

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	
	)	FINAL STIPULATED
Mark Walsh, D.C.	)	ORDER
License No; 1912)	
)	
Licensee.	)	Case # 2004-1036; 2004-3003
_____)	

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. Mark Walsh, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon.

Findings of Fact

Case Number 2004-1036

1.

While a patient with Licensee for a five year period, patient 1 would occasionally be requested by Licensee to loan him large sums of money. Patient 1 estimated that this occurred several times during the five year doctor/patient relationship. The first incident occurred October 2000. Licensee sent Patient 1 a letter requesting to borrow \$6000. On June 21, 2004, patient 1 received an e mail request from Licensee that indicated he needed the sum of \$5000 in order to make improvements to his clinic facilities and specifically requested that amount from Patient 1 stating, "I'm looking for some help and hope you don't mind me asking, I can definitely make it worth your while, thanks, Mark." After Patient 1 told him it was unprofessional to do that,

Licensee then wrote Patient 1 a letter admitting that he had provided false reasons for his need of the money in the original e mail. In the letter dated July 8, 2004, Licensee admitted requesting money from a patient was an unethical act.

2.

During a board investigation, Licensee admitted to soliciting loans from three patients, Patient 1, 2 and 3, all of whom were approached during June 2004. Investigation confirmed that patient 3 had been approached for a loan during a conversation approximately June 2004.

Patient 2 is an 8 year patient of Licensee. Patient 2 confirmed that during that 8 year period, she was solicited by Licensee for loans. It occurred on two or more occasions. During June 2004, Patient 2 received an e mail from Licensee requesting a \$5000 loan to enable improvements to the clinic.

During the investigation, an additional Patient 4 was found that revealed as a patient several years ago, Licensee had solicited to borrow money from her approximately 2 or 3 times. Patient 4 believed that she was not the only patient who was requested to loan Licensee money.

3.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015 (8). On December 22, 1992, Licensee was found in violation of ORS 684.100(1)(g)(A) for intentionally charging patients credit cards for services that were not rendered in the sum of \$51,000 to 29 different accounts. For that violation, Licensee received a 123 day suspension, a \$5,000 civil penalty and a record review of his financial records by the Board.

Case Number 2004-300

4.

A complaint was filed in regards to treatment of patient 5. In that complaint, patient 5 was chart noted and billed for appointments between March 11 and May 11, 2004 that patient 5 could not have kept since she was away on business trips during that time period. Chart notes included symptoms, findings and treatment appearing that the patient had actually been seen and treated on those dates. Licensee had submitted chart notes and billings to Farmer's Insurance Company for payments for services during that time period. When Patient 5's insurance company inquired with licensee as to why that billing and charting had occurred, Licensee stated that there was a "billing error."

When the Board investigated these allegations, in Licensee's response as to the billing errors licensee stated "Patient 5 was billed inaccurately for dates of service when she was out of town because another patient, Patient 6, who was also involved in an auto accident, was treating with Licensee on the same dates. Patient 6 had approximately the same injuries and symptom complex as Patient 5 and Patient 6 was treated each of the same days. Due to being behind in charting for over 3 weeks, Licensee mistook Patient 6's treatments for Patient 5's and completed Patient 5's chart by mistake. The billing error followed this and thus, inaccuracies occurred in Farmer's billing as well. After Licensee realized the errors through Farmer's, he immediately responded with a review and located the errors and made corrections to rectify the mistake."

5.

Licensee sent an addendum to Farmer's stating that in regards to Patient 5, the following dates were billed in error: 3/13/04, 3/16/04, 3/17/04, 3/19/04, 3/24/04, 4/3/04 and 4/10/04.

6.

At the request of the Board, the Peer Review Committee reviewed this matter. They received documents from Licensee, (chart notes of patient 5 and 6), and documents from the insurance company of both Patient 5 and 6.

7.

Peer review found in review of patient 5 and 6 chart notes that the past history provided by Licensee does not meet minimal standards. No past health history information was found. Licensee stated that patient 5 was a 10 year patient. That is in violation of ORS 684.100(1)(g)(A) and OAR 811-015-0005(1).

8.

Licensee failed to include any diagnoses on the patient charts of Patient 5 or 6 either by ICD code or in writing. In the event another doctor was required to take over care for this patient, the diagnosis would be not available to that practitioner. In addition, each page of chart notes does not identify the patient by name and the clinic by name. That is in violation of ORS 684.100(1)(g)(A) and OAR 811-015-0005(1).

9.

The billings of patient 5 and 6 are not substantiated by the record. Licensee billed Farmers Insurance for patient 5 for a 3/13/04 date of service without a corresponding chart note to substantiate the treatment. In addition, Patient 5 was billed for 3/16/04, 3/17/04, 3/19/04 and 4/3/04 and 4/10/04 when she did not receive services. Patient 5 states she was out of town on those dates for business trips and was not provided services by Licensee. In his letter dated 6/14/04 (addendum) Licensee states this date, along with others, was billed in error. That is in

violation of ORS 684.(1)(g)(A) and OAR 811-035-0015(5) and (12) in charging a patient for a service not rendered and/or perpetrating fraud upon patients or third party payors relating to services.

10.

The Peer Review Committee found evidence of altered chart notes on Patients 5 and 6. Licensee admits in his response to the Board that these records are not contemporaneous records. Two different versions of chart notes exist for Patient 6. If you compare the original chart notes to the second version of chart notes for Patient 6, in the second version, dates of services have been added into the records. By altering the charts in this way, Licensee is deceptive. In addition, the notations are added without a notation of the reason it was added or the date. That is a violation of ORS 684.100(1)(g)(A) and OAR 811-035-0005(1).

In addition, there are also alterations to the chart notes where the patient encounter information has been changed. For the date of service on 3/13/04, comparing version one and version two of Patient 6's notes, one finds different intensity of symptoms, different objective findings, different treatment rendered and different treatment plans.

Careful review of the notes of Patient 5 and 6 shows that for the date of service on 3/13/04 for patient 6, identical wording for patient 5 is used for the date of service on 3/12/04. Alterations similar to these also occurred for service dates on 3/16/04, 3/18/04, 3/19/04 and 3/24/04, with the revised notes for patient 6 now matching patient 5's notes. These alterations are all done without any notation of the reason or date of the revision. That is a violation of ORS 684.100(1)(g)(A) and OAR 811-035-0005(1), OAR 811-035-0015(5) and (12).

///

The Committee and Board are deeply concerned about the inaccuracy in billing and the alteration of patient records without appropriate notations and the inconsistencies in Licensee's explanations. Licensee admits to erroneously billing the insurance company for multiple dates of service when patient 5 was not treated. The explanation that Licensee utilized notes that were made at the time of treatment and mistook Patient 6 treatments for Patient 5 and completed Patient 5's chart instead of patient 6 is not supported by the documents provided. Both patients have charts with dates of service for 3/16/04, 3/19/04 and 3/24/04 that are different in content and therefore indicate two different patient encounters.

Conclusions of Law

In the two cases findings of fact mentioned above, the conduct results in violations of 684.100 (1)(g)(A); and OAR 811-035-0015 (8), OAR 811-015-0005(1), OAR 811-035-0015(5) and (12) and OAR 811-035-0005(1).

Stipulations

This matter having come properly before and been considered by the Board, and Licensee having voluntarily stipulated and consented to the issuance and entry of this order by signing below,

IT IS HEREBY ORDERED THAT:

1. Licensee will serve a 6 month suspension from the practice of chiropractic. This shall start no later than November 1, 2006. If Licensee begins his suspension sooner he must notify the Board. Suspension from the practice means that Licensee can provide no treatment or chiropractic services to any patients.

2. Licensee agrees to make a civil penalty in the total of \$20,000. Beginning when the six month suspension has been served by Licensee, Licensee will make monthly payments of \$200, due and payable by the 1st of every month, until the remaining amount owed is paid.
3. If ten days pass the 1st of the month, and payment is not received, Licensee will be considered delinquent in payment and may be charged interest at the rate determined by the state rate. Payments which are over 90 days delinquent if payments have stopped, then the entire amount remaining becomes due and may be referred either to the Department of Revenue for collections, or to state contracted private collection firms and may include the filing of liens on property.
4. Licensee is on probation for a period of 10 years beginning following the conclusion of his suspension. During probation, the Board or its staff representative may request patient records from Licensee, to be selected by the Board or representative to be reviewed. Licensee must cooperate in providing the records in a timely fashion or that may be considered cause for further discipline.
5. Licensee must take and pass the NBCE Ethics & Boundary Examination within one year from the date of this order and provide proof of passage to the Board.
6. If Licensee violates any of the terms of this order, the Board may, after notice and hearing, enter further disciplinary orders.
7. The parties have agreed to enter this stipulated final order to resolve this matter. Licensee waives his right to a hearing and any appeal rights. Licensee has been

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of	)	AMENDED
	)	NOTICE OF PROPOSED
Mark Walsh, D.C.	)	DISCIPLINARY ACTION
License No; 1912	)	(REVOCATION)
)	
Licensee.	)	Case # 2004-1036; 2004-3003
<hr/>		

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. Mark Walsh, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board proposes to discipline Licensee for the following reasons:

Case Number 2004-1036

1.

While a patient with Licensee for a five year period, patient 1 would occasionally be requested by Licensee to loan him large sums of money. Patient 1 estimated that this occurred several times during the five year doctor/patient relationship. The first incident occurred October 2000. Licensee sent Patient 1 a letter requesting to borrow \$6000. On June 21, 2004, patient 1 received an email request from Licensee that indicated he needed the sum of \$5000 in order to make improvements to his clinic facilities and specifically requested that amount from Patient 1 stating, "I'm looking for some help and hope you don't mind me asking, I can definitely make it worth your while, thanks, Mark." After Patient 1 told him it was unprofessional to do that, Licensee then wrote Patient 1 a letter admitting that he had provided false reasons for his need of the money in the original e mail. In the letter dated July 8, 2004, Licensee admitted requesting money from a patient was an unethical act.

2.

During a board investigation, Licensee admitted to soliciting loans from three patients, Patient 1, 2 and 3, all of whom were approached during June 2004. Investigation confirmed that patient 3 had been approached for a loan during a conversation approximately June 2004. Patient 2 is an 8 year patient of Licensee. Patient 2 confirmed that during that 8 year period, she was solicited by Licensee for loans. It occurred on two or more occasions. During June 2004, Patient 2 received an e mail from Licensee requesting a \$5000 loan to enable improvements to the clinic.

During the investigation, an additional Patient 4 was found that revealed as a patient several years ago, Licensee had solicited to borrow money from her approximately 2 or 3 times. Patient 4 believed that she was not the only patient who was requested to loan Licensee money.

3.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015 (8). On December 22, 1992, Licensee was found in violation of ORS 684.100(1)(g)(A) for intentionally charging patients credit cards for services that were not rendered in the sum of \$51,000 to 29 different accounts. For that violation, Licensee received a 123 day suspension, a \$5,000 civil penalty and a record review of his financial records by the Board.

Case Number 2004-3003

4.

A complaint was filed in regards to treatment of patient 5. In that complaint, reference is made to an Independent Examination report on patient 5 conducted on June 1, 2004. In that report, patient 5 is said to have "...indicated that from the time of March 11, 2004 through May 11, 2004, she made four trips out of the area traveling primarily to Kansas City. Because of this she was able to "squeeze in a few treatments a couple of days at a time." This is inconsistent with Dr. Walsh's chart notes, which indicate 15 treatment sessions between March 11, 2004 and May 11, 2004." The complaint states, "I showed her the charts which obviously upset her." Chart notes included symptoms, findings and treatment appearing that the patient had actually been seen and treated on all the dates billed. Licensee had submitted chart notes and billings to Farmer's Insurance Company for payments for services during that time period. When Patient 5's insurance company inquired with licensee as to why that billing and charting had occurred, Licensee stated that there was a "billing error."

When the Board investigated these allegations, in Licensee's response as to the billing errors licensee stated "Patient 5 was billed inaccurately for dates of service when she was out of town because another patient, Patient 6, who was also involved in an auto accident, was treating with Licensee on the same dates. Patient 6 had approximately the same injuries and symptom complex as Patient 5 and Patient 6 was treated each of the same days. Due to being behind in charting for over 3 weeks, Licensee mistook Patient 6's treatments for Patient 5's and completed Patient 5's chart by mistake. The billing error followed this and thus, inaccuracies occurred in Farmer's billing as well. After Licensee realized the errors through Farmer's, he immediately responded with a review and located the errors and made corrections to rectify the mistake."

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Licensee sent an addendum to Farmer's stating that in regards to Patient 5, the following dates were billed in error: 3/13/04, 3/16/04, 3/17/04, 3/19/04, 3/24/04, 4/3/04 and 4/10/04.

6.

At the request of the Board, the Peer Review Committee reviewed this matter. They received documents from Licensee, (chart notes of patient 5 and 6), and documents from the insurance company of both Patient 5 and 6.

7.

Peer review found in review of patient 5 and 6 chart notes that the past history provided by Licensee does not meet minimal standards. No past health history information was found. Licensee stated that patient 5 was a 10 year patient. That is in violation of ORS 684.100(1)(g)(A) and OAR 811-015-0005(1).

8.

Licensee failed to include any diagnoses on the patient charts of Patient 5 or 6 either by ICD code or in writing. In the event another doctor was required to take over care for this patient, the diagnosis would be not available to that practitioner. In addition, each page of chart notes does not identify the patient by name and the clinic by name. That is in violation of ORS 684.100(1)(g)(A) and OAR 811-015-0005(1).

9.

The billings of patient 5 and 6 are not substantiated by the record. Licensee billed Farmers Insurance for patient 5 for a 3/13/04 date of service without a corresponding chart note to substantiate the treatment. In addition, Patient 5 was billed for 3/16/04, 3/17/04, 3/19/04 and 4/3/04 and 4/10/04 when she did not receive services. Patient 5 states she was out of town on those dates for business trips and was not provided services by Licensee. In his letter dated 6/14/04 (addendum) Licensee states this date, along with others, was billed in error. That is in violation of ORS 684.100(1)(g)(A) and OAR 811-035-0015(5) and (12) in charging a patient for a service not rendered and/or perpetrating fraud upon patients or third party payers relating to services.

10.

The Peer Review Committee found evidence of altered chart notes on Patients 5 and 6. Licensee admits in his response to the Board that these records are not contemporaneous records. Two different versions of chart notes exist for Patient 6. If you compare the original chart notes to the second version of chart notes for Patient 6, in the second version, dates of services have been added into the records. For example, in the second version of chart notes provided by Licensee for Patient 6, there appears a service date of 3/17/04 with a treatment note. That note is a re-write of that patient chart and is an exact copy of Patient 5's note for date of service 3/16/04 so that Patient 5's note matches patient 6's note. By altering the charts in this way, Licensee is deceptive. In addition, the notations are added without a notation of the reason it was added or the date. There was no date of service of 3/17/04 in the original notes for Patient 6 provided. Similar additions to Patient 6's charts are made in the second version for dates of service of 4/3/04 and 4/10/04. That is a violation of ORS 684.100(1)(g)(A) and OAR 811-035-0005(1).

In addition, there are also alterations to the chart notes where the patient encounter information has been changed. For the date of service on 3/13/04, comparing version one and version two of Patient 6's notes, one finds different intensity of symptoms, different objective findings, different treatment rendered and different treatment plans.

Careful review of the notes of Patient 5 and 6 shows that for the date of service on 3/13/04 for patient 6, identical wording for patient 5 is used for the date of service on 3/12/04. Alterations similar to these also occurred for service dates on 3/16/04, 3/18/04, 3/19/04 and 3/24/04, with the revised notes for patient 6 now matching patient 5's notes. These alterations are all done without any notation of the reason or date of the revision. That is a violation of ORS 684.100(1)(g)(A) and OAR 811-035-0005(1), OAR 811-035-0015(5) and (12).

