

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 :
 : FINAL DECISION AND ORDER
MARGARET MERTENS, D.C., :
RESPONDENT. :

0005141

Division of Legal Services and Compliance Case Nos. 14 CHI 022 and 15 CHI 001

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

Margaret Mertens, D.C.
106 S. Chestnut
Marshfield, WI 54449

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

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 Margaret Mertens, D.C., (DOB November 11, 1961) is licensed to practice chiropractic in the state of Wisconsin, having license number 2195-12, first issued on November 17, 1986 and current through December 14, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 106 South Chestnut, Marshfield, Wisconsin 54449.

2. At all times relevant to this proceeding, Respondent was employed as a chiropractor at a clinic located in Marshfield, Wisconsin.

Prior discipline

3. On December 18, 2003, in case numbers 97CHI027 and 01CHI030, the Board suspended Respondent's license to practice chiropractic for 21 days, of which 11 days were stayed. The Board further ordered remedial education and costs, which Respondent completed and paid.

4. The Board found that on May 21, 2000, Respondent entered into a settlement agreement with the United States Department of Justice, which alleged that Respondent submitted claims to the Medicare Program for services purportedly rendered between September 1, 1994 through February 6, 1996, and January 1, 1999 through October 1, 1999. The United States contended that some of the services Respondent claimed to have provided were not adequately documented to substantiate the diagnosis, necessity for treatment or treatment provided. Respondent did not admit the violations, but paid a sum of money to the United States.

5. Between December 31, 2001 and July 10, 2001, Respondent practiced with an expired license. Between July 11, 2001 and August 15, 2001, Respondent's license was subject to a revenue hold, and she continued to practice chiropractic.

6. The Board determined that Respondent failed to cooperate with a Division investigation by failing to provide medical records in a timely manner.

14 CHI 022: Patient A

7. On March 3, 2014, Respondent saw Patient A (DOB June 19, 1939) due to pain in Patient A's left shoulder. Patient A also complained about pain in her left leg. Patient A was in a wheelchair and accompanied by family members. Respondent examined Patient A while she remained in her wheelchair.

8. At that first meeting, Patient A gave Respondent paper copies of x-rays of her left leg. Respondent states that because the x-rays were less than a year old, Respondent did not recommend or order additional x-rays.

9. Respondent reported that before commencing treatment she told Patient A "unequivocally" that, "there was nothing I could do with the stabilization sites." Nevertheless, Respondent asserts that because Patient A specifically requested her to perform some muscle manipulation techniques with respect to Patient A's left leg, Respondent agreed to do so.

10. Between March 3 and June 9, 2014, Respondent treated Patient A 30 times. During this period, with few exceptions, Patient A allegedly reported that the pain she was experiencing with respect to her left leg was either at the same level or worse than the previous appointment.

11. Respondent told Patient A that she did not expect to accomplish anything with treatment of Patient A's leg, and there was little more they could do for her.

12. When Patient A asked about a new x-ray with respect to her left leg, Respondent indicates she told Patient A to see the physician who took the original x-rays.

13. Respondent explains that she could not take x-rays of Patient A's leg because Patient A could not stand, and Respondent did not have equipment to take an x-ray with the patient in a prone position.

14. On April 23, 2014, Respondent documented:

Recc early [check] at ortho Assoc. didn't know anything else would help—suggested possible decomp for L/S nerve to [reduce] mm spasms.

15. Respondent did not otherwise document any indication that she informed Patient A that she could not help her.

16. Respondent did not otherwise document a referral to another health care practitioner.

17. Respondent did not otherwise document any recommendation for additional x-rays.

18. In June 2014, Patient A's regular doctor allegedly found that Patient A had a fracture in her left leg, requiring surgery.

19. Patient A's family members report that they witnessed Respondent advising Patient A of futility of further treatment on only one occasion. That occurred during Patient A's last visit.

15 CHI 001, Patient B

20. Between May 19, 2014, and January 8, 2015, Respondent provided treatment to Patient B (DOB April 23, 1924) on at least 122 dates, with multiple modalities rendered.

21. Patient B was 88 years-old when he commenced treatment with Respondent.

22. Respondent did not document informed consent for treatment in the patient health care record.

23. Respondent allegedly billed a third-party payer \$19,589.53 for services provided to Patient B.

24. On September 26, 2014, Respondent's staff member reported to a third-party that Patient B was mildly confused, "tend[ed] not to be a very reliable reporter of his symptoms", and stated that he was "unable to rate his weakness" according to Respondent's symptom and pain scale.

