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

IN THE MATTER OF:	)	**FINAL ORDER**
	)	
THADDEUS R. GALA, DC	)	OAH Case No. 2016-ABC-00100
	)	OAH Former Case No. 1604737[1]
	)	Agency Case Nos. 2015-1001, 2015-3005 and
	)	2016-1007

HISTORY OF THE CASE

On August 17, 2016, the Board of Chiropractic Examiners (Board) issued Thaddeus R. Gala, DC, a Proposed Notice of Disciplinary Action. On September 14, 2016, Dr. Gala requested a hearing.

On September 28, 2016, the Board referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha A. Fair to preside at hearing. On December 8, 2016, ALJ Alison Webster convened a telephone prehearing conference on behalf of ALJ Fair. The Board appeared and was represented by Senior Assistant Attorney General (AAG) Lori Lindley. Attorney Kevin Burgess appeared on behalf of Dr. Gala. ALJ Webster scheduled the hearing for May 1 through 4, 2017, and set deadlines for submission of motions, witness lists and exhibits.

On December 14, 2016, the Board filed a Motion for Protective Order. On December 20, 2016, the OAH issued a Qualified Protective Order Limiting Use and Disclosure.

On March 6, 2017, the Board filed a Motion for Qualified Protective Order. On March 11, 2017, the OAH issued a Qualified Protective Order Limiting Use and Disclosure.

On March 31, 2017, Dr. Gala's new attorney James Dole requested a postponement of the hearing. On April 3, 2017, the Board objected to the request. On April 4, 2017, ALJ Fair denied the request.

ALJ Fair convened an in-person hearing on May 1, 2017, in Salem, Oregon. Dr. Gala appeared, represented by Mr. Dole. The Board appeared, represented by AAG Lindley. ALJ Fair postponed the hearing to allow the Board to file an amended notice and scheduled the matter for a telephone prehearing conference.

On May 8, 2017, the Board issued an Amended Proposed Notice of Disciplinary Action (Amended Notice).

---

[1] After this matter was referred to the OAH, the OAH changed its case management system and assigned new case numbers to all existing cases.

On May 22, 2017, ALJ Fair convened a telephone prehearing conference. The Board appeared and was represented by AAG Lindley. Mr. Dole appeared on behalf of Dr. Gala. ALJ Fair scheduled the hearing for December 4 through 8, 2017, and set deadlines for submission of motions, witness lists and exhibits. ALJ Fair established a deadline for the filing by either party of a motion for summary determination as July 28, 2017, with responses due by August 18, 2017.

On June 2, 2017, Mr. Dole, on Dr. Gala's behalf, filed a Response to the Amended Proposed Notice of Disciplinary Action.

On October 11, 2017, Mr. Dole, on Dr. Gala's behalf, filed a Response (Amended) to the Amended Proposed Notice of Disciplinary Action.

On October 31, 2017, Mr. Dole, on Dr. Gala's behalf, filed a Motion for Summary Determination (Motion). On October 31, 2017, the Board filed a request for an expedited ruling on whether the Motion should be dismissed for lack of timely filing. On October 31, 2017, ALJ Fair set a deadline of noon on November 3, 2017, for the receipt of any response to the Board's request from Dr. Gala. No response was filed by the established deadline. After the deadline on November 3, 2017, the OAH issued a Ruling on Board's Motion to Dismiss Dr. Gala's Motion for Summary Determination, granting the Board's motion and dismissing Dr. Gala's Motion as untimely.

ALJ Fair convened an in-person hearing from December 4 through December 8, 2017, in Salem, Oregon. The Board appeared and was represented by AAG Lindley. Dr. Gala appeared and was represented by Mr. Dole.

Testifying on behalf of the Board were: Katie Bernstein, Patient 1's[2] daughter; Jan Lintz, MS PA-C, Patient 2's physician assistant; Joan Stotts, prior caregiver for Patient 2; Patient 3; George Finch, a Board investigator; Frank Prideaux, DC, a Board investigator and expert witness; and Christopher Browne, DC MS, expert witness.

Testifying on behalf of Dr. Gala were: Dr. Gala; Rebecca Blust, Dr. Gala's executive director; Kyle Cawthorne, a participant in Dr. Gala's Health Living Program (HLP); Tracy Macias, Dr. Gala's customer care manager; Anna Joyce Rogers, a participant in the HLP; Jamie Walls, Dr. Gala's receptionist; David Seaman, DC, expert witness; Deanna Courogen, a participant in the HLP; and Scott Abrahamson, DC, expert witness.

The evidentiary record closed on December 8, 2017, at the conclusion of the hearing. The record was left open through January 5, 2018, for the receipt of the parties' closing arguments. On January 5, 2018, both parties filed their closing arguments, and the record was closed upon their receipts.

On May 24, 2018, ALJ Fair issued her Proposed Order finding Dr. Gala engaged in

[2] For purposes of confidentiality and to match their identification in the Amended Notice, the three individuals that are the subjects of the Board's Amended Notice are identified as Patients 1, 2 and 3.

unprofessional or dishonorable conduct and gross negligence and recommended Dr. Gala take and pass the EBAS text, complete 10 hours of continuing education within six months of this order on record keeping and differential diagnoses, allow the Board to enter his premises to examine, review and photocopy patient records to determine compliance with the Board; provide two file pulls with a minimum of three files per pull within the next six months after the order is final. In that Proposed Order Licensee was provided the timing requirements for filing exceptions. Licensee timely filed exceptions to the Proposed Order. The Board reviewed the exceptions and found them to lack legal merit, in fact, several of them attempted to reargue the issues at hearing for an additional time.

On August 6, 2018, the Board issued an Amended Proposed Order and a copy was provided to Dr. Gala and his attorney. The Amended Proposed Order included exceptions instructions. Dr. Gala did not file any exceptions to the Amended Proposed Order. On October 5, 2018, at their regularly scheduled Board meeting, the Board voted to issue this Final Order.

ISSUES

1. Whether Dr. Gala engaged in unprofessional or dishonorable conduct. ORS 684.100(1)(f) and OAR 811-035-0005(1) and (2).

2. Whether Dr. Gala engaged in gross negligence. ORS 684.100(1)(q).

3. Whether Dr. Gala engaged in fraud, misrepresentation and/or unprofessional conduct by charging patients for services not rendered, charging fees for unnecessary services, perpetrating fraud upon patients or third party payors, and/or engaging in dishonest or misleading fee collection techniques. ORS 684.100(1)(a) and (f) and OAR 811-035-0015(2), (5), (7) and (12).

4. Whether Dr. Gala failed to generate and maintain appropriate medical records. OAR 811-015-0010.

5. Whether the Board may take disciplinary action against Dr. Gala. ORS 684.100.

6. Whether costs of discipline should be imposed to Dr. Gala pursuant to ORS 684.1—(9)(g).

EVIDENTIARY RULINGS

The Board offered Exhibits A1 through A24.[3] Exhibits A3, A5 through A13, A15, A17 through A20, and A22 through A24 were admitted into the record without objection. Dr. Gala's objections to Exhibits A1, A2, A4, A14, A16 and A21 were overruled and the exhibits were

[3] During the course of the hearing, the original Exhibit A10 was modified to include an additional page, page 57, and admitted into the record in its modified form with no objection. The original Exhibit A11 was modified to include two additional pages, pages 18 and 19, and admitted into the record in its modified form with no objection. Exhibits A22 through A24 were offered and admitted into the record without objection during the course of the hearing.

admitted into the record. Exhibits R1 through R34, offered by Dr. Gala, were admitted into the record without objection.

FINDINGS OF FACT

Background

1. The Board's mission is to protect the public and ensure that chiropractic doctors are competent. (Test. of Finch.)

2. Dr. Gala graduated from the Palmer College of Chiropractic with a doctorate of chiropractic in 2006. He performed post-doctorate course work at the Carrick Institute of Neurology. He has been a speaker at various events, primarily on issues involving nutrition. (Ex. R1 at 1.) Dr. Gala has been continuously licensed by the Board as a chiropractor since September 22, 2006. (Ex. A1 at 4.)

3. Dr. Gala is the founder, president, sole owner and medical director for his two businesses: My Diabetic Solutions (MDS) and Complete Care. (Exs. A16 at 161; A18 at 2.) Complete Care includes two clinic sites in Southern Oregon, both of which offer traditional chiropractic services for neuromuscular skeletal complaints and include primary care providers (PCPs) and the performance of lab work. MDS, which Dr. Gala began approximately six years ago, is the business through which Dr. Gala offers seminars, classes, webinars, and health coaching services. (Ex. A16 at 17; test. of Gala.) Dr. Gala spends the majority of his time with the MDS business. He does not provide chiropractic services to the Complete Care patients. (Test. of Blust.)

4. Dr. Gala believes that medical doctors intend to help their patients, but he finds their treatments can cause harm, such as addiction to pain medications and adverse consequences from surgery. He finds the rising rates of obesity and medication usage by the general public excessive and harmful to individuals' health. Dr. Gala believes that individuals turn to medical doctors for treatment instead of making healthier lifestyle changes because medications and surgeries appear to be quick and easy solutions. Absent lifestyle changes, Dr. Gala has found that chronic conditions, such as diabetes, worsen over time. In Dr. Gala's opinion, wellness programs serve as alternatives to traditional medical treatments of chronic diseases. Dr. Gala believes that traditional medical treatment relies on medications and/or surgeries, while a wellness program's long-term goal is to enable a patient to cease taking the medications or avoid the surgeries recommended by traditional medical practitioners. (Test. of Gala.)

5. Dr. Gala desires to help people transform their health and achieve health goals without the use of medications or surgery, a desire spawned by his mother's medical history. (Ex. A5 at 9, 12; test. of Gala.) Dr. Gala's mother, Melonie Jorgenson, had debilitating fibromyalgia symptoms. She sought treatment from multiple medical doctors, who treated her with medications and offered surgical procedures. She then obtained guidance from a chiropractor who helped improve her condition through nutrition and lifestyle changes. (Exs. A5 at 12; A9 at

2; A16 at 11.) As Dr. Gala obtained his chiropractic education, he provided his mother additional tips and suggestions to further improve her lifestyle. When she adopted these suggestions, Dr. Gala observed continued improvement in his mother's medical condition. (Test. of Gala.) Currently, Ms. Jorgenson is no longer debilitated, and, as noted by Dr. Gala, she is in "100% fibromyalgia remission." (Exs. A5 at 12; A9 at 2; A16 at 11.)

6. During the course of his traditional chiropractic practice, Dr. Gala suggested his patients modify their nutritional and other lifestyle habits but found that they frequently failed to implement these suggestions. In discussions with these patients, many expressed an interest in sustained health coaching to assist in making these lifestyle changes. (Test. of Gala.)

7. Dr. Gala reviewed scientific studies that support the concept of the benefits of nutrition and lifestyle changes on individual's health and improvement in their medical condition. (Test. of Gala.) In a 2010 published case study Drs. Gala and Seaman performed involving a 55-year-old male with an 11-year history of obstructive sleep apnea syndrome (OSAS), the subject's sleep habits dramatically improved to the extent that he ceased using a continuous positive airway pressure (CPAP) device within three months of the adoption of anti-inflammatory lifestyle changes. Approximately two years later, the subject continued to be free of OSAS symptoms and had also ceased using hypertension medications, a condition he had experienced for 30 years. (Ex. R2 at 3-4.) The case study concluded that physicians should encourage patients to pursue anti-inflammatory lifestyle modifications and "that chiropractors can help manage pro-inflammatory conditions such as OSAS that can be treated with lifestyle interventions such as dietary modifications." (*Id.* at 6.)

8. Based upon his observations of his mother's experiences, his knowledge of the scientific evidence, and his patients' expressed interests, Dr. Gala formed the MDS business and developed a healthy living program (HLP) to market to the public. (Test. of Gala.)

The MDS and the HLP

9. On the MDS website, Dr. Gala notes:

> My Diabetic Solution was created with the sole purpose and goal of helping 5 million people achieve their individual health goals. At My Diabetic Solution we help people with all types of diabetes and chronic ailments reverse their disease in 1-8 months while reducing or completely eliminating all medications so they can live a high quality happy life.
>
> * * * * *
>
> Dr. Thaddeus Gala is a chiropractor who was raised in rural Trail, Oregon where he witnessed the complete transformation of his mother's health decline and ultimate recovery from a painful and severe case of fibromyalgia. Ever since watching his mother's health transform from a bed-ridden illness to the vibrant health coach she is today, he has been

> inspired and dedicated to pursuing and promoting health as his professional life's work in natural medicine.
>
> * * * * *
>
> "I'm blessed in that I get to work closely with my mother, Melonie, and the team at My Diabetic Solution in helping people lose weight and reverse their disease everyday."

(Ex. A18 at 1-2.) The website includes a link to download a free report by the MDS entitled "Reversing Diabetes." (*Id.* at 3.) In a video on the website, Dr. Gala describes himself as "a functional medicine provider that specializes in endocrine disorders." (*Id.*, video entitled "Breakthroughs.") In the video, he further notes that chronic diseases, such as diabetes and heart disease, have an inflammatory component. When an individual makes inflammatory lifestyle choices, the chemicals that turn on chronic disease, including chronic pain, will cause the disease to express itself. Food choices can increase or reduce inflammation as well as choices regarding activity levels. Choices that reduce inflammation can have "massive impact on your health." (*Id.*) In the video, Dr. Gala's mother appears and references Dr. Gala's excitement when attending chiropractic college and his learning of nutrition and the effect of diet on health. (*Id.*)

10. Dr. Gala's HLP focuses on the adoption of an anti-inflammatory diet, frequently referred to as a paleo diet, and other anti-inflammatory lifestyle changes. The anti-inflammatory diet involves the avoidance of refined sugar and refined grains with an increased consumption of nutrient-dense foods, such as vegetables, fruits, lean meats, fish, skinless chicken, eggs, and nuts. It further involves a reduction in junk food snacks, soft drinks, and alcohol. Supplements that have anti-inflammatory tendencies are introduced to the diet, including a multivitamin, magnesium, fish oil, coenzyme Q10, and certain botanicals, such as turmeric and ginger. Additional anti-inflammatory lifestyle changes include the introduction of regular exercise in increasing amounts over time. (Ex. R2 at 2-3.)

11. Dr. Gala does not provide one-on-one management care services to HLP participants. (Ex. A16 at 21; test. of Blust.) HLP participants can communicate directly with Dr. Gala, primarily by telephone or via occasional in-person visits if the participant is in the Southern Oregon area. (Test. of Blust.) The health coaches provide the one-on-one services through scheduled coaching calls. The coaching calls are usually once per week but can be reduced or increased at a participant's request. (Ex. A16 at 21; test. of Blust.) The coaching calls focus on the participant's goals, progress and challenges and involve discussions about the HLP, answers to participants' questions, and provide any additional information and support. (Ex. R10 at 12; test. of Blust.) Coaches provide information to the participants and advise them on implementing the HLP. Coaches will advise how to shop, how to cook, and how to prepare healthy food for ready consumption to help participants avoid unhealthy eating habits. (Ex. A16 at 21-22.)

12. HLP participants can attend a weekly group phone conference, which would include a lesson, such as mechanisms to handle stress, a question and answer session, and an opportunity for participants to share experiences and tips for success. The facilitator of the group conference

call is usually Ms. Jorgenson. (Ex. A16 at 64-65; test. of Blust.) Participants have online access to an educational program that provides additional information, such as recipes, menus, and meal plans. (Ex. R10 at 12.) The MDS website provides participants access to additional instructional videos and products, such as tips to handle lifestyle choices during holidays. The MDS website includes a community forum for the HLP participants. (Test. of Blust.)

13. In the MDS, Dr. Gala supervises an executive director and the wellness director. The executive director supervises all aspects of the MDS. The wellness director oversees the health coaches. (Ex. R14 at 1.) The MDS has a customer care manager, who reviews HLP participants' contact logs to ensure that coaching calls are being made; handles refunds; handles service and product questions; and performs quality assurance calls when an HLP participant completes the program. (Test. of Macias.) Ms. Jorgenson is the lead health coach. Ms. Jorgenson has no education or certifications in any medical or nutritional field. (Test. of Blust.) The health coaches are not licensed or certified by any Oregon agencies. (Test. of Finch.) Not including Dr. Gala, there are currently six employees providing the MDS' services. In 2015, there were five employees providing the MDS' services. The MDS has approximately 100 active HLP participants at any given time. (Test. of Blust.)

14. As noted in their employment agreements with MDS, health coaches' duties include the following:

- Follow "Dr. Gala's customized care plan and/or other protocols for program participants;" (Ex. R16 at 1.)
- Perform health coaching by "answering client questions, offering support and motivation, advising on nutritional changes, problem solving client concerns;" (*Id.*)
- Maintain "current working knowledge of medications clients are currently taking including side effects;" (*Id.*)
- Maintain working knowledge of updates, programs, website, etc.; and (*Id.*)
- Provide "accurate documentation and account in SOAP format of each client contact." [4] (*Id.*)

The employment agreement notes that health coach duties do not include "creating a patient doctor relationship nor will you be giving any medical advice **under any circumstances**." (*Id.*; emphasis in original.)

15. The MDS requires newly hired health coaches to complete a seven-week training course, developed by Dr. Gala and conducted by Ms. Jorgenson. (Test. of Blust.) The trainees must view all training materials, both video and reading materials. Such materials include a Healthy Living Guide and other materials created by Dr. Gala, materials on the paleo diet, and

[4] SOAP includes noting subjective complaints, objective findings, assessment or diagnosis, and plan of action. (Ex. A22 at 23; test. of Abrahamson.)

materials on the specific health conditions of neuropathy, diabetes, fibromyalgia and sleep apnea. Trainees complete quizzes to test their knowledge of the reviewed materials. Trainees are trained on the specifics of health coaching, including entering chart notes and participant logs, and they shadow Ms. Jorgenson when she makes health coaching calls to HLP participants. In their final week of training, trainees perform the coaching calls while shadowed by the wellness director.[5] The new health coaches are subject to a 90-day evaluation by which time they must demonstrate proficiency in chart noting and maintain perfect attendance of health coach meetings, clinic team meetings and group coaching calls. Health coaches are encouraged to continue their education with further recommended reading and additional informational videos. (Ex. R15 at 1-3; test. of Blust.)

16. Dr. Gala trains the health coaches to instruct HLP participants to check with their medical doctors regarding any health changes they experience. (Ex. A16 at 67-68.) The health coaches may provide participants tips, such as suggesting increasing a magnesium supplement when participants complain of diarrhea. (*Id.* at 70-71.) The health coaches will chart any concerns raised by participants and can either personally inform Dr. Gala or email him about the concerns. The MDS has no policy in place providing instruction for health coaches who observe potential cognitive deficit issues with any HLP participants because the issue has never arisen. (Test. of Blust.)

17. Dr. Gala confers with the health coaches and meets with each health coach once per month. He also provides monthly trainings for the health coaches. (Test. of Blust.) He is available to HLP staff to respond to any of their or the HLP participants' inquiries. (Test. of Gala.)

18. Participants in the HLP receive Dr. Gala's Healthy Living Guide (Guide). The cover page of the Guide advertises that it is the road map to "reversing chronic disease," weight loss, reducing medication reliance and lowering pain. (Ex. R10 at 1.) The Guide primarily includes meal plans, recipes, daily logs and shopping lists. The Guide provides information regarding certain elements of the HLP, such as foods to avoid, the dangers of salt and the benefits of healthy oils. (Ex. R10.) On the first page of the Guide, entitled "Getting Started: Your First Steps," participants are advised to "Start following the meal plan recipes or the balance protein guide 100%. Do not wait and do not deviate." (*Id.* at 9.) This section advises those participants who are opting to have lab work performed to review the next page, entitled "Suggested Labs." (*Id.* at 9-10.) In this section, participants are advised on the tests recommended by the HLP and a mechanism to arrange for such testing. At the bottom of this page appears the phrase "**Talk to your doctor before making any medication, supplemental or health changes**." (*Id.* at 10; emphasis in original.) In the section entitled "Commonly Asked Questions," the Guide advises participants to check with their primary care physician or cardiologist before using potassium chloride, a substance the Guide notes as being "a healthier alternative to salt." (*Id.* at 13.)

19. For the HLP participants, Dr. Gala produces additional publications, such as:

- A publication entitled *Reversing Disease* on which the front page states "5 Simple Steps to feel great, lose weight & reduce your medications forever." (Ex. R11 at 1.) In a

[5] The wellness director appeared to be Ms. Jorgenson but the evidence did not make this clear.

section entitled "Medication Isn't the Answer," Dr. Gala notes that daily medications do not fix a disease but simply treat symptoms for a limited period of time. He provides a parable of an old home with faulty wiring that causes light bulbs to short out. He notes that a homeowner, who keeps buying new bulbs, is treating the symptom of the faulty wiring. The homeowner that fixes the faulty wiring is "reversing the disease." (*Id.* at 4.) In another section, Dr. Gala explains that although medical doctors and chiropractors are trained to treat chronic disease, medical doctors are trained in drugs and surgical treatment options while chiropractors are trained in natural solutions. (*Id.*) He highlights his "Bottom line" as "If you want drugs and surgery, seek advice from physicians that use those methods. Conversely, if you want to get off drugs and avoid surgery, seek advice from physicians that are trained to use natural methods." (*Id.*) He concludes that "we are looking to reverse the disease, not treat the symptom" and lists changes experienced by HLP participants, such as less numbness in extremities, healing of infections, and reductions in chronic pain, sleep apnea, blood pressure and cholesterol; (*Id.* at 7.)

- A publication entitled *The Cookbook to Defy Disease and Decay* that contains numerous recipes for the anti-inflammatory diet; and (Ex. R12.)

- A 45-page publication entitled *The Secret to Defy Disease and Decay*, in which Dr. Gala explains the problems caused by sub-clinical inflammation and the improvements in quality of life that can occur when individuals make healthy lifestyle choices to reduce such inflammation. (Ex. R13.) Dr. Gala notes that this publication is for individuals who "want to prevent or reverse any form of chronic disease." (*Id.* at 25.) In this publication, he notes that "If you are on medications, as with blood sugar medications for diabetes, once you start to lower your inflammation and blood sugar levels you can typically start to safely stair step off your medication in several weeks with the help of your prescribing physician." (*Id.* at 13.) In one discussion regarding the use of supplements to aid in inflammation reduction, Dr. Gala notes that the types of supplements and the amounts of the supplements "should be discussed with a health care professional before making any changes." (*Id.* at 21.)

20. Dr. Gala continuously develops and modifies the HLP based upon ongoing scientific studies and participant exit interviews performed by the HLP staff. In the exit interviews, his customer care manager reviews participants' responses to determine what works and what does not work in the HLP. (Test. of Gala.)

21. Participation in the HLP has improved the lives of many of the HLP participants. Participants have been able to cease taking prescription medications; have remained pain free; improved other health conditions, such as reduced blood pressure, resolved irritable bowel syndrome, improved cognition, reduced blood sugar levels, and improved sleep; lost weight; and have returned to an active lifestyle, including some participants, previously disabled from work, who have returned to work. There are participants who remained in touch with their PCPs and understood from Dr. Gala that he was not their doctor. There are participants who find the lifestyle changes effective, the health coaching team very accessible, and the health coaches' guidance and encouragement crucial to adopting these lifestyle changes permanently. HLP participants who completed the program found that they could speak with Dr. Gala when desired.

Ultimately, these successful participants felt the results were well worth the money spent for the HLP. (Test. of Cawthorne, Rogers, Courogen, and Gala.)

22. The MDS website receives regular positive reviews from participants of the HLP, in which they note improvements in symptoms, reduction of weight, savings in medical costs, and improvement in their quality of life. (Ex. A5 at 17-20.)

Initial Contacts with HLP Participants

23. Dr. Gala hosts four free seminars designed for each of the following medical conditions: diabetes, fibromyalgia, sleep apnea and neuropathy. (Ex. A16 at 166.) These seminars last approximately 1 to 1.5 hours and are open to the public. (Exs. A5 at 1; A16 at 182.) The MDS advertises the seminars by newspaper advertisements, online promotions, or distributions to an email list, as shown in the attached and incorporated Exhibit R22. (Ex. A16 at 24.) The MDS advertisements for the seminars always note Dr. Gala's status as a chiropractor. (Test. of Blust.) Adults of all age ranges are represented in the seminars. However, because older individuals are more likely to experience the chronic diseases addressed in the seminars than younger individuals, attendees , and ultimately HLP participants, include a greater number of older individuals than younger individuals. (Exs. A5 at 1; A16 at 182-183; test. of Gala.) The vast majority of HLP participants are more than 45 years old. (Test. of Gala.)

24. As described by Dr. Gala, at the seminars, he presents information to assist people to:

> [W]ork towards successfully reversing symptoms and signs related to health conditions allowing them to often times reduce or eliminate the need for medications and the risk of future surgeries.
>
> * * * * *
>
> We want to help the community and let them know that they have alternatives beside the mainstream drugs and surgery perspective. We believe that by offering helpful information to the public, they will hopefully think of us for their health care needs * * *.

(Ex. A5 at 1-2.) The MDS also hosts an annual two-day health longevity summit, which includes speeches from nationwide health professionals. The MDS usually charges participants a fee for the summit unless Dr. Gala secures sponsors for the summit, in which case attendance at the summit is free. (Ex. A16 at 15.)

25. Dr. Gala begins the seminars by talking about his background and research regarding the specific medical condition addressed in the seminar, such as fibromyalgia or diabetes. (Ex. A16 at 29.) He includes information about the progressively worsening symptoms of the medical condition and the possible adverse outcomes of the condition, such as amputation and blindness that may result from diabetes. Dr. Gala includes photographs of these worsening symptoms and outcomes in his seminars. (Test. of Gala.) He explains the HLP, the changes in nutrition and lifestyle participants would have to make, and explains that a participant's

unwillingness to make such changes means that the HLP is not for that attendee. Dr. Gala has attendees write down their goals that they desire to achieve through lifestyle changes. (Ex. A16 at 39-40.) In the seminars, he informs attendees that he is not establishing a doctor-patient relationship. (*Id.* at 36.)

26. When describing the HLP to attendees, Dr. Gala emphasizes the significant commitment that participants must make, as the HLP requires a multi-month commitment to an overhaul of the participants' lifestyles and the elimination of certain foods, particularly grains and dairy, from their diets. He further emphasizes the desirability of a support mechanism for the participant, particularly among other members of the participant's household, because of the lifestyle changes and the financial commitment involved with the HLP. (Ex. A5 at 2-3.)

27. At the free seminars, attendees may purchase books and supplements; register for a consultation with Dr. Gala that will occur on a subsequent day; or simply leave with some free handouts. Attendees are also provided an internet address to review additional free materials. (Ex. A5 at 1-2.) For those attendees who do not have access to the internet, Dr. Gala's staff will mail them the materials upon the attendees paying for the shipping costs of the materials. (*Id.* at 1.)

28. In the seminars and in the materials provided to participants, Dr. Gala does not indicate that the HLP can cure a condition. Instead, he states that changes in lifestyle can result in "reversing their signs and symptoms" or "reducing or eliminating the signs and symptoms of certain health issues and that people have been able to reduce or eliminate medications with the help of their prescribing physician(s)." (Ex. A5 at 4.) When a participant uses the word "cure," Dr. Gala will correct such usage and again reference that instead of curing a condition, the HLP is "reversing and reducing signs and symptoms." (*Id.*)

29. When an attendee signs up for a consultation, the attendee signs a Consultation Form and a Health Application and Case History form (Health Application)[6] to be completed and returned at the time of the consultation. (Exs. A5 at 2; R3 at 1-2; test. of Blust.) The Health Application is a three-page form with sections for the attendee to identify their present health complaint, symptom rating, medications, medical and social history, and a comprehensive review of past and current health conditions, such as heart disease, insomnia, varicose veins, and diabetes. In the section for the identification of the present complaint, the attendee identifies the main health problem, diagnosis, symptoms, prior treatments, length of affliction and health goals. (Ex. R3 at 1-3.)

30. The Consultation Form provides, in part:

> Please complete the following for your initial evaluation. The following will reserve your personal time with a team member to assess your case. While health matters will be discussed, our team is not replacing the role of your primary care physician nor entering into a doctor-patient

[6] Depending upon the seminar attended, the title of this form may be Fibromyalgia Application and Case History or Neuropathy Application and Case History. The contents of the form remain unchanged. (Exs. A6 at 1-3; A8 at 1-3.)

> relationship. Rather, the consultation is to evaluate if you qualify for one of our health coaching programs.
>
> At this consultation, we will discuss the specifics of the coaching including your goals, questions, concerns, past health history, medications, diet, supplements, recent diagnostic testing, illnesses and an overview of our services including costs and time frame to achieve these goals. We ask you bring your spouse or support partner, as we will be covering quite a bit of information[.]

(Ex. A5 at 15.) The form concludes with a statement that the consultation fee, such as an $87.50 fee for a consultation the day following the seminar, is non-refundable, followed by a signature line for the participant. (*Id.*) Consultations are not performed on the same day as the seminars to allow participants the opportunity to review the materials and think about the HLP. The delay also allows participants the opportunity to bring a spouse to the consultation. (Test. of Gala.)

31. During the consultation, Dr. Gala determines whether the individual is suitable to participate in the HLP. (Ex. A16 at 38.) Dr. Gala reviews the Health Application for completeness and the participant's motivation for lifestyle changes. He verifies the contact information and other basic information contained in the form with the participant. He reviews with the participant how the listed diagnosis was obtained and confirms whether the participant has a PCP. If the participant does not have a PCP, he suggests that the participant obtain one. For participants who inquire about their ongoing use of current medications and when they can reduce or eliminate them, Dr. Gala will advise them to talk to their prescribing physician before making changes to their medications. When asked by participants if the HLP will result in the discontinuation of medications, Dr. Gala "typically responds that, I have had people that have been able to get off their medications in the past with the help of their prescribing physician. * * *. We do offer suggestions on how they could dialogue with their physician so they can better articulate and relay their goals to their physician." (Ex. A5 at 6.)

32. Dr. Gala reviews the information from the seminar and the components of the HLP with the participant during the consultation. (Test. of Gala.) He asks participants whether they are willing to follow the HLP directives, such as giving up dairy and grains; whether they are willing to give up their favorite foods; and whether family and friends will support these changes. (Ex. A16 at 38-39.) Dr. Gala asks such questions in an effort to determine whether the participant has the willingness to be coached and the motivation to adhere to the HLP, attributes needed to succeed in the HLP. (Test. of Gala.) Dr. Gala will decline an applicant's request to participate in the HLP if they fail to demonstrate a commitment to these changes. (Ex. A5 at 10.)

33. Participants can pay for the HLP by check, credit card or by an opening a credit account with CareCredit, which Dr. Gala can arrange during the consultation. (Test. of Dr. Gala.) CareCredit is a credit account that only pays for health-related costs.[7] (Ex. A16 at 47.) CareCredit's policies provide that consumer's accounts will only be charged "for services that

[7] CareCredit is a credit program provided by Synchrony Bank. (Test. of Finch.) In the evidentiary record, the bank is sometimes referred to as "Synergy Bank," but its name is actually Synchrony Bank. (Exs. A11 at 2; A15 at 1.)

have been completed or will be completed or provided within thirty days of the initial charge of [the] account." (*Id.* at 50.) Dr. Gala has discussed his HLP with CareCredit, who approved the use of its services for his multiple-month wellness plans. (Test. of Gala.) When applying for credit with CareCredit, Dr. Gala will request the individual to provide a driver license, a credit card and Social Security number. (*Id.* at 59-60.) Dr. Gala will complete the application form and have the participant sign the form prior to uploading the information to CareCredit's website. Once Dr. Gala submits the online information, CareCredit will promptly approve or deny the extension of credit. (Exs. A5 at 8; A16 at 48, 62; test of Gala.)

34. Once Dr. Gala accepts an individual into the HLP, there are multiple forms that the participant must sign and additional materials that the participant receives from Dr. Gala. (Test. of Gala and Macias.) The Wellness Plan Agreement is a one page document that includes two columns of information, followed by a list of payment options with signature lines at the bottom of the page. The left hand column lists the services/products and the right hand column lists the charges for the services/products. The services/products listed on the form are the wellness plan sign-up fee; coaching and training that includes phone consultations, monitoring, materials and updates; diagnostic review of functional blood chemistry/urine analysis; case management that includes the time analyzing the participant's case, physician and health coach collaboration, record review, and support through the HLP; the healthy living guide, recipes and grocery lists; the cleanse; and the supplements. Each category has its own fee with the exception of the diagnostic review, which is noted as being included in the case management and work up fee, and the health living guide, recipes and grocery list, which is noted as being included with the wellness plan sign-up fee. (Exs. A3 at 12; A6 at 4.) Dr. Gala provides HLPs of two, four or six months in length, charging flat fees of $2,495, $5,995, and $6,995 respectively. If a participant pays by check or credit card at the time of the consultation, the Wellness Plan Agreement provides for a $1,000 reduction for the four and six month plans and a $500 reduction for the two month plan. (Exs. R5 through R7.) The diagnostic review is only for the review of any lab work a participant elects to obtain. The MDS does not perform lab work, but Dr. Gala will review any lab work obtained elsewhere by a participant. (Test. of Gala.)

35. The Office and Refund Policy provides, in part:

Office and Refund Policy

> Welcome! In our experience, working with metabolic imbalances, the success rate has been tremendous. As your partner in health, we are excited to be your coach on the journey toward a happier and healthier quality of life. This letter is to share our refund policy with our clients.
>
> 1. Full refund with the return of all materials within the first 3 days.
>
> * * * * *
>
> 2. Percentage refund within 15 days (see below).

3. After 15 days no refund will be issued.

* * * * *

We are not treating your allopathic conditions such as but not limited to: diabetes, fibromyalgia, neuropathy, sleep apnea or other endocrine disorders; rather we are working to help you work towards improving nutritional, lifestyle and metabolic and functional imbalances as we find them. We are not entering into a doctor-patient relationship. Diabetes, fibromyalgia or endocrine disorders cannot be *cured*; however our program has helped individuals become *clinically free from their symptoms and clinically reverse and put their health issues into remission*. We can assure you that we will do everything in our power to ensure you have a favorable outcome. * * *. If you are currently on prescription medication we ask you not to make any changes or go off of these medications *without first consulting with your prescribing doctor*. It is the responsibility of your prescribing doctor to make these changes and work with us toward helping you become as drug free as possible.

* * * * *

I have had the opportunity to discuss the purposes, benefits, and risks of the recommended care and alternatives to the recommended care have been reviewed. I further understand that * * * cannot guarantee the results of treatment. I know that each person reacts in a different way to treatments, procedures, and recommendations. Therefore, the results cannot be certain. I acknowledge that no guarantee of the outcome of the care I have requested has been made. I have had ample opportunity to ask questions and my questions have been answered to my satisfaction.

Please Print, Sign and Date below that you read, understood and agree to our refund policy.

(Exs. A3 at 10; A6 at 5; emphasis in original.) Dr. Gala encourages prompt refunds, including 100 percent refunds after the first 3 days, to participants that change their minds about participating in the HLP. (Ex. A5 at 5; test. of Gala.) The paragraph above the signature declaration is the only record that Dr. Gala has that informed consent has been obtained or a PARQ[8] has been performed. (Test. of Gala.)

36. Following the consultation, Dr. Gala will send the participant to his staff in a nearby room. The staff provides the individual with a packet that includes *Reversing Disease*, a

[8] PARQ is a common acronym used in the chiropractic field that stands for the review of the proposed treatment with the patient that a chiropractor must conclude before obtaining informed consent from a patient. The "P" stands for procedures intended for treatment; the "A" stands for alternatives to the proposed treatment; the "R" stands for the risks of the proposed treatment; the "Q" stands for answering any questions from the patient. (Test. of Dr. Prideaux.)

cookbook, and the Guide. (Ex. A16 at 42.) The staff advises the participant to review these materials and the online materials. The staff reminds the participant that they can change their mind and return the materials for a full refund within three days. (*Id.* at 43, 102.)

37. After the consultation, Dr. Gala sends a form letter to the participants that reiterates some points of the seminar, such as the adverse effect that inflammation has on the body. The letter concludes with a list of recommended supplements, which varies per participant as determined by Dr. Gala after his review of the participant's file. (Ex. A6 at 6-7; test. of Blust and Gala.) The supplements include a group of four core supplements: vitamin D, fish oil, a multivitamin; and a probiotic. Dr. Gala will recommend additional supplements to the four core supplements based upon the participant's medical conditions and goals. The supplements are usually shipped to the participant within three days of the letter. (Test. of Gala.)

Dr. Gala's History with the Board

38. In 2009, the Board received a patient complaint about Dr. Gala, alleging an injury to her back during a manipulation. After an investigation, the Board closed the complaint with a Letter of Concern issued to Dr. Gala. The Board received four complaints from consumers regarding Dr. Gala's billing practices in relation to his MDS practice: three in 2013, and one in 2014. The four complaints regarding billing practices involved individuals ranging in age from 65 to 80, two of whom had diagnoses for dementia or Alzheimer's. (Ex. A16 at 185-186.) The Board closed each complaint with a Letter of Concern issued to Dr. Gala. (Ex. A1 at 5.)

39. On August 5, 2014, the Board issued Dr. Gala a Letter of Concern, closing the 2014 complaint for insufficient evidence. In the Letter of Concern, the Board suggested that Dr. Gala make some changes to his HLP, such as making it clear in his advertising that Dr. Gala is a licensed chiropractor and emphasize in the materials that participants must consult with their doctors before making changes to medications. (Ex. A19 at 1-2.) In the Letter of Concern, the Board suggested that:

> Please provide your patients/clients clarification and education regarding your nutritional coaching and chiropractic practices and the differences thereof to enable them the ability to make educated decisions regarding their care and to provide you with their proper informed consent.

(*Id.* at 1.) The Board concluded the Letter of Concern by indicating "that the Board's concerns pertain more to the vulnerability of the majority of your clientele, as opposed to the efficacy and benefits of your program." (*Id.* at 2.)

40. Dr. Gala welcomes feedback from the Board and is willing to make changes to ensure compliance. (Ex. A16 at 85, 180, 193.) Dr. Gala conferred with the Board when developing his MDS business and the HLP, as he intended to make the HLP comply with chiropractor standards. (Test. of Gala.) Dr. Gala submitted a recording of a HLP seminar to the Board for review. In response, he received compliments from Board staff regarding the content of the seminar and a few suggestions for improvement, which he implemented. (Ex. A5 at 4.) Dr. Gala submitted copies of the forms he used in his HLP to the Board for its input and made

changes to the forms based upon the input he received. Dr. Gala consulted with the Board regarding the use of non-licensed health coaches versus chiropractic assistants. (Test. of Gala.) The Board confirmed with Dr. Gala that his staff did not need to be licensed chiropractic assistants if they did not physically touch patients when providing care or administering treatment. (Ex. A5 at 5.) Because the Board reviewed the Office and Refund Policy, Dr. Gala understood that obtaining prepayment was allowed so long as refunds for unperformed services were provided to the participants. (Test. of Gala.)

41. As indicated by Dr. Gala:

> We want to be in collaboration with the [Board] and offer the best support in products, services and safety to the public. * * *. Which is one of the reasons why, we offer a 100% money back refund for any reason if people change their minds after going home and decide one of our programs is not right for them for whatever reasons.

(Ex. A5 at 11.)

42. In 2015 and 2016, the Board received complaints regarding Patients 1, 2 and 3 and their interactions with Dr. Gala and his HLP. During the course of the Board's investigation into the complaints, Dr. Gala asked the Board investigators for input on how to improve the Office and Refund Policy. (Test. of Finch.) Following that contact with the Board, Dr. Gala asserted that he "will make it clear we are establishing a doctor-patient relationship" with any participants with whom he consults directly. (Ex. A5 at 3, 11.) Dr. Gala changed the language in the Consultation Form and the Office and Refund Policy to remove the language that provided that there was no doctor-patient relationship. Dr. Gala did not add language that advised the signor that a doctor and patient relationship was established. (Exs. A5 at 3; R4 at 1; R8 at 1.) Dr. Gala also decided to add an additional form for a participant to sign before submitting a CareCredit application. The form would be a short form, signed by the participant, in which the participant acknowledged that their credit would be checked, and, if approved, a medical line of credit would be issued. (Ex. A5 at 14.)

Patient 1

43. Patient 1 is currently 82 years old. She has dementia, fibromyalgia, arthritis and peripheral neuropathy in both feet. Patient 1 also uses a CPAP machine for her sleep apnea. She began developing dementia approximately five years ago. Upon the development of her dementia, she signed a power of attorney to allow her daughter, Ms. Bernstein, to take care of her financial matters. Ms. Bernstein helped her parents move into a retirement community and downsize their personal possessions. (Test. of Bernstein.)

44. On January 24, 2015, Patient 1 attended Dr. Gala's fibromyalgia seminar in a hotel without any family member to accompany her and signed up for a consultation. (Exs. A5 at 6; A6 at 1; R29 at 28.) Patient 1 found the seminar informative and the speaker easy to understand. (Ex. R29 at 28.)

45. Patient 1 thoroughly completed a Health Application. She noted her age as 79, and her main problems as fibromyalgia, poly neuropathy, numb feet and brain fog. Among her symptoms, she listed "funny feelings in head – shaky at times BAD BRAIN FOG." (Ex. A6 at 1; emphasis in original.) She noted her medications as synthroid and Cymbalta as well as a variety of supplements, including turmeric extract. For her medical history, she noted a history of cancer in 2003, plus current symptoms of cancer and memory loss or confusion, and a "head MRI in Dec." (*Id.* at 2-3.) All the information she provided was accurate. (Test. of Bernstein.)

46. During her January 26, 2015 consultation with Dr. Gala, Patient 1 appeared excited about the HLP and enthusiastic about losing weight and feeling better. (Test. of Gala.) During the consultation, Dr. Gala did not check Patient 1's vital statistics. (Test. of Finch.) He reviewed her goals, which included losing weight, reducing her brain fog, increasing her energy, and reducing her use of a CPAP. (Ex. A6 at 3.) Because Patient 1 reported cancer in remission in her Health Application, Dr. Gala advised her that she could begin the HLP but he would also be contacting her PCP. (Test. of Gala.) Patient 1 signed a Wellness Plan Agreement for a six-month HLP plan for $7,995. Because she paid by check on that same date, she received a $1,000 discount off that price. (Ex. A6 at 4.) She also signed the Office and Refund Policy. (*Id.* at 5.)

47. Upon completing the seminar and joining the HLP, Patient 1 expressed excitement about the HLP to Ms. Bernstein because she thought she would get tips to live a healthier lifestyle, lose weight and experience less pain. Patient 1 expressed to Ms. Bernstein that she believed the HLP would cure her fibromyalgia. Patient 1 also expressed her belief that Dr. Gala would be replacing one of her current medical doctors, either her primary care physician (PCP) or her neurologist. (Test. of Bernstein.)

48. On January 27, 2015, Dr. Gala mailed Patient 1 a form letter that included a list of the recommended supplements that would be shipped to her. (Ex. A6 at 6-7.)

49. On January 28, 2015, a health coach rescheduled the initial coaching call because Patient 1 had been ill. (Ex. A6 at 8.)

50. On January 30, 2015, Patient 1 called the HLP staff and inquired about the amount of water she should be drinking. Because Patient 1 was already drinking approximately how much would be recommended by the HLP guidelines, the HLP staff told her to continue her current intake and said that she could discuss it further at the first coaching session that was scheduled to occur in three days. (Ex. A6 at 9.)

51. On February 2, 2015, Ms. Jorgensen, the health coach, called Patient 1. The call lasted 45 minutes, and they discussed Patient 1's goals, the HLP recipes, restaurant choices, attendance at the weekly group calls, the use of the online HLP resources, and the use of the supplements that Patient 1 had just received. Patient 1 reported that she had a recent episode of dizziness and fell. Her home blood pressure test indicated her blood pressure was 172 over 109. Patient 1 informed Ms. Jorgensen that she had contacted her PCP about the incident. (Ex. A6 at 10-11.) Ms. Jorgensen scheduled Patient 1's next coaching call with a different health coach and placed a note in Patient 1's medical records, informing the next health coach to "ask how swishing in head has been." (*Id.* at 12.)

52. On February 11, 2015, a health coach called Patient 1. The call lasted 50 minutes, during which time they discussed the same items reviewed during the prior coaching call. During the call, Patient 1 indicated that she had not yet started taking the supplements. (Ex. A6 at 13-14.)

53. On February 17, 2015, a health coach rescheduled the next coaching call because Patient 1 was ill. Patient 1 indicated she had not been following the HLP because of her illness. (Ex. A6 at 15.)

54. On February 23, 2015, Patient 1 visited her PCP with a complaint of lightheadedness and difficulty walking. She reported to her PCP her participation in the HLP, describing it as a diet plan with supplements. (Ex. A20 at 3.) The PCP had never been contacted by Dr. Gala's office. (Test. of Bernstein.) Patient 1 reported that she had not used the supplements but liked the recipes. (Ex. A20 at 3.) Patient 1's PCP expressed the desire to see the supplements to verify their ingredients before Patient 1 consumed any to ensure that there were no risks associated with the supplements. Patient 1's PCP and her neurologist expressed concerns regarding the high costs of the supplements purchased through the HLP. Patient 1 returned the supplements to the MDS without consuming any of them. (Test. of Bernstein.)

55. On February 24, 2015, Ms. Bernstein called the HLP staff and wanted to discuss Patient 1's participation in the HLP. (Ex. A6 at 16.) On February 25, 2015, Ms. Bernstein left a message with the health coach that Patient 1 no longer wanted to participate in the HLP and advised that Patient 1's neurologist and her PCP expressed concerns regarding the HLP and the recommended supplements. (*Id.* at 17.) Dr. Gala was unaware of any concerns regarding Patient 1's participation in the HLP until Ms. Bernstein's February 25, 2015 message. (Test. of Gala.)

56. On February 26, 2015, Ms. Jorgenson had a conference call with Ms. Bernstein and Patient 1. Ms. Bernstein made it clear that Patient 1 was opting out of the HLP and that Ms. Bernstein would file complaints with the police and the Board if Patient 1 did not receive a full refund. (Ex. A6 at 18.) Ms. Jorgenson initially indicated uncertainty about how Patient 1 could cancel the contract and obtain a refund. (Test. of Bernstein.) When Ms. Jorgenson referenced the refund policy and that the fees were nonrefundable, Ms. Bernstein asserted that Patient 1 had dementia and again demanded a refund. (Ex. A6 at 18; test. of Bernstein.)

57. On February 28, 2015, Ms. Bernstein sent a letter to Dr. Gala indicating:

> You never should have enrolled our 78-year old mother in your questionable program. We feel that you took advantage of her age, medical condition and emotional state. * * *. More troubling, however, is the fact that you provided her with medical related advice without ever consulting with her treating doctor. Not only is this course of action highly questionable but, according to her treating doctor, may have been harmful to her wellbeing. * * *. In an effort to compromise and in the hopes of avoiding a drawn out dispute, [Patient 1] would be willing to accept a refund of $6,400 ($6,995 price - $595 "non refundable" fees).

(Ex. A6 at 19-20.)

58. On March 3, 2015, Dr. Gala called Patient 1, who reiterated that her PCP and her daughter did not want her in the HLP and suggested that Dr. Gala call Ms. Bernstein. (Ex. A6 at 22.)

59. On March 8, 2015, Dr. Gala sent Patient 1 a check in the amount of $6,400 and confirmed her withdrawal from the HLP. (Ex. A6 at 23.) Because Patient 1 withdrew from the HLP, Dr. Gala did not contact her PCP. (Test. of Gala.)

60. Patient 1 no longer recollects the details of the seminar or her participation in the HLP. Approximately one year after joining the HLP, Patient 1 began taking medications to treat her dementia. (Test. of Bernstein.)

Patient 2

61. Patient 2, who was 82 years old in 2015, had a number of medical conditions, including atrial fibrillation, heart valve replacement with a mechanical valve, a pacemaker, anemia, pulmonary hypertension, dementia, spinal stenosis, osteoporosis, hypothyroidism, hyperlipidemia, peripheral neuropathy, and degenerative disc disease. She utilized a CPAP machine and supplemental oxygen. She was under medical orders for a number of vitamins and supplements as well as prescription medications, including Lasik, Coumadin,[9] Digitek, tramadol, Symbicort, Celebrex and Wellbutrin, which included anti-coagulation and other heart medications. (Exs. A5 at 6; A8 at 1; A10 at 1-2.) The anti-coagulation medications were necessary for the proper functioning of her mechanical heart valve. (Test. of Lintz.)

62. Patient 2 resided in her own home and had home health care workers provide her daily services, including the distribution of her medications. (Test. of Lintz and Stotts.) Patient 2 was forgetting the instructions for her medications and becoming lost when heading to medical appointments. Senior and Disabled Services had also begun checking on Patient 2 because of a report it had received regarding her welfare and her failure to take her medications. On March 30, 2015, based upon her worsening dementia, Ms. Lintz, Patient 2's physician assistant who acted as her PCP, recommended that Patient 2 and her family look for an assisted or memory care home for Patient 2. (Ex. A10 at 45, 49-50.) Because Ms. Lintz found that Patient 2 needed assistance in making her health care decisions, she would consult with Patient 2's sons in treatment decisions. (Test. of Lintz.) Patient 2 continued to handle her own financial transactions with her bank. (Test. of Stotts.)

63. Patient 2's target international normalized ratio (INR), a test result that determines a patient's rate of blood clotting, was 2.5 to 3.5. (Ex. A10 at 57; test. of Lintz.) Lower INR levels placed Patient 2 at an increased risk of blood clots and higher levels reflect an increased risk of hemorrhaging. INR levels are susceptible to fluctuations based upon changes in a patient's diet,

[9] Coumadin, a blood thinner, is the brand name for warfarin. Because the witnesses usually used the brand name rather than the generic, I strictly use the name Coumadin in this Proposed Order to avoid confusion.

bowel movements, supplements and medications. Certain vitamins can be contraindicated for a patient on Coumadin, especially vitamin K that decreases the effectiveness of Coumadin. Omega-3 can interact with Coumadin and cause hemorrhaging. Diarrhea impairs the absorption of medications and may result in the decreased effectiveness of Coumadin. It is not common in the medical field for medical professionals to receive calls or record requests from other medical professionals, but it is the standard of care in the medical field to consult with a PCP when recommending supplements for a patient on Coumadin. (Test. of Lintz.)

64. On March 31, 2015, Patient 2's INR was 2.3. (Ex. A10 at 47.) On April 1, 2015, her INR was 2.7. (*Id.* at 46.) On April 8, 2015, her INR was 1.9 with Patient 2 reporting that she had missed a dose of Coumadin. (*Id.* at 43.) On April 23, 2015, Patient 2's INR was 2.8. On this date, Patient 2's regime had improved because of her two regular caregivers' increased monitoring of her medications. (*Id.* at 39.) On May 6, 2015, Patient 2's INR was 2.4. (*Id.* at 38.)

65. On May 13, 2015, Patient 2 reported that she felt her memory had deteriorated. During the medical visit, she failed to bring money she would need to pay the cab for the return ride to her home and left her purse in the exam room until reminded to retrieve it by staff. Ms. Lintz noted Patient 2's "mild dementia" in her medical records and approved Patient 2's travel plans to visit family. (Ex. A10 at 35.)

66. On May 21, 2015, Patient 2's INR was 3.4. (Ex. A10 at 33.) On June 1, 2015, Patient 2's INR was 3.3. (*Id.* at 57.) On June 15, 2015, Patient 2's INR was 4.2, and she complained of loose bowels following her return from her trip to visit family during which her diet had changed. (*Id.* at 31.)

67. On June 20, 2015, Patient 2 attended Dr. Gala's neuropathy seminar in Eugene, Oregon, after seeing a newspaper advertisement for it. (Ex. A8 at 1; test. of Lintz.) She found the class informative and the speaker easy to understand. (Ex. R30 at 27.)

68. On June 23, 2015, Patient 2 went to the emergency room because of her atrial fibrillation. (Ex. A10 at 29.)

69. Approximately June 28, 2015, Patient 2 thoroughly completed a Health Application.[10] She noted her age as 82 and her main problems as "Tired – heart – neuropathy depression congestive heart failure." (Ex. A8 at 1.) She noted some of her symptoms as back and leg pain, diarrhea, heart flutter and fast heart rate. (*Id.*) In her medical history, she included breast cancer, blood pressure, heart fibrillation, mitral valve prolapse, heart disease, diarrhea, head injury, and numbness or tingling as her current medical conditions. She also noted current issues with "a little" memory loss or confusion. (*Id.* at 3.) Under the sections titled "Medications" and "Medical and Social History," she indicated to "see list" and "see note." (*Id.* at 2.) Dr. Gala's medical records for Patient 2 did not include the list or note. (Ex. R30.) Patient 2 further noted on an additional form that her top three health frustrations were: neuropathy, congestive heart failure, and "'weak memory' big time." (*Id.* at 27.) The information that

[10] The form was dated June 29, 2015; however, Patient 2 met with Dr. Gala on June 28, 2015, and the form was completed before the meeting. (Ex. A8.)

Patient 2 provided on the form was accurate. (Test. of Lintz.)

70. During the consultation with Patient 2, Dr. Gala reviewed the HLP and performed a single neuropathy examination of Patient 2. (Test. of Gala.) Dr. Gala completed a neuropathy severity evaluation on Patient 2's feet, noting sensory losses of 28 to 35 percent in her right foot and left foot respectively, based upon Patient 2's grading of her symptoms. (Ex. A8 at 4.) Dr. Gala did not check Patient 2's vital statistics. (Test. of Finch.) During the consultation, Dr. Gala observed Patient 2 to be "confident, bright, engaging, clear minded, well spoken." (Ex. A9 at 1.) Dr. Gala did not observe any signs that Patient 2 had cognitive impairments. (*Id.*; test. of Gala.) Patient 2 appeared excited about partaking in the HLP and believed that her neuropathy would improve and sensation would return in her legs if she followed the HLP. (Ex. A9 at 1; test. of Lintz and Stotts.) Patient 2 reported to Dr. Gala that she was on Coumadin, and she understood from the consultation with Dr. Gala that there would be no problems with her participation in the HLP. (Ex. A10 at 23; test. of Lintz.) Dr. Gala confirmed that Patient 2 had a PCP, advised her to stay in touch with her PCP, and to check with her PCP before making any changes to her medications. (Ex. A5 at 6; test. of Gala.) Because Patient 2 reported breast cancer in 2013, Dr. Gala believed it would be "prudent" to contact her PCP at some point. (Test. of Gala.)

71. On June 28, 2015, Patient 2 signed a Wellness Plan Agreement for a four-month HLP for $5,995 and a peripheral neuropathy plan for 30 visits for $4,500. Dr. Gala deducted $2,000 from each plan's cost, and Patient 2 paid the remaining cost of $6,495 in full that same day via a credit card. (Ex. A8 at 6-7; test. of Gala.) Patient 2 also signed the Office and Refund Policy. (Ex. A8 at 8.) She signed a second Office and Refund Policy for the neuropathy program, which noted that:

> Neuropathy cannot be *cured*; however, our program has helped countless individuals become *clinically non-neuropathic*.

(*Id.* at 9; emphasis in original.) For the neuropathy plan, Dr. Gala referred her to another chiropractor to receive the 30 visits included in the neuropathy plan. (Test. of Gala.)

72. On June 29, 2015, Dr. Gala sent Patient 2 a form letter that included a list of the recommended supplements that would be shipped to her. (Ex. A8 at 10-11.) The supplements included the following:

- Clinical Omega-3 supplementation
- Clinical D3 supplementation
- AVED iron-free multi-vitamin
- Probiotic
- Tri B Plex
- Clinical Antioxidant
- Pro-Enz
- Nutra Cal
- Co-Q 10

(*Id.* at 11.)

73. Following the consultation, Patient 2, accompanied by her home health care worker, went grocery shopping to obtain groceries recommended by the HLP. The groceries contained significant amounts of healthy, nutritious food, such as fresh fruits, vegetables and tuna. (Test. of Stotts.)

74. On June 29, 2015, Patient 2 met with Ms. Lintz as a follow-up to the emergency room incident. Patient 2 expressed an interest in an ablation procedure. Ms. Lintz found Patient 2 alert and oriented but warned her to include her family in her decision on the ablation procedure because of her dementia. (Ex. A10 at 29.) On that date, her INR was 2.4. (*Id.* at 57.)

75. On July 1, 2015, a health coach called Patient 2. The health coach noted that Patient 2 had been diagnosed with early dementia[11] and that the coach would need to double check with Patient 2 that she had recorded the date and time for the next coaching call. Patient 2 informed the health coach that she had been to the hospital's emergency room earlier that week and was experiencing an irregular heartbeat. The health coach reviewed Patient 2's goals and reminded her to start the meal plan and the supplements as soon as they arrived. Patient 2 reported that she had consumed the nutritional shake, provided to her at the time of her consultation with Dr. Gala, on June 30, 2015. The health coach scheduled the next coaching call for July 7, 2015. (Ex. A8 at 12.) Following the call, Patient 2 reported to her home health care worker that she had difficulty hearing the health coach and understanding the health coach's suggestions. (Test. of Stotts.) Dr. Gala's records for Patient 2 failed to include any notation regarding any actions taken on Patient 2's new information regarding the dementia diagnosis or the emergency room visit. There was no record of any further contact with Patient 2 until July 20, 2015. (Ex. R30.) During the period that Patient 2 was involved with the HLP, Dr. Gala never contacted Ms. Lintz. (Test. of Lintz.)

76. On July 9, 2015, Patient 2 reported to Ms. Lintz significant dizziness and two bouts of diarrhea in the past 24 hours. She attributed the dizziness to some nuts she had eaten. Because of her dementia, Ms. Lintz was unable to elicit further details from Patient 2. (Ex. A10 at 26.)

77. On July 13, 2015, Patient 2's INR was 2.2, and she reported to Ms. Lintz that she had made numerous changes in her diet after attending Dr. Gala's seminar and joining the HLP. (Ex. A10 at 57.) She reported that she paid $4,000 on her credit card for the HLP, asserting that Dr. Gala promised that he could reverse her neuropathy. (*Id.* at 23.) After further discussion with Ms. Lintz, Patient 2 acknowledged that she erred in paying thousands of dollars for the promise of a medical cure. She indicated that family members had also expressed concerns about her purchase of the HLP. Patient 2's caregiver advised Ms. Lintz that she would assist Patient 2 in canceling the HLP. (*Id.* at 24.) Following the appointment with Ms. Lintz, Patient 2's home health care worker took Patient 2 to the bank to file a challenge to the credit card transaction for the fees for the HLP. (Test. of Stotts.)

---

[11] Other than Patient 2's references to memory loss and confusion on her Health Application, there were no other references to her mental condition or to any diagnosis of dementia in Dr. Gala's records until July 1, 2015. (Ex. R30.)

78. On July 20, 2015, Ms. Blust, Dr. Gala's executive director, returned Patient 2's home health care worker's call about Patient 2 withdrawing from the HLP. She spoke with Patient 2 and her home health care worker about Patient 2's decision to opt out of the HLP. (Ex. A8 at 15-16.) Ms. Blust informed the care worker that Patient 2 would receive a refund upon the return of the HLP's supplements and books. The care worker mailed the items to Dr. Gala's office. (Test. of Stotts.) Ms. Blust promptly refunded Patient 2's credit card in the full amount of $6,495 within a few days of the care worker mailing the items. (Ex. A8 at 15-16; test. of Stotts.)

79. On July 20, 2015, Patient 2's INR was 2.2, and she reported to Ms. Lintz ongoing explosive black diarrhea that had begun prior to her commencement of the HLP. She reported that she had ceased the new HLP diet and returned to her prior diet. (Ex. A10 at 21, 57.) Subsequently, Ms. Lintz had a conference call with Patient 2's children regarding her progressive dementia and likely inability to continue to live independently. (*Id.* at 19.) Because Patient 2 had already ceased her participation in the HLP, Ms. Lintz did not contact Dr. Gala's office. (Test. of Lintz.)

80. On July 27, 2015, Patient 2's INR was 3.3, and she reported significant improvement in bowel movements. Patient 2 advised Ms. Lintz that she received a refund of the $6,495 HLP cost on her credit card. (Ex. A10 at 17, 57.)

81. On August 5, 2015, Dr. Gala called Patient 2 and her home health care worker. He confirmed that the refund had been received and that they were satisfied with the outcome. Patient 2's care worker informed Dr. Gala that Ms. Lintz intended to file a complaint with the Board. Following the conversation, Dr. Gala wrote a letter to the Board, confirming that Patient 2 "was given a full refund after she rescinded her decision during her due diligence period after talking with her provider." (Ex. A9 at 1-2.)

82. On August 10, 2015, Patient 2's INR was 3.3. (Ex. A10 at 57.) On August 24, 2015, Patient 2's INR was 4.3. (*Id.* at 16.) On September 9, 2015, her INR was 4.3. (*Id.* at 14.) On October 1, 2015, her INR was 3.8, and she reported a return of diarrhea. (*Id.* at 11-12.) On October 15, 2015, her INR was 3.2. (*Id.* at 9.) On January 1, 2016, her INR was 3.0. (*Id.* at 6.) On March 24, 2016, her INR was 2.7. (*Id.* at 4.)

Patient 3

83. In 2016, Patient 3 was 69 years old with medical conditions that included arthritis and fibromyalgia. (Ex. A4 at 4.) She received the fibromyalgia diagnosis approximately 20 years ago and experienced constant aches and pain from the condition. She took prescription anti-inflammatory medication to treat the symptoms. Because of the pain from the fibromyalgia, Patient 3's activity level was very restricted. Patient 3 wanted to find a solution that would alleviate her fibromyalgia symptoms so that she could return to a more active lifestyle. (Test. of Patient 3.)

84. On February 13, 2016, Patient 3 attended Dr. Gala's free fibromyalgia seminar at the Bend Convention Center after she reviewed the HLP's Facebook advertisement about the

seminar that her daughter had forwarded to her. (Exs. A3 at 4; A14 at 1.) The advertisement was entitled "The End of Fibromyalgia," which appeared in large, bold type at the top of the advertisement. (Ex. A3 at 5.)

85 Patient 3 found the seminar informative and the speaker easy to understand. (Ex. R31 at 19.) During the seminar, Dr. Gala discussed his mother's fibromyalgia and how she was now able to run marathons after making the lifestyle changes recommended in Dr. Gala's HLP. Dr. Gala discussed how people can "work towards reducing or reversing symptoms related to fibromyalgia and sleep apnea." (Ex. A13 at 1.) He also discussed in detail the HLP, which he explained focused on helping people make changes in "their cooking, lifestyle, eating habits," and the options for paying for the HLP. (*Id.* at 1, 3.) He repeatedly warned the seminar attendees of the commitments needed to make the lifestyle changes required by the HLP and to only join the HLP if they were willing to make the commitments, such as the reduction in grain and dairy consumption. (*Id.*) During the seminar, Dr. Gala did not state that he will "cure" fibromyalgia, but he provided examples of individuals who achieved complete remission of fibromyalgia, such as his mother, or no longer had any symptoms of sleep apnea, such as his stepfather, whose sleep apnea symptoms were eliminated after making similar lifestyle changes. (*Id.* at 1.)

86. After the seminar, Patient 3 signed the Consultation Form and paid the $87.50 fee to have a consultation with Dr. Gala the following day. (Exs. A12 at 15; R31 at 20; test. of Patient 3.) Patient 3 concluded from the seminar that Dr. Gala could cure her fibromyalgia. Patient 3 was interested in the HLP because of its promotion of healthy lifestyle changes and the positive effects such changes would have on her health conditions. She was not persuaded to pursue the HLP because of Dr. Gala's standing as a chiropractor. (Test. of Patient 3.)

87. Based upon his statements during the seminar, Patient 3 believed that the consultation would be a health evaluation, in which Dr. Gala would review her physical condition and medical history. (Ex. A11 at 1; test. of Patient 3.) At the time of the scheduling of the consultation, Patient 3 also received the Health Application, which she completed. (Exs. A12 at 3-6; A14 at 2.)

88. On February 14, 2016, Patient 3 met with Dr. Gala for an approximately 30-minute consultation. He flipped through her questionnaire and asked her a few questions, such as how long she had fibromyalgia. (Exs. A11 at 1-2; A14 at 2.) On the bottom of the Health Application, Dr. Gala noted Patient 3's goals, such as reduction in fibromyalgia and arthritis, and her willingness to comply with the HLP and give up grains and dairy. (Ex. A12 at 6.) During the consultation, Dr. Gala did not review Patient 3's current medications with her and did not perform any kind of physical examination or obtain her vitals, such as blood pressure. (Test. of Case) Without performing a PARQ, Dr. Gala indicated that his HLP could help Patient 3 with her fibromyalgia and other health problems. He proceeded to discuss the HLP services with her, the length of the HLP, and the costs of the HLP. (Exs. A11 at 1-2; A16 at 82; test. of Patient 3.)

89. Dr. Gala was aware that Patient 3 had limited financial means. (Ex. A5 at 6.) Dr. Gala suggested that she could obtain a part-time job to help pay for the HLP. He also suggested that, if she gave up drinking Diet Coke, she would save $3 per day, which could then be applied

towards the monthly payment for the HLP. Patient 3 repeatedly informed Dr. Gala that she could not afford the costs of the HLP and became agitated and upset. Dr. Gala suggested that she might qualify for a hardship loan. At his urging and his insistence that he must have her information to perform a credit check,[12] she provided him her driver license, her social security number and credit card. She signed some forms he presented to her without reading them. Dr. Gala advised her he needed the forms to determine her eligibility for a hardship loan. (Exs. A11 at 1; A14 at 4; test. of Patient 3.) When Patient 3 expressed concerns about the cost of the HLP, Dr. Gala questioned Patient 3 by asking "what's more important" and "how important is getting healthy to you." (Test. of Gala.)

90. During the February 14, 2016 consultation with Dr. Gala, Patient 3 initialed and signed the Wellness Plan Agreement. (Ex. A3 at 10-12.) The Wellness Plan Agreement was originally for a six-month plan for a total cost of $7,995. Dr. Gala modified the program as shown by a handwritten notation for a nine-week quick start plan at a hardship rate of $3,800 to be financed over 60 months at payments of $90 per month. Dr. Gala also wrote "$3/day" adjacent to the 60 months financing notation. (Exs. A3 at 12; A16 at 45.) Patient 3 signed an Application and Credit Card Account Agreement for CareCredit that stated "I am asking Synchrony Bank * * * to issue me a CareCredit Credit Card * * *." (Ex. A11 at 10.) Above her signature, the Application and Credit Card Account Agreement stated that Patient 3 was "responsible for obligations under the Agreement and by signing below, you each agree that you intend to apply for joint credit." (*Id.*) Patient 3 also signed a Promotional Plan Selection Slip for CareCredit. Above her signature, it stated that her signature "acknowledges that you have received goods and/or services from a CareCredit Provider. You hereby agree to perform the obligation set forth in your Cardholder Agreement with GE Capital Retail Bank." (*Id.* at 8.) Once Patient 3 signed the forms, Dr. Gala uploaded the information to the CareCredit website and obtained immediate approval of the loan. (Test. of Gala.)

91. During the consolation, Patient 3 became very nervous and scared. She felt overwhelmed by Dr. Gala's demeanor and insistence that she join the HLP. She signed the forms Dr. Gala presented to her because she felt pressured to do so, although she did not tell Dr. Gala her reason for signing the forms. (Test. of Patient 3.)

---

[12] There was some dispute regarding the events of this consultation. I found Patient 3's testimony more persuasive than Dr. Gala's or his assistant's written statement in some respects. In a letter dated March 30, 2016, Dr. Gala noted that he advised Patient 3 of the process for applying for credit and performing a "credit check," which supports Patient 3's memory of the event. (Ex. A13 at 2, 4.) When she again informed him that she did not have the funds for the HLP and asked for copies of her identification to be returned, Patient 3 recalled Dr. Gala's insistence that he retain those copies because he was legally required to keep them for seven years. (Test. of Patient 3.) OAR 811-015-0005(3) requires chiropractors to keep a patient's health care and billing records for a minimum of seven years, which again supports Patient 3's recollection of the event. On March 10, 2016, Ms. Walls, one of Dr. Gala's assistants at this seminar, completed a written statement regarding her interactions with Patient 3. (Ex. A12 at 15-16.) However, her representations in the March 10, 2016 statement regarding Patient 3's measured and calm responses were contradicted by her February 14, 2016 email to Dr. Gala's customer care manager, in which she represented that Patient 3 "freaked out." (*Id.* at 17, 21.) The evidence established that Patient 3 became visibly upset during this event.

92. After Patient 3 signed the forms, Dr. Gala sent her to the neighboring room to review the HLP's materials with his assistants. (Ex. A11 at 1.) Patient 3 was not aware that Dr. Gala had already processed and charged the CareCredit account. (Exs. A11 at 1; A14 at 4; test. of Patient 3.) Patient 3 never viewed Dr. Gala as her medical provider. (Test. of Patient 3.)

93. Dr. Gala's assistants provided Patient 3 with the Office and Refund Policy, which she signed. (Ex. A12 at 15.) They verified Patient 3's contact information, scheduled her first HLP coaching session, and issued Patient 3 the Guide and other materials. (*Id.* at 14.) They began reviewing these materials with Patient 3. Partway through this review, Patient 3 stated she did not want to participate in the HLP. The assistants offered her an alternative program, which Patient 3 rejected. She again reiterated that she did not want to participate in the HLP. Patient 3 became visibly upset during this interaction. Patient 3 asked for the assistants to void out her contract, which they proceeded to do. (Exs. A12 at 14-16; A14 at 5; test. of Patient 3.) The assistants contacted Dr. Gala, who confirmed the issuance of the CareCredit loan and advised the assistants to arrange a refund. (Test. of Gala.) The assistants informed Patient 3 that Dr. Gala had already charged $3,800 to a CareCredit loan in her name with a five-year payment plan consisting of $90 monthly payments. (Exs. A11 at 1-2; A12 at 3-6, 14; A14 at 2-3, 5.) Ms. Walls, one of the assistants, assured Patient 3 that Dr. Gala's customer care manager would call CareCredit on Monday, February 15, 2016, to arrange for the refund of the CareCredit loan. (Ex. A3 at 9.) After Patient 3 left, Dr. Gala's assistant contacted the customer care manager to request the refund of the CareCredit account. (Ex. A12 at 17.) The refund was processed by the end of that day. (Exs. A11 at 18; A12 at 17.)

94. On February 15, 2016, Dr. Gala's assistant called Patient 3 and confirmed that the CareCredit loan had been cancelled. (Ex. A11 at 2.) On February 16, 2016, Patient 3 received a phone call from Synchrony Bank, confirming the CareCredit loan and providing her instructions on how to pay the loan. She subsequently received a copy of the CareCredit card in the mail. (Ex. A11 at 12.) Patient 3 filed a fraud claim with Synchrony Bank regarding the opening of the CareCredit account and the $3,800 charge. (Test. of Patient 3.)

95. On February 16, 2016, Patient 3 sent a letter to Dr. Gala and demanded reimbursement of the $87.50 consultation fee. (Ex. A11 at 1-3.) On that same date, she met with a City of Bend police officer and filed a report regarding her interactions with Dr. Gala and "possible fraudulent activity," in regards to the opening of the CareCredit loan. (Ex. A3 at 4.) Patient 3 informed the police officer that she had signed the forms, but she felt pressured to do so, felt that the forms were quickly and poorly explained, and had accepted Dr. Gala's statement that the forms were only to see if she qualified for a loan. (*Id.* at 6, 8.) The police officer took no further action in regards to Patient 3's report. (*Id.* at 4.)

96. On February 19, 2016, Dr. Gala's office refunded Patient 3's $87.50 consultation fee and conveyed that information to her. (Exs. A11 at 13-14; A12 at 22.)

97. After receipt of Patient 3's complaint, Synchrony Bank opened up a fraud investigation. Synchrony Bank did not perform any further investigation and closed the claim because Dr. Gala's office had already credited the CareCredit for the full price of the sale. (Ex. R34 at 1.) On March 1, 2016, Synchrony Bank resolved Patient 3's credit dispute in her favor

and removed any information regarding the opening of the CareCredit account from her credit reports. (Ex. A15 at 1.) Subsequently, Synchrony Bank verified that Dr. Gala's office followed the CareCredit policies in his processing of Patient 3's transaction. (Ex. R34 at 1.)

98. On March 2, 2016, Dr. Gala sent a letter to Patient 3, in which he repeatedly apologized for her experience. He noted that "I have been told before that my passion can come across as overbearing & can cause people to feel overwhelmed." (Ex. A11 at 4, 7.) He further explained that he had been wronged by people in his life, and he reflected that he was only human and therefore fallible. He reiterated his belief that the HLP could help her achieve her health goals. He proceeded to offer her free access to the HLP for four months, free supplements for her and her husband, a gift card, and a donation to a charity of her choosing, or any other suggestion she may have. (*Id.* at 4-6.) He sent this letter before he received any notice from the Board regarding Patient 3's complaint. (Ex. A12 at 25.) Patient 3 was angry about her interactions with Dr. Gala, felt that the letter was a bribe, and refused to respond to the letter. (Test. of Patient 3.)

Additional Chiropractic Resources

99. The Ethics and Boundaries Assessment Services (EBAS) test is conducted by a national board and tests a health care professional's knowledge of ethics and boundaries in health care practices. (Test. of Finch and Prideaux.) The Special Purposes Examination for Chiropractic (SPEC) test is conducted by a national board of chiropractor examiners and assesses the competency of the chiropractor in all aspects of chiropractic practice. (Test. of Prideaux, Browne and Abrahamson.) The SPEC test covers the following clinical areas: patient interview, physical examination, neuromuscular skeletal examination, X-ray examination, clinical lab and special studies, diagnosis or clinical impression, chiropractic techniques, supportive techniques, and case intervention strategies. (Ex. A24 at 1, 3.) Continuing education classes cover a variety of subjects, including record-keeping and initial examinations. (Test. of Abrahamson.) Continuing education classes for chiropractors do not include a test that confirms the chiropractor's knowledge of the materials. (Test. of Browne.)

100. The medical publication, *The Merck Manual*, in discussing psychosocial assessments provides:

> The physician must determine whether the patient can provide a history, ie, whether the patient readily and coherently responds to initial questions. If not, information is sought from family and caregivers. Even when a patient is communicative, close family members, friends, or caseworkers may provide information that the patient has omitted.

(Ex. A23 at 2.)[13]

[13] Only two pages of *The Merck Manual* were included in Exhibit A23.

101. The Board publishes an Oregon Chiropractic Practices and Utilization Guidelines (OCPUG), Volume 1 for common neuromuscular skeletal conditions, which was updated in 1991 and revised in November 2017. (Ex. A22.)[14] The OCPUG is the Board's "attempt to provide a guideline for assuring that quality [of care] and [clinical] competence" are rendered to patients. (*Id.* at 13.) In the Introduction, the OCPUG warns "that these guidelines are not designed to cover the complete scope of chiropractic practice in Oregon" and "modifications will be appropriate to supplement the original consensus process." (*Id.*)

102. The OCPUG provides that a chiropractor should:

- perform such examination and diagnostic procedures within the statutory scope of practice and clinic capabilities and consistent with efficient exploration of the condition presented; (Ex. A22 at 15.)

- accurately record the examination's findings in the patient's case file consistent with common practice; (*Id.* at 16.)

- record and date the treatment plan, including expected length and intensity of treatment, in the case file; and (*Id.* at 17.)

- perform ongoing assessments of subjective and objective findings; (*Id.*)

103. At the initial contact with a patient, the OCPUG notes that the commonly followed practices of a chiropractor require an intake interview, followed by the performance of an examination and diagnostic procedures. The chiropractor then forms a diagnostic impression with a prognosis and concludes with the formulation of a treatment plan. The intake interview would include a history of presenting illness, past health history and personal and social history. An examination would include a physical examination, a psycho-social assessment, and laboratory/diagnostic imaging/special examinations as clinically indicated. (Ex. A22 at 19.) The physical examination would include obtaining the patient's vitals. (*Id.* at 20.) Upon deciding to treat the patient, the chiropractor would implement manual therapy, physiological therapeutics, nutritional, counseling and/or other specialized treatments. (*Id.* at 21-22.)

104. The OCPUG provides record-keeping guidelines, including the requirement that chart notes, which can be understood by peers, should be recorded for each visit. Full SOAP charting, while recommended, is not required. (Ex. A22 at 23.)

105. The OCPUG's Chiropractic Management Algorithm was completely revised in November 2017. (Ex. A22 at 1-5.) The 1991 and the revised 2017 algorithms provide that the chiropractor is to begin with a patient consultation, obtaining the history of the presenting illness and a physical examination. The chiropractor is to determine a diagnostic or clinical impression followed by a treatment plan. During the implementation of the treatment plan, the chiropractor should reassess the condition, the effectiveness of treatment, and make appropriate adjustments. If maximum improvement has been achieved, then both algorithms provide for ongoing

[14] The first five pages of Exhibit A22 are the 2017 OCPUG revisions. Pages 6 through 40 of Exhibit A22 are the 1991 OCPUG.

supportive or maintenance treatment (in the 1991 OCPUG) or ongoing supportive or wellness care. (*Id.* at 2-4, 27.) In the 2017 OCPUG, the Board ceased using the term "maintenance care," finding that the term was not well-defined. Supportive care is intended to minimize degeneration in condition and can include lifestyle modifications. (*Id.* at 4.) Wellness care can include any element of a chiropractor's scope of practice to enhance a "patient's physical well-being and potentially prevent the future onset of symptoms." (*Id.* at 5.)

106. The Board also produces a pamphlet entitled *Chiropractic in Oregon*. (Ex. R32 at 1.) The pamphlet provides, in part:

> Chiropractic health care is an alternative to conventional, or allopathic, medicine. * * *.
>
> Along with specific, careful "adjustments" to spinal and/or other joint "subluxations," your chiropractor's treatment plan may include diet, exercise, psychosocial, and ergonomic recommendations. Many treatment options are available, and these may be discussed with your chiropractic physician.
>
> * * * * *
>
> A chiropractic physician will:
>
> - Take a health history.
> - Conduct a thorough physical examination to determinate and evaluate conditions that are appropriate for chiropractic care.
> - Ensure that the patient understands the type of care to be administered and what results to expect.
> - Provide a clear understanding of financial arrangements.
> - Keep current, detailed, and complete records of the patient's history, examination, and ongoing treatments.
> - Provide ongoing evaluation of treatment including both efficacy and projected duration consistent with the patient's stated goals.
> - Refer a patient to suitable health care provider for conditions that require co-management or are not otherwise amendable for chiropractic care alone[.]

(*Id.* at 2.)

Dr. Seaman's Expert Opinion

107. David Seaman, DC, has been licensed as a chiropractor by the State of Florida since January 2006. He was originally licensed as a chiropractor by the State of New York in 1986 but no longer holds an active New York license. (Ex. R23 at 1-2.) He has never been licensed as a chiropractor in Oregon. (Test. of Seaman.) After obtaining his chiropractic degree from the New York Chiropractic College in 1986, he obtained a master of science degree in biology and nutrition from the University of Bridgeport in 1991. Dr. Seaman has held a variety of faculty positions in a number of different colleges and universities, teaching chiropractic and nutrition courses, and has authored a number of papers and books involving these subjects. He is a member of the American Chiropractic Association and the International Association for the Study of Pain and is a fellow in the American College of Chiropractors. He had a clinical chiropractic practice from 1987 through 1990 and from 2009 to 2010. (Ex. R23.) Currently, he holds a faculty position at Logan University in Missouri, works as a nutrition consultant, and teaches license renewal classes for chiropractors throughout the nation. (Test. of Seaman.)

108. Chiropractic doctors have a history of a traditional approach to chiropractic care that is focused on mechanical and structural treatment of the neuromuscular skeletal system. Because of recent research from the mid-2000s that demonstrated the relationship between diet, inflammation, pain and chronic disease, chiropractors should incorporate nutritional modification counseling for patients who are experiencing chronic inflammatory conditions. (Ex. R25 at 1-3.) Chiropractic care encompasses any treatment allowed by the regulatory agency in each state. Most states recognize nutrition recommendations as part of chiropractic practice. (Test. of Seaman.)

109. Low-grade chronic inflammation[15] is the primary cause of most chronic degenerative diseases. Chronic inflammation manifests locally and systemically because of increased cellular release of a variety of inflammatory mediators. The release of the inflammatory mediators generates pain in somatic tissues. (Ex. R24 at 2.) Thus, musculoskeletal pains, tendinopathy, and metabolic syndromes, such as diabetes, can be treated by implementing anti-inflammatory dietary changes. (Exs. R24 at 2; R25 at 1-2.) As an example, in response to high glucose levels that occur with the excessive consumption of sugar, flours and refined oils, inflammatory chemicals are released that cause chronic inflammation in the pancreas, which leads to the development of diabetes. Stress, disruptions in sleep, lack of exercise and overeating can all cause inflammatory reactions. Thus, lifestyle changes that include improved eating habits and exercise reduce inflammatory reactions and can reverse chronic inflammation. (Test. of Seaman.)

110. An anti-inflammatory diet can reduce pain and inflammation and help reverse some medical conditions, such as heart disease, diabetes and pain syndromes. (Ex. R24 at 1-2.) An anti-inflammatory diet includes adequate amounts of protein, lipids, Omega-3 fatty acids and is rich in phytonutrients, micronutrients and fiber. Such a diet includes fish, lean meats, vegetables, fruits, eggs and sweet potatoes. (*Id.* at 5.) The anti-inflammatory diet promotes a significant reduction in the consumption of sugar, flour, refined oils, gluten, and non-lean meats. (*Id.* at 8-9.) Certain supplements, such as magnesium, probiotics, vitamin D, Omega-3 fatty

[15] Chronic inflammation is distinct from the acute inflammation that occurs following an injury or infection. (Ex. R24 at 2.)

acids and fiber support the anti-inflammatory diet. (*Id.* at 5.) As an editor of an article that Dr. Seaman published in Practical Pain Management stated, "Most experts consider this diet to be healthy." (*Id.* at 1.) Likewise, most medical PCPs would support any healthy lifestyle changes made by their patients. In general, healthy changes in diet are not contraindicated for patients. (Test. of Seaman.)

111. For conditions based in chronic inflammation, lifestyle changes are the only treatment. Thus, the condition needs to be identified in order to determine if an anti-inflammatory diet would help treat the condition. For example, an anti-inflammatory diet would not help all neuropathies. The chiropractor would need to identify the type of neuropathy to determine the efficacy of an anti-inflammatory diet. Thus, a diabetic neuropathy, as a chronic inflammatory state resulting from hyperglycemia, would be susceptible to treatment with an anti-inflammatory diet. (Test. of Seaman.)

112. In response to the question of whether a chiropractor would have to render a diagnosis to "encourage healthy eating," Dr. Seaman opined that such a question was difficult to answer. (Test. of Seaman.) He opined that medical doctors typically render a diagnosis prior to any treatment. He further opined, in traditional chiropractic practice, the chiropractor would identify the underlying condition prior to treatment. Dr. Seaman further opined that physical examinations are "not necessarily needed" for nutritional suggestions. (*Id.*)

113. Dr. Seaman finds the HLP's dietary recommendations to be consistent with anti-inflammatory methodology used in other programs known to reduce chronic inflammation and treat chronic anti-inflammatory conditions. (Test. of Seaman.)

114. In general, an anti-inflammatory diet is not designed to a specific individual except for that individual's personal preferences or food allergies. Dr. Seaman opined that, in general, it would not be necessary for a chiropractor suggesting the introduction of an anti-inflammatory diet to consult with the patient's PCP. However, sudden, rapid changes to diet or the introduction of supplements are risky for patients on Coumadin because of the potential adverse effects on the patient's INRs. For example, the anti-inflammatory diet substantially increases a patient's consumption of green vegetables that contain high levels of vitamin K, which is a "big problem" for patients on Coumadin because of Vitamin K's blood clotting properties. (Test. of Seaman.) The anti-inflammatory diet also increases the consumption of high potassium foods. High potassium levels can trigger a heart attack for a patient on Coumadin with the attendant risk of death. Dr. Seaman opined that for any patient on Coumadin, a chiropractor would have to coordinate care with the monitoring medical professional before the introduction of any dietary changes or supplements for a patient on Coumadin. Dr. Seaman further opined that the risks of such changes for a patient on Coumadin are so widely known by health practitioners that he does not always review the risks in his national nutritional lectures. (Test. of Seaman.)

115. The introduction of an anti-inflammatory diet can also cause complications with a patient's concurrent use of some other medications, such as beta blockers and diuretics used to treat high blood pressure. Such medications would also warrant communication to a patient's PCP to coordinate care. (Test. of Seaman.)

116. For chiropractors, a doctor-patient relationship forms when the chiropractor performs a nutritional consult. Completing a health history form and discussing nutritional changes at an initial consultation would result in the formation of a doctor-patient relationship. (Test. of Seaman.)

Dr. Browne's Expert Opinion

117. Dr. Browne graduated from the University of Western Chiropractic College. He has been licensed as a chiropractor by the Board since 2010. He was an associate director for nutrition and functional medicine for two years and was an assistant professor in natural medicine for three years. In both of these positions, he also maintained a clinical practice as a chiropractor. He ceased clinical practice in 2015 and has been exclusively in administrative and instructive positions since then. (Test. of Browne.)

118. Dr. Browne had no experience or knowledge of the OCPUG prior to his involvement with the Board's investigation of Dr. Gala. After he reviewed the OCPUG, he found the OCPUG to include the guidelines for chiropractic standards of care. Board rules and the OCUPG would be applicable to all types of chiropractic care and do not provide any distinction between wellness care and traditional neuromuscular skeletal care. (Test. of Browne.)

119. It is an understanding in the chiropractic profession that if an action is not documented in a patient's medical record, then it did not occur. All components of a PARQ and the treatment plan must be documented in a patient's chart notes for the initial examination. (Test. of Browne.)

120. Wellness care is a term widely used in chiropractic practice to mean objective maintenance of a state of good health, reduction in diseases and reduced risk of illness through the practice of lifestyle changes, primarily diet and exercise. It is normally instituted for general health improvement and not for condition or problem focused care. When recommended solely as a means to maintain and maximize health, a wellness care plan, such as Dr. Gala's HLP would not be considered chiropractic practice. Chiropractors can limit the scope of their practice to non-problem focused wellness care so long as there are no risks to the patients. A chiropractor would still need to evaluate problems, and, if electing not to treat, would need to refer patients to other medical professionals. (Test. of Browne.)

121. When a chiropractor recommends a wellness plan for a clinical condition, then it is a treatment plan for that condition and considered chiropractic care. There is no separate standard for different types of chiropractic care. A chiropractor must take the same steps in providing problem-based wellness care or traditional neuromuscular skeletal care, including charting and assignment of codes for symptoms, treatment and diagnosis. When Dr. Gala accepts an individual who attends his condition-specific seminars into the HLP, he is recommending a treatment plan to treat that individual's clinical condition, which is considered chiropractic practice. (Test. of Browne.)

122. To meet the minimum standards of chiropractic care, the steps at an initial

examination, assuming there are no cognitive issues, would include conducting a structured verbal health history; making findings from the history and confirming the findings with the patient; determining and completing any appropriate physical examination; reviewing the results of the history and the examination to complete the differential diagnosis process to select the most likely diagnosis; and reviewing the treatment plan with the patient and performing PARQ to obtain informed consent. The physical examination must include, at a minimum, the taking of the patient's vitals, which are height, weight and blood pressure. (Test. of Browne.)

123. Chiropractic minimum standards of care require a chiropractor to question any patient that reports being ill. The chiropractor must determine the onset of illness and exact nature of the symptoms to evaluate whether changes should be made to the treatment plan. A telephone evaluation would not be satisfactory in such a circumstance because it limits the ability of the chiropractor to gather visual information, and, especially for elderly patients, makes it difficult for the chiropractor to evaluate the presence of cognitive or hearing issues that may impair communication or understanding. (Test. of Browne.)

124. A chiropractor should avoid making comments about their personal experiences and personal commentary to prevent any boundary issues with patients. In the March 2, 2016 letter to Patient 3, Dr. Gala's personal statements of it "hurt my heart" to hear of Patient 3's distress and "I have been wronged" in his past encounters created a potential boundary issue, as it had the appearance of inappropriate manipulation of the patient. (Test. of Browne.) A chiropractor must be careful when extending offers to patients, such as the offers Dr. Gala made to Patient 3 in the March 2, 2016 letter, as such offers also give the appearance of an attempt to influence Patient 3's attitude towards him. (*Id.*)

125. A chiropractor must be cognizant of any cognitive impairment of a patient because it may inhibit effective communication, impair the patient's comprehension of the treatment plan, and jeopardize the accuracy and completeness of the information provided by the patient. When treating a patient with a cognitive impairment, a chiropractor should perform a psychosocial assessment during an examination. Such an assessment is essentially a mini-mental status examination to determine the patient's presence and degree of any cognitive impairment. There is no standard to which a chiropractor is held with regard to the type or extent of questions asked during the assessment. As a general rule, questioning involves determining whether the patient is oriented to person, place and time. If there appears to be cognitive impairment, a chiropractor would consult with either a family member or a caregiver regarding the patient's condition and treatment. (Test. of Browne.)

126. At the initial consultation with Dr. Gala, Patient 1 included the following symptoms in the Health Application: brain fog, memory loss, confusion and a prior MRI. Based upon these symptoms and her advanced age of 79, Dr. Gala was required, as a chiropractor, to make additional inquiries to determine the extent of any cognitive impairment Patient 1 was experiencing. Even though Patient 1 thoroughly answered the questions on the Health Application and did not demonstrate any cognitive deficit, the symptoms she noted in the Health Application required Dr. Gala to perform a cognitive evaluation. (Test. of Browne.)

127. Because Patient 1 noted current cancer issues in the Health Application, Dr. Gala

was required to ask follow-up questions regarding her cancer history and current status. Active cancer usually means the patient is receiving medical treatment, and, dependent upon the treatment, nutrition changes could be contraindicated. Because of her reference to neuropathy and numb feet, Dr. Gala should have performed additional testing, including upper and lower pulses to eliminate vascular issues and a motor examination to check for movement and strength. Dr. Gala was required to perform these examinations because Patient 1 did not bring her prior medical records for Dr. Gala's review. (Test. of Browne.)

128. In light of the variety of medical conditions noted by Patient 1, including fibromyalgia, cancer, and neuropathy, Dr. Gala should have consulted with Patient 1's PCP, as he should not have managed her care in isolation without the PCP's input. (Test. of Browne.)

129. Patient 2, who was 82 years old, presented with a variety of medical conditions, including a reference to a head injury, that would require a more extensive examination than the one performed by Dr. Gala to meet the minimum standard of care. To meet the minimum standard of care, Dr. Gala was required to ask additional questions to determine the degree of any cognitive impairment. Although Patient 2 lived alone and conducted her own financial transactions, she demonstrated substantial cognitive impairment based upon the totality of her circumstances. (Test. of Browne.)

130. Dr. Gala's performance of a single self-graded examination of Patient 2's neuropathy is not enough to adequately make a clinical decision or to formulate a treatment plan. It was enough information to support a referral to another practitioner, who would then perform further testing and formulate a treatment plan. (Test. of Browne.)

131. Significant changes in diet, such as required by Dr. Gala's HLP, can change the way Coumadin is absorbed, adversely affecting blood clotting times that can result in hemorrhaging or clotting. High doses of Omega-3 or fish oil can have blood thinning properties, which could make a bleeding event more likely. Vitamin K can interfere in the patient's ability to absorb Coumadin, so it is necessary to know the exact contents of any multi-vitamin in case it is contraindicated. Turmeric, garlic and leafy green vegetables can all adversely affect a patient on Coumadin. Dietary changes can cause gastro-intestinal disturbances, such as diarrhea, which can result in electrolyte imbalances and adversely impact blood clotting abilities. Because of Patient 2's heart conditions and use of Coumadin, Dr. Gala was required to complete a full examination, which may have uncovered symptoms such as edema that would indicate a compromised cardiovascular system. Additionally, Dr. Gala should have consulted with Patient 2's PCP prior to instituting a treatment plan. (Test. of Browne.)

132. Because of Patient 2's heart condition and use of Coumadin, Dr. Gala's HLP, especially with its proposed rapid diet changes and introduction of supplements, posed a significant risk to Patient 2's health. In light of Patient 2's health conditions, any changes to diet or supplements would need to be gradual. (Test. of Browne.)

133. Patient 3, an older patient of 69 years, noted dizziness and concentration issues in the Health Application. Dr. Gala should have asked additional follow-up questions to determine any cognitive impairment of Patient 3. Based upon her testimony in the hearing, there are no

cognitive concerns with Patient 3. (Test. of Browne.)

134. Patient 3 reported musculoskeletal symptoms of pain, stiffness, weakness and difficulty walking in the Health Application. The minimum standard of care required Dr. Gala to obtain Patient 3's vitals and perform neuromuscular skeletal testing, including sensation, motor strength and movement because of these symptoms. Because she reported chest pain and shortness of breath on the Health Application, Dr. Gala should have asked more questions about these conditions and listened to her lungs and heart. Depending upon the result of these additional tests, Dr. Gala may have been required to consult with Patient 3's PCP. (Test. of Browne.)

135. Altering diets, especially the fats, proteins, carbohydrates and calories, for elderly patients can by risky. Food elimination diets, such as Dr. Gala's HLP, can result in the reduction of protein and calories to the point of malnourishment, sarcopenia, which is the loss of muscle mass, and hypoglycemia with resulting dizziness. Changes in diet can also cause changes in blood pressure that need to be monitored, especially as a diuretic is a common medication used to treat hypertension. Geriatric patients are also more susceptible to electrolyte imbalances, which can result from significant dietary changes. (Test. of Browne.)

136. The diet changes required of HLP participants would create a potential risk for Patient 2 because of her use of Coumadin and a potential risk for Patient 3 because of her use of blood pressure medication. (Test. of Browne.)

137. There is no indication in any of Dr. Gala's records for Patients 1, 2 and 3 that he performed any review or verification of the health information or performed any cognitive assessment. (Test. of Browne.)

138. In practice, Dr. Browne has seen the term "clinically non-diabetic" used to indicate that a patient has no measureable indications of diabetes. (Test. of Browne.) Remission is a term used by practitioners to indicate relief of symptoms while reversal is a term to indicate actual physiological change. The use of the term "clinically reverse" would suggest that a patient does not have any outward manifestation of the disease. (Test. of Browne.)

Dr. Prideaux's Expert Opinion

139. Dr. Prideaux graduated from chiropractic college in 1978. He first became licensed as an Oregon chiropractor in 1979 and spent 34 years in active chiropractic practice until retiring in 2013. He is currently employed as the Board's health care investigator, reviewing the chiropractic care aspect of the Board's investigations. At various times throughout his career, he has held clinic director positions, taught as an adjunct professor, and worked on medical advisory committees, all in the chiropractic field. (Test. of Prideaux.)

140. The scope of chiropractic care is extremely broad and includes a variety of health issues, from birth to death, female and male health, and nutrition. Chiropractors can be PCPs and port of entry providers. As physicians, chiropractors adhere to the Hippocratic Oath of "do no harm." (Test. of Prideaux.)

141. There is only one standard of care for all chiropractors regardless of the scope of the chiropractor's individual practice. The OCPUG is an overall guideline and educational tool for chiropractic care in Oregon and its algorithm of treatment perimeters is included in the Board's licensing examination. The OCPUG does not comprise the entire standard of chiropractic care. The original OCPUG focused on neuromuscular skeletal care as it was the traditional form of chiropractic practice. The original OCPUG did not include the phrase "wellness care," although it provided for maintenance care, which was considered a form of preventive and supportive care that primarily occurred after primary care was concluded. (Test. of Prideaux.) The OCPUG has evolved with the changes that occurred in the scope of chiropractic care. The recently revised OCPUG now includes references to wellness care and defines it as care that concerns the patient's state of wellbeing and the ability to live a healthy and fulfilling life. (*Id.*)

142. Oregon does not provide for the licensing of nutritionists so anyone can be a nutritionist. Wellness care, and its recommendations of improved nutrition, falls within the scope of chiropractic practice. A wellness program is a treatment plan when prescribed by a chiropractor. (Test. of Prideaux.)

143. By engaging in a consultation with Patient 3, Dr. Gala established a doctor-patient relationship. By leaving the consultation after voiding the contracts, Patient 3 was no longer a patient of Dr. Gala's. (Test. of Prideaux.)

144. In all cases, a chiropractor's initial examination of a patient requires the obtaining of the patient's health history and vitals. Further elements of an examination would be dependent upon the condition presented by the patient. There is nothing in Dr. Gala's records for Patients 1, 2 and 3 that demonstrate that basic vitals, such as height, weight and blood pressure, were obtained from any of the patients during their initial examinations. (Test. of Prideaux.)

145. To obtain informed consent from a patient, a chiropractor must perform an examination, render a diagnosis, and perform a PARQ with the patient. The requirement to perform a PARQ is always reviewed during orientation for new chiropractors. There is nothing in Dr. Gala's records for Patients 1, 2, and 3 that document that a PARQ was performed other than the patients' signatures beneath the statement in the Office and Refund Policy. (Test. of Prideaux.)

146. A differential diagnosis distinguishes the condition causing the patient's symptoms and differentiates between any comorbid conditions. Diagnoses can be provisional and evolve over the course of treatment. Dr. Gala did not provide any differential diagnoses for Patients 1, 2 and 3. (Test. of Prideaux.)

147. A patient seeking treatment for neuropathy would require a physical examination, such as reflexes, sensation, and motor skills, to allow the chiropractor to differentiate the type of neuropathy. (Test. of Prideaux.)

148. Cognitive impairments of patients are a particular concern for chiropractors, not only for issues of informed consent, but also because such impairments may cause the patient to

provide inaccurate medical and health histories. The psychosocial assessment, included in *The Merck Manual*, is an evaluation tool in which the chiropractor asks the patient concise questions to allow the chiropractor to determine if there are any cognitive concerns before providing treatment. With the assessment, the chiropractor is attempting to determine if the patient is "oriented x3," which means that they are alert, oriented, and cooperative and able to engage in discussions in the current space and time of the examination. (Test. of Prideaux.) Such an assessment does not involve the same specific questions or require continued in-depth questions for every patient. If a patient presents as coherent, responds to questions appropriately, and provides no history suggesting cognitive impairments, no further questioning is necessary to conclude the psychosocial assessment. If the assessment suggests the presence of cognitive impairments, the chiropractor may seek further information from the patient's family or caregivers. Chiropractors are expected to perform a psychosocial assessment at the initial interview of a patient to meet the minimum standard of care. (Test. of Prideaux.)

149. There is nothing in Dr. Gala's records that demonstrate that he performed any examination or psychosocial assessment of Patient 1. Because Patient 1 represented that she experienced brain fog, Dr. Gala was required to perform a psychosocial assessment on her. Dr. Prideaux observed Patient 3 during her testimony in the hearing and did not observe any signs of incapacity or mental impairment. Dr. Gala's records failed to show that he performed an examination on Patient 3 or reviewed her health conditions. (Test. of Prideaux.)

150. Dr. Prideaux opined that Dr. Gala did not meet the minimum standards of care for a chiropractor because he failed to obtain relevant information from patients, such as failing to obtain additional information regarding the cognitive abilities of the patients when the patients' health histories suggested cognitive impairments; failing to perform examinations of the patients; failing to perform an assessment and diagnosis of the patients; failing to perform a PARQ for the patients; and failing to obtain informed consent from the patients. Such failures placed the patients' health at risk. (Test. of Prideaux.)

151. Nutritional supplements can be a problem for patients depending upon their comorbid conditions or medications. Turmeric has blood thinning properties. Diuretics, commonly used for blood pressure conditions, can be adversely affected by supplements that alter the patient's fluid ratios and potentially lead to electrolyte imbalances. (Test. of Prideaux.)

152. The need to consult with a patient's PCP would be dependent upon the patient's comorbid conditions. The attempt to consult with the PCP should be made before treatment, and the attempt should be recorded in the patient's chart notes. Patient 2's comorbid conditions of heart failure, heart palpitations, presence of a heart valve, and the use of Coumadin required Dr. Gala to consult with her PCP before Patient 2 began her participation in the HLP. Patient 1's comorbid conditions of blood pressure issues, memory loss and confusion, and polyneuropathy required Dr. Gala to consult with PCP before her commencement of the HLP. Dr. Prideaux opined that Dr. Gala did not meet the minimum standard of chiropractic care when he failed to contact Patient 1 and 2's PCPs. (Test. of Prideaux.)

153. The chiropractor is the author of all medical records and responsible for his staff. He must directly supervise the staff and monitor their activities. Licensed chiropractic assistants

require onsite supervision by a chiropractor. Chiropractic assistants cannot take medical history from patients and cannot dictate care for patients. There are no Board rules regarding what an unlicensed person can do with a patient, but unlicensed individuals cannot perform the duties of a chiropractic assistant or a chiropractor. Unlicensed individuals can take information from a patient and convey it to the chiropractor who then determines the appropriate courses of action and enters the chart notes. Untrained or unlicensed individuals should not perform wellness checks on patients or make dietary suggestions. Dr. Gala's records failed to demonstrate that there was any supervision of the health coaches once the patients began participating in the HLP. In Dr. Prideaux's opinion, Dr. Gala's failure to supervise the health coaches' actions placed the patients' health at risk. (Test. of Prideaux.)

154. There was no evidence that Patient 1 experienced any adverse consequences from her participation in the HLP. (Test. of Prideaux.)

155. The Board has no concerns regarding the efficacies of Dr. Gala's HLP. Dr. Gala could continue the HLP without his chiropractic license and would no longer be subject to the Board's jurisdiction. (Test. of Prideaux.)

156. Dr. Gala's use of the phrases "clinically non-diabetic," "clinically reverse," and "reversal of symptoms" imply that his wellness program cures the conditions he references in his advertisements. The term "clinically" connotes a medical opinion and the term "non-diabetic" indicates that an individual does not have the condition of diabetes. (Test. of Prideaux.)

Dr. Abrahamson's Expert Opinion

157. Dr. Abrahamson graduated from Western States Chiropractic College in 1987, and the Board licensed him as a chiropractor approximately the same year. He then began his practice in traditional chiropractic work and later developed a practice geared to wellness care. He has taught numerous continuing education classes for chiropractors, worked as an associate professor, and performed independent medical examinations. He worked on the Board's rules advisory committee for 14 months, including work on updating the OCPUG and its algorithm and references to wellness care. The updates to the OCPUG were based upon a review of chiropractic practice, rules and laws in the past 10 years. (Test. of Abrahamson.)

158. The OCPUG provides guidelines for chiropractors to administer chiropractic care and to understand the laws regarding chiropractors. Because the majority of chiropractic care involves traditional neuromuscular skeletal adjustments, the OCPUG's primary focus is on that type of care. (Test. of Abrahamson.)

159. The purpose of wellness care is to enhance a patient's life and is not normally focused on treating a patient's specific medical condition. Wellness care focuses on diet, exercise, and mindfulness to enhance the lives of patients. Wellness care most closely resembles the maintenance care, referenced in the original OCPUG. However, maintenance care is usually the follow-up care after the completion of the traditional chiropractic care and includes the occasional traditional adjustment care. Patients usually seek out wellness care because of a personal interest in improved health, a recommendation of a chiropractor after receiving

traditional chiropractic treatment, or an interest in improving lifestyles by patients with chronic diseases. (Test. of Abrahamson.)

160. Wellness care is within the scope of chiropractic care. Chiropractors performing wellness care must still conform to the same chiropractic standards as chiropractors performing traditional care. If a patient presented with a specific problem, then the chiropractor would have to obtain a health history, perform an examination and fulfill all other traditional chiropractic standards before providing wellness care. (Test. of Abrahamson.)

161. Chiropractors are required to render a diagnosis when a patient presents for a problem-based issue. Dr. Abrahamson opined that performing an examination and providing a diagnosis "would not necessarily" be required for providing wellness care. (Test. of Abrahamson.) If a patient is seeking general healthy living recommendations, then the chiropractor would not need to render a diagnosis because there is no need for a differential diagnosis when the chiropractor is not treating a specific condition. Dr. Abrahamson opined that Dr. Gala met the standard of care for chiropractors for the care he was providing. In his own practice, Dr. Abrahamson would conduct examinations when providing wellness care to individual patients. If a patient had comorbid conditions, Dr. Abrahamson might perform additional examinations or contact the patient's PCP. Dr. Abrahamson "did not think" physical examinations would help in providing wellness care because such care was normally just to enhance the lives of patients. (*Id.*)

162. There is no standard that requires a chiropractor to perform specific examinations for medical conditions. A chiropractor uses his judgment to determine the appropriate examination to conduct on a patient based upon the nature of the problem that he observes during the examination. The examination is a tool to allow the chiropractor to determine the nature of the problem, treatment options and risks. Dr. Abrahamson opined that Dr. Gala's dialogue with a patient, including Patient 2, would be a sufficient examination for Dr. Gala to recommend that the patient participate in the HLP and follow its dietary and exercise recommendations. (Test. of Abrahamson.)

163. Dr. Abrahamson understands that the Board requires chiropractors to obtain a patient's vitals, which are height, weight, blood pressure, temperature and respiration rate, during an initial examination. The purpose is to obtain a baseline to which subsequent readings can be compared. (Test. of Abrahamson.)

164. Dr. Abrahamson opined that Dr. Gala met the minimum standard of chiropractic care in his initial consultation with Patient 1 by performing a sufficient PARQ. Dr. Abrahamson opined that Dr. Gala would not need to review alternative treatments as the HLP is the alternative treatment from the medical treatment Patient 1received from her PCP. Dr. Abrahamson opined that there are not risks with the HLP; therefore, Dr. Gala would not have to review risks with the participants. Dr. Abrahamson concluded that Dr. Gala performed a sufficient PARQ by his discussion of the HLP and his answering of any questions posed by the patient. He further opined that Dr. Gala's Office and Refund Policy provided sufficient evidence that a PARQ was performed. The language in the Office and Refund Policy is common language used by many chiropractors. (Test. of Abrahamson.)

165. Dr. Abrahamson opined that Patient 2's list of main problems would be comorbid conditions and would not require a chiropractor to render a diagnosis. (Test. of Abrahamson.)

166. Dr. Abrahamson found that the neuropathy examination performed by Dr. Gala on Patient 2 demonstrated that Dr. Gala had performed an examination, even though it was not a standard neuropathy examination. More common neuropathy examinations would be checking the pulses for vascular issues and assessing strength. (Test. of Abrahamson.)

167. In Dr. Abrahamson's opinion, Dr. Gala's records of the initial consultations with Patients 1 and 2 were sufficient to show that Dr. Gala performed satisfactory reviews of Patient 1 and 2's medical conditions and symptoms to support his determination to allow their participation in the HLP, "assuming he read them and went over them." (Test. of Abrahamson.) Dr. Abrahamson did not find anything in Dr. Gala's records for Patient 1 or 2 that demonstrated that their health or safety would be at any risk from their participation in the HLP. Dr. Abrahamson found that Dr. Gala must have reviewed the health information provided by Patients 1 and 2 to produce the list of recommended supplements he provided for both patients. (*Id.*)

168. Dr. Abrahamson was not familiar with the term "psychosocial assessment" prior to preparing for Dr. Gala's case. (Test. of Abrahamson.) He does not consciously perform such an assessment but does make further inquiries of patients who report certain symptoms such as dizziness or ones who demonstrate cognitive issues. Dr. Abrahamson assumes patients are functional until something occurs that suggests a cognitive impairment. Dr. Abrahamson opined that Patient 1's reference to brain fog does not demonstrate cognitive impairment, and it is the demonstration of cognitive impairment that would trigger further analysis and a possible referral. In Dr. Abrahamson's opinion, Dr. Gala's review of the forms that he provides to patients at the initial consultation would act as a psychosocial assessment, and a chiropractor would continue to gather more evidence of cognitive issues at every subsequent meeting with the patient. Dr. Abrahamson opines that cognitive issues become a concern when patients fail to answer questions or demonstrate memory loss or when a patient's mind wanders during conversation. Dr. Abrahamson would refer a patient with cognitive issues to a neurologist, and if the cognitive issue is severe would contact the patient's family. (*Id.*)

169. Dr. Abrahamson found no signs that Patient 1 had any cognitive impairment when she met with Dr. Gala because, although she may have experienced brain fog, she completed the forms Dr. Gala gave her, drove a vehicle, and lived independently at that time. (Test. of Abrahamson.)

170. Dr. Abrahamson found no signs that Patient 2 had any cognitive impairment when she met with Dr. Gala because she completed the forms and attended both the seminar and the initial consultation without assistance. (Test. of Abrahamson.)

171. A doctor-patient relationship is established when a chiropractor obtains a health history from a patient, performs a consultation with the patient and receives a fee from the patient for the consultation. Dr. Abrahamson opined that Dr. Gala established a doctor-patient relationship with Patient 3. (Test. of Abrahamson.)

172. In Dr. Abrahamson's experience, most chiropractors do not contact PCPs to coordinate care. Attempts to contact PCPs regularly fail to elicit a response. Chiropractors will assign that task to the patient, i.e. advise the patient to make an appointment with their PCP. It is reasonable for a chiropractor to rely on a patient to follow that instruction. It is rare in the chiropractic field for a chiropractor to refrain from treating a patient because of an inability to reach a PCP. The general chiropractic standard would be to do what is safe for the patient. Dr. Abrahamson opined that there is no need to contact a PCP unless the patient's safety is at risk by the chiropractor's failure to make such contact. (Test. of Abrahamson.)

173. Dr. Abrahamson opined that it would not be necessary to contact a PCP before making nutritional changes for a patient on Coumadin. Dr. Abrahamson also opined that "don't think I would get approval" from a PCP prior to treating a patient who is using Coumadin. (Test. of Abrahamson.) If he were treating a patient on Coumadin, Dr. Abrahamson would advise the patient of the risk of a bleeding event that could occur from a neuromuscular skeletal adjustment. Dr. Abrahamson would generally rely on the patient to get clearance from their PCP for treatment. (*Id.*)

175. Dr. Abrahamson opined that a chiropractor can begin a patient taking Coumadin on a wellness plan, including implementing immediate dietary changes, but would need to follow up with and monitor the patient. Patients that present with a broad spectrum of conditions, such as Patients 1 and 2, would need to be closely monitored for any adverse reactions. In Dr. Abrahamson's opinion, Patient 2 was a very ill individual, and low grade changes and long term interventions, including dietary changes, could improve her conditions but such changes and interventions would need to be closely monitored. (Test. of Abrahamson.)

176. Dr. Gala's HLP is representative of a wellness care program, which would be helpful to any individual and not just applicable to individuals with specific medical conditions. Dr. Abrahamson opined that the diet, supplements and exercise components of the HLP would only be contraindicated in unusual circumstances, such as an allergic reaction to a recommended food or supplement. (Test. of Abrahamson.)

177. Dr. Abrahamson opined that the use of supplements, including multivitamins, can entail risk for a patient dependent on the patient's medical conditions. (Test. of Abrahamson.)

178. In Dr. Abrahamson opinion, Patient 1 and 2 would not experience any adverse consequences from their participations in Dr. Gala's HLP. (Test. of Abrahamson.)

179. In Dr. Abrahamson's experience, chiropractors understand that if something is not documented in the patient's records, then it never happened. That is, if there is no chart note for an action, then it is assumed that such action never happened. Dr. Abrahamson opined that, when the health coach noted that Patient 2 had a diagnosis of dementia and had a recent trip to the emergency room, Dr. Gala should have reviewed the health coach's note and followed up with Patient 2. Dr. Gala would need to chart those actions to meet the minimum standard of record-keeping for the chiropractic profession. (Test. of Abrahamson.)

180. The record-keeping standard for chiropractors requires accuracy. Chart notes with generic language are acceptable as long as the notes are accurate. In Dr. Abrahamson's opinion, it is common practice for chiropractors to use standardized forms, such as Dr. Gala's standardized letters that include his recommendations for the HLP participant's supplements. In Dr. Abrahamson's opinion, chart notes from an initial examination must include the chiropractor's objective findings, the diagnosis, and the treatment plan. Upon review of Dr. Gala's records for Patient 1 and 2, Dr. Abrahamson concluded that they failed to include SOAP. (Test. of Abrahamson.)

181. Dr. Abrahamson concluded that Dr. Gala's records meet the minimum standard of chiropractic care for record-keeping, which Dr. Abrahamson understands to require that an individual who reviews the records would be able to ascertain the reasonableness of the care provided to the patient. (Test. of Abrahamson.)

182. In Dr. Abrahamson's experience, unlicensed individuals employed in a chiropractic office are usually confined to reception and front office work. They cannot make care recommendations or manage a patient's care in anyway, including suggesting dosage changes. They can pass messages to the chiropractor of patient communications or any concerns regarding the patient. At the chiropractor's direction, unlicensed individuals can reiterate the chiropractor's previous directives to the patient. (Test. of Abrahamson.)

183. Dr. Abrahamson opines that Dr. Gala's HLP is designed to have the health coaches provide the HLP services to the patients. In Dr. Abrahamson's opinion, Dr. Gala's unlicensed health coaches can operate the HLP because they are not treating any medical conditions. (Test. of Abrahamson.)

184. Dr. Abrahamson opined that Dr. Gala's records do not exhibit any signs of violations of the ethical standards for chiropractic care. Dr. Gala's records demonstrate that appropriate protocols were in place and exhibited no signs of inappropriate delegation of chiropractic duties. (Test. of Abrahamson.)

Dr. Gala's Professional Opinion

185. In Dr. Gala's opinion, if a patient is seeking problem-based care, i.e. care for a specific complaint, than a chiropractor would need to review the patient's medical history. The chiropractor would need to have a dialogue with the patient about the history of the problem; determine what type of examination to perform and perform it (such as range of motion, physical palpitation, etc.); diagnosis the condition; review treatment options and expected results with the patient; and chart the conversation or the SOAP. (Test. of Gala.)

186. Dr. Gala understands the OCPUG to be a model for problem-based chiropractic care. Dr. Gala does not believe that the performance of a review, examination, and dialogue is necessary when providing a patient with wellness care. In the OCPUG, wellness care "goes nowhere," i.e. it appears at the bottom of the algorithm, leading Dr. Gala to conclude that it is a separate form of care from the rest of chiropractic care. (Test. of Gala.) Dr. Gala opines that curative treatments and wellness programs are different forms of care and have different

applicable standards. (*Id.*)

187. There is no requirement that an individual obtain a license to provide diet and exercise advice in Oregon. (Test. of Gala.)

188. In Dr. Gala's experience, there is a wide variety of standard basic tests for a chiropractor to perform, such as strength, reflexes and vitals. Vitals would include respiration, pulse and blood pressure. Dr. Gala opines that it is within the chiropractor's judgment which tests should be performed. (Test. of Gala.)

189. Dr. Gala opines that examinations can be performed exclusively through dialogue with the patient and do not always require physical examinations. When offering wellness plans, Dr. Gala opines that there is no obligation for a chiropractor to perform an examination. (Test. of Gala.)

190. Dr. Gala opines that a doctor-patient relationship is not established at the time of the HLP consultation because he tells the individual that no such relationship is established, regardless of his obtaining the Health Application and reviewing it with the individual. (Ex. A16 at 36.) Dr. Gala opines the context of the seminar presentation would not support the creation of a doctor-patient relationship. (*Id.* at 41.) Dr. Gala opines that no doctor-patient relationship was established with Patient 3 because the consultation was for wellness care. (Test. of Gala.)

191. Dr. Gala opines that he performs a satisfactory review of an HLP participant's health history; performs a sufficient examination of the HLP participant; performs a sufficient PARQ; and obtains a satisfactory informed consent when he is offering a wellness program to an HLP participant. (Test. of Gala.)

192. Dr. Gala understands that the goal of a psychosocial assessment is to ensure that information obtained from the patient is accurate and that the patient understands the discussion of the medical condition and proposed treatment. If a patient appears to be cognitively impaired, then Dr. Gala would have the patient bring a spouse or caregiver to participate in the consultation. In Dr. Gala's opinion, his HLP consultation, in which he reviews the Health Application and the HLP with the patient, acts as a psychosocial assessment. (Test. of Gala.)

193. In Dr. Gala's opinion, obtaining medical records from a PCP would be triggered when a planned treatment might be contraindicated by the patient's representations of medical history or the existence of a comorbid condition that is at risk of complication. Dr. Gala opined that, even if there is a need for a consultation with a patient's PCP, a chiropractor can still provide treatment to the patient so long as it is a non-invasive form of treatment. Dr. Gala opined that a patient on Coumadin would not require a chiropractor to consult with the PCP unless the treatment could adversely impact blood thinning properties. In Dr. Gala's opinion, for an HLP participant, a consultation with the PCP would be necessary for any patient on Coumadin because diet changes, such as increase in green leafy vegetables and introduction of fish oil, can have an adverse effect on the patient's blood clotting abilities. (Test. of Gala.)

194. In Dr. Gala's opinion, an increase in water consumption rarely would be

contraindicated by any health condition. (Test. of Gala.) Changes in diet can result in changes in bowel movements, and persistent diarrhea can result in electrolyte imbalances that can detrimentally effect a patient's health. (Ex. A16 at 67.)

195. Dr. Gala understands there are limitations on actions an unlicensed individual can take and what information an unlicensed individual can convey to the patient. An unlicensed individual cannot modify a chiropractor's treatment plan without a chiropractor's direction. (Test. of Gala.)

196. On March 30, 2016, Dr. Gala drafted a response to the Board's letter of inquiry regarding Patient 3. In the letter, Dr. Gala repeatedly asserted that he does not claim to "cure" any medical conditions. (Ex. A13 at 1, 4.) Throughout the letter, he made repeated claims that programs, such as the HLP, can: reverse symptoms; result in symptoms that are no longer present; cause fibromyalgia to go into complete remission; and successfully reverse conditions, such as hemochromatosis and diabetes. (*Id.*) He asserted that he does not provide any treatment to the HLP participants. Dr. Gala explained that "rather than rendering treatment," the HLP is primarily a coaching program to teach people how to shop and prepare food. (Ex. A13 at 2.) Dr. Gala continues to assert that the HLP is just a wellness program and is not used to treat any specific medical condition. He asserts that his use of seminars that target specific medical conditions is simply a marketing tool. Thus, Dr. Gala produces a fibromyalgia seminar because people understand the term fibromyalgia while they would not understand the term wellness. Once in the seminar, Dr. Gala then explains the concept of wellness. Dr. Gala recognizes that any care provided to treat fibromyalgia would be problem-based care. (Test. of Gala.)

197. When Dr. Gala uses the phrase "clinically free," he means that there would be "no overt evidence of the medical condition." (Test. of Gala.)

CONCLUSIONS OF LAW

1. Dr. Gala engaged in unprofessional or dishonorable conduct.

2. Dr. Gala engaged in gross negligence.

3. Dr. Gala did not engage in fraud, misrepresentation and/or unprofessional conduct by charging patients for services not rendered, charging fees for unnecessary services, perpetrating fraud upon patients or third party payors, and/or engaging in dishonest or misleading fee collection techniques.

4. The Board's allegation that Dr. Gala failed to generate and maintain appropriate medical records is dismissed.

5. The Board may take disciplinary action against Dr. Gala.

6. The board may assess costs of discipline against Dr. Gala.

OPINION

The Board proposes to take disciplinary action against Dr. Gala's chiropractic licenses based on multiple allegations that include unprofessional conduct, fraud and/or misrepresentation, and gross negligence. As the proponent of the allegations, the Board has the burden to establish, by a preponderance of the evidence, that the allegations are correct and that the proposed disciplinary actions are appropriate. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Dixon v. Board of Nursing*, 291 Or App 207 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Applicable Law

ORS 684.100 provides, in part:

> (1) 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.
>
> * * * * *
>
> (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.
>
> (B) Willful ordering or performance of unnecessary laboratory tests or studies; administration of unnecessary treatment; failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care; or otherwise ordering or performing any chiropractic service, X-ray or treatment that is contrary to recognized standards of practice of the chiropractic profession.
>
> * * * * *
>
> (q) Gross incompetency or gross negligence[.]

OAR 811-035-0005 provides, in part:

(1) The health and welfare of the patient shall always be the first priority of Chiropractic physicians and expectation of remuneration shall not affect the quality of service to the patient.

(2) The patient has the right to informed consent regarding examination, therapy and treatment procedures, risks and alternatives, and answers to questions with respect to the examination, therapy and treatment procedures, in terms that they can be reasonably expected to understand.

(a) Chiropractic physicians shall inform the patient of the diagnosis, plan of management, and prognosis in order to obtain a fully informed consent of the patient during the early course of treatment.

(b) In order to obtain the informed consent of a patient, the chiropractic physician shall explain the following:

(A) In general terms, the examination procedure or treatment to be undertaken;

(B) That there may be alternative examination procedures or methods of treatment, if any; and

(C) That there are risks, if any, to the examination procedure or treatment[.]

OAR 811-035-0015 provides, in part:

Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic physician:

* * * * *

(2) Charging fees for unnecessary services;

* * * * *

(5) Charging a patient for services not rendered;

* * * * *

(7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;

* * * * *

(12) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic[.]

ORS 684.010 provides, in part:

(2) "Chiropractic" is defined as:

(a) That system of adjusting with the hands the articulations of the bony framework of the human body, and the employment and practice of physiotherapy, electrotherapy, hydrotherapy and minor surgery.

(b) The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuro-musculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges.

(3) "Chiropractic physician" means a person licensed by ORS 677.060, 684.025, 684.100, 684.155 or 688.010 to 688.201 and this section as an attending physician[.]

OAR 811-035-0001(3) (1995), *amended* effective April 21, 2017,[16] provides:

"Diagnosis": as defined in the Practice and Utilization Guidelines means the art of distinguishing one disease from another.

OAR 811-010-0005 (1992), *amended* effective January 6, 2017,[17] provides, in part:

(2) "Advertising" means any form of promotional (educational) information.

* * * * *

(4) "Patient" means any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into

---

[16] The administrative rule was amended, effective April 21, 2017. The amendments made no changes to the cited portions of the administrative rule.

[17] The administrative rule was amended, effective January 6, 2017. The amendments only changed the numbering of the cited portions of the administrative rule.

a physician/patient relationship or has agreed to pay a fee for services.

Adequacy of the Amended Notice

Dr. Gala argued that the Amended Notice was deficient because of the Board's alleged failure to provide enough specificity in each of its allegations, citing *Murphy v. Oregon Medical Board*, 270 Or App 621 (2015). In *Murphy*, the Oregon Medical Board sought to revoke Dr. Murphy's medical license based upon an allegation that he engaged in unprofessional and dishonorable conduct in violation of ORS 677.188(4)(a), which is virtually identical to ORS 684.100(1)(f)(A), one of the statutory bases for the disciplinary action cited by the Board in the Amended Notice. Within the body of the notice issued to Dr. Murphy, the Oregon Medical Board provided "a short factual statement" for the basis of the violation as Dr. Murphy's consumption of alcohol while on call in violation of a hospital's drug free work place policy (Dr. Murphy was contracted by a hospital to perform anesthesia services). *Id.* at 629. The Oregon Court of Appeals found that the Oregon Medical Board could only proceed against Dr. Murphy on the ground as stated in its notice (that his violation of the hospital's policy was unprofessional and dishonorable) and could not proceed on the basis that his conduct violated the ethical standards of the medical community. *Id.* at 630-631. The Court of Appeals explained that "having provided that explicit explanation of the basis on which it was choosing to proceed, the board could not then change course at the contested case hearing * * * without first providing [Dr. Murphy] adequate notice so that he could have the opportunity to prepare a defense." *Id.* at 631.

Unlike the Oregon Medical Board in Dr. Murphy's matter, the Board in Dr. Gala's matter provided a highly detailed Amended Notice, in which it provided a lengthy recitation of facts and allegations of deficiencies in Dr. Gala's conduct for each of the three patients at issue. As an example, in the Amended Notice, the Board sets out the standard that a chiropractor must perform an examination of a patient; render a differential diagnosis, and provide PARQ and obtain informed consent before proceeding to treatment. The Board then proceeds to allege that Dr. Gala failed to perform each of those required elements in regards to each patient, describing the nature of Dr. Gala's contact with the patients. In regards to the allegation of gross negligence, the Board provided specific factual allegations of conduct by the health coaches, discussing medications with Patient 1 and modifications of her treatment, and alleging such activities as being outside the scope of unlicensed individuals and an abdication of Dr. Gala's chiropractic duties. As to each of its allegations, the Board's Amended Notice provided Dr. Gala with adequate notice on the bases on which the Board determined he should be disciplined. And, unlike Dr. Murphy, Dr. Gala was prepared to proceed on each of the allegations and provided testimony from two expert witnesses on his chiropractic obligations in regards to the patients.[18] The Board's Amended Notice is not deficient and is not subject to dismissal.

---

[18] The Oregon Court of Appeals noted that Dr. Murphy, at the inception of the hearing, indicated he was not prepared to proceed on the Oregon Medical Board's additional issue that his conduct violated the standards of the medical community and indicated that he had no witnesses prepared to address that issue. *Murphy* at 624. The Court of Appeals noted that "the board's own order makes clear the prejudice to [Dr. Murphy] by 'find[ing] it notable that in the course of the contested case hearing, [Dr. Murphy] did not produce one physician to testify that they consumed alcohol while on call at a hospital, or thought it was appropriate to do so.'" *Id.* at 632.

