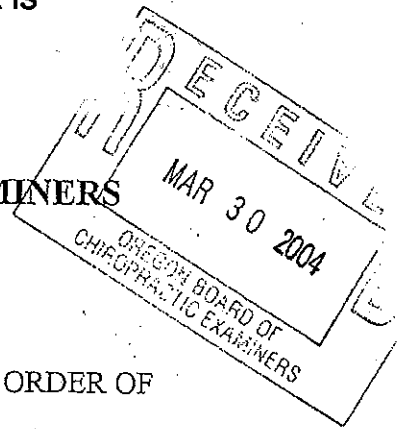


This is a board action and therefore,
a public document. However, it is
NOT a disciplinary action.

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON



In the Matter of)
Earl Duncan, D.C.) STIPULATED ORDER OF
) AGREEMENT
)
)
)
)
)
 Licensee.) Case # 2002-3004

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Earl Duncan, D.C. (Licensee) is licensed by the Board to practice as a chiropractic physician in the State of Oregon.

In the Notice of Proposed Disciplinary Action issued against Licensee on November 5, 2003, the Board alleged the following:

1.

a. The Oregon Board of Chiropractic Examiners received a complaint as to the independent medical examination performed by Licensee on Patient 1 on March 20, 2002. This patient was a 52 year old male with a history of back complaints. On February 2, 2002 while pulling a reed cutter, Patient 1 experienced the immediate onset of acute low back pain. Licensee concluded that on February 2, 2002 the patient suffered exacerbation of preexisting degenerative changes and a congenital transitional lumbosacral segment. Licensee further postulated that there was not a work related back injury on that date or at any other time stating that "we find no evidence of lumbosacral strain either at today's examination or on history." A Physician-Patient relationship was formed with this patient pursuant to OAR 811-010-0005.

b. After review of the records provided to the IME examiner and the IME report generated dated March 20, 2002, this Board as well as two of Licensee's chiropractic peers concludes that Licensee's conclusions and/or opinions disregarded so much critical information concerning Patient 1.

c. The Licensee's opinions that five episodes of back pain over a four year period are not related to a work injury are not supported. The patient has history and chart note forms from the treating physician indicated low back strain and diagnosis of lumbar strain/sprain that Licensee ignores.

1 d. Licensee's opinions and/or conclusions that Patient 1's 1995 leg fracture "plays no
2 role in his recurring back episodes" is not supported by chiropractic or biomechanical reason.
3 Information provided to the Licensee by the treating physician and documented history of
4 physical findings of this patient contradicts the Licensees opinions in this area.
5

6 e. The opinion that this patient has "no impairment related to any work related injury" is
7 contrary to the facts presented in Patient 1's records and his physical examination findings.
8

9 2.
10

11 Licensee has reviewed the above allegations and asserts the following:
12

- 13 a. Oregon Workers' Compensation law, specifically, ORS 656.325(1) provides the
14 examiner's and the examinee's rights and responsibilities during an insurer medical
15 evaluation.
16 b. The records provided to and reviewed by Licensee for the examination, including
17 Patient 1's own statements found in the workers' compensation forms (801 and 827)
18 and a letter from Patient 1's employer to Licensee, state that Patient 1 was either
19 bending or twisting when the injury occurred, rather than pulling on a reed cutter.
20 c. X-rays and medical records provided and reviewed by Licensee support the medical
21 opinion concurred to by Licensee that Patient 1's degenerative and congenital
22 conditions, rather than a lumbar strain/sprain as a result of bending and twisting, were
23 the major contributing cause of Patient 1's recurrent episodes of back pain.
24 d. Patient 1's medical records do not provide sufficient evidence that the 1995 leg
25 fracture played a role in patient 1's recurring back episodes. The medical records do
26 not relate Patient 1's eight millimeter difference between the right and left femoral
27 head to the 1995 leg fracture.
28 e. The opinion that Patient 1 has "no impairment related to any work injury" should be
29 read in the context of the purpose of the examination, Patient 1's back, and it should
30 not be construed as an opinion relating to Patient 1's 1995 leg fracture. This statement
31 was made in reference to the employer's question regarding the subjective complaints
32 and objective findings relating to Patient 1's back condition.
33

34 3.
35

36 The parties understand and agree as follows:

- 37 a. The doctor/patient relationship between examiner and the examinee is limited to the
38 examination, the opinion, and the review of the patient history and medical records provided and
39 does not include ongoing treatment monitoring. The examiner shall make important health
40 information, diagnosis and treatment recommendations available to the patient, treating doctor,
41 and patient's legal counselor or guardian via the independent report. Upon request, a copy of the
42 independent report shall be made available to the patient, the treating doctor and/or the patient's
43 legal guardian.

