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**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON**

In the Matter of)
Venus Smith, D.C.) FINAL DEFAULT
) ORDER
)
Licensee.) Case # 2004-2001

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. The Board consists of five chiropractic physicians and two public members. Venus Smith, 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.

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 Licensees patient files, billing practices, inaccurate chart notes, altered records and clinical decision making. The Peer Review Committee consists of a representative group of seven chiropractic physicians.

2.

At the Board's request, Licensee was interviewed by the Peer Review Committee following initial review of the complaint in regards to care provided to Patient 1. The complaint alleged stated that Licensee was charging for 5-6 modalities per office visit while her chart notes did not support the number of modalities provided or the medical necessity of the 5-6 therapies per visit. A further complaint alleged alteration of chart notes to obtain insurance reimbursement. In their review, the Peer Review committee was supplied with copies of patient charts and billings for patient 1 from the insurance company and from Licensee.

3.

After review of the information provided as stated in paragraph 2, the Peer Review Committee found the following: Re-examinations of this patient did not meet minimal standards. Although an attending physicians report was completed on April 19, 2004 in response to an insurance company request, there are no re-exams identified in the file. This patient received thirty-seven treatments over a five month period. A re-examination is necessary to

1 better assess the patient's response to treatment, prognosis and to determine whether future
2 treatment is needed. This is in violation of ORS 684.100(1)(g)(B) and OAR 811-015-0010
3

4 4.

5 Chart notes provided do not meet minimal competency. It is difficult to read the handwriting and
6 difficult to determine whether the patient is responding overall to the treatment rendered. A speed
7 code was used to decipher the notes, but without that code, they are virtually indecipherable.
8 This is in violation of ORS 684.100(1)(g)(B) and OAR 811-015-0005(1) and is unprofessional
9 conduct in not keeping complete and accurate records on all patients, including but not limited to
10 legible notes.
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12 5.

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14 The Peer Review Committee found that Licensee charged a reasonable number of
15 modalities per patient visit, based on chart notes, history, exam and symptoms, for the first two
16 months, with the exception of date 3-18-04 when 5 therapies were charged. Licensee had
17 multiple billing charges for the date of service March 18, 2004, that were not clinically
18 substantiated nor were they supported by the chart notes. On March 18, 2004, five therapies
19 were billed including hot packs, ultrasound, attended EMS, soft tissue massage and manual
20 therapy. There was no recognizable documentation in the chart notes for manual therapy on this
21 date. Ultrasound to L spine was not medically necessary at this region of the body based on the
22 history, exam and symptoms from the patient. Neuromuscular re-education is not documented in
23 the chart notes on this date. This is in violation of ORS 684.100(1)(g)(B), OAR 811-015-0010
24 and OAR 811-015-0005(1).
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27 6.

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29 Licensee charged excessive therapies on 12 of the 21 visits from April 16, 2004 through
30 August 19, 2004. These charges are not substantiated by chart notes nor medically necessary per
31 the patient history, mechanism of the injury, exam and documented symptoms. The following
32 dates of service had excessive charges: 4/16, 4/19, 4/29, 5/6, 6/11 through 7/1, 7/16 through 8/5,
33 and 8/19/04.
34

35 The charges are excessive because several passive therapies are administered at each visit,
36 two months into the active treatment plan, without supporting documentation or clinical
37 substantiation noting the need for this amount of treatment. No re-exams were performed.
38 Typically, application of the passive treatment modalities decreases over the course of treatment,
39 whereas this patient's treatment included continuing or increasing numbers of passive modalities
40 without expressed clinical rationale in the patient record. This is in violation of ORS
41 684.100(1)(g)(B) OAR 811-015-0010 and OAR 811-015-0005(1).
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Further, Licensee charges for neuromuscular re-education (97112) on several dates of service, beginning on March 4, 2004 without supporting documentation. The dates that are not substantiated are: 3-4, 3-18, 4-16, 4-29, 6-11, 6-17 and 7-16-04. On the few occasions where "NMR" is written in the record, there is not clear description of what specific therapy is provided in this regard. Since this procedure was billed at times with multiple units (each unit is 15 minutes), Licensee's chart notes are not sufficient for another doctor to interpret and continue similar care. This is a violation of OAR 811-035-0015(2) (unnecessary services), OAR 811-015-0010(1) (clinical justification) and OAR 811-015-0005(1) (record keeping). Licensee has not provided documentation to prove this service was actually provided on the dates listed above. Charging for services not rendered would be a violation of ORS 684.100 (1) (a) and OAR 811-035-0015 (5).

