

FILED DATE - SEP 25 2018

Department of Health

By: *Amy R. Callaway*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

HAMED KIAN, D.C.,

Respondent.

DOAH CASE NO.: 18-263PL
DOH CASE NO.: 2017-07671

DIVISION OF
ADMINISTRATIVE HEARINGS

2018 OCT -2 AM 11:29

FILED

FINAL ORDER

THIS CAUSE came before the FLORIDA BOARD OF CHIROPRACTIC MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 24, 2018, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order ("Recommended Order"), Exceptions to the Recommended Order ("Exceptions"), Response to Exceptions to the Recommended Order ("Response")(copies of which are attached hereto as Exhibits A, B, and C, respectively) and Motion to Assess Costs in the above-styled cause. Petitioner was represented by Mary A. Iglehart, Assistant General Counsel. Respondent was present and was represented by David Spicer, Esq.

Upon review of the Recommended Order, the written and oral argument of the parties, the written Exceptions and Responses thereto, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULING ON EXCEPTIONS

1. Exception No. 1: Respondent filed an exception to Paragraph 11 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

2. Exception No. 2: Respondent filed an additional exception to Paragraph 11 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

3. Exception No. 3: Respondent filed an exception to Paragraph 12 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

4. Exception No. 4: Respondent filed an exception to Paragraph 13 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

5. Exception No. 5: Respondent filed an exception to Paragraph 14 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

6. Exception No. 6: Respondent filed an exception to Paragraph 15 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

7. Exception No. 7: Respondent filed an exception to Paragraph 16 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

8. Exception No. 8: Respondent filed an exception to Paragraph 17 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

9. Exception No. 9: Respondent filed an exception to Paragraph 18 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is

rejected.

10. Exception No. 10: Respondent filed an additional exception to Paragraph 18 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

11. Exception No. 11: Respondent filed an exception to Paragraph 19 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

12. Exception No. 12: Respondent filed an exception to Paragraph 20 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

13. Exception No. 13: Respondent filed an exception to Paragraph 21 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

14. Exception No. 14: Respondent filed an additional exception to Paragraph 21 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

15. Exception No. 15: Respondent filed an additional exception to Paragraph 21 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

16. Exception No. 16: Respondent filed an exception to Paragraph 22 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

17. Exception No. 17: Respondent filed an additional exception to Paragraph 22 of

the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

18. Exception No. 18: Respondent filed an additional exception to Paragraphs 21 and 22 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

19. Exception No. 19: Respondent filed an exception to Paragraph 31 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

20. Exception No. 20: Respondent filed an exception to Paragraph 32 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

21. Exception No. 21: Respondent filed an exception to Paragraphs 38, 39, and 40 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

22. Exception No. 22: Respondent filed an exception to the recommended penalty on Page 16 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

23. Exception No. 23: Respondent does not identify or argue a twenty-third exception.

24. Exception No. 24: Respondent filed an additional exception to the recommended penalty on Page 16 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

25. Exception No. 25: Respondent filed an additional exception to the

recommended penalty on Page 16 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

26. Exception No. 26: Respondent filed an additional exception to the recommended penalty on Page 16 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

27. Exception No. 27: Respondent filed an exception to Paragraph 41 and to the recommended penalty on Page 16 of the Recommended Order. For the reasons stated in Petitioner's Response, the exception is rejected.

FINDINGS OF FACT

1. There is competent substantial evidence to support the Findings of Fact.
2. The Findings of Fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 471, Florida Statutes.
2. The Conclusions of Law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

DISPOSITION

1. Section 456.072(2), F.S., states:

When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

* * *

- (c) Restriction of practice or license, including, but not limited to, restricting

the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare. (emphasis added)

* * *

In determining what action is appropriate, the board, or department when there is no 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 practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

2. Although admitted into evidence as Petitioner's Exhibit 15, the Recommended Order does not reference either the deposition or live testimony of Respondent's witness Stephen Alexander, Psy.D. in any way. On Pages 68, lines 15-18 of Dr. Alexander's deposition, Dr. Alexander states "[f]rom a psychological standpoint, yes, sir, I see no disturbances, characteristics, disorders, traits, or attributes that could reasonably impair his ability to practice chiropractic medicine."

3. Because a review of the complete hearing record in this case, including Dr. Alexander's testimony, fails to demonstrate why restriction(s) on Respondent's practice of chiropractic medicine would not be adequate to protect the public health, safety and welfare, the Board REJECTS the penalty set forth in the Recommended Order and imposes the following penalties:

- a. Respondent is referred to the Professionals Resource Network for evaluation. Respondent shall comply with any and all recommendations of PRN.
- b. Respondent shall take and pass the National Board of Chiropractic Examiners Ethics and Boundaries (E&B) examination within one (1) year of the date of this order.

c. Respondent shall take ten (10) hours of continuing education in the area of risk management. Such hours shall be in addition to that required for biennial licensure renewal.

d. Respondent shall complete ten (10) hours of community service per month for six (6) months, for a total of sixty (60) months.

e. Respondent's license is placed on indefinite probation with monitoring. The terms of probation are set forth in the attached "Attachment A, Terms and Conditions of Probation," which is incorporated herein and made a part hereof in its entirety.

RULING ON MOTION TO ASSESS COSTS

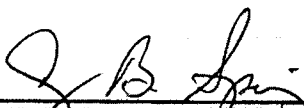
1. Petitioner filed a Motion to Assess Costs in the amount of \$49,148.43. Respondent filed objections to Petitioner's Motion. At the hearing, the parties asked that the Board defer ruling on the Motion to Assess Costs to allow the parties to resolve any and all disputed facts regarding costs.

2. Accordingly, the Board defers ruling on the Motion to Assess Costs and reserves jurisdiction to impose costs in the future.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 20 day of September, 2018.

BOARD OF CHIROPRACTIC MEDICINE



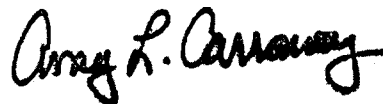
Anthony B. Spivey, D.B.A., Executive Director
for Kevin Fogarty, DC, FICA, Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE FLORIDA APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to **Hamid Kian, D.C.**, c/o **David Spicer, Esq.**, Law Offices of Spicer & Chambers, P.A., 8895 North Military Trail, Suite 302E, Palm Beach Gardens, FL 33410 and **F. Scott Boyd**, Administrative Law Judge, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, FL 32399-1550; by electronic mail to **Mary Iglehart**, Assistant General Counsel, mary.iglehart@flhealth.gov and **Lawrence D. Harris**, Assistant Attorney General, Lawrence.Harris@myfloridalegal.com this 25th day of September, 2018.



Deputy Agency Clerk

ATTACHMENT 1
TERMS AND CONDITIONS OF PROBATION

Indefinite Probation. Respondent's license to practice chiropractic medicine shall be placed on indefinite probation, with the following terms and conditions.

1. Chaperone. Respondent shall be permanently prohibited from examining or treating any female patients unless such examination and/or treatment is witnessed in full by a Board-approved, female, Florida-Chapter 460, F.S., licensed health care practitioner ("chaperone").

a. Prior to the approval of a chaperone by the Board, Respondent shall provide his proposed chaperone with a copy of the Administrative Complaint and the Final Order, including all attachments and exhibits, in this case.

b. Any proposed chaperone must be licensed, certified, or registered pursuant to Chapter 460, Florida Statutes. Further, any proposed chaperone must be in good standing and without restriction or limitation on her license(s), certificate(s), or registration(s). The Board confers authority on the Chairman of the Board to approve any proposed chaperones. To obtain this approval, Respondent shall submit to the Chairman the name and curriculum vitae of his proposed chaperone. If the Chairman does not approve or deny Respondent's proposed chaperone within fourteen (14) days of receiving her name and curriculum vitae, the proposed chaperone shall be deemed approved.

c. In the event that a Board-approved chaperone becomes unable, or unwilling, to fulfill the responsibilities of a chaperone, Respondent shall immediately notify the Board and suspend examining and/or treating female patients until a new chaperone is approved by the Chairman.

