

BEFORE THE NORTH CAROLINA BOARD
OF CHIROPRACTIC EXAMINERS

N.C. BOARD OF CHIROPRACTIC
EXAMINERS

v.

RICHARD SHEPPARD, D.C., (# 3847)
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 Richard Sheppard, 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 about July 3, 2019, the Board received a complaint from Jennifer A. Hildebran ("Complainant") against Respondent, in which Complainant alleges Respondent acted unethically, negligently, and fraudulently. In support of her allegations, Complainant attached to her complaint a copy of the proposed cost/treatment plan purportedly provided by Respondent to Complainant, a receipt from Respondent for certain treatment received by Complainant, and an Explanation of Benefits from Complainant's health insurance provider;

WHEREAS, on July 5, 2019, the Board mailed to Respondent, via FedEx – Return Receipt Requested, a copy of the Complaint and request to provide a response to same, to include the complete chiropractic records for Complainant;

WHEREAS, on July 12, 2019, the Board's Investigator interviewed Complainant by telephone;

WHEREAS, Complainant confirmed that she received a reimbursement check from Respondent in the amount of \$83.00 on or about July 5, 2019;

WHEREAS, on July 15, 2019, Complainant emailed to Board staff a screenshot of her insurance claim summary from the 6/26/2019 visit to Respondent's chiropractic practice. The information reflects that a claim as submitted to the insurance company by Respondent in the amount of \$314.00, of which the insurance company paid \$44.00 and of which Complainant was to pay \$11.00;

WHEREAS, Respondent submitted a response to the Board, along with copies of Complainant's medical records;

WHEREAS, Dr. Ricky Sides, in his capacity as an expert witness for the Board, reviewed Complainant's patient records provided by Respondent, including her intake forms, activity assessments, informed consent documents, and narrative notes. Based upon this review, Dr. Sides concluded that there are billing and recordkeeping discrepancies in Complainant's patient records provided by Respondent. Dr. Sides further concluded that Respondent's patient records do not support the charges that were billed to Complainant's insurance provider. Finally, Dr. Sides concluded that the advertising employed by Respondent does not have the required disclaimer and did not have the correct charge for the discounted rate of service provided to Complainant;

WHEREAS, Respondent's licensure file indicates that he previously received a letter of caution from the Board as a result of advertising practices that were not in compliance with the Board's laws and rules;

WHEREAS, Respondent met with the Board Review Committee on Thursday February 27, 2020 at the Board Office at 6070 Six Forks Road, Suite L, Raleigh, North Carolina;

WHEREAS, the Review Committee consisted of the Secretary of the Board, Dr. John P. Hammer and Dr. Christopher Outten;

WHEREAS, Respondent was represented by counsel, Michael J. Allen, and the Board staff was represented by M. Jackson Nichols; and

WHEREAS, the parties wish to resolve and settle this matter without proceeding to a Probable Cause Hearing and potentially to a contested case hearing thereafter;

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 3847, which first was issued on January 26, 2008. Respondent practices at Wellness One of Hickory, Inc., located at 3614 14th Ave. NE #181, Hickory, NC 28601.

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 a complaint against Respondent from Jennifer Hildebran, the Board and Respondent agree that Respondent's actions and omissions violate the following of the Board's laws and rules:
 - 1. N.C. Gen. Stat. § 90-154(b)(9) – committing an act that demonstrates misrepresentation;
 - 2. N.C. Gen. Stat. § 90-154(b)(13) – advertising any free or reduced rate service without prominently stating in the advertisement the usual fee for that service; and
 - 3. N.C. Gen. Stat. § 90-154(b)(15) – charging an insurer or other third-party payor a fee greater than the advertised fee for the same service.
- B. The facts stated in the Recitals are hereby incorporated by reference herein.

V. Stipulated Informal Settlement Agreement:

A. Stipulation to Sections of Law Violated:

Respondent admits that his actions with regard to the allegations set forth herein, if proven at a hearing, would violate N.C. Gen. Stat. §§ 90-154(b)(9), (13), and (15). If proven at a hearing, these violations would constitute grounds for disciplinary action.

B. Stipulation to Sanction

In lieu of proceeding to hearing, Respondent and the 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 one (1) year, 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 June 30, September 30, December 31, of the year in which Respondent's license is on probation, and March 30, 2021.
4. During Respondent's probationary period, Respondent shall have the Board or its designated staff pre-approve any advertising or marketing materials Respondent intends to use to advertise his chiropractic services and/or chiropractic practice before same are published to any third parties;
5. Within six (6) months of the effective date of this Informal Settlement Agreement, Respondent shall take the Jurisprudence course and successfully pass the same day Jurisprudence Exam. Respondent shall not receive Continuing Education credit towards annual license renewal for such course.
6. Within one (1) year of the effective date of this Informal Settlement Agreement Respondent agrees to take the 6-hour online course "Managing for Success A Step Further: Improving Quality & Treatment Outcomes & Clinical Care and Risk Management" sponsored by Health Network Solutions.
7. Respondent must reimburse Complainant for funds she paid him that were subsequently paid by the insurance provider and/or were in excess of the amount she was quoted in the advertisement for services. Based on representations, the Board finds that this requirement already has been satisfied.
8. Respondent must reimburse Complainant's insurance provider for any amount paid in excess of the quoted price for services Respondent provided to Complainant.
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.

VI. 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.

VII. 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.

VIII. 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).

IX. 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.

X. 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.

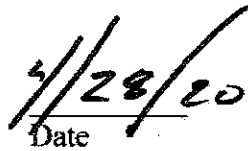
- F) Communications with Respondent regarding compliance with this Informal Settlement Agreement may occur between the Board staff and Respondent.

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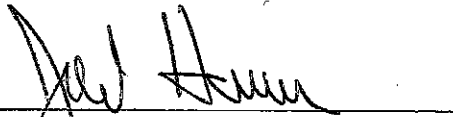
WE CONSENT:



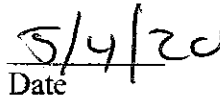
Richard Sheppard, D.C.
Respondent



Date



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



Date

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