

**BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS**

In the Matter of
Cory Dean Couillard, D.C.
License No. 4869

**STIPULATION
AND ORDER**

STIPULATION

Cory Dean Couillard, D.C. (“Respondent”), and the Minnesota Board of Chiropractic Examiners Complaint Panel (“Complaint Panel”) agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

A. The Minnesota Board of Chiropractic Examiners (“Board”) is authorized pursuant to Minnesota Statutes sections 148.01 to 148.108 to license and regulate chiropractors and to take disciplinary action as appropriate.

B. Respondent holds a license from the Board to practice chiropractic in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Order.

II.

CONFERENCE

On September 29, 2009, Respondent and his attorney, Todd Crabtree, Esq., of Crabtree Law Firm, Stillwater, Minnesota, appeared before the Complaint Panel, composed of Kimberly Hill, Board member, Matthew Anderson, D.C., Board member, and Larry Spicer, D.C., Executive

Director, to discuss allegations made in a Notice of Conference dated August 25, 2009. Careen Martin, Assistant Attorney General, represented the Complaint Panel at the conference.

III.

FACTS

The parties agree this Stipulation and Order is based upon the following facts:

A. Respondent solicited new patients at booths and kiosks at such locations as the Burnsville Mall or Sam's Club where Respondent offered a "free health scan" or "spinal scan." Following the initial scan, patients were invited for a full evaluation at Respondent's clinic, Express Health, usually for a \$25 fee. Respondent provided the full evaluation and took x-rays. The patient was then told to return to attend an informational session and to review Respondent's treatment recommendations and financial arrangements. Respondent met with patients individually or with their spouse to review the findings of Respondent's full examination and x-rays. Respondent proposed treatment recommendations by providing patients with a copy of a "Health Development Plan."

B. The Health Development Plan usually listed a chiropractic plan of care which included 72 adjustments at \$40, 72 exercises at \$35, three scans at \$100, three re-exams at \$100, two re-x-rays at \$150, and home exercise at \$220 for a total "actual fee" of \$6,520. After the "actual fee" section, the Health Development Plan included an "administrative fee reduction" section, which was typically the same plan consisting of 72 adjustments at \$40, 72 exercises at \$0, three scans at \$0, 3 re-exams at \$0, two re-x-rays at \$0, and home exercise at \$220, for a total cost of \$3,100. Respondent offered the same administrative fee reduction to a spouse, but at 50% off, for a cost of \$1,440.

C. Respondent provided misleading information to patients regarding the medical necessity of the Health Development Plan. For example:

1. Respondent told B.M. that without his treatment her life could be shortened.

2. Respondent showed S.V. x-rays of patients who did not sign up for his Health Development Plan and told her, "I don't know if they are even alive today." Respondent told S.V. that her neck was so bad it was crushing her spinal cord and led her to believe that she would get cancer or have a heart attack without Respondent's treatment.

D. Respondent told consumers they could pay for the Health Development Plan by making twelve monthly interest-free payments.

E. Respondent advised patients they could pay for the Health Development Plan with CareCredit, a health care credit card. Respondent did not provide patients with written disclosures outlining CareCredit's terms and conditions. Respondent failed to tell patients that if the promotional charges were not paid within the promotional period or if the patient did not pay the minimum monthly payment on time every month, the promotional terms would be terminated and the patient would be assessed default annual percentage rates of up to 29.99% on the full promotional purchase amount from the date of purchase.

F. Respondent told patients they were not applying for a credit card by filling out a CareCredit application, but that the clinic was just checking to "see if they qualified" for credit. Respondent did not tell patients that he intended to submit the completed application to apply for a credit card in the patients' name. In some cases Respondent affirmatively told patients they were not signing up for a credit card.

G. Respondent electronically applied for CareCredit cards in patients' names, often without the patients' knowing consent.

H. Respondent submitted false information to CareCredit, including false annual household income for patients and false home ownership information for patients.

I. After signing up patients for a CareCredit credit card, Respondent placed charges of up to \$5,040 on the credit cards without patients' authorization.

J. For patients who were interested in participating in the Health Development Plan, such patients were not advised that Respondent would immediately charge the total cost of the program to the CareCredit card opened in their name. Respondent's lack of full disclosure to patients led some patients to believe that they would pay for services as the services were rendered.

