

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	
STEPHEN LISTON, D.C.,)	Case # 2004-3001
Licensee License No.: 2945)	
_____)		STIPULATED FINAL ORDER
		(CIVIL PENALTY)

The Oregon Board of Chiropractic Examiners (hereafter "Board" or "OBCE") is the state agency responsible for licensing, regulating and disciplining chiropractic physicians and certified chiropractic assistants in the State of Oregon. When this matter was Noticed for Discipline, Stephen Liston D.C., (hereafter "Licensee"), was an inactive licensed chiropractor in the State of Oregon. Licensee has since been activated to practice in the State of Oregon. Licensee has an active chiropractor license in the State of Washington. The Board issues the following Stipulated Final Order for unlicensed practice issuing a civil penalty to the above Licensee on the following basis:

Findings of Fact

1.

On April 4, 2004, the OBCE received a complaint alleging that Licensee had performed unlicensed practicing during an Independent Medical Examination on two patients (Patient 1 and Patient 2) that occurred on December 20, 2003. Those IME's were conducted at Medical Consultants Network (MCN) in the Portland, Oregon offices.

The MCN office is located at 9370 SW Greenburg Road, Portland, Oregon.

In the IME report for Patient 1, there is a section titled "Chiropractic Examination" and the report is signed Stephen A. Liston, D.C., with "Chiropractic" typed below the signature. The report included a diagnosis and responded to a question regarding whether this patient required ongoing chiropractic treatment by stating "ongoing chiropractic treatment is not medically necessary at this point." It concludes by providing how to resolve the low back issue recommending a certain treatment regime and time limits. The examination performed was chiropractic in nature and the statements rendered are a chiropractic opinion.

In the IME report for Patient 2, there is a section titled "Physical Examination" and a section titled "Chiropractic Examination." The report is signed Stephen A. Liston, D.C., with "Chiropractic" typed below the signature. The IME report states, "Ongoing chiropractic treatment is not medically necessary at this point" and recommends further physical therapy. The examination performed was chiropractic in nature and the statements rendered are a chiropractic opinion.

2.

Licensee stated to the OBCE that he has performed approximately 48 IME's for Medical Consultants Network (MCN) in Oregon. Tina Lingenfelter, Oregon Regional Manager for MCN has confirmed Dr. Liston performed other IME's for MCN in Oregon. It wasn't until April 2004 that MCN staff became aware that Licensee was not an active licensed Oregon Chiropractic physician. Although Licensee was licensed as a chiropractic physician in the State of Washington from 1993 to the present, Licensee was never actively licensed as a chiropractic physician in the State of Oregon while performing the aforementioned IME's.

3.

In April, 2004, investigation found that Licensee also had contracted with Corvel Corporation to provide chiropractic examinations in the state of Oregon, in the Portland area. In investigation, Licensee admitted to performing less than 10 IME's for Corvel in Oregon, while Ellen Rensklev, Manager for Corvel IME Services, estimates Licensee performed about 5 IME's for them in Oregon.

4.

Licensee's consistent use of the term "D.C." in all of his IME reports reinforces his identification as a chiropractic physician in such a way as to "induce the belief" that he is licensed as an actively practicing chiropractic physician in Oregon.

5.

In a Board interview and letter of response, Licensee stated that he did not understand that he needed an active Oregon license to perform IME's in Oregon, since "I was not treating patients." After Licensee reviewed the Oregon state laws and rules, Licensee understands that he was incorrect and that "ignorance of the law is no excuse." Licensee stated "I will do anything the board feels he needs to do to rectify this situation. I am guilty of this allegation and ask the board for their understanding in this matter."

Conclusions of Law

6.

The Board finds that the acts and conduct of Licensee is evidence of unlicensed practice which constitutes a violation of :

ORS 684.020 (1) "except as provided in ORS 684.107 it is unlawful for any person to practice chiropractic in this state unless the person first obtains and maintains an active license, as provided in this chapter."

OAR 811-010-0005(4) 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.

OAR 811-035-0015(14) unprofessional conduct shall include practicing chiropractic without a current Oregon license.

