

IN THE MATTER OF
FRANK E. TARQUINI, D.C.

Respondent

License Number: S01882

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BEFORE THE MARYLAND STATE
BOARD OF CHIROPRACTIC AND
MASSAGE THERAPY EXAMINERS

Case Number: 12-11C

CONSENT ORDER

On October 22, 2012, the Maryland State Board of Chiropractic and Massage Therapy Examiners (the "Board") summarily suspended the chiropractic license of FRANK E. TARQUINI, D.C. (the "Respondent"), License Number S01882, pursuant to Md. Code Ann., State Gov't, § 10-226(c) (2009 Repl. Vol.). On November 14, 2012, the Board charged the Respondent with violating the Maryland Chiropractic Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ."), §§ 3-101 *et seq.* (2009 Repl. Vol.).

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

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

- (6) Provide professional services while: (i) under the influence of alcohol;
- (20) Violates any rule or regulations adopted by the Board;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic; and
- (27) Is physically or mentally impaired to the extent that it impairs the applicant's or licensee's ability to practice chiropractic safely.

The Board charged the Respondent with violating rule or regulations adopted by the Board under Health Occ. § 3-313(20), specifically Md. Regs. Code ("COMAR") tit. 10, § 43.14.03B, which states:

A chiropractor or chiropractic assistant who suffers from a physical, mental, or emotional impairment, including chemical abuse, that impacts the individual's ability to practice chiropractic or provide chiropractic assistance shall seek professional treatment and refrain from the practice of chiropractic or the practice of chiropractic assistance until the impairment no longer exists or reasonable accommodations can be made.

On February 7, 2013, a Case Resolution Conference was held before a panel of the Board. As a result of negotiations, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND

1. At all times relevant hereto, the Respondent was and is licensed to practice chiropractic in the State of Maryland. The Respondent was originally licensed to practice chiropractic in the State of Maryland on March 18, 1998, under License Number S01882. The Respondent's license is due to expire on September 1, 2013.

2. At all times relevant hereto, the Respondent was employed by a temporary chiropractic employment agency ("Agency A")¹ to provide temporary chiropractic services in Maryland.

¹ To ensure confidentiality, the names of individuals and facilities involved in this case are not disclosed in this document.

3. The Board initiated an investigation of the Respondent after receiving a complaint from an office supervisor (the "Office Supervisor") at a chiropractic practice (the "Chiropractic Practice") with multiple locations in Maryland alleging that on or about October 5, 2012, the Respondent, who was assigned to provide temporary chiropractic services at the Chiropractic Practice's Essex location, appeared there in a drunk manner and attempted to provide chiropractic services to a patient ("Patient A").

4. In furtherance of its investigation, the Board's investigator conducted a search of the Respondent's criminal history and interviewed witnesses and the Respondent.

5. Board investigation determined that on or about October 5, 2012, the Respondent provided professional services by appearing at the Chiropractic Practice's Essex location and attempted to treat Patient A while under the influence of alcohol.

BOARD INVESTIGATION

6. On or about October 5, 2012, at approximately 9:30 a.m., a receptionist (the "Receptionist") at the Chiropractic Practice observed the Respondent stumbled up the steps to the office in a drunken manner. The Respondent stated to the Receptionist that he was assigned by Agency A to provide temporary chiropractic services to the Chiropractic Practice that day. The Respondent fell into the Receptionist when he attempted to hug her. Throughout their conversation, the Receptionist smelled vodka on the Respondent.

7. After observing the Respondent in a drunken state, the Receptionist immediately called the Office Supervisor, who advised the Receptionist to cancel the rest of the patients for the day.

8. In the meantime, the Respondent left the Chiropractic Practice for approximately ten to fifteen minutes. By the time the Respondent returned, Patient A had arrived for her scheduled appointment. Upon seeing the Receptionist, the Respondent told her that he found a bar and grill restaurant nearby. The Respondent further mentioned that he did not have a driver's license as a result of a drunk-driving incident at the end of February.

9. The Respondent attempted to treat Patient A but was unable to figure out how to operate the paper sheet dispenser on the treatment table, or how to operate the electrical stimulation machine. While with Patient A, the Respondent received a phone call from Agency A advising him not to treat any patient that day. After receiving the phone call, the Respondent stated to the Receptionist and Patient A, "one drink is about to ruin my whole life, other people are sticking needles in their arms and all I had was a couple of beers."