8.

In patient chart notes for the date of service June 11, 2004, there are no case file notes. Five procedure codes are billed for that day and there is no documentation to support billing EMS or ultrasound. Both hot pack and Neuromuscular Re-education are documented as being administered but not to which body regions. This is in violation of ORS 684.100(1)(g)(B), OAR 811-015-0010 and OAR 811-015-0005(1). Licensee has not provided documentation to prove this service was actually provided on the date listed above. Charging for services not rendered is a violation of ORS 684.100(1)(a) and OAR 811-035-0015(5).

9.

For the date of service July 16, 2004, chart notes were altered and then re-submitted by Licensee in an attempt to obtain payment for a service not fully supported in the original chart notes. With notes provided by the insurance company on August 9, 2004, the chart notes for service date July 16, 2004 do not reflect any notations of Neuromuscular Re-education or NMR being provided. Notes submitted later by Licensee on September 3, 2004, show the same chart note for date of service July 16, 2004, with a notation **added** to the chart on the second line, N.M.R. The addendum to the record was done without the author's initials and date of addendum. Based on the two sets of records submitted, there is clear evidence of alteration of records for the date of service of July 16, 2004. (Similarly, chart notes are alleged – and appear – to have been altered and resubmitted with the same NMR notation for dates 8-26-04, 9-23-04, 9-30-04, 10-4-04, and 10-13-04).

This is a violation of ORS 684.100 (1) (g) (A), OAR 811-015-0005 (1)(b), OAR 811-035-0015 (1) and (5), OAR 811-035-0015 (7) and (12).

1 Procedural Background

2 10.

3 On August 8, 2005, Licensee was served with a Proposed Notice of Disciplinary Action
4 by certified mail. Licensee signed the certified mail receipt on August 22, 2005. Licensee has
5 failed to request a hearing within the 30 day time limit provided by rule. Thus, Licensee is in
6 default.

7 In the Notice of Proposed Discipline, Licensee was provided notice that if she failed
8 within 30 days to request a hearing the Board may issue a final order by default and impose the
9 sanctions listed. Licensee was also notified that the board's file becomes the evidentiary record
10 for proving the case.

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12 Conclusions of Law

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14 11.

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16 Licensee violated the following statutes and rules: ORS 684.100(1)(B), OAR 811-015-0010,
17 OAR 811-015-0005(1), OAR 811-035-0015(2) and OAR 811-035-0015 (5) (7) and (12).

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19
20 Order of the Board

21 12.

22 Due to the aforementioned findings of fact and conclusions of law, the OBCE issues to
Licensee a Letter of Reprimand. This letter is attached as Attachment 1.

24
25
26 DATED this 23rd day of September, 2005.

27
28 BOARD OF CHIROPRACTIC EXAMINERS
29 State of Oregon

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31 Original signatures on file at
32 the OBCE office.

33 By:

34 Dave McTeague, Executive Director
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State of Oregon) Case # 2004-2001
County of Marion) Venus Smith 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 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 23rd day of September, 2005

Original signatures on file at
the OBCE office.

