

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
WITH VARIANCE

TYLER G. SCHNEEKLOTH, DC
RESPONDENT.

DHA Case No. SPS-15-0036
DLSC Case No. 14 CHI 004

00047 05

BACKGROUND

On December 23, 2015, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On January 11, 2016, the Division of Legal Services and Compliance (Division) filed an objection to the PDO regarding the proposed level of discipline and the amount of costs to be paid by Respondent. The Division recommended Respondent's license be suspended for one (1) month and be assessed one hundred percent (100%) of the costs of this proceeding. On January 21, 2016, Respondent filed a response to the Division's objections and requested the Chiropractic Examining Board (Board) adopt the PDO in its entirety. On April 12, 2016, the Board met to consider the merits of the PDO and the stated objections. The Board voted to approve the PDO with variance. The PDO is attached and incorporated in its entirety into this Final Decision and Order with Variance (Order).

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1m) and 446.03, the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding, pursuant to Wis. Stat. § 227.01(3)(b). The Board may make modifications to a PDO, in a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2), provided the Board's decision includes an explanation of the basis for each variance.

In the present case, the Board adopts the "PROCEDURAL HISTORY" and "FINDINGS OF FACT" found in the PDO. Under the section titled "DISCUSSION," the Board also adopts the sections titled "Burden of Proof," "Violations," "Memorandum of Understanding," and "Practicing Chiropractic Without a License."

The Board varies the remainder of the Order as follows:

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 Respondent's license be suspended for one (1) month and that his license be limited to require him to send written notification to individuals and entities he billed for chiropractic services during the period he was unlicensed, informing them that he was not licensed and that he billed for chiropractic services he was not legally authorized to perform or bill for during that time. Respondent requests significantly less discipline, asserting that the notification requirement will require him to repay all amounts he received for services rendered while he was unlicensed, which would be an amount likely in excess of \$100,000.

To ensure fairness and uniformity, prior Board decisions provide guidance as to appropriate discipline. *See e.g. In the Matter of Disciplinary Proceedings Against Ty C. Wade, D.C.*, Order No. 0003774 (March 5, 2015). To begin, prior case decisions involving periods of unlicensed practice clearly show the Board places a priority on the notification requirement. Past decisions further demonstrate the Board promotes rehabilitation, protection of the public, and deterrence by imposing discipline ranging from a reprimand to licensure suspension, as appropriate given the circumstances of the case.¹

In the instant case, Respondent practiced for a significant period of time, approximately eight (8) months, without a license. Respondent's unsupported claims he did not know his license was revoked due to his tax delinquency, despite the notices sent to him by both DOR and DSPS, are unpersuasive. Respondent's failure to attend to the multiple warnings requires a high degree of negligence. Thus, Respondent's unlicensed practice is misconduct of a substantially different character than unlicensed practice by a chiropractor who made one honest mistake. Respondent's situation also differs from prior cases in that there is no indication in the prior cases that the licensees had been sent notices warning them that their licenses were in jeopardy

¹ Prior cases demonstrating the Board's inclusion of the "notification" requirement and the range of discipline imposed for unlicensed practice: *In the Matter of Disciplinary Proceedings Against Drew M. Kaminski, D.C.*, Order No. 0001149 (Oct. 6, 2011) (practiced with expired license for one year and five months; licensee also had issues with continuing education, although Board stated he was in "technical compliance" during unlicensed period); *In the Matter of Disciplinary Proceedings Against James Charles Kolbeck, D. C.*, Order No. 0001148 (Oct. 6, 2011) (practiced with expired license for one year and six months); *In the Matter of Disciplinary Proceedings Against John T. Riegleman, D. C.*, Order No. 0000813 (April 27, 2011) (practiced with expired license for approximately three months); *In the Matter of Disciplinary Proceedings Against Danny B. Futch, D.C.*, Order No. 0001452 (March 29, 2012) (practiced with expired license for five months; at all times licensee in "technical compliance" with licensing requirements); *In the Matter of Disciplinary Proceedings Against Russell M. Sherbondy, D.C.*, Order No. 0002014 (Jan. 24, 2013) (practiced with expired license for 11 months due to early lease termination of office space and relocation of practice twice within eight-month period); *In the Matter of Disciplinary Proceedings Against Dale R. Alt, D.C.*, Order No. 0002267 (Jan. 24, 2013) (practiced with expired license on three occasions, for approximately four months, three weeks and three weeks, respectively; at all times while unlicensed, licensee was in compliance with licensing requirements); *In the Matter of Disciplinary Proceedings Against Jeremy J. Fritz, D.C.*, Order No. 0002269 (Jan. 24, 2013) (practiced with expired license for approximately two years and failed to complete continuing education requirements, claiming office manager responsible for renewal suffered from a condition which affected job performance; in addition to reprimand and notification requirements, Board suspended license for two weeks); *In the Matter of Disciplinary Proceedings Against Robert C. Kurtz, D. C.*, Order No. 0000343 (Aug. 12, 2010) (practiced while ineligible for license due to tax delinquency for approximately three months); *In the Matter of Disciplinary Proceedings Against Richard L. Olson, D.C.*, Order No. 0002268 (Jan. 24, 2013) (practiced with expired license for eight months; licensee also short two of required 40 continuing education credits; when licensee discovered he was not in compliance, he immediately stopped seeing patients).

but failed to take action on such notices. In this respect, Respondent's conduct is more egregious than the conduct involved in prior cases.

Unlicensed practice is a serious matter of public safety. Based on the foregoing, Respondent's license shall be suspended for one (1) week beginning one (1) month after the date of this Final Decision and Order, and Respondent's license is limited relating to notification. These limitations require that, within 60 days of the Final Decision and Order in this matter, Respondent shall notify the individuals and entities he billed for chiropractic services from June 26, 2013, through February 27, 2014, that he was unlicensed and that he billed for chiropractic services he was not legally authorized to perform or bill for during this period. In addition, within 90 days of the Board's Final Decision and Order, Respondent must file a notarized affidavit with the DSPS Monitor of his satisfactory notification, with the requirements and supporting documentation set forth in the Order section.

The one (1) week suspension will adequately rehabilitate the Respondent by clearly conveying the seriousness of his unlicensed practice and emphasizing the importance of attending to all of the responsibilities under his license. Respondent has been made explicitly aware of the tie between his professional license and the payment of his taxes. This decision also adequately deters all licensees from engaging in similar conduct by stressing the importance of complying with licensing requirements. The decision further highlights the necessity of paying attention to, and responding in a timely manner to correspondence sent by DSPS. Finally, this decision protects the public by requiring the notification to all patients of his unlicensed practice and deterring future unlicensed practice.

Costs

The Board has authority to assess all or part of the costs for disciplinary proceedings, taking into account the particular facts of each case. Wisconsin Statute section 440.22(2) states, in relevant part:

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.

The Board is not required to go through any particular analysis when determining whether to assess all or part of the costs of this proceeding against the Respondent. Nevertheless, guidance can be found in *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In *Noesen*, the Court opined:

Under Wis. Stat. § 440.22(2), the Board may, in its discretion, "assess all or part of the costs of the proceeding" against the licensee if the Board takes disciplinary action as a result. We give due weight to the Board's exercise of discretion. Wis. Stat. § 227.57(10). In reviewing the exercise of discretion, we look to determine whether the decision maker

examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion. *Doersching*, 138 Wis. 2d at 328.

Id. ¶ 30. In addition to the above mandatory authority, in previous orders, the Board has considered the following non-mandatory factors to aid in determining if all or part of the costs should be assessed against a Respondent:

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 parties;
4. The respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of Safety and Professional Services (DSPS) is a "program revenue" agency; and
7. Any other relevant circumstances.

In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI). In considering these factors, the Board has the discretion to give each factor the weight appropriate given present circumstances. In this case, the Board finds that the imposition of one hundred percent (100%) of the costs is warranted.

The Division charged the Respondent with a single count, which was contested, and proven. There is no argument that the Division litigated any counts unnecessarily. Furthermore, as discussed above, Respondent's unlicensed practice is serious, warranting an equally serious form of discipline; a one (1) week suspension of Respondent's license to practice chiropractic and notification limitations on his license. Practicing without a license undermines the licensing scheme which ensures the public that licensees are sufficiently competent and ethical to practice. In addition, this case involved a relatively long period of practicing without a license – approximately eight (8) months.

Additionally, the Department of Safety and Professional Services (Department) is a program revenue agency, meaning the Department is funded by the revenue received from all licensees. This is a fact that also weighs heavily into the calculation of the appropriate amount of costs to be borne by the Respondent. As a program revenue agency, any costs not paid by the Respondent are shared by all other chiropractic profession licensees. Therefore, the Board gives serious consideration as to whether the costs associated with this action should be paid by the Respondent or shared by other non-culpable licensees.

The Respondent's lack of prior discipline and appearance at required conferences and proceedings, are significantly outweighed by the other factors discussed herein. Logically, had the Respondent not ignored multiple notices, resulting in the revocation of his license and subsequent eight (8) months of practicing without a license, none of these costs would have ever been incurred.

Based on all of the above, it is appropriate for the Respondent to bear one hundred percent (100%) of the costs associated with this matter.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter, pursuant to Wis. Stat. §§ 440.035(1m) and 446.03.
2. The Division met its burden, of establishing by a preponderance of the evidence, that Respondent practiced chiropractic without a license to do so from June 26, 2013, through February 27, 2014, in violation of Wis. Stat. §§ 446.02 and 446.03(5), and Wis. Admin. Code §§ Chir 6.02(25) and 6.02(26).
3. Respondent has failed to establish that the Division's revocation of Respondent's license on June 26, 2013, was ineffective because DSPS did not comply with Wis. Stat. § 73.0301(2)(b)1.
4. The facts of record and the criteria delineated in *Aldrich* warrant that Respondent's license be suspended for one (1) week and, further warrants the imposition of the notification requirements set forth in the Order section below.
5. Imposition of one hundred percent (100%) of the costs of these proceedings on Respondent is appropriate under the facts of this case, and the guidance of *Noesen* and *Buenzli-Fritz*.