11.

The Committee and Board are deeply concerned about the inaccuracy in billing and the alteration of patient records without appropriate notations and the inconsistencies in Licensee's explanations. Licensee admits to erroneously billing the insurance company for multiple dates of service when patient 5 was not treated. The explanation that Licensee utilized notes that were made at the time of treatment and mistook Patient 6 treatments for Patient 5 and completed Patient 5's chart instead of patient 6 is not supported by the documents provided. Both patients have charts with dates of service for 3/16/04, 3/19/04 and 3/24/04 that are different in content and therefore indicate two different patient encounters.

Moreover, Licensee's response to investigative requests by the Board was not timely.

12.

Licensee's previous disciplinary history is relevant to these cases. Licensee was placed on emergency suspension and given a Notice of Proposed Revocation on October 8, 1992 for unprofessional conduct in that he charged \$51,000 to 29 different VISA accounts of various patients for services not rendered and without their knowledge. Following contested case hearing, the Hearings Officer found that Licensee intended to repay the funds and found, "The Licensee clearly understands that what he did was wrong." The Board accepted the Hearing Officer's recommendations and Licensee was suspended for 126 days and given a \$5,000 civil penalty.

As regards Case # 2004-1036, given his disciplinary history, Licensee should have clearly understood that attempting to borrow money from his patients is egregious unprofessional and unethical behavior. As regards Case # 2004-3003, the Board agrees with the Peer Review Committee's findings that Licensee is deceptive in his alternations of patient chart notes and deeply concerned by the inaccuracies in billing and the inconsistencies between Licensee's explanations and what the patient charts reveal.

Due to the aforementioned violations, and the previous disciplinary history of this Licensee, the OBCE proposes to discipline Licensee by revoking the license of Licensee.

13.

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

14.

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.

15.

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.

16.

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.

17.

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.

Signed this day of 10th day of November 2005.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director

State of Oregon) Case # 2004-1036; 2004-3003
County of Marion) Mark Walsh 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 Amended Notice of Proposed Disciplinary Action is true to the best of my knowledge as I verily believe.

Original signature on file
at the OBCE office.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

SUBSCRIBED AND SWORN to before me

this 10 day of November, 2005

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 11-5-08



CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on November 10, 2005, I served the foregoing Amended of Proposed Disciplinary Action upon Mark Walsh DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Mark Walsh, DC
Walsh Chiropractic
11000 SW Barbur Boulevard, Suite201
Portland, Oregon 97219

By regular mail to:

James Vick AAL
698 12th Street SE Suite 200
Salem OR 97301

Original signature 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

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(503) 378-5816

FAX (503) 362-1260

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

www.obce.state.or.us

March 25, 2005

Mark Walsh, DC
Walsh Chiropractic
11000 SW Barbur Boulevard, Suite 201
Portland, Oregon 97219

Re: Notice of Proposed Disciplinary Action, Case # 2004-1036

Dear Dr. Walsh:

The Oregon Board of Chiropractic Examiners reviewed this case at their March 17, 2005 meeting and voted to issue the enclosed Notice of Proposed Disciplinary Action.

You have 30 days in which to respond and/or request a contested case hearing on the allegations contained in the Notice. Also enclosed is your Notice of Contested Case rights should we proceed to contested case hearing.

If you are represented by legal counsel, that person may contact Lori Lindley, Assistant Attorney General at 503-947-4520 should there be any questions. If you are not represented you may contact me directly with any questions.

Sincerely,

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director

Cc: Lori Lindley AAG
Oregon Board of Chiropractic Examiners

Enclosure



BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	
	)	NOTICE OF PROPOSED
Mark Walsh, D.C.)	
	)	DISCIPLINARY ACTION
Licensee.	)	(SUSPENSION)
	)	Case # 2004-1036
License No; 1912)	
_____)	

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. Mark Walsh, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board proposes to discipline Licensee for the following reasons:

1.