Doctor-Patient Relationship

Dr. Gala's duty to provide the minimum standard of chiropractic care and comply with the laws and rules of his profession is predicated on the establishment of a doctor-patient relationship with Patients 1, 2 and 3. At the time of the hearing, Mr. Dole, on behalf of Dr. Gala, stipulated that Dr. Gala established a doctor-patient relationship with Patients 1 and 2. The stipulation did not include the relationship with Patient 3. Dr. Gala asserted that no doctor-patient relationship formed with Patient 3 because she never participated in the HLP. However, that argument is unpersuasive because the evidence failed to demonstrate that a patient must participate in a proposed plan of action or treatment for such a relationship to form.

At the conclusion of the fibromyalgia seminar, Patient 3 scheduled a consultation with Dr. Gala for the following day. She signed the Consultation Form and paid an $87.50 fee for the consultation. Although the Consultation Form included language that no doctor-patient relationship would be formed, such representation does not control the reality of the existence of the relationship. Similarly, just because Patient 3 did not consider Dr. Gala to be her doctor does not control the reality of whether the doctor-patient relationship was created. Instead, the existence of the doctor-patient relationship is determined by the totality of the interaction between Dr. Gala and Patient 3.

Dr. Gala required Patient 3 to complete the Health Application for the consultation, which required her to divulge her private health information including her health history, medications and pain levels. During the course of the consultation, Dr. Gala asked Patient 3 some questions about the information she provided in the Health Application, discussed her goals of reducing her fibromyalgia and arthritis, and proceeded to evaluate her suitability for the HLP. By requiring Patient 3 to disclose her private health information, by discussing her goals of reducing the severity of two of her medical conditions, by evaluating her suitability for participation in the HLP with the goal of improving those same medical conditions, and by charging her a fee for this consultation, the preponderance of the evidence supports a finding that Dr. Gala established a doctor-patient relationship with Patient 3.

The establishment of the relationship is further supported by the testimony of Dr. Gala's own witnesses Drs. Abrahamson and Seaman. Dr. Abrahamson opined that a doctor-patient relationship is established when a chiropractor obtains a health history from a patient, performs a consultation with the patient, and receives a fee from the patient for the consultation. Dr. Seaman opined that obtaining a health history from a patient and discussing nutritional changes during a consultation result in the establishment of a doctor-patient relationship. Neither doctor opined that a patient's participation in a proposed treatment plan was necessary to establish a doctor-patient relationship. Dr. Abrahamson further opined that a doctor-patient relationship was established between Dr. Gala and Patient 3. Drs. Browne and Prideaux also opined that a doctor-patient relationship was established between Dr. Gala and Patient 3.

Because Dr. Gala established doctor-patient relationships with Patients 1, 2 and 3, he had a duty to provide the minimum standard of chiropractic care and comply with the laws and rules governing his profession.

Wellness Care and Chiropractic Practice

Dr. Gala asserted the existence of a "rule that if expert opinions of reasonable professionals differ, then the board has failed to establish that a Licensee's conduct was outside the acceptable range of care." Respondent's Closing Argument at 7. He cited to *Tilden v. Board of Chiropractic Examiners*, 135 Or App 276 (1995), as support for the existence of this rule. *Id.* However, that is a misstatement of the findings of the Oregon Court of Appeals in *Tilden*. In *Tilden*, the Board issued a final order in which it found that reasonable chiropractors can differ as to whether the subject patient needed to have X-rays performed or a hands-on physical examination. The Board concluded that, in the case before it, the licensee's failure to order diagnostic imaging and perform a motion examination was outside the acceptable range of care. *Tilden* at 281. The Oregon Court of Appeals reversed and remanded for reconsideration based upon its determination that the Board failed to provide an adequate explanation as to the Board's conclusion. The Oregon Court of Appeals stated "if reasonable chiropractors could differ, then the failure to perform the procedures is *not necessarily* evidence that petitioner acted outside an acceptable range of care." *Id.* at 282 (emphasis added.). Thus, the Oregon Court of Appeals did not find that a Board cannot establish misconduct when there are conflicting opinions from reasonable professionals. Instead, it simply concluded that a Board must provide an explicit, rather than a cursory, rationale for the finding of misconduct. *Id.*

Naturally, both parties argued that their experts provided more valuable and persuasive evidence than the other parties' experts. Dr. Seaman is not, and has never been, an Oregon-licensed chiropractor. Therefore, Dr. Seaman cannot provide evidence on the standard of care for Oregon chiropractors. However, he can, and did, provide excellent information on the history and development of wellness care and verified its effectiveness as treatment for conditions based in chronic inflammation, evidence in which Oregon-specific knowledge is not required. Dr. Browne had the least chiropractic experience of the experts; however, his knowledge of current expectations and practices is based upon knowledge obtained through recent education, and ongoing educational exposure in his teaching position, coupled with some clinical practice. This knowledge based on recent chiropractic education provides balance to the cumulative evidence from all the experts, as the other experts' knowledge can sometimes be mired in past practices. As noted by Drs. Seaman and Abrahamson, chiropractic practice has seen significant changes in the past 10 years, enough to result in the recognition of wellness care as chiropractic practice and the revision to the OCPUG. Dr. Prideaux appeared the expert least enchanted and most skeptical of Dr. Gala's practices, while Dr. Abrahamson was the most accepting. However, I did not find that their personal opinions regarding Dr. Gala's practices influenced their professional opinions. Ultimately, the ALJ found all four of these doctors made honest efforts to provide the best information they could, and, in a number of the most crucial areas, there was relatively little, if any, inconsistencies in their opinions.

Dr. Seaman confirmed, as did the other four chiropractors who testified at the hearing, that Dr. Gala's HLP is consistent with wellness care programs that utilize an anti-inflammatory methodology and that Dr. Gala's recommendations for HLP participants would normally promote improved health among the participants. As stated by the Board's chiropractic expert, Dr. Prideaux, there are no concerns regarding the efficacies of Dr. Gala's HLP. The Board's

issues with Dr. Gala concern his specific activities in the implementation of the HLP and whether his conduct meets the standard of care for chiropractors. And this leads to the underlying issue in this case – whether Dr. Gala must meet the same standard of care in providing the HLP to the participants, as he implemented it in his interactions with Patients 1, 2 and 3, that a chiropractor must provide in a traditional chiropractic practice.

Drs. Browne, Abrahamson and Gala all acknowledged that wellness care, such as Dr. Gala's HLP, is normally recommended by chiropractors for the general health improvement of a patient and not to treat a patient's specific medical condition. As noted by Dr. Browne, when recommended solely as a means to maintain and maximize health, the wellness care plan would not be considered chiropractic practice. However, as opined by all the chiropractors with the exception of Dr. Gala, when wellness care is recommended for a specific medical condition, then it is considered chiropractic practice and offered as a treatment plan for that condition. Even Dr. Abrahamson's opinion supports this conclusion. Dr. Abrahamson opined that following traditional chiropractic guidelines, such as the performance of an examination and providing a diagnosis, would not necessarily be required for a recommendation of wellness care. However, he confirmed that, for patients that are presenting with a specific medical problem, the chiropractor must fulfill all traditional chiropractic standards in order to recommend wellness care. Finally, even though Dr. Gala was insistent that the HLP did not require him to fulfill those traditional chiropractic standards, he agreed that, for a patient seeking problem-based care, the chiropractor would need to follow all the requirements of traditional chiropractic care. In conclusion, the standard is clear – if the chiropractor is providing problem-based care to a patient, then he must follow the traditional chiropractic standards, regardless of the nature of the recommended treatment.

At the time of the initial consultations with Dr. Gala, HLP participants must sign forms that include representations that there is no doctor-patient relationship and that Dr. Gala's office is not treating their allopathic conditions. First, as concluded above, the ALJ did not find that such statements from language contained in a generically-worded form document controls whether or not a doctor-patient relationship is established, or whether the HLP serves as a treatment plan for a particular medical condition. Here, as above, it is the totality of the circumstances that determines whether the HLP is offered as a treatment plan for a specific medical condition. The Board agrees.

In this matter, the ALJ and Board find the evidence overwhelming that Dr. Gala provides problem-based care to the HLP participants. A review of Dr. Gala's advertising materials, attached as Exhibit R22 to this Proposed Order, demonstrates that he is targeting patients who experience very specific medical conditions. Although the first advertisement entitled "Discover Weight Loss That Lasts" has a general focus just on weight loss (suggesting a focus on maximizing health), the advertisement references three other seminars scheduled for that same date, each of which targets a specific medical condition: diabetes, fibromyalgia and neuropathy. (Ex. R22 at 1.) As such for those three seminars, the advertisement is targeting patients who experience the specifically referenced medical condition. The next advertisement is for a fibromyalgia seminar. In the advertisement, Dr. Gala states "I have used easy lifestyle changes that have helped hundreds of * * * fibromyalgia suffer[ers] feel better and live healthier, more joyful lives." (Ex. R22 at 2.) In the advertisement, he proceeds to explain his mother's history

and how her fibromyalgia symptoms were reversed. And, in bold print, the advertisement promises "Finally, A Solution for Fibromyalgia Pain!" (*Id.*) Similarly, the advertisement for diabetes states "Diabetics Finally Have Hope!" and "Reverse Diabetes in 1-8 months" and further provides a testimonial from an HLP participant that medications can be reduced or eliminated after participation in the HLP. (*Id.* at 3.) The advertisements include statements from prior patients who make representations that their medical doctors took them off all diabetic medications after participating in the HLP. The advertisement shows an HLP participant wearing a t-shirt that states "I BEAT diabetes." (*Id.*; emphasis in original.) Again both of these advertisements, and the remaining ones, all target individuals that experience a specific medical condition and who would very likely only be attending the seminar if they experienced such a medical condition, as Patients 1, 2 and 3 did. Additionally, the MDS website and the materials available through the HLP include similar statements to those contained in the advertisements: reversing chronic diseases in one to eight months; reducing or completing eliminating all medications; describing Dr. Gala as a functional medicine provider specializing in endocrine disorders; the Guide, which although it primarily includes meal plans and recipes, states that it is the road map to reversing chronic disease; and assertions that medications are not the answer to treating certain medical conditions. Such statements, in particular the references to the reduction or elimination of medications to treat certain medical conditions, further indicate that Dr. Gala is providing the HLP as an alternative treatment program to traditional allopathic medical care for the specific medical conditions of diabetes, neuropathy and fibromyalgia.

Patients 1, 2 and 3 attended Dr. Gala's seminars that advertised help for their specific medical conditions. All three patients voiced their expectations that Dr. Gala's HLP would help "cure" their medical conditions, further supporting their understanding that the HLP was offered as a treatment for their medical conditions. All three patients received the Guide and other materials that included the references discussed above. All three patients completed a consultation with Dr. Gala, provided him with Health Applications that listed their medical conditions and health history, and he approved all three patients' participation in the HLP. Based upon the totality of the circumstances, Dr. Gala proposed the HLP to the three patients as a treatment program for their specific medical conditions, fibromyalgia in the cases of Patients 1 and 3 and neuropathy in the case of Patient 2. Because Dr. Gala proposed the HLP to Patients 1, 2 and 3 as a treatment plan for their specific medical conditions, he was required to fulfill all standards of chiropractic care during his interactions with each of the three patients.

Unprofessional and Dishonorable Conduct

Although Dr. Gala asserted that he fulfilled the standards of chiropractic care with respect to the patients at issue, the evidence in the record does not support this assertion. Dr. Gala clearly believed that the HLP was not within the scope of chiropractic care and that he did not need to meet any standards of chiropractic care when treating the HLP participants. He demonstrated this belief in his testimony, in his responses to the Board's investigative inquiries, and in the forms he had HLP participants sign in which he noted that he was not the participant's doctor and that he was not providing treatment for their medical condition. The initial HLP consultations with Dr. Gala lasted approximately 30 minutes. Patient 3 persuasively testified that Dr. Gala spent little time reviewing her Health Application, only asked a few questions about the information on the form, performed no health examination, and failed to review any of

her medications with her. Instead, the focus of the consultation was primarily a sales pitch - a discussion of how the HLP could help Patient 3 with her fibromyalgia and other health problems; the length of the HLP; and the costs of the HLP.

The cursory nature of his review of the HLP participants' Health Applications during consultations was also demonstrated during Patient 2's consultation. In her Health Application, Patient 2's Health Application referenced the reader to "see list" and "see note" under the sections titled Medications and Medical and Social History. However, Dr. Gala's records for Patient 2 included no such list or note, demonstrating that he failed to even observe that crucial medical information was missing from the Health Application. Although Dr. Abrahamson concluded that Dr. Gala's records were sufficient to show that he performed satisfactory reviews of the HLP participants' medical conditions and symptoms, he based that conclusion on the assumption that Dr. Gala "read them and went over them." The evidence established that Dr. Gala did not; therefore, his records are not a reliable indicator of whether he performed the tasks necessary to meet the standards of chiropractic care. Although Dr. Gala obtained a health history from Patients 1, 2 and 3 as required by the standards of chiropractic care, his lack of careful review of the medical and health information contained therein violated the standards of chiropractic care.

As a chiropractor providing problem-based care, Dr. Gala must perform an examination of each patient before allowing their participation in the HLP, his treatment program. The experts agreed that there are no set types of examinations required to be performed on these patients. Instead, a chiropractor must use his professional judgment to determine the appropriate examinations to perform dependent upon the patient and the presenting condition. Dr. Gala argued that his review of the Health Application and dialogue with the HLP participants is an examination. However, as noted above, the evidence demonstrated that little review occurred and the dialogue primarily concerned the HLP services, length and costs. Therefore, Dr. Gala's interactions with the patients during the consultation do not amount to an examination. This evidence supports Drs. Browne and Prideaux's conclusions that Dr. Gala did not perform an examination on any of the patients. The Board has established by a preponderance of the evidence that Dr. Gala's failure to perform any kind of examination on Patients 1 and 3 violated the standards of chiropractic care.

Dr. Gala performed one neuropathy test on Patient 2 that was a severity evaluation based upon Patient 2's grading of her symptoms. Dr. Browne persuasively testified that Dr. Gala's performance of this single self-graded examination of Patient 2's neuropathy was inadequate to support a treatment plan. Dr. Prideaux agreed with Dr. Browne's opinion that a neuropathy examination would need to include tests of reflexes, sensation and motor skills in order for the chiropractor to differentiate the type of neuropathy. Although Dr. Abrahamson opined that Dr. Gala had performed a neuropathy examination, he also noted that the severity evaluation was not a standard examination and agreed with Dr. Prideaux's opinion that chiropractors commonly perform examinations that demonstrate the existence of vascular issues and assess strength. Based upon these three experts' opinions, the ALJ concluded that Dr. Gala's single test was inadequate to support a conclusion that a treatment plan of 30 chiropractic sessions was appropriate. The Board agrees. Dr. Gala's failure to perform an examination to support the treatment plan for the HLP and his failure to perform an adequate examination to support the

treatment plan for traditional chiropractic care on Patient 2 violated the standards of chiropractic care.

As confirmed by the expert opinions of Drs. Browne, Prideaux and Abrahamson, an initial examination must include the patient's vitals, which includes at a minimum the height, weight and blood pressure of the patient. Dr. Gala's failure to obtain the vitals of Patients 1, 2 and 3 violated the standards of chiropractic care. These three experts also agreed that a chiropractor must determine a diagnosis, or at least a provisional diagnosis, at the initial examination before suggesting a treatment plan. As discussed above, based upon the cursory nature of the review of the Health Applications and the focus of the consultations on the HLP rather than the patients, Dr. Gala failed to make his own diagnoses of Patients 1, 2 and 3's medical conditions. His failure to render a diagnosis for each of these patients violated the standards of chiropractic care.

Although the three patients signed the Office and Refund Policy that provided they had the opportunity to discuss the purposes, benefits and risks of the HLP and alternatives, the ALJ found that Dr. Gala failed to perform all aspects of the PARQ, which the experts agreed was necessary before providing treatment to these patients. The Board agrees. Dr. Gala did review the proposed treatment, the HLP, with the patients rather extensively. The evidence also established that he reviewed the alternative available treatments, as he frequently discussed in his seminars the alternative to the HLP, which was the participants' continued use of medications to treat their medical conditions. However, Dr. Gala did not review the risks of the HLP, primarily because, as he testified, he does not believe there are any risks associated with participation in the HLP. Although Dr. Abrahamson also agreed that participation in the HLP had no risks, I find his opinion unpersuasive, as demonstrated particularly by Patient 2's condition.

Patient 2 was an elderly individual with a litany of serious heart conditions, and she was taking the prescription medication Coumadin to control her blood clotting properties to alleviate the risk of strokes and to prevent her from experiencing hemorrhaging events. As demonstrated by her INR levels, Patient 2's condition was not well controlled and subject to significant fluctuation due to changes to her diet (that occurred on her family vacation), her daily health condition (diarrhea episodes), and her forgetfulness in taking her medication.[19] Dr. Browne persuasively testified that changes in Patient 2's diet can adversely affect the way her body absorbs Coumadin. Certain supplements, such as the Omega-3 that Dr. Gala included in Patient 2's supplements, have blood thinning properties and increase the possibility of a bleeding event. Vitamin K, turmeric, garlic and leafy green vegetables can all adversely affect Patient 2 by interfering with the effectiveness of the Coumadin. Dietary changes can lead to diarrhea, which can adversely impact Patient 2's health by interfering with the effectiveness of the Coumadin. Most notably, Dr. Seaman in his testimony was absolutely adamant that a chiropractor would have to coordinate care for a patient on Coumadin before the introduction of any dietary changes or supplements because of the potential for harm and the risk that certain changes could trigger heart attacks. There are also attendant risks for individuals on blood pressure medications, a condition that Patients 1, 2 and 3 had, because diuretics are commonly used to control blood

[19] Based upon the INR records and Patient 2's limited involvement in the HLP, there is insufficient evidence to establish that her participation in the HLP adversely affected her INR levels.

pressure. Dr. Gala's recommendations for supplements for each HLP participant and the potentially radical changes to diets recommended to HLP participants with the emphasis on increased vegetable consumption and increased water consumption can pose risks to patients with certain medical conditions or using certain medications. Because Dr. Gala did not review the risks of the HLP with Patients 1, 2, and 3, he did not perform all aspects of a PARQ, which violated the standards of chiropractic care.

OAR 811-035-0005(2)(b) requires a chiropractor to perform PARQ in order to obtain informed consent from the patient. As confirmed by the experts, obtaining informed consent from patients for treatment is also a standard of chiropractic care. Because Dr. Gala did not perform all aspects of a PARQ with Patients 1, 2 and 3, he failed to obtain informed consent from any of these patients in violation of OAR 811-035-0005(2) and in violation of the standards of chiropractic care.

As noted above, Dr. Seaman opined that it was absolutely imperative for a chiropractor to contact the patient's medical professional to coordinate care before making changes to a patient's diet or recommending the use of supplements. In Dr. Seaman's opinion, Dr. Gala should have contacted Ms. Lintz, who was monitoring Patient 2's medical condition, to coordinate care before making any changes to Patient 2's diet or introducing any supplements. Drs. Browne and Prideaux concurred with Dr. Seaman's opinion because of the significant dangers to Patient's health in light of her comorbid conditions and use of Coumadin. Even Dr. Gala concurred in this assessment, noting that the increase in green leafy vegetables and introduction of fish oil included in the HLP, can have an adverse effect on the patient's blood clotting properties. Therefore, Dr. Gala violated the standards of chiropractic practice by failing to contact Patient 2's PCP.[20]

Dr. Browne opined that, based upon Patient 1's comorbid conditions, Dr. Gala was also required to consult with Patient 1's PCP. Dr. Gala concurred with Dr. Browne's opinion, as he testified that he intended to contact Patient 1's PCP because of her history of cancer. Dr. Gala asserted that Patient 1's early termination from the HLP resulted in the lack of need to contact her PCP. Dr. Gala is correct that, once Patient 1 exited the HLP, there was no longer a need for him to contact her PCP. However, Patient 1 was in the HLP for one month before she gave notice of her withdrawal from the HLP. During that month, Dr. Gala made no effort to contact her PCP, he never reviewed Patient 1's progress in the HLP, and was never notified by his staff that Patient 1 was frequently ill. Dr. Gala had plenty of time to contact Patient 1's PCP, and her medical records failed to reflect any intent on Dr. Gala's part to contact her PCP. Instead, the evidence demonstrates that once Dr. Gala had concluded his initial consultation with Patient 1, he had no further involvement with her treatment or care.

The Board has established by a preponderance of the evidence that Dr. Gala failed to contact Patients 1 and 2's PCPs during the course of their participation in the HLP, which was a violation of the standards of chiropractic care.

---

[20] Even if Dr. Gala was unaware of Patient 2's use of Coumadin, his lack of awareness was due to his failure during the consultation to obtain her list of medications, which led to his failure to consult with her PCP.

The Board also alleged that Dr. Gala failed to perform psychosocial assessments on Patients 1, 2 and 3. The ALJ found that the evidence did not establish such failures. The Board doesn't totally agree with that conclusion based on the following reasoning. Considering Dr. Gala failed to complete even the minimum record keeping required by the Board for Patients 1-3, the Board finds that Dr. Gala has in turn, failed to provide the minimum amount of evaluation of these same patients. This was consistent in all three patients involved. Dr. Gala's attorney, on cross examination of the Board's healthcare investigator, Dr. Prideaux asked at hearing if he was aware of a specific test (alert times three or alert times four) and asked Dr. Prideaux to describe it. That test is part of a psycho social assessment and mentioned in the evaluation of dementia patients. Nowhere in Dr. Gala's patient records on each of the three patients does he reference performing a simple standard evaluation. In two of the three patient encounters, the patients had been previously diagnosed by their medical providers with either dementia or Alzheimer's. The Board finds that Dr. Gala has failed to perform the basics of Chiropractic evaluation on these patients.

Psychosocial assessments do not include a schedule of specific questions. Psychosocial assessments of the patient are included in the OCPUG. Asking the types of questions on a psychosocial assessment are considered by the Board to be part of the chiropractic examination. A psychosocial assessment can include the dialogue between a chiropractor and the patient that occurs during a consultation or examination. Although symptoms such as brain fog, memory loss, and dizziness would cause concern for the possible existence of a cognitive impairment, unless the patient exhibits overt signs of cognitive impairment during the consultation, then the chiropractor would not conclude that impairment exists. The experts who heard Patient 3 testify during the hearing concluded that she showed no signs of cognitive impairment. At the time of their consultations, Patients 1 and 2 lived independently, attended Dr. Gala's seminars without any assistance, and each patient engaged in an approximately 30-minute conversation with Dr. Gala with no overt signs of cognitive impairment. There was no evidence that Dr. Gala's 30-minute interactions with the patients did not constitute a psychosocial assessment or that any of the patients demonstrated overt signs of cognitive impairment.

As discussed above, Dr. Gala's interactions with Patients 1, 2, and 3 violated numerous standards of chiropractic care. All three of these patients had blood pressure issues and Patient 2 was taking Coumadin. As established above, because of these comorbid conditions, there were inherent risks associated with each of the patient's participation in the HLP because of the potential adverse effects that may occur with the dietary changes and the introduction of supplements because of their comorbid conditions and medications. Therefore, the Board has established by a preponderance of the evidence that Dr. Gala's violated the standards of chiropractic care in such a way as to constitute a danger to the health and safety of these patients in violation of ORS 684.100(1)(f)(A), which constitutes unprofessional and dishonorable conduct. Moreover, Dr. Gala's failure to consult with Patients 1 and 2's PCPs also violated ORS 684.100(1)(f)(B) and constituted unprofessional and dishonorable conduct.

Gross Negligence

The Board contends that Dr. Gala's use of unlicensed personnel, namely the health coaches, resulted in the abdication of his duties as a chiropractor and amounted to gross

negligence. Dr. Abrahamson concluded that the health coaches provided all the wellness services available through the HLP. This conclusion is supported by Patient 1 and 2's medical records. The health coaches were the only points of contact with Patients 1 and 2, until they contacted the MDS to withdraw from the HLP. Patient 1 reported ongoing episodes of illness to her health coach, in particular an episode where she was dizzy and fell with a blood pressure of 172 over 109. Patient 2 reported a trip to the emergency room because of an irregular heartbeat to her health coach. Patient 2 reported a diagnosis of early dementia to her health coach, a condition not previously disclosed in her Health Application. The only actions Patient 1's health coaches took were to reschedule coaching calls to accommodate the illness and to leave a note in Patient 1's records for the next health coach to inquire about the dizziness with Patient 1. In response to Patient 2's disclosure of the dementia diagnosis, the health coach's only action was to make a note to remind Patient 2 of the date and time for the next coaching call. The health coach took no action in response to the emergency room visit for an irregular heartbeat, despite the natural alarm such information should elicit especially for an HLP participant with the history of significant heart issues that were disclosed on her Health Application. The health coaches failed to make any efforts to notify Dr. Gala of the changes to the health conditions of Patients 1 and 2. Patient 2's health coach also failed to notify Dr. Gala of the additional diagnosis of dementia.

These health coaches had completed the seven-week training program created by Dr. Gala. They were required to review a litany of materials regarding the HLP, and they had been tested on this information. Before providing unsupervised services to HLP participants, they had observed an experienced coach's interactions with participants and had an experienced coach observe their interactions with participants. In particular, Ms. Jorgensen is the lead health coach and conducts the trainings, presumably making her the most knowledgeable health coach at the MDS. However, despite this training regime, Dr. Gala's training and policies failed to provide the necessary instructions to the health coaches to bring such essential information to Dr. Gala's attention. As a result, Patients 1 and 2 did not receive the chiropractic care that Dr. Gala was required to provide – his review of the changes in their health followed by an assessment of whether changes in the treatment plan were warranted. The Board's supposition is correct. Dr. Gala abdicated his duties as a chiropractor to the unlicensed health coaches.

