

BEFORE THE NORTH CAROLINA BOARD  
OF CHIROPRACTIC EXAMINERS

N.C. BOARD OF CHIROPRACTIC  
EXAMINERS

v.

Michael Fortini, D.C., (# 3716)  
Respondent

**INFORMAL SETTLEMENT  
AGREEMENT**

This INFORMAL SETTLEMENT AGREEMENT, made between the N.C. Board of Chiropractic Examiners ("Board"), acting through John Hammer, D.C. ("Secretary"), in his official capacity as Secretary of the Board and Chair of the Chiropractic Review Committee ("Committee"), and Michael Fortini, D.C. (Respondent), in his capacity as a licensed chiropractic physician subject to the Board's jurisdiction (collectively, "Parties"), agree, for the purposes of resolving a pending disciplinary action and potential contested case, to the following:

**WITNESS THAT:**

**WHEREAS**, on or after April 13, 2019, the Board received complaints against Respondent from Adrianna Duncan, Crystal Martin, D.C., Serenity Allen, Matthew Schnell, Elizabeth Davis, and Monica Cook;

**WHEREAS**, on April 23, 2019, the Board received notice that a separate, but related, civil lawsuit had been filed by two of the Complainants, Serenity Allen and Crystal Martin, D.C., against Respondent;

**WHEREAS**, on April 25, 2019, the Board mailed to Respondent, via FedEx – Return Receipt Requested, a copy of the Complaints and requested to provide a response to same;

**WHEREAS**, on June 6, 2019, the Board office received notice that the civil lawsuit had been dismissed as to all of Serenity Allen's claims;

**WHEREAS**, on June 10, 2019, the Board office mailed to Respondent, via FedEx – Return Receipt Requested, a notice that a Probable Cause Hearing had been scheduled in the above-referenced matter for July 18, 2019;

**WHEREAS**, on June 14, 2019, Respondent's counsel provided to Dr. Ricky Sides, the Board's Director of Standards & Enforcement, Respondent's response and supporting exhibits, addressing the allegations against Respondent;

**WHEREAS**, on July 15, 2019, Respondent's counsel provided to the Board's counsel a letter from Shaaron Boyles, MSW, LCSW, opining in part that "There is no indication Dr. Fortini cannot practice with reasonable skill, safety, and ethical capacity;"

**WHEREAS**, on July 17, 2019, Respondent's counsel provided to the Board's counsel the Affidavit of Melissa Cheek;

**WHEREAS**, the parties met for a Probable Cause Hearing as scheduled on July 18, 2019;

**WHEREAS**, Board staff and the Secretary have determined that the allegations of the Complaint, if proven, would constitute one or more violations of the statutes and regulations administered by the Board and, thus, would require disciplinary action; and

**WHEREAS**, the parties wish to resolve and settle this matter without a contested case hearing.

**NOW, THEREFORE**, pursuant to N.C. Gen. Stat. § 150B-22, which mandates that whenever possible disputes between a regulatory agency and another person that involves the person's rights, duties or privileges to be settled through informal procedure, and pursuant to N.C. Gen. Stat. § 150B-41(c), which authorizes settlement of a contested case by consent, the Parties hereby agree and stipulate as follows:

**I. Jurisdiction:**

The Board is an occupational licensing board of the State of North Carolina, organized under N.C. Gen. Stat. § 90-139, *et. seq.* The Board has jurisdiction over this matter pursuant to N.C. Gen. Stat. § 90-154 *et. seq.*, N.C. Gen. Stat. § 150B-1, *et. seq.*, and 21 N.C. Admin. Code 10 .0103, *et. seq.*

**II. Identification of Licensee/Respondent:**

Respondent holds license number 3716, which first was issued on April 28, 2007. Dr. Fortini practices at Merrimon Family Chiropractic, located at 390-A South French Broad, Asheville, NC 28801.

**III. Waiver of Rights:**

In order to resolve this matter by an Informal Settlement Agreement, Respondent agrees that the Board staff and counsel may discuss this Informal Settlement Agreement with the Board Secretary and any subcommittee that may be assigned to this matter *ex parte* whether or not the Board accepts this Informal Settlement Agreement as written.

**IV. Stipulation to Facts:**

The Parties stipulate to the following facts:

- A. After receiving complaints against Respondent from Adrianna Duncan, Crystal Martin, D.C., Serenity Allen, Matthew Schnell, Elizabeth Davis, and Monica Cook, the Board staff's investigator investigated this matter and the Board's Review

Committee determined that this matter should be set for a Probable Cause Hearing. Based upon a review of all of the complaints, Respondent's responses thereto, the Board staff's investigative report, and the statements of Respondent and Serenity Allen at the Probable Cause Hearing of this matter, the Board's Review Committee has determined Respondent to have committed the following violations of the Board's laws and rules:

1. N.C. Gen. Stat. § 90-154(b)(21) – committing an act that demonstrates lack of good moral character
2. N.C. Gen. Stat. § 90-143.2 & 21 NCAC 10 .0206 – non-certified/unlicensed x-ray technicians
3. 21 NCAC 10 .0213 – non-certified/unlicensed chiropractic assistants; and
4. 21 NCAC 10 .0305 – using a prepaid treatment plan that does not meet the requirements specified by the Rule.

