

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
BOARD OF CHIROPRACTIC EXAMINERS**

IN THE MATTER OF:

DANNY N. SCHULTZ

) **RULING ON MOTION FOR SUMMARY**
) **DETERMINATION AND FINAL**
) **ORDER**
)
) OAH Case No.: 1403945
) Agency Case No.: 2014-5012

HISTORY OF THE CASE

On July 22, 2014, the Board of Chiropractic Examiners (Board) issued a Notice of Proposed Denial of License (Notice) to Danny N. Schultz. On September 2, 2014, Mr. Schultz requested a hearing.

On November 3, 2014, the Board referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha Fair to preside at hearing.

On November 25, 2014, the Board filed a Motion for Summary Determination (Motion).

On December 1, 2014, ALJ Fair convened a telephone prehearing conference and scheduled the hearing for February 19, 2015, and set deadlines for submission of witness lists and exhibits. ALJ Fair advised Mr. Schultz of the requirements for filing a response to the Motion and set his response deadline for December 10, 2014. The record closed on December 15, 2014 without receipt of any response by Mr. Schultz.

On December 19, 2014, ALJ Fair issued the Ruling on Motion for Summary Determination and Proposed Order granting the Board's motion. Mr. Schultz received notice that exceptions were due on December 29, 2014. No exceptions were filed.

ISSUES

1. Whether there is a genuine issue as to any material fact and whether the Board is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
2. Whether Danny N. Schultz's application for a license to practice as a chiropractic physician should be denied. ORS 684.100(1) and OAR 811-035-0015(12).

EVIDENTIARY RULINGS

Exhibits A through C and the Affidavit of Cassandra C. Skinner, Executive Director, Board of Chiropractic Examiners (Skinner Aff.), offered by the Board, were admitted into the record.

FINDINGS OF FACT

1. The State of California issued Mr. Schultz a chiropractic license on November 13, 2008. (Ex. C at 3.) Mr. Schultz had previously been licensed as chiropractor in Michigan for about 18 to 19 years. (*Id.* at 4.)

2. On April 2, 2009, an Indictment was filed in the United States District Court of Michigan. (Ex. B at 12.) The Indictment charged Mr. Schultz with 12 counts of mail fraud, 1 count of conspiracy to commit mail fraud, 20 counts of use of false documents involving a health care benefit program, and 1 count of concealment of a material fact involving a health care benefit program. (*Id.* at 14-22.)

3. On December 1, 2009, Mr. Schultz pled guilty to one count of violating 18 U.S.C. §1035(a)(2), a felony crime, by making and using materially false documents in a matter involving a health care benefit program. The remaining counts were dismissed. (Exs. B at 7; C at 3.) The count to which he pled guilty involved Mr. Schultz directing his office staff to note on patient records that mechanical traction was provided to the patients when no such traction was provided. These notes were made to support claims for payment for those services from the insurer. (Ex. B at 19.) When he entered his guilty plea, Mr. Schultz agreed that he acted knowingly and willfully by abetting the making of a false writing used in relation to a matter involving a health care benefit program in connection with the payment for health care services. (*Id.* at 27-28.) As a result of this conviction, the United States District Court sentenced Mr. Schultz to three years of probation. The probationary terms included the requirements to perform 250 hours of community service, to provide his probation officer with all records related to billing and other financial information, to not third-party bill for chiropractic services without approval from his probation officer, to pay restitution of \$62,401.22 to Blue Cross Blue Shield of Michigan, and to pay a fine of \$125,000. (*Id.* at 8-10.)

4. On July 13, 2010, the California Board of Chiropractic Examiners (California Board) issued an Accusation to Mr. Schultz. (Ex. B at 1-6.) In the Accusation, the California Board alleged that Mr. Schultz engaged in unprofessional conduct and was subject to disciplinary action because his December 1, 2009 conviction was for a crime involving moral turpitude or dishonesty and that the crime was substantially related to the “qualifications, functions or duties of a chiropractor.” (*Id.* at 2-5.)

5. On March 3, 2011, the California Board issued a Decision. In its Decision, the California Board adopted an administrative law judge’s proposed decision, which was issued after an administrative hearing was held at which Mr. Schultz was present. (Ex. C at 1, 3.) The California Board revoked Mr. Schultz’s chiropractic license but “the revocation is stayed and [Mr. Schultz] is placed on probation for three years.” (*Id.* at 6.) The California Board found that

Mr. Schultz's conviction constituted a felony involving moral turpitude and dishonesty and was substantially related to the duties, qualifications and functions of a chiropractor. (Ex. C at 3.) The probationary terms required Mr. Schultz to obey all laws, to submit quarterly reports to the California Board, to comply with the California Board's probation compliance monitoring program, to not supervise chiropractic students, and to notify employers and employees of the terms of his probation. (*Id.* at 6-8.) The California Board further found that Mr. Schultz's license would be fully restored upon successful completion of probation. (*Id.* at 8.) Mr. Schultz continues to be licensed as a chiropractor in California. (Ex. A at 2.)

6. On June 30, 2014, the Board received Mr. Schultz's application for a chiropractic license. (Ex. A at 1.) In the application, Mr. Schultz disclosed that he had a conviction and had disciplinary action taken against his chiropractic license. (*Id.* at 3.) The Board seeks to deny Mr. Schultz's application for licensure in Oregon because his conviction involved conduct related to his practice as a health care provider and was demonstrably related to the duties, qualifications and functions of a chiropractor. (Skinner Aff. at 2-3.)

CONCLUSIONS OF LAW

1. There is no genuine issue as to any material fact, and the Board is entitled to a favorable ruling as a matter of law.
2. Danny N. Schultz's application for a license to practice as a chiropractic physician should be denied.

