

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)
) Case # 2021-1016
Andrew Torchio D.C.)
)
) **STIPULATED FINAL**
) **ORDER**
)
_____)

The Oregon Board of Chiropractic Examiners (Board or OBCE) is the state agency responsible for licensing, regulating, and disciplining chiropractic physicians and certified chiropractic assistants in the State of Oregon. Licensee, Andrew Torchio D.C. (Licensee 1), has been a licensed chiropractor since December 6, 2012. The Board proposes to discipline his license for the following reasons:

Findings of Fact

1.

Brent Torchio (Licensee 2) was a chiropractic student and had his preceptorship from April 2020 to June 2020. His preceptorship occurred with Licensee 1, who is his brother and was a licensed DC at the time of his preceptor at the clinic in Bend, Oregon. Once his preceptorship ended, Licensee 2 stayed on and continued to work in his brother's (Licensee 1's) chiropractic clinic.

Patient 1 went to the clinic for assistance with back pain. Appointments were scheduled from February 1, 2021, through May 10, 2021. Patient 1 was seen 7 times. Licensee 1 provided treatment and care to Patient 1 during this time. During treatment for the back condition, Patient 1 received x rays taken by Licensee 2. The patient was concerned about x-ray shielding not being performed and mentioned that to Licensee 2 and was told by Licensee 2 that "it was no problem" and that shielding was not needed since the x-rays were digital. The patient did not realize that Licensee 2 was not licensed at the time the x-rays were taken. At the time the x-rays were taken, Licensee 2 was no longer a preceptor, nor was he a licensed Oregon chiropractic physician. In addition, during the time frame Patient 1 sought treatment, Licensee 2 helped Patient 1 with a wobble board and used a dual scale to see if Patient 1 was balanced.

On August 17, 2021, the Oregon Board of Medical Imaging (OBMI) and Licensee 1's clinic signed a stipulated order for discipline. In that order, the OBMI found that Licensee 2 took x-rays without a license. Licensee 1 provided information to the OBMI confirming that Licensee 2 had taken the x-rays after the conclusion of his preceptorship. The clinic and

Licensee 1 stipulated that the violations occurred and was issued a \$10,500 civil penalty with a portion of it stayed for five years.

During the OBCE's investigation, Licensee 1 first stated during his investigatory interview, that he had taken the x-rays. When confronted with the OBMI investigation, Licensee 1 then admitted that Licensee 2 had taken them. Licensee 1 confirmed that Licensee 2's preceptor was completed and that he was not licensed at the time the x-rays were taken on Patient 1. Licensee 1 was made aware of the OBMI investigation prior to signing the stipulation in August 2021.

2.

Review of Patient 1's chart notes from February 1, 2021, through May 10, 2021 showed often there were no vitals recorded, and no neurological exam or muscle testing was performed. Often patient name and identifying information were not included in the chart. SOAP notes had subjective and objective findings missing and often copied directly from previous chart notes. Some chart notes did not include a diagnosis or a list of objective findings.

Licensee 1 was treating Patient 1 three times per week. However, chart notes failed to include clinical justification for the treatment, including subjective and objective findings.

Conclusions of Law

3.

The Board finds, as described in paragraphs 1 and 2, that the acts and conduct of Licensee 1 are violations of the Board's laws and rules. As a licensed chiropractic physician, Licensee 1 had a duty to report the OBMI investigation and outcome when he became aware of it. In addition, as a licensed chiropractic physician, Licensee 1 is responsible to be aware of the laws and rules of the Board regarding Licensee 2's licensure requirement and as the chiropractic physician holding ownership of the clinic, Licensee 1 has a responsibility to render adequate supervision, management and training of staff including chiropractic physicians. The Board determined that there were violations of ORS 684.100(1)(A), unprofessional conduct; ORS 684.100(1)(m) aiding and abetting the practice of the healing arts by an unlicensed person; OAR 811-010-0040(1): failure to report a violation and failing to adequately supervise and be responsible for staff; OAR 811-035-0015 (15) and (31); allowing another person to use one's chiropractic license for any purpose, and failing to answer truthfully any question asked by the Board during an investigation, OAR 811-035-0015(22).

The patient chart notes as discussed in paragraph 2 are in violation of ORS 684.100(1)(f)(A), OAR 811-015-0005(1)(a)-(c)(A)-(C)(i), (ii), (iii), (iv), and OAR 811-015-0010(1), (2), (3) and (4) as notes lack clinical justification for the amount of treatment Patient 1 received.

STIPULATION

4.

Therefore, pursuant to ORS 183.417(3) and ORS 684.100(9)(f) the OBCE orders:

1. The parties have agreed to enter this Stipulated Final Order. Licensee agrees that he is aware of his right to a hearing with his attorney present to contest the charges and hereby waives that right and agrees to entry of this order. Licensee agrees to waive any right to appeal. Licensee denies the allegations but wishes to settle and resolve the above matter without further proceedings.
2. Licensee agrees to pay a civil penalty of \$5,000 to be paid to the Board within 90 days this order becomes final. Pursuant to ORS 293.231, the Board will refer the amounts owed to collection if it has received no payment on the account for more than 90 days. Thereafter, the Board will consider assignment to the Oregon Department of Revenue or a private collection agency for collection. Final fees may include additional percentages of any increase in the amount you owe due to the accrual of interest on the unpaid principal amount.
3. Licensee agrees to complete a total of 6 hours of continuing education, consisting of 2 hours in recordkeeping, 2 hours in billing, and 2 hours in ethics, all to be taken within 90 days this order becomes final. These hours will be in addition to the required education for licensure. Licensee is responsible to provide verification of completion to the Board.
4. Licensee agrees to provide to the Board or their agent, patient files to review, a total of three times providing two files on each occasion and that to occur within 6 months

the order becomes final. Licensee is obligated to provide the files to the Board when requested.

5. Failure to abide by this stipulation may result in further discipline up to and including revocation.
6. This order is public and is reportable to NPDB.
7. This order is effective on the date signed by the Board.

Dated this ^{21st} 12th of September, 2022.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Signatures are held at the OBCE office.

Cassandra C. McLeod-Skinner, J.D.
Executive Director

Dated: 9/16/22

Signatures are held at the OBCE office.

Andrew Torchio, D.C.

CERTIFICATE OF SERVICE

I, Cassandra C. McLeod-Skinner, certify that on September 12, 2022, I served the foregoing Final Stipulated Order upon Andrew Torchio, D.C., the party hereto, by email and by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Scott O'Donnell
Keating and Jones
200 SW Market Street Suite 900
Portland OR 97201-5730
sodonnell@keatingjones.com

Andrew Torchio D.C.
Pangea Chiropractic
409 NE Greenwood Avenue Suite 120
Bend OR 97701

Signatures are held at the OBCE office.

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

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	
)	Case # 2021-1016
Andrew Torchio D.C.)	
)	
)	NOTICE OF PROPOSED
Licensee)	DISCIPLINE
_____)	

The Oregon Board of Chiropractic Examiners (Board or OBCE) is the state agency responsible for licensing, regulating, and disciplining chiropractic physicians and certified chiropractic assistants in the State of Oregon. Licensee, Andrew Torchio D.C. (Licensee 1), has been a licensed chiropractic physician since December 6, 2012. The Board proposes to discipline his license for the following reasons:

Findings of Fact
1.

Brent Torchio (Licensee 2) was a chiropractic student and had his preceptorship from April 2020 to June 2020. His preceptorship occurred with Licensee 1 who is his brother and was a licensed DC at the time of Licensee 2's preceptor at the clinic in Bend, Oregon. Once his preceptorship ended, Licensee 2 stayed on and continued to work in his brother's (Licensee 1's) chiropractic clinic.

Patient 1 went to the clinic for assistance with back pain. Appointments were scheduled from February 1, 2021, through May 10, 2021. Patient 1 was seen 7 times. Licensee 1 provided treatment and care to Patient 1 during this time. During treatment for the back condition, Patient 1 received x rays taken by Licensee 2. The patient was concerned about x-ray shielding not being performed and mentioned that to Licensee 2 and was told by Licensee 2 that "it was no problem" and that shielding was not needed since the x-rays were digital. The patient did not realize that Licensee 2 was not licensed at the time the x rays were taken. At the time the x rays were taken, Licensee 2 was no longer a preceptor, nor was he a licensed Oregon chiropractic physician. In addition, during the time frame Patient 1 sought treatment, Licensee 2 helped Patient 1 with a wobble board and used a dual scale to see if Patient 1 was balanced.

On August 17, 2021, the Oregon Board of Medical Imaging (OBMI) and Licensee 1's clinic signed a stipulated order for discipline. In that order, the OBMI found that Licensee 2 took x rays without a license. Licensee 1 provided information to the OBMI confirming that Licensee 2 had taken the x rays after the conclusion of his preceptorship. The clinic and

Licensee 1 stipulated that the violations occurred and was issued a \$10,500 civil penalty with a portion of it stayed for five years.

