

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)
) STIPULATED FINAL ORDER
Kent Achtyes, D.C.) DISCIPLINE MATTER
) Case # 96-3016
Licensee.) 99-2008

The Board of Chiropractic Examiners (Board) is the state agency responsible for, regulating the practice of chiropractic in the State of Oregon. Kent Achtyes, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician and practices in Portland, Oregon

1.

The Oregon Board of Chiropractic Examiners (OBCE) issued an Amended Notice of Proposed Revocation of Licensee on November 6, 2000. On November 6, 2000, Licensee was served with the Amended Notice of Proposed Revocation of License. On November 9, 2000 Licensee filed a response to the notice and a request for a hearing. The Board and Licensee agree that the November 6, 2000 Amended Notice of Intent to Revoke may be resolved on the terms set forth in this Stipulated Final Order. The Board hereby incorporates by reference the Notice and Amended Notice of Proposed Revocations.

11.

The Board makes the following findings of fact:

1. Licensee is licensed by the Board to practice chiropractic in the State of Oregon.

2. Licensee currently practices chiropractic in Portland, Oregon.

3. The Board conducted an investigation and the Peer Review Committee reviewed eleven patients chart notes and records. The investigation resulted in the issuance of a Notice on June 8, 1999 and an amended notice on November 6, 2000 hereby incorporated by reference.

III.

Conclusions of Law

Based on the Findings of Fact contained in paragraph II above, the Board makes the following conclusions of law:

1. The Board has jurisdiction over the Licensee, Kent Achtyes, and over the subject matter of this proceeding;

2. Licensee failed to articulate or otherwise substantiate a reasonable clinical rationale to support the duration and frequency of treatments administered to patients during the course of this investigation. This conduct constitutes unprofessional conduct within the meaning of ORS 684.100(1)(g)(A), (B) and violates OAR 811-015-0010(1)(2).

3. Licensee failed to keep complete and accurate records as evidenced by the Peer Review findings and was in violation of ORS 684.100(1)(q) and OAR 811-015-0005(1)(a).

4. Licensee agrees that the findings of fact noted in paragraphs 2 and 3 above constitute violations and admits to those violations.

IV

Stipulations

NOW THEREFORE, the Board and Licensee stipulate and agree that this disciplinary action may be concluded by the entry of this Stipulated Final Order upon the following terms it is hereby ordered that:

1. Pursuant to ORS 183.415(5), the Board and Licensee agree to informally dispose of and settle this matter.
2. Licensee stipulates that he has been advised of his right to request a hearing in this matter pursuant to ORS 183.415(2)(a) and to be represented at a hearing pursuant to ORS 183.415(3).
3. Licensee waives his right to a hearing in this matter.
4. Licensee waives the right to appeal this Stipulated Final Order.
5. Licensee is placed on probation for five years.
6. During the probation above, Licensee is required to allow the OBCE or its representative upon receipt of reasonable notice, to periodically review Licensee's patient records and chart notes and have full access to the premises to examine, review and photocopy the records and chart notations. This includes review and photocopy of Licensee's patient records to ensure licensee complies with the requirements of ORS Chapter 684 and OAR 811.
7. Licensee will be suspended for a period of 90 days. The suspension will begin on January 1, 2002. During the period of suspension, Licensee may not provide chiropractic treatment to any patient including writing chart notes and/or supervision of any treatment of a patient under care in his clinic, or otherwise render chiropractic opinions regarding patients. Licensee may perform billing and administrative functions only during suspension.
8. Licensee agrees to pay the disciplinary costs of this proceeding in the sum of \$4000.00 pursuant to ORS 684.100(9). Licensee will make four payments monthly of \$1000 beginning 1/1/02 until the sum is paid in full.
9. This Stipulated Final Order memorializes the entire agreement between the Licensee and the Board and supercedes all prior offers, negotiations or settlement discussion regarding this matter.
10. The Board and the Licensee Stipulate to the above and agree that this disciplinary action may be concluded by the entry of the following order:

V

Order

NOW THEREFORE, pursuant to the above Findings of Fact and Conclusions of Law and Stipulations it is hereby ordered that:

1. Licensee Kent Achtyes D. C. is on probation for five years to begin the date following the final order signature.
2. Licensee is suspended for a period of 90 days to begin on January 1, 2002 at which time he is not allowed to treat any patients.
3. During the probationary time, Licensee will allow visits by the OBCE or its representatives who shall have access to Licensee's business premises to examine, review and photocopy Licensee's patient records.
4. Licensee shall pay costs in the amount of \$4000.00.

This Stipulated Final Order sets forth the entire agreement and stipulation of the parties to resolve this matter.

I have read and I understand all of the above Stipulated Final Order and fully agree to its terms;

IT IS SO STIPULATED this 19 day of DECEMBER 2001

Original signature on file
at the OBCE office.

B

Kent Achtyes D. C.

IT IS SO STIPULATED this 21st day of December 2001

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signature on file
at the OBCE office.

By

Dave McTeague, Executive Director

COPY

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)
) NOTICE OF PROPOSED
Kent Atchyes, D.C.) REVOCATION OF LICENSE
Atchyes) Case # 96-3016
Licensee.)

The Board of Chiropractic Examiners (the Board) is the state agency responsible for, regulating the practice of chiropractic in the State of Oregon. Kent Atchyes, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician. Licensee is the clinic director and co-owner, along with a non-chiropractor, of the Pain Care Chiropractic Clinic (the Clinic). Licensee operates the Clinic at two locations in Oregon - a main Clinic located in Sandy, and a satellite office in Beaverton. Licensee practices at both clinics. Licensee is responsible for the supervision of other Clinic staff at both locations, including other chiropractic physicians and certified chiropractic assistants. The Board directed the Peer Review Committee (the Committee) to review the contents of certain patient files from the Clinic, including Licensee's patient files. The Committee randomly chose files for patients treated on two dates in February, 1998. The Board proposes to revoke the license of Dr. Atchyes based upon the following allegations:

1.

Patient File # 97371

Patient #97371 sought treatment from Licensee on September 5, 1997, for injuries sustained in a motor vehicle accident, which occurred nearly three months previous, on June 13, 1997. Patient received 55 treatments between September 5, 1997 and February 16, 1998. The identity of the primary treating physician is not clear from the file. Licensee is listed as the physician on the "Patient History" form dated September 5, 1997. Dr. Gregory Baker, a chiropractic physician employed by Licensee, signed the "Diagnosis" form, also dated September 5, 1997. The Initial Treatment Plan, again dated September 5, 1997, is unsigned.

2.

Licensee estimated the improvement of the patient at each re-examination based on his interpretation of the charting. He estimated a 50 - 60 % improvement of the cervical region after the first re-exam on November 5, 1997; a 75% improvement after the second re-exam on January 15, 1998; and an 80 - 85 % improvement after the third re-exam on February 16, 1998. However, the charts do not contain significant differences in the findings noted over the 55 treatments administered. The chart notes do not contain any documented improvements or changes, and there is no indication in the file of a change in the treatment rendered during the entire treatment period. When asked, Licensee was unable to differentiate for the Committee his findings concerning "cervical compression," and stated, "We don't know specifically which of my definition (sic) is positive."

3.

Licensee failed to articulate or otherwise substantiate a reasonable clinical rationale to support the duration and frequency of treatments administered to Patient #97371. This conduct constitutes unprofessional conduct within the meaning of ORS 684.100 (1)(g)(A), (B), and violates OAR 811-015-0010 (1), (2), (4) (excessive

1 treatment); 811-035-0005 (4), 811-035-0015 (2) (charging fees for unnecessary
2 services).

3 4.

4 **Patient File # 97526**

5
6 Patient #97526 sought treatment on December 1, 1997, for injuries related to a
7 motor vehicle accident that occurred on November 27, 1997. Records indicate that Dr.
8 Baker, a chiropractor employed in Licensee's Clinic, performed the initial examination.
9 The "Diagnosis" and "Treatment Plan" records are not signed by a physician. Patient
10 #97526 was treated by three different physicians (including Licensee and Dr. Baker) in
11 the Clinic.

12
13 5.

14 The patient's file indicates that Patient #97526 received 33 treatments between
15 December 1, 1997 and February 23, 1998. The initial treatment plan included an
16 estimation of 8-10 weeks of treatment. There is no evidence of any re-examination or
17 modification of the treatment plan. There is no indication in the file of any
18 communication about or coordination of treatment between the three treating
19 physicians.

20
21 6.

22 The file contains five work releases, indicating that Patient #97526 was off work
23 from December 1, 1997 through January 30, 1998. The file does not contain a "return
24 to work" form, and there is no indication that Patient #97526 was released to return to
25 work. Licensee advised the Committee that Patient #97526 was still being treated in
26 the Clinic as of November 5, 1998.

27
28 7.

29 The chart notes for Patient #97526 were repetitious and contained little change
30 in the limited objective findings noted. Licensee was unable to correlate improvement

1 in the patient's condition with the contents of the chart notes. Licensee was unable to
2 explain the case based on the chart notes. He was unable to explain why a re-
3 examination had not been performed after 30 treatments administered over a two-
4 month period failed to yield an improvement in the patient's condition. Licensee stated
5 that the patient had a difficult time making appointments or a referral (which was never
6 mentioned in the charting) because she was working in a restaurant "that was kind of
7 her own restaurant". However, the file indicates that the patient had been released
8 from work during this entire treatment period.

9
10 8.

11 Licensee failed to provide a reasonable clinical rationale for the length of
12 treatment, frequency of treatment and frequency of use of different physical therapy
13 modalities for this patient. Information contained in the patient's file does not justify the
14 amount of care administered in this case.

15
16 9.

17 Licensee's conduct regarding Patient #97526, as described above, violates ORS
18 684.100 (1) (g) (A),(B); OAR 811-015-0010 (2) and (3) (failure to demonstrate rational
19 for repetitive treatments; excessive treatment); OAR 811-035-0001 (4) (overutilization);
20 811-035-0015(2) (charging fees for unnecessary services).

21
22 10.

23 **Patient File #97569**

24
25 This patient was initially seen at the Clinic on December 30, 1997, for injuries
26 sustained in a motor vehicle accident on December 26th. Licensee performed the initial
27 exam on December 30 and a re-examination on February 13, 1998. Licensee's initial
28 diagnosis was "acute, traumatic, moderate sprain/strain of the cervical, thoracic and
29 lumbar regions, subluxation complex of the cervical, thoracic, and lumbar regions, and
30 headache." Licensee's initial treatment plan for the patient was for 3 to 5 visits per

1 week for 8 to 12 weeks. Patient #97569 was released from work by Licensee from
2 December 29, 1997 - January 1, 1998. The patient received 21 treatments between
3 December 30, 1997 and February 21, 1998. The patient was treated by at least three
4 different physicians in Licensee's clinic. The chart notes for the February 13, 1998, re-
5 examination indicate the patient was experiencing a 60% reduction in the "up and down
6 pattern." Licensee was unable to explain what this phrase meant, or whether it
7 indicated an improvement or worsening of the patient's condition. Licensee's
8 examination notes were cryptic, and minimal changes were noted between this exam
9 and the prior one. The examination findings did not support the modification of the
10 treatment plan to "2 to 3 visits for the next 3 to 5 weeks." Licensee last treated patient
11 on February 21, 1998
12

13 11.

14 The chart notes and records in Patient' 97569's file do not indicate how the patient
15 responded to treatment. The information recorded for each date is substantially the
16 same. The patient received heat or cold therapy and ultrasound for 20 out of the total
17 21 treatments. The file does not document the need for the frequency of treatments
18 administered or the use of various physical therapy modalities. The chart notes reflect
19 no change in the type or frequency of treatments, and there is no indication that the
20 patient's condition improved with the use of various physical therapy modalities.
21

22 12.

23 The patient's cervical radiographs do not include the standard Anterior to
24 Posterior Open Mouth (APOM) view. The standard cervical series must include the
25 APOM view in order to adequately visualize the entire cervical spine.
26

27 13.

28 Licensee's conduct regarding Patient # 97569, as above described, constitutes a
29 violation of ORS 684.100(1)(q); OAR 811-015-0005(1)(a) (failure to keep complete and
30 accurate records); OAR 811-015-0010 (2), (3) (excessive treatment); OAR 811-030-

1 0030 (2)(c) (radiographs). The charting of this file, taken as a whole, does not justify
2 the necessity for services performed by Licensee, in violation of ORS 684.100
3 (1)(g)(A), (B); OAR 811-035-0005 (4); and 811-035-0015 (2).
4

5 14.

6 **Patient File #97386**
7

8 The patient appeared for an initial exam on September 11, 1997. Licensee
9 diagnosed the patient as having a "moderate sprain-strain," and set up a treatment plan
10 of "3-4 times per week for 6-10 weeks" with several types of therapy, including
11 manipulation, ultrasound, interferential, traction (unidentified as to what body part, or
12 whether traction was to be manual vs mechanical), massage, heat, exercise instruction,
13 and the Biofreeze (a topical pain relieving ointment). Licensee's initial chart notes in
14 this file are quoted below:

15 "S: N.P. Consultation

16 O: N.P. Exam +x-ray

17 A: N.P. pt

18 P: PRT for tx"

19 Written "SOAP" notes, where legible, are incomplete and confusing. Licensee himself
20 was unable to decipher whether a chart notation indicated "left side exacerbation" or
21 "lumbar exacerbation." Licensee was unable to explain why some of the chart notes
22 contained in the file were written in someone else's handwriting. There is no correlation
23 in the file between the examination findings, diagnosis, and treatment plan.
24

25 15.

26 Licensee submitted billing charges for treatment on September 17, 1997, which
27 included a charge for "therapeutic exercises - 30 minutes." There are no chart notes to
28 support this charge. Licensee admitted that the "therapeutic exercises" consisted of
29 the patient being handed a printed exercise sheet with directions printed in English.
30

16.

Licensee performed 8 treatments on the patient in 12 days, and charged a total of \$982. Patient #97386 then left on an extended trip, from September 23 -December 2, 1997. The patient's file indicates that Patient #97386 was treated by a chiropractor in another state during this time. There is no indication that Licensee sought to obtain the other chiropractor's charts for the patient. Licensee did not perform a re-examination or evaluation of the patient upon his return on December 2, and the patient's file does not indicate why the patient's treatment plan continues unchanged given the patient's subjective complaint of "mild" low back pain.

17.

Licensee treated and billed the patient for the same therapies (ultrasound, heat and adjustments, and occasional trigger point therapy-massage) 15 more times between December 2, 1997 and February 20, 1998. The file contains no substantiation of the need for these treatments. After five months of care by Licensee, the patient's diagnosis and treatment plan remained unchanged. Licensee did not refer patient for a second opinion, nor did Licensee make any significant change in the treatment plan. Licensee did not perform a re-examination of the patient, despite the patient's failure to respond to care in a reasonable time after being diagnosed with a "moderate" injury. Licensee failed to establish an objective clinical rationale for extending the length of care.

18.

Licensee's conduct with regard to Patient #97386 as described above constitutes a violation of ORS 684.100(1)(q); OAR 811-015-0005 (1)(a) (failure to keep complete and accurate records on all patients); OAR 811-015-0010 (1), (2), (3) (excessive treatment); 684.100(1)(g)(B); and OAR 811-035-0015 (2) (charging fees for unnecessary services).

19.

Patient File # 97502

Licensee diagnosed this patient with a "moderate" injury due to a motor vehicle accident, and recommended a treatment plan consisting of "3-5 (treatments) a week for 8-12 weeks" and utilizing 8 modalities (manipulation, ultrasound, interferential, traction, massage, heat, exercise instruction and Biofreeze).

20.

Following the initial examination, Licensee treated the patient 7 times in 10 calendar days and submitted charges in the amount of \$785. In the next 12 days, Patient #97502 received 7 additional treatments and was billed \$545. Between November 18, 1997 and February 27, 1998, Licensee billed patient over \$3000 for services. The examination findings contained in the patient's file do not provide a reasonable clinical rationale to justify the extent of treatment provided. Licensee was unable to articulate the clinical need for this level of care. The file does not address the patient's prognosis. The treatment rendered appears unrelated to the exam findings. There is no assessment of the effectiveness of the treatment plan; no assessment of deviations from planned recovery; no modification of the diagnosis, and no discussion concerning the conclusion of treatment.

21.

Licensee's conduct concerning the treatment of patient #97502, as described above, constitutes a violation of. ORS 684.100(1)(q); OAR 811-015-0005 (1)(a) (failure to keep complete and accurate records for all patients); OAR 811-015-0010(1), (2),(3) (excessive treatment; failure to state rationale for repetitive treatments); and OAR 811-035-0005(4) (treatment outside OPUG Guidelines; overutilization); ORS 684.100(1)(g)(B); and OAR 811-035-0015 (2) (unnecessary treatments).

1 22.

2 **Patient Files #97569, 98010, 97522, 97371, 97541, 97562, 98038**

3
4 Patient # 97569 was initially treated by Licensee on December 30, 1997, for
5 injuries related to a motor vehicle accident that occurred on December 26, 1997. On
6 January 7, 1998, Patient #97569 was seen by Franklin Gouge, D.C. (Dr. Gouge), a
7 licensed chiropractor employed in Licensee's Clinic. The patient came to the Clinic to
8 receive physical therapy treatment. Dr. Gouge was not the patient's primary care
9 physician. Dr. Gouge did not approve physical therapy for this patient on this date, as
10 he was not familiar with the patient or the patient's current condition. Dr. Gouge made
11 a notation in the file that "Dr. did not treat pt. nore(sic) did he approve P.T." Dr.
12 Gouge's chart note was later removed from the patient's file and replaced with a chart
13 note authored by Licensee which indicates the patient received "P.T only today."
14 Licensee did not treat the patient on January 7, 1998. Licensee billed the patient for
15 physical therapy treatment purportedly rendered on this date in the amount of \$46.
16

17 23.

18 Licensee's conduct regarding patient #97569, described above, constitutes a
19 violation of ORS 684.100 (1)(a) (fraud or misrepresentation); ORS 684.100 (1)(q);
20 OAR 811-035-0015 (5), (12) (charging for services not rendered, perpetrating fraud
21 upon patients or third party payors).
22

23 24.

24 Patient #98010 was seen by Dr. Gouge on January 26, 1998. On that date, Dr.
25 Gouge refused patient's request for additional time off for the Chinese New Year, which
26 was unrelated to the injury. He also noted in the patient's chart that the patient could
27 be released from treatment. The next time Dr. Gouge saw the patient, on February 6,
28 1998, he noticed that the chart note he wrote was missing and another entry, signed by
29 Dr. Greg Baker, was in its place.
30

1 25.

2 Licensee's conduct regarding patient #98010, described above, constitutes a
3 violation of ORS 684.100 (1)(a) (fraud or misrepresentation); ORS 684.100 (10)(q);
4 OAR 811-035-0015 (5), (12) (charging for services not rendered, perpetrating fraud
5 upon patients or third party payors).

6
7 26.

8 On February 6, 1998, Dr. Gouge saw patients #97541, 97522, 98038, 97562,
9 and 97371.

10
11 27.

12 Dr. Gouge's chart notes for Patient #97541 indicate "patient still feels 85%
13 better, has no complaints, feels he does not need further treatment." Upon
14 examination, Dr. Gouge did not perform any treatment, due to a lack of subjective or
15 objective findings. Dr. Gouge specifically did not approve any physical therapy for this
16 patient. Dr. Gouge's chart note indicated the patient should return the following week
17 for a final exam. Dr. Gouge's chart note for this date was later altered to add electrical
18 stimulation, heat/cold therapy, and adjustment. Licensee admitted altering the chart
19 note. The patient was charged for these treatments. Licensee continued to treat the
20 patient for another 4 treatment sessions, despite the fact that the patient's subjective
21 reports in the chart notes indicate he had "no complaints"(February 7, 1998), and "he
22 feeling (sic) 88-90% better now" (February 9, 1998). Records indicate the patient's last
23 treatment was on February 23, 1998. Licensee's conduct regarding Patient #97541
24 constitutes a violation of ORS 684.100(1)(a), (g)(B); OAR 811-035-0015 (2), (5)
25 (charging for unnecessary services, services not rendered); OAR 811-035-0015 (12)
26 (perpetrating fraud upon third party payors or patients).

27
28 28.

29 Dr. Gouge performed an adjustment on Patient #97522, but did not authorize or
30 perform any physical therapy treatments. He made notations in the chart to document

1 the treatment he rendered. The patient's chart notes were later altered to indicate that
2 the patient had received ultrasound and hot pack treatments, and the patient was
3 charged for these services. Licensee's conduct regarding Patient #97522 constitutes a
4 violation of ORS 684.100(1)(a), (g)(B); OAR 811-035-0015 (2), (5) (charging for
5 unnecessary services, services not rendered): OAR 811-035-0015 (12) (perpetrating
6 fraud upon third party payors or patients).

7
8 29.

9 Dr. Gouge was the only chiropractic physician to see Patients # 98038, 97562,
10 and 97371 at the Clinic on February 6, 1998. Dr. Gouge did not approve physical
11 therapy treatments for any of these patients. Each patient's file was altered to add
12 physical therapy treatments consisting of ultrasound and/ or hot pack. Each patient
13 was charged for physical therapy treatment(s). Licensee did not see any of these
14 patients on this date. Licensee's conduct regarding Patients #98038, 97562, 97371
15 97522 constitutes a violation of ORS 684.100(1)(a); (1)(g)(B); OAR 811-035-0015 (2),
16 (5) (charging for unnecessary services, services not rendered): OAR 811-035-0015
17 (12) (perpetrating fraud upon third party payors or patients).

18
19 30.

20 Based upon the violations set forth above, the Board proposes to revoke
21 Licensee's license.

22
23 31.

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

34.

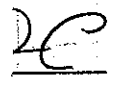

If Licensee requests a hearing, before commencement of that hearing, Licensee will be given information on the procedures, rights of representation, and other rights of the parties relating to the conduct of the hearing as required under ORS 183.413-415.

35.