25. Respondent failed to maintain complete health care records for Patient B.

26. In a letter to a third-party payer, Respondent's staff member explained that due to Patient B's inability to reliably report his symptoms, "the subjective portion of his daily notes and examinations are generally incomplete."

27. Respondent failed to document in the patient health care record that Patient B was improving with treatment.

28. In addition to other treatment, Respondent allegedly provided biofeedback to treat cognitive deficits and confusion.

29. Respondent's assessment of Patient B was allegedly inadequate because he purportedly could not tell Respondent about his condition.

30. Respondent failed to obtain adequate informed consent before treating Patient B because of Patient B's purported cognitive impairment.

31. Respondent failed to perform and document proper assessment and case planning by failing to utilize objective measures.

32. The above facts remain unproven in a formal contested hearing. Respondent denies any and all wrong-doing. However, in an effort to avoid the expense of litigation, Respondent knowingly consents to entry of the following Conclusions of Law and Order.

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. By the alleged conduct described in the Findings of Fact, Margaret Mertens, D.C., engaged in unprofessional conduct as defined by Wis. Admin. Code § Chir 6.02(6).

3. By the alleged conduct described in the Findings of Fact, Margaret Mertens, D.C., engaged in unprofessional conduct as defined by Wis. Admin. Code § Chir 6.02(8).

4. As a result of the above alleged conduct, Margaret Mertens, D.C., is subject to discipline pursuant to Wis. Stat. § 446.03(5).

ORDER

1. The attached Stipulation is accepted.
2. Margaret Mertens, D.C., (license number 2195-12) is hereby REPRIMANDED.
3. Margaret Mertens, D.C., (license number 2195-12) shall complete education as follows:

- a. Within eighteen (18) months from the date of this Order, Respondent shall successfully complete twelve (12) hours of education on the subject of record keeping, including informed consent; and twelve (12) hours of education on diagnoses and assessment in the practice of chiropractic. The course(s) must be pre-approved by the Board's designee. Successful completion requires Respondent to take and pass any exam offered for the course(s). Courses taken without preapproval may NOT be used to satisfy the education requirements of this Order.
 - b. The course entitled, "Documentation: Satisfying the Coders, Auditors and Claims Reviewers," sponsored by the Wisconsin Chiropractic Association on Saturday, September 17, 2016, is preapproved to satisfy four (4) of the twenty-four (24) hours ordered in sub-paragraph a, on the topic of record keeping.
 - c. Within thirty (30) days of completion of the preapproved remedial education, Respondent shall submit proof of successful completion in the form of verification from the institution or organization that provided the education.
 - d. None of the remedial education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.
4. Within ninety (90) days from the date of this Order, Margaret Mertens, D.C., (license number 2195-12) shall commence meeting with a professional mentor who is licensed to practice chiropractic in the state of Wisconsin, and who has not been disciplined by the Board as follows:
- a. Within thirty (30) days from the date of this Order, Respondent shall submit to the Department Monitor, at the address below, a written request for approval of a proposed mentor. The request for approval shall be accompanied by the mentor's current curriculum vitae and a letter from the professional mentor confirming that he or she has read this Order and agrees to undertake the duties of a professional mentor as set out in this paragraph.
 - b. Unless otherwise authorized by the Board or its designee, the professional mentor shall not have any personal or professional relationship with Respondent, past or present that could reasonably be expected to compromise the proposed mentor's ability to render fair and unbiased reports to the Department.
 - c. The Board or its designee has the full and final authority to approve or reject a proposed mentor. This decision is based on an exercise of discretion and is not reviewable. The Board or its designee may, upon request of Respondent and for good cause, approve or direct a change in the professional mentor at any time.