ORDER

For the reasons set forth above, it is hereby ORDERED:

1. Respondent's license is SUSPENDED for the period of one (1) week, beginning one (1) month after the date of this Final Decision and Order.
2. Respondent's license to practice chiropractic is limited as follows:
 - a. Within 60 days of the date of the Final Decision and Order in this matter, 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 Respondent during the period from June 26, 2013, through February 27, 2014. The written notice shall explain that Respondent was not licensed to practice chiropractic in Wisconsin during that period, and was, therefore, not authorized to practice chiropractic or charge any fee for doing so.
 - b. Within 90 days from the date of this Order, Respondent shall send to the DSPS Monitor, at the address listed below, a sworn affidavit. The affidavit must identify each person or entity that received notification, and the date of notification. The following documents must be attached to the affidavit:

- i. A copy of the letter sent to Medicare and Medicaid;
 - ii. A copy of a representative letter sent to third party payers;
 - iii. A list of the third party payers to whom the letter was sent;
 - iv. A copy of a representative letter sent to patients; and
 - v. A list of the patients to whom the letter was sent.
- c. This limitation shall be removed from Respondent's license after Respondent satisfies the Board or its designee that Respondent has successfully completed all of the notification requirements in paragraphs 2.a. and 2.b. of the Order.
- d. Respondent shall pay 100 percent (100%) of all recoverable costs in this matter in an amount to be established, pursuant to Wis. Stat. § 440.22(2) and 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 & Compliance
1400 East Washington Ave., P.O. Box 7190
Madison, WI 53707-7190

3. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.
4. IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Tyler G. Schneekloth.

Dated at Madison, Wisconsin this 9th day of May, 2016.

By: *Dr. Patti Schumacher*
A Member of the Board *PS*



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Tyler G. Schneekloth, D.C., Respondent

DHA Case No. SPS-15-0036
DLSC Case No. 14 CHI 004

PROPOSED DECISION AND ORDER

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

Tyler G. Schneekloth, D.C., by

Attorney John C. Gardner
Dewitt Ross & Stevens, S.C.
Two E. Mifflin Street, Suite 600
Madison, WI 53703-2865

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 James E. Polewski
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 on March 27, 2015, when the Department of Safety and Professional Services (DPS), Division of Legal Services and Compliance (Division), filed and served its Complaint on Respondent Tyler G. Schneekloth (Respondent). The Division's Complaint alleged that on multiple occasions between June 26, 2013 and February 27, 2014, Respondent practiced chiropractic without a license to do so in the State of Wisconsin, in violation of Wis. Stat. § 446.02(1)(a), and that this conduct constituted unprofessional conduct under Wis. Stat. § 446.03(5) and Wis. Admin. Code § Chir. 6.02(25) and (26).

Following Respondent's filing of his Answer, a telephone prehearing conference was held on April 27, 2015, at which the parties agreed to a hearing date and related deadlines. A contested case hearing was held on August 31, 2015, at which exhibits were received and testimony heard. At the request of the parties at the close of hearing, a briefing schedule was agreed to, with the last brief submitted on November 30, 2015.

FINDINGS OF FACT

Facts Related to Allegation of Practicing Chiropractic Without a License

1. Respondent Tyler G. Schneekloth, D.C. (D.O.B. September 19, 1967), is licensed in the State of Wisconsin to practice chiropractic, having license number 3425-12, first granted on March 20, 1997, and current through December 14, 2016. (Complaint, ¶ 1; Answer, ¶ 1)

2. In or about December 2009, Respondent and his wife (collectively, the Schneekloths) entered into an installment payment plan with respect to back taxes they owed the State of Wisconsin (the 2009 Installment Plan) (Resp. Ex. 116; Hrg. Tr., p. 54)

3. The 2009 Installment Plan, which consisted of one page, required the Schneekloths to make monthly payments of \$300 to the Wisconsin Department of Revenue (DOR) until the family's tax debt was fully paid. The Schneekloths made these payments every month from January 2010 until January 2014. (Hrg. Tr., pp. 54-56)

4. In April 2013, the Schneekloths failed to pay Wisconsin certain taxes that they owed for the year 2012. Mrs. Schneekloth, who was responsible for handling taxes, billing and other finances with respect to Respondent's practice, had been unable to keep up to date with the practice's billings due to various health problems. She testified that she had suffered from migraine headaches for approximately 15 years and that during the relevant time period, she experienced blood loss nearly requiring a blood transfusion and that these health issues made it difficult to even get out of bed in the morning. As a result, Mrs. Schneekloth was not able to get billings out in a timely manner, which resulted in their income being down in 2013. In addition, they paid a large sum of money for their son to travel to China for six months in 2013. Consequently, they did not have the money to pay their 2012 taxes. At some point in 2012, Respondent hired a receptionist to help reduce Mrs. Schneekloth's workload. (Hrg. Tr., pp. 40, 53, 56-58)

5. The Schneekloths' failure to pay their 2012 taxes accelerated the debt remaining under the 2009 Installment Plan, with the entire amount on the 2009 debt becoming due immediately. The 2009 Installment Plan specifically stated: "THE UNDERSIGNED AGREES TO: 1. File current tax returns and pay all tax due by the due dates of the returns." It further provided: "THIS AGREEMENT WILL BE VOIDED . . . IF THERE IS ANY DEFAULT IN THE TERMS OF THIS AGREEMENT. THE ENTIRE UNPAID BALANCE SHALL THEN BECOME PAYABLE AND THE DEPARTMENT MAY PROCEED TO COLLECT IT IMMEDIATELY USING ANY LEGAL MEANS INCLUDING LEVY AND/OR WAGE ATTACHMENT WITH NO FURTHER WARNING OR NOTICE TO YOU." (Resp. Ex. 116, p. 2; Hrg. Tr., p. 47) (Emphasis in original.)

