

IN THE MATTER OF * **BEFORE THE MARYLAND**
JOSEPH P. HUGHES, D.C., * **STATE BOARD OF CHIROPRACTIC**
Respondent. * **EXAMINERS**
License No. S01182 *

* * * * *

FINAL OPINION AND ORDER

I. PROCEDURAL HISTORY

On August 9, 2004, the Board charged Dr. Hughes with violating the Maryland Health Occupations Code and its implementing regulations as follows, by:

(1) Fraudulently or deceptively obtain[ing] or attempt[ing] to obtain a license for the applicant or licensee or for another, in violation of Md. Health Occ. Code Ann. § 3-313 (1);

* * *

(2) Make[ing] or fil[ing] a false report or record in the practice of chiropractic in violation of Md. Health Occ. Code Ann. § 3-313 (12);

* * *

(3) Committ[ing] an act of unprofessional conduct in the practice of chiropractic, in violation of Md. Health Occ. Code Ann. § 10-313 (21).

Following the filing of charges, a pre-hearing procedure took place during which the parties exchanged witness lists and documents. Additionally, the Parties both filed motions with respect to evidentiary matters. A full evidentiary

hearing took place before a quorum of the Board on May 12, 2005. One witness testified for the State, Mr. David Ford, an Investigator for the Board.

Dr. Hughes, a licensed chiropractor, was represented by counsel throughout the proceedings. Dr. Hughes testified on his own behalf and in addition presented the following witnesses: Mr. Paul Levene, Esq., Dr. Hughes' attorney; Joel Kruh, Esq., General Counsel of the Maryland Chiropractic Association, who testified as a character witness; Paul Goszkowski, a licensed chiropractor and former President of the Board of Chiropractic Examiners, who testified as both an expert and a character witness.

Thirteen exhibits, labeled A through M, were admitted on behalf of Dr. Hughes. Fourteen documents, numbered 1-14 as listed on the "State's Exhibit List" attached to those documents, were also admitted into evidence as State's exhibits numbers 1 through 14.

As preliminary matter, the State's attorney moved to exclude a portion of the testimony of Dr. Goszkowski. Over the objection of Dr. Hughes, the Board ruled that Dr. Goszkowski was not permitted to testify about confidential Board deliberations on previous cases with public and non-public disposition.

II. EVALUATION OF THE EVIDENCE

Most of the facts of this case were not in controversy. Since 1982, Dr. Hughes has been a licensed Chiropractor in this State. Dr. Hughes has served

as Chairman, Vice-President and President of the Maryland Chiropractic Association. Dr. Hughes owns his own practice in Baltimore, where he has an unblemished record and is known as an excellent chiropractor.

In February of 2003, Dr. Hughes was arrested and charged with assault on a minor. These charges arose out of a domestic situation, which Dr. Hughes claims was misunderstanding. On June 4, 2003, Dr. Hughes was found guilty of second-degree assault in District Court in Harford County. After this ruling, Dr. Hughes agreed to accept probation before judgment ("PBJ").

On September 10, 2003, Dr. Hughes signed and filed his renewal application for licensure with the Maryland State Board of Chiropractic Examiners. This application asks all applicants, "Have you pled guilty, *nolo contendere*, no contest or been convicted or received probation before judgment of any criminal act (including all felonies, misdemeanors and including DWI or DUI of alcohol or controlled substances)?" In response to this question, Dr. Hughes wrote the word, "No."

The state's first witness was David Ford, the Board's Investigator. Mr. Ford testified that he has been the Board's investigator for the past six years. On February 4, 2004, he received underlying anonymous complaint that alleged that Dr. Hughes had been arrested in February of 2003, and pled guilty to assault charges in June of 2003. Mr. Ford testified that he was responsible for investigating the complaint against Dr. Hughes. Mr. Ford stated that he

confirmed that the allegations in the complaint were indeed true. After confirming the allegations, Mr. Ford reviewed Dr. Hughes's renewal application and discovered that the doctor had not disclosed his PBJ.

Mr. Ford then requested that Dr. Hughes write to the Board and explain his failure to disclose this PBJ on his renewal application. Dr. Hughes's attorney submitted several responses with different reasons for his client's failure to disclose. Mr. Ford presented this disciplinary case to the Board at their March, 2004 meeting and, the Board voted to forward this case to the Attorney General's Office for charges. On August 4, 2004, Dr. Hughes was sent, via certified mail, charges resulting from the above-mentioned complaint.

After Mr. Ford completed his testimony, the State concluded its case. Next, Dr. Hughes presented the Board with a 43-page motion for acquittal. The Board took a fifteen-minute recess to read and consider Dr. Hughes's motion. Essentially, Dr. Hughes moved for acquittal on the basis that the State had not proved that his conduct technically violated the Act. The Board was not persuaded by Dr. Hughes's motion and it was denied.

Dr. Hughes called his first witness Paul Levene, the attorney who represented him in his assault case. Mr. Levene testified that after Dr. Hughes entered his guilty plea and received a PBJ, he was required to register as a suspected child abuser with the State. On July 25, 2003, Dr. Hughes filed an appeal with the Office of Administrative Hearings regarding his registry as a suspected child abuser. This appeal was denied.

As a result of Dr. Hughes's appeal of his registry as a suspected child abuser, Dr. Hughes requested that his attorney appeal his acceptance of probation before judgment. On September 5, 2003, Mr. Levene filed a Motion to Withdraw Acceptance of Probation Before Judgment. In this motion, Mr. Levene argued that it was important for Dr. Hughes's to withdraw his acceptance of the PBJ because Dr. Hughes is a licensed healthcare provider in the State of Maryland and a finding of child abuse could result in the Maryland Chiropractic Board ruling barring Dr. Hughes from treating patients under eighteen years of age. (T. 103.) Mr. Levene claimed that he and Dr. Hughes never actually discussed the effect that the PBJ and registration as a child abuser would have on his licensure. Mr. Levene testified that he had independently crafted this argument without the input or assent of Dr. Hughes. On September 9, 2003, the District Court for Harford County denied Dr. Hughes's request to withdraw his guilty plea. On September 12, 2003, Dr. Hughes filed a motion for reconsideration of his request to withdraw his PBJ. The motion for reconsideration was denied on September 21, 2003.

Dr. Hughes did not appeal the matter any further. Mr. Levene admitted that he generally sends his clients copies of everything he files on their behalf. (T. 112.) He further testified that, as a matter of normal procedure, he will also call or write clients on the status of their case. (*Id.*)

The Board did not find Mr. Levene's testimony to be particularly credible. He was evasive and non-responsive in his answers. For example, he answered

questions with questions of his own and was unresponsive to questions during cross-examination. (T. 100, 101, 103.) Mr. Levene's demeanor and facial expressions imparted a disdain for the proceedings. Apparently, he felt so remorseful about his conduct and demeanor at the hearing that he was compelled to apologize to the Board at the conclusion of his testimony. (T. 127.) He also stated that, "he did not mean to be argumentative ... and was not trying to be disrespectful." (*Id.*)

Dr. Hughes called Joel Kruh as a character witnesses. Mr. Kruh testified that Dr. Hughes was honest and truthful in his dealings with him. Mr. Kruh, however, did not have any direct involvement with the events that led up to the charges in this matter.

Dr. Hughes called Dr. Paul Goszkowski as an expert witness. Dr. Goszkowski testified that he and Dr. Hughes were classmates in chiropractic school. Additionally, both men were active in the Maryland Chiropractic Association. Dr. Goszkowski testified that Dr. Hughes was always honest and reputable in his dealings with him. Finally, Dr. Goszkowski (a former president of the Maryland Board of Chiropractic Examiners, though not a member during any portion of the pendency of this particular case) stated that he had never observed Dr. Hughes to behave in unprofessional or unethical manner. There is no dispute that Dr. Goszkowski did not have any direct involvement with the events that led up to the charges in this matter.

Finally, Dr. Hughes testified on his own behalf. He testified in great detail with regards to the circumstances that led up to his PBJ. Additionally, he stated that he believed that his motion to withdraw his acceptance of the PBJ had taken care of the matter. Dr. Hughes claimed that he had not given his attorney any input or guidance in preparing the motion to withdraw. Additionally, he claimed that he had not read any of the pleadings prepared on his behalf because he was just too overwhelmed and he did not want to think about it. (T. 175.) Specifically, he denied ever seeing the motion to withdraw that cites a possible sanction from the Chiropractic Board, as one the reasons supporting his motion.

Dr. Hughes denied having any intent to deceive the Board when he submitted his application that did not disclose his PBJ for assault on a minor. Dr. Hughes claimed that he did not know that his motion to withdraw his PBJ had been denied the day before his renewal application was signed and submitted.

Near the end of his testimony, Dr. Hughes stated, "I understood that I was given probation before judgment." (T. 183.) In response to the question, "[Y]ou knew these proceedings, could have an effect on your license, your career?" He stated,

No. Why would it? Why would these proceedings have a thing on my license? Okay? Why would I even be in the child welfare – the child abuse line-up? Because I didn't belong there. And if I came in here and everyone read that testimony in the thing, there is no way that anyone would – I had a judge read it. And she said I don't know what happened to – she knew the woman. She said she didn't know what happened to such and such that day, she was really sensitive. But there is nobody that would find me guilty of

that. So, why would I worry about my license? It's something, I guess could happen, but I didn't worry about my license.

The foregoing testimony reflects that Dr. Hughes did understand and contemplate that his conduct could in fact impact his license. The response is rambling and a little incoherent, but Dr. Hughes does admit that on some level he knew that the PBJ could have an effect on his license to practice chiropractic. He had this knowledge when he knowingly executed the renewal application. (T. 184 – 185.) Based on Dr. Hughes testimony and the undisputed facts, the Board believes that Dr. Hughes knowingly deceived the Board when he failed to disclosed his PBJ on his renewal application.

The Board did not find Dr. Hughes to be a credible witness. Dr. Hughes was red-faced, argumentative and agitated during his testimony. Additionally, his testimony conflicted with the facts and his actions. Dr. Hughes went to great lengths to appeal both his registration as a child abuser and his PBJ. Neither appeal was successful. The facts and evidence of this case lead the Board to the conclusion that Dr. Hughes deceptively obtained a license when he failed to disclose his PBJ.

III. FINDINGS OF FACT

After considering the entire record in this case, including the testimony and exhibits entered into evidence at the hearing, and the arguments of counsel, the Board finds the following facts.

1. At all times referenced, Dr. Hughes has been licensed to practice chiropractic in the State of Maryland. Dr. Hughes was originally licensed as a chiropractor by the Board on May 10, 1982. Dr. Hughes is currently licensed by the Board as a chiropractor with physical therapy privileges, License Number S01182.

2. On September 10, 2003, Dr. Hughes signed his Maryland Chiropractic License (03-05 Biennial) Renewal Application ("Renewal Application"), for the Maryland State Board of Chiropractic Examiners.

3. Question number 5 of the Renewal Application asked the following:

Have you pled guilty, *nolo contendere*, no contest or been convicted or received probation before judgment of any criminal act (including all felonies, misdemeanors and including DWI or DUI of alcohol or controlled substances)?

4. Dr. Hughes wrote the answer "No" to question number 5 of the Renewal Application.

5. Dr. Hughes's answer to question number 5 of the Renewal Application was false; Dr. Hughes had received probation before judgment for Second Degree Assault. On June 4, 2003, in the District Court of Harford County, Maryland, Case Number 2R00035947, Dr. Hughes was found guilty of the crime of Second Degree Assault, Md. Crim. Law Code Ann. § 3-203, and, based upon the guilty finding, Dr. Hughes received probation before judgment, Md. Crim. Proc. Code Ann. § 6-220.

6. Dr. Hughes submitted to the Board the false Renewal Application, which was received on September 12, 2003. The Renewal Application contained the following affirmation:

I AFFIRM AND ATTEST THAT THE INFORMATION I
HAVE GIVEN ON THIS APPLICATION IS TRUE AND
CORRECT TO THE BEST OF MY KNOWLEDGE
AND BELIEF[.]

7. Based upon Dr. Hughes's representations in the Renewal Application, the Board renewed Dr. Hughes's license on or about September 12, 2003.

8. The conduct set forth above in the preceding paragraphs constitutes violations of Section 3-313(1)¹ of the Act, fraudulently or deceptively obtaining or attempting to obtain a license for the applicant or licensee or for another.

IV. CONCLUSIONS OF LAW

It is uncontested that Dr. Hughes' renewal application was not factually correct. There is no dispute that Dr. Hughes failed to disclose his PBJ on his renewal application, even though the application specifically requests such information. The Board finds that Dr. Hughes' failure to disclose this PBJ is evidence in and of itself that he deceptively obtained a license.

As a matter of public policy, any chiropractor completing an application for a license in Maryland is under an affirmative duty to disclose any and all information relevant for the Board's consideration. The Application contains a

¹ Because Dr. Hughes's conduct falls so squarely within the parameters of Section 3-313(1) the Board did not reach the issue of whether Dr. Hughes' actions constitute violations of Sections 3-313(12) or 3-313(21).

sworn statement² from the Applicant that he will provide accurate and thorough answers to the questions therein. Although the Board can and does independently verify every applicant's answers to some of the questions through other means, the Board must rely on each applicant's candor, honesty, integrity and thoroughness in completing the application. Thus, Dr. Hughes was under a duty to disclose the information asked for in the renewal application and he did not.

Moreover, Dr. Hughes failed to provide any credible explanation for his failure to disclose his PBJ in his renewal application, or his subsequent failure to correct the application. Although Dr. Hughes claimed that his PBJ was only a personal matter and not something that would be relevant to his renewal application, Dr. Hughes did not, because he could not, explain why he would be exempt from the application's request for information about criminal history, including PBJ's. Dr. Hughes's blanket assertion that the request for PBJ information did not apply to him simply is not enough to overcome the presumption that he intentionally failed to disclose his PBJ to deceive the Board.