During the OBCE's investigation, Licensee 1 first stated during his investigatory interview that he had taken the x rays. When confronted with the OBMI investigation, Licensee 1 then admitted that Licensee 2 had taken them. Licensee 1 confirmed that Licensee 2's preceptorship was completed and that he was not licensed at the time the x rays were taken on Patient 1. Licensee 1 was made aware of the OBMI investigation prior to signing the stipulation in August 2021.

2.

Review of Patient 1's chart notes from February 1, 2021, through May 10, 2021 showed that often there were no vitals recorded, and no neurological exam or muscle testing performed. Often patient name and identifying information were not included in the chart. SOAP notes had subjective and objective findings missing and often copied directly from previous chart notes. Some chart notes did not include a diagnosis or a list of objective findings.

Licensee 1 was treating Patient 1 three times per week. However, chart notes failed to include clinical justification for the treatment, including subjective and objective findings.

Conclusions of Law

3.

The Board finds as described in paragraphs 1 and 2 that the acts and conduct of Licensee 1 are violations of the Board's laws and rules. As a licensed chiropractic physician, Licensee 1 had a duty to report the OBMI investigation and outcome when he became aware of it. In addition, as a licensed chiropractic physician, Licensee 1 is responsible to be aware of the laws and rules of the Board regarding Licensee 2's licensure requirement and as the chiropractic physician holding ownership of the clinic, Licensee 1 has a responsibility to render adequate supervision, management, and training of staff including chiropractic physicians. The Board determined that there were violations of ORS 684.100(1)(A), unprofessional conduct; ORS 684.100(1)(m) aiding and abetting the practice of the healing arts by an unlicensed person; OAR 811-010-0040(1): failure to report a violation and failing to adequately supervise and be responsible for staff; OAR 811-035-0015 (15) and (31); allowing another person to use one's chiropractic license for any purpose, and failing to answer truthfully any question asked by the Board during an investigation, OAR 811-035-0015(22).

The patient chart notes as discussed in paragraph 2 are in violation of ORS 684.100(1)(f)(A), OAR 811-015-0005(1)(a)- (c)(A) –(C)(i), (ii), (iii), (iv), and OAR 811-015-0010(1), (2), (3) and (4) as notes lack clinical justification for the amount of treatment Patient 1 received.

4.

Based on the above, the Board proposes the following:

- a. A civil penalty in the amount of \$5,000 is issued, payable to the Board within 90 days the order becomes final;
- b. Licensee 1 will be required to take 6 hours total of continuing education consisting of 2 hours in recordkeeping, 2 hours in billing, and 2 hours in ethics, all to be taken within 90 days this order becomes final. The continuing education is in addition to the required education to maintain licensure. Licensee is required to provide verification of completion of the continuing education to the Board; and
- c. Licensee will participate in 3 file reviews of -2 files each, to be completed within 6 months the order becomes final. Licensee is obligated to provide the files to the Board when requested.

5.

Pursuant to ORS 293.231, the Board will refer the amounts owed to collection if it has received no payment on the account for more than 90 days. Thereafter, the Board will consider assignment to the Oregon Department of Revenue or a private collection agency for collection. Final fees may include additional percentages of any increase in the amount Licensee owes due to the accrual of interest on the unpaid principal amount, any and all collection fees and costs.

6.

The Board proposes to assess against Licensee all of the Board's costs of this disciplinary process and action, including but not limited to all legal costs from the Department of Justice, all hearing costs from the Office of Administrative hearings, all costs associated with any expert or witness, and all administrative costs specific to this proceeding, in an amount not to exceed \$150,000, pursuant to ORS 684.100(9)(g), any and all interest accrued at the legal rate, and any and all costs associated with collections.

7.

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

8.

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.

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. Licensee's submissions to the OBCE to-date regarding the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

10.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS:

Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

DATED this 2nd day of August, 2022.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:

Signatures are held at the OBCE office.

Cassandra C. McLeod- Skinner, J.D.
Executive Director

CERTIFICATE OF SERVICE

I, Cass McLeod-Skinner, certify that on August 2, 2022, I served the foregoing Notice of Proposed Discipline upon Andrew Torchio D.C., the party hereto, by email and by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Scott O'Donnell
Keating and Jones
200 SW Market Street Suite 900
Portland OR 97201-5730
sodonnell@keatingjones.com

Andrew Torchio D.C.
Pangea Chiropractic
409 NE Greenwood Avenue Suite 120
Bend OR 97701

Signatures are held at the OBCE office.

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