IN THE MATTER OF	*	**BEFORE THE**
STEVEN HORWITZ, D.C.	*	**STATE BOARD OF**
Respondent	*	**CHIROPRACTIC AND**
	*	**MASSAGE THERAPY EXAMINERS**
License Number: S01402	*	**Case Number: 2011-04C**

* * * * * * * * * * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On March 14, 2013, the State Board of Chiropractic and Massage Therapy Examiners (the "Board") charged **STEVEN HORWITZ, D.C.** (the "Respondent"), License Number S01402, under the Maryland Chiropractic Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 3-101 *et seq.* (2009 Repl. Vol.) and Code Md. Regs. ("COMAR") tit. 10, § 43.01 *et seq.*

The Board charged the Respondent under the following provisions of the Act under H.O. § 3-313 provide:

> 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;
>
> (18) Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic;
>
> (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;

(26) Misrepresents qualifications, education, training, or clinical experience; [and/or]

(28) Violates any provision of this title.

The Board also charged the Respondent with violating the following COMAR provisions:

COMAR 10.43.07 CHIROPRACTIC ASSISTANTS

COMAR 10.43.07.01 Definitions

B. Terms Defined.

(1) "Applicant" means a person who is undergoing training to become a chiropractic assistant.

(4) "Supervising chiropractor" means a chiropractor licensed by the Board in chiropractic with the right to practice physical therapy as set forth in Health Occupations Article, § 3-301(c), Annotated Code of Maryland, and approved as a supervising chiropractor by the Board.

COMAR 10.43.07.02 Requirements for Achieving Supervising Chiropractor Status.

A. Only a supervising chiropractor may work with or train a chiropractic assistant or applicant.

B. Only an active, licensed chiropractor who holds physical therapy privileges and has no outstanding disciplinary orders may qualify for supervising chiropractor status.

C. An applicant for supervising chiropractor status shall:

(1) Submit to the Board the required application and fee; and

(2) Successfully pass the Board supervising chiropractor examination and interview.

COMAR 10.43.07.08 Activities That May Be Performed by Chiropractic Applicants and Assistants Without Direct Supervision.

Only a chiropractic applicant or assistant may perform the following activities without the direct supervision of a supervising chiropractor:

A. Taking the height, the weight, and vital signs of a patient and recording them in the patient record;

B. Assisting in the dressing, undressing, and draping of a patient;

C. Removing and applying assistive and supportive devices;

D. Observing treatments and modalities as authorized by the supervising chiropractor; and

E. Providing preprinted non-patient specific health and chiropractic concepts and information that has been approved and reviewed by the chiropractic supervisor.

COMAR 10.43.07.10 Chiropractic Applicant or Assistant Prohibited Acts.

A chiropractic applicant or assistant may not engage in any of the following activities:

A. Communicate an evaluation or diagnosis to a patient or third parties;

B. Perform an act requiring the professional skill or judgment of a licensed chiropractor;

C. Take x-rays or position patients for x-rays; or

D. Perform orthopedic or neurologic tests.

COMAR 10.43.07.11 Practicing Without Registration.

A. Except as otherwise provided in this chapter, a person may not practice, attempt to practice, or offer to practice as a chiropractic assistant in this State unless registered by the Board.

B. A person may not serve as a chiropractic applicant or assistant unless approved by the Board.

COMAR 10.43.07.12 Penalties for Violations of This Chapter.

A. Violations of these regulations may result in disciplinary actions against the supervising chiropractor as set forth in Health Occupations Article, § 3-313, Annotated Code of Maryland.

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:

(8) Cooperate with any lawful investigation conducted by the Board, including:

(a) Furnishing information requested;

(b) Complying with a subpoena;

(c) Responding to a complaint at the request of the Board; and

(d) Providing meaningful and timely access to relevant patient records[.]

D. A chiropractor and chiropractic assistant may not:

(1) Misrepresent credentials, qualifications, or affiliations and shall attempt to correct others who misrepresent the chiropractor's or the chiropractic assistant's credentials, qualifications, or affiliations;

(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.

D. Correspondence. The chiropractor shall identify the name of the attending chiropractor, clinic name, address, and telephone number on patient records and reports sent to another health care provider.

E. Maintenance and Release of Patient Records.

(1) The chiropractor shall keep confidential all information contained in the patient file, in accordance with Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland.

(2) The chiropractor shall release patient records when release is:

(a) Authorized by the patient in writing; or

(b) Compelled by law.

