

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**

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In the Matter of )  
 ) FINAL ORDER OF DISMISSAL  
Bryan Scott, D.C. )  
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 Licensee. ) Case # 2007-5013

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Bryan Scott, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to Dismiss the Notice of Proposed Suspension of Licensure issued on July 20, 2007 for the following reasons.


1.

On February 4, 2008, the Board received a letter dated January 24, 2008, entitled "Withdrawal of Request for Suspension of Business License" issued by the Department of Revenue Director, Elizabeth Harchenko. In that request, the Department of Revenue states that the letter issued to the Board dated July 2, 2007, requesting to suspend the Chiropractic license for Bryan J. Scott is withdrawn at their request. Since the Department of Revenue is no longer directing the Board to proceed with this discipline pursuant to ORS 305.385, the Board agrees to dismiss the above matter.

Therefore, the Notice of Proposed Suspension of Licensure pursuant to ORS 305.385 dated July 20, 2007, is hereby dismissed without prejudice.

DATED this 5th day of February 2008.

**BOARD OF CHIROPRACTIC EXAMINERS**  
State of Oregon

By:  Original signature on file  
at the OBCE office.  
Dave McTeague, Executive Director

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BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF OREGON

6 In the Matter of )  
7 ) Case # 2007-5013  
8 Bryan Scott D.C. )  
9 )  
10 ) **NOTICE OF PROPOSED**  
11 Licensee. ) **SUSPENSION OF LICENSURE**  
12 \_\_\_\_\_ )  
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14 The Oregon Board of Chiropractic Examiners (hereafter "Board" or "OBCE") is the state  
15 agency responsible for licensing, regulating and disciplining chiropractic physicians and certified  
16 chiropractic assistants in the State of Oregon. Bryan Scott D.C. (hereafter "Licensee"), is a  
17 Licensee to the Board to practice as a chiropractic physician in Oregon.  
18

19 1.

20 Dr. Bryan Scott D. C. is a chiropractor licensed under ORS 684.054 who has practiced  
21 2787 Sunset Avenue, West Linn, Oregon, 97043. The board proposes to suspend Licensee's  
22 license for the following reasons:

23 2.

24 Licensee has neglected or refused to file any tax return or pay any tax owed to the  
25 Oregon Department of Revenue, has not filed a good faith petition before the Department of  
26 Revenue and the Department of Revenue has been unable to obtain payment of the tax through  
27 other methods of collection. The above information was provided by the Department of  
28 Revenue and was based on neglect or refusal to pay personal income taxes from years 1999  
29 through 2006.  
30  
31

1 3.

2 On July 2, 2007, the OBCE received notice of Licensee's deficiencies of tax payment and  
3 a request from the director of the Oregon Department of Revenue to suspend Licensee's business  
4 license.

5 4.

6 This Notice described acts of Licensee which constitute violations of ORS chapter  
7 305.385 4 (c). Therefore, pursuant to ORS 305.385 the Board is required to suspend  
8 Licensee's license to practice chiropractic.

9 5.

10 **NOTICE OF RIGHT TO A HEARING**

11 Licensee has the right, if Licensee requests, to a hearing as provided by the  
12 Administrative procedures Act (ORS Chapter 183) before the Board or its hearing officer to  
13 contest the matter set out above. At the hearing, Licensee may be represented by an attorney,  
14 and may subpoena and cross-examine witnesses. A request for hearing must be made in writing  
15 to the Board, and must be received by the Board within 30 days from the date of mailing of this  
16 notice (or if not mailed, the date of personal service), and must be accompanied by a written  
17 answer to the charges contained in this Notice. Upon receipt of a request for hearing, the Board  
18 will notify Licensee of the time and place of the hearing. If Licensee requests a hearing,  
19 Licensee will be given, prior to the commencement of the hearing, information on the  
20 procedures, right of representation, and other rights of parties relating to the conduct of the  
21 hearing as required by ORS 183.413(2).

22  
23 6.

24 Licensee's answer shall be made in writing to the Board and shall include an admission  
25 or denial of each factual matter alleged in this Notice, and a short plain statement of each

1 relevant affirmative defense Licensee may have. Except for good cause, factual matters alleged  
2 in this notice and not denied in the answer shall be presumed admitted; failure to raise a  
3 particular defense in the answer will be considered a waiver of such defense; and new matters  
4 alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency, and  
5 evidence shall not be taken on any issue not raised in the Notice and answer.

7 7.

8 If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the  
9 hearing, the Board may issue a final order by default and impose the above sanctions against  
10 Licensee. Upon default order of the Board or failure to appear, the contents of the Board's file  
11 regarding the subject of this case automatically becomes part of the evidentiary record of this  
12 disciplinary action for the purpose of proving a prima facie case. ORS 183.415(6).

13  
14 DATED this 20<sup>th</sup> day of July 2007.