1 **VERIFICATION**

2
3 State of Oregon)
4 County of Marion) Case # 2003-3006
5

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

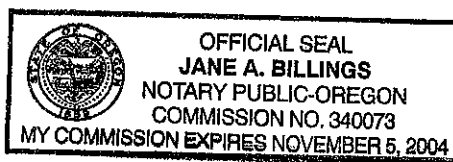
10 **Original Signatures on file**
11 **at the OBCE Office**

12 _____
13 DAVE McTEAGUE, EXECUTIVE DIRECTOR
14 OREGON BOARD OF CHIROPRACTIC EXAMINERS

15 SUBSCRIBED AND SWORN to before me
16 this 5th day of Nov, 2003.

17 **Original Signatures on file**
18 **at the OBCE Office**

19 NOTARY PUBLIC FOR OREGON
20 My Commission Expires: 11/5/04



1
2 The parties acknowledge by their signature that this agreement resolves all issues raised in the
3 Notice of Discipline dated November 5, 2003.

4
5 DATED this 30th day of March, 2004.
6

7
8 BOARD OF CHIROPRACTIC EXAMINERS
9 State of Oregon

10
11 Original Signatures on file
12 at the OBCE Office
13 By: Dave McTeague, Executive Director

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15 Original Signatures on file
16 at the OBCE Office
17 By: Earl Duncan D.C. Licensee
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**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON**

6 In the Matter of)
7)
8 Earl Duncan, D.C.) NOTICE OF PROPOSED
9) DISCIPLINARY ACTION
10)
11)
12 Licensee.) Case # 2002-3004
13
14

15 The Board of Chiropractic Examiners (Board) is the state agency responsible for
16 licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Earl
17 Duncan, D.C. (Licensee) is licensed by the Board to practice as a chiropractic physician in the
18 State of Oregon. The Board proposes to discipline Licensee pursuant to ORS 684.100(9) for the
19 following reasons.
20

21 1.

22
23 The Oregon Board of Chiropractic Examiners received a complaint as to the independent
24 medical examination performed by Licensee on Patient 1 on March 20, 2002. This patient was a
25 52 year old male with a history of back complaints. On February 2, 2002 while pulling a reed
26 cutter, Patient 1 experienced the immediate onset of acute low back pain. Licensee concluded
27 that on February 2, 2002 the patient suffered exacerbation of preexisting degenerative changes
28 and a congenital transitional lumbosacral segment. Licensee further postulated that there was not
29 a work related back injury on that date or at any other time stating that "we find no evidence of
30 lumbosacral strain either at today's examination or on history." A Physician-Patient
31 relationship was formed with this patient pursuant to OAR 811-010-0005.
32

33 2.

34
35 The examination and report from Licensee did not mention the presence or absence of
36 swelling, edema or myofascial inflammation. There was no mention of active or passive motion
37 testing, no palpatory assessment and the treating physician's findings of edema, spasm and
38 dysfunction injury were ignored by Licensee.
39

40 After review of the records provided to the IME examiner and the IME report generated
41 dated March 20, 2002, this Board as well as a group of Licensee's chiropractic peers concludes
42 that Licensee's conclusions and/or opinions disregard so much critical information concerning

1 Patient 1 as to fall below the minimum accepted standards of practice of the chiropractic
2 profession.
3

4 The Licensee's opinions that five episodes of back pain over a four year period are not
5 related to a work injury are not supported. The patient has history and chart note forms from the
6 treating physician indicating low back strain and diagnosis of lumbar strain/sprain that Licensee
7 ignores.
8

9 Licensee's opinions and/or conclusions that Patient 1's 1995 leg fracture "plays no role in
10 his recurring back episodes" is not supported by chiropractic or biomechanical reason.
11 Information provided to the Licensee by the treating physician and documented history of
12 physical findings of this patient contradicts the Licensees opinions in this area.
13

14 The opinion that this patient has "no impairment related to any work related injury" is
15 contrary to the facts presented in Patient 1's records and his physical examination findings. This
16 is not within the minimally accepted standards of chiropractic practice.
17

18 3.
19

20 This is in violation of ORS 684.100 (1)(g)(B) and OAR 811-035-0015 and Oregon
21 Chiropractic Practice and Utilization Guidelines Chapter 1 pages 1 and 2, Chapter 2 as adopted
22 by OAR 811-035-0005. The conduct above is in violation in that the performance of the service
23 rendered was contrary to the recognized standards of practice of the chiropractic profession.
24

25 4.
26

27 Licensee's IME report dated March 20, 2002 indicates that "no doctor-patient relationship
28 was sought or established." This statement is a violation of OAR 811-010-0005(4) which states,
29 "patient" means any person who is examined, treated, or otherwise provided chiropractic
30 services." By failing to acknowledge the doctor-patient relationship, Licensee raises an issue as
31 to whether the examination is in fact an "independent medical examination" as the document
32 titles itself.

33 5.
34

35 Due to the aforementioned violations, the OBCE proposes to issue a Letter of Reprimand
36 specifying the Board concerns.
37

38 6.
39

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

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7.

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

8.

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.

9.

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.

10.

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

DATED this 5th day of November, 2003.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:

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

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Certificate of Service

I, Dave McTeague, certify that on November 5, 2003, I served the foregoing Notice of Proposed Disciplinary Action upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Earle Duncan DC
6026 NE Sandy Blvd
Portland, Oregon 97213

**Original Signatures on file
at the OBCE Office**

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners