

IN THE MATTER OF
RICHARD GAKNER, D.C.

Respondent

License Number: 01617

* BEFORE THE STATE BOARD
* OF CHIROPRACTIC
* EXAMINERS
* Case Number: 03-33C

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Chiropractic Examiners (the "Board"), and subject to Md. Health Occ. Ann. § 3-101, et seq., the Maryland Chiropractic Practice Act (the "Act") (2000 Repl. Vol.), the Board charged Richard Gakner, D.C., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 3-313:

(a) Subject to the hearing provisions of § 3-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (2) Fraudulently or deceptively uses a license;
- (11) Misrepresents the effectiveness of any treatment, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (19) Violates any rule or regulation adopted by the Board;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic;

- (28) Violates any provision of this title.

The Board further charges that the Respondent violated the following provision of the Act § 3-101:

(f) *Practice chiropractic.* – (1) “practice chiropractic” means to use a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease:

The Board also charged the Respondent with violation of its Code of Ethics, found in Code Md. Regs. tit. 10 § 43.14 Standards of Practice.

A. A chiropractor and chiropractic assistant shall concern themselves primarily with the welfare of the patient.

The Board further charged the Respondent with violation of Code Md. Regs. tit. 10 § 43.15 (February 23, 1998):

.03 Record Keeping.

C. The Patient Record.

(3) The chiropractor shall include the following information in the patient record:

- (a) Chiropractor and clinic name identification;
- (e) Treatment plan;
- (f) SOAP notes;

E. Maintenance and Release of Patient Records.

(2) The chiropractor shall release patient records when release is:

(a) Authorized by the patient in writing; or

(3) The chiropractor may assess fees for duplicating patient records for the patient or for another health care provider in accordance with Health-General Article, §4-304, Annotated Code of Maryland.

.05 Patient History.

The chiropractor shall include the following in the patient history:

C. Family health history;

D. Past health history, including:

- (1) General state of health,
- (7) Prescribed and nonprescribed medications and supplements,
- (8) Allergies, and
- (9) Mental illness;

E. Systems review, including:

- (1) Musculoskeletal,
- (2) Cardiovascular,
- (3) Respiratory,
- (4) Gastrointestinal,
- (5) Neurological,
- (6) Ophthalmological,
- (7) Otolaryngological,
- (8) Endocrine,
- (9) Peripheral vascular, and
- (10) Psychiatric; and

F. Personal history, including:

- (1) Occupational,
- (2) Activities,
- (3) Exercise, and
- (4) Health habits.

.06 Penalties.

Violation of this chapter may result in disciplinary action against the chiropractor, as set forth in Health Occupations Article, §3-313, Annotated Code of Maryland.

The Respondent was given notice of the issues underlying the Board's charges by letters dated March 1, 2004, and April 5, 2004. Accordingly, a Case Resolution Conference was held on April 8, 2004, and was attended by Marc Gamerman, D.C., Vice President of the Board, and Richard Bloom, Assistant Attorney General, Counsel to the Board.¹ Also in attendance were the Respondent and his attorney, Christopher M. Johns, and the Administrative Prosecutor, Roberta Gill.

¹ Duane R. Sadula¹, D.C., whose term begins July 1, 2004, was present in an observational capacity.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent was licensed to practice chiropractic in the State of Maryland. The Respondent was first licensed on June 18, 1993. The Respondent's license expires August 31, 2005.
2. At all times relevant hereto, the Respondent practiced in Silver Spring, Maryland under the name of Accessible Chiropractic Care.
3. On or about January 3, 2003, Kaiser Permanente, a health maintenance plan, referred Patient A² to the Respondent. The basis for the referral was a diagnosis of "neck pain." Patient A's pertinent history was as follows: "56 yo w/neck pain, bilat. Pain has been a feature since an episode of polymyalgia (sic) rheumatica in 1997. Neck pain improved a lot, but then w/MVA in 8/02 exacerbated. She has been taking advil (sic) off and on since 1997 for this. I have discussed w/her that posture at work may be exacerbating her sx, as pain is in the posterior neck muscles, bilat and rhomboids. I would appreciate your eval."
4. On January 8, 2003, Patient A first presented to the Respondent and filled out an application for treatment. Patient A indicated that her major complaint was "constant pain beginning every morning in the neck area & shoulders." Patient A further reported that

² The identity of Patient A is confidential.

her condition was a result of an accidental injury which occurred on 8/26/02 when she was "reared in the back by another automobile." She further stated that it caused an "instant jerk to the upper body." On that same date, the Respondent conducted an examination of Patient A, consisting of "reflexes, range of motion-cervical, and ortho/neuro." He billed for a diagnosis of cervical myalgia, thoracic spine pain and thoracic sequemental dysfunction, as well as multi-cervical vertebra.

5. Thereafter, the Respondent treated the patient for five more visits, noting on the sixth one, on April 2, 2003, that he informed the patient that she could request additional visits from her HMO, if "she feels need for additional tx. Otherwise her K-P referred (6 visits) has [sic] expired."

6. The Respondent's treatment notes are below standard in that he failed to document family history, failed to adequately identify the practitioner and clinic throughout the patient's records, and failed to conduct a systems review, among other things, pursuant to the Board's regulations.

7. As set forth above, the Respondent's failure to maintain treatment notes in the manner required by law, is a violation of the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated § 3-313 (a) (19) of the Act. The Board also finds that the Respondent violated Code Md. Regs. tit. 10 § 43.15.05 C, E and F.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 17th day of June, 2004, by a majority of a quorum of the Board,

ORDERED that the Respondent is hereby placed on **PROBATION** for one year, subject to the following condition: that he takes and successfully completes a documentation/record-keeping course pre-approved by the Board, and document that completion to the Board; and be it

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it


ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of chiropractic in Maryland; and be it further

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on his license, provided

that he can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary; and be it

ORDERED that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 1999), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.

JUN 17 2004



E. Brian Ashton, D.C., P.T., President
State Board of Chiropractic Examiners

CONSENT OF RICHARD GAKNER, D.C.,

I, Richard Gakner, D.C., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Christopher M. Johns, and have been advised by him of the legal implication of signing this Consent Order;
2. I am aware that, without my consent, my license to practice chiropractic in this State cannot be limited except pursuant to the provisions of § 3-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (1999 Repl. Vol., and 2003 Supp.).
3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in §3-315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 3-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice chiropractic in the State of Maryland.

6/16/04
Date

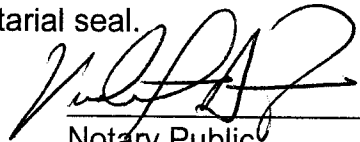
Richard Gakner, D.C.
Richard Gakner, D.C.

STATE OF Maryland

CITY/COUNTY OF Montgomery :

I HEREBY CERTIFY that on this 16 day of June, 2004, before me, Richard Gakner D.C., a Notary Public of the foregoing State and (City/County),
(Print Name) personally appeared Richard Gakner, D.C., License No. 01617, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission Expires: May 23 2005