15  
16 Original signatures on file  
17 at the OBCE office.

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19 \_\_\_\_\_  
20 Dave McTeague, Executive Director  
21 Oregon Board of Chiropractic Examiners  
22 State of Oregon  
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State of Oregon ) Case # 2007-5013  
County of Marion ) Bryan Scott D.C.

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

Original signature on file  
at the OBCE office.

Dave McTeague, Executive Director  
Oregon Board of Chiropractic Examiners

SUBSCRIBED AND SWORN to before me

this 20th day of July, 2007

Original signatures on file  
at the OBCE office.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 10/7/07



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## Certificate of Service

I, Dave McTeague, certify that on July 20, 2007, I served the foregoing Notice of Proposed Suspension upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Original signatures on file  
at the OBCE office.

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Dave McTeague  
Executive Director  
Oregon Board of Chiropractic Examiners

## EXPLANATION OF CONTESTED CASE RIGHTS AND PROCEDURES

### You should read this information to prepare for the hearing

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules and statutes of the Oregon Board of Chiropractic Examiners (OBCE), OAR chapter 811, ORS chapter 684, and the Attorney General's Office of Administrative Hearing Rules, OAR Chapter 137 Division 3, and OAR 471-060-0005. (January 1, 2004 ed.)
2. **Right to attorney.** The OBCE will be represented by an attorney. You have a right to be represented by an attorney at your own expense. You may represent yourself at the hearing. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary it will be in the discretion of the hearings officer or presiding officer to grant you a recess. Agencies, corporations and associations may be represented only by attorney unless otherwise specifically provided by law.
3. **Subpoenas.** You may subpoena witnesses. The OBCE will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
4. **Presiding Officer.** The person presiding at the hearing will be an Administrative Law Judge from the Office of Administrative Hearings. The ALJ will rule on all matters that arise at the hearing, subject to any agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 and 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings. The Office of Administrative Hearings consists of employees of the Employment Department and independent contractors with the Office of Administrative Hearings. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Board.
5. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to gather facts. The order of presentation of evidence is normally as follows:
  - a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
  - b. Testimony of your witnesses and your other evidence.
  - c. Rebuttal evidence by the Board and by you.
6. **Burden of presenting evidence.** The burden of presenting evidence to support a fact or a position rests upon the party who proposes that fact or position. You should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.
7. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by other parties or by the presiding officer.
8. **Admissible Evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

Four kinds of evidence may be admitted.

- a. Knowledge of the OBCE. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the OBCE takes "official notice" of any fact so that you may contest those facts. The agency may also take "judicial notice" of a fact that is not subject

to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

- b. Testimony of witnesses. This includes your own testimony.
- c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.
- d. Photographs, experiments, demonstrations and similar means to prove a fact.

9. **Objections to evidence.** Evidence may be objected to on any legal grounds; including:

- a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
- b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.
- c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.
- d. Hearsay, authenticity or foundation. To the extent that such evidence would not commonly be relied upon by reasonably prudent persons in the conduct of their serious affairs.

10. **Continuances.** Unless allowed by the OBCE or ALJ, there will be no continuance and the record will not be reopened regarding any matters determined at the conference or hearing. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

11. **Proposed Order and Exceptions to proposed order.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions" to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will also be notified when you may appear and make oral argument to the Board if applicable

Not later than 10 days after the date of the filing of the proposed order with the Board, you may file and serve on the OBCE and the ALJ, your written exceptions to the proposed order.

- a. The exceptions shall be confined to the factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:
  - A. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;
  - B. A necessary legal conclusion is omitted or is contrary to law or the Board's policy; or
  - C. Prejudicial procedural error occurred.
- b. The exceptions shall be numbered and shall specify the disputed findings, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

After the OBCE has received and reviewed the proposed order and the exceptions, if any, the OBCE shall:

- a. Entertain such oral argument as it determines necessary or appropriate to assist it in the proper disposition of the case; and
- b. Remand the matter to the hearings officer for further proceedings on any issues of fact which the OBCE believes were not fully or adequately developed; or

- c. Enter a final order adopting the recommendation of the ALJ as the OBCE's order or rejecting the recommendation of the ALJ. If the OBCE elects to reject the recommendation of the ALJ, the final order shall contain necessary findings of fact and conclusions of law.

12. **Conferences.** Prior to a hearing, the ALJ may schedule conferences to:

- a. Establish a procedural schedule, including dates for prefiled testimony and exhibits;
- b. Identify, simplify or clarify issues;
- c. Eliminate irrelevant or immaterial issues;
- d. Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof; and
- e. Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

Except as provided in the following paragraph, the record shall reflect the results of any conferences, which shall be binding on all parties.

13. **Record.** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous or you unreasonably refuse to stipulate to a limited record. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.

14. **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 on you. See Oregon Revised Statutes 183.480 et seq.