

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD)
OF CHIROPRACTIC,)
)
Petitioner,)
)
vs.) Case No. 00-5065PL
)
ROY A. DAY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Clearwater, Florida, on April 30, 2001.

APPEARANCES

For Petitioner: Wings S. Benton, Senior Attorney
Agency for Health Care Administration
Office of General Counsel
Medical Quality Assurance
Practitioner Regulation--Legal
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: Roy A. Day, pro se
Post Office Box 33
Tarpon Springs, Florida 34688-0033

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of making or filing a false report signed in the capacity of a licensed

chiropractic physician, in violation of Section 460.413(1)(j), Florida Statutes, and, if so, the penalty.

PRELIMINARY STATEMENT

By Amended Administrative Complaint dated February 1, 2001, Petitioner alleged that Respondent is a licensed chiropractor in Florida, holding license number CH 0002696.

The Amended Administrative Complaint alleges that, on April 7, 1999, Respondent completed Petitioner's "Mandatory Practitioner Profile Questionnaire." The Amended Administrative Complaint alleges that Respondent's signature on the questionnaire affirms that his responses to the questions were true and correct.

The Amended Administrative Complaint alleges that Respondent falsely answered "no" to the question asking, "Have you ever been convicted or found guilty, regardless of whether adjudication of guilt was withheld, or pled guilty or nolo contendere to a criminal misdemeanor or felony in any jurisdiction."

The Amended Administrative Complaint alleges that, on September 20, 1996, the Pinellas County Circuit Court found Respondent guilty of two counts of uttering a check with forged endorsements, one count of aggravated stalking, and one count of intercepting oral communication--all felonies. The Amended Administrative Complaint alleges that the court sentenced

Respondent to one year's imprisonment, with credit for time served, and Respondent was released from jail on February 11, 1997.

The Amended Administrative Complaint alleges that Respondent thus violated Section 460.413(1)(i), Florida Statutes, by failing to perform a statutory or legal obligation placed on a licensed chiropractic physician. The Amended Administrative Complaint alleges three such obligations: Section 455.624(1)(v) [now Section 456.072(1)(v)], Florida Statutes, which prohibits "making misleading, untrue, deceptive, or fraudulent representations on a profile"; Section 460.413(1)(j), Florida Statutes, which prohibits the "[m]aking or filing a report which the licensee knows to be false"; and Section 460.413(1)(k), Florida Statutes, which prohibits "[m]aking misleading, deceptive, untrue, or fraudulent representations in the practice of medicine." In its proposed recommended order, Petitioner abandons the alleged violation of Section 460.413(1)(k), Florida Statutes.

At the hearing, Petitioner called one witness and offered into evidence seven exhibits: Petitioner Exhibits 1-7. Respondent called two witnesses and offered into evidence six exhibits: Respondent Exhibits 1-6. All exhibits were admitted except Petitioner Exhibits 3 and 5, which were proffered.

Respondent never filed Respondent Exhibits 2 and 6, so they are deemed withdrawn.

The court reporter filed the transcript on May 21, 2001.

FINDINGS OF FACT

1. Respondent has been a licensed chiropractor in Florida since 1978, holding license number CH0002696.

2. Petitioner requires licensed chiropractors to file Mandatory Practitioner Profile Questionnaire Packets (Profiles). The subject Profile was due on or before April 15, 1999. The Profile asks the licensee to supply various items of information and answer several questions.

3. Section II of the Profile requires information concerning "medical education." In response to the question of what medical school Respondent attended, he wrote: "Logan 'Quack Con-Artist' School of Chiropractic." In response to the type of his degree, Respondent wrote: "Quack Con-Artist Chiropractic Degree."

4. In response to questions concerning medical training, Respondent answered: "'Fraudulent' Automobile Personal Injury Cases (Robbing Insurance Companies)" and "'Fraudulent' Workers Compensation Cases (Robbing Insurance Companies)." Respondent also added to these responses, as well as the responses cited in the preceding paragraph, the following: "Caveat: see letter

dated April 7, 1999 sent to Gloria Henderson, Division Director)."

5. Section VIII of the Profile requires information concerning criminal offenses. This section asks: "have you ever been convicted or found guilty, regardless of whether adjudication of guilt was withheld, or pled guilty or nolo contendere to a criminal misdemeanor or felony in any jurisdiction?" The question then states: "If "YES," briefly describe the offense(s), indicate whether the conviction is under appeal, and attach copy of notice of appeal." The form supplies three lines for each of these items of information.

6. Respondent answered "no" to the first question in Section VIII and left the remainder of the section blank.

7. The Profile concludes, immediately above the signature line: "I affirm these statements are true and correct and recognize that providing false information may result in disciplinary action against my license or criminal penalties pursuant to Sections 455.624, 458.327, 458.331, 459.013, 459.015, 460.413, 461.013, 775.082, 775.083 and 775.084, Florida Statutes."

8. Respondent signed on the signature line and added the date of April 7, 1999. Immediately beneath the signature line, Respondent added: "Notice: Signed under caveat--see letter

dated April 7, 1999 sent to Gloria Henderson, Division Director."

9. Respondent's four-page letter to Gloria Henderson dated April 7, 1999, references the Profile, notifies Ms. Henderson and Petitioner of Respondent's intent to sue, and demands that Petitioner omit Respondent's listing from a website of chiropractors because, in part, "I do NOT accept their '**valueless treatment**' known as an **"adjustment"** (it is a **waste of money and time**), and because I practice health care from an "Allopathic" (medical approach) point of view, including but not limited to, surgery, drug prescription, physical therapy" Respondent states in the letter that the Petitioner's failure to incorporate his comments in all computer files listing him as a chiropractor will result in his filing a federal action under tort and constitutional law seeking \$1 million plus punitive damages.

10. The final caveat in the April 7 letter states:

My (Roy A. Day) signature on the instant letter, and the associated completed questionnaire, reflects the denial of Roy A. Day to have meaningful access to so-called "licensed attorney" courts of law, and the associated denials of each and all discovery, and trial by jury, and the right to each and all appeals, and the denial to write a brief on appeals, and each and all associated "railroading" of Roy A. Day, with the overlay for "licensed attorney" courts of law to deny the law, facts and evidence existed when they pertained to Roy A. Day,

since Roy A. Day is not represented by a so-called "licensed attorney" at \$300.00 per hour in artificial-monopolistic legal fees. In addition, the signature reflects each and all associated "forced and coerced" action, specifically, Roy A. Day has been denied "due process and equal protection of the law."

11. On February 6, 1995, Pinellas County Circuit Court entered an Order of Probation. The Order states that Respondent pleaded guilty to aggravated stalking, interception of oral communication, and uttering a check with a forged endorsement. The Order withholds adjudication and places Respondent on probation for two years.

12. As a result of Respondent's violation of the conditions of probation, on September 20, 1996, Pinellas County Circuit Court entered a judgment finding Respondent guilty of two counts of the third-degree felony of uttering a check with a forged endorsement, in violation of Section 831.02, Florida Statutes. The checks totaled approximately \$20,000, and, sometime between March 13 and May 5, 1993, Respondent passed each check knowing that the signature of his brother, Donald Day, was forged. For each count, the court sentenced Respondent to one year in jail with credit for 130 days he had already served in jail, and the sentences ran concurrently.

13. As a result of Respondent's violation of the conditions of probation, on September 20, 1996, Pinellas County

Circuit Court entered a judgment finding Respondent guilty of the third-degree felony of aggravated stalking, in violation of Section 784.048(3), Florida Statutes. The stalking consisted of repeated and harassing telephone calls that Respondent made to the house of a person who had, at one time, expressed interest in purchasing a home in which Respondent had an interest, but later decided not to pursue the purchase. The court sentenced Respondent to one year in jail with credit for 133 days that he had already served in jail, and this sentence ran concurrently with the sentences for uttering a check with a forged endorsement.

14. Petitioner lacked a copy of a judgment concerning the interception of oral communications. This offense arose out of Respondent's surreptitious recording of a conversation that he had with a police officer who was investigating the stalking charges. Absent a copy of the judgment, however, insufficient evidence of this conviction exists for the purpose of this disciplinary case.

15. At the final hearing, Respondent explained that he did not disclose these criminal convictions on the Profile because doing so would somehow implicate him as a "co-conspirator" in the injustices perpetrated upon him by the authorities involved in prosecuting these offenses.

16. Respondent falsely failed to disclose on the Profile his convictions for aggravated stalking and uttering a check with a forged instrument. His failure to disclose this information constitutes fraudulent concealment of these criminal offenses.

17. In a fairly straightforward case, Respondent has filed nearly 250 pleadings containing thousands of pages. He also abused the subpoena power of this tribunal by subpoenaing judges and court officials from every level of the federal and state judiciaries. Last but not least, Respondent has defamed and discredited numerous persons without apparent reason, although some question exists whether Respondent is capable of exercising consistent control over the impulses leading to at least some of these utterances.

18. The crimes of which Respondent was convicted may have arisen out of family disagreements, possibly concerning the sale of a family home. Respondent may be obsessively preoccupied with actual or perceived injustices that he suffered as a result of this transaction. Undoubtedly, Respondent compulsively litigates everything that has the most remote bearing upon this transaction, using court files as archives for materials that he believes will vindicate him, despite an ardent and often-expressed repulsion for judges, lawyers, and others connected with the legal system.

19. No penalty but revocation is suitable under the circumstances, absent a showing by Respondent that he has commenced or is continuing therapy and that the prognosis is reasonably good. The record lacks such evidence.

20. Respondent is not unintelligent, nor is he entirely devoid of insight. His thinking, although at times disordered, is capable of impressive organizational efforts, as best revealed by his meticulous organization in his proposed recommended order of what otherwise seemed to be a bewildering variety of materials that Respondent has seen fit to file in this case. Although his behavior seems at times compulsive, Respondent was capable of a certain level of self-restraint, at least during the hearing and when not directly confronting the underlying transaction or crimes. If they occur at some point in the future, successful diagnosis and treatment of Respondent should inform Petitioner's interpretation of the events and behaviors described in this Recommended Order, if Respondent seeks relicensure as a chiropractor.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes.)

22. Section 460.413(1)(i) and (j) provides:

The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(i) Failing to perform any statutory or legal obligation placed upon a licensed chiropractic physician.

(j) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity of a licensed chiropractic physician.

23. Section 460.413(2) authorizes the Board of Chiropractic Medicine to revoke the license of a chiropractor guilty of any violation described in Section 460.413(1).

Section 460.413(3) adds:

In determining what action is appropriate, the board must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the chiropractic physician.

24. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

25. Petitioner has proved by clear and convincing evidence that Respondent's concealment of his criminal convictions from the Profile was the making or filing of a report that he knew to be false and that he signed in the capacity of a licensed chiropractic physician. At present, protection of the public safety compels the revocation of his license.

RECOMMENDATION

It is

RECOMMENDED that the Board of Chiropractic Medicine enter a final order finding Respondent guilty of violating Section 460.413(1)(j), Florida Statutes, and revoking his license.

DONE AND ENTERED this 19th day of July, 2001, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of July, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.