

IN THE MATTER OF
MARK FEDORCZYK, D.C.
Respondent

* BEFORE THE
* STATE BOARD OF
* CHIROPRACTIC AND
* MASSAGE THERAPY EXAMINERS
* Case Number: 2010-42C

License Number: S01649

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On March 21, 2011, the State Board of Chiropractic and Massage Therapy Examiners (the "Board") charged Mark Fedorczyk, D.C. (the "Respondent") (D.O.B. 02/05/1964), License Number S01649, under the Maryland Chiropractic Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 3-101 *et seq.* (2009 Repl. Vol. and 2010 Supp.) and Code Md. Regs. ("COMAR") tit. 10, §§ 43.01 *et seq.*:

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 3-313:

Subject to the hearing provisions of § 3-315 of this subtitle, the Board may ... reprimand any licensee, place any licensee on probation, with or without conditions, or suspend or revoke a license, or any combination thereof, if the ... licensee:

- (2) Fraudulently or deceptively uses a license;
- (7) Solicits or advertises in a false or misleading manner or in any other manner not approved by the Board;
- (8) Is unethical in the conduct of the practice of chiropractic;
- (18) Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic;
- (19) Violates any rule or regulation in the practice of chiropractic;

- (20) Behaves immorally in the practice of chiropractic;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic;
- (26) Misrepresents qualifications, education, training, or clinical experience; [and/or]
- (28) Violates any provision of this title.

The Board also charged the Respondent with violating the following COMAR provisions:

COMAR 10.43.03 ADVERTISING

COMAR 10.43.03.03 Prohibitions.

An advertisement may not contain statements that:

- A. Contain a misrepresentation of facts or do not reasonably identify the practice as chiropractic;
- B. Are likely to mislead or deceive because in context the statement makes only a partial disclosure of relevant facts;
- D. Relate to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully disclosing all variable and other relevant factors[.]

COMAR 10.43.03.04 Solicitations.

- A. A chiropractor may not engage in solicitation, including but not limited to, in-person, telephone, or direct mail solicitation which:
 - (1) Amounts to fraud, undue influence, intimidation, or overreaching;
 - (2) Contains statements which would be improper under Regulation .03 of this chapter.
- B. A chiropractor shall also be accountable under this regulation if the chiropractor uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

COMAR 10.43.07 CHIROPRACTIC ASSISTANTS

COMAR 10.43.07.11 Practicing Without Registration.

- A. Except as otherwise provided in this chapter, a person may not practice, attempt to practice, or offer to practice as a chiropractic assistant in this State unless registered by the Board.
- B. A person may not serve as a chiropractic applicant or assistant unless approved by the Board.

COMAR 10.43.07.12 Penalties for Violations of This Chapter.

- A. Violations of these regulations may result in disciplinary actions against the supervising chiropractor as set forth in Health Occupations Article, § 3-313, Annotated Code of Maryland.

COMAR 10.43.14 CODE OF ETHICS

COMAR 10.43.14.03 Standards of Practice.

- A. A chiropractor and chiropractic assistant shall concern themselves primarily with the welfare of the patient.
- C. A chiropractor and chiropractic assistant shall:
 - (4) Provide accurate fee information to the patient, the individual responsible for payment for treatment, and the insurer;
 - (6) Practice chiropractic only as defined in the scope of practice set forth in Health Occupations Article, § 3-101(f) and (g), Annotated Code of Maryland;
 - (7) Provide chiropractic assistance only within the parameters set forth in Health Occupations Article, § 3-404, Annotated Code of Maryland, and COMAR 10.43.07;
- D. A chiropractor and chiropractic assistant may not:

- (1) Misrepresent credentials, qualifications, or affiliations and shall attempt to correct others who misrepresent the chiropractor's or the chiropractic assistant's credentials, qualifications, or affiliations;
- (2) Knowingly engage in or condone behavior that is fraudulent, dishonest, or deceitful, or involves moral turpitude.

COMAR 10.43.15 RECORDKEEPING

COMAR 10.43.15.04 Supervisory Responsibilities

- A. The chiropractor is responsible for record keeping, consent forms, billing, and other patient-related documentation handled, maintained, or managed by the chiropractor's staff.
- B. The chiropractor shall ensure that employees involved in the preparation, organization, and filing of records adhere to the regulations of this chapter.