- d. Respondent shall meet with the professional mentor for at least twenty-four (24) months from the date the Board or its designee approves the mentor. Every month, the professional mentor shall meet with Respondent and shall randomly select and review the charts of at least five (5) patients that have presented to Respondent in the preceding month. The meeting and record review shall be for the purpose of determining whether or not Respondent: maintains adequate treatment records consistent with the standards of the profession and as required by rule; has accepted only clients for whom reasonable progress is expected; provides care meeting at least the standard of minimum competence; conducts and documents assessments as required by the standards of the profession and avoids conflicts of interest.
- e. The professional mentor shall offer feedback and direction to Respondent as necessary for the purposes of assisting Respondent in improving the quality of care provided to clients and record-keeping. Respondent shall follow the appropriate guidance of the professional mentor. Whether or not guidance of the professional mentor is appropriate and whether or not Respondent has complied with the guidance shall be in the sole discretion of the Board or its designee. These discretionary determinations are not reviewable.
- f. The professional mentor shall submit a written and thorough quarterly report identifying the number of charts reviewed in the previous quarter and identifying any concern with Respondent's practice, records and care of clients. It is Respondent's responsibility to ensure the quarterly reports are submitted when due.
- g. The professional mentor shall immediately report any unprofessional conduct or suspected violation of this Order to the Department Monitor.
- h. After the timely submission of two (2) consecutive satisfactory quarterly reports, and with a written recommendation from the professional mentor expressly supporting the request, Respondent may petition the Department for a modification or termination of any part of this professional mentor requirement, including termination of the requirement of the professional mentor. Whether to modify the terms of the requirement of the professional mentor under this provision, is in the sole discretion of the Board or its designee and is not reviewable. This provision shall not be interpreted to mean that Respondent will be granted modification of the terms of the requirement nor termination of the requirement of the professional mentor except as set out in (i) below.
- i. After the timely submission of eight (8) consecutive satisfactory quarterly reports, and with a written recommendation from the professional mentor expressly supporting the request, the requirement of a professional mentor shall be terminated.


- j. Respondent is responsible for any and all costs associated with the services of the professional mentor.
5. Respondent shall not provide chiropractic diagnoses or treatment to Patient B.
6. Within one hundred eighty days (180) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$5,569.00.
7. Any requests, reports, request for approval of courses, proof of successful course completion and 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

8. 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 for a violation of any of the terms of this Order. In the event Respondent fails to timely obtain a professional mentor, fails to comply with the professional mentor's recommendations, fails to timely submit quarterly reports, provides treatment to Patient B, fails to timely submit payment of the costs as ordered, or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 2195-12) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has obtained a professional mentor, complied with the professional mentor's recommendations, timely submitted quarterly reports, terminates the care of Patient B, submitted proof of the successful completion of the ordered education and complied with payment of the costs.

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

WISCONSIN CHIROPRACTIC EXAMINING BOARD

by: ) 12/6/17
Member of the Board Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MARGARET MERTENS, D.C.,
RESPONDENT.

:
:
:
:
:

STIPULATION

0005 141

Division of Legal Services and Compliance Case Nos. 14 CHI 022 and 15 CHI 001

Respondent Margaret Mertens, 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 John Gardner and Steven Conway.

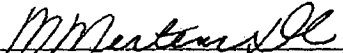
4. Respondent agrees to the adoption of the attached Final Decision and Order by
the Wisconsin Chiropractic Examining Board (Board). The parties to the Stipulation consent to
the entry of the attached Final Decision and Order without further notice, pleading, appearance
or consent of the parties. Respondent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

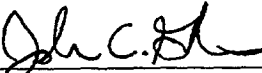
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Margaret Mertens, D.C., Respondent
106 S. Chestnut
Marshfield, WI 54449
License no. 2195-12

9/13/16

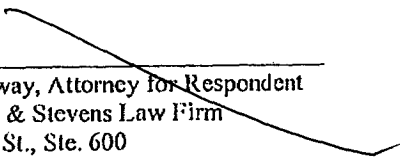
Date



John Gardner, Attorney for Respondent
Dewitt Ross & Stevens Law Firm
2 E. Mifflin St., Ste. 600
P.O. Box 2865
Madison, WI 53703

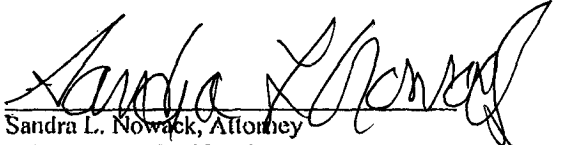
9/19/16

Date



Steven Conway, Attorney for Respondent
Dewitt Ross & Stevens Law Firm
2 E. Mifflin St., Ste. 600
P.O. Box 2865
Madison, WI 53703

Date



Sandra L. Nowack, Attorney

WI State Bar No. 1025643

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9/26/10
Date