Additionally, the timing of events creates a strong inference that the PBJ was at the forefront of Dr. Hughes's mind when he filled out and filed his renewal application. On June 4, 2003, Dr. Hughes accepted probation before judgment ("PBJ") on the charge of second-degree assault in District Court, in Harford

² The Affidavit on the last page of the Application reads as follows: "I affirm and attest that the information I have given on this application is true and accurate to the best of my knowledge and belief."

County. By notice dated June 17, 2003, the Harford County Department of Social Services informed Dr. Hughes that was required to register his name with the central registry for suspected child abusers. On July 25, 2003, Dr. Hughes, by and through counsel, Paul Levene, filed an appeal of this notice with the Office of Administrative Hearings (OAH). Dr. Hughes lost this appeal, and on September 5, 2003, Dr. Hughes, by and through counsel, moved to withdraw his acceptance of probation before judgment. This motion was denied on September 9, 2003. The next day, Dr. Hughes signed and filed his renewal application without any reference to the PBJ or without any indication that he was contesting a PBJ.

Dr. Hughes' many steps to appeal his PBJ also create a strong inference that he knew that information about the PBJ could adversely affect his license, and that he wanted to keep this information from the Board. Indeed, his motion to withdraw the PBJ (which was denied prior to his filing his application) specifically references the impact that the PBJ would have on his license.

What is more, Dr. Hughes failed to provide any basis as to why he did not correct or amend his application after his final motion for reconsideration was denied the withdrawal of his PBJ was denied. On September 12, 2003, Dr. Hughes (once again by and through counsel) submitted a motion to reconsider his motion to withdraw. This motion was denied on September 21, 2003. At no point subsequent to the denial of this final motion did Dr. Hughes inform the Board that his application needed to be corrected or amended.

In summary, the factual picture reveals an esteemed and professional doctor of chiropractic, who refused to deal with the consequences of his actions during a time of intense personal turmoil. Dr. Hughes' failure to disclose amounts to an act that was intentional, knowing or voluntary as opposed to accidental because it was done without ground for believing it is lawful or...[with] careless disregard whether one has the right so to act. The Board finds that Dr. Hughes was less than forthcoming with unflattering information about his background and that his omission was deceptive, especially in light of his duty to be candid on his application and the Board's need to be able to rely on the information reported on the Application.

Because the evidence weighs so heavily against Dr. Hughes there can be but one inference drawn by the Board -- Dr. Hughes fraudulently and deceptively obtained a license when he filed his renewal application and failed to disclose his PBJ that he had received just months prior to filing his application.

V. SANCTION

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 16th day of November 12, 2005, by a majority of a quorum of the Board,

ORDERED that effective thirty days from the date of this order, Dr. Hughes's license to practice chiropractic is hereby SUSPENDED for ninety days, with all but thirty days stayed. Additionally, Respondent is placed on PROBATION for three years, subject to the following conditions:

1. Within 180 days of the date this order is signed, Dr. Hughes

- shall take and pass, the Board's Jurisprudence Examination;
2. Within 180 days of the date this order is signed, Dr. Hughes shall take and complete a Board-pre-approved ethics course;

ORDERED that should the Board receive a report that Dr. Hughes's practice is a threat to the public health, welfare and safety, the Board may take immediate action against Dr. Hughes, including suspension or revocation, providing notice and an opportunity to be heard are provided to Dr. Hughes in a reasonable time thereafter. Should Dr. Hughes violate the terms of this Order, after providing Dr. Hughes with notice and an opportunity for a hearing, the Board may take further disciplinary action against Dr. Hughes, including suspension or revocation. Any violation of the terms of this Order shall constitute unprofessional conduct in addition to any applicable grounds under the Act. The burden of proof for any action brought against Dr. Hughes as a result of a breach of the terms of this Order shall be on Dr. Hughes to demonstrate compliance with the Order; and it is further

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

ORDERED that Dr. Hughes shall be responsible for all hearing costs incurred by the Board in the amount of \$1,139.40; and be it further

ORDERED that this document is a public record, pursuant to Md. Code Ann., State Gov't Article, § 10-611 et seq. (1999) and that it shall be forthwith

reported to appropriate data bases and disseminated in the Board website and newsletter.

11/16/05
Date

Marc Gamerman
Dr. Marc Gamerman, D.C.
President
Maryland State Board of
Chiropractic Examiners

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Code Ann., Health Occ. Article, § 3-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Findings of Fact, Conclusion s of Law and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't Article, §§ 10-201 *et seq.*, and Title 7 Chapter 200 of the Maryland Rules.

If Dr. Hughes files an appeal, the Board is a party and should be served with the court's process. The Administrative Prosecutor is not involved in the case at this point and need not be served with or copied on the pleadings.