

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
BOARD OF NATUROPATHY

In the Matter of

No. M2010-1493

RICHARD A. MARSCHALL
Credential No: NATU.NT.00000532

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
AGREED ORDER

Respondent

The Board of Naturopathy (Board), through Judy L. Young, Department of Health Staff Attorney, and Respondent, represented by counsel, Seth A. Rosenberg, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On September 17, 2012, the Board issued a Statement of Charges against Respondent.

1.2 Respondent understands that the Board is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.3 Respondent understands that if the allegations are proven at a hearing, the Board has the authority to impose sanctions pursuant to RCW 18.130.160.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 Respondent waives the opportunity for a hearing on the Statement of Charges provided that the Board accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondent understands that this Agreed Order is not binding unless and until it is signed and accepted by the Board.

1.8 If the Board accepts this Agreed Order, it will be reported to the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. It is a public document and will be placed on the Department of Health's website and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act RCW 18.130.110.

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1.9 If the Board rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Board members who heard the Agreed Order presentation.

2: FINDINGS OF FACT

Respondent and the Board stipulate to the following facts:

2.1 On August 26, 1986, the state of Washington issued Respondent a credential to practice as a naturopathic physician. Respondent's credential is currently active.

2.2 On or about September 26, 2011, Respondent was convicted of Causing the Introduction of a Misbranded Drug, in the Federal District Court for the Western District of Washington, Case Number 3:11CR5222BHS-0001, USM Number 41188-086. The charge resulted from the introduction of Human Chorionic Gonadotropin (hCG), manufactured in China and distributed by a company in India, and Respondent's use of it as a weight loss drug, a use for which the drug is not approved by the Food and Drug Administration (FDA).

2.3 In an email dated February 17, 2009, to the FDA, Respondent stated, "I am an endocrinologist, a hormone expert. I use Human Chorionic Gonadotropin to treat infertile patients."

2.4 On his web site, Respondent has referred to himself as a "bariatric endocrinologist." He has voluntarily removed those references.

2.5 Doctors of naturopathic medicine may not be board certified in bariatric endocrinology. There is no certification in bariatric endocrinology.

2.6 In 2008, Respondent prescribed hCG for Patient A for weight loss. At no time did Respondent meet Patient A in his office or elsewhere. Respondent's contact with Patient A was by telephone. Respondent had given Patient A the option of coming to his clinic or having a telephone consultation. Patient A chose the telephone consultation. On the telephone, Respondent asked Patient A questions about her medical history and asked her what medications she was currently taking.

2.7 In 2008, 2009, and 2010, Respondent prescribed hCG for weight loss for approximately one hundred seventy (170) patients who reside outside of Washington State and whom Respondent did not see in person before or after prescribing hCG.

2.8 Respondent sent to patients hCG that was manufactured in India or China, not approved for use in the United States for any purpose, and potentially dangerous to patients. Patient B asked Respondent where the hCG was from. Respondent replied that he had an American supplier. Respondent made no mention of the hCG coming from an unapproved source overseas. Respondent's statement was untrue or misleading. On or about March 3, 2010, Respondent told an agent of the FDA that, when asked, he told patients that the hCG came from India.

3. CONCLUSIONS OF LAW

The Board and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Board has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1), (4), (13), and (17).

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. COMPLIANCE WITH SANCTION RULES

4.1 The disciplining authority applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. WAC 246-16-800(2)(c) requires the disciplining authority to impose terms based on a specific sanction schedule unless "the schedule does not adequately address the facts in a case."

4.2 The sanction schedules stated in rule do not address the conduct in this case. RCW 18.130.390 and WAC 246-16-800(2)(d) require the disciplining authority to use its judgment to determine appropriate sanctions when the sanction schedules do not address the conduct in question. The disciplining authority determined that a period of suspension and conditions to be imposed should Respondent return to practice are necessary to protect the public.

4.3 The disciplining authority considered that:

- A. Respondent has a history of previous discipline.
- B. The misconduct was grave.
- C. The misconduct had a potential to injure patients.
- D. Respondent has responsibility for the outcome of the misconduct.

- E. Respondent's act was intentional.
- F. Respondent's motivation was dishonest and for personal gain.
- G. Respondent's conduct brings ill repute upon the profession.

5. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, the Board and Respondