

IN THE MATTER OF
MITCHELL SILVERMAN, D.C.

Respondent

License Number: S01450

* BEFORE THE MARYLAND
* STATE BOARD OF
* CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
* Case Number: 13-08C

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On July 30, 2014, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") charged **MITCHELL SILVERMAN, D.C.** (the "Respondent"), License Number S01450, under the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") §§ 3-101 *et seq.* (2009 Repl. Vol. and 2013 Supp.) and Md. Code Regs. ("COMAR") 10.43.01 *et seq.*

Specifically, the Board charged the Respondent under the following provisions of the Act under Health Occ. § 3-313:

Subject to the hearing provisions of § 3-315 of this subtitle, the Board may ... reprimand any licensee, place any licensee on probation, with or without conditions, or suspend or revoke a license, or any combination thereof, if the ... licensee:

- (2) Fraudulently or deceptively uses a license;
- (8) Is unethical in the conduct of the practice of chiropractic;
- (12) Makes or files a false report or record in the practice of chiropractic;
- (16) Over utilizes health care services;
- (19) Violates any rule or regulation in the practice of chiropractic;

- (20) Behaves immorally in the practice of chiropractic;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic;
- (22) Grossly over utilizes health care services; [and/or]
- (28) Violates any provision of this title.

The Board also charged the Respondent under the following provisions of COMAR:

COMAR 10.43.14 CODE OF ETHICS

COMAR 10.43.14.03 Standards of Practice.

- A. A chiropractor and chiropractic assistant shall concern themselves primarily with the welfare of the patient.
- C. A chiropractor and chiropractic assistant shall:
 - (2) Be professional in conduct, with honesty, integrity, self-respect, and fairness;
 - (4) Provide accurate fee information to the patient, the individual responsible for payment for treatment, and the insurer;
- D. A chiropractor and chiropractic assistant may not:
 - (2) Knowingly engage in or condone behavior that is fraudulent, dishonest, or deceitful, or involves moral turpitude[.]

COMAR 10.43.15 RECORDKEEPING

COMAR 10.43.15.03 Recordkeeping.

- A. The chiropractor shall maintain accurate, detailed, legible, and organized records, documenting all data collected pertaining to the patient's health status.
- B. The chiropractor may not erase, alter, or conceal patient records but shall initial and date any changes made in the corresponding margin.

C. The Patient Record.

- (1) The chiropractor shall create a record for each patient.
- (2) The chiropractor shall state the patient's name or identification number on each document contained in the patient record.
- (3) The chiropractor shall include the following information in the patient record:
 - (a) Chiropractor and clinic name identification;
 - (b) Patient history;
 - (c) Examination findings;
 - (d) Diagnoses;
 - (e) Treatment plan;
 - (f) SOAP notes;
 - (g) Financial records;
 - (h) Records of telephone conversations;
 - (i) Copies of correspondence and reports sent to other health care providers, diagnostic facilities, and legal representatives;
 - (j) Records and reports provided by other health care providers and diagnostic facilities; and
 - (k) The signed consent of the patient or the parent or guardian of a minor patient or incompetent patient.

COMAR 10.43.15.04 Supervisory Responsibilities

- A. The chiropractor is responsible for record keeping, consent forms, billing, and other patient-related documentation handled, maintained, or managed by the chiropractor's staff.
- B. The chiropractor shall ensure that employees involved in the preparation, organization, and filing of records adhere to the regulations of this chapter.

COMAR 10.43.15.05 Patient History

The chiropractor shall include the following in the patient history:

- A. Personal data, including:
 - (1) Name,
 - (2) Address,

- (3) Telephone number,
 - (4) Date of birth,
 - (5) Race,
 - (6) Sex, and
 - (7) Current occupation;
- B. Complaint or complaints, including:
- (1) Description of the complaint or complaints,
 - (2) Quality and character of the complaint or complaints,
 - (3) Intensity,
 - (4) Frequency,
 - (5) Location,
 - (6) Radiation,
 - (7) Onset,
 - (8) Duration,
 - (9) Palliative and provocative factors, and
 - (10) History of present complaint or complaints;
- C. Family health history;
- D. Past health history, including:
- (1) General state of health,
 - (2) Previous illnesses,
 - (3) Surgical history,
 - (4) Previous injuries,
 - (5) Hospitalizations,
 - (6) Previous treatment and diagnostic testing,
 - (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.

On February 12, 2015, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, which consists of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND FINDINGS

I. Licensing Information

1. At all times relevant, the Respondent was and is licensed to practice chiropractic in the State of Maryland. The Respondent was initially licensed to practice chiropractic in Maryland on June 20, 1989, under License Number S01450.

2. At all times relevant, the Respondent operated the Head, Neck & Back Pain Center, located at 1703 East Joppa Road, Parkville, Maryland 21234.