6. The Schneekloths claim that they were not aware that their failure to pay the 2012 taxes resulted in the entire remaining amount becoming due on the 2009 Installment Plan. Respondent stated that he did not read the 2009 Installment Plan carefully because his wife handled that. Mrs. Schneekloth testified that “right or wrong,” she believed that the amount they owed for 2012 would be “added to [their 2009] installment payment,” which would continue to be owed on an installment basis. (Hrg. Tr., pp. 45, 47, 55, 58)

7. DOR sent a notice to the Schneekloths’ home address in Fall River, Wisconsin, dated April 19, 2013, entitled, “Occupational License Denial Warning.” The notice warned Respondent that DOR would instruct DSPS to suspend Respondent’s license to practice chiropractic unless he resolved his delinquent tax account with DOR within ten days. The delinquent taxes were for the amount remaining on the 2009 Installment Plan, then just under \$3,300. The notice was sent through the U.S. Postal Service by regular mail, with no return receipt required. (Resp. Ex. 112; Hrg. Tr., pp. 14-16, 66-67, 81-82)

8. The Schneekloths testified that they did not recall seeing this notice until February 2014, and, consequently, did not repay the debt in time to prevent DSPS from moving to revoke Respondent’s license. (Hrg. Tr., 25-29, 60-61, 66-67)

9. Mrs. Schneekloth testified that the Schneekloths had the ability to pay off the remaining balance of the 2009 Installment Plan and that they would have paid it off had they been aware of the debt acceleration and that Respondent’s license was at risk. (Hrg. Tr., pp. 67-70)

10. Because the Schneekloths did not resolve their account with DOR as required by DOR’s April 19, 2013 notice, DOR issued a certificate of delinquent taxes to DSPS dated May 16, 2013, stating that Respondent was liable for delinquent taxes under Wis. Stat. chs. 71 and 77 in the amount of \$3,029.27, together with accruing interest. (Div. Ex. 1; Hrg. Tr., p. 83, 85)

11. By letter dated May 24, 2013 and sent by first-class mail via the U.S. Postal Service to Respondent’s office in Waterloo, Wisconsin, DSPS notified Respondent that because of his delinquent taxes in the amount of \$3,029.27, together with accruing interest, his credential as a chiropractor “will be revoked under s. 440.12, Stats.” The letter also noted that DOR had mailed its April 19, 2013 letter to Respondent notifying him that his credential would be suspended unless DOR had certified to DSPS that Respondent was not liable for delinquent taxes, but that DSPS had not received such documentation. The letter further explained that Respondent had 30 days to seek review of DOR’s certification of the tax delinquency and that his license would continue to be active until any review was finally acted upon, or, if he did not seek review, until after expiration of the 30-day time period. (Div. Ex. 2; Hrg. Tr., p. 22-23)

12. The Schneekloths testified that they did not recall seeing DSPS’s May 24, 2013 notice until February of 2014, in connection with DSPS’s prosecution of the instant case, and that it was in February of 2014 that they first realized that DSPS had revoked Respondent’s license. (Hrg. Tr., 25-29, 32-33, 60-61, 66-67)

13. Upon being contacted by DSPS in February 2014 regarding the problems with his license, Respondent immediately contacted DSPS employee Steve Engelbrecht to address the issue and paid off all of their delinquent taxes at once, including the amounts remaining for both 2009 and 2012. DSPS restored Respondent's license, effective February 28, 2014. (Hrg. Tr., pp. 21, 32-34, 71-73)

14. An email from Respondent to Mr. Engelbrecht dated February 26, 2014 states that Respondent had not been informed of any issues pertaining to his license status until he received the letter from the State dated February 12, 2014 and that if he had, he would have made sure to take care of any outstanding taxes owed. (Resp. Ex. 106; Hrg. Tr., p. 35)

15. DSPS's mail log shows that DSPS's May 24, 2013 notice was sent to the Schneekloths on May 24, 2013, and that it was not returned to DSPS as undeliverable. Any time a 30-day notification is sent to a license holder, DSPS documents the notification in the mail log which is contained in an Excel spreadsheet, along with the date the notice is sent. The mail log also documents instances where mail is undeliverable or a forwarding address is provided. DSPS also has a physical file which contains copies of all revenue letters that are sent, notice attempts from DOR and 30-day notices for denial. If mail is returned as undeliverable, the envelope is contained in the file. There is no such envelope from DSPS's May 24, 2013 letter in the physical file. (Hrg. Tr., pp. 16-18)

16. The Schneekloths testified that they sometimes had problems with the mail at their home address in Fall River from approximately 2011 or 2012 until 2014 or 2015, in that they have received other people's mail and did not receive some water bills and credit card statements. Respondent also testified that he has had some problems with receiving other people's mail at his office in Waterloo, particularly when they have substitute mail carriers. (Hrg. Tr., pp. 39-40, 64-66)

17. In September 2013, DOR levied the Schneekloths' bank account for approximately \$1,531. Respondent claimed not to have known about that because his wife handles all banking. According to on-line circuit court records, a tax warrant was also issued by the State of Wisconsin and a judgment and lien entered against Respondent for taxes in the amount of \$12,402.49, docketed on October 21, 2013. Respondent states that he did not believe his wife told him about this either. (Div. Ex. 5; Hrg. Tr., pp. 40-43)

