

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE LICENSE OF	:	
	:	FINAL DECISION AND ORDER
BENJAMIN J. BREIDENBACH, D.C.,	:	FOR REMEDIAL EDUCATION
LICENSEE.	:	ORDER 0006733

Division of Legal Services and Compliance Case No. 18 CHI 004

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

Benjamin J. Breidenbach, D.C.
Onalaska, WI 54650

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. Licensee Benjamin J. Breidenbach, D.C., (DOB xx/xx/1975) is licensed in the state of Wisconsin as a chiropractor, having license number 3676-12, first issued on August 10, 2000, and current through December 14, 2020. Licensee's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Onalaska, Wisconsin 54650.

2. At all times relevant to this proceeding, Licensee was employed as a chiropractor at chiropractor office (Office), located in Wisconsin.

3. Complainant is the mother of minor Patient A. She has filed several complaints against Licensee concerning Licensee's scoliosis treatment of Patient A and the use of a "DMX" imaging machine for diagnosis and treatment with the radiation exposure to Patient A.

- a. In case 15 CHI 002, Patient A's mother alleged that Licensee failed to properly treat Patient A's scoliosis and Licensee continued to providing treatment even though Patient A was not improving and was getting worse. This case was closed after investigation for No Violation.
- b. In case 16 CHI 018, Patient A's mother alleged that Licensee was exposing patients to excessive radiation during radiographs and DMX fluoroscopy of patients. This case was closed after investigation for Insufficient Evidence.

4. The instant case was opened at Complainant's request for reconsideration of 16 CHI 018 and submission of additional evidence of purported effects of radiation exposure to Patient A.

5. The Department investigated DMX exposures through all available documentation and opinions from a health physicist.

6. Treatment records for Patient A provided by Licensee document three (3) minutes and fifty-three (53) seconds of DMX exposure between September 11, 2014 and December 10, 2014. There is also evidence of two (2) DMX studies where exposure time was not documented.

7. Additionally, these treatment records document standard radiographic exposures at each of Patient A's 36 office visits between July 4, 2014, and December 10, 2014. Licensee denies this quantity of x-rays and stated that a "scoliosis chair placement" x-ray was only performed once despite being documented on every visit note.

8. Licensee agreed in an in-person interview that the average person is exposed to 300 mrem (millirem) of radiation per year.¹ There are considerable differences of opinion on the amount of exposure from the DMX.

9. Licensee is "CLEAR"² trained and certified for treating scoliosis patients. This protocol calls for specific radiographs and recommends the use of the DMX machine. Licensee stated that he was not overly concerned with Patient A's radiation exposure because he was trying to treat the patient and give him the "maximum opportunity to get better."

10. At the Department's request, Licensee provided all of Patient A's treatment records. Each visit note had an addendum dated March 15, 2015.³ Licensee stated that upon a review of the records prior to providing them to the Department, he noticed that the neuromuscular re-education (NMR) or rehabilitation sections were inaccurate, so he completed the addenda from memory and pictures.

¹ 1 mSv = 100 mrem.

² CLEAR is an acronym for "Chiropractic Leadership, Educational Advancement, and Research."

³ Each addendum was approximately 3 – 8 months after the visit.

11. The December 5, 2014 visit note mentioned treatment in the office by Dr. Dennis A. Woggon (CLEAR founder) on November 29, 2014. This treatment included 53 seconds of DMX exposure. There was no note made of the November 29, 2014 visit.

12. In resolution of this matter, Licensee consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

ORDER

1. The attached Stipulation is accepted.
2. Within ninety (90) days of the date of this Order, Licensee shall at his own expense, successfully complete fifteen (15) hours of education on the topic of evidence based utilization of diagnostic imaging in spine patients and fifteen (15) hours of education on the topic of patient documentation, as follows:
 - a. Each course attended in satisfaction of this Order must be pre-approved by the Board or its designee. Licensee shall be responsible for locating course(s) satisfactory to the Board and for obtaining the required approval of the courses from the Board or its designee. Licensee must take and pass any exam offered for the course(s).
 - b. Licensee shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. Up to ten (10) hours of the education completed pursuant to this requirement may be used to satisfy any education requirements that have been or may be instituted by the Board or Department.
 - c. The Board accepts the eight (8) hours of continuing chiropractic education on the subject of patient documentation that Licensee has already completed as satisfying eight (8) of the fifteen (15) patient documentation hours ordered.
 - d. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Licensee. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.

3. Request for approval of courses and proof of successful course completion shall be sent by Licensee to the Department Monitor at the address below:

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

You may also submit this information online via DSPP's Monitoring Case Management System, here:

<https://dpsmonitoring.wi.gov>

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

WISCONSIN CHIROPRACTIC EXAMINING BOARD

by: Jeffrey King D.C.
A Member of the Board

4/2/2020
Date

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

BENJAMIN J. BREIDENBACH, D.C.,
RESPONDENT.

:
:
:
:
:

STIPULATION

ORDER 0006733

Division of Legal Services and Compliance Case No. 18 CHI 004

Respondent Benjamin J. Breidenbach, 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 Michael Russart.


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 or Respondent's attorney, 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.

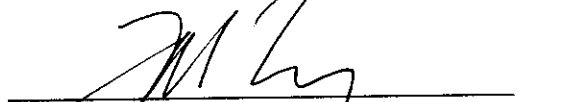
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Benjamin J. Breidenbach, D.C., Respondent
N5539 Penney Lane
Onalaska, WI 54650
License no. 3676-12

02/08/2020
Date


Jill Munson, Attorney for Respondent
Hinshaw & Culbertson
100 E Wisconsin Avenue, Suite 2600
Milwaukee, WI 53202

2/10/2020
Date


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

2/19/20
Date