II. Prior Board Disciplinary Action

3. The Board initiated an investigation of the Respondent in or around 2001 after receiving a complaint regarding his billing practices.

4. Pursuant to this investigation, the Board reviewed a series of charts the Respondent maintained for patients upon whom he provided chiropractic treatment.

5. As a result of this investigation, the Board, on April 15, 2003, issued disciplinary charges against the Respondent in which it alleged, *inter alia*, that he failed to document essential elements of the chiropractic care and treatment he purportedly provided to five patients.

6. The Respondent resolved these disciplinary charges by entering into a Consent Order with the Board, dated December 11, 2003, under Board Case Number 01-41C. In the Consent Order, the Board found as matters of fact that in numerous instances, the Respondent failed to maintain chiropractic notes in a SOAP¹ format and failed to document: (a) patient histories; (b) examination findings; (c) an assessment of care; or (d) a plan of care. In numerous instances, the Respondent's progress notes consisted solely of patient complaints and a code for the treatment provided.

7. The Board concluded as matters of law that the Respondent violated a rule or regulation adopted by the Board, in violation of HEALTH OCC.§ 3-313(19), and violated COMAR 10.43.15, pertaining to chiropractic recordkeeping.

8. Pursuant to the Consent Order, the Board placed the Respondent on probation for eighteen months, subject to a series of probationary conditions, including

¹ "SOAP" is an acronym that stands for **S**ubjective, **O**bjective, **A**ssessment and **P**lan.

successful completion of courses in recordkeeping and CPT² coding/billing, and random, unannounced reviews of patient records.

9. On or about July 11, 2004, the Board terminated the Respondent's probation under Board Case Number 01-41C.

III. Current Complaint

10. In or around February 2013, a supervisory agent of the National Insurance Crime Bureau (the "NICB") submitted a complaint to the Board alleging that the Respondent over-treated two related individuals ("Patients A and B," *infra*)³ and maintained chiropractic records for those patients that failed to justify the treatment provided and were otherwise deficient.

11. The NICB reported that it referred this matter to the Board after receiving a complaint from an insurance carrier that received claims for payment from the Respondent with respect to Patients A and B.

12. The insurance carrier reported to the NICB that it investigated the Respondent's actions after he submitted a significant number of claims for payment for providing chiropractic treatment to Patients A and B. Patients A and B claimed that they both sustained injuries in the same three automobile accidents, all occurring within a 19-month time period. The Respondent reportedly treated Patient A 163 times over a 23-month time period and Patient B 89 times over a 24-month time period.

² CPT stands for **C**urrent **P**rocedural **T**erminology codes. CPT codes describe medical, surgical or diagnostic services and is used to communicate information about services provided.

³ To ensure confidentiality, the names of patients or other individuals referenced herein will not be disclosed in this charging document. The Respondent may obtain the identity of any patient or individual referenced herein by contacting the assigned administrative prosecutor.

13. In making its referral to the NICB, the insurance carrier referred the Respondent's treatment of Patients A and B to a chiropractic peer, who found numerous deficiencies in the Respondent's treatment and supporting documentation.

IV. Board Investigation

14. Based on this complaint, the Board initiated an investigation of the Respondent under Board Case Number 13-08C. The focus of the Board's investigation concerned the treatment the Respondent provided to Patients A and B. According to the Respondent's patient records, Patients A and B reside at the same address and reportedly have a familial relation of some kind.⁴ The Respondent's charts for Patients A and B indicate that he provided chiropractic services for multiple injuries.

15. On or about January 8, 2009, Patient A, then in his mid-30's, initially saw the Respondent for chiropractic treatment for a self-described "slip and fall" injury he purportedly sustained on or about January 7, 2009.

16. On or about May 14, 2010, Patient A and Patient B, then in his late-60's, both sought treatment from the Respondent for a motor vehicle collision ("MVC") they were involved in that purportedly occurred on May 5, 2010. The Respondent provided chiropractic treatment to Patient A on 53 dates of service and to Patient B on 27 dates of service for injuries they purportedly sustained in this MVC.

17. On or about July 8, 2011, Patients A and B both sought treatment from the Respondent after a second MVC they were involved in that purportedly occurred on July 3, 2011. The Respondent provided chiropractic treatment to Patient A on 63 dates of service and to Patient B on 36 dates of service for injuries they purportedly sustained in this MVC.

⁴ The Respondent's records variously identify Patient B as Patient A's uncle or father.

18. On or about December 28, 2011, Patients A and B sought treatment from the Respondent after a third MVC they were involved in that purportedly occurred on December 27, 2011. The Respondent provided chiropractic treatment to Patient A on 46 dates of service and to Patient B on 26 dates of service for injuries they purportedly sustained in this MVC.

19. In all three instances where vehicular contact occurred (*i.e.*, May 5, 2010, July 3, 2011, and December 27, 2011), Patient A was sitting in the front passenger seat of an automobile that his relative, Patient B, was operating.

20. The Respondent's charts for Patients A and B generally contain an initial report; an examination form; a set of daily treatment notes, which contain a series of descriptors the Respondent circled, along with small blank areas for short narratives; and insurance and billing records. The records also contain letters/materials from the patients' attorney.

21. As part of its investigation, the Board sought an opinion from a chiropractor (the "Expert") regarding the Respondent's compliance with the Act and applicable regulations. The Board provided the Expert with the Respondent's treatment records for Patients A and B and other pertinent documents to perform this review.

V. Board Investigative Allegations

22. The Expert submitted a report, dated May 27, 2014, in which he concluded that the Respondent violated the Act and applicable regulations. In his summary, the Expert stated,

The overall trends . . . demonstrate a clear lack of appropriate documentation to support the services claimed as well as an overall lack of attention given to appropriate documentation of key factors in the patients' health records. "Boiler-plate" records would be

considered inappropriate, which is the primary pattern that these records follow. It is the regulated standard in the State of Maryland that doctors of chiropractic maintain records which are accurate, verified, and reflect all data regarding a patient's condition (COMAR 10.43.15). Clearly, these files do not meet that standard.

23. The Respondent violated the Act and applicable chiropractic regulations when providing chiropractic treatment to Patients A and B. The Respondent provided chiropractic services without recording adequate documentation to support such services. The Respondent's documentation of services provided was inadequate and does not sufficiently identify the patients' condition or response to treatment.

24. The Respondent's patient charts, as noted above, contain numerous recordkeeping deficiencies in violation of the Act, and as set forth in the Board's recordkeeping regulations, COMAR 10.43.15 *et seq.* The Respondent's chiropractic records fail to contain accurate and verified information about his patients' conditions and sufficient information to support the services he claimed to have provided.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provision of the Maryland Chiropractic Act: Health Occ. § 3-313(19), Violates any rule or regulation in the practice of chiropractic.

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following COMAR provisions: 10.43.15.03; and 10.43.15.05.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, by a majority of the Board considering this case, it is:

ORDERED that the Respondent is hereby **REPRIMANDED**, and it is further

ORDERED that the Respondent's license to practice chiropractic shall be placed on **PROBATION** for a period of **ONE (1) YEAR**, to commence on the date the Board executes this Consent Order; and it is further

ORDERED that during the period of probation, the Respondent shall take and successfully complete Board-approved courses in the following: (a) chiropractic recordkeeping; and (b) CPT coding. The Respondent shall be solely responsible for furnishing the Board with adequate written verification that he has completed the courses according to the terms set forth herein; and it is further

ORDERED that upon proof of successful completion of the probationary requirements stated herein, the Respondent may apply for termination of probation upon proof of satisfaction of all probationary conditions set forth above; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed under the Maryland Chiropractic Act, including a reprimand, probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that the following charges are **DISMISSED**: Health Occ. § 3-313(2) (Fraudulently or deceptively uses a license); Health Occ. § 3-313(8) (Is unethical in the conduct of the practice of chiropractic); Health Occ. § 3-313(12) (Makes or files a false

report or record in the practice of chiropractic); Health Occ. § 3-313(16) (Over utilizes health care services); Health Occ. § 3-313(20) (Behaves immorally in the practice of chiropractic); Health Occ. § 3-313(21) (Commits an act of unprofessional conduct in the practice of chiropractic); Health Occ. § 3-313(22) (Grossly over utilizes health care services); Health Occ. § 3-313(28) (Violates any provision of this title); COMAR 10.43.14.03 (Code of Ethics/Standards of Practice); and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in the fulfillment of the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann. Gen. Prov. §§ 4-101 *et seq.* (2014).

3/12/15
Date



Michael Fedorczyk, D.C., Chair
Maryland Board of Chiropractic and
Massage Therapy Examiners

CONSENT

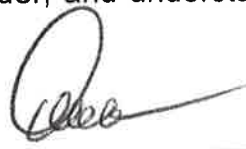
I, Mitchell Silverman, D.C., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree to the foregoing Consent Order, which consists of Procedural Background, Findings of Facts, Conclusions of Law, Order, and Consent, and I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to

counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

2-25-15
Date



Mitchell Silverman, D.C.
Respondent

NOTARY

STATE OF Maryland
CITY/COUNTY OF: Harford.

I HEREBY CERTIFY that on this 25th day of February, 201⁵, before me, a Notary Public of the State and County aforesaid, personally appeared Mitchell Silverman, D.C., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



Notary Public

My commission expires: _____