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10/7/07



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Certificate of Service

I, Dave McTeague, certify that on September 23rd, I served the foregoing Final Order by Default upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Venus Smith, DC
Sunshine Chiropractic
PO Box 1894
Bandon, OR 97411

Original signatures on file at
the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

3218 Pringle Road SE, Suite 150

Salem, OR 97302-6311

(503) 378-5816

FAX (503) 362-1260

E-mail: oregon.obce@state.or.us

www.obce.state.or.us

ATTACHMENT 1

September 23, 2005

Venus Smith, DC
Sunshine Chiropractic
PO Box 1894
Bandon, OR 97411

Re: Letter of Reprimand
OBCE Complaint # 2004-2001

Dear Dr. Smith,

The Oregon Board of Chiropractic Examiners has voted to issue you this Letter of Reprimand in regards to violations found in the Final Order on this complaint.

The Board requests that you take this opportunity to evaluate your practice, specifically your chart noting, billing, clinical justification, and need for periodic reexaminations. The Board recommends you take CE hours in record keeping/charting, use of appropriate billing codes and procedure codes, and rationale/indications for obtaining x-rays.

The Board is especially concerned by the finding of altered chart notes. You must take care to date any changes or alternation to an existing chart note, identify the provider of the service and note the author of any entry.

The Board does note this is your only complaint in eight years of practice. They hope you will learn from this experience and take steps to improve your practice as a result.

Sincerely,

Original signatures on file at
the OBCE office.

Executive Director



1
2 **BEFORE THE**
3 **BOARD OF CHIROPRACTIC EXAMINERS**
4 **STATE OF OREGON**
5

6 In the Matter of)
7)
8 Venus Smith, D.C.) NOTICE OF PROPOSED
9) DISCIPLINARY ACTION
10)
11)
12 Licensee.) Case # 2004-2001
13

14 The Board of Chiropractic Examiners (Board) is the state agency responsible for
15 licensing, regulating and disciplining chiropractic physicians in the State of Oregon. The Board
16 consists of five chiropractic physicians and two public members. Venus Smith, D.C. (Licensee),
17 is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board
18 proposes to discipline Licensee for the following reasons.
19

20 1.

21 In response to a complaint, the Oregon Board of Chiropractic Examiners directed the Peer
22 Review Committee to review the complaint in regards to Licensees patient files, billing practices,
23 inaccurate chart notes, altered records and clinical decision making. The Peer Review Committee
24 consists of a representative group of seven chiropractic physicians.
25

26 2.

27
28 At the Board's request, Licensee was interviewed by the Peer Review Committee
29 following initial review of the complaint in regards to care provided to Patient 1. The complaint
30 alleged that Licensee was charging for 5-6 modalities per office visit while her chart notes did
31 not support the number of modalities provided or the medical necessity of the 5-6 therapies per
32 visit. A further complaint alleged alteration of chart notes to obtain insurance reimbursement. In
33 their review, the Peer Review committee was supplied with copies of patient charts and billings
34 for patient 1 from the insurance company and from Licensee.
35

36
37 3.

38 After review of the information provided as stated in paragraph 2, the Peer Review
39 Committee found the following: Re-examinations of this patient did not meet minimal
40 standards. Although an attending physicians report was completed on April 19, 2004 in response
41 to an insurance company request, there are no re-exams identified in the file. This patient
42 received thirty-seven treatments over a five month period. A re-examination is necessary to

1 better assess the patient's response to treatment, prognosis and to determine whether future
2 treatment is needed. This is in violation of ORS 684.100(1)(g)(B) and OAR 811-015-0010.
3

4 4.

5 Chart notes provided do not meet minimal competency. It is difficult to read the handwriting and
6 difficult to determine whether the patient is responding overall to the treatment rendered. A
7 speed code was used to decipher the notes, but without that code, they are virtually
8 indecipherable. This is in violation of ORS 684.100(1)(g)(B) and OAR 811-015-0005(1) and is
9 unprofessional conduct in not keeping complete and accurate records on all patients, including
10 but not limited to legible notes.
11

12 5.

