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Before The
State Of Wisconsin
CHIROPRACTIC EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against SCOTT A. SCHUETZ, D.C.,
Respondent

FINAL DECISION AND ORDER

0003336

Order No. _____

Division of Legal Services and Compliance Case No. 12 CHI 018

The State of Wisconsin, Chiropractic Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Chiropractic Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 7th day of Aug, 2014.

Member
Chiropractic Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **SCOTT A. SCHUETZ, D.C.**,
Respondent

DHA Case No. SPS-14-0015
DLSC Case No. 12 CHI 018

PROPOSED DECISION AND ORDER

0003336

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Scott A. Schuetz, D.C.
2117 Lenora Drive
West Bend, WI 53090

Wisconsin Chiropractic Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Andrea E. Brauer
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Scott Schuetz, alleging that Respondent engaged in the practice of chiropractic without a current and active license to do so and was therefore subject to discipline. The Division served Respondent on February 27, 2014, by sending a copy of the Notice of Hearing and Complaint to Respondent's last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09. On March 27, 2014, the Division filed a Motion for Default pursuant to Wis. Admin. Code §§ SPS 2.09 and 2.14, based on Respondent's failure to file an Answer.

Following due notice, on April 1, 2014, a telephonic prehearing conference was held before the Division of Hearings and Appeals, at which Respondent failed to appear. At the prehearing conference, the Division renewed its previous request for default and also moved for

default pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c) based on Respondent's failure to appear at the conference. In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Scott A. Schuetz, D.C., DOB January 12, 1966, is licensed in the state of Wisconsin to practice chiropractic, pursuant to license number 2568-12. This license was first granted on February 8, 1990 and expires on December 14, 2014.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2117 Lenora Drive, West Bend, Wisconsin 53090.

3. At all times relevant to this proceeding, Respondent worked as a chiropractor at Brugger Chiropractic, AKA Woodridge Chiropractic, West Bend, Wisconsin.

4. On May 8, 2012, pursuant to Wis. Admin. Code § SPS 9.05, Respondent's license to practice chiropractic became "inactive" due to delinquent taxes.

5. On July 17, 2012, Respondent satisfied the tax delinquency and his legal authorization to practice chiropractic was restored.

6. Between May 8, 2012 and July 17, 2012, Respondent continued to practice chiropractic, for a fee, without a valid and current license to do so.

7. On February 4, 2012, the Division sent a letter via certified mail to Respondent.

8. As of February 19, 2014, Respondent had not responded to the Division's inquiry.

Facts Related to Default

9. The Complaint and Notice of Hearing in this matter were served on Respondent on February 27, 2014, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within twenty (20) days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

10. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

11. On March 27, 2014, the Division filed a Motion for Default based on Respondent's failure to file an Answer, pursuant to Wis. Admin. Code §§ SPS 2.09 and 2.14. Respondent did not file a response to this motion.

12. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 1, 2014. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at which Respondent could be reached for the conference to the ALJ no later than March 27, 2014. The Notice further informed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

13. Respondent failed to provide a telephone number as ordered and could not be reached for the prehearing conference.

14. At the prehearing conference, the Division renewed its previous request for default and also moved for default pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c) based on Respondent's failure to appear at the conference. The ALJ granted the Division's motion for default.

CONCLUSIONS OF LAW AND DISCUSSION

Default

Wisconsin Admin. Code § SPS 2.14 provides: "If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." An Answer to a Complaint must be filed within 20 days of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at the respondent's last known address. Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1). "Service by mail is complete upon mailing." Wis. Admin. Code § SPS 2.08(1). Further, Wis. Admin. Code § HA 1.07(3) states, in relevant part:

(3) FAILURE TO APPEAR.

...
(b) If a Respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate. . .

(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or video conference line . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

On February 27, 2014, the Division duly served Respondent with the Complaint by mailing a copy of the Notice of Hearing and Complaint by both regular and certified mail to Respondent's most recent address on file with the Department. Pursuant to Wis. Admin. Code §§ SPS 2.08(1) and 2.09(4), Respondent was required to file an Answer within 20 days but failed

to do so. Respondent also failed to appear at the telephone prehearing conference held on April 1, 2014 and failed to provide a telephone number at which Respondent could be reached for the conference.

Thus, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wisconsin Statute and Administrative Code

Wisconsin Stat. § 446.02(1)(a) states, in relevant part, that “no person may engage in the practice of chiropractic . . . unless such person . . . [i]s licensed by the examining board.”

It is undisputed that between May 8, 2012 and July 17, 2012, Respondent practiced chiropractic, for a fee, without a valid and current license to do so. He is therefore in violation of Wis. Stat. § 446.02(1)(a).

In addition, Wis. Stat. § 446.03(5), states:

446.03 Reprimand; revocation, limitation, or suspension of a license or certificate. The examining board, by order, may reprimand a licensee, certificate holder, or registrant and may deny, limit, suspend or revoke any license, certificate, or certificate of registration if the licensee, certificate holder, or registrant does any of the following:

...

(5) Is guilty of unprofessional conduct.

The phrase “unprofessional conduct” as used in Wis. Stat. § 446.03(5) includes: “[v]iolating any provision of ch. 446, Stats., or any rule or order of the board.” Wis. Admin. Code § Chir 6.02(25). Because there is no dispute that Respondent violated Wis. Stat. § 446.02(1)(a), there is likewise no dispute that he engaged in unprofessional conduct under Wis. Stat. § 446.03(5), as defined by Wis. Admin. Code § Chir 6.02(25). He is therefore subject to discipline pursuant to Wis. Stat. § 446.03(5).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent be reprimanded and that his license be limited as follows. First, the Division requests that Respondent should, within 90 days of the date of the final decision in this case, provide written notice, via certified mail return receipt requested, to Medicare, Medicaid, all third-party payers, and to each patient who personally paid fees for chiropractic services performed by him between May 8, 2012 and July 16, 2012 which explains that he was not licensed to practice chiropractic or charge any fee for doing so.

Second, the Division requests that Respondent be required to send to the Department Monitor, within 180 days from the date of the final decision and order, a sworn affidavit which identifies each person or entity that received the required notification and the date of the notification. The Division requests that the following documents be attached to the affidavit: (a) a copy of the letter sent to Medicare and Medicaid; (b) a copy of a representative letter sent to the third-party payers; (c) a list of the third-party payers to whom the letter was sent; (d) a copy of a representative letter sent to patients; and (e) a list of the patients to whom the letter was sent. The Division requests that these limitations be removed only upon proof satisfactory to the Board or its designee that the terms of the limitations have been satisfied.

The discipline recommended by the Division is warranted. The proposed discipline fulfills the objectives of discipline articulated in *Aldrich* and conforms to the Board's approach to discipline in cases of unlicensed practice. The Division cites nine recent Board decisions in which the Board imposed similar discipline on those who practiced chiropractic without a valid credential: *In the Matter of Disciplinary Proceedings against Robert C. Kurtz, D.C.*, ORDER0000343 (Aug. 12, 2010); *In the Matter of Disciplinary Proceedings Against Drew M. Kaminski, D.C.*, ORDER0001149 (Oct. 6, 2011); *In the Matter of Disciplinary Proceedings Against Charles Kolbeck, D.C.*, ORDER0001148 (Oct. 6, 2011); *In the Matter of Disciplinary Proceedings Against John T. Riegleman, D.C.*, ORDER0000813 (April 27, 2011); *In the Matter of Disciplinary Proceedings Against Danny B. Futch, D.C.*, ORDER0001452 (March 29, 2012); *In the Matter of Disciplinary Proceedings Against Russell M. Sherbondy, D.C.*, ORDER0002014 (Aug. 23, 2012); *In the Matter of Disciplinary Proceedings Against Dale R. Alt, D.C.*, ORDER0002267 (Jan. 24, 2013); *In the Matter of Disciplinary Proceedings Against Jeremy J. Fritz, D.C.*, ORDER0002269 (Jan. 24, 2013); and *In the Matter of Disciplinary Proceedings Against Richard L. Olson, D.C.*, ORDER0002268 (Jan. 24, 2013).

With only one exception, in those cases, the Board reprimanded the licensees (or, in the *Fritz* case, issued a two-week license suspension), assessed costs against the licensees and imposed a license limitation requiring the licensees to notify the people and entities the licensees charged for services performed during the unlicensed period. The exception was in the case involving Mr. Futch, who was simply reprimanded and assessed costs. In that case, the Board did not order Mr. Futch to notify the patients or insurance carriers regarding his unlicensed practice because he had already done so.

Based on the foregoing, it is appropriate to impose the discipline recommended by the Division.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The factors to be considered in assessing costs are: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In*

the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, LS0802183CHI (Aug. 14, 2008).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed the full amount of recoverable costs in this case.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent Scott A. Schuetz, D.C. is REPRIMANDED.
2. Within 90 days of the date of the final decision and order in this case, Respondent shall provide written notice, via certified mail return receipt requested, to Medicare, Medicaid, all third-party payers, and to each patient who personally paid fees for chiropractic services performed by him between May 8, 2012 and July 16, 2012 which explains that he was not licensed to practice chiropractic or charge any fee for doing so.
3. Within 180 days from the date of the final decision and order in this matter, Respondent shall send to the Department Monitor a sworn affidavit which identifies each person or entity that received the required notification and the date of the notification. The following documents shall be attached to the affidavit: (a) a copy of the letter sent to Medicare and Medicaid; (b) a copy of a representative letter sent to the third-party payers; (c) a list of the third-party payers to whom the letter was sent; (d) a copy of a representative letter sent to patients; and (e) a list of the patients to whom the letter was sent. These limitations shall be removed only upon proof satisfactory to the Board or its designee that the terms of the limitations have been satisfied.
4. Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190**

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board, in its discretion, may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely satisfy any part of the Order as set forth above, Respondent's license may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the relevant terms of the Order.
6. The terms of this Order are effective the date the final decision and order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Scott A. Schuetz, D.C.

Dated at Madison, Wisconsin on May 5, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By:

A handwritten signature in black ink, appearing to read "JENASHOLD", written over a horizontal line.

Jennifer E. Nashold
Administrative Law Judge