

IN THE MATTER OF

*

BEFORE THE STATE BOARD

CLYDE NICHOLS, D.C.
license no. 01285

*

OF CHIROPRACTIC

*

EXAMINERS

Respondent

*

* * * * *

NOTICE OF CHARGES AND CONSENT ORDER
UNDER THE MARYLAND CHIROPRACTIC ACT

The Maryland State Board of Chiropractic Examiners (the "Board") hereby charges Clyde Nichols, D.C. (the "Respondent"), with violation of certain provisions of Md. Code Ann. Health Occupations §3-313 (1994).

Specifically, the Board charges the Respondent with violation of the following provisions:

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:

(25) Submits false statements to collect fees for which services were not provided[.]

The Board, the Respondent, and the Office of the Attorney General enter into this pre-charge Consent Order to resolve the issues and to avoid further litigation.

Findings of Fact

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant the Respondent was licensed to practice as a chiropractor in the State of Maryland.

2. As a result of a patient complaint to the Board, the Board subpoenaed the Respondent's treatment records of twenty-

five (25) patients¹.

3. Upon review of the twenty-five (25) patient records it was learned that the Respondent routinely billed for electrical stimulation on nineteen (19) of the patients reviewed. This practice occurred on 303 occasions. The remaining six treatment records supported the Respondent's bills of electrical stimulation as those treatment records contained notations in the progress notes which indicated that electrical stimulation was provided.

4. For example:

A. Patient A was initially seen by the Respondent on 11/10/89 for sciatica. From 12/26/95 to 1/14/97 Patient A was seen on 25 occasions for chiropractic care. On 20 occasions Patient A was billed for electrical stimulation. The Respondent's office notes reflect that Patient A received physical therapy, adjustments and manipulations, traction, and heat pack applications over the course of her treatment. The Respondent's treatment record on Patient A reflects that the Respondent did not bill the third party insurer for all of the modalities of care provided to Patient A.

B. Patient B was initially seen on 3/2/95 for lumbar sprain/strain. From 3/2/95 until 10/17/95 Patient B was seen on 23 occasions. Patient B was billed for electrical stimulation on

¹ Patient names are confidential and are not referred to in this document by name. A list of patient names which correspond to the letters used in this document has been provided to the Respondent through his attorney.

19 dates of service. The Respondent's office notes reflect that Patient B received physical therapy, adjustments and manipulations, traction, and heat pack applications over the course of her treatment. The Respondent's treatment record on Patient A reflects that the Respondent did not bill the third party insurer for all of the modalities of care provided to Patient B.

C. This pattern was similar for the remainder of the patient files². In each of these treatment records, the Respondent noted that certain modalities were provided to the Patients. The Respondent did not bill the third party insurer for all these other modalities. The Respondent provided heat packs and other treatments to his patients. However, the Respondent did not bill for heat packs, which were not reimbursable through this insurance company. Alternatively, the Respondent billed for electrical stimulation, which the patients did not receive on each and every occasion where a bill was generated for this procedure. The Respondent's billing code covered the office visit and two treatment modalities, however, according to the treatment notes, the Respondent at times, provided more than two modalities to the Patients.

² Patient treatment records of Patients H and I contain letters written to a medical doctor (for Patient I) and an attorney (for Patient H). In both of these letters, the Respondent indicated that these patients received electrical stimulation. In neither of these patient records was there any treatment notation which indicated that electrical stimulation was provided.

5. The Respondent stated to the Board's investigator that the patients were at times billed for electrical stimulation when the patients did not receive electrical stimulation. The Respondent's explanation to the Board's investigator was that the patients received several treatment modalities and that the patients were not billed for each of them so that, according to the Respondent, at no time did the billing of electrical stimulation cause the Respondent to be over-compensated³. According to the Respondent, the manner in which he billed resulted in his being under-compensated by the third party insurers.

6. The Respondent asserts that he contacted the managed care organization regarding the bills which were in error. According to the Respondent, he was informed that he did not have to re-pay for the reimbursed electrical stimulation because he had provided other chiropractic treatments to these patients.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact the Board finds that the Respondent billed for treatments which were not

³ According to the Respondent, he billed these patients in this manner due to a clerical error. The Respondent states that his office routinely billed for an office visit and two modalities where appropriate, but that when the modalities were broken down they were the two modalities which were most often provided to the patients. This was true, according to the Respondent, regardless of the number of other modalities provided to the patients. The Respondent asserts that the form of billing which he employed caused him to not bill to the full extent of the services provided to his patients.

rendered, which is submitting false statements to a collect fee, and is therefore a violation of the Act under §3-313 (25) (1994).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this _____ day of _____, 1998, by a majority of the Board, hereby

ORDERED that the Respondent is **REPRIMANDED**; and be it further

ORDERED that the Respondent is placed on **PROBATION** pending his successful completion of the course in ethics and course in documentation and the random record review described below. Upon completion of both courses and record review the Respondent shall petition in writing to be released from Probation and the Respondent shall provide the Board with supporting documentation as to his successful completion of the courses described herein; and be it further

ORDERED that the Respondent is required to take and pass one (1) Board-approved course in documentation and one (1) Board approved course in ethics, pre-approved by the Board; and be it further

ORDERED that the Respondent shall have a random record review within six (6) months after the completion of both courses described above under the following circumstances:

- a. The Board's investigator will select a date from

the Respondent's office calendar;

b. The Respondent shall then provide the original patient treatment notes and billing records, including copies of insurance records identified as being seen in the office on the date described in subparagraph a above;

c. The investigator will perform an audit of the bills and/or insurance submissions for compliance with the Act;

d. The Board at its discretion, may submit the items received and described above, to an independent reviewer selected by the Board;

e. Under the circumstances in subparagraph d above, the Respondent will reimburse the reviewer for performing the review at a rate not to exceed \$175.00 per hour.

BE IT FURTHER ORDERED that in the event the Board finds for any reason that the Respondent has substantially violated any provision of Title 3 of the Health Occupations Article, Annotated Code of Maryland or the regulations thereunder, or if the Respondent violated any of the foregoing conditions of this Consent Order, the Board, *after notification to the Respondent, and an opportunity to be heard,* may take immediate action or impose any lawful disciplinary sanction it deems appropriate, including but not limited to revocation or suspension of Respondent's license to practice chiropractic; and be it further **ORDERED** that the conditions of this Consent Order be, and the same hereby are, effective as of the date of this Order; and be it further

ORDERED that for purposes of public disclosure, as permitted by Md. Code Ann. State Government §10-617 (h) (1994 and Supp.) this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order, resulting from formal disciplinary proceedings.

01-28-99
Date

Howard F. Lewis, D.C.
President

CONSENT of Clyde Nichols, D.C.

I, Clyde Nichols, by affixing my signature hereto, acknowledge that:

1. I have had an opportunity to consult with an attorney whether or not I have chosen to do so;

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 §3-315 of the Act and §10-201 et seq. of the Administrative Procedure Act, Md. Code Ann. State Government.

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

4. By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law, and Order provided the Board adopts the foregoing Final Consent Order in its entirety. By doing so, I waive my right to a formal hearing

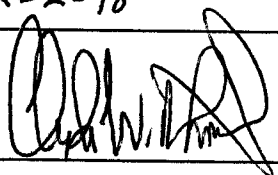
as set forth in §3-315 of the Act and §10-201 et seq. of the Administrative Procedure Act except on connection with any alleged violation of this Order. I waive any appeal right under Md. Code Ann. State Government §10-222.

5. I acknowledge that by failing to abide by the conditions set forth in this Order, I may, after an opportunity to be heard, suffer disciplinary action, including revocation of my chiropractic license in the State of Maryland.

6. I understand that this Consent Order is a public document, disclosable under §10-617 (h) (2) (vi) of the Md. Code Ann. State Government.

7. I sign this Order without reservations, and I fully understand its meaning.

12-2-98

DATE 

Clyde Nichols, D.C.

STATE OF Maryland
CITY/COUNTY OF: Montgomery

I HEREBY CERTIFY that on this 2nd day of December, 1998, a Notary of the State of Maryland and (City/County), Montgomery, personally appeared CLYDE NICHOLS N/A, MD License No. 01285, 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 WITNESS my hand and notarial seal.



Notary Public

My commission expires: 3/13/1999

NOTARY FOR NICHOLS, CLYDE.

DATE: 12-2-1998

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