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14 The Peer Review Committee found that Licensee charged a reasonable number of
15 modalities per patient visit, based on chart notes, history, exam and symptoms, for the first two
16 months, with the exception of date March 18, 2004 when 5 therapies were charged. Licensee had
17 multiple billing charges for the date of service March 18, 2004, that were not clinically
18 substantiated nor were they supported by the chart notes. On March 18, 2004, five therapies
19 were billed including hot packs, ultrasound, attended EMS, soft tissue massage and manual
20 therapy. There was no recognizable documentation in the chart notes for manual therapy on this
21 date. Ultrasound to L spine was not medically necessary at this region of the body based on the
22 history, exam and symptoms from the patient. Neuromuscular re-education is not documented in
23 the chart notes on this date. This is in violation of ORS 684.100(1)(g)(B), OAR 811-015-0010
24 and OAR 811-015-0005(1).
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26 6.

27 Licensee charged excessive therapies on 12 of the 21 visits from April 16, 2004 through
28 August 19, 2004. These charges are not substantiated by chart notes nor medically necessary per
29 the patient history, mechanism of the injury, exam and documented symptoms. The following
30 dates of service had excessive charges: 4/16, 4/19, 4/29, 5/6, 6/11 through 7/1, 7/16 through 8/5,
31 and 8/19/04.
32

33 The charges are excessive because several passive therapies were administered at each visit,
34 two months into the active treatment plan, without supporting documentation or clinical
35 substantiation noting the need for this amount of treatment. No re-exams were performed.
36 Typically, application of the passive treatment modalities decreases over the course of treatment,
37 whereas this patient's treatment included continuing or increasing numbers of passive modalities
38 without expressed clinical rationale in the patient record. This is in violation of ORS
39 684.100(1)(g)(B), OAR 811-015-0010 and OAR 811-015-0005(1).
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Further, Licensee charged for neuromuscular re-education (97112) on several dates of service, beginning on March 4, 2004 without supporting documentation. The dates that are not substantiated are: 3-4, 3-18, 4-16, 4-29, 6-11, 6-17 and 7-16-04. On the few occasions where "NMR" is written in the record, there is not a clear description of what specific therapy is provided in this regard. Since this procedure was billed at times with multiple units (each unit is 15 minutes), Licensee's chart notes are not sufficient for another doctor to interpret and continue similar care. This is a violation of OAR 811-035-0015(2), OAR 811-015-0010(1) and OAR 811-015-0005(1). Licensee has not provided documentation to prove this service was actually provided on the dates listed above. Charging for services not rendered is a violation of ORS 684.100 (1)(a) and OAR 811-035-0015 (5).

8.

In patient chart notes for the date of service June 11, 2004, there are no case file notes. Five procedure codes are billed for that day and there is no documentation to support billing EMS or ultrasound. Both hot pack and Neuromuscular Re-education are documented as being administered but not to which body regions. This is a violation of ORS 684.100(1)(g)(B), OAR 811-015-0010 and OAR 811-015-0005(1). Licensee has not provided documentation to prove this service was actually provided on the date listed above. Charging for services not rendered is a violation of ORS 684.100 (1)(a) (fraud) and OAR 811-035-0015 (5) (services not rendered)

9.

For the date of service July 16, 2004, chart notes were altered and then re-submitted by Licensee in an attempt to obtain payment for a service not fully supported in the original chart notes. With notes provided by the insurance company on August 9, 2004, the chart notes for service date July 16, 2004 do not reflect any notations of Neuromuscular Re-education or NMR being provided. Notes submitted later by Licensee on September 3, 2004, show the same chart note for date of service July 16, 2004, with a notation **added** to the chart on the second line, N.M.R. The addendum to the record was done without the author's initials and date of addendum. Based on the two sets of records submitted, there is clear evidence of alteration of records for the date of service of July 16, 2004. (Similarly, chart notes are alleged, and appear, to have been altered and resubmitted with the same N.M.R. notation for dates 8-26-04, 9-23-04, 9-30-04, 10-4-04, and 10-13-04).

This is a violation of ORS 684.100 (1) (g) (A), OAR 811-015-0005 (1)(b), OAR 811-035-0015 (1) and (5), OAR 811-035-0015 (7) and (12).

10.

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2 Due to the aforementioned violations, the OBCE proposes the Licensee receive a Letter
3 of Reprimand. (Attachment 1)
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5 11.
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7 Licensee shall pay costs of this disciplinary proceeding, including investigative costs and
8 attorney fees pursuant to ORS 684.100(9)(g).
9

10 12.
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12 Licensee has the right, if Licensee requests, to have a formal contested case hearing
13 before the OBCE or its hearings officer to contest the matter set out above. At the hearing,
14 Licensee may be represented by an attorney and subpoena and cross examine witnesses. That
15 request for hearing must be made in writing to the OBCE, must be received by the OBCE within
16 30 days from the mailing of this notice (or if not mailed, the date of personal service), and must
17 be accompanied by a written answer to the charges contained in this notice.
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19 13.
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21 The answer shall be made in writing to the OBCE and shall include an admission or
22 denial of each factual matter alleged in this notice, and a short plain statement of each relevant
23 affirmative defense Licensee may have. Except for good cause, factual matters alleged in this
24 notice and not denied in the answer will be considered a waiver of such defense; new matters
25 alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and
26 evidence shall not be taken on any issue not raised in the notice and answer.
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30 If Licensee requests a hearing, before commencement of that hearing, Licensee will be
31 given information on the procedures, rights of representation and other rights of the parties
32 relating to the conduct of the hearing as required under ORS 183.413-415.
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34 15.
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36 If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the
37 hearing, the OBCE may issue a final order by default and impose the above sanctions against
38 Licensee. Upon default order of the Board or failure to appear, the contents of the Board's file
39 regarding the subject of this automatically become part of the evidentiary record of this
40 disciplinary action upon default for the purpose of proving a prima facie case.
41

42
43 DATED this 18th day of August, 2005.

1
2 BOARD OF CHIROPRACTIC EXAMINERS
3 State of Oregon

4 Original signatures on file
5 at the OBCE office.

6 By:

7 Dave McTeague, Executive Director
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State of Oregon) Case # 2004-2001
County of Marion) Venus Smith 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 Disciplinary Action 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 18 day of August, 2005

Original signatures on file at the OBCE office.

NOTARY PUBLIC FOR OREGON
My Commission Expires: 11-5-08



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Certificate of Service

I, Dave McTeague, certify that on August 18, 2005, I served the foregoing Notice of Proposed Disciplinary Action upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Venus Smith, DC
Sunshine Chiropractic
PO Box 1894
Bandon, OR 97411

Original signatures on file at
the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners



Oregon

Theodore R. Kulongoski, Governor

Oregon Board of Chiropractic Examiners

3218 Pringle Road SE, Suite 150

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E-mail: oregon.obce@state.or.us

www.obce.state.or.us

ATTACHMENT 1

August 18, 2005

Venus Smith, DC
Sunshine Chiropractic
PO Box 1894
Bandon, OR 97411

Re: Letter of Reprimand
OBCE Complaint # 2004-2001

Dear Dr. Smith,

The Oregon Board of Chiropractic Examiners has voted to issue you this Letter of Reprimand in regards to violations found in the Final Order on this complaint.

The Board requests that you take this opportunity to evaluate your practice, specifically your chart noting, billing, clinical justification, and need for periodic reexaminations. The Board recommends you take CE hours in record keeping/charting, use of appropriate billing codes and procedure codes, and rationale/indications for obtaining x-rays.

The Board is especially concerned by the finding of altered chart notes. You must take care to date any changes or alternation to an existing chart note, identify the provider of the service and note the author of any entry.

The Board does note this is your only complaint in eight years of practice. They hope you will learn from this experience and take steps to improve your practice as a result.

Sincerely,

Dave McTeague
Executive Director