While a patient with Licensee for a five year period, patient 1 would occasionally be requested by Licensee to loan him large sums of money. Patient 1 estimated that this occurred several times during the five year doctor/patient relationship. The first incident occurred October 2000. Licensee sent Patient 1 a letter requesting to borrow \$6000. On June 21, 2004, patient 1 received an e mail request from Licensee that indicated he needed the sum of \$5000 in order to make improvements to his clinic facilities and specifically requested that amount from Patient 1 stating, "I'm looking for some help and hope you don't mind me asking, I can definitely make it worth your while, thanks, Mark." After Patient 1 told him it was unprofessional to do that, Licensee then wrote Patient 1 a letter admitting that he had provided false reasons for his need of

the money in the original e mail. In the letter dated July 8, 2004, Licensee admitted requesting money from a patient was an unethical act.

2.

During a board investigation, Licensee admitted to soliciting loans from three patients, Patient 1, 2 and 3, all of whom were approached during June 2004. Investigation confirmed that patient 3 had been approached for a loan during a conversation approximately June 2004.

Patient 2 is an 8 year patient of Licensee. Patient 2 confirmed that during that 8 year period, she was solicited by Licensee for loans. It occurred on two or more occasions. During June 2004, Patient 2 received an e mail from Licensee requesting a \$5000 loan to enable improvements to the clinic.

During the investigation, an additional Patient 4 was found that revealed as a patient several years ago, Licensee had solicited to borrow money from her approximately 2 or 3 times. Patient 4 believed that she was not the only patient who was requested to loan Licensee money.

3.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015 (8). On December 22, 1992, Licensee was found in violation of ORS 684.100(1)(g)(A) for intentionally charging patients credit cards for services that were not rendered in the sum of \$51,000 to 29 different accounts. For that violation, Licensee received a 123 day suspension, a \$5,000 civil penalty and a record review of his financial records by the Board.

4.

Due to the aforementioned violations, and the discipline history of this Licensee, the OBCE proposes to discipline Licensee by suspending the license of Licensee to practice for a period of one year to take effect when this matter becomes a final order. Suspension for the year period prohibits Licensee from engaging in the practice of chiropractic in the State of Oregon for that time period. In addition, Licensee is required to take and pass the NBCE ethics exam prior to resuming any chiropractic practice after suspension and will be on probation for five years after the suspension has been served. Further violations will provide adequate grounds for revocation after an appropriate notice and right to a contested case hearing.

5.

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

6.

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.

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.

Signed this day of 25th of March, 2005.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director

State of Oregon) Case # 2004-1036
County of Marion) Mark Walsh 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 signature on file
at the OBCE office.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners



SUBSCRIBED AND SWORN to before me

this 24th day of March, 2005

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 10/7/07

CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on March 25, 2005 I served the foregoing Notice of Proposed Disciplinary Action upon Mark Walsh DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Mark Walsh, DC
Walsh Chiropractic
11000 SW Barbur Boulevard, Suite201
Portland, Oregon 97219

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

You should read this information to prepare for the hearing

1. **Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in chapter 183 of the Oregon Revised Statutes and the administrative rules and statutes of the Oregon Board of Chiropractic Examiners (OBCE), OAR chapter 811, ORS chapter 684, and the Attorney General's Office of Administrative Hearing Rules, OAR Chapter 137 Division 3, and OAR 471-060-0005. (January 1, 2004 ed.)
2. **Right to attorney.** The OBCE will be represented by an attorney. You have a right to be represented by an attorney at your own expense. You may represent yourself at the hearing. If you choose to represent yourself but determine in the course of the hearing that an attorney is necessary it will be in the discretion of the hearings officer or presiding officer to grant you a recess. Agencies, corporations and associations may be represented only by attorney unless otherwise specifically provided by law.
3. **Subpoenas.** You may subpoena witnesses. The OBCE will issue subpoenas upon request and upon a showing of good cause and general relevance of the evidence sought. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness and mileage fees to a witness you subpoena is your responsibility.
4. **Presiding Officer.** The person presiding at the hearing will be an Administrative Law Judge from the Office of Administrative Hearings. The ALJ will rule on all matters that arise at the hearing, subject to any agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 and 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings. The Office of Administrative Hearings consists of employees of the Employment Department and independent contractors with the Office of Administrative Hearings. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Board.
5. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to gather facts. The order of presentation of evidence is normally as follows:
 - a. Testimony of witnesses and other evidence of the Board in support of its proposed action.
 - b. Testimony of your witnesses and your other evidence.
 - c. Rebuttal evidence by the Board and by you.
6. **Burden of presenting evidence.** The burden of presenting evidence to support a fact or a position rests upon the party who proposes that fact or position. You should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.
7. **Witnesses.** All witnesses will testify under oath or affirmation to tell the truth. All witnesses may be cross-examined by other parties or by the presiding officer.
8. **Admissible Evidence.** Evidence that may be admitted at the hearing is that which is commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance the Board will place on it in reaching a decision.

