

NOV - 4 2013

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

OREGON BOARD OF
CHIROPRACTIC EXAMINERS

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In the Matter of)
) STIPULATED FINAL ORDER
Jerry Evans DC)
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Licensee.) Case # 2012-1009, 1020, 1028, 3014

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Jerry Evans DC (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to discipline Licensee for the following reasons.

FINDINGS OF FACT

1.

The Oregon Board of Chiropractic Examiners received complaints in regards to Licensee's care of patients, billing and the use of untrained personnel by Licensee. Treatment records were obtained by the Board and the Peer Review Committee reviewed them. The Peer Review Committee also interviewed the Licensee in regards to his chart notes. The committee reviewed 939 pages of chart notes and correspondence.

2.

The Peer Review Committee found the following:

Uncertified staff The Peer Review Committee found that Licensee allowed three different uncertified personnel to conduct exercise therapy, electrotherapies and massage procedures on different patients. In an interview with the Committee, Licensee admitted that he employed at least three individuals to perform exercise training, electrotherapies and take range of motion measurements. Other witnesses interviewed by the Committee supported this admission. Based on logs for the CA training, Licensee has logs to support training for only two individuals when he had more. Licensee stated that he thought it was okay to allow these workers to conduct therapies because he reports that he notified the patients that they were not licensed or certified prior to the activity.

That violates ORS 684.100(1)(f)(A), and OAR 811-010-0110(1), and (2)(a) and OAR 811-015-0010(2), OAR 811-035-0015(3).

1 **Chart Notes:** The Peer Review Committee found that chart notes were not sufficiently
2 individual or detailed, nor they communicated a clinical rationale or justification for the care
3 provided. Licensee stated he felt his ortho charting was sufficient enough to be understood; but
4 as demonstrated in table 1 attached, the Committee found there was insufficient detail in the
5 chart notes for another doctor to understand what the other doctor was thinking or the level of
6 care being provided, such as ancillary care, procedure durations or re-evaluation schedules. In
7 the records reviewed, there was only one instance of an effort of Licensee to conduct a re-
8 evaluation of the patient. Licensee stated he does perform re-exams but he does not document
9 them nor does he charge for them.

10 The Committee found that there were inadequate exam findings in some of the charts as
11 demonstrated by the table 1 attached. In addition, the chart notes failed to identify the patients
12 by name, the clinic of origin by name or address and identify the day, month and year of service
13 provided along with the author of the notes. The Committee found that when they reviewed the
14 charts, some charts were missing identifying information. Chart notes lacked clear outcome
15 measures, treatment plans and entries do not adequately communicate clinical rationale or justify
16 treatment. Licensee admitted he knows that he needs to record treatment times for time
17 dependent procedures, yet there were no times recorded in the chart notes. (See Table 1
18 attached) The patients are treated more frequently than his clinical documentation suggests is
19 appropriate. It is difficult to determine the extent of a patient's injury and the clinical rationale
20 from Licensee's documentation.

21 Chart notes did not include a functional chiropractic analysis (PARTS exam) as required.
22 As noted in Table 2, Licensee does not have adequate or consistent approach to documenting or
23 completing his chiropractic functional assessment. Although there were initial exam plans
24 recorded there were no clear progressive treatment plans found for patients. Licensee admitted
25 that he needs better clinical rationale for continued care, especially when the patient had limited
26 improvement.

27 Licensees electronic medical records are not capturing the patient's subjective and his
28 objective components. Licensee also does not document radiographic findings or report for
29 virtually all billed x-rays billed. There was also no evidence of radiographic reports. (See
30 Table 2)

31 Licensee fails to provide the patients with adequate informed consent, or if he does he
32 does not have the appropriate consent documented in the charts. See in Table 1 and 2 where
33 patient S has no informed consent documented.

34
35 This violates ORS 684.100(1)(f)(A) and OAR 811-015-0005(1)(a), 811-015-0010(1) and
36 (3), OAR 811-030-0030(2)(m), OAR 811-035-0005(2)(a),

37
38 **Billing:** The Peer Review Committee found that the billing for services, such as
39 radiographs was not substantiated by documentation. The committee also found that as
40 demonstrated in Table 2, Licensee charged fees for unnecessary services for patients. In Table 2
41 attached, patients DH, JR, JS and RC have been charged fees for unnecessary services. In
42 addition, patient JC was asked to perform basic range of motion stretches which could have been
43 done at home. In Table 2 there are several dates of service that are billed but no documentation
44 corresponds with the services. It is unknown if these encounters took place. Further chart notes

1 exist for dates of service that are not reflected in the patient's billing record. This suggests
2 disorganized and poor care coordination.