In order to prevail on its allegations that Dr. Gala's conduct violated ORS 684.100(1)(q), the Board must also establish that Dr. Gala's abrogation of his duties as a chiropractor amounted to *gross* negligence. The ALJ emphasized the "gross" because ordinary negligence is not enough to establish a violation, and "gross" suggests something significantly greater than ordinary negligence. The statutes and administrative rules do not provide a definition of the term "gross negligence." *Webster's Third New Int'l Dictionary* 1002 (unabridged ed 1993) defines "gross negligence" as "negligence marked by total or nearly total disregard for the rights of others and by total or nearly total indifference to the consequences of an act."

Dr. Gala used scientific principles to develop the HLP and continues to modify it in response to any new developments or information he receives. He crafted the HLP to make it readily accessible to the participants through the weekly coaching phone calls, the group calls, the online community forum and other materials available at the MDS website. Although he utilizes unlicensed individuals to provide the ongoing HLP services, he created a training

program for the health coaches, which would aid in establishing uniformity in practices among the health coaches and ensure that the health coaches were conversant with the HLP recommendations. Dr. Gala demonstrated a genuine interest and strong desire to improve the health of his HLP participants. He also has a profound belief that adoption of the HLP's healthy lifestyle choices absolutely will improve the health of the HLP participants and has the potential to result in remarkable improvements in their health.

Unfortunately, the degree of this belief in the efficacy of his HLP clouded Dr. Gala's professional judgment and caused him to abdicate his duties as a chiropractor to his unlicensed health coaches. Ms. Jorgenson, the lead health coach, had no education or certifications in any medical or nutritional field, demonstrating that such a background is not a requirement for an HLP health coach. So, not only did he abdicate his duties as a chiropractor to unlicensed individuals, he abdicated his duties to individuals who did not have, and were not required to have, a medical or nutritional background.

On two occasions, Patient 1 rescheduled coaching calls because she was ill. This information was not conveyed to Dr. Gala. On February 2, 2015, she engaged in a lengthy telephone call with Ms. Jorgensen. During the course of that call, Patient 1 reported dizziness and a fall coupled with a very high blood pressure reading. Ms. Jorgensen's only response was to chart the statement from Patient 1 and leave a note for the next health coach to ask Patient 1 about the "swishing in her head." Even though Patient 1 reported that she spoke with her PCP about the dizziness episode, the information regarding the episode should have been convey to Dr. Gala. Similarly, Patient 2's health coach took no action when Patient 2 disclosed the dementia diagnosis during a coaching session, other than to note that the health coach should remind Patient 2 of the next coaching appointment. During this same coaching call, Patient 2 disclosed a trip to the emergency room because of her irregular heartbeat. The health coach again took no action other than including the disclosure in Patient 2's records. As the chiropractor, it is Dr. Gala's duty to review the changes to the health condition of the HLP participants and determine what action, if any, should be taken. Such review and determination is not the prerogative of an unlicensed individual, but Dr. Gala permitted the unlicensed individuals to make these decisions, which put the health and safety of the HLP participants, including Patients 1 and 2, at risk.

The health coaches' failures to inform Dr. Gala of the illnesses, emergency room episode, and the new diagnosis of Patients 1 and 2 also demonstrated the failure of his training program. The training program and HLP policies clearly did not include instructions for the simple and obvious requirement that health coaches immediately inform Dr. Gala of any health changes in the HLP participants' conditions.

Although Dr. Gala asserted that he does periodically review HLP participants' records, he failed to review any of Patients 1 or 2's records once he completed the initial consultation. Although he argued that their early withdrawal from the HLP resulted in his lack of review, the ALJ was not persuaded by this argument. The Board agrees. Dr. Gala testified that he intended to contact Patient 1's PCP because of her history of cancer; yet, he failed to make any such effort during the initial month she participated in the HLP. Additionally, the evidence from the other HLP participants supports a finding that his availability to consult with an HLP participant is

primarily triggered by that participant's desire to speak with Dr. Gala, rather than triggered by any regular monitoring of a HLP participant's record. The ALJ found that Dr. Abrahamson's conclusion that Dr. Gala's HLP was designed to have the health coaches provide the HLP services was accurate and supported by the evidentiary record. Finally, even if Dr. Gala intended to review Patients 1 and 2's records at some point during the course of their participations in the HLP, Patients 1 and 2 needed their disclosures about their health reviewed at the time they made the disclosures, not at some undefined point in the future.

Dr. Gala testified that the HLP primarily attracts older individuals with chronic diseases. Despite knowing that his HLP participants are composed of older chronically ill patients, Dr. Gala turns over the care of these HLP participants to unsupervised, unlicensed individuals with no medical background. He does this action because of his blind belief in the efficacy of his HLP and his refusal to consider that the HLP could harm individuals with certain comorbid conditions. This matter involves only three of his HLP participants, but all three patients were elderly and had comorbid conditions (blood pressure and Patient 2's heart issues) that could be adversely affected by the dietary changes and supplements recommended by the HLP. Patient 2, in particular, was in the greatest jeopardy from such changes. Patient 2 was an elderly female in extremely delicate health because of the severity of her heart conditions. Because of her use of Coumadin, the HLP recommendations placed her health and safety at significant risk because such dietary and supplement changes could result in hemorrhaging or clotting events that could cause a stroke, a circumstance that Drs. Seaman, Browne, Prideaux and Abrahamson all recognized. Even Dr. Abrahamson, who opined that Patient 2 could start the HLP, recognized that her condition would need to be closely monitored by Dr. Gala, an event that would never happen under the HLP's policies as created by Dr. Gala.

Dr. Gala's abdication of his duties to the unlicensed health coaches demonstrated his nearly total disregard for the rights of others (his patients to whom he owed a professional duty of care and whose health and safety were at risk due to his negligence) and his nearly total indifference to the consequences of his action (patients who are left to experience adverse changes in their health condition without any oversight from the health care professional). The Board established that Dr. Gala's conduct amounted to gross negligence, in violation of ORS 684.100(1)(q).

Misconduct Regarding Fees

The Board alleges that Dr. Gala engaged in fraud or misrepresentation and unprofessional conduct regarding his assessment of fees to Patients 1, 2 and 3. In the Wellness Plan Agreement, diagnostic review of functional blood chemistry/urine analysis is listed as a service or product. In the fee column on the form, this review is noted as being included in the case management and work up fee. As explained by Dr. Gala, the MDS does not perform lab work. The diagnostic review is exactly that – Dr. Gala's review of lab work results that the HLP participant independently provides to him. It is not a misrepresentation of what work he would perform. If a participant elects, Dr. Gala will review the lab work, which would allow him to assess the status of such conditions as blood sugars and cholesterol. As Dr. Abrahamson testified, the results of lab work can also provide a baseline to measure future results. Dr. Gala's offer to perform diagnostic reviews is not an unnecessary service. The Board failed to establish that Dr.

Gala violated OAR 811-035-0015(2).

Patients 1 and 2 paid the full costs of the HLP at the time of the consultation, and Dr. Gala never performed a diagnostic review for either patient. However, both patients terminated early from the HLP, with Patient 2 receiving a full refund, and Patient 1 receiving the refund her daughter requested of $6,400 of the $6,995 that Patient 1 originally paid for the HLP. Because they terminated early from the HLP, it is speculative whether either patient would have sought Dr. Gala's review of lab work at some point during the course of the HLP. Therefore, the Board cannot establish that Dr. Gala charged Patient 2, who received a full refund, for a service that was never rendered because it may have been rendered if she had stayed in the HLP. This reasoning remains the same for the neuropathy portion of the services Patient 2 paid up front. She did not receive the neuropathy services, but she received a full refund. Patient 1entered the HLP on January 26, 2015. On February 25, 2015, Dr. Gala's office received notice that Patient 1 was terminating her involvement in the HLP. Therefore, of the six-month HLP she purchased, she completed one month and received a refund of approximately 91 percent of the fee she had paid. As with Patient 2, because Patient 1 terminated early and received a refund of the majority of the fee she paid, the evidence failed to demonstrate that she was charged a fee for a service that was not rendered. The Board failed to establish that Dr. Gala violated OAR 811-035-0015(5).[21]

The Wellness Plan Agreements, signed by Patients 1, 2 and 3, include a provision that provides a $1,000 discount off the cost of the four and six-month plans if the participant pays in full by check or credit card. Both Patients 1 and 2 received this discount. In its Amended Notice, the Board alleged that such an inducement caused undue pressure on Patient 1 to sign the contract and pay the fee at the time of the consultation to avoid the possibility of foregoing the discount. This discount was included in the standardized Wellness Plan Agreement, so Patient 1 had the option to not join the HLP at the time of the initial consultation, spend more time deciding whether she wished to join, and then join at a later date and receive the same discount. Dr. Gala testified, as did some of the other HLP participants, that participants could join the HLP any time so long as they attended a seminar and completed a consultation. The evidence did not support a finding that this discount would not be available if Patient 1 elected to join many months following the consultation. There was also no evidence from any of the experts that an offer of a discount on services would be considered in anyway unethical or unprofessional for a chiropractor. Finally, the evidence does not support a finding that such an offered discount, although an inducement to join the HLP, is dishonest or misleading or that it constitutes fraud or misrepresentation. Similarly, the evidence does not support a finding that wanting written confirmation from an HLP participant of their election to terminate their participation is in anyway inappropriate. Instead, such a request would be appropriate for a doctor who wants to

[21] Because the Board's allegations in its Amended Notice are specific to Patients 1, 2 and 3, Dr. Gala's practices in regards to other HLP participants cannot support the finding of a violation. Thus, the evidence established that many HLP participants do not provide lab work for Dr. Gala's review, yet they pay the full case management and work up fee and receive no portion of that fee as a refund for an un-conducted diagnostic review. However, the testimony and materials regarding Dr. Gala's HLP actually reflects that he is not charging any fee for such diagnostic review. It is simply an additional service he offers to HLP participants, just as with the videos, pamphlets and other online materials. It is left to the HLP participant whether they will utilize this service.

document the participant's withdrawal from the HLP in the participant's file. The evidence also demonstrated that Dr. Gala's office did not make such a request of Patients 2 and 3. Dr. Gala's office confirmed via a telephone call with Patient 2 that she wanted to discontinue her participant, and Patient 3's refund was processed at the time of the consultation.

The Board also alleges that Dr. Gala's use of CareCredit, in which he charges the account for the entire cost of a multiple month service at the time of the consultation, was fraudulent. In the Amended Notice, the Board cited Dr. Gala's use of the CareCredit accounts for all three patients as violations of the applicable statutes and administrative rules. However, Patient 1 paid for the HLP with a check and Patient 2 paid for the HLP with her personal credit card. Patient 2's home health care worker took Patient 2 to her bank to file a challenge to the charge on the credit card. That challenge became unnecessary because Dr. Gala's office immediately refunded Patient 2 the entire fee upon her return of the HLP materials. There was no evidence of irregularities regarding the handling of Patients 1 and 2's payments or refunds.

The use of the CareCredit services was only applicable with Patient 3. CareCredit has a policy that accounts will only be charged for services that will be "completed or provided" within thirty days of the charge. The Board argued that Dr. Gala's charging of the full price of the multi-month HLP plans when a participant first begins the HLP violates this policy and results in Dr. Gala perpetrating fraud upon a third party payor. Aside from the single policy statement, there was no other evidence to support such an allegation. There was no evidence as to the meaning of CareCredit's statement of "completed or provided." Although the term "completed" has an obvious meaning, the term "provided" is less clear, especially when it is distinguished as meaning something other than completed. Thus, it leaves the possibility that Dr. Gala has provided the services of the HLP once a participant joins the program, regardless of how long the particular program lasts. Dr. Gala testified persuasively that he has spoken with CareCredit about his multi-month HLP plans, and CareCredit approved the use of its credit accounts for the HLP. Although Synchrony Bank resolved Patient 3's credit dispute in her favor, it had not performed any fraud investigation into her claims because Dr. Gala's office had already reversed the charge. Subsequently, Synchrony Bank confirmed that Dr. Gala's office followed its policies in the processing of Patient 3's transaction.

Patient 3 had a limited understanding of Dr. Gala's use of CareCredit accounts. It was clear from her testimony that Patient 3 did have an understanding of the concept, that Dr. Gala could process an application for the opening of a CareCredit credit account to which the HLP fee would be charged, and she would then make monthly payments to CareCredit over a six-year period. However, she failed to review the forms she signed, which made it clear that she was actively opening a credit account. She failed to understand that a "credit check" occurred when CareCredit processed her application for credit rather than being a preliminary matter with the processing to occur after some undefined further authorization. She also failed to inform Dr. Gala of her lack of understanding and that she only signed the forms because she felt overwhelmed.

Patient 3 adamantly believed that she never authorized Dr. Gala to open the CareCredit account and charge the account for the HLP. However, the evidence at hearing persuasively demonstrated that she had agreed to join the HLP and would only be paying for the cost of the

HLP with a CareCredit account. When Dr. Gala concluded the consultation, he sent Patient 3 to the HLP assistants to review the HLP materials. The assistants verified Patient 3's contact information, scheduled her first coaching session, and provided her the Guide and other materials. The assistants even began reviewing the Guide with Patient 3 before Patient 3 announced that she was not interested in participating in the HLP. The ALJ stated "I can only conclude from these actions that, at the time Patient 3 left Dr. Gala and joined the assistants, she knew that she had joined the HLP, and, as such, she knew that she was paying for the HLP with the CareCredit account, the mechanism for payment that she had discussed with Dr. Gala." If Patient 3 left her consultation with Dr. Gala with the belief that she was not participating in the HLP, she would not have confirmed her contact information, scheduled a coaching session and obtained and reviewed materials with the assistants. Instead, the evidence establishes that Patient 3 changed her mind during the review and became visibly upset at the point when the assistants first tried to sell her an alternative program and then confirmed that the CareCredit account had already been opened and charged. Her feeling of being overwhelmed by Dr. Gala was exacerbated by her alarm that the CareCredit account had been processed so quickly and that she had already been charged $3,800, an amount she could not afford. However, this evidence fails to establish that Dr. Gala engaged in dishonesty, fraud or misrepresentation when he opened and charged the CareCredit account.

For these reasons, the Board failed to provide persuasive evidence that Dr. Gala perpetrated fraud upon a third party payor or a patient. The Board failed to establish that Dr. Gala violated OAR 811-035-0015(12).

The Board's remaining allegation regarding irregularities with fees concern Dr. Gala's sales tactics with Patient 3. Without a doubt, Dr. Gala holds strong beliefs that his HLP would benefit any member of the public who has any complaint about the state of their general health. As demonstrated in his testimony, in his promotional materials, in his seminars, and in his interactions with Patient 3, Dr. Gala's enthusiasm for the HLP and his insistence that the HLP will improve the lives of the HLP participants could be overwhelming to individuals. As he acknowledged in his March 2, 2016 letter to Patient 3, Dr. Gala had been told that he can appear overbearing and cause people to feel overwhelmed. There were aspects of his encounter with Patient 3 that were demeaning and belittling. He belittled Patient 3's concerns about the cost of the HLP when he replied with the comments "what's more important" and "how important is getting healthy to you." He demeaned Patient 3, a 69-year-old woman suffering from a long-term serious illness that caused her constant pain, when he suggested that she get a part-time job to pay for the HLP or that she stop consuming Diet Coke and use the $3 per day savings to pay for the HLP, even going so far as to note that option on the Wellness Plan Agreement. Finally, he clearly overrode and disregarded her repeated concerns about the cost of the HLP and her inability to pay for it. His final solution to offer her a "hardship" plan, which cost approximately one-half of the original six-month HLP but would only last for approximately two months, was clearly not any kind of discounted offer. However, Dr. Gala's representations regarding the HLP services, the length of the proposed HLP, and the cost of the proposed HLP were accurate and fully disclosed by Dr. Gala and in the forms presented to Patient 3. Therefore, while Dr. Gala's mannerism during his consultation with Patient 3 was demeaning, belittling, and overwhelming to Patient 3, the Board failed to establish that Dr. Gala engaged in fraud, misrepresentation, dishonesty, threatening, or misleading fee techniques with Patient 3 in regards to the services,

length or costs of the proposed HLP.

For the reasons discussed above, the Board failed to establish that Dr. Gala violated ORS 684.100(1)(a) and (f) and OAR 811-035-0015 in regards to his charging of fees to Patients 1, 2 and 3.

Adequate Record-Keeping Practices

In the Amended Notice, the Board alleges that Dr. Gala failed to maintain accurate medical records on Patients 1, 2, and 3. During testimony, much of the focus on the inadequacies of the medical records primarily concerned the lack of documentation of such things as an examination and the results of the examination, the determination of a diagnosis, the finding of informed consent, and the patient's vitals. However, the lack of documentation of such items was because Dr. Gala did not perform those tasks as detailed above. Therefore, there were no examinations to detail, no diagnoses to list, no informed consents to note, and no vitals to record.[22] Additionally, in its Amended Notice, the Board indicated that Dr. Gala's failure to maintain accurate records constituted "unprofessional conduct pursuant to OAR 811-015-0010(1)-(5)." Amended Notice at 11. This citation is in error. OAR 811-015-0010 concerns the requirement for clinical justifications for all diagnosis and treatment procedures. OAR 811-015-0005(1) defines the failure to maintain accurate and complete records as unprofessional conduct and describes the requirements for such records.

ORS 183.415(3)(c) requires notices of agency action to include "a reference to the particular sections of the statutes and rules involved." Because the Amended Notice does not include a reference to the "involved" administrative rule, namely OAR 811-015-0005(1), the Amended Notice fails to comply with the statutory notice requirement of ORS 183.415(3)(c). Pursuant to *Villanueva v. Board of Psychologist Examiners,* 175 Or App 345 (2001), *adh'd to on recons.,* 179 Or App 134 (2002), such a failure is inherently prejudicial and the agency cannot proceed on its allegation. Because the Amended Notice failed to include the citation to the rule on which it relied, the Board cannot establish a violation of OAR 811-015-0005(1) against Dr. Gala.

Disciplinary Action

ORS 684.100(9) provides:

> In disciplining a person as authorized by subsection (1) of this section, the board may use any or all of the following methods:
>
> (a) Suspend judgment.

[22] This is not to say that there was no evidence of inaccurate record-keeping. There were specific, isolated instances of apparently inadequate records, such as the missing medication and medical history lists noted in Patient 2's Health Application.

(b) Place the person on probation.

(c) Suspend the license of the person to practice chiropractic in this state.

(d) Revoke the license of the person to practice chiropractic in this state.

(e) Place limitations on the license of the person to practice chiropractic in this state.

(f) Impose a civil penalty not to exceed $10,000.

(g) Take other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings.

OAR 811-035-0025 provides:

In addition to the methods enumerated in ORS 684.100(9), in disciplining, imposing probation, or limiting the license of a person as authorized under 684.100(1), the Board may do any or all of the following:

(1) Issue an order to cease and desist;

(2) Issue a censure;

(3) Issue letters or a reprimand; or

(4) Impose any reasonable conditions or limitations for the purpose of protecting the public, rehabilitating the licensee, or ensuring licensee's compliance with the statutes and rules governing the practice of chiropractic.

In its Amended Notice, the Board proposes to require Dr. Gala to successfully pass the SPEC and EBAS tests, to provide file pulls to the Board for examination and review, to pay a civil penalty in the amount of $5,000 per each case for a total of $15,000, and to pay the costs of the disciplinary proceeding. In light of the range of sanctions available to the Board, the Board's proposed sanctions are not exceptionally onerous and appear to be mostly appropriate.

The EBAS test covers ethical and boundary issues encountered by chiropractors. Dr. Gala frequently engaged in behaviors that reflected a willingness to modify and a desire to perfect his HLP, such as his regular review of scientific studies and updating his HLP materials and his willingness to seek advice from the Board. However, Dr. Gala's conduct, as detailed above, also demonstrated a stubborn resistance to accepting that he must comply with chiropractic standards in his interactions with the HLP participants. His stubborn resistance included his refusal to accept that he established doctor-patient relationships with the patients at the time of their consultations and his continued refusal to acknowledge that he was not

providing problem-based treatment even though his marketing technique exclusively targeted members of the public who suffered from specific medical conditions. Dr. Gala even testified that he targets the medical conditions in his advertisements because he determined that an advertisement that just references wellness care and improving one's general health would not capture the attention or interest of the public to the degree that specific medical conditions would capture the interest of those who suffer from them.

Dr. Gala's HLP provides excellent advice on lifestyle changes that would normally benefit most individuals. His use of health coaches, the individualized weekly contacts, the weekly group phone calls, the online community forum, the plethora of materials are all tools that would likely increase a participant's success in implementing the lifestyle changes and potentially making the changes permanent. Dr. Gala's enthusiasm and dedication to improving people's health are admirable and clearly genuine. However, the level of his enthusiasm can be overwhelming, especially when coupled with his insistence that an individual must make these lifestyle changes or be doomed to a life filled with medications, surgeries, inactivity and pain, as demonstrated by his interaction and effect on Patient 3. Further, as again demonstrated in his interactions with Patient 3, he essentially ignored and overrode her regularly voiced concerns and objections that she simply could not afford his HLP. His extreme focus on signing her up for the HLP because of his fervent belief that her health would improve with her participation in the HLP, demonstrated his inability to maintain an appropriate professional distance and neutral manner in his relationship with Patient 3. His desire to sign her up for the HLP made him incapable of considering her concerns or observing her increasing distress. Dr. Gala's interactions with the patients support the Board's decision that he take and pass the EBAS test as a reasonable condition for the purpose of protecting the public. Dr. Gala must complete the EBAS test within six months of the issuance of the Board's final order in this matter.

The Board also sought for Dr. Gala to take and pass the SPEC test. The SPEC tests covers all aspects of chiropractic care, including patient interview, physical examination, neuromuscular skeletal examination, X-ray examination, clinical lab and special studies, diagnosis or clinical impression, chiropractic techniques, supportive techniques, and case intervention strategies. However, the facts of this case do not support a finding that Dr. Gala has deficiencies in the majority, or even a minority, of the aspects of chiropractic care. Instead, this matter primarily involved Dr. Gala's inability to accept that he was providing chiropractic care to the HLP participants, in the form of wellness care, and had to comply with the standards of his profession. Therefore, there was no evidence that he was unable to perform a variety of the activities required of a chiropractor. The ALJ found that the requirement that Dr. Gala pass a SPEC test is excessive and inappropriate. Instead, the Board should require Dr. Gala to take specific continuing education classes focused on those areas applicable in this matter as a reasonable condition for the purpose of protecting the public. Therefore, Dr. Gala shall take 10 hours of continuing education classes, in addition to any classes required for maintaining his licensure, with the classes pre-approved by the Board. Such classes must include any of the following subjects: initial patient consultation and/or initial examination; rendering differential diagnoses; record-keeping; PARQ; informed consent; psychosocial assessments; issues concerning elderly patients; the use of unlicensed individuals; and coordination of care. Dr. Gala must complete the continuing education classes within six months of the issuance of the Board's final order in this matter.

Dr. Gala will have to implement new policies and procedures for his HLP to ensure compliance with the standards of his profession and the applicable statues and administrative rules. The Board also established that Dr. Gala engaged in unprofessional and dishonorable conduct regarding the chiropractic care he provided HLP participants. As such, it is reasonable for the Board to require file pulls to verify his compliance with the standards of chiropractic care. As requested by the Board, Dr. Gala will provide one file pull of three HLP patient files that involve patients age 65 and older who have completed Dr. Gala's HLP immediately upon the issuance of the Board's final order in this matter. Dr. Gala will allow an additional file pull of three different HLP patient files, who are age 65 and older and who have completed the HLP, six months after the first file pull. Dr. Gala will allow Board staff access to his business premises to examine, review and photocopy HLP participants' records to verify compliance with the Board's final order. The Board will provide reasonable notice of the file pull requests.

The ALJ found that the Board's request for a $5,000 civil penalty, one-half of the maximum available civil penalty, in each patient's case was appropriate. The Board agrees. The proposed amount is approximately the amount charged to each patient; the Board established that Dr. Gala engaged in multiple instances of unprofessional and dishonorable conduct as well as gross negligence; and, by this conduct, he placed the health and safety of Patient 1 at risk, placed the health and safety of Patient 2 at serious risk, and caused Patient 3 significant emotional distress. Dr. Gala must pay $5,000 per case for a total civil penalty of $15,000 for all three cases.

In his closing argument, Dr. Gala asserted that the Board should be precluded from seeking disciplinary costs from before the original hearing date of May 1, 2017 because the "board was required to withdraw the original notice of discipline in order to avoid an inevitable dismissal pursuant to *Murphy*." Respondent's Closing Argument at 20. First, application of the conclusions in the *Murphy* case does not result in a finding of a legally deficient notice or a dismissal of the notice. *Murphy* simply requires a state agency to proceed on the grounds, including the legal theories, that are specifically referenced in the notice. The Board could have proceeded on its original notice and it may have prevailed on the grounds specifically referenced in the original notice. The Board could not have prevailed on any grounds that Dr. Gala could not reasonably have understood to be alleged in the notice. Upon the Board's opening statement at the time of the May 1, 2017 hearing, it appeared that the Board may indeed be pursuing a claim based upon grounds that were not necessarily clearly stated in its notice. The Board chose to amend its notice to provide more clarity and specificity as to its claims, which decision was allowed by the ALJ pursuant to OAR 137-003-0530(4)(a)(B). The ALJ did not find that the Board is precluded from pursuing the assessment of any disciplinary costs that predate the May 1, 2017 hearing date. As found above, Dr. Gala engaged in unprofessional or dishonorable conduct in regards to all three patients. Therefore, the Board's investigation in each patient's case was necessary and its costs it incurred to pursue its legitimate concerns were warranted. Dr. Gala is assessed the costs of the disciplinary proceedings.