Four kinds of evidence may be admitted.

- a. Knowledge of the OBCE. The ALJ may take "official notice" of commonly known facts and of facts and conclusions developed from the experience in the specialized field of activity. This includes notice of technical or scientific facts. You will be informed at the hearing if the OBCE takes "official notice" of any fact so that you may contest those facts. The agency may also take "judicial notice" of a fact that is not subject

to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

- b. Testimony of witnesses. This includes your own testimony.
- c. Writings. This includes letters, maps, diagrams and other written material offered as evidence.
- d. Photographs, experiments, demonstrations and similar means to prove a fact.

9. **Objections to evidence.** Evidence may be objected to on any legal grounds; including:

- a. Irrelevant. The evidence has no tendency to prove or disprove any issue involved in the hearing.
- b. Immaterial. The evidence is offered to prove a proposition which is not a matter in issue at the hearing.
- c. Unduly repetitious. The evidence is merely repetitive of what has already been offered and admitted.
- d. Hearsay, authenticity or foundation. To the extent that such evidence would not commonly be relied upon by reasonably prudent persons in the conduct of their serious affairs.

10. **Continuances.** Unless allowed by the OBCE or ALJ, there will be no continuance and the record will not be reopened regarding any matters determined at the conference or hearing. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

11. **Proposed Order and Exceptions to proposed order.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions" to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will also be notified when you may appear and make oral argument to the Board if applicable

Not later than 10 days after the date of the filing of the proposed order with the Board, you may file and serve on the OBCE and the ALJ, your written exceptions to the proposed order.

- a. The exceptions shall be confined to the factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:
 - A. A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;
 - B. A necessary legal conclusion is omitted or is contrary to law or the Board's policy; or
 - C. Prejudicial procedural error occurred.
- b. The exceptions shall be numbered and shall specify the disputed findings, opinions or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

After the OBCE has received and reviewed the proposed order and the exceptions, if any, the OBCE shall:

- a. Entertain such oral argument as it determines necessary or appropriate to assist it in the proper disposition of the case; and
- b. Remand the matter to the hearings officer for further proceedings on any issues of fact which the OBCE believes were not fully or adequately developed; or

- c. Enter a final order adopting the recommendation of the ALJ as the OBCE's order or rejecting the recommendation of the ALJ. If the OBCE elects to reject the recommendation of the ALJ, the final order shall contain necessary findings of fact and conclusions of law.

12. **Conferences.** Prior to a hearing, the ALJ may schedule conferences to:

- a. Establish a procedural schedule, including dates for prefiled testimony and exhibits;
- b. Identify, simplify or clarify issues;
- c. Eliminate irrelevant or immaterial issues;
- d. Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof; and
- e. Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

Except as provided in the following paragraph, the record shall reflect the results of any conferences, which shall be binding on all parties.

13. **Record.** A record will be made of the entire hearing to preserve the testimony and other evidence for appeal. This will be done by a tape recorder. Ordinarily the record will not be transcribed unless you appeal to the Court of Appeals. If you appeal, you will not have to pay for the cost of transcribing the record, unless the petition is frivolous or you unreasonably refuse to stipulate to a limited record. If you do not appeal, a copy of the record will be made available to you upon payment of the cost of making it.

14. **Appeal.** If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served on you. See Oregon Revised Statutes 183.480 et seq.