3
4 This violates ORS 684.100(1)(f)(A), and OAR 811-035-0015(2) and (5).

5
6 **Advertising;** The Peer Review Committee found that Licensee advertised on his website
7 that he had an "OBCE certification" when in fact, there is no such certification.

8
9 This violates ORS 684.100(1)(f)(A) and OAR 811-015-0045(1)(a) and (c).

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11 CONCLUSIONS OF LAW

12 3.

13 Described in paragraph 2 above, the records provided by Licensee are in violation of the
14 following: ORS 684.100(1)(f)(A), OAR 811-010-0110(1), and (2)(a), OAR 811-015-0010(2),
15 OAR 811-035-0015(3) OAR 811-015-0005(1)(a), 811-015-0010(1) and (3), OAR 811-030-
16 0030(2)(m), OAR 811-035-0005(2)(a), OAR 811-035-0015(2) and (5) and OAR 811-015-
17 0045(1)(a) and (c).

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19 STIPULATIONS

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21 4.

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23 Therefore, pursuant to ORS 183.417(3) and ORS 684.100(9)(g) the OBCE orders:

- 24
25 1. The parties wish to settle and resolve this matter without further proceedings and have
26 agreed to enter this stipulated final order. Licensee is aware of his right to a hearing with
27 her attorney present to contest the charges and hereby waives that right and agrees to
28 entry of this final order. The signature of this order also waives any right to appeal.
29
30 2. Licensee agrees to be on probation for a period of 2 years from this order becoming final.
31 Licensee agrees during probation that if he leaves the State of Oregon the time period for
32 probation is tolled. Licensee also agrees to random file reviews for that time period.
33 Licensee agrees to allow Board staff to retrieve patient files, or their representative to
34 review and agrees to provide those records. Licensee is also required to submit his
35 forms for charting to the Board for review when his file reviews occur.
36
37 3. Licensee is also required to complete continuing education in the amount of sixteen
38 hours, 8 on charting, coding, billing and documentation and 8 on clinical justification.
39 The education must be completed within 6 months and proof of completion submitted to
40 the Board and cannot be counted for education of licensure.
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42 4. Licensee agrees to a reprimand.
43 5. Licensee agrees to take and pass the Oregon Ethics and Jurisprudence Exam and NBCE
44 ethics test within 1 year at an expense to Licensee.

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- 6. Licensee is also required to remove the statement from all advertising, that he is "OBCE Certified" and provide proof to the Board within 30 days of doing so.
- 7. Licensee agrees to pay a civil penalty in the sum of \$4000 due within 120 days this order becomes final.
- 8. The Board waives all costs and fees incurred.
- 9. Failure to complete this final stipulated order with the terms so stated, may result in further discipline, up to and including, revocation.

IT IS SO STIPULATED AND AGREED TO EFFECTIVE LAST DATE SIGNED BELOW:

DATED 10/30/13 Original signatures are on file in OBCE office.

By: Jerry Evans, DC
Original signatures are on file in OBCE office.

DATED 11-4-13

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**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON**

6 In the Matter of)
7) NOTICE OF PROPOSED
8 Jerry Evans, DC) DISCIPLINARY ACTION
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10)
11)
12 Licensee.) Case # 2012-1009
13

14 The Board of Chiropractic Examiners (Board) is the state agency responsible for
15 licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Jerry Evans,
16 DC (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of
17 Oregon. The Board proposes to discipline Licensee for the following reasons.
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19 1.

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22 records were obtained by the Board and the Peer Review Committee reviewed them. The Peer
23 Review Committee also interviewed the Licensee in regards to his chart notes. The committee
24 reviewed 939 pages of chart notes and correspondence.
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26 2.