10. Shortly thereafter, the Respondent walked out of the Chiropractic Practice in the direction of the nearby bar and grill restaurant. He returned approximately ten to fifteen minutes later with a clear cup filled with a clear liquid. The Receptionist and Patient A observed the Respondent sat down in the patient waiting area drinking the clear liquid. When the Respondent got up to go to the bathroom, Patient A was able to smell vodka on the Respondent.

11. The Respondent walked out of the Chiropractic Practice for a third time in the direction of the bar and grill restaurant and returned approximately ten to fifteen minutes later with another clear cup containing a clear liquid in his hand. The Respondent sat on the front porch of the office drinking the clear liquid until his mother

and father arrived in a vehicle to pick him up. The Respondent gave the Receptionist another hug before he left.

12. In statements to the Board, the Receptionist stated that she felt threatened by the Respondent's behavior, and Patient A stayed with her to comfort her.

13. Board investigation confirmed that on or about January 24, 2012, the Respondent was charged with driving while impaired by alcohol, Md. Code Ann., Transp. § 21-901(b)(1) in Carroll County, Maryland. On May 25, 2012, the Respondent pled not guilty but was found guilty and received probation before judgment in the Maryland District Court for Carroll County.

14. On or about October 15, 2012, a Board investigator interviewed the Respondent regarding the complaint. During the interview, the Respondent admitted that when he appeared for temporary work at the Chiropractic Practice on the morning of October 5, 2012, he still had alcohol in his system from consuming vodka the night before or early in the morning. The Respondent further admitted that after Agency A told him not to treat any patient, he walked to the nearby bar and grill restaurant and consumed two shots of alcoholic drinks.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions of providing professional services by appearing at the Chiropractic Practice's Essex location and attempting to treat Patient A while under the influence of alcohol constitute: providing professional services while under the influence of alcohol, in violation of Health Occ. § 3-313(6); committing an act of unprofessional conduct in the practice of chiropractic, in violation of Health Occ. § 3-313(21); being

physically or mentally impaired to the extent that it impairs his ability to practice chiropractic safely, in violation of Health Occ. § 3-313(27); and violating any rule or regulations adopted by the Board, in violation of Health Occ. § 3-313(20), specifically, a violation of COMAR 10.43.14.03B.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the Board considering this case:

ORDERED that the Summary Suspension of the Respondent's license issued on October 22, 2012, is hereby **TERMINATED**; and it is further

ORDERED that the Respondent's license to practice chiropractic in the State of Maryland is hereby **SUSPENDED** for a period of **TWO (2) YEARS** with all but a minimum of **SIX (6) MONTHS** of said suspension **STAYED**, to commence on February 7, 2013, and continuing until he has fully and successfully completed the following terms and conditions:

- (1) Alcohol and Substance Abuse Evaluation:
 - I. Before the Respondent may file a petition to stay the suspension of his license, he shall undergo an alcohol and substance abuse evaluation by a Board-approved health care provider, who will submit a report to the Board within **fifteen (15) business days** of the completion of the evaluation, to assist the Board in determining whether the Respondent can safely resume the practice of chiropractic, and if so, under what conditions.
- (2) Board-approved Alcohol and Substance Abuse Outpatient Program:
 - I. Within **thirty (30) days** of the date the Board executes this Consent Order, the Respondent shall enroll in a Board-approved alcohol and substance abuse outpatient treatment program (the "Outpatient Program"), which shall be effective for the duration of the suspension period; and

- II. For the entire duration of the suspension period, the Respondent shall fully, timely and satisfactorily cooperate and comply with all recommendations and requirements from the Outpatient Program, which must include at the very least the following requirements:
- a. The Respondent shall be subject to periodic randomized alcohol and drug screening, the frequency of which to be approved by the Board.
 - b. The Outpatient Program shall submit quarterly reports to the Board summarizing the Respondent's treatment sessions, including, but not limited to, its assessment of the Respondent's progress and the results of the Respondent's alcohol and drug screens. The Respondent is solely responsible for ensuring that the Outpatient Program submits the required quarterly reports to the Board in a timely manner.
 - c. The Board retains sole authority to implement or approve any changes in the Respondent's treatment.
 - d. In the event that the Outpatient Program discontinues or discharges the Respondent from treatment for any reason, the Respondent shall immediately notify the Board and submit a replacement Outpatient Program under the terms specified under this Consent Order. The replacement Outpatient Program must be pre-approved by the Board.
 - e. The Respondent's failure to comply with the recommendations or requirements of the Outpatient Program shall be deemed a violation of of this Consent Order.

