was based on the California actions and on Respondent allegedly having made a fraudulent statement on his application for renewal of his Arizona license. The Wisconsin Board's rules do not require a Respondent to report pending disciplinary actions and Respondent elected not to tell DOE about the Arizona proceeding. On August 23, 2000, a hearing was held before an administrative law judge (ALJ) in Arizona, based

upon the previously issued complaint.

12. On October 12, 2000, the Arizona State Board of Chiropractic Examiners issued an Order adopting the ALJ's August 31, 2000 Findings of Fact, Conclusions of Law and Recommended Decision and revoking Respondent's license to practice chiropractic in the state of Arizona. The discipline was based on:

- a. Respondent's October 7, 1999 criminal convictions in California.
- b. Respondent's January 5, 2000 California discipline, to which he had stipulated on November 29, 1999.
- c. Respondent having engaged in fraud or deception in securing an Arizona license by answering "No" to each of the following questions on his 2000 License Renewal Application submitted on or about December 17, 2009, when he knew each answer was false:
 - 1) "Pursuant to A.R.S. § 32-924(B)14, has any licensing board other than the Arizona Board of Chiropractic Examiners initiated or taken any disciplinary action against any of your licenses since you last applied for renewal of this license?"
 - 2) "Pursuant to A.R.S. § 32-924(B)6, have you been convicted of or pled guilty or pled nolo contendere to a misdemeanor or a felony since you last applied for renewal of this license?"

13. Respondent's Arizona license remains revoked.

Failure to Notify the Wisconsin Board of the Arizona Discipline

14. Wis. Adm. Code § Chir 6.02(21) makes it unprofessional conduct for a chiropractor to fail to notify this Board that a chiropractic license granted by another jurisdiction has been subject to disciplinary action.

15. Neither Respondent nor any representative of Respondent ever notified the Wisconsin Board of the October 12, 2000 Arizona discipline.

16. On January 22, 2001, DOE received a letter from the Federation of Chiropractic Licensing Boards notifying Wisconsin that the Arizona Board had revoked Respondent's Arizona license. The notice did not include the basis for the revocation. The investigator who had been assigned to the 2000 investigation had the notice filed in the old case file because he erroneously assumed the Arizona revocation was based on the same California actions for which Wisconsin had already disciplined Respondent. Neither the DOE investigator nor any other DOE employee notified the Wisconsin Chiropractic Examining board about the information contained in the letter from the Federation of Chiropractic Licensing Boards.

Removal of Limitation on Wisconsin License.

17. On April 17, 2002, Respondent took and passed the Wisconsin written state law examination, which was one of the things required by the 2000 Final Decision and Order before he could practice chiropractic in Wisconsin. A Test Specification Sheet is provided in advance of the test and lists the topics which will be covered by the test. It notes that 20 of the 55 questions will be on unprofessional conduct. The person who is to take the test is also referred to the relevant statutes and administrative rules, including chapter Chiro 6 Standards of Conduct.

18. On May 23, 2002, Respondent appeared before the Wisconsin Board to request reinstatement of his license and to answer this Board's questions. Although he had taken the Wisconsin state law examination the previous month, Respondent still did not report the Arizona discipline to this Board and this Board was not aware of the Arizona discipline. On May 28, 2002, this Board ordered that the limitations on Respondent's license be removed and granted Respondent an unlimited license.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 446.03 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by having had disciplinary action taken against his Arizona license to practice chiropractic by the Arizona State Board of Chiropractic Examiners, as set out above, has committed unprofessional conduct as defined by Wis. Admin. Code § Chir 6.02(22) and is subject to discipline pursuant to Wis. Stat. § 446.03(5).

3. Respondent, by failing to notify the Board of having had disciplinary action taken against his chiropractic license by the Arizona State Board of Chiropractic Examiners, has committed unprofessional conduct as defined by Wis. Admin. Code § Chir 6.02(21) and is subject to discipline pursuant to Wis. Stat. § 446.03(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by David L. Hagen, D.C., Respondent, of his license to practice chiropractic in the state of Wisconsin is hereby ACCEPTED.

2. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$1,500.00 pursuant to Wis. Stat. § 440.22(2).

3. Payment shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

4. This Order is effective on the date of its signing.

Wisconsin Chiropractic Examining Board

By: Steven Silverman, D.C.
A Member of the Board

10/16/08

Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : STIPULATION
DAVID L. HAGEN, D.C., : LS _____ CHI
RESPONDENT. :

[Division of Enforcement Case # 04 CHI 056]

It is hereby stipulated and agreed, by and between David L. Hagen, D.C., Respondent; Kevin F. Milliken of Relles, Long & Milliken, LLP, attorneys for Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

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

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached. Respondent does not agree that the findings of unprofessional conduct warrant the surrender of his license to practice chiropractic. However, Respondent has elected to resolve this matter by stipulation for health reasons and to avoid the expense and time involved in a formal disciplinary proceeding.

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

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to the Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

David L. Hagen, D.C.
Respondent
58 Cherokee Circle #103
Madison, WI 53704

Date

Kevin F. Milliken
Relles, Long & Milliken, LLP
Attorneys for Respondent
301 N. Broom Street
Madison, WI 53703-5216

Date

John R. Zwieg
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date

[04 CHI 056: Costs \$1,500.00]

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