27 The Peer Review Committee found the following:
28

29 **Uncertified staff** The Peer Review Committee found that Licensee allowed three
30 different uncertified personnel to conduct exercise therapy, electrotherapies and massage
31 procedures on different patients. In an interview with the Committee, Licensee admitted that he
32 employed at least three individuals to perform exercise training, electrotherapies and take range
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8 The Committee found that there were inadequate exam findings in some of the charts as
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21 completing his chiropractic functional assessment. Although there were initial exam plans
22 recorded there were no clear progressive treatment plans found for patients. Licensee admitted
23 that he needs better clinical rationale for continued care, especially when the patient had limited
24 improvement.

25 Licensees electronic medical records are not capturing the patient's subjective and his
26 objective components. Licensee also does not document radiographic findings or report for
27 virtually all billed x-rays billed. There was also no evidence of radiographic reports. (See
28 Table 2)

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34 (3), OAR 811-030-0030(2)(m), OAR 811-035-0005(2)(a),
35

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40 addition, patient JC was asked to perform basic range of motion stretches which could have been
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10 3.

11 Described in paragraph 2 above, the records provided by Licensee are in violation of the
12 following: ORS 684.100(1)(f)(A), OAR 811-010-0110(1), and (2)(a), OAR 811-015-0010(2),
13 OAR 811-035-0015(3) OAR 811-015-0005(1)(a), 811-015-0010(1) and (3), OAR 811-030-
14 0030(2)(m), OAR 811-035-0005(2)(a), OAR 811-035-0015(2) and (5) and OAR 811-015-
15 0045(1)(a) and (c).

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18 4.

19 Due to the aforementioned violations, the OBCE proposes to issue a letter of reprimand, a
20 civil penalty in the sum of \$4,000 to be paid within 30 days this order becomes final. In addition
21 the Board also will require probation with random file reviews for a period of 2 years from when
22 this order becomes final. The file reviews will involve staff, or their representative at random
23 requesting patient files for the board and/or their representative to review and infers your
24 cooperation and agreement with providing those records. Licensee is also required to complete
25 continuing education in the amount of sixteen hours, 8 on charting, coding, billing and
26 documentation and 8 on clinical justification. The education must be completed within 6 months
27 and proof of completion submitted to the Board and cannot be counted for education of licensure.
28 The Licensee is also required to submit his medical forms for charting to the Board for review
29 when his file reviews occur. Licensee is also required to retake the Oregon Ethics and
30 Jurisprudence Examination and the NBCE ethics examination. Licensee is also required to
31 remove the statement from all advertising, that he is "OBCE Certified" and provide proof to the
32 Board.

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34 5.

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

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38 6.

39 Licensee has the right, if Licensee requests, to have a formal contested case hearing
40 before the OBCE or its Administrative Law Judge to contest the matter set out above. At the
41 hearing, Licensee may be represented by an attorney and subpoena and cross examine witnesses.
42 That request for hearing must be made in writing to the OBCE, must be received by the OBCE

1 within 30 days from the mailing of this notice (or if not mailed, the date of personal service), and
2 must be accompanied by a written answer to the charges contained in this notice.
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5 7.

6 The answer shall be made in writing to the OBCE and shall include an admission or
7 denial of each factual matter alleged in this notice, and a short plain statement of each relevant
8 affirmative defense Licensee may have. Except for good cause, factual matters alleged in this
9 notice and not denied in the answer will be considered a waiver of such defense; new matters
10 alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and
11 evidence shall not be taken on any issue not raised in the notice and answer.
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13 8.

14 If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the
15 hearing, the OBCE may issue a final order by default and impose the above sanctions against
16 Licensee. Licensee's submissions to the OBCE to-date regarding the subject of this case
17 automatically become part of the evidentiary record of this disciplinary action upon default for
18 the purpose of proving a prima facie case.
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22 DATED this 20th day of August 2013.
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25 BOARD OF CHIROPRACTIC EXAMINERS

26 State of Oregon

27 Original Signatures are available in OBCE Admin Office

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29 By: (

30 Daniel Côté D.C., President
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Table 1. Examples of Documentation Deficiencies

Patient	DOS	Pages	Deficiencies
JC	10/11/06	76-78	History and physical exam findings insufficient; no documentation of onset, chronology, modifying factors; vague statements like 'DTRs are normal'; abnormal sensory findings without detail
JC	10/11/06	78	Treatment plan calls for 3 times a week for 4-6 weeks. No re-evaluation was found and no subsequent treatment plan was written
JC	10/23-10/30	59-61	Very similar objective findings and levels are cut and pasted and errors carry over into subsequent entries; subjective entries identical
JC	11/13/06	60	Documents interferential used but no notes indicating need
JS	01/24/07	236-238	MVA, but minimal history; missed diabetes; no follow up on shoulder injury; no referrals for other types of care; no consent; no re-exam in 12 months of care; no Oswestries
JS	2007: 01/25; 01/26; 01/30; 03/28		Billing ledger shows charges for 98941 & 97032 however no chart notes are noted
JS	08/29/07		Billing ledger shows charges for 98941 & 97110 & 97014 however no chart notes are noted.
RC	03/03/07	115	Appears to release symptomatic patient (PRN) but no closing exam
RC	2007: 01/24; 01/25; 01/06	103	No electrotherapy record that corresponds to billing ledger
RC	03/09/07		Billing ledger shows charges for 98941 & 97032 however no chart notes are noted
RC	04/27/07	110	No record of exercise training but ledger indicates it was billed
JR	07/30/12		Billing ledger shows charges for 97124 however no chart notes are noted
AH	03/07/12	439	There is no documentation of electrotherapy duration or settings used recorded in chart note. Auriculotherapy is the only descriptor used
DH	2007: 09/14; 09/17	816	There is no documentation of electrotherapy in chart note

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Table 2. Documentation and Billing Errors

Patient	DOS	Imaging Reports	Chart notes present but not reflected in billed services	Chart Notes not present for billed services:
JC	10/11/2006- 02/01/2008	No record of radiographs or report of findings associated with bill on 10/16/2006	0	0
RC	01/22/2007- 08/03/2007	No record of radiographs or report of associated with bill on 01/22/2007	4 DOS in 2007 had chart notes but nothing in billing ledger for 3/8; 7/23; 7/30; 8/3	DOS 3/9/2007 did not have chart notes for services billed
BH	03/27/2006 - 09/15/2006	No record of radiographs or report of associated with bill on 03/27/2006	0	0
RP	04/04/2006 - 10/31/2006	No record of radiographs or report of findings associated with bill on 04/04/2006	0	0

JS	01/24/2007 - 03/28/2008	No record of radiographs or report of radiographic findings reflected billing ledger for 01/24/2007	6 DOS in 2007 had chart note entries but nothing reflected in billing ledger: 05/18; 05/22; 05/25; 5/29; 05/30; 07/23	5 DOS in 2007 had no chart notes for services billed: 01/25; 01/26; 01/30; 03/28; 08/29
AH	03/05/2012- 07/25/2012	No record of radiographs or report of radiographic findings reflected billing ledger for 03/05/2012	0	0
JR	06/26/2012- 10/18/2012	No record of radiographs or report of findings associated with bill on 06/26/2012	0	DOS 07/30/2012 had no chart notes for services billed
RD	07/13/2012 - 09/10/2012	No record of radiographs or report of findings associated with bill on 07/13/2012	0	0
DH	06/22/2005 - 11/15/2010	No record of radiographs or report of associated with bill on 06/22/2005	39 DOS had chart note entries but nothing reflected in billing ledger: 2005: 8/19; 10/3; 11/21; 11/23; 2006: 1/20; 1/24; 1/25; 1/30; 3/6; 4/5; 7/6; 9/26; 2007: 3/9; 5/2; 5/4; 5/7; 5/30; 6/1; 6/4; 6/6; 6/8; 6/11; 6/13; 6/18; 6/20; 6/22; 2008: 3/10; 4/4; 5/2; 5/8; 9/5; 1/2; 8/5; 9/28; 2010: 6/25; 6/30; 8/2; 8/9; 9/3	7 DOS had no chart notes for services billed 20006: 04/14; 07/05; 07/07; 09/25 2007: 04/02; 04/18; 12/05

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Certificate of Service

I Donna Dougan, certify that on August 21, 2013, I served the foregoing Proposed Notice of Discipline upon Jerry Evans, DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Jerry Evans, DC
Evans Chiropractic Group
190 E 18th Ave
Eugene, OR 97401

Original Signatures are available in OBCE Admin Office

Donna Dougan, Administrative Assistant
Oregon Board of Chiropractic Examiners