(3) The chiropractor may assess fees for duplicating patient records for the patient or for another health care provider in accordance with *Health-General Article, § 4-304*, Annotated Code of Maryland.

(4) The chiropractor shall maintain records in accordance with *Health-General Article, § 4-403*, Annotated Code of Maryland.

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 July 18, 2013, 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

1. At all times relevant hereto, 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 2, 1988, under License Number S01402.

2. At all times relevant hereto, the Respondent operated the Capital Sports Injury Center, which has locations at the following addresses: 12220 Tech Road, Suite 104, Silver Spring, Maryland 20904; and 5411 West Cedar Lane, Suite 202A, Bethesda, Maryland 20814.

Prior Board investigation/action

3. On or about October 18, 2002, the Board issued a letter of education to the Respondent for using an unauthorized assistant. The letter stated,

> This letter of education formally advises you that ignorance of applicable laws and/or regulations is NOT an excuse for negligence or omission to follow laws and/or regulations. As intelligent professionals, all chiropractors hold advanced educational degrees and are fully expected to have a working knowledge and understanding of all laws and regulations applying to their profession. Enclosed herewith is a complete copy of the laws and regulations governing chiropractors, chiropractic assistants and massage therapists. The Board is surprised that a distinguished chiropractor with your credentials would be unaware of the applicable provisions of law and regulations. Accordingly, the Board expects that you familiarize yourself with all applicable provisions, particularly the provisions

relating to the employment and training of chiropractic assistants. (emphasis in original)

Current Board investigation

4. The Board initiated an investigation of the Respondent after a Board representative attempted to contact a chiropractic assistant applicant ("Employee A")[1] in the Respondent's office on or about January 25, 2011, about a licensing issue. The Board representative received information that Employee A was seeing patients in the Respondent's office on that date without the Respondent's presence or supervision, or without the supervision of a Board-authorized supervising chiropractor.

5. The Board then received a second complaint, dated December 2, 2011, from a chiropractor ("Chiropractor A") who formerly worked for the Respondent. Chiropractor A alleged that shortly after beginning employment at the Respondent's practice in or around May 2011, and continuing until his departure from the Respondent's practice in or around October 2011, the Respondent instructed him to generate fraudulent chiropractic notes for patients he had either not seen or who were seen by Employee A, whom he did not supervise. Chiropractor A stated that the Respondent's practice billed these patients for therapeutic exercises ("TE"). Chiropractor A stated that the Respondent instructed him to create these fraudulent notes several times per week. Chiropractor A also reported that the Respondent referred patients to Employee A, who performed physical therapy treatment without supervision. Chiropractor A stated in a Board interview that when he questioned the Respondent about his billing practices, the Respondent fired him.

---

[1] In order to maintain confidentiality, the names of employees, patients or other individuals, other than the Respondent, will not be used in this Consent Order. The Respondent is aware of all individuals referenced herein.

6. Based on the above complaints, the Board sought an opinion from a chiropractor (the "Expert") regarding the Respondent's compliance with the Act and applicable regulations. The Board requested that the Expert review 44 patient records and other pertinent documents in order to render this expert opinion.

7. The Expert submitted a report, dated January 25, 2013, in which he concluded that the Respondent violated the Act and applicable regulations. In his summary, the Expert concluded,

> 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. 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. Additionally, several issues regarding inappropriate billing are also identified. Moreover, the records provided for this review do not support a claim that ... [Employee A] ... acted entirely independently of the Capital Sports Injury Center. Instead, these records demonstrate a close integration of services, as it should. It does not make sense that an exercise practitioner/trainer would work inside a doctor's office, especially a doctor who is very knowledgeable in exercise, without working as part of a team. This would be a disservice to the patient/client and the doctor. Moreover, it would not be reasonable to accept that a doctor who clearly is involved in exercise to the extent that ... [the Respondent] ... is and has been would allow his patients to receive exercise services, in his office, without any connection to his clinical goals. Further, the case files reviewed to date represent a small percentage of these practitioners' patient load. However, the problems identified occurred with sufficient consistency to predict errors/inconsistencies in other cases from these practitioners. As stated earlier in this report, there are no files provided for this review which are without substantive errors.

8. The Board's investigative findings are set forth *infra*.

BOARD INVESTIGATIVE FINDINGS

9. Board investigation determined numerous instances in which the Respondent violated the Act and applicable chiropractic regulations, which include but are not limited to the following:

Impermissible use of a chiropractic assistant applicant/Impermissible billing for therapeutic exercises provided by an unsupervised chiropractic assistant applicant

10. In or around August 2009, the Respondent hired Employee A, who at the time was a chiropractic assistant applicant, to provide and/or to assist in the provision of chiropractic and physical therapy to patients in the Respondent's office.

11. In a Board interview, the Respondent stated that he supervised Employee A when Employee A provided chiropractic or physical therapy to patients. In his Board interview, however, Employee A denied providing chiropractic or physical therapy to the Respondent's patients but claimed that he provided personal or athletic training to patients in the Respondent's office. Employee A stated that he did not receive a care plan from the Respondent and did not consult with the Respondent when providing athletic training to patients.

12. The Respondent's patient records indicate that from in or around 2010 onward, and continuing into 2011, Employee A provided TE to patients, under CPT Code 97110. The Respondent's office billed these patients and/or third-party payors for the provision of TE.

13. The Respondent went on medical leave from on or about October 18, 2010, until on or about December 1, 2010. During this time period, another chiropractor ("Chiropractor B") provided chiropractic to patients in the Respondent's office. Chiropractor B was not authorized by the Board to serve as a supervising chiropractor. The Respondent did not have or otherwise arrange for a Board-authorized supervising chiropractor to supervise Employee A in his office during this time period.

14. As a chiropractic assistant applicant, Employee A was not authorized to provide chiropractic or physical therapy to patients, including but not limited to TE, without the Respondent's supervision or the supervision of a Board-authorized supervising chiropractor. During this time period, however, Employee A saw patients in the Respondent's office without the Respondent's supervision and/or without the supervision of a supervising chiropractor.

15. During the time when the Respondent was absent from his practice, the Respondent, through his office, billed patients and/or third-party payors for TE under CPT Code 97110. The Respondent's records indicate that Employee A provided the TE in at least 12 instances. Board investigation determined that under the circumstances, the Respondent impermissibly billed for the provision of TE, which his records indicated was performed by Employee A.

16. During this time period, a chiropractor or other qualified licensee did not provide TE to patients in the Respondent's office. The Respondent impermissibly permitted Employee A, who was not qualified or licensed to do so, to provide TE to patients. The Respondent did not supervise Employee A or arrange for or otherwise have a Board-authorized supervising chiropractor supervise Employee A. Under these circumstances, the Respondent impermissibly billed patients and/or third-party payors for TE.

17. The Respondent's use of Employee A to provide TE to patients, and billing patients and/or third-party payors for TE performed by Employee A, as described above, constitutes a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Practices

chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. § 3-313(18); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); Misrepresents qualifications, education, training, or clinical experience, in violation of H.O. § 3-313(26); and Violates any provision of this title, in violation of H.O. § 3-313(28).

18. The Respondent's use of Employee A to provide TE to patients, and billing patients and/or third-party payors for TE performed by Employee A, who acted without direct supervision, as indicated by Employee A, as described above, constitutes a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. § 3-313(18); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); Misrepresents qualifications, education, training, or clinical experience, in violation of H.O. § 3-313(26); and Violates any provision of this title, in violation of H.O. § 3-313(28).

19. The Respondent's submission of billings for TE during the period October 18, 2010, to December 1, 2010, that were not in fact performed, constitutes a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Violates any rule or regulation in the

practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); and Violates any provision of this title, in violation of H.O. § 3-313(28).

20. The Respondent's employment of a non-licensed individual, Employee A, to provide CA services without direct supervision, as described above, constitutes, in whole or in part, the following COMAR violations: 10.43.07.11, 10.43.07.12, and 10.43.14.03.

Billing for services not performed or for services that were not supported by chiropractic records

21. Board investigation determined that during the period from on or about October 18, 2010, until on or about December 1, 2010, the Respondent's office billed patients and/or third-party payors for therapeutic activities ("TA"), under CPT Code 97530, that were purportedly provided by Chiropractor B, who was then working in the Respondent's office. Board investigation determined that the Respondent impermissibly billed for the provision of TA. Board investigation determined that: (a) Chiropractor B did not provide TA in these instances to patients and/or (b) the chiropractic records maintained by the Respondent's office did not support that Chiropractor B or any other chiropractor provided such services.

22. The Respondent's submission of billings for TA during the period October 18, 2010, to December 1, 2010, that were not in fact performed, or for which there is no supporting evidence, constitutes a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-

313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); and Violates any provision of this title, in violation of H.O. § 3-313(28).

Billing for services that were not provided or for which there was no supporting documentation

23. In 2010 through 2011, the Expert reviewed the Respondent's billing records with respect to TE. The Expert determined that in at least five charts, the Respondent's office billed for TE in which the services were either not provided, or for which there was no supporting documentation. For example, in one chart reviewed, the Respondent billed the patient for TE on 57 dates of service. The Respondent's chart for this patient contained TE logs for only 30 dates of service, however. The Respondent's billing for services that were not provided or for which there was no supporting documentation, as described above, constitutes a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. § 3-313(18); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); Misrepresents qualifications, education, training, or clinical experience, in violation of H.O. § 3-313(26); and Violates any provision of this title, in violation of H.O. § 3-313(28).

Billing for other chiropractic services that were not provided or for which there was no supporting documentation

24. Of the 44 charts that were reviewed, only 39 contain treatment notes. The other five charts only include billing information. Within the 39 charts, 23 charts, or 59%, include at least one service date for which the notes were left blank with respect to objective findings, leaving the charges for that service date entirely unsupported. When including the additional five charts to the total, the number of files without proper documentation to support any claimed services is 64% overall. Without any objective findings verifying that a patient presented with a treatable condition, no treatment services would be considered appropriate or necessary. The Respondent's billing of patients and/or third-party payors for chiropractic services, which were either not provided or for which there was no supporting documentation, as described above, constitutes a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); and Violates any provision of this title, in violation of H.O. § 3-313(28).

Double-billing for services

25. In one patient chart, the Respondent's records indicate two instances (*i.e.*, October 1, 2010, and October 22, 2010) where he billed twice for providing TE on those dates. The Respondent's actions, as described above, constitute, in whole or in part, a violation of the following provisions of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Violates any rule or regulation in the

practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); and Violates any provision of this title, in violation of H.O. § 3-313(28).

Chiropractic recordkeeping violations

26. The Respondent's patient charts contain numerous recordkeeping deficiencies in violation of 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 insufficient information to support the services he claimed to have provided. These deficiencies include but are not limited to the following:

(a) **The Respondent's charts contain forms with titles that do not match their respective contents.** The Respondent's charts contain "Patient Historical Information" forms that are actually billing ledgers with diagnoses. The charts contain a "Patient History Summary" form that is also a billing ledger, but without diagnoses. The charts contain "Patient History Summary" forms that contain general intake demographics and written informed consent forms with no patient history information at all. There are two different forms titled, "Examination Form," neither of which are actual examination forms. One of the forms is a general patient history form with the bottom half that includes a "check off" format for regions of the body where the patient might have a complaint. The other form only includes the general history questions for the patient. There are

no examination findings or questions on either form. COMAR 10.43.15.03A and C; COMAR 10.43.15.05.

(b) **The Respondent's examination forms do not contain names or dates listed.** Of the 44 charts reviewed, 13 contain actual examination information. None of the forms include either the patient's name or the date of the examination, thus leaving them of no value when attempting to determine a specific presentation of a patient. COMAR 10.43.15.03A and C.

(c) **The Respondent's charts do not contain objective findings supporting the charges assessed for a particular treatment date.** More than one-half of the records include charges for service dates that are unsupported in the clinical/treatment record. Of the 44 charts reviewed, only 39 contain treatment notes. The other five charts only include billing information. Within the 39 charts, 23 charts, or 59%, include at least one service date for which the notes were left blank with regard to objective findings, leaving the charges for that service date entirely unsupported. When including the additional five charts to the total, the number of files without proper documentation to support any claimed services is 64% overall. Without objective findings verifying that a patient presented with a treatable condition, no treatment services would be considered appropriate or necessary. While the charts contain some generic regions in the spine where treatment is claimed to have been performed, the treatment would not be considered to have been properly

supported, since there were no correlating findings within the objective findings portion of the treatment record defining any treatable conditions that were in need of treatment at that time. COMAR 10.43.15.03A and C.

(d) **The Respondent's charts contain intake forms that are either incomplete or missing, leaving the records without proper support to initiate care for any given condition.** Of the 44 charts reviewed, 17 contain no intake records. Of those charts, eight were not cases that continued from prior to the review period (*i.e.*, prior to 2011). Thus, at least 18% of the charts reviewed contained no intake records at all. Without properly establishing a patient's past health history, including a review of systems, family history, surgical history, previous injuries, previous treatment, medications, allergies, hospitalizations and other pertinent patient data, in addition to the details of the current complaint, it is not possible for the chiropractor to accurately determine what treatment services, if any, are appropriate and necessary. Even among those charts that included some type of intake documentation, the necessary information was not recorded. For example, in three charts containing the most complete information, the charts failed to provide consistent and complete information, especially regarding joint problems. In one of the three cases, for example, the computerized report describes that this patient had an undefined "sports related incident," but then refers to the injury as an "accident." The chart then states that the patient had active myofascial trigger points in the "left gluteus medius, left gluteus maximus,

left quadratus lumborum, left thoraco-lumbar fascia, left adductor longus, left rectus femoris, left pectineus, left gluteus minimus, left psoas, and left piriformis," which is a lengthy and detailed list of muscle findings, yet contrastingly, the record stated on the following page that lumbar ranges of motion and the ranges of motion in both hips "were within normal limits," which is neither reasonable nor likely. The note also describes that all of the orthopedic/neurologic tests/signs of the lumbar, pelvic and hip regions were normal. The diagnosis of "Hip, Derangement" is unsupported. On the following service date, October 31, 2011, the records provide the identical list of low back and hip muscle findings; however, the primary diagnosis is changed to "Shoulder Derangement," which is an entirely unsupported claim. COMAR 10.43.15.03A and C; COMAR 10.43.15.05.

(e) **The Respondent's examination forms do not address joint issues.** In the Respondent's charts where an actual examination form was provided, the form does not contain a section dealing with joint issues/problems. The Respondent's examination forms fail to provide any options for joint problems and none were added. Throughout the charts, the Respondent did not specifically address or document any specific joint issues in his objective findings. COMAR 10.43.15.03A and C.

(f) **The Respondent's charts contain an instance of duplicate therapeutic exercise logs that contain inconsistencies.** In one reviewed chart, the chart contains two therapeutic exercise logs for a specific date, one initialed by Employee A, and the other initialed by both

Employee A and the Respondent. These forms contain inconsistent information about the services purportedly provided. COMAR 10.43.15.03A.

Failure to cooperate

27. After receiving the complaint noted in paragraph four, *supra*, the Board, beginning in 2011, initiated an investigation of the Respondent's practice. Pursuant to that investigation, the Board made numerous attempts, through the issuance of *subpoenas duces tecum,* written correspondence and electronic mail, to obtain patient sign-in sheets, provider schedules, patient chiropractic records and billing information from the Respondent. In response, the Respondent did not provide full, complete and meaningful disclosure of the patient records and materials the Board requested in a timely manner. When the Respondent did respond to the Board's subpoenas and written demands for sign-in sheets, provider schedules, billing information and/or patient records, he provided only partial responses to such demands, thus requiring the Board to issued additional demands, through subpoenas, written correspondence or electronic mail for all of the materials requested.

28. The Respondent's failure to provide full, complete, meaningful and timely responses and disclosures to the Board in this investigation, as described above, constitutes a violation of the following violations of the Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act

of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); and Violates any provision of this title, in violation of H.O. § 3-313(28).

26. The Respondent's failure to provide full, complete, meaningful and timely responses and disclosures to the Board in this investigation, as described above, constitutes a violation of the following regulation: COMAR 10.43.14.03C(8).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of the Maryland Chiropractic Act: Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. § 3-313(18); Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); Misrepresents qualifications, education, training, or clinical experience, in violation of H.O. § 3-313(26); and Violates any provision of this title, in violation of H.O. § 3-313(28).

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following COMAR provisions: 10.43.07.11; 10.43.07.12; 10.43.14.03; 10.43.15.03A and C; 10.43.15.05; and 10.43.14.03C(8).

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 shall pay a fine in the amount of five thousand dollars ($5,000.00), payable to the Board within sixty (60) days of the date the Board executes this Consent Order, and is it 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 the following: (a) the NBCE ethics course; (b) a Board-approved course in professional boundaries; and (c) a Board-approved recordkeeping course. 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 charges under H.O. § 3-313(2)(Fraudulently or deceptively uses a license) are hereby **DISMISSED**; 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. State Gov't § 10-611 et seq. (2009 Repl. Vol. and 2013 Supp.).

10/10/13
Date

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

CONSENT

I, Steven Horwitz, 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.

9/18/13
Date

Steven Horwitz, D.C.
Respondent

NOTARY

STATE OF Texas

CITY/COUNTY OF: Rockwall

I HEREBY CERTIFY that on this 18 day of Sept., 2013, before me, a Notary Public of the State and County aforesaid, personally appeared Steven Horwitz, 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.

L Openshaw
Notary Public

My commission expires: 7-5-14

LAUREN OPENSHAW
Notary Public
STATE OF TEXAS
My Comm. Exp. 07-05-14