Costs:

Pursuant to this statute, the Board (having successfully proven its case) has the right to assess the

costs of the disciplinary proceeding against Dr. Gala, and it has indicated its intention to do so.

DOJ Costs

AAG costs: 143.9 hours at $182 per hour	$26,189.80
Paralegal costs: 84.9 hours at $91 per hour	$7,725.90
Total DOJ costs:	**$33,915.70**

Experts Costs

Total Expert costs:	**$12,500.00**

OAH Costs[23]

A.	OAH Direct Charges: (ALJ & Operations Staff Time, Travel, & Transcripts, includes working capital)	$23,536.39
B.	OAH Admin. Charges: (OAH Overhead, includes working capital)	$ 968.20
Total OAH Costs:		**$24,504.59**
Total Costs:		**$70,920.29**

ORDER

The Board of Chiropractic Examiners issues the following final order:

1. Thaddeus R. Gala, DC, must comply with the following conditions:

    - Complete and successfully pass the EBAS test within six months of the issuance of the Board's final order;

    - Complete 10 hours of continuing education classes within six months of the issuance of the Board's final order. These classes must be pre-approved by the

[23] "Office of Administrative Hearings costs are based on actual charges calculated by Oregon Employment Department financial services for the administrative law judge, for the hearing, and for all associated administrative costs, pursuant to ORS 183.655. Direct costs include ALJ and OAH staff time, and any travel, transcripts and interpreters. Administrative costs include OAH overhead calculated based on hours. Working capital is assessed at 9%."

Board and include any of the following subjects: initial patient consultation and/or initial examination; rendering differential diagnoses; record-keeping; PARQ; informed consent; psychosocial assessments; issues concerning elderly patients; the use of unlicensed individuals; and coordination of care. These 10 hours of continuing education classes are in addition to any classes required to maintain his licensure;

- Allow the Board to enter the MDS' premises to examine, review and photocopy HLP participants' records to determine compliance with the Board's final order;

- Provide two file pulls with a minimum of three files per pull for different patients age 65 and older and who have completed the HLP. The first file pull of three files will occur immediately after issuance of the Board's final order. The second file pull of three files will occur six months after the first file pull;

- Dr. Gala will have to implement new policies and procedures for his HLP to ensure compliance with the standards of his profession and the applicable statues and administrative rules within the next 6 months this order becomes final. Dr. Gala is responsible to provide verification of these changes in his policies and procedures.

2. Thaddeus R. Gala, DC, must pay civil penalties in the total amount of **$15,000** ($5,000 for each of the following cases: 2015-1001, 2015-3005 and 2016-1007) to be paid within three months of the issuance of the Board's final order; and

3. Thaddeus R. Gala, DC, must pay the costs of the disciplinary proceeding in the sum of **$70,920.29**. As indicated in the Amended Notice of Proposed Discipline, Licensee will be charged any interest charges for failure to pay the penalties and costs, including collection fees the Board incurs.

[redacted] /18

Cassandra C. McLeod-Skinner J.D., Executive
Director, Oregon Board of Chiropractic
Examiners
Office of Administrative Hearings

/ / / /

/ / / /

/ / / /

/ / / /

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*.

CERTIFICATE OF MAILING

On October 9, 2018 I mailed the foregoing Final Order issued on this date in OAH Case No. 2016-ABC-00100.

By: First Class Mail

Thaddeus R Gala, DC
1296 S. Shasta Avenue, #5
Eagle Point OR 97524

James R Dole
Watkinson Laird Rubenstein
PO Box 10567
Eugene OR 97440

Lori H. Lindley AAG
Department of Justice
Business Activities Section
1162 Court St NE
Salem OR 97301

[redacted]
Cassandra C. McLeod Skinner, J.D.
Executive Director
Oregon Board of Chiropractic Examiners

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

Thaddeus R. GALA, DC,
Petitioner,

v.

BOARD OF CHIROPRACTIC EXAMINERS,
Respondent.

Board of Chiropractic Examiners
20151001, 20153005, 20161007;
A169311

Argued and submitted December 18, 2020.

James R. Dole argued the cause for petitioner. Also on the briefs was Watkinson Laird Rubenstein, P.C.

Jona J. Maukonen, Assistant Attorney General, argued the cause for respondent. Also on the brief were Ellen F. Rosenblum Attorney General, and Benjamin Gutman, Solicitor General.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

TOOKEY, J.

Affirmed.

TOOKEY, J.

Petitioner, a chiropractic physician, seeks judicial review of a final order of the Oregon Chiropractic Board of Examiners (the board). The final order imposed a disciplinary sanction on petitioner for unprofessional or dishonorable conduct and gross negligence in providing care to three patients—Patients 1, 2, and 3—through his "Healthy Living Plan" wellness program (HLP).

We write to address petitioner's first through fourth assignments of error, in which petitioner challenges the board's determinations that (1) petitioner's HLP is subject to the chiropractic standard of care; (2) petitioner engaged in unprofessional or dishonorable conduct; (3) petitioner engaged in gross negligence; and (4) petitioner could be disciplined for conduct relating to Patient 3, who did not consider herself petitioner's patient. We reject petitioner's remaining assignment of error without discussion,[1] and for the reasons that follow, we affirm.

I. STANDARD OF REVIEW

We review the board's order for errors of law and substantial evidence. ORS 684.105(2); ORS 183.482(8)(a), (c); *Bruntz-Ferguson v. Liberty Mutual Ins.*, 310 Or App 618, 619, 485 P3d 903 (2021). Substantial evidence "exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482(8)(c). In addition to reviewing for substantial evidence, "we also review the board's order for substantial reason." *Bruntz-Ferguson*, 310 Or App at 619. Substantial reason exists when "the board provided a rational explanation of how its factual findings lead to the legal conclusions on which the order is based." *Id.* In conducting our review, "the court shall not substitute its judgment for that of the agency as to any issue of fact." ORS 183.482(7).[2]

---

[1] In his fifth assignment of error, petitioner contends that the board's final order "improperly infringes on his [commercial speech] rights under Article I, § 8 of the Oregon Constitution," because "[t]he only basis for the board to seek discipline is because [petitioner] refers in advertising and media to the fact that he is an Oregon licensed chiropractor."

[2] Although reviewing for substantial evidence includes reviewing for substantial reason, *see, e.g.*, *Jenkins v. Board of Parole*, 356 Or 186, 201, 335 P3d 828

II. FACTUAL BACKGROUND

We begin by briefly summarizing the facts giving rise to this case, which we later supplement with additional facts in our discussion of each assigned error.

Petitioner is a licensed chiropractic physician. He runs a traditional chiropractic business and a second business called "My Diabetic Solution." According to petitioner's website, "My Diabetic Solution was created with the sole purpose and goal of helping 5 million people achieve their individual health goals *** [and to] help people with all types of diabetes and chronic ailments reverse their disease in 1-8 months." Through My Diabetic Solution, petitioner offers four free seminars, each focused on a specific medical condition: diabetes, fibromyalgia, sleep apnea, and neuropathy. The seminars are open to the public and advertised in print and online. Those advertisements always note petitioner's status as a chiropractic physician.

At the seminars, attendees may register for an individual consultation with petitioner. In so doing, an attendee completes a "Health Application and Case History" form, in which the attendee identifies, among other things, current and past health problems and medications. During the consultation, petitioner explains the HLP wellness program and determines whether the attendee is suitable to participate in the HLP, which focuses on introducing an anti-inflammatory diet, lifestyle changes, dietary supplements, and exercise. Petitioner offers two-, four-, and six-month HLP plans, charging flat fees of $2,495, $5,995, and $6,995, respectively.

Once accepted into the HLP, participants can communicate directly with petitioner, but they do not receive one-on-one care from petitioner; instead, they receive one-on-one services through scheduled phone calls with HLP "health coaches." Coaching calls usually occur once a week and focus on the HLP participants' goals, progress, and challenges. Health coaches provide information and advice

(2014) ("[T]he substantial reason requirement is part of the substantial evidence standard of review."), petitioner's briefing is largely focused on substantial evidence and arguments that the board's decision is "contrary to law"; consequently, our analysis is similarly focused.

to the participants about how to implement the HLP, including advice on meal preparation, unhealthy eating habits, and dietary supplements.

Before coaching HLP participants, new health coaches are required to complete a seven-week training course developed by petitioner, but those health coaches are not licensed or certified by any Oregon agencies. Health coaches are overseen by the My Diabetic Solutions wellness director, who is in turn supervised by petitioner. Petitioner meets with the health coaches once a month, and he is available to answer questions from the health coaches or their HLP participants

In 2015 and 2016, the board received complaints regarding three HLP participants—*i.e.*, Patients 1, 2, and 3—and their interactions with petitioner and his HLP.

Patient 1 was 79 years old, had dementia, and enrolled in the HLP after attending petitioner's fibromyalgia seminar. She indicated in her Health Application that her main problems included fibromyalgia and neuropathy. She discontinued her participation in the HLP after about a month on the advice of her primary care provider and her daughter and received a partial refund. The complaint regarding Patient 1 was submitted to the board by her daughter.

Patient 2 was 82 years old, had dementia, and enrolled in the HLP after attending petitioner's neuropathy seminar. She indicated in her Health Application that she had numerous medical conditions, including conditions of the heart, lungs, spine, and nervous system. She stopped participating in the HLP after several weeks and received a full refund. The complaint regarding Patient 2 was submitted to the board by a physician's assistant in the office of her primary care provider.

Patient 3 was 69 years old and enrolled in the HLP after attending petitioner's fibromyalgia seminar. During her 30-minute consultation with petitioner, she became "very nervous and scared" and enrolled in the HLP because "she felt pressured to do so." Shortly after leaving the consultation, she informed one of petitioner's assistants that

she did not want to participate in the HLP, and she eventually received a full refund. The complaint regarding Patient 3 was submitted to the board by Patient 3 herself.

The complaints relating to Patients 1, 2, and 3 ultimately led to the board issuing the final order that we are now asked to review. In that order, the board determined, among other things, that (1) petitioner's HLP was subject to the chiropractic standard of care; (2) petitioner had engaged in unprofessional or dishonorable conduct; (3) petitioner had engaged in gross negligence; and (4) petitioner had a doctor-patient relationship with Patients 1, 2, and 3. On review, petitioner challenges each of those determinations, and we address each, in turn.

III. ANALYSIS

A. *First Assignment of Error: HLP and the Chiropractic Standard of Care*

In his first assignment of error, petitioner contends that "[t]he final order is contrary to law and is not based on substantial evidence, because [petitioner's] program of wellness care is not 'chiropractic' and is therefore not subject to the standard of care for traditional chiropractic care." We disagree.

The board determined that the HLP was "chiropractic" and subject to the chiropractic standard of care. That determination was based largely on the expert testimony of four chiropractors who testified at petitioner's hearing:

> "[W]hen recommended solely as a means to maintain and maximize health, the wellness care plan would not be considered chiropractic practice. However, *as opined by all the chiropractors* with the exception of [petitioner], *when wellness care is recommended for a specific medical condition, then it is considered chiropractic practice and offered as a treatment plan for that condition*."

(Emphases added.) Additionally, the board noted that petitioner "agreed that, for a patient seeking problem-based care, the chiropractor would need to follow all the requirements of traditional chiropractic care." In light of the experts' testimony, the board concluded that "the standard is clear—if the chiropractor is providing problem-based care to a

patient, then [they] must follow the traditional chiropractic standards, regardless of the nature of the recommended treatment."

The board then reviewed "the totality of the circumstances" to "determine[] whether the HLP is offered as a treatment plan for a specific medical condition." In so doing, the board highlighted (1) petitioner's HLP advertisements "targeting patients who experience very specific medical conditions"—*i.e.*, "diabetes, fibromyalgia, and neuropathy"; (2) petitioner's website and HLP materials asserting that "medications are not the answer to treating certain medical conditions," and that the HLP "is the road map to reversing chronic disease"; and (3) petitioner's recommendation of "the HLP to the three patients as a treatment program for their specific medical conditions, fibromyalgia in the cases of Patients 1 and 3, and neuropathy in the case of Patient 2."

Based on those circumstances, the board—like the administrative law judge—found "the evidence overwhelming that [petitioner] provides problem-based care to the HLP participants," and it reasoned that "[b]ecause [petitioner] proposed the HLP to Patients 1, 2, and 3 as a treatment for their specific medical conditions, he was required to fulfill all standards of chiropractic care during his interactions with each of the three patients."

We conclude that the board's determination that petitioner must meet the chiropractic standard of care in providing the HLP to the participants is not legally erroneous and is supported by substantial evidence.

B. *Second Assignment of Error: Unprofessional or Dishonorable Conduct*

Next, petitioner assigns error to the board's various determinations that he engaged in unprofessional or dishonorable conduct, arguing that the standards applied by the board are "improperly vague" and that substantial evidence does not support the board's findings. We disagree.

Under ORS 684.100(1)(f)(A), the board may discipline a person based on unprofessional or dishonorable conduct, including but not limited to,

> "[a]ny 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."

Here, the board determined that petitioner engaged in unprofessional or dishonorable conduct because he "violated the standards of chiropractic care" in six ways: (1) failing to carefully review the patients' medical and health information; (2) failing to perform an appropriate examination of each patient; (3) failing to render his own diagnosis for each patient; (4) failing to review the risks of the HLP with the patients; (5) failing to obtain informed consent from any of the patients; and (6) failing to coordinate care with Patients 1 and 2's primary care providers.[3] We briefly discuss each of those determinations and conclude that the board did not legally err, and that its determinations are supported by substantial evidence.

1. *Review of patients' medical and health records*

The board determined, based on the testimony of multiple expert witnesses, that the standard for chiropractic care requires obtaining and reviewing a patient's health history. Additionally, the board noted that, in "[petitioner's] opinion, if a patient is seeking problem-based care, *i.e.*, care for a specific complaint, then a chiropractor would need to review the patient's medical history." The board also determined that the Oregon Chiropractic Practices and Utilization Guidelines—which are the board's "attempt to provide a guideline for assuring that quality and competence are rendered to patients"—provide that a chiropractor should perform an "intake interview" or initial "patient consultation," which includes reviewing "a history of presenting illness, [and] past health history."

---

[3] In his briefing, petitioner contends that the board also determined that petitioner engaged in unprofessional or dishonorable conduct, in part, for "failing to perform psychosocial assessments" of Patients 1, 2, and 3. However, we understand the board to have made the opposite determination: The board determined that "[t]here was no evidence that [petitioner's] 30-minute interactions with the patients did not constitute a psychosocial assessment."

Applying that standard, the board determined that, "although [petitioner] obtained a health history from Patients 1, 2, and 3 as required by the standards of chiropractic care," the evidence established that petitioner did not "read them and [go] over them." On that basis, the board concluded that petitioner's "lack of careful review of [Patients 1, 2, and 3's] medical and health information *** violated the standards for chiropractic care."

2. *Medical examinations*

The board determined that, "[a]s a chiropractor providing problem-based care, [petitioner] must perform an examination of each patient before allowing their participation in the HLP." That determination was based on, and consistent with, the agreement among several expert witnesses that "there are no set types of examinations required," but rather, "a chiropractor must use his professional judgement to determine the appropriate examinations to perform dependent upon the patient and the presenting condition." The board also determined, based on the opinions of three expert witnesses, that "an initial examination must include [taking] the patient's vitals, which includes at a minimum the height, weight, and blood pressure of the patient."

With respect to Patients 1 and 3, the board determined—based on the evidence adduced in the hearing—that petitioner's post-seminar consultations with Patients 1 and 3 "primarily concerned the HLP services, length, and costs" and "do not amount to an examination." On that basis, the board concluded that "[petitioner's] failure to perform any kind of examination on Patients 1 and 3 violated the standards of chiropractic care."

With respect to Patient 2, the board found that "[petitioner] performed one neuropathy test on Patient 2." But the board determined—based on testimony from three expert witnesses—that "[petitioner's] single test was inadequate to support" the treatment plan he recommended to Patient 2, and that "[petitioner's] failure to perform an examination to support the treatment plan *** violated the standards of chiropractic care."

The board further determined that "[petitioner's] failure to obtain the vitals of Patients 1, 2, and 3 violated the standards of chiropractic care."

3. *Diagnoses*

Three expert witnesses agreed—and on that basis the board determined—that "a chiropractor must determine a diagnosis, or at least a provisional diagnosis, at the initial examination before suggesting a treatment plan."

Applying that standard, the board then determined that, "based upon the cursory nature of the review of the [patients'] health applications and the focus of the consultations on the HLP rather than the patients, [petitioner] failed to make his own diagnoses of Patients 1, 2, and 3's medical conditions," and that "[petitioner's] failure to render a diagnosis for each of these patients violated the standards of chiropractic care."

4. *Review of risks*

The board concluded—based on agreement among the expert witnesses—that it is necessary for a chiropractor "to perform all aspects of the PARQ [*i.e.*, Procedures, Alternatives, Risks, Questions] *** before providing treatment" to a patient.[4]

With respect to Patient 2, the board found that she was "taking the prescription medication Coumadin to control her blood-clotting properties to alleviate the risk of strokes and to prevent her from experiencing hemorrhaging events." The board then determined, based on expert testimony, that "Patient 2's condition was not well controlled and

[4] Regarding the PARQ, OAR 811-035-0005(2)(a) provides, in relevant part:

"The patient has the right to informed consent regarding examination, therapy and treatment procedures, alternatives and risks, and answers to questions (PARQ) in terms that they can reasonably understand.

"P – Procedures: examination, diagnosis, therapy, and treatment procedures

"A – Alternatives: alternative options to examination or chiropractic treatment

"R – Risks: risks and benefits associated with examination and/or chiropractic treatment

"Q – Questions: answer any questions patients have regarding the examination or treatment."

subject to significant fluctuation due to changes in her diet," and that certain supplements and foods included in the HLP "increase the possibility of a bleeding event" and can "interfer[e] with the effectiveness of the Coumadin."

With respect to Patients 1, 2, and 3, the board determined—based on expert testimony—that introducing dietary changes or supplements carries "attendant risks for individuals on blood pressure medications, a condition that Patients 1, 2, and 3 had."

In light of those determinations, the board further determined that although petitioner had "rather extensively" discussed the HLP treatment plan with the patients and had "reviewed the alternative available treatments," petitioner "did not review the risks of the HLP" with each of the patients. On that basis, the board determined that "[b]ecause [petitioner] did not review the risks of the HLP with Patients 1, 2, and 3, he did not perform all aspects of a PARQ, which violated the standards of chiropractic care."

5. *Informed consent*

Related to its determination that petitioner had failed to review the risks of the HLP with the patients, the board concluded that "OAR 811-035-0005(2)(b) requires a chiropractor to perform PARQ in order to obtain informed consent from the patient," and that, "[a]s confirmed by the experts, obtaining informed consent from patients for treatment is also a standard of chiropractic care."[5] On that basis, the board determined that "[b]ecause [petitioner] did not perform all aspects of a PARQ with Patients 1, 2, and 3, he failed to obtain informed consent from any of those patients in violation of OAR 811-035-0005(2) and in violation of the standards of chiropractic care."

6. *Contacting primary care providers*

The board determined that petitioner was required to coordinate care with Patient 1 and 2's primary care

[5] OAR 811-035-0005(2)(b) provides:

"Chiropractic physicians shall perform and document a PARQ conference in order to obtain informed consent from the patient prior to examination and treatment. The PARQ conference and informed consent shall be noted within the patient record."

providers (PCP) before introducing dietary changes or supplements.

With respect to Patient 1, the board determined—based both on the testimony of petitioner and an expert witness—that due to Patient 1's comorbid conditions and history of cancer, petitioner was "required to consult with Patient 1's PCP." The board further found that, despite Patient 1's "early termination from the HLP," she was nevertheless "in the HLP for one month before she gave notice of her withdrawal," but "[d]uring that month, [petitioner] made no effort to contact her PCP."

With respect to Patient 2, the board determined—based on agreement among three expert witnesses—that "because of the significant dangers to Patient's health in light of her comorbid conditions and use of Coumadin," it would be "absolutely imperative for a chiropractor to contact the Patient's medical professional to coordinate care before making changes to [the Patient's] diet or recommending the use of supplements."

Based on the above, the board determined that "[petitioner] failed to contact Patients 1 and 2's PCPs during the course of their participation in the HLP, which was a violation of the standards of chiropractic care."

7. *Conclusion as to petitioner's unprofessional and dishonorable conduct*

We conclude that the board did not legally err in its determinations regarding the six ways that petitioner engaged in unprofessional or dishonorable conduct and that its determinations are supported by substantial evidence.

C. *Third Assignment of Error: Gross Negligence*

In his third assignment of error, petitioner contends that the board's determination that he engaged in gross negligence is "contrary to law and is unsupported by substantial evidence." We disagree.

The board determined that petitioner engaged in gross negligence by "abdicat[ing] his duties as a chiropractor to the unlicensed health coaches." The board's standard for "gross negligence" is "negligence marked by a total or

nearly total disregard for the rights of others and by total or nearly total indifference to the consequences of an act."

Here, petitioner does not challenge the board's standard for gross negligence; instead, petitioner challenges the board's "application of that standard to these facts," arguing that "what the board finds in the Final Order is demonstrably not gross negligence."

The board's gross negligence determination was based on several underlying determinations. For one, the board determined that

> "[a]s the chiropractor, it is [petitioner's] duty to review the changes to the health condition of the HLP participants and determine what action, if any, should be taken. Such review and determination is not the prerogative of an unlicensed individual, but [petitioner] permitted the unlicensed [health coaches] to make these decisions, which put the health and safety of the HLP participants, including Patients 1 and 2, at risk."

Additionally, the board determined—based on evidence about the functions of the HLP health coaches—that petitioner not only abdicated "his duties as a chiropractor to unlicensed individuals, he abdicated his duties to individuals who did not have, and were not required to have, a medical or nutritional background." The board further determined that there were instances of "health coaches' failures to inform [petitioner] of the illnesses, emergency room episode, and the new diagnoses of Patients 1 and 2" by their PCPs, and that those failures "demonstrated the failure of [petitioner's] training program" for the HLP's health coaches.

The board also found that "all three patients were elderly and had comorbid conditions *** that could be adversely affected by the dietary changes and supplements recommended by the HLP." And, specifically with respect to Patient 2, the board found that three expert witnesses recognized that "[b]ecause of her use of Coumadin, the HLP recommendations placed her health and safety at significant risk because such dietary and supplement changes could result in hemorrhaging or clotting events that could cause a stroke."

Based on the above, the board ultimately determined that

> "[petitioner's] abdication of his duties to the unlicensed health coaches demonstrated his nearly total disregard for the rights of others (his patients to whom he owed a professional duty of care and whose health and safety were at risk due to his negligence) and his nearly total indifference to the consequences of his action (patients who are left to experience adverse changes in their health condition without any oversight from the health care professional)."

We conclude that the board's determination that petitioner engaged in gross negligence is not legally erroneous and is supported by substantial evidence.

D. *Fourth Assignment of Error: Discipline Relating to Patient 3*

In his fourth assignment of error, petitioner contends that he "cannot be disciplined for conduct relating to [Patient 3,] a person who neither wanted nor accepted respondent's care or treatment." More specifically, petitioner contends that Patient 3 "was adamant that she *** was not and did not want to be respondent's patient," and that "[t]here is no basis for discipline where the evidence is unequivocal that the so-called patient neither wanted nor expected" to receive care from petitioner. Thus, petitioner contends, the board's determination was not supported by substantial evidence. We disagree.

As the board noted in its final order, OAR 811-010-0005(9) defines "patient" to mean "any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services."

Here, the board explained that "just because Patient 3 did not consider [petitioner] to be her doctor does not control the reality of whether" she was petitioner's patient. Instead, the board further explained, whether she had become petitioner's patient "is determined by the totality of the interaction between [petitioner] and Patient 3."

In examining the interaction between petitioner and Patient 3, the board determined that Patient 3 was

petitioner's patient based on a number of factual findings: Patient 3 attended petitioner's fibromyalgia seminar; she paid for and received a consultation with petitioner; she completed the HLP application; she divulged private health information to petitioner; she discussed with petitioner goals of reducing her fibromyalgia; and she was evaluated by petitioner for her suitability to participate in petitioner's HLP. Based on those facts, the board stated that the evidence supports a determination "that [petitioner] established a doctor-patient relationship with Patient 3," and that as a result, "[petitioner] had a duty to provide the minimum standard of chiropractic care and comply with the laws and rules governing his profession."

We conclude that substantial evidence supports the board's determination that Patient 3 was petitioner's patient; consequently, the board could subject petitioner to disciplinary action for his conduct relating to Patient 3.

IV. CONCLUSION

In sum, we conclude that the determinations made by the board and challenged by petitioner on review are not legally erroneous and are supported by substantial evidence. Accordingly, we affirm the final order of the board.

Affirmed.