BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of	)	
	)	FINAL ORDER BY DEFAULT
Jonathan Preiss, D.C.	)	
	)	
	)	
Licensee.	)	Case # 2004-2002

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Jonathan Preiss, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board orders discipline to Licensee for the following reasons.

Findings of Fact

1.

In response to a complaint, the Oregon Board of Chiropractic Examiners directed the Peer Review Committee to review the complaint in regards to Licensee's patient files, insufficient medical justification for duration of treatment, record keeping, use of excessive modalities per visit and lack of clinical rational for x- rays.

2.

Due to a complaint being filed by an insurance carrier, in response, Licensee's file and the complaint were reviewed by the Peer Review Committee during the Spring 2005. The complaint stated that Licensee did not provide sufficient medical justification for the duration or treatment; did not have records that supported the frequency of treatment, had an excessive number of modalities per visit with inadequate records to explain/support their medical necessity; and had no clinical rationale for the amount of radiation exposure to the patient. In their review, the Peer Review committee was supplied with copies of patient charts and billings for patient 1 from the Licensee, x-rays included with the file, and responses of Licensee provided. Licensee treated patient from September 20, 2004 through January 19, 2005.

Peer Review Committee also noted that Licensee has had similar discipline in the past as in 1998 when he received a civil penalty for billing issues. (Case number 1998-1002)

3.

After review of the information provided as stated in paragraph 2, the peer review found the following: Daily chart notes of Licensee were not legible. The tracking of subjective complaints throughout the months of treatment is very difficult and often impossible. It is difficult to support the necessity for treatment of the patient without ability to understand daily SOAP notes.

It is not possible to correlate the daily chart note with a 9896 CMT code and the treatment absent legible complete and explanatory documentation that is lacking in the file. There is no ongoing case management plan indicated and no treatment plan in the notes. There did not appear to be an original treatment plan and there was no explanation provided for the treatment used or discussion of reasoning for the treatment plan that was delivered. The subjective complaints noted in the chart notes did not meet minimal standards. This is in violation of ORS 684.100(1)(A) and OAR 811-015-0010(1) and OAR 811-015-0005(1). The chart notes do not identify the patient by name nor the clinic by name or address as is required in OAR 811-015-0005(1)(b).

4.

After the investigation began and the chart notes were received by the Board, Licensee's office provided typed chart notes that were provided to the insurance carrier in regards to questions for billing purposes. In comparing the handwritten contemporaneous chart notes to the typed chart notes, the content difference between them were stark. There was no apparent correlation between the original notes and the typed notes provided in March 2005. The typed notes lacked veracity and were not considered by the Peer Review Committee as part of the clinical record on review. The typed notes were received by the insurance carrier on March 31, 2005, long after the office visits from which the contemporaneous chart notes were derived. The Peer Review Committee felt the typed notes were created simply to expedite payment of the billed charges and were not a verbatim typed version of the original handwritten notes.

For example, a contemporaneous handwritten note for 9/23/04 visit stated as follows:

> *"(Sif or clinic?) mobl imp w/ (increased) HA-STM neck-ctrac- Cont w/ posture excercises – wobble chair. "3SWTX".*

The typed version was as follows:

> *Subjective: Ms. Agee has a chief complaint of pain and soreness of the upper back, mid back and neck. The symptoms are described as moderate and constant. The condition has been present for about a day or so. Patient also complains of headaches. The symptoms are described as moderate and constant.*
> *Objective: My findings indicate subluxation of the C1, C2, C4 and C5 segments; T3, T4 and T5 segments. Palpation examination indicates spasm and tenderness of th suboccipital muscles bilaterally; spasm and tenderness of the paracervical muscles bilaterally; spasm and tenderness of the Paradorsal muscles bilaterally.*
> *Assessment: The condition is virtually unchanged at this time.*
> *Plan: Treatment performed today consisted of spinal manipulation (3-4 regions) myofascial therapy, rehabilitative postural exercises, neuromuscular re-education and cervical traction. Patient will stay on regularly scheduled plan for return visits.*

It is unclear at how Licensee arrives at his findings in the typed notes, as review of the handwritten vs. typed versions did not find correlation. The handwritten chart notes are inadequate in painting a picture of how the patient is responding to care. There is no ongoing case management plan, nor a treatment plan. The typed notes purporting to be a reflection of services are not a verifiable account of the doctor/patient encounter and is in violation of ORS 684.100(1)(A) and OAR 811-035-0015(7) and (12).