If Licensee fails to request a hearing within 21 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 case automatically becomes part of the evidentiary record of this disciplinary action for the purpose of proving a prima facie case. ORS 183.415(6).

DATED this 25th day of June, 1999.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

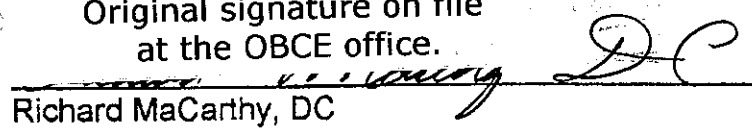
Original signature on file
at the OBCE office. 
By: 
Richard McCarthy, DC
President, Oregon Board of Chiropractic Examiners

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4
5 **Certificate of Service**
6

7 I, Richard McCarthy, DC, certify that on June 25, 1999, I served the foregoing Dr. Kent
8 Atchyes, D. C. upon the party hereto by certified mail an exact and full copy thereof to:
9

10 Kent Atchyes, DC
11 4838 NE Sandy Blvd. #200
12 Portland, Oregon 97213
13
14
15
16

17 Original signature on file
18 at the OBCE office.

19 
20 Richard McCarthy, DC
21 President, Oregon Board of Chiropractic Examiners
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VERIFICATION

State of Oregon) Kent Atchyes, D. C.
County of Marion) Case No: 96-3016

I, Richard McCarthy, being first duly sworn, state that I am the President 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 Disciplinary Action is true to the best of my knowledge as I verily believe.

Original signature on file
at the OBCE office.


Richard McCarthy, D. C.
President, Oregon Board of Chiropractic Examiners

SUBSCRIBED AND SWORN to before me

this 25th day of June, 1999

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON
My Commission Expires. Jan. 11, 2002



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STATE OF OREGON

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In the Matter of) AMENDED
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Kent Achtyes, D.C.) REVOCATION OF LICENSE
) Case # 96-3016 ; 99-2008
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1 treatment); 811-035-0005 (4), 811-035-0015 (2) (charging fees for unnecessary
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3 4.

4 **Patient File # 97526**

5
6 Patient #97526 sought treatment on December 1, 1997, for injuries related to a
7 motor vehicle accident that occurred on November 27, 1997. Records indicate that Dr.
8 Baker, a chiropractor employed in Licensee's Clinic, performed the initial examination.
9 The "Diagnosis" and "Treatment Plan" records are not signed by a physician. Patient
10 #97526 was treated by three different physicians (including Licensee and Dr. Baker) in
11 the Clinic.

12
13 5.

14 The patient's file indicates that Patient #97526 received 33 treatments between
15 December 1, 1997 and February 23, 1998. The initial treatment plan included an
16 estimation of 8-10 weeks of treatment. There is no evidence of any re-examination or
17 modification of the treatment plan. There is no indication in the file of any
18 communication about or coordination of treatment between the three treating
19 physicians.

20
21 6.

22 The file contains five work releases, indicating that Patient #97526 was off work
23 from December 1, 1997 through January 30, 1998. The file does not contain a "return
24 to work" form, and there is no indication that Patient #97526 was released to return to
25 work. Licensee advised the Committee that Patient #97526 was still being treated in
26 the Clinic as of November 5, 1998.

27
28 7.

29 The chart notes for Patient #97526 were repetitious and contained little change
30 in the limited objective findings noted. Licensee was unable to correlate improvement

1 in the patient's condition with the contents of the chart notes. Licensee was unable to
2 explain the case based on the chart notes. He was unable to explain why a re-
3 examination had not been performed after 30 treatments administered over a two-
4 month period failed to yield an improvement in the patient's condition. Licensee stated
5 that the patient had a difficult time making appointments or a referral (which was never
6 mentioned in the charting) because she was working in a restaurant "that was kind of
7 her own restaurant". However, the file indicates that the patient had been released
8 from work during this entire treatment period.

9 8.

10 Licensee failed to provide a reasonable clinical rationale for the length of
11 treatment, frequency of treatment and frequency of use of different physical therapy
12 modalities for this patient. Information contained in the patient's file does not justify the
13 amount of care administered in this case.

14
15 9.

16 Licensee's conduct regarding Patient #97526, as described above, violates ORS
17 684.100 (1) (g) (A),(B); OAR 811-015-0010 (2) and (3) (failure to demonstrate rational
18 for repetitive treatments; excessive treatment); OAR 811-035-0001 (4) (overutilization);
19 811-035-0015(2) (charging fees for unnecessary services).

20
21 10.

22 **Patient File #97569**

23
24 This patient was initially seen at the Clinic on December 30, 1997, for injuries
25 sustained in a motor vehicle accident on December 26th. Licensee performed the initial
26 exam on December 30 and a re-examination on February 13, 1998. Licensee's initial
27 diagnosis was "acute, traumatic, moderate sprain/strain of the cervical, thoracic and
28 lumbar regions, subluxation complex of the cervical, thoracic, and lumbar regions, and
29 headache." Licensee's initial treatment plan for the patient was for 3 to 5 visits per
30 week for 8 to 12 weeks. Patient #97569 was released from work by Licensee from

1 December 29, 1997 - January 1, 1998. The patient received 21 treatments between
2 December 30, 1997 and February 21, 1998. The patient was treated by at least three
3 different physicians in Licensee's clinic. The chart notes for the February 13, 1998, re-
4 examination indicate the patient was experiencing a 60% reduction in the "up and down
5 pattern." Licensee was unable to explain what this phrase meant, or whether it
6 indicated an improvement or worsening of the patient's condition. Licensee's
7 examination notes were cryptic, and minimal changes were noted between this exam
8 and the prior one. The examination findings did not support the modification of the
9 treatment plan to "2 to 3 visits for the next 3 to 5 weeks." Licensee last treated patient
10 on February 21, 1998

11
12 11.

13 The chart notes and records in Patient' 97569's file do not indicate how the patient
14 responded to treatment. The information recorded for each date is substantially the
15 same. The patient received heat or cold therapy and ultrasound for 20 out of the total
16 21 treatments. The file does not document the need for the frequency of treatments
17 administered or the use of various physical therapy modalities. The chart notes reflect
18 no change in the type or frequency of treatments, and there is no indication that the
19 patient's condition improved with the use of various physical therapy modalities.

20
21 12.

22 The patient's cervical radiographs do not include the standard Anterior to
23 Posterior Open Mouth (APOM) view. The standard cervical series must include the
24 APOM view in order to adequately visualize the entire cervical spine.

25
26 13.

27 Licensee's conduct regarding Patient # 97569, as above described, constitutes a
28 violation of ORS 684.100(1)(q); OAR 811-015-0005(1)(a) (failure to keep complete and
29 accurate records); OAR 811-015-0010 (2), (3) (excessive treatment); OAR 811-030-
30 0030 (2)(c) (radiographs). The charting of this file, taken as a whole, does not justify

1 the necessity for services performed by Licensee, in violation of ORS 684.100
2 (1)(g)(A), (B); OAR 811-035-0005 (4); and 811-035-0015 (2).

3
4 14.

5 **Patient File #97386**
6

7 The patient appeared for an initial exam on September 11, 1997. Licensee
8 diagnosed the patient as having a "moderate sprain-strain," and set up a treatment plan
9 of "3-4 times per week for 6-10 weeks" with several types of therapy, including
10 manipulation, ultrasound, interferential, traction (unidentified as to what body part, or
11 whether traction was to be manual vs mechanical), massage, heat, exercise instruction,
12 and the Biofreeze (a topical pain relieving ointment). Licensee's initial chart notes in
13 this file are quoted below:

14 "S: N.P. Consultation

15 O: N.P. Exam +x-ray

16 A: N.P. pt

17 P: PRT for tx"

18 Written "SOAP" notes, where legible, are incomplete and confusing. Licensee himself
19 was unable to decipher whether a chart notation indicated "left side exacerbation" or
20 "lumbar exacerbation." Licensee was unable to explain why some of the chart notes
21 contained in the file were written in someone else's handwriting. There is no correlation
22 in the file between the examination findings, diagnosis, and treatment plan.
23

24 15.

25 Licensee submitted billing charges for treatment on September 17, 1997, which
26 included a charge for "therapeutic exercises - 30 minutes." There are no chart notes to
27 support this charge. Licensee admitted that the "therapeutic exercises" consisted of
28 the patient being handed a printed exercise sheet with directions printed in English.
29
30

16.

Licensee performed 8 treatments on the patient in 12 days, and charged a total of \$982. Patient #97386 then left on an extended trip, from September 23 -December 2, 1997. The patient's file indicates that Patient #97386 was treated by a chiropractor in another state during this time. There is no indication that Licensee sought to obtain the other chiropractor's charts for the patient. Licensee did not perform a re-examination or evaluation of the patient upon his return on December 2, and the patient's file does not indicate why the patient's treatment plan continues unchanged given the patient's subjective complaint of "mild" low back pain.

17.

Licensee treated and billed the patient for the same therapies (ultrasound, heat and adjustments, and occasional trigger point therapy-massage) 15 more times between December 2, 1997 and February 20, 1998. The file contains no substantiation of the need for these treatments. After five months of care by Licensee, the patient's diagnosis and treatment plan remained unchanged. Licensee did not refer patient for a second opinion, nor did Licensee make any significant change in the treatment plan. Licensee did not perform a re-examination of the patient, despite the patient's failure to respond to care in a reasonable time after being diagnosed with a "moderate" injury. Licensee failed to establish an objective clinical rationale for extending the length of care.

18.

Licensee's conduct with regard to Patient #97386 as described above constitutes a violation of ORS 684.100(1)(q); OAR 811-015-0005 (1)(a) (failure to keep complete and accurate records on all patients); OAR 811-015-0010 (1), (2), (3) (excessive treatment); 684.100(1)(g)(B); and OAR 811-035-0015 (2) (charging fees for unnecessary services).

19.

Patient File # 97502

Licensee diagnosed this patient with a "moderate" injury due to a motor vehicle accident, and recommended a treatment plan consisting of "3-5 (treatments) a week for 8-12 weeks" and utilizing 8 modalities (manipulation, ultrasound, interferential, traction, massage, heat, exercise instruction and Biofreeze).

20.

Following the initial examination, Licensee treated the patient 7 times in 10 calendar days and submitted charges in the amount of \$785. In the next 12 days, Patient #97502 received 7 additional treatments and was billed \$545. Between November 18, 1997 and February 27, 1998, Licensee billed patient over \$3000 for services. The examination findings contained in the patient's file do not provide a reasonable clinical rationale to justify the extent of treatment provided. Licensee was unable to articulate the clinical need for this level of care. The file does not address the patient's prognosis. The treatment rendered appears unrelated to the exam findings. There is no assessment of the effectiveness of the treatment plan; no assessment of deviations from planned recovery; no modification of the diagnosis, and no discussion concerning the conclusion of treatment.

21.

Licensee's conduct concerning the treatment of patient #97502, as described above, constitutes a violation of. ORS 684.100(1)(q); OAR 811-015-0005 (1)(a) (failure to keep complete and accurate records for all patients); OAR 811-015-0010(1), (2),(3) (excessive treatment; failure to state rationale for repetitive treatments); and OAR 811-035-0005(4) (treatment outside OPUG Guidelines; overutilization); ORS 684.100(1)(g)(B); and OAR 811-035-0015 (2) (unnecessary treatments).

22.

Patient Files #97569, 98010, 97522, 97371, 97541, 97562, 98038

Patient # 97569 was initially treated by Licensee on December 30, 1997, for injuries related to a motor vehicle accident that occurred on December 26, 1997. On January 7, 1998, Patient #97569 was seen by Franklin Gouge, D.C. (Dr. Gouge), a licensed chiropractor employed in Licensee's Clinic. The patient came to the Clinic to receive physical therapy treatment. Dr. Gouge was not the patient's primary care physician. Dr. Gouge did not approve physical therapy for this patient on this date, as he was not familiar with the patient or the patient's current condition. Dr. Gouge made a notation in the file that "Dr. did not treat pt. nore(sic) did he approve P.T." Dr. Gouge's chart note was later removed from the patient's file and replaced with a chart note authored by Licensee which indicates the patient received "P.T only today." Licensee did not treat the patient on January 7, 1998. Licensee billed the patient for physical therapy treatment purportedly rendered on this date in the amount of \$46.

23.

Licensee's conduct regarding patient #97569, described above, constitutes a violation of ORS 684.100 (1)(a) (fraud or misrepresentation); ORS 684.100 (10)(q); OAR 811-035-0015 (5), (12) (charging for services not rendered, perpetrating fraud upon patients or third party payors).

24.

Patient #98010 was seen by Dr. Gouge on January 26, 1998. On that date, Dr. Gouge refused patient's request for additional time off for the Chinese New Year, which was unrelated to the injury. He also noted in the patient's chart that the patient could be released from treatment. The next time Dr. Gouge saw the patient, on February 6, 1998, he noticed that the chart note he wrote was missing and another entry, signed by Dr. Greg Baker, was in its place.

1 25.

2 Licensee's conduct regarding patient #98010, described above, constitutes a
3 violation of ORS 684.100 (1)(a) (fraud or misrepresentation); ORS 684.100 (10)(q);
4 OAR 811-035-0015 (5), (12) (charging for services not rendered, perpetrating fraud
5 upon patients or third party payors).

6
7 26.

8 On February 6, 1998, Dr. Gouge saw patients #97541, 97522, 98038, 97562,
9 and 97371.

10
11 27.

12 Dr. Gouge's chart notes for Patient #97541 indicate "patient still feels 85%
13 better, has no complaints, feels he does not need further treatment." Upon
14 examination, Dr. Gouge did not perform any treatment, due to a lack of subjective or
15 objective findings. Dr. Gouge specifically did not approve any physical therapy for this
16 patient. Dr. Gouge's chart note indicated the patient should return the following week
17 for a final exam. Dr. Gouge's chart note for this date was later altered to add electrical
18 stimulation, heat/cold therapy, and adjustment. Licensee admitted altering the chart
19 note. The patient was charged for these treatments. Licensee continued to treat the
20 patient for another 4 treatment sessions, despite the fact that the patient's subjective
21 reports in the chart notes indicate he had "no complaints"(February 7, 1998), and "he
22 feeling (sic) 88-90% better now" (February 9, 1998). Records indicate the patient's last
23 treatment was on February 23, 1998. Licensee's conduct regarding Patient #97541
24 constitutes a violation of ORS 684.100(1)(a), (g)(B); OAR 811-035-0015 (2), (5)
25 (charging for unnecessary services, services not rendered); OAR 811-035-0015 (12)
26 (perpetrating fraud upon third party payors or patients).

27
28 28.

29 Dr. Gouge performed an adjustment on Patient #97522, but did not authorize or
30 perform any physical therapy treatments. He made notations in the chart to document

1 the treatment he rendered. The patient's chart notes were later altered to indicate that
2 the patient had received ultrasound and hot pack treatments, and the patient was
3 charged for these services. Licensee's conduct regarding Patient #97522 constitutes a
4 violation of ORS 684.100(1)(a), (g)(B); OAR 811-035-0015 (2), (5) (charging for
5 unnecessary services, services not rendered); OAR 811-035-0015 (12) (perpetrating
6 fraud upon third party payors or patients).

7
8 29.

9 Dr. Gouge was the only chiropractic physician to see Patients # 98038, 97562,
10 and 97371 at the Clinic on February 6, 1998. Dr. Gouge did not approve physical
11 therapy treatments for any of these patients. Each patient's file was altered to add
12 physical therapy treatments consisting of ultrasound and/ or hot pack. Each patient
13 was charged for physical therapy treatment(s). Licensee did not see any of these
14 patients on this date. Licensee's conduct regarding Patients #98038, 97562, 97371
15 97522 constitutes a violation of ORS 684.100(1)(a); (1)(g)(B); OAR 811-035-0015 (2),
16 (5) (charging for unnecessary services, services not rendered); OAR 811-035-0015
17 (12) (perpetrating fraud upon third party payors or patients).

18
19 30.

20 Patient 11

21 Patient 11 sought treatment from Licensee due to a side swipe accident. The
22 exam noted restricted cervical extension, "positive" cervical extension, lateral foraminal
23 compression, shoulder depression test and Soto Hall test. The treatment plan was 3-4
24 times per week for 6-10 weeks. The clinical rationale for such extensive treatment is
25 not in the charting. The examination appears to be performed by Dr. Boucher, though it
26 is unclear who performed treatment as it is not in the chart. Lumbar spine x-rays were
27 taken even though no lumbar exam was done per the charts. The clinical reasoning for
28 the additional views without impact or rear collision is not explained. The clinical
29 reasoning for the additional x-ray views and other modalities is not apparent.