On April 21, 2011, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Consent and Order.

FINDINGS OF FACT

The Board makes the following findings:

BACKGROUND FINDINGS

1. At all times relevant hereto, the Respondent was and is licensed to practice chiropractic in the State of Maryland. The Respondent was initially licensed to practice chiropractic in Maryland on November 29, 1993, under License Number S01649.

2. At all times relevant hereto, the Respondent operated Chiro Care of Frederick, an office for the practice of chiropractic, at 1050 Key Parkway, Suite 202, Frederick, Maryland 21702.

3. On or about July 31, 2010, the Board received a complaint about the Respondent from a legal representative (the "Complainant") of UnitedHealthcare, a national health insurance company. The Complainant reported that the Respondent's office distributed an advertisement for its services in which it offered to provide "free medical treatment" for all Frederick County school bus drivers who had insurance coverage through UnitedHealthcare, without co-pays or deductibles. The Complainant reported that after reviewing the solicitation, UnitedHealthcare sent a formal, written request to the Respondent that he cease and desist from making such representations in his solicitations.

4. Based on this complaint, the Board initiated an investigation of this matter, the findings of which are set forth *infra*.

BOARD INVESTIGATIVE FINDINGS

Office advertisement

5. In or around June 2010, a staff person from the Respondent's office distributed an advertisement in the form of a handbill for its services to one or more Frederick County school bus drivers or affiliated employees. The advertisement, which contained the Respondent's office name, address and telephone number, stated the following:

Any Frederick County School Bus Driver with United Health Care can come to our office and receive **FREE MEDICAL TREATMENT.**

That's right, all physical therapy, chiropractic, x-rays and examinations are **FREE. NO CO-PAYS, NO DEDUCTIBLES.**

(emphasis in original)

6. Thereafter, the Frederick County Public Schools referred the advertisement to UnitedHealthcare. UnitedHealthcare then sent a cease and desist letter to the Respondent, dated July 28, 2010, in which it stated that the Respondent did not have authorization to use UnitedHealthcare's name or to represent that someone insured by UnitedHealthcare could receive "free medical treatment." UnitedHealthcare stated that the Respondent's representation that an individual who was insured by UnitedHealthcare was eligible to receive free medical care was "misleading" and that the "arrangements described in the ad constitute misrepresentations and/or fraud within the meaning of several state and federal laws."

7. UnitedHealthcare submitted a complaint to the Board about this matter, received on or about July 31, 2010.

8. By letter to the Board, dated August 19, 2010, the Respondent acknowledged that his office sent out the advertisement but claimed that it was only distributed to one person. The Respondent further stated that his office sent out the advertisement without his authorization or approval and that since that time, he ordered that it not be used again.

Use of an unlicensed chiropractic assistant

9. Board investigation determined that the Respondent used an unlicensed chiropractic assistant ("Employee A") to perform physical therapy on the Respondent's patients for over one year, beginning in or around 2009, and continuing into 2010.

10. The Respondent originally hired Employee A to work for him as a chiropractic assistant ("CA") in his office in or around 1994. Employee A obtained a Maryland CA license on or about August 15, 1995. Employee A continued to work for the Respondent until 1998 or 1999, at which point he left his employment with him. Employee A's Maryland CA license expired on or about March 31, 2001.

11. The Respondent rehired Employee A in or around September 2009. From the time Employee A's Maryland CA license expired in 2001 until the date the Respondent hired him, Employee A had not taken any continuing education credits. The Respondent was aware that as of the date he hired Employee A, Employee A was not licensed as a CA. Thereafter, Employee A performed various activities on the Respondent's patients, including ultrasound, electrostimulation, the placement of hot and cold packs and traction therapy. During this time period, Employee A worked about 14 to 20 hours per week for the Respondent and provided the above treatments to 10 to 20 patients per day.

12. The Respondent's use and distribution of the advertisement referred to above constitutes the following violations of the Act: Solicits or advertises in a false or misleading manner or in any other manner not approved by the Board, in violation of H.O. § 3-313(7); and Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19).