K. Some patients who had not authorized charges to be made to the CareCredit card opened in their name contacted Respondent to request refunds, and Respondent told some patients that the charges could not be refunded.

L. Respondent otherwise made it difficult for patients to receive refunds. Some patients had to call Respondent's office repeatedly in order to get the charges removed from their account. They often could not get Respondent on the phone and Respondent did not return voice messages. Respondent required many patients to meet with him in person before he issued a refund.

M. Respondent did not disclose his refund policies, if any, to patients in advance of providing care. Despite the lack of prior disclosure, when a patient requested a refund, the refund amount was sometimes calculated by retroactively charging Respondent's full retail price for the services rendered and not the rate with the administrative discount.

N. Respondent failed to secure patient records, including CareCredit applications, according to Health Insurance Portability and Accountability Act (HIPAA) regulations. The CareCredit applications contained confidential patient information including names, birthdates, Social Security numbers, addresses, and income. The CareCredit applications were either never completed, destroyed, or stolen from Respondent's unsecured office and home.

O. Up until the middle of July 2009, Respondent kept patient records at his clinic and at his home. Respondent disclosed these records were not in locked rooms or cabinets.

P. A review of 81 of Respondent's patient files revealed the following deficiencies:

1. Of the 81 records reviewed, 79 had no documents corresponding to an initial patient evaluation. The financial statements of all 81 records indicated Respondent performed a "New Patient Exam Level I," with a CPT code of 99201. The CPT manual indicates the requirements for this code are documentation of a problem-focused history, a problem-focused examination and involves medical decision-making of a straightforward nature.

2. In the case of patients W.T. and S.W., there were some notes which appear to be in Respondent's handwriting, but which list subjective findings only.

3. In 14 of 81 records reviewed, there was no documentation of x-ray findings, although the financial statements indicated x-rays were taken and charges billed.

4. In 43 instances, there were documented x-rays findings. However, these interpretations were all signed by Respondent on March 23, 2009 or thereafter; some were not signed until more than a year had elapsed since the x-rays were taken.

5. For patients S.L., S.O., J.A.S., T.S. and W.T., the patients' financial statements indicated lumbosacral spine x-rays were taken. However, no lumbosacral spine x-ray interpretations were present in these records.

6. In nine cases, no Chiropractic Informed Consent form was present. In nine other cases, the consent form was incomplete, with certain pages missing or not dated.

7. In 58 of 81 records reviewed, no HIPAA consent form was present. When HIPAA consent forms were present, they were not signed and dated until after late March 2009.

8. The record of patient M.A.D. had no treatment logs, although she signed a consent for treatment form and had x-ray orders.

9. Respondent failed to list the significant pre-existing condition of diabetes for patients M.L., R.E.L., and J.W. in his treatment notes.

10. For patients D.D., J.D., and S.S., no subjective findings were documented in the initial treatment record.

11. For patients C.A., M.B., M.J.D., D.H., S.H., L.L., R.M., S.P., C.S., G.S., J.A.S. and M.S., on multiple occasions, patient financial statements showed charges for treatments with no corresponding visits documented.

12. Respondent ordered shoulder x-rays on patient M.J.D., signed the form, but did not document any interpretation.

13. There was a thermal scan with a date of 10/8/08 in the records of patient TM. However, TM made no visits to the clinic between 10/1/08 and 5/19/09.

14. Patient S.O. was listed as a "no show" for visits scheduled on 8/19/08 and 10/17/08. However, Respondent documented both objective and subjective findings on both these dates, and wrote "No show (mark same as previous)."

15. Patient S.P.'s signatures on the HIPAA and Express Health Policies forms were dated 4/8/09. S.P. made no visits to Respondent's clinic after 3/23/09.

16. W.T.'s record had cervical spine x-ray orders written and signed by Respondent on both 9/4/08 and 9/8/08. These x-rays had different interpretations.

Q. Respondent failed to cooperate fully with the Board by failing to provide the Board with truthful accurate responses to its questions, including but not limited to the following:

1. On September 16, 2008, Respondent met with the Complaint Panel. At that time, the panel asked whether Respondent had ever failed to provide a patient with a refund on a prepaid plan of chiropractic services when the patient requested a refund. Respondent answered "no." However, some patients have reported that Respondent refused to refund money to them for amounts Express Health charged to the patients' CareCredit accounts.

2. On July 15, 2009, during an interview with the Attorney General's Office Respondent was asked whether "there have ever been any instances when you've refused to refund money to clients on the CareCredit accounts?" Respondent answered "no." However, some patients have reported that Respondent refused to refund money to them for amounts Express Health charged to the patients' CareCredit accounts.

3. On July 9, 2009, Respondent was asked whether he "ha[d] any contract that you signed with CareCredit." Respondent answered "no." On August 11, 2009, the

Attorney General's Office received a copy of the CareCredit Participating Professional Application Respondent signed on or about November 15, 2006.

IV.

LAWS

The Complaint Panel concludes that the conduct described in section III. above constitutes a violation of Minnesota Statutes section 148.10, subdivision 1(a)(10), (11), (14), (15), (18), (19), and 1(e)(4), (e)(5), and (e)(6), for purposes of this Stipulation and Order and justifies the disciplinary action described in section V. below. Licensee agrees that the conduct described in section III. above constitutes a violation of Minnesota Statutes section 148.10 if proven by the Complaint Panel but agrees to enter into this Stipulation and Consent Order for purposes of settlement.

V.

DISCIPLINARY ACTION

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

Stayed Suspension

A. The Board **SUSPENDS** Respondent's license to practice chiropractic for three (3) years, effective as of October 1, 2009. After twenty-one (21) months, the suspension shall be **STAYED** and Respondent may return to practice under a stayed suspension so long as Respondent first complies with the following conditions:

1. Reexamination, Licensure Application, and Licensure Fee. Respondent shall take and successfully pass the Special Purposes Examination in Chiropractic (SPEC), submit a completed application for licensure, pay the licensure fee, and meet all other licensure

requirements in effect at the time of application, including completing any necessary continuing education requirements.

2. Professional Boundaries and Ethics (ProBE) Program. Respondent shall submit to the Board, or cause to be submitted, evidence of successful completion of the ProBE program with a rating of unconditional pass. Respondent shall arrange for taking the course and shall assume all responsibility for all associated costs. The program's information may be found online at www.cpepdoc.org/probe.htm.

3. Restitution. Respondent shall pay restitution to all patients who prepaid for services at Respondent's clinic by using healthcare credit cards, but who have not yet received a refund for such services. Restitution shall include, but not be limited to, restitution to J.S. and his wife M.S.; S.C.; S.L. and his wife L.L. Respondent shall submit to the Board written verification that he has fulfilled this requirement.

4. During the twenty-one (21) months of active suspension, Respondent shall not:

a. Engage or attempt to engage in any act or practice in the State of Minnesota which constitutes the practice of chiropractic under Minnesota Statutes section 148.01 and Minnesota Rules 2500.0100, subpart 9b;

b. Advertise, use any of the terms or letters "Doctor of Chiropractic," "Chiropractor," "D.C." or any other title or letters under any circumstances as to lead the public to believe that he is engaged in the practice of chiropractic, or otherwise hold himself out in any manner as being authorized to practice chiropractic in Minnesota; or

c. Hold any ownership interest in a firm that engages in the practice of chiropractic except as authorized by Minnesota Statutes chapter 319B.

d. Imply to patients or other persons by words or conduct that Respondent is authorized to practice chiropractic in Minnesota.

e. Provide, direct, or assist in the provision of chiropractic care to any person or engage in any other procedure or practice which may be undertaken in this state only by licensed health personnel or by the lawful delegates, assistants, technicians, or aids of such personnel.

5. Within ten (10) days of the date of this Order, Respondent shall surrender his license certificate and current license renewal card to the Board. The certificate and card shall be mailed or delivered to the Minnesota Board of Chiropractic Examiners, c/o Dr. Larry A. Spicer, Suite 300, 2829 University Avenue SE, Minneapolis, Minnesota 55414.

Return to Practice Under Stayed Suspension

B. Respondent may return to practice under a Stayed Suspension twenty-one (21) months after October 1, 2009, and upon written notification to Respondent by the Board of the removal of the suspension, provided Respondent has complied with the conditions outlined in paragraph V.A above.

Stayed Suspension

C. Provided Respondent has complied with the conditions outlined in paragraph V.A above, and after written notification to Respondent by the Board, Respondent may return to practice under a **STAYED SUSPENSION** no sooner than July 1, 2011. The suspension is stayed provided Respondent complies with the following conditions:

1. Group Practice and Practice Supervisor. Respondent shall practice only in a group practice setting pre-approved by the Board. Respondent shall submit to the Board the name of a proposed practice supervisor for the Board's consideration and pre-approval.

Respondent shall provide the practice supervisor with a copy of the entire signed Stipulation and Order. Respondent shall cause to be submitted to the Board a report from Respondent's practice supervisor every three months and at the time Respondent petitions for an unconditional license.

Each report shall provide and address:

- a) Respondent's attendance and reliability;
- b) Respondent's ability to handle stress;
- c) The number of hours Respondent worked during the reporting period;
- d) Verification Respondent does not use CareCredit, ChaseHealthAdvance, or any other health credit cards in any manner;
- e) Verification Respondent does not use prepay plans for chiropractic services in any manner; and
- f) Any other information the employer believes would assist the Board in its ultimate review of this matter.

2. Records review. On a quarterly basis, Respondent shall submit six new patient records to Joel B. Wulff, D.C., or another consultant who has been preapproved by the Board, for review of compliance with current recordkeeping, billing, and treatment standards. Respondent is responsible for arranging and paying for the records review and evaluation. Respondent shall cause the chiropractic consultant to submit a report directly to the Board every three months, or on a frequency at the discretion of the consultant, and at the time Respondent petitions for an unconditional license. The reports shall address the following:

- a) Verification the chiropractic consultant has reviewed a copy of this Stipulation and Order;

b) An evaluation of Respondent's recordkeeping, billing and chiropractic practice;

c) Any recommendations for additional education directed at improving Respondent's chiropractic practice; and

d) Any other information the chiropractic consultant believes would assist the Board in its ultimate review of this matter.

3. Respondent shall not use health credit cards. Respondent shall not use CareCredit, ChaseHealthAdvance, or any other health credit cards in any form.

4. Respondent shall not use prepay plans. Respondent shall not use prepay plans for chiropractic services in any manner, including billing for any service before it is rendered.

5. Civil Penalty. Respondent must pay to the Board a civil penalty of \$2,000.00. The civil penalty shall be paid by cashier's check(s) or money order(s) made payable to the Minnesota Board of Chiropractic Examiners, c/o Larry Spicer, Executive Director, 2829 University Ave SE, #300, Minneapolis, Minnesota 55414.

Removal of Stayed Suspension

D. Respondent may petition to have the **STAYED SUSPENSION** removed from his license not less than three (3) years after October 1, 2009. Respondent's stayed suspension may be removed as the evidence dictates and based upon the need to protect the public. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that Respondent is capable of conducting himself in a fit and competent manner in the practice of chiropractic. Respondent's compliance with the foregoing requirements shall not create a presumption that the stayed suspension shall be removed. Before petitioning for removal of the stayed suspension, Respondent shall meet with a Complaint Panel to review his petition and any

evidence in support of the petition. The meeting with the Complaint Panel shall be scheduled after Respondent has complied with, at a minimum, the conditions outlined in paragraph I above.

E. Respondent shall provide any additional information relevant to his petition reasonably requested by the Complaint Panel. The Board will consider all competent evidence of rehabilitation presented to the Board upon Respondent's application for relicensure.

F. The Board may, at any regularly scheduled meeting following Respondent's petition for removal of the stayed suspension pursuant to paragraph D above, remove the stayed suspension, remove the stayed suspension with limitations placed upon the scope of Respondent's practice and/or conditional upon further reports to the Board, or continue the stayed suspension of Respondent's license based upon Respondent's failure to meet the burden of proof.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

A. It is Respondent's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board pursuant to this Stipulation and Order are timely filed by those preparing the report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Stipulation and Order.

Noncompliance With Requirements for Stayed Suspension

B. If the Complaint Panel has probable cause to believe Respondent has failed to comply with or has violated any of the requirements for staying the suspension as outlined above, the Complaint Panel may remove the stay of the suspension pursuant to the procedures outlined in paragraph I below, with the following additions and exceptions:

1. The removal of the stayed suspension shall take effect upon service of an

Order of Removal of Stayed Suspension (“Order of Removal”). Respondent agrees that the Complaint Panel is authorized to issue an Order of Removal, which shall remain in effect and shall have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph C below or until the complaint is dismissed and the order is rescinded by the Complaint Panel. The Order of Removal shall confirm the Complaint Panel has probable cause to believe Respondent has failed to comply with or has violated one or more of the requirements for staying the suspension of Respondent’s license. Respondent further agrees an Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act. Respondent waives any right to a conference or hearing before removal of the stayed suspension.

2. The Complaint Panel shall schedule the hearing pursuant to paragraph C below to be held within 60 days of service of the Order of Removal.

Noncompliance With Stipulation and Consent Order

C. If Respondent fails to comply with or violates this Stipulation and Consent Order, the Complaint Panel may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

1. The Complaint Panel shall schedule a hearing before the Board. At least 30 days before the hearing, the Complaint Panel shall mail Respondent a notice of the violation(s) alleged by the Complaint Panel. In addition, the notice shall designate the time and place of the hearing. Within ten days after the notice is mailed, Respondent shall submit a written response to the allegations. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

2. The Complaint Panel, in its discretion, may schedule a conference with Respondent prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through agreement.

3. Prior to the hearing before the Board, the Complaint Panel and Respondent may submit affidavits and written argument in support of their positions. At the hearing, the Complaint Panel and Respondent may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. Unless stated otherwise in this Stipulation and Consent Order, the Complaint Panel shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Respondent has failed to submit a timely response to the allegations, Respondent may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Respondent waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

4. Respondent's correction of a violation prior to the conference, hearing, or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Complaint Panel not to seek discipline when it first learns of a violation will not waive the Complaint Panel's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while Respondent's license is suspended or the suspension is stayed.

5. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional requirements for the stayed

suspension, removal of the stayed suspension, an additional period of suspension, or revocation of Respondent's license.

6. Nothing herein shall limit the Complaint Panel's or the Board's right to temporarily suspend Respondent's license pursuant to Minnesota Statutes section 148.10, subdivision 4, based on a violation of this Stipulation and Order or based on conduct of Respondent not specifically referred to herein.

7. In the event Respondent should leave Minnesota to reside or to practice outside of the state, Respondent shall give the Board written notification of the new location, as well as dates of departure and return. Periods of residency and practice outside of Minnesota will not apply to the reduction of any period of Respondent's suspended license in Minnesota unless Respondent demonstrates that the practice in another state conforms completely with this Stipulation and Order. If Respondent leaves the state, the terms of this Order continue to apply unless waived in writing.

VII.

ADDITIONAL INFORMATION

A. Respondent waives the contested case hearing and all other procedures before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or rules.

B. Respondent waives any claims against the Board, the Minnesota Attorney General, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Order, which may otherwise be available to Respondent.

C. This Stipulation and Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

D. Either party may seek enforcement of this Stipulation and Order in any appropriate civil court.

E. Respondent has read, understands, and agrees to this Stipulation and Order and has voluntarily signed the Stipulation and Order. Respondent is aware this Stipulation and Order must be approved by the Board before it goes into effect. The Board may approve the Stipulation and Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Respondent, the Stipulation and Order will take effect and the order as modified will be issued. If the changes are unacceptable to Respondent or the Board rejects the Stipulation and Order, it will be of no effect except as specified in the following paragraph.

F. Respondent agrees that if the Board rejects this Stipulation and Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Order or of any records relating to it.

G. This Stipulation and Order shall not limit the Board's authority to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent which constitutes grounds for disciplinary action and which is not directly related to the specific facts and circumstances set forth in this document.

VIII.

DATA PRACTICES NOTICES


A. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Data regarding this action will be provided to data banks as required by Federal law or consistent with Board policy.


B. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

CONSENT:

BOARD OF CHIROPRACTIC EXAMINERS

COMPLAINT PANEL


CORY DEAN COUILLARD, D.C.
Respondent


LARRY SPICER, D.C.
Executive Director

Dated: 4-7, 2010

Dated: April 8th, 2010

ORDER

Upon consideration of the Stipulation, the Board SUSPENDS Respondent's license and adopts all of the terms described above on this 8th day of April, 2010.

MINNESOTA BOARD
OF CHIROPRACTIC EXAMINERS


TERESA MARSHALL, D.C.
President