2. Monitoring. Respondent's license to practice chiropractic medicine shall be placed under the indefinite indirect supervision of a Board approved chiropractic physician, hereinafter referred to as a "monitor", whose responsibilities shall be as follows. Any costs associated with obtaining and maintaining a monitor shall be borne by the Respondent.

a. Approval of Monitor: Prior to the approval of a monitor by the Board, Respondent shall provide his proposed monitor with a copy of the Administrative Complaint and the Final Order (including all attachments and exhibits) in this case.

b. Any proposed monitor must be a Florida licensed chiropractic physician. Further, any proposed monitor must be in good standing and without restriction or limitation on his or her license(s). The Board confers authority on the Chairman of the Board to approve any proposed monitors. To obtain this approval, Respondent shall submit to the Chairman the name and curriculum vitae of his proposed monitor. If the Chairman does not approve or deny Respondent's proposed monitor within fourteen (14) days of receiving his or her name and curriculum vitae, the proposed monitors shall be deemed approved.

c. In the event that a Board-approved monitor becomes unable, or unwilling, to fulfill the responsibilities of a monitor, Respondent shall immediately notify the Board office and suspend examining and/or treating female patients until a new monitor is approved. The Board confers authority on the Chairman of the Board to approve any

proposed replacement monitors. To obtain this approval, Respondent shall submit to the Chairman the name and curriculum vitae of the proposed replacement monitor. If the Chairman does not approve or deny Respondent's proposed replacement monitor within fourteen (14) days of receiving his or her name and curriculum vitae, the proposed replacement monitor shall be deemed approved.

d. Responsibilities of the Monitor: The monitor shall:

1. Conduct training of the chaperone(s) regarding the scope of chiropractic practice, the terms of the Final Order, the responsibilities of the chaperone, and situations or observations which the chaperone should report to the monitor and/or the Board.

2. Visit Respondent's place(s) of business, during normal business hours, at random intervals to determine whether Respondent is in compliance with the use of a chaperone.

a. In making that determination, the monitor shall make contact with Respondent and Respondent's chaperone and determine Respondent's compliance with the use of a chaperone for all female patients. During the monitor's visits, Respondent shall allow the monitor full access to office personnel, appointment calendars, patient logs, and patient records to the extent required by the monitor to determine Respondent's use of a chaperone.

b. During the monitor's visits, the monitor shall conduct periodic re-training of the chaperone(s) to ensure their continued understanding of the chaperone's requirements, the terms of probation, and to answer any questions of the chaperone(s).

3. The monitor shall also submit written semi-annual Monitoring Reports, in affidavit form, which shall include:

a. A brief statement of why Respondent is on a monitoring agreement;

b. A statement addressing Respondent's compliance with the terms of monitoring;

c. A brief description of the monitor's relationship with Respondent;

d. A statement advising the Board of any problems which have arisen;

e. The date(s) the monitor went to Respondent's place(s) of business, the number of patient records reviewed on that date, and the names of the chaperone and office personnel that the monitor contacted; and

f. A statement advising the Board of the training provided to the chaperone(s).

3. The monitor's Quarterly Monitoring Reports shall be timely submitted by mail to the Department of Health, Compliance Management Unit, Bin C-76, Post Office Box 6320, Tallahassee, Florida 32314, Attention: Board of Chiropractic Medicine Compliance Officer. The monitor shall maintain documentation evidencing the mailing of each Report.

4. The monitor shall immediately report to the Board any violations by Respondent of Chapters 456 or 460, Florida Statutes, and/or the rules promulgated thereto, or any violation of the terms of the Final Order or the conditions of probation imposed therein.