18. The Schneekloths' practice with respect to mail received at home was that Respondent's son or wife would get the mail and place anything business-related into a box near the work computer for Mrs. Schneekloth to handle within a day or two, although Mrs. Schneekloth stated that she would open mail from the government right away. With respect to business-related mail received at Respondent's office in Waterloo, Respondent would put it in a tote bucket and bring it home for his wife to handle, although if the mail was anything of importance, such as from the State of Wisconsin, he would open and identify it first. (Hrg. Tr., pp. 29-31, 62-63)

19. On June 26, 2013, pursuant to Wis. Stat. § 73.0301 and Wis. Stat. § 440.12, Respondent's license to practice chiropractic was revoked because he owed delinquent taxes to

the State of Wisconsin. Respondent's license did not become active again until approximately eight months later, on February 28, 2014. (Div. Exs. 2 and 3, Hrg Tr. at 19-21)

20. On multiple occasions between June 26, 2013, and February 27, 2014, Respondent practiced chiropractic for compensation without a license to do so in the State of Wisconsin. The Schneekloths testified that they did not know Respondent's license had been revoked during this time period. (Complaint, ¶ 7; Answer ¶7; Hrg. Tr., pp. 31-32, 71-72)

21. Respondent has been practicing chiropractic for over eighteen years and has not previously been disciplined or been the subject of any disciplinary action. (Hrg. Tr., p. 38)

22. Respondent's income from his chiropractor practice is the family's only source of income. If Respondent is required repay patients and providers all amounts he received for services rendered during the eight-month period he was unlicensed, the amount would likely be in excess of \$100,000. (Hrg. Tr, pp. 36-37, 53)

Facts Related to Memorandum of Understanding

23. On March 4, 1999, DOR entered into a Memorandum of Understanding with DSPS's precursor, the Wisconsin Department of Regulation and Licensing (DRL), the purpose of which was to "accomplish the statutory requirement under Section 73.0301, Wisconsin Statutes ... dealing with the denial, nonrenewal and revocation of occupational licenses and credentials based on nonpayment of delinquent taxes owing to DOR." This agreement was superseded by a subsequent Memorandum of Understanding entered into by DOR and DSPS on June 13, 2013, whose stated purpose was again to "accomplish the statutory requirement under sec. 73.0301, Wis. Stats." (Resp. Exs. 113, 114)

24. Effective July 1, 2011, DRL's name was changed to DSPS. 2011 Wisconsin Act 32.

DISCUSSION

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is "more likely than not" that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violations

The Board may reprimand a licensee and may deny, limit, suspend or revoke any license to practice chiropractic if the licensee is guilty of unprofessional conduct. Wis. Stat. § 446.03(5). Unprofessional conduct includes violating any provision of Wis. Stat. ch. 446, or any rule or order of the Board, Wis. Admin. Code § Chir 6.02(25), and also includes violating a law

substantially related to the practice of chiropractic. Wis. Admin. Code § Chir 6.02(26). Wisconsin Stat. § 446.02 provides that no person may practice chiropractic in Wisconsin without a license to do so, unless under certain specified exceptions, inapplicable here.

Memorandum of Understanding

Pursuant to Wis. Stat. § 440.12 (2011-2012), Respondent's license to practice chiropractic was revoked on June 26, 2013, due to his tax delinquency. This provision states, in relevant part, that DSPS "shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes. . . ." Wis. Stat. § 440.12.

Respondent first asserts that DSPS's revocation of his license was legally ineffective because it did not comply with Wis. Stat. § 73.0301. Specifically, Respondent argues that at the time DSPS sought to revoke his license, DSPS had not entered into an appropriate memorandum of understanding with DOR, which Respondent claims is a prerequisite to revoking a license on grounds of delinquent taxes. *See* Wis. Stat. § 73.0301(2)(b)1 (providing that DSPS shall move to revoke a license for delinquent taxes "after a request is made under par. (a)1. or 2.," which, in turn, states that DSPS "shall enter into a memorandum of understanding with the department of revenue.") Respondent acknowledges that DOR had entered into an agreement with DSPS's predecessor, DRL, in 1999, which, at the time of the revocation process was initiated under Wis. Stat. § 73.0301, had not been rescinded. However, Respondent argues that DSPS's attempted revocation was ineffective because DSPS did not itself enter into a memorandum of understanding with DOR until June 14, 2013, approximately two months after DSPS initiated the revocation procedure under Wis. Stat. § 73.0301 in April 2013 by requesting DOR to certify whether Respondent was liable for delinquent taxes.

Respondent's argument is not persuasive. As a preliminary matter, I note that DSPS did not revoke Respondent's license until June 26, 2013, *after* it entered into the agreement with DOR on June 15, 2013. Thus, DSPS had an agreement in place with DOR at the time it revoked Respondent's license for delinquent taxes. I also note that to the extent Respondent is challenging DSPS's revocation of Respondent's license, his time to challenge the revocation has passed as the revocation occurred approximately two and a half years ago.

More fundamentally, however, it is inconsequential that the revocation process was initiated prior to the June 14, 2013 agreement between DSPS and DOR because the 1999 agreement between DOR and DRL was in effect for both DRL and subsequently, for DSPS, from the time it was signed until the time a new agreement was signed on June 15, 2013.

When legislation reorganizes agencies and transfers functions from one agency to another, the act of legislation doing so customarily includes provisions stating that all contracts entered into by the former agency remain in effect, are transferred to, and are to be carried out by the new agency. *See e.g.*, § 9110, 2011 Wisconsin Act 32, pp. 502-504. With respect to the legislation "creating" DSPS, however, no such language was required because the legislation involved only a name change from DRL to DSPS. *See* Analysis for 2011 AB 40, enacted as 2011 Wisconsin Act 32, p. 30 ("Under current law, DRL, and various boards in DRL,

administers Wisconsin's professional credentialing laws. DRL is charged with ensuring the safe and competent practice by credentialed professionals in Wisconsin, such as doctors, nurses, cosmetologists, real estate agents, and veterinarians. *This bill changes DRL's name to the Department of Safety and Professional Services (DSPS)*" (emphasis added).¹

Based on the foregoing, I reject Respondent's argument that DSPS's revocation of Respondent's license was ineffective because there was no Memorandum of Understanding between DOR and DSPS at the time the revocation process was initiated under Wis. Stat. § 73.0301.

Practicing Chiropractic Without a License

Putting aside Respondent's challenge to the validity of the underlying license revocation, there is no dispute that Respondent practiced chiropractic for approximately eight months without a license to do so. Respondent argues, however, that his doing so was an "honest mistake," in that he did not know his license had been revoked for failure to pay the remaining amount on his 2009 Installment Plan as a result of his tax delinquency for 2012 taxes. (Respondent's Brief, p. 1)

Respondent suggests that the notices from DOR and DSPS informing him that his credential would be revoked were either not sent or not received at his home or office. This suggestion fails. It is extremely unlikely that two separate letters, sent from two separate agencies, to both Respondent's home and business addresses, in two separate towns, were not delivered. It is far more likely that the letters (or at least one of them) were received and that for some reason, were not acted upon, either due to mismanagement or some other unknown reason. Evidence in support of the notices being delivered includes the following: the testimony by witnesses for DOR and DSPS that the letters were sent; DSPS's mail log and physical file which show that DSPS's notice was sent and not returned; testimony that Mrs. Schneekloth had the bulk of responsibilities over the business mail and finances and that during the relevant time period she suffered health problems which made it difficult to even get out of bed in the morning and resulted in her getting behind on billing; testimony that Respondent hired a receptionist in 2012 to help with Mrs. Schneekloth's workload; Mrs. Schneekloth's testimony that she realized in 2013 that they could not pay 2012 taxes; and the subsequent warrant, judgment and lien that resulted from Respondent's delinquent taxes. I also note that, other than their own testimony, the Schneekloths did not present any evidence that receiving mail was a problem at either their Fall River home address or Respondent's Waterloo work address. Even if mail was sometimes a problem at these addresses, however, for the reasons stated above, I do not believe that both the DOR and the DSPS notices were not delivered.

Moreover, Wisconsin law supports the premise that mail sent through the U.S. Postal Service is presumed to be received, and that the presumption is not overcome with mere statements that the intended recipients do not recall receiving it. *See e.g.*, Wis. Stat. § 891.46 ("Unless otherwise specifically provided . . . papers . . . authorized to be served by mailing in

¹ Analysis by the Legislative Reference Bureau is significant in determining legislative intent and the effect of a statutory change. *See State DOC v. Schwarz*, 2005 WI 34, ¶¶ 22-23, 279 Wis. 2d 223, 693 N.W.2d 703; *Stockbridge School Dist. v. DPI*, 202 Wis. 2d 214, 224-25, 550 N.W.2d 96 (1996).

judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail. . . .”); *Am. Family Ins. Co. v. Golke*, 2009 WI 81, ¶ 36, 319 Wis. 2d 397, 768 N.W.2d 729 (“Once the presumption of mailing has been established, the burden shifts to the party challenging receipt to present credible evidence of non-receipt. . . . Mere non-remembrance of receipt is not enough. . . .”)

Although I conclude that either one or both notices were delivered to Respondent’s home and/or office, I cannot determine why the Schneekloths did not act on this information earlier than February of 2014. The Division states that Respondent knew his license was revoked and simply continued to practice. However, this inference is undermined not only by the Schneekloths’ testimony but by how quickly Respondent acted on the matter following the letter from Mr. Engelbrecht in February 2014, paying off not only the amount remaining from 2009 but also the amount owing from 2012, and by Respondent’s email to Mr. Engelbrecht in February 2014, which is consistent with the testimony from the Schneekloths at hearing. It could be that the Schneekloths failed, for whatever reason, to open or review the notices, that they did not fully understand them, or that some type of denial of the magnitude of the situation was in play. While I do not wish to speculate as to what happened with the notices once they were delivered or why they were not acted upon, the result is that Respondent practiced without a valid license for a period of approximately eight months, from June 26, 2013 through February 27, 2014. This conduct violates Wis. Stat. § 446.02 and is unprofessional conduct under Wis. Stat. § 446.03(5) and Wis. Admin. Code § Chir 6.02(25) and (26). As a result, Respondent is subject to discipline.

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 requests that Respondent’s license be suspended for one month and that the license be limited to require him to send written notification to individuals and entities he billed for chiropractic services during the period he was unlicensed, informing them that he was not licensed and that he billed for chiropractic services he was not legally authorized to perform or bill for during that time. The Division states that this discipline is consistent with the disciplinary objectives set forth in *Aldrich* and is also consistent with prior Board decisions involving unlicensed chiropractors, ten of which the Division cites.

In the cases upon which the Division relies, the Board ordered a reprimand, and, in one case, a two-week suspension, and ordered a variation of the notification requirements requested here, with the exception of one case where the licensee had already provided notification. *See In the Matter of Disciplinary Proceedings Against Ty C. Wade, D.C.*, Order No. 0003774 (Mar. 5, 2015); *In the Matter of Disciplinary Proceedings Against Drew M. Kaminski, D.C.*, Order No. 0001149 (Oct. 6, 2011) (practiced with expired license for one year and five months; licensee also had issues with continuing education, although Board stated he was in “technical compliance” during unlicensed period); *In the Matter of Disciplinary Proceedings Against James Charles Kolbeck, D.C.*, Order No. 0001148 (Oct. 6, 2011) (practiced with expired license for one

year and six months); *In the Matter of Disciplinary Proceedings Against John T. Riegleman, D.C.*, Order No. 0000813 (April 27, 2011) (practiced with expired license for approximately three months); *In the Matter of Disciplinary Proceedings Against Danny B. Futch, D.C.*, Order No. 0001452 (March 29, 2012) (practiced with expired license for five months; at all times licensee in “technical compliance” with licensing requirements); *In the Matter of Disciplinary Proceedings Against Russell M. Sherbondy, D.C.*, Order No. 0002014 (Jan. 24, 2013) (practiced with expired license for 11 months due to early lease termination of office space and relocation of practice twice within eight-month period); *In the Matter of Disciplinary Proceedings Against Dale R. Alt, D.C.*, Order No. 0002267 (Jan. 24, 2013) (practiced with expired license on three occasions, for approximately four months, three weeks and three weeks, respectively; at all times while unlicensed, licensee was in compliance with licensing requirements); *In the Matter of Disciplinary Proceedings Against Jeremy J. Fritz, D.C.*, Order No. 0002269 (Jan. 24, 2013) (practiced with expired license for approximately two years and failed to complete continuing education requirements, claiming office manager responsible for renewal suffered from a condition which affected job performance; in addition to reprimand and notification requirements, Board suspended license for two weeks); *In the Matter of Disciplinary Proceedings Against Robert C. Kurtz, D.C.*, Order No. 0000343 (Aug. 12, 2010) (practiced while ineligible for license due to tax delinquency for approximately three months); *In the Matter of Disciplinary Proceedings Against Richard L. Olson, D.C.*, Order No. 0002268 (Jan. 24, 2013) (practiced with expired license for eight months; licensee also short two of required 40 continuing education credits; when licensee discovered he was not in compliance, he immediately stopped seeing patients).

As pointed out by Respondent, with the exception of the *Wade* decision, all of these decisions were the result of stipulations between the parties, not contested hearings. Respondent states that the chiropractors in these cases likely entered into the respective agreements to avoid the imposition of additional costs and because the Division held a better bargaining position, not because the discipline was necessarily fair. Respondent requests significantly less discipline, asserting that the notification requirement will require him to repay all amounts he received for services rendered while he was unlicensed, which would be an amount likely in excess of \$100,000. He emphasizes that he is the sole provider for his family and states that the combination of a one-month suspension and repaying these amounts would likely bankrupt him. He also cites *In the Matter of the Disciplinary Proceedings Against Chad C. Wolter, D.C.*, Order No. LS0606227CHI (June 22, 2006), in which the Board did not impose the notification requirements for a chiropractor who practiced for approximately three months while unlicensed.²

The Division responds that a licensee who brings a case to hearing rather than settling it should not receive more lenient discipline than those who admit their misconduct and settle the case early on in the process.

As noted by this tribunal in *Wade*, cited above, to ensure fairness and uniformity, prior Board decisions are generally followed. This tribunal did so in *Wade*, despite the fact that *Wade* involved a contested case hearing whereas the Board decisions cited by this tribunal (and again

² Respondent also relies on *In the Matter of Disciplinary Proceedings Against John A. Nilsson, D.C.*, Order No. LS0509021CHI (Nov. 20, 2006); however, as pointed out by the Division, *Nilsson* does not support Respondent’s position because in that case, the Board revoked the chiropractor’s license.

relied upon by the Division here) involved stipulated agreements. It is clear from these prior decisions that the Board places a priority on the notification requirement (*Wolter* appears to be an aberration). I conclude that this case is sufficiently similar to prior cases that similar discipline is warranted.

The prior cases involved time periods of unlicensed practice ranging from approximately three months to two years. In the case involving two years, *Fritz*, the Board did impose a two-week suspension; however, other cases involved practicing for approximately eight months to a year and a half, with no suspension ordered, only a reprimand. The prior cases also involved inadvertent failures to renew, which, when discovered by the licensee, were addressed immediately.

In this case, Respondent practiced for approximately eight months without a license. As with the licensees in prior cases, Respondent claims that he did not know his license was expired for any of this time period. His situation is different from the prior cases, however, in that there is no indication in the prior cases that the licensees had been sent notices warning them that their licenses were in jeopardy but failed to take action on such notices. In this respect, Respondent's conduct is more egregious than the conduct involved in the prior cases. However, in Respondent's favor, several of the prior cases involved licensees who had more than one instance of unlicensed practice or who had engaged in other violations, such as not being current in their continuing education.

Based on this record and the factors articulated in *Aldrich*, I cannot conclude that there is any reason to deviate from the practice of requiring notification. However, I likewise cannot conclude that there is any reason to deviate from the general practice of imposing a reprimand rather than a suspension.

Based on the foregoing, a reprimand is imposed, along with limitations on Respondent's license related to notification. These limitations require that, within 60 days of the Final Decision and Order in this matter, Respondent shall notify the individuals and entities he billed for chiropractic services from June 26, 2013 through February 27, 2014 that he was unlicensed and that he billed for chiropractic services he was not legally authorized to perform or bill for during this time period. In addition, within 90 days of the Board's Final Decision and Order, Respondent must file a notarized affidavit with the DSPS Monitor of his satisfactory notification, with the requirements and supporting documentation set forth in the Order section below.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 cooperation of the respondent; (5) any prior discipline; and (6) the fact that DSPS is a program revenue agency, funded by other licensees. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, Order No. LS0802183CHI (Aug. 14, 2008).

Addressing the first factor, I note that one count was alleged, that of practicing chiropractic without a license, and that the Division has prevailed on that count. With respect to the nature and seriousness of the misconduct, the Division is correct that practicing without a license is serious in that it undermines the licensing scheme which ensures the public that licensees are sufficiently competent and ethical to practice. In addition, this case involved a relatively long period of practicing without a license, approximately eight months. However, it is also true that this case does not involve any allegation that a patient was mistreated or received inadequate care. This is also true of the underlying revocation, which was based on a tax issue, not on a situation involving harm to patients. While there were undoubtedly huge lapses with respect to the business end of Respondent's practice, I cannot conclude that Respondent's conduct of practicing without a license was deliberate.

Regarding the third factor, the level of discipline sought by the Division is severe in that it involves a suspension; however, the suspension sought is for a relatively short period of time, one month, and is not being imposed in this case. Rather, a reprimand, the lowest form of discipline, is imposed. With respect to the notification requirement and possible recoupment by payers for Respondent's services, this requirement is severe in that it may result in Respondent repaying a very large sum of money; however, it has not been demonstrated that notification will definitely result in repayment.

With respect to Respondent's cooperation in these proceedings, I note that he has been fully cooperative in all respects, provided what was required of him in a timely manner, appeared at the prehearing conference and hearing, and followed the directives required by law and by this tribunal. In addition, he never disputed that he practiced chiropractic during the period of June 26, 2013 through February 27, 2014, or that if DSPS followed the appropriate legal procedure to revoke his license for tax delinquency, he practiced without a license.

The fifth factor operates in Respondent's favor as he has no prior discipline. The final factor, which always unequivocally operates in the Division's favor, is that if the costs are not borne by Respondent, they would be ultimately be borne by members of Respondent's profession who have not engaged in any wrongdoing.

Based on the foregoing, I conclude that 60 percent of the costs of these proceedings should be imposed on Respondent.

CONCLUSIONS OF LAW

1. The Division met its burden of establishing that Respondent practiced chiropractic without a license to do so from June 26, 2013 through February 27, 2014, in violation of Wis. Stat. §§ 446.02 and 446.03(5), and Wis. Admin. Code § Chir 6.02(25) and (26).

2. Respondent has failed to establish that the Division's revocation of Respondent's license on June 26, 2013 was ineffective because DSPS did not comply with Wis. Stat. § 73.0301(2)(b)1.

3. The facts of record and the factors delineated in *Aldrich* warrant imposition of a reprimand and the notification requirements set forth in the Order section below.

4. Imposing 60 percent of the costs of these proceedings on Respondent is appropriate under the facts of this case and the factors articulated in *Buenzli-Fritz*.

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. Respondent is reprimanded.
2. Respondent's license to practice chiropractic is limited as follows:
 - a. Within 60 days³ of the date of the Final Decision and Order in this matter, 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 Respondent during the period from June 26, 2013, through February 27, 2014. The written notice shall explain that Respondent was not licensed to practice chiropractic in Wisconsin during that period, and was, therefore, not authorized to practice chiropractic or charge any fee for doing so.
 - b. Within 90 days from the date of this order, Respondent shall send to the DSPS Monitor, at the address listed below, a sworn affidavit. The affidavit must identify each person or entity that received notification, and the date of notification. The following documents must 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 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.
3. This limitation shall be removed from Respondent's license after Respondent satisfies the Board or its designee that Respondent has successfully completed all of the notification requirements in paragraphs 2a and 2b of the Order.

4. Respondent shall pay 60 percent of 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:

³ The Division requests that notification be provided within 30 days of the Final Decision and Order and that an affidavit confirming notification be provided within 60 days. Given the eight-month period at issue, I have instead imposed a 60 and 90-day time limit, respectively.

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

5. 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 Tyler G. Schneekloth.

Dated at Madison, Wisconsin on December 23, 2015.

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

By: _____

Jennifer E. Nashold
Administrative Law Judge