

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

RECEIVED

MAY 14 2013

OREGON BOARD OF
CHIROPRACTIC EXAMINERS

In the Matter of)
) Case # 2012-1047
Kevin Misenheimer DC)
)
)
Licensee.) **Final Order by Default**
) (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. Kevin Misenheimer DC (hereafter "Licensee"), is currently licensed by the Board to practice as a chiropractic physician in Oregon.

Findings of Fact
1.

Licensee contacted advertiser Living Social in August 2012 and entered into a contract with them on August 29, 2012 for advertisement services of his clinic. In the contract, it contained a marketing fee of 46% of the "deal price." That is Living Social was paid 46% of the coupon price for each coupon sold.

On July 25, 2011, January 23, 2012, and May 2, 2012, the OBCE has communicated messages to all the Oregon chiropractic physicians with an email address (including licensee) the Board's position concerning online coupon fee-splitting arrangements. This notice was also carried on page four of the OBCE's BackTalk newsletter (Summer 2012). These notices were and are currently posted on the OBCE's website to communicate to all professionals that the online coupon sales where the fee is split on a per patient basis between a chiropractic clinic and the advertising company violated OAR 811-035-0015(24) which prohibits splitting fees or giving or receiving a commission in the referral of patients for services. This constitutes numerous attempts to convey to the profession the OBCE's rulings in regards to online and coupon advertising. In communications with the profession the Board said a flat fee advertising contract, not tied to coupon sales and patient referrals, did not violate the rule.

Previously, Licensee ran two Groupon ads as of May, 19, 2011 and on January 20, 2012. These Groupon ads were fee-splitting arrangements. The OBCE addressed this issue with Licensee in Case # 2012-3005. In his response to the complaint, Licensee pleaded ignorance stating, "I do sincerely apologize for overlooking the Groupon rules. Never in my wildest dreams would I have considered this to be fee splitting and we will not advertise with Groupon again unless we can get them to restructure our contract and let us pay a flat fee as we do with other forms of advertising."

The Board issued a Case Closed, Letter of Concern in that case. Licensee was fully informed through that complaint as to the fee-splitting rules.

2.

In his Living Social advertisement that ran on December 21, 2012, Licensee offered nutrition response and allergy testing and the ad indicated "founder and clinical director Dr. Kevin Misenheimer offers a holistic approach to treatment." The ad did not indicate that Licensee is a chiropractic physician.

Previously, in Case # 2008-5020, Licensee responded to a similar complaint that his advertising did not identify himself as a chiropractic physician. He admitted to the violation and updated his advertising. The Board issued a Case Closed, Letter of Concern in that case. Licensee was fully informed through that complaint as to the requirements of the Oregon Doctor's Title Act, ORS 676.110 (2) and (3) (a) and OAR 811-015-0045 (3).

3.

Conclusions of Law

The above contract, specifically a % fee, with Living Social violates ORS 684.100(1)(f) and (i), and OAR 811-035-0015 (23) (fee-splitting). Failure to indicate the type of doctor in the advertisement violates the Oregon Doctor's Title Act, ORS 676.110 (2) and (3)(a) and OAR 811-015-0045 (3).

4.

A Notice of Proposed Civil Penalty was issued on March 26, 2013 proposing a \$1,000 fine for each violation, for a total of \$2,000.

Order

5.

Licensee is assessed a \$2,000 civil penalty for aforementioned violations. Licensee paid the \$2,000 civil penalty in full on April 5, 2013 and indicated he is not contesting the Notice or requesting a hearing, and is therefore agreeable to this Default Order.

DATED May 14, 2013

BOARD OF CHIROPRACTIC EXAMINERS

State of Oregon

Original Signatures are on file in OBCE office

By:

Dave McTeague, Executive Director

CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on May 14, 2013, I served the foregoing Default Order upon Kevin Misenheimer DC, the party hereto, by mailing, regular mail, postage prepaid, a true, exact and full copy thereof to:

Kevin Misenheimer DC
4522 SW Water Ave Set 105
Portland, OR 97239

Original Signatures are on file in OBCE office

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)
) Case # 2012-1047
Kevin Misenheimer DC)
)
)
) ~~NOTICE OF PROPOSED~~
) ~~CIVIL PENALTY~~
)
)
)
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Licensee.

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In his Living Social advertisement that ran on December 21, 2012, Licensee offered nutrition response and allergy testing and the ad indicated "founder and clinical director Dr. Kevin Misenheimer offers a holistic approach to treatment." The ad did not indicate that Licensee is a chiropractic physician.

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3.

The above contract, specifically a % fee, with Living Social violates ORS 684.100(1)(f) (unprofessional conduct) and (i), and OAR 811-035-0015 (23) (fee-splitting). Failure to indicate the type of doctor in the advertisement violates the Oregon Doctor's Title Act, ORS 676.110 (2) and (3)(a) and OAR 811-015-0045 (3).

4.

The Board proposes a \$1000 Civil Penalty for each violation for a total of \$2,000 due to the previously mentioned violations.

5.

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.

6.

NOTICE OF HEARING RIGHTS

Licensee has the right, if Licensee requests, to have a formal contested case hearing before the OBCE or the Administrative Law Judge 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.

7.

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.

8.

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.

9.

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 March 26, 2013

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original Signatures are on file at OBCE office

By:

Dave McTeague, Executive Director

VERIFICATION

State of Oregon)
County of Marion) Case # 2012-1047

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

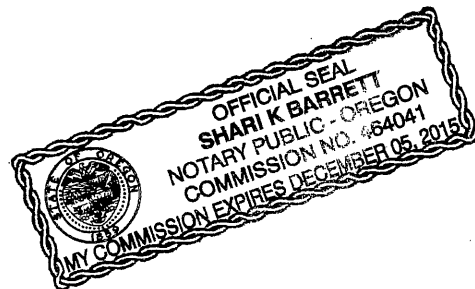
Original Signatures are on file at OBCE office

DAVE McTEAGUE, EXECUTIVE DIRECTOR
OREGON BOARD OF CHIROPRACTIC EXAMINERS

SUBSCRIBED AND SWORN to before me
this 25th day of March, 2013.

Original Signatures are on file at OBCE office

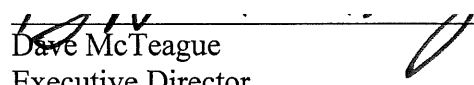
NOTARY PUBLIC FOR OREGON
My Commission Expires: 12/5/2015



CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on March 26 2013, I served the foregoing Notice upon Kevin Misenheimer DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Original Signatures are on file at OBCE office



Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners