

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID R. TOFTNESS, D.C.,
RESPONDENT.

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FINAL DECISION AND ORDER

0004120

Division of Legal Services and Compliance Case No. 13 CHI 025

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

David R. Toftness, D.C.
102 Keller Avenue South
Amery, WI 54001

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Chiropractic Examining Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent David R. Toftness, D.C., (dob December 6, 1949) is licensed to practice chiropractic medicine in the State of Wisconsin, having license number 1481-12, first granted on February 7, 1979 and current through December 14, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 102 Keller Avenue South, Amery, Wisconsin 54001.

2. On August 29, 2013, in the United States District Court, Western District of Wisconsin, Case No. 13-CR-48-BBC-02, Respondent was convicted of introducing an adulterated or misbranded medical device into interstate commerce, a Class A misdemeanor in violation of 21 U.S.C. § 331(a) and 333(a)(1).

3. At the times of the violations, Respondent was affiliated with, and maintained at least partial control of the Toftness Post-Graduate School of Chiropractic, Inc., 102 Keller Avenue, Amery, Wisconsin, 54001.

4. On August 29, 2013, in the United States District Court, Western District of Wisconsin, Case No. 13-CR-48-BBC, the Toftness Post-Graduate School of Chiropractic, Inc., was convicted of felonious contempt of court, in violation of 18 U.S.C. § 401(3).

5. The factual basis of both convictions was Respondent's delivery into interstate commerce the Toftness Device or Toftness Instrument contrary to a court Order and without premarket approval or pursuant to U.S.C. Section 360e(a) or without approval of an investigational device exemption pursuant to 21 U.S.C. Section 360j(g).

6. Respondent agrees these facts are sufficient to support the conclusions of law and Order set out below.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 446.03, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Under the circumstances of this case, the prohibition on introducing adulterated or misbranded medical device into interstate commerce, a Class A misdemeanor in violation of 21 U.S.C. § 331(a) and 333(a)(1), is a law governing the practice of chiropractic, and a crime, the circumstances of which are substantially related to the practice of chiropractic medicine.

3. Under the circumstances of this case, the prohibition on felonious contempt of court, in violation of 18 U.S.C. § 401(3), is a law governing the practice of chiropractic, and a crime, the circumstances of which are substantially related to the practice of chiropractic medicine.

4. By the conduct described in the Findings of Fact, above, David R. Toftness, D.C., violated Wis. Stat. § 446.03(3) by violating a law governing the practice of chiropractic medicine.

5. As a result of the above violations, David R. Toftness, D.C., is subject to discipline pursuant to Wis. Stat. § 446.03(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent David R. Toftness, D.C., is REPRIMANDED.

3. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$700.00.


4. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

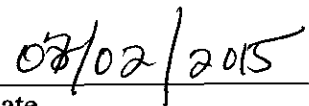
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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 submit payment of costs as ordered, Respondent's license (no. 1481-12) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of costs.

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

WISCONSIN CHIROPRACTIC EXAMINING BOARD

by: 
A Member of the Board


Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID R. TOFTNESS, D.C.,
RESPONDENT.

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:
:

STIPULATION

0004120

Division of Legal Services and Compliance¹ Case No. 13 CHI 025

Respondent David R. Toftness, D.C., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Marie A. Stanton.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Chiropractic Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.


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 then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the 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 Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such 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 Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


David R. Toftness, D.C., Respondent
102 Keller Avenue South
Amery, WI 54001
License no. 1481-12

4/16/15
Date


Marie A. Stanton, Respondent's Attorney
Hurley, Burish & Stanton, S.C.
33 East Main Street, Suite 400
Madison, WI 53701-1528

4/24/2015
Date


Kim M. Kluck, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

4/28/15
Date