B. The Parties met for a Probable Cause Hearing as scheduled on July 18, 2019.

**V. Stipulated Informal Settlement Agreement:**

**A. Stipulation to Sections of Law Violated:**

Respondent admits that his actions with regard to the allegations set forth in Paragraphs IV.A.1.-4. above, if proven at a hearing, would violate N.C. Gen. Stat. §§ 90-154(b)(21) and 90-143.2; and 21 N.C. Admin. Code 10 .0206, .0213, and .0305. If proven, these violations would constitute grounds for disciplinary action.

**B. Stipulation to Sanction**

In lieu of proceeding to hearing, Respondent and the Board Secretary hereby enter into this Informal Settlement Agreement, whereby Respondent and the Board agree to the following terms:

1. Respondent admits the **Stipulation to Facts** above;
2. Respondent shall cease and desist from further violations of the above allegations;
3. Respondent's license to practice chiropractic shall be placed on probation for a minimum of two (2) years, during which time Respondent must submit to the Board quarterly reports regarding his compliance with the terms of this ISA; said reports shall be due on March 30, June 30, September 30, and December 31, of each year in which Respondent's license is on probation;
4. During Respondent's probationary period, Respondent must have a female chiropractic assistant chaperone him if he is performing any chiropractic technique in a closed room;

5. Respondent must pass the National Board of Chiropractic Examiners Ethics and Boundaries Exam within one (1) year of the effective date of this Informal Settlement Agreement;
6. Respondent shall take the Jurisprudence class and successfully pass the Jurisprudence exam within six (6) months of the effective date of this Informal Settlement Agreement. Respondent shall not receive Continuing Education credit toward his annual license renewal for such course;
7. Respondent shall undergo a mental health evaluation by a Board-approved clinician; however, Petitioner Board agrees that the evaluation already performed and provided to the Board by Shaaron Boyles, MSW, LCSW, on July 15, 2019, satisfies this requirement;
8. Respondent shall reimburse to the Board its hearing costs and attorneys' fees in the amount of \$1,000.00; and
9. Respondent agrees that in the event of future disciplinary actions, this Informal Settlement Agreement and the facts underlying it will be considered in future investigations and may, at the Board's discretion, be admitted as evidence in future disciplinary proceedings.

#### **VII. Effective Date**

The effective date of this Informal Settlement Agreement is the date on which it is signed by the Board Secretary, or his designee.

#### **VIII. Public Record**

The parties agree that this Informal Settlement Agreement is a public record, as required by N.C. Gen. Stat. § 132-1.3. As such, this agreement is admissible in future disciplinary proceedings. Other related documents that are part of the investigative file and are trial preparation materials are not public records, pursuant to N.C. Gen. Stat. § 132-1.9.

#### **IX. Adverse Action Reporting**

The parties agree that this Informal Settlement Agreement is a disciplinary ISA and contains an adverse action against Respondent's license, and, therefore, will be reported to the National Practitioners Data Bank (The Data Bank) through the Public Protection Database (PPD).

#### **X. Respondent's Contact Information**

Within 21 days of the effective date of this Informal Settlement Agreement, Respondent shall submit to the Board by certified mail Respondent's: 1) Residential address and residential phone number; 2) Primary mailing address, if different from the residential address; and 3) Business address(es) and business phone number(s), if any.

Respondent shall notify the Board by certified letter, return receipt, within one week of any changes in Respondent's contact information during the probationary period imposed by this ISA.

**XI. Compliance with Informal Settlement Agreement**

- A) This Informal Settlement Agreement and its provisions are effective on the date of signature by the Board's Secretary.
- B) Any modification of this Informal Settlement Agreement must be pre-approved in writing by the Board and signed by the Board President or his or her designee before it may be effective.
- C) Failure by Respondent to meet the terms of this Informal Settlement Agreement, either in substance or in timing, is a violation of N.C. Gen. Stat. § 90-154(a)(6).
- D) If, during the term of this Informal Settlement Agreement, the Board staff receives evidence that Respondent has violated any of the above conditions, the Board staff may schedule a Show Cause Hearing for a determination of the violations.
- E) Should circumstances arise that affect Respondent's ability to remain in compliance, Respondent shall immediately notify the Board in writing by certified mail, fully describing the situation along with any attendant request for Board consideration.
- F) Communications with Respondent regarding compliance with this Informal Settlement Agreement may occur between the Board staff and Respondent.

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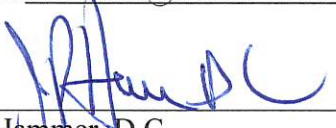
WE CONSENT:

  
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Michael Fortini, D.C.  
Respondent

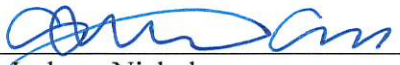
8/27/19  
Date

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8/27/19  
Date

  
\_\_\_\_\_  
John Hammer, D.C.  
Board Secretary  
N.C. Board of Chiropractic Examiners  
6070 Six Forks Rd. Ste. L  
Raleigh, NC 27609

10/2/19  
Date

  
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10/2/19  
Date