5.

Review of a single lateral cervical spine x-ray dated 9/20/04 was billed to the carrier for two views. On 9/22/04 there was a single view AP cerviocothoracic spine x- ray; yet the carrier was billed for two views. There was no x-ray report for these thoracic films.

On 12/16/04 two views of the cervical were taken and a single view of the lumbopelvic. No pregnancy waiver was found in the file. A single view of the spinal area does not provide adequate visualization and is not sufficient for diagnostic purposes. Female patients of childbearing age should be screened for pregnancy prior to taking the films. There is no clinical justification found in the patient records for the 12/16/04 films. This is in violation of ORS 684.100(1)(A) and OAR 811-015-0010, 811-030-0030(2)(d) and 811-030-0020(1)(2)(6).

6.

The frequency of treatment was high and lacked sufficient supporting documentation from September through December 2004. The number of modalities used at each office visit and the frequency of visits is not supported from the initial patient complaint of minimal upper back pain. No rationale was found to explain the treatment intensity in association with this injury. The patient was treated four days in a row initially, five days the second week, three days the third through fifth weeks and four days again the sixth week. There is no rationale offered by Licensee in the charts for the number and frequency of treatments. The frequency of treatment exceeds the OCPUG recommendations and there is no supporting documentation to detail the necessity for such treatment outside the guidelines. The intensity and number of modalities performed were not provided any rationale for their use in relation to the injury. Thus, frequency of treatment does not meet minimal standards. This is in violation of ORS 684.100(1)(A) and OAR 811-015-0010(1), (2) and (4) and is unprofessional conduct in not keeping accurate records on all patients, including but not limited to legible notes, and updated treatment plans.

7.

Licensee provides two fee schedules which list different prices for similar procedures. For example, neuromuscular re-education (code 97112) is $27 on one fee schedule and $50 on another. Licensee has billed the insurance carrier the $50 charge for one unit each time he bills a code 97112-52. This is in violation of OAR 811-015-0000(3).

1 8.

2 On September 28, 2005, a Notice of Proposed Discipline was issued to Licensee. On October
3 27, 2005, Licensee indicated in writing to the Board that he was not requesting a formal
4 contested case hearing, and wrote a letter that Licensee requested become part of the record. In
5 the Notice of Proposed Discipline issued on September 28, 2005, the Board included language
6 stating that if Licensee failed to request a hearing the matter would be issued by final order by
7 default and the sanctions would be imposed. In addition, the notice stated that the record would
8 be used as a prima facie case for purposes of default.
9
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11 Conclusions of Law
12 9.
13 The Licensee has violated 684.100(1)(A) and OAR 811-015-0010(1), (2) and (4) and OAR 811-
14 015-0005(1), and (1)(b), OAR 811-015-0015(7) and (12), OAR 811-030-0030(1), (2)(d) and (6),
15 OAR 811-015-0000(3).
16
17 The Peer Review Committee felt after review of this case, that Licensee continually exhibited a
18 pattern of substandard chart notes, lack of clinical justification in the notes, no treatment
19 planning, lack of clinical justification for x-rays, unprofessional conduct in typing up chart notes
20 that do not correlate with the original chart notes, and treatment modalities unsupported by chart
21 notes. Due to the repeat patterns the Board and Peer Review Committee have concerns about the
22 ability of Licensee to effectively practice and order the following:
23
24 Order
25 10.
26 The Board orders Licensee receive a letter of reprimand and a $1000 civil penalty pursuant to
27 ORS 684.100(9)(f). The civil penalty is due and payable within 30 days of the date of this final
28 order.
29
30 Ordered this 5th day of December 2005.
31
32 BOARD OF CHIROPRACTIC EXAMINERS
33 State of Oregon
34
35 Original signatures on file
36 By: at the OBCE office.
37 I
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State of Oregon	)	Case # 2004-2002
County of Marion	)	Jonathan Preiss, D.C.

I, Dave McTeague, being first duly sworn, state that I am the Executive Director of the Oregon Board of Chiropractic Examiners, and as such, am authorized to verify pleadings in this case: and that the foregoing Final Order by Default 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 5th day of December, ~~2003~~ 2005

Original signatures on file at the OBCE office.