OPINION

Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

- (6) The administrative law judge shall grant the motion for a summary determination if:
 - (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
 - (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
- (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

* * * * *

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

Pursuant to OAR 137-003-0580(6)(a), in making my ruling, the ALJ considered the Board's Motion, Skinner's Affidavit, and Exhibits A through C. Pursuant to OAR 137-003-0580(7), the ALJ reviewed the evidence in the light most favorable to Mr. Schultz, the non-moving party, and determined there is no genuine issue as to the material facts of the Board's allegations that are relevant to resolution of the legal issues. Because the ruling on the Motion resolves all issues in this matter, a proposed order is issued and the hearing is canceled.

Application for Licensure

The Board seeks to deny Mr. Schultz's application based on allegations that his conviction involves moral turpitude and demonstrates unprofessional conduct relating to the practice of chiropractic. Because this is an application proceeding, Mr. Schultz has the burden to establish, by a preponderance of the evidence, his eligibility for licensure. *Sobel v. Board of Pharmacy*, 130 Or App 374, 380 (1994) (applicants have the burden of establishing their eligibility). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

ORS 684.100(1) provides, in part:

The State Board of Chiropractic Examiners may refuse to grant a license to any applicant or may discipline a person upon any of the following grounds:

(a) Fraud or misrepresentation.

* * * * *

(d) A conviction of a felony or misdemeanor involving moral turpitude. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, is conclusive evidence of the conviction.

* * * * *

(f) Unprofessional or dishonorable conduct, including but not limited to:

(A) Any conduct or practice contrary to recognized standard of ethics of the chiropractic profession or any conduct or practice that does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition that does or might adversely affect a physician's ability safely and skillfully to practice chiropractic.

* * * * *

(p) Violation of any provision of this chapter or any rule adopted thereunder.

* * * * *

(r) The suspension or revocation by another state of a license to practice chiropractic, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence thereof[.]

Pursuant to the authority granted by ORS 684.155(1), the Board promulgated administrative rules regarding applications for licensure. OAR 811-035-0015 defines unprofessional conduct in the chiropractic profession to include "Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic." OAR 811-035-0015(12).

In its Notice, the Board cited ORS 684.100(1)(r) as a basis for denial of Mr. Schultz's application. The California Board adopted the proposed decision in which the administrative law judge revoked Mr. Schultz's license. However, that revocation was stayed, pending successful completion of three years of probation. A stay is defined as "An order to suspend all or part of a * * * judgment[.]" *Black's Law Dictionary* 1453 (8th ed 2004). Therefore, at the time the California Board issued its Decision, Mr. Schultz's license was not revoked and would not be revoked so long as he successfully completed his probation. His probation would have expired about March 2014. Because he currently remains licensed by California, the evidence demonstrates that he must have successfully completed his probation and had his license fully restored. Therefore, Mr. Schultz's license to practice chiropractic has not been suspended or revoked by another state and cannot be the basis for a denial of his application for licensure in Oregon.

In addition to ORS 684.100(1)(r), the Board cited several other subsections of that statute to support its decision to deny Mr. Schultz licensure in Oregon. On December 1, 2009, Mr. Schultz was convicted of a felony for making false statements related to health care matters. He directed his staff to falsify patient records for submission to an insurer for payment for services that were not performed.¹ Moral turpitude is defined as "Conduct that is contrary to justice,

¹ Although the California Board took action against Mr. Schultz's license for this conviction, the evidence was insufficient to make a determination that the California proceeding was the type of proceeding to which a court would give preclusive effect. Therefore, the California Board's finding that his conviction "constituted a felony involving moral turpitude and dishonesty and was substantially related to

honesty, or morality.” *Black’s* at 1030. Mr. Schultz’s conduct was contrary to justice, as it was illegal, and contrary to honesty, as it involved falsification of records in order to secure payment from an insurer for services that were not performed. His conduct violated ORS 684.100(1)(d). This conduct involved misrepresentations to the insurer in an attempt to defraud it; therefore, his conduct also violated ORS 684.100(1)(a). Finally, because his conduct involved perpetrating fraud upon a third party payor relating to his chiropractic practice, his conduct was unprofessional as defined by OAR 811-035-0015, which amounted to a violation of ORS 684.100(1)(p).

Pursuant to ORS 684.100(1), the Board is entitled to deny a license when an applicant engages in fraudulent conduct, unprofessional conduct, or has a felony conviction involving moral turpitude. Because Mr. Schultz engaged in such conduct involving his prior chiropractic practice which resulted in a conviction as recently as 2009, the Board’s decision to deny his application is reasonable. Mr. Schultz’s application for a chiropractic license should be denied.

FINAL RULING AND ORDER

The Board of Chiropractic Examiner’s Motion for Summary Determination, filed on November 25, 2014, is granted. The hearing scheduled for February 19, 2015, is canceled.

The Board of Chiropractic Examiners issues the following order:

Danny N. Schultz’s application for a license to practice as a chiropractic physician in Oregon is denied.

Cassandra C. Skinner J.D., Executive Director,
Oregon Board of Chiropractic Examiners

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 et seq.

the duties, qualifications and functions of a chiropractor” did not preclude Mr. Schultz re-litigating that issue. *See Nelson v. Emerald People’s Utility Dist.*, 318 Or 99, 104 (1993) (prior proceeding must be sufficiently formal and comprehensive, trustworthy, and the same quality of proceeding as present proceeding).

CERTIFICATE OF MAILING

On January ²³, 2015, I mailed the foregoing Ruling on Motion for Summary Determination and Final Order issued on this date in OAH Case No. 1403945.

By: First Class Mail

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