

1 treatment plans, rendering diagnoses consistent with the history/findings and creating legible,
2 intelligible daily chart records.

3 3. Licensee will follow and comply with ORS 684.100 et. seq. and all Administrative Rules that
4 govern the practice of Chiropractic in the State of Oregon.

5 4. Licensee agrees to allow the OBCE, or it's representative to enter Licensee's business
6 premises, after notice, to examine, review, and photocopy Licensee's patient and billing
7 records to determine compliance with the terms of this order, for a period of three years after
8 the agreement becomes final. Licensee may redact patient names from the files before
9 submitting to the Board. The OBCE will limit it's review to motor vehicle accident patients.

10 5. Licensee and OBCE agree this Agreement of Voluntary Compliance is not and will not be
11 reported as a disciplinary action.

12 6. Licensee and OBCE agree that if Licensee's continued practice of chiropractic falls below
13 required minimum standards, the OBCE may proceed to issue a new Notice of Proposed
14 Disciplinary Action.

15 7. This Agreement of Voluntary Compliance concludes Case 99-1006. This agreement is a
16 public document.

17 2.

18 I have read and I understand all of the above Agreement of Voluntary Compliance and
19 fully agree to all of its terms.

20 IT IS SO STIPULATED this 5th day of June, 2002.

21 Original Signatures on file
22 at the OBCE Office
23 By: Jeffrey Bratten *JB*

24
25 Original Signatures on file 6-14-2002
26 at the OBCE Office
27 Dave McTeague, Ex. Dir.
28 Oregon Board of Chiropractic Examiners
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**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON**

6 In the Matter of)
7)
8 Jeffrey Bratten, D.C.) NOTICE OF PROPOSED
9) DISCIPLINARY ACTION
10)
11)
12 Licensee.) Case # 99-1006
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15 The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing,
16 regulating and disciplining chiropractic physicians in the State of Oregon. Jeffrey Bratten, D.C.
17 (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon.
18 The Board proposes to discipline Licensee for the following reasons.
19

20 1.

21 The Oregon Board of Chiropractic Examiners directed the Peer Review Committee to review
22 certain files from Licensee due to a complaint by a patient that she was given extended treatment
23 without related supportive exam findings. The Board's concerns with Dr. Bratten included
24 treatment inconsistent with patient complaints; exam findings inconsistent with each other;
25 extended treatment without related supportive exam findings; over treatment and over billing and
26 billing for services not provided to patients. During the investigation of the initial complaint, the
27 Board expanded its request to evaluation of several of Licensee's files. Licensee was interviewed
28 by the Peer Review Committee on October 14, 1999.
29

30 2.

31 Patient 1 was a 44 year old woman who was involved in a motor vehicle accident. On initial
32 exam on April 17, 1995, she complained of mild and moderate pain to neck, mid back, ribs, legs
33 and right hand areas. Subsequently she was treated by Licensee approximately 107 times in a ten-
34 month period. Review of this chart showed largely illegible chart notes. From the chart notes
35 reviewed by Peer Review, it was unknown what type of adjustment was given or to which
36 segment of the body it was given to. On the standard exam form the 58 test procedures listed;
37 most items are either not done or "normal." Some tests are repeated without clinical factors
38 required for repeating the tests over a 10-month period. Recorded orthopedic findings by date
39 and page do not support the need for the intensity, duration or frequency of the treatment given to
40 this patient. The measurements given do not demonstrate the effectiveness of treatment. The
41 Peer Review committee found based on Licensees interview and records that there was a lack of
42 demonstration of clinical justification for treating Patient 1 107 times in a ten month period which

1 represents over utilization. The Peer Review Committee found that the type of treatment given to
2 Patient 1 was not supported by subjective and objective documentation.

3
4 Licensee's billings for Patient 1 showed billings for extensive comprehensive and detailed exams
5 while the recording data were for lesser level procedure codes. The treatment, regardless of exam
6 findings or subjective patient complaints, averages every third day over a 10-month period.

7
8 This is in violation of ORS 684.100 (1)(g)(A) and (B) and OAR 811-035-0005(4) and OAR 811-
9 015-0010(2) and (3) and OAR 811-035-0015 (2) and (5) and Oregon Chiropractic Practice and
10 Utilization Guidelines Chapter 1 page 1 and Chapter 5 as adopted by OAR 811-035-0005 (4).

11
12 3.

13
14 Patient 3 was involved in a motor vehicle accident. Licensee stated in the chart notes that the
15 injuries of Patient 3 were directly the result of the motor vehicle accident on February 7, 1999.
16 However, tests noted on page 2 of the chart "comprehensive orthopedic and neurological testing"
17 and then repeated on re-exam, lack logical test consistency and paint an incongruent clinical
18 picture. The tests initially do not support the conclusion of a physiologic injury, let alone a motor
19 vehicle trauma that is fourteen days old. As exams continue, the patient appears to deteriorate in
20 an illogical manner. (Tests which were previously normal later become positive) Peer Review
21 found that the initial objective tests and subsequent re-exams lacked inter test consistency and
22 paint an incongruent clinical picture of this patient.

23 This is in violation of OAR 811-015-0005(1) and (2) and Oregon Chiropractic Practice and
24 Utilization Guidelines Chapter 1 page 1 (Examination objectives and Diagnosis Goals) as
25 adopted by OAR 811-035-0005.

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27 4.

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29 Patient 4 presented with complaints of moderate and frequent pain and stiffness in the neck and
30 low back. Initial orthopedic and neurological findings are Normal except "actual leg length."
31 Assessment shows "mild flair up of a chronic condition." This patient was treated 88 times over a
32 ten-month period with multiple modalities. Inclinometer readings are virtually identical from start
33 of treatment to end. Patient 5 had consistent inclinometer readings and was treated several
34 occasions for a five-month period without appropriate clinical justification.

35
36 This is in violation of ORS 684.100 (1)(g)(A) and (B) and OAR 811-035-0005(4) and OAR 811-
37 015-0010(2) and (3) and OAR 811-035-0015 (2) and (5) and Oregon Chiropractic Practice and
38 Utilization Guidelines Chapter 1 page 1 and Chapter 5 as adopted by OAR 811-035-0005.

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41 5.

42 Patient 7 was referred by a medical doctor for manipulation and physical therapy for relief of
43 spasm due to a workers' compensation injury. Licensee performed minimal exam procedures and

1 did not meet the definition for level of services per the CPT codes. Minimal to normal orthopedic
2 exam findings were noted. Symptoms and complaint levels are normal within the first two weeks.
3 Multiple modalities of treatment were provided 18 times over a six-week period for these mild to
4 non-existent complaints. There is little difference in palpation findings or x-ray listings from start
5 to finish in treatment of this patient. Licensee ordered x-rays one month after the beginning of
6 care for no discernable clinical reason.

7
8 In the interview with Peer Review, Licensee was unable to explain why chart notes of the same
9 date of service (4/17/98) were printed at different times and explain the sequential alteration at a
10 later date. Peer Review did not have confidence in Licensee's explanation given and find that this
11 file has multiple billing and chart errors.

12
13 This is in violation of ORS 684.100 (1)(g)(A) and (B) and OAR 811-035-0005(4) and OAR 811-
14 015-0010(2) and (3) and OAR 811-035-0015 (2) and (5) and Oregon Chiropractic Practice and
15 Utilization Guidelines Chapter 1 page 1 and Chapter 5 as adopted by OAR 811-035-0005.

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17 6.

18 Patient 8 presented for complaints sustained in a motor vehicle accident. Severity of condition at
19 intake was "acute" and "pain level 1." Initial exam procedures do not establish a clear
20 differential diagnosis. Follow up exams do not support the need for intensity of treatment.
21 Neurological and orthopedic testing is minimal and substandard. The mechanism of the injury and
22 relationship to complaints is not in the chart.

23
24 Chart notes in the SOAP format are in conflict with the patient that generated a Symptom Survey
25 Form. Review of the SOAP notes shows that notes from beginning of treatment to finish remain
26 the same, in fact, almost identical.

27
28 Licensee does not perform the component required in a comprehensive, extensive or detailed
29 exam, yet the patient is billed for those items. The case is based on x ray listings, inclinometer
30 readings and palpation findings.

31
32 This is in violation of ORS 684.100 (1)(g)(A) and (B) and OAR 811-035-0005(4) and OAR 811-
33 015-0010(2) and (3) and OAR 811-035-0015 (2) and (5) and Oregon Chiropractic Practice and
34 Utilization Guidelines Chapter 1 page 1 and Chapter 5 as adopted by OAR 811-035-0005.

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36 7.

37 Patient 9 presented for treatment due to a motor vehicle accident. The examinations are billed as
38 extended office visit, citing the amount of time for the visit. There are minimal numbers of
39 orthopedic or neurological tests that correlate to the subluxations with trauma in the chart notes.
40 The narrative appears to contain a lot of information but there are few findings of substance as
41 compared to recognized standard practices to justify the intensive or lengthy treatment, or linking
42 it to any trauma. Inappropriate responses to tests used in the profession are noted in the records.
43 No description of amount, location, or quality of sensation is reported from this test. The Peer

1 Review committee was unable to determine if this finding is related to a spinal injury or an
2 established location. Subsequent exams contain the same finding on exam as previous. After 16
3 weeks of treatment the patient's subjective statements of marked improvement from the complaint
4 forms does not coincide with Licensee's orthopedic findings which are identical to those of a
5 previous exam. There is a failure to provide meaningful documentation in this file.

6
7 This is in violation of ORS 684.100 (1)(g)(A) and (B) and OAR 811-035-0005(4) and OAR 811-
8 015-0010(2) and (3) and OAR 811-035-0015 (2) and (5) and OAR 811-015-0005 (1) and Oregon
9 Chiropractic Practice and Utilization Guidelines Chapter 1 page 1 and Chapter 5 as adopted by
10 OAR 811-035-0005

11
12 8.

13 Due to the aforementioned violations, the OBCE proposes to suspend Licensee for ninety days,
14 and subsequently place licensee on probation for three years, during which time Licensee is
15 required to allow the OBCE to periodically review Licensee's patient records and chart notes.
16 The Licensee will be required to pay a fine of \$5000 pursuant to ORS 684.100(9)(f).

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18 9.

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20 Licensee shall pay costs of this disciplinary proceeding, including investigative costs and
21 attorney fees pursuant to ORS 684.100(9)(g).

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23 10.

24
25 Licensee has the right, if Licensee requests, to have a formal contested case hearing before
26 the OBCE or its hearings officer to contest the matter set out above. At the hearing, Licensee
27 may be represented by an attorney and subpoena and cross examine witnesses. That request for
28 hearing must be made in writing to the OBCE, must be received by the OBCE within 30 days
29 from the mailing of this notice (or if not mailed, the date of personal service), and must be
30 accompanied by a written answer to the charges contained in this notice.

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32 11.

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34 The answer shall be made in writing to the OBCE and shall include an admission or denial
35 of each factual matter alleged in this notice, and a short plain statement of each relevant
36 affirmative defense Licensee may have. Except for good cause, factual matters alleged in this
37 notice and not denied in the answer will be considered a waiver of such defense; new matters
38 alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and
39 evidence shall not be taken on any issue not raised in the notice and answer.

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If Licensee requests a hearing, before commencement of that hearing, Licensee will be given information on the procedures, rights of representation and other rights of the parties relating to the conduct of the hearing as required under ORS 183.413-415.

13.

If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the hearing, the OBCE may issue a final order by default and impose the above sanctions against Licensee. Upon default order of the Board or failure to appear, the contents of the Board's file regarding the subject of this automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

DATED this 16 day of August, 2001.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original Signatures on file
at the OBCE Office
By: _____
Dave McTeague, Executive Director

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Certificate of Service

I, Carol Rohde, certify that on 16 August 2001, I served the foregoing Jeffrey Bratten, D. C. upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Jeffrey Bratten
Pettigrew Chiropractic Clinic
837 East Powell
Gresham OR 97030

Jacob Tanzer, AAL
Ball, Janik, L.L.P.
101 SW Main Street, Suite 1100
Portland, Oregon 97204

Original Signatures on file
at the OBCE Office

Carol Rohde
Office Specialist
Oregon Board of Chiropractic Examiners

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VERIFICATION

State of Oregon)
County of Marion) Case # 99-1006

I, Dave McTeague, being first duly sworn, state that I am the Executive Director of the Board of Chiropractic Examiners of the State of Oregon, and as such, am authorized to verify pleadings in this case: and that the foregoing Notice is true to the best of my knowledge as I verily believe.

Original Signatures on file
at the OBCE Office
DAVE McTEAGUE, EXECUTIVE DIRECTOR
OREGON BOARD OF CHIROPRACTIC EXAMINERS

SUBSCRIBED AND SWORN to before me
this 15th day of August, 2001.

Original Signatures on file
at the OBCE Office
NOTARY PUBLIC FOR OREGON
My Commission Expires: 10/10/03