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10/7/2007

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12 **Certificate of Service**
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14 I, Dave McTeague, certify that on December 5, 2005, I served the foregoing Final Order
15 by Default upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full
16 copy thereof to:
17
18 Jonathan Preiss, DC
19 7412 Beaverton Hills Highway, Suite 109
20 Portland, Oregon 97221
21
22 By Regular mail to:
23
24 Karen O'Kasey
25 Hoffman, Hart & Wagner
26 1000 SW Broadway Twentieth Floor
27 Portland, Oregon 97205
28
29
30 Original signatures on file
31 at the OBCE office.
32 Dave McTeague
33 Executive Director
34 Oregon Board of Chiropractic Examiners
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BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of	)	
	)	NOTICE OF PROPOSED
Jonathan Preiss, D.C.	)	DISCIPLINARY ACTION
	)	
	)	
Licensee.	)	Case # 2004-2002

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Jonathan Preiss, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to discipline Licensee for the following reasons.

1.

In response to a complaint, the Oregon Board of Chiropractic Examiners directed the Peer Review Committee to review the complaint in regards to Licensee's patient files, insufficient medical justification for duration of treatment, record keeping, use of excessive modalities per visit and lack of clinical rational for x- rays.

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difficult to support the necessity for treatment of the patient without ability to understand daily SOAP notes. It is not possible to correlate the daily chart note with a 9894x CMT code and the treatment absent legible complete and explanatory documentation that is lacking in the file. There is no ongoing case management plan indicated and no treatment plan in the notes. There did not appear to be an original treatment plan and there was no explanation provided for the treatment used or discussion of reasoning for the treatment plan that was delivered. The subjective complaints noted in the chart notes did not meet minimal standards. This is in violation of ORS 684.100(1)(A) and OAR 811-015-0010(1) and OAR 811-015-0005(1). The chart notes do not identify the patient by name nor the clinic by name or address as is required in OAR 811-015-0005(1)(b).

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On 12/16/04 two views of the cervical were taken and a single view of the lumbopelvic. No pregnancy waiver was found in the file as patient 1 was pregnant. A single view of the spinal area does not provide adequate visualization and is not sufficient for diagnostic purposes. Female patients of childbearing age should be screened for pregnancy prior to taking the films. There is no clinical justification found in the patient records for the 12/16/04 films. This is in violation of ORS 684.100(1)(A) and OAR 811-015-0010, 811-030-0030(2)(d) and 811-030-0020(1)(2)(6).

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8.

The Peer Review Committee felt after review of this case, that Licensee continually exhibited a pattern of substandard chart notes, lack of clinical justification in the notes, no treatment planning, lack of clinical justification for x-rays, unprofessional conduct in typing up chart notes that do not correlate with the original chart notes, and treatment modalities unsupported by chart notes. Due to the repeat patterns the Board and Peer Review Committee have concerns about the ability of Licensee to effectively practice and propose the following:

Due to the aforementioned violations, the OBCE proposes the Licensee receive a letter of reprimand and a $1000 civil penalty pursuant to ORS 684.100(9)(f).

9.

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

10.

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.

11.

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.

12.

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.

13.

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 September, 2005.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signatures on file
at the OBCE office.

By:

D[illegible], Executive Director

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3 State of Oregon) Case # 2004-2002

4 County of Marion) Jonathan Preiss, D.C.

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7 I, Dave McTeague, being first duly sworn, state that I am the Executive Director of the

8 Oregon Board of Chiropractic Examiners, and as such, am authorized to verify pleadings in this

9 case: and that the foregoing Notice of Proposed Disciplinary Action is true to the best of my

10 knowledge as I verily believe.

11

Original signatures on file at the OBCE office.

12

13 Dave McTeague, Executive Director

14 Oregon Board of Chiropractic Examiners

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September 28, 2005

Original signatures on file at the OBCE office.

My commission expires Oct 7, 2007

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Certificate of Service
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4 I, Dave McTeague, certify that on September 28, 2005, I served the foregoing Notice of
5 Proposed Disciplinary Action upon the party hereto by mailing, certified mail, postage prepaid, a
6 true, exact and full copy thereof to:
7
8 Jonathan Preiss, DC
9 7412 Beaverton Hills Highway, Suite 109
10 Portland, Oregon 97221
11
12 Original signatures on file at the OBCE office.
13
14 Dave McTeague
15 Executive Director
16 Oregon Board of Chiropractic Examiners
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