13. The Respondent's use and distribution of the advertisement referred to above constitutes the following violations of COMAR: 10.43.03.03 and 10.43.03.04.

14. The Respondent's employment and use of a non-licensed individual, Employee A, to provide CA services constitutes the following violations of the Act:

Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. § 3-313(18); and Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19).

15. The Respondent's employment of a non-licensed individual, Employee A, to provide CA services constitutes the following violations of COMAR: 10.43.07.11 and 10.43.07.12.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of the Act under H.O. § 3-313: Solicits or advertises in a false or misleading manner or in any other manner not approved by the Board, in violation of H.O. § 3-313(7); Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic, in violation of H.O. § 3-313(18); and Violates any rule or regulation in the practice of chiropractic, in violation of H.O. § 3-313(19).

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of COMAR: 10.43.03.03; 10.43.03.04; 10.43.07.11; and 10.43.07.12.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 10th day of MAY, 2011, by a majority of the Board considering this case:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent is placed on probation for a minimum period of **EIGHTEEN (18) MONTHS**, to commence on the date the Board executes this Consent Order, and continuing until the Respondent fully and successfully complies with the following terms and conditions:

1. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall pay a fine in the amount of two thousand five hundred (\$2,500.00) dollars, by certified check or money order, payable to the Maryland State Board of Chiropractic and Massage Therapy Examiners.

2. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall take and successfully pass the Board's Jurisprudence Examination. The Respondent shall bear all responsibility for scheduling and coordinating the examination with the Board and for all costs/fees associated with this examination.

3. Within six (6) months of the date the Board executes this Consent Order, the Respondent shall enroll in and successfully complete a Board-approved course in professional ethics. The Respondent shall bear all responsibility for scheduling and coordinating the course with the instructor, paying all costs/fees associated with the course, and submitting a written certificate of successful completion of the course in a timely manner to the Board. The Respondent may not use any continuing education credits earned through this coursework to fulfill any continuing education requirements mandated under law or for renewal of licensure. The Respondent shall be responsible for all costs/fees associated with enrolling in and completing this course.

AND IT IS FURTHER ORDERED that the Board shall dismiss the following charges and regulatory violations: Fraudulently or deceptively uses a license, in violation of H.O. § 3-313(2); Is unethical in the conduct of the practice of chiropractic, in violation of H.O. § 3-313(8); Behaves immorally in the practice of chiropractic, in violation of H.O. § 3-313(20); Commits an act of unprofessional conduct in the practice of chiropractic, in violation of H.O. § 3-313(21); Misrepresents qualifications, education, training, or clinical experience, in violation of H.O. § 3-313(26); Violates any provision of this title, in violation of H.O. § 3-313(28); COMAR 10.43.14.03 and COMAR 10.43.15.04; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, after notice and an opportunity for a hearing, may impose any other disciplinary sanctions it deems appropriate, including but not limited to, suspension or revocation, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall not apply for early termination of his probation; and it is further

ORDERED that after **EIGHTEEN (18) MONTHS** from the date the Consent Order goes into effect, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board or a designated Board committee. The Board, or designated Board committee, will grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no outstanding complaints against the Respondent; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §§10-611 *et seq.* (2009 Repl. Vol. and 2010 Supp.).

Done for / by direction

Kay B. O'Hara, D.C., President
State Board of Chiropractic and Massage
Therapy Examiners

MAY 10 2011

CONSENT

I, Mark Fedorczyk, D.C., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order without reservation after having had an opportunity to consult with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

5/5/11
Date


Mark Fedorczyk, D.C.
Respondent

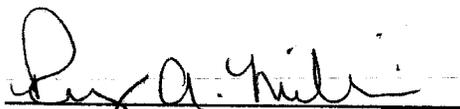
NOTARY

STATE OF Maryland

CITY/COUNTY OF: Fredrick

I HEREBY CERTIFY that on this 5th day of May, 2011, before me, a Notary Public of the State and County aforesaid, personally appeared Mark Fedorczyk, D.C., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.


Notary Public

My commission expires: 2/24/2014