In addition, the conduct of Licensee violates ORS 684.100 which states the Chiropractic Examiners Board may discipline a person upon the following grounds:

(1) (g) unprofessional or dishonorable conduct

7.

Therefore, the Board and Licensee stipulate and agree that this disciplinary action may be concluded by entry of this Stipulated Final Order upon the following terms:

1. Pursuant to ORS 183.415(1) the Board and Licensee agree to informally dispose of and settle this matter.
2. Licensee stipulates that he has been advised of his right to request a hearing in this matter pursuant to ORS 183.415(2)(a) and to be represented at hearing, pursuant to ORS 183.415(3).
3. Licensee waives his right to a hearing and any appeal of this matter.
4. Licensee agrees to pay a civil penalty in the sum of \$5,000. Licensee understands that the civil penalty is due and payable within 21 days of the executive director's signature of this order and understands the statutory rate of interest applies to any amount not paid when due.
5. Licensee understands and agrees that any violation of the terms of the order will be a basis for additional discipline as allowed by the Board.
6. The Stipulated Final Order memorializes the entire agreement between Licensee and the Board and supercedes all prior offers, negotiations or settlement discussions.

7.

The Board finds that Licensee violated ORS 684.100(g), 684.020 and OAR 811-035-0015(14) and that conduct warrants that Licensee be responsible for a \$5,000 civil penalty pursuant to ORS 684.100(9).

The civil penalty is due and payable within 21 days of the effective date of any Final Order.

IT IS SO ORDERED this 15th day of July, 2004.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signatures on file
at the OBCE office.

Stephen A. Liston D.C.

Original signatures on file at
the OBCE office.

Dave McTeague, Executive Director

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	
)	Case # 2004-3001
STEPHEN LISTON, D.C.,)	
)	
Licensee No.: 2945)	
)	NOTICE OF PROPOSED
)	CIVIL PENALTY
)	

The Oregon Board of Chiropractic Examiners (hereafter "Board" or "OBCE") is the state agency responsible for licensing, regulating and disciplining chiropractic physicians and certified chiropractic assistants in the State of Oregon. Stephen Liston D.C., (hereafter "Licensee"), is an inactive licensed chiropractor in the State of Oregon. Licensee has an active chiropractic license in the State of Washington. The Board proposes to issue the following notice of discipline for unlicensed practice and to issue a civil penalty to the above Licensee on the following basis:

1.

On April 4, 2004, the OBCE received a complaint alleging that Licensee had performed unlicensed practicing during an Independent Medical Examination on two patients (Patient 1 and Patient 2) that occurred on December 20, 2003. Those IME's were conducted at Medical Consultants Network (MCN) in the Portland, Oregon offices.

The MCN office is located at 9370 SW Greenburg Road, Portland, Oregon.

In the IME report for Patient 1, there is a section titled "Physical Examination" and a section titled "Chiropractic Examination." The report is signed Stephen A. Liston, D.C., with "Chiropractic" typed below the signature. The report included a diagnosis and responded to a question regarding whether this patient required ongoing chiropractic treatment by stating "ongoing chiropractic treatment is not medically necessary at this point." It concludes by providing how to resolve the low back issue recommending a certain treatment regime and time limits. The examination performed was chiropractic in nature and the statements rendered are a chiropractic opinion.

In the IME report for Patient 2, there is a section titled "Physical Examination" and a section titled "Chiropractic Examination" The report is signed Stephen A. Liston, D.C., with "Chiropractic" typed below the signature. The IME report states, "Ongoing chiropractic treatment is not medically necessary at this point" and recommends further physical therapy. The examination performed was chiropractic in nature and the statements rendered are a chiropractic opinion.

2.

Licensee stated to the OBCE that he has performed approximately 48 IMEs for Medical Consultants Network (MCN) in Oregon. Tina Lingenfelter, Oregon Regional Manager for MCN

has confirmed Dr. Liston performed the two IMEs on December 20, 2003, and further confirmed that Dr. Liston has performed other IMEs for MCN in Oregon. It wasn't until April 2004 that MCN staff became aware that Licensee was not an active licensed Oregon chiropractic physician. Although Licensee was licensed as a chiropractic physician in the State of Washington from 1993 to the present, Licensee was never actively licensed as a chiropractic physician in the State of Oregon while performing the aforementioned IME's.

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In April, 2004, investigation found that Licensee also had contracted with Corvel Corporation to provide chiropractic examinations in the State of Oregon, in the Portland area. Licensee admits to performing less than 10 IME for Corvel in Oregon, while Ellen Rensklev, manager for Corvel IME services estimates Licensee performed about 5 IMEs for them in Oregon.

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Licensee's consistent use of the term "D.C." in all of his IME reports reinforces his identification as a chiropractic physician in such a way as to "induce the belief" that he is licensed as an actively practicing chiropractic physician in Oregon.

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In a Board interview and letter of response, Licensee states that he did not understand that he needed an active Oregon license to perform IME's in Oregon, since, "I was not treating patients." After Licensee reviewed the Oregon law and rule, Licensee understands that he was incorrect and that "ignorance of the law is no excuse." He stated that, "I will do anything the board feels I need to do to rectify this situation. I am guilty of this allegation...I ask the board for understanding in this matter."

6.

The Board finds that the acts and conduct of Licensee is evidence of unlicensed practice which constitutes a violation of:

ORS 684.020 (1) "except as provided in ORS 684.107 it is unlawful for any person to practice chiropractic in this state unless the person first obtains and maintains an active license, as provided in this chapter."

OAR 811-010-0005(4) 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.

OAR 811-035-0015(14) unprofessional conduct shall include practicing chiropractic without a current Oregon license.

In addition, the conduct of Licensee violates ORS 684.100 which states the Chiropractic Examiners Board may discipline a person upon the following grounds:

(1) (g) unprofessional or dishonorable conduct

(9) In disciplining a person as authorized by this section, the board may (f) impose a civil penalty not to exceed \$10,000.

7.

The Board finds that Licensee violated ORS 684.100(g), 684.020 and OAR 811-035-0015(14) and proposes a \$10,000 civil penalty be issued to Licensee pursuant to ORS 684.100(9).

The civil penalty is due and payable within 21 days of the effective date of any Final Order.

8.

Licensee shall pay costs of this disciplinary proceeding, which may include investigative costs and attorney fees pursuant to ORS 684.100(9)(g). This cost recovery may also include collection of non-sufficient funds fees, interest, hearing panel and contested case related expenses. The statutory rate of interest applies to an amount not paid when due. This amount is immediately due and payable unless the OBCE agrees to a payment plan.

9.

Licensee has the right, if Licensee requests, to have a formal contested case hearing before the OBCE or its hearings officer to contest the matter set out above. At the hearing, Licensee may be represented by an attorney and subpoena and cross-examine witnesses. That request for hearing must be made in writing to the OBCE, must be received by the OBCE within 30 days from the mailing of this notice (or if not mailed, the date of personal service), and must be accompanied by a written answer to the charges contained in this notice.

10.

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

11.

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

CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on May 28, 2004, I served the foregoing Notice upon Stephen Liston DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Stephen Liston DC
1316 NE 99th St.
Vancouver, Washington 98665

By regular mail to:

Donald L. Jacobs AAL
1405 Esther Street.
Vancouver, Washington 98660

Original signatures on file at
the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

12.

If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the hearing, the OBCE may issue a final order by default and impose the above sanctions against Licensee. Upon default order of the Board or failure to appear, the contents of the Board's file regarding the subject of this automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

DATED this 28th day of May, 2004.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon



Original signatures on file
at the OBCE office.



By:

Dave McTeague, Executive Director

State of Oregon) Case # 2004-3001
County of Marion) Stephen Liston DC

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

Original signatures on file
at the OBCE office.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

SUBSCRIBED AND SWORN to before me

this 28th day of May, 2004

NOTARY PUBLIC FOR OREGON

My Commission Expires: 10/7/07