30 31.

1 Licensee's conduct concerning the treatment of Patient 11, as described above,
2 constitutes a violation of. ORS 684.100(1)(q); OAR 811-015-0005 (1)(a) (failure to keep
3 complete and accurate records for all patients); OAR 811-015-0010(1), (2),(3)
4 (excessive treatment; failure to state rationale for repetitive treatments); and OAR 811-
5 035-0005(4) (treatment outside OPUG Guidelines; overutilization); ORS
6 684.100(1)(g)(B); and OAR 811-035-0015 (2) (unnecessary treatments).

7 32.

8 From October 1993 through 1997, Licensee alleged that he was the majority
9 shareholder of Pain Care Chiropractic Clinic, a professional corporation, owning 51%
10 or more of the interest in said professional corporation. On October 5, 1993, Licensee
11 signed the Articles of Incorporation stating that he shall at all times be the majority
12 shareholder and sole director of the Pain Care Chiropractic Clinic, a professional
13 corporation. (The Articles are hereby attached as Exhibit A and are incorporated by
14 reference)

15 In October 1993, Licensee provided to the Board, the Articles of Incorporation
16 and in those articles represented to the Board that he, and he alone, was the sole
17 director of the Pain Care Chiropractic Clinic and was at all times the majority
18 shareholder. That representation was made as a statement of fact and was either
19 fraudulent, deceptive or dishonest or was recklessly made with the intent to deceive the
20 Board that the corporate structure of Pain Care Chiropractic Clinic complied with ORS
21 58.108.

22 At the time of the signing of the Articles of Incorporation, ORS 58.108 required
23 that a professional corporation must be owned by a majority of each class of shares
24 who are licensed within the state to render that professional service.

25 The Licensee engaged in fraudulent, deceptive, or dishonest conduct as cited
26 above which was in violation of ORS 684.100(a) and OAR 811-035-0015(10) and (12).

27 33.

28 Based upon the violations set forth above, the Board proposes to revoke
29 Licensee's license.

34.

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

NOTICE OF RIGHTS

35.

Licensee has the right, if Licensee requests, to have a contested case hearing as provided by the Administrative Procedures Act (ORS Chapter 183) before the OBCE or its hearings officer to contest the matter set out above. At the hearing, Licensee may be represented by an attorney, and may subpoena and cross-examine witnesses. A request for hearing must be made in writing to the OBCE, must be received by the OBCE within 21 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 allegations contained in this notice. Upon receipt of a request for hearing, the Board will notify licensee of the time and place of the hearing as required by ORS 183.413(2).

36.

The answer shall be made in writing to the Board 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 shall be presumed admitted; failure to raise a particular defense in the answer will be considered a waiver of such defense; and new matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency. Evidence shall not be taken on any issue not raised in the Notice and answer.

37.

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.


38.

If Licensee fails to request a hearing within 21 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 case automatically becomes part of the evidentiary record of this disciplinary action for the purpose of proving a prima facie case. ORS 183.415(6).

DATED this th day of October, 2000.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signature on file
at the OBCE office.

By: 
Richard McCarthy, DC
President, Oregon Board of Chiropractic Examiners

CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on November 6, 2000, I served the foregoing Amended Notice upon Kent Achtyes DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Kent Achtyes DC
4838 NE Sandy Blvd #200
Portland, Oregon 97213

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

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

VERIFICATION

State of Oregon)

County of Marion)

Case # 96-3016, 99-2008

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 Amended Notice 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

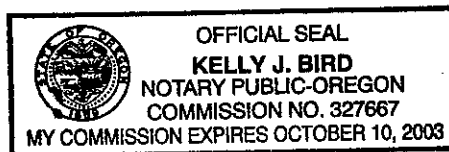
SUBSCRIBED AND SWORN to before me

this 6th day of November 2000.

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 10/10/03



OCT 05 1993

SECRETARY OF STATE

ARTICLES OF INCORPORATION
OF
PAIN CARE CHIROPRACTIC CLINIC, P.C.

I, KENT ACHYTES, D.C., a person over the age of 18 years, acting as incorporator under the Oregon Business Corporation Act, do hereby certify and adopt the following Articles of Incorporation, and state as follows:

ARTICLE 1

Name of the Corporation

The name of the Corporation shall be "Pain Care Chiropractic Clinic, P.C.," and its duration shall be perpetual.

ARTICLE II

Number of Shares the corporation will have authority to issue

The corporation will have the authority to issue 200 shares.

ARTICLE III

Name of and Address of Registered Agent

The name of the registered agent is David J. Edstrom, whose address is 4307 N.E. Tillamook, Portland, Oregon 97213.

ARTICLE IV

Address where the Division may mail notices

The Corporate Division may mail notices to 4307 N.E. Tillamook, Portland, Oregon 97213.

ARTICLE V

Professional service(s) to be rendered

The general nature of the business of the Corporation, and the

object and purposes proposed to be transacted, promoted, and carried on by it, are the chiropractic care and ancillary services.

ARTICLE VI

Name and address of the original shareholders

Kent Achytes, D.C., and Hugh H. Nguyen, both of which are at 4317 N.E. Tillamook, Portland, Oregon 97213.

ARTICLE VII

Optional provisions

Dr. Kent Achytes shall at all times be the majority shareholder and sole director.

ARTICLE VIII

Incorporator

Kent Achytes, D.C., at 4317 N.E. Tillamook, Portland, Oregon 97213, is the incorporator.

Executed at Portland, Oregon this 05 day of October, 1993.

Original signature on file
at the OBCE office.

Kent Achytes/ D.C.