(3) Release(s):

- I. The Respondent shall sign a release or releases from time to time to ensure that the Board has the ability to receive any and all treatment records from any alcohol or substance abuse treatment program(s) he attended or may attend.
- (4) The Respondent shall be solely responsible for ensuring that he provides the Board with adequate written verification that he has fully and successfully complied with the above terms and conditions.

AND IT IS FURTHER ORDERED that after the conclusion of a minimum of **SIX (6) MONTHS PERIOD OF SUSPENSION**, the Respondent may file a written petition with the Board to request a stay the suspension. The Board will stay the suspension if it determines that the Respondent has successfully complied with the terms and conditions of the suspension. If the Board determines that the Respondent fails to fully comply with the above terms and conditions, or that his alcohol and substance abuse evaluator finds that he cannot safely resume the practice of chiropractic, the Board shall continue the suspension of the Respondent's license until he has complied with all of the above terms and conditions and his alcohol and substance abuse evaluator finds that he can safely resume the practice of chiropractic; and it is further

ORDERED that if the Board grants the Respondent's request to stay the suspension of his chiropractic license, the Board shall place the Respondent on **PROBATION** for a minimum period of **TWO (2) YEARS**, to commence on the date the Board stays the suspension. During the probationary period, the Respondent must comply with the following terms and conditions:

- (1) The Respondent's shall continue his enrollment with the Outpatient Program for the duration of the probation period;
- (2) For the entire duration of the probation period, the Respondent shall fully, timely and satisfactorily cooperate and comply with all recommendations and requirements of the Outpatient Program, which must include at the very least the following requirements:
 - I. The Respondent shall be subject to periodic randomized alcohol and drug screening, the frequency of which to be approved by the Board.
 - II. The Outpatient Program shall submit quarterly reports to the Board summarizing the Respondent's treatment sessions, including, but not limited to, its assessment of the Respondent's progress and the results of the Respondent's alcohol and drug screens. The

Respondent is solely responsible for ensuring that the Outpatient Program submits the required quarterly reports to the Board in a timely manner.

- III. The Board retains sole authority to implement or approve any changes in the Respondent's treatment.
 - IV. In the event that the Outpatient Program discontinues or discharges the Respondent from treatment for any reason, the Respondent shall immediately notify the Board and submit a replacement Outpatient Program under the terms specified under this Consent Order. The replacement Outpatient Program must be pre-approved by the Board.
 - V. The Respondent's failure to comply with the recommendations or requirements of the Outpatient Program shall be deemed a violation of of this Consent Order.
- (3) The Respondent shall comply with the Maryland Medical Practice Act and all laws, statutes and regulations pertaining thereof; and
 - (4) Any non-compliance with the recommendations and requirements of the Outpatient Program shall be deemed a violation of his probation and of this Consent Order.

AND IT IS FURTHER ORDERED that after the conclusion of the **TWO (2) YEAR** probationary period, 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 pending complaints related to the charges; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing if there is a genuine dispute as to the underlying facts, or an opportunity for a show cause hearing, before the Board otherwise, may impose any

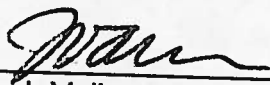
sanction which the Board may have imposed in this case, including probationary terms and conditions, a reprimand, suspension, revocation and/or a monetary penalty; and it is further

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 a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't, §§ 10-611 *et seq.* (2009 Repl. Vol.).

APR 03 2013

Date



J. J. Vallone, JD, CFE
Executive Director
For Stephanie Chaney, D.C.
President, by direction of the
Maryland State Board of Chiropractic
and Massage Therapy Examiners

CONSENT

I, Frank E. Tarquini, D.C., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions. I acknowledge the violations as set forth above and accept personal responsibility for my behavior.

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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority

and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

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

3/24/2013
Date

Frank E. Tarquini
Frank E. Tarquini, D.C.

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 29th day of March, 2013, before me, a Notary Public of the foregoing State and City/County personally appear Frank E. Tarquini, D.C., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Margaret Peterson
Notary Public

My commission expires: 4/22/14