

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
MICHAEL M. HAMILTON, D.C., : LS0905284CHI
RESPONDENT. :

[Division of Enforcement Case #'s 07 CHI 018 and 07 CHI 042]

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

Michael M. Hamilton, D.C.
2331 Velp Avenue, Suite C/D
Green Bay, WI 54303

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

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 in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Michael M. Hamilton, D.C., Respondent, date of birth November 11, 1976, is licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the state of Wisconsin pursuant to license number 4164, which was first granted November 10, 2005.

2. Respondent's address of record with the Department of Regulation and Licensing is 2331 Velp Avenue, Suite C/D, Green Bay, WI 54313.

3. Respondent is the owner of and practices chiropractic at Planet Chiropractic in Green Bay, Wisconsin. At all times relevant to this matter, Respondent was the individual responsible for approving content of the advertisements for Planet Chiropractic.

COUNT ONE

4. In 2007, Respondent approved an advertisement which was published in the Green Bay Press Gazette on March 30; April 1, 3, 27 and 30; and May 19, 2007. The advertisement contained a picture of Respondent and his wife, who is also a chiropractor at Planet Chiropractic, and begins, "This cute doctor changed my life." The advertisement contained the following language:

Six years ago my life was changed by Chiropractic. The heart problems that had affected me for 24

years were gone with a simple chiropractic adjustment. Since that day my wife and I have helped people with many different health problems.

The advertisement offered discounts to patients who presented the advertisement.

5. In response to a Division of Enforcement inquiry, Respondent explained, "What I meant by this statement is that chiropractic helped my heart condition by restoring proper function to my nervous system." He stated, "For twenty four years of my life I lived with serious heart rate and rhythm problems. I had three surgeries and many years of medication before finally finding relief from chiropractic care. The severity of my condition towards the end of those 24 years, leads me to believe that I would not be writing this today if it were not for chiropractic."

6. Respondent indicated that, in response to the ad, four people came into his office with heart rhythm conditions. He explained to each of them that chiropractic does not cure heart conditions; it simply allows the body to function better which may improve the heart's function.

7. Following the above-referenced advertisements, Respondent said he mailed another ad that contained the same title but included more text. In the expanded written materials, he explained that "chiropractors don't heal anything. We simply find the areas of the spine where people have nerve pressure, and remove that pressure with a specific adjustment. Your body will simply help itself when there is no nerve interference."

8. The advertisements referenced in paragraph 4 contained no statement to clarify the advertisement's suggestion that chiropractic adjustments could cure cardiac problems.

9. The advertisements referenced in paragraph 4 were likely to create false or unjustified expectations of favorable results in persons with cardiac health problems.

COUNT TWO

10. From February 28, 2007 to June 4, 2007, Patient KH received chiropractic services at Planet Chiropractic for treatment of lower back pain. Respondent and two other chiropractors at Planet Chiropractic provided treatment to KH between February 28, 2007 and June 4, 2007.

11. The Division of Enforcement (DOE) undertook an investigation of Patient KH's care, and asked Respondent to submit all records pertaining to KH's care.

12. In response to DOE inquiries, Respondent reported that, on July 27, 2007, he and his colleagues saw KH when she requested a letter concerning her condition for an employment matter. Although KH had last seen Respondent and his colleagues on June 4, 2007, she brought a June 12, 2007 MRI from another practitioner. Respondent explained that he and his colleagues reviewed the MRI and generated an opinion about it. However, their opinion did not support KH's objective in requesting the letter.

13. Neither the MRI, nor a report of the MRI, were present in KH's record at Planet Chiropractic. The evaluation of the MRI and the opinion Respondent and his colleagues generated were not documented in KH's record.

14. Professional standards for chiropractors require that chiropractors maintain file copies of any diagnostic tools used in the evaluation of a patient. Professional standards also require documentation of evaluations and opinions offered in patient care.

15. Respondent's failure to maintain a copy of the MRI reviewed, failure to document clinical observations and failure to document the opinion offered as a result of the evaluation of KH's MRI resulted in documentation below minimal standards for the profession of chiropractic.

CONCLUSIONS OF LAW

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

2. Respondent, by engaging in the conduct set out in Count I above, has advertised in a manner which is false, deceptive or misleading, which is unprofessional conduct as defined by Wis. Admin. Code § Chir 6.02(15)(e). Respondent is therefore subject to discipline pursuant to Wis. Stat. § 446.03(5).

3. Respondent, by engaging in the conduct set out in Count II above, has engaged in unprofessional conduct as defined by Wis. Admin. Code § Chir 6.02(3) and is subject to discipline pursuant to Wis. Stat. § 446.03(5).

4. Respondent, by engaging in the conduct set out in Count II above, has violated Wis. Stat. § 446.02(7m) and Wis. Admin. Code § Chir 6.02(27) and is subject to discipline pursuant to Wis. Stat. § 446.03(5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Michael M. Hamilton, D.C., is hereby REPRIMANDED for the conduct set out above.

2. Respondent shall, within 30 days of the date of this Order, and for a period of 7 consecutive days, publish in the Green Bay Press Gazette, a notice which has been preapproved by the Board's designee, and which states as follows:

Between March 30, 2007 and May 19, 2007, Planet Chiropractic published advertisements in the Green Bay Press Gazette which have been interpreted to suggest that chiropractic care may treat cardiac health problems. This interpretation was unintended. Chiropractic care cannot cure cardiac health problems.

3. Respondent shall provide all patients who presented in response to the advertisements with cardiac issues, a written disclosure which shall be preapproved by the Board's designee, and which includes the following statement:

Between March 30, 2007 and May 19, 2007, Planet Chiropractic published advertisements in the Green Bay Press Gazette which have been interpreted to suggest that chiropractic care may treat cardiac health problems. This interpretation was unintended. Chiropractic care cannot cure cardiac health problems.

4. Respondent's license is LIMITED as follows:

a. Within 180 days of the date of this Order, Respondent shall provide proof sufficient to the Board, or its designee, of Respondent's satisfactory completion of 4 hours of continuing education in patient record keeping and 4 hours in case management, which course(s) shall first be approved by the Board, or its designee.

b. Upon Respondent providing proof sufficient to the Board, or its designee, that he has completed the education, the Board shall issue an Order removing this limitation of Respondent's license.

c. Respondent is prohibited from applying any of the hours completed to satisfy the terms of this Order toward satisfaction of the continuing education required during the December 15, 2008 through December 14, 2010 registration biennium.

5. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$570.00 pursuant to Wis. Stat. § 440.22(2).

6. Requests for approval, notification of completion of educational programs and payment shall be faxed, 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

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

Wisconsin Chiropractic Examining Board

By: Wendy Henrichs
A Member of the Board

5/28/09
Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
MICHAEL M. HAMILTON, D.C., : LS _____ CHI
RESPONDENT. :

[Division of Enforcement Case #'s 07 CHI 018 & 07 CHI 042]

It is hereby stipulated and agreed, by and between Michael M. Hamilton, D.C., Respondent; Robert J. Lightfoot II of Murphy Desmond S.C.; attorneys for Respondent; and Sandra L. Nowack, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of pending investigations of Respondent's licensure by the Division of Enforcement (cases 07 CHI 018 & 07 CHI 042). Respondent consents to the resolution of these investigations 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.

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. 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.

7. 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.

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

Michael M. Hamilton, D.C.
Respondent
2331 Velp Avenue, Suite C/D
Green Bay, WI 54313

Date

Robert J. Lightfoot II
Murphy Desmond, S.C.
Attorneys for Respondent
P.O. Box 2038
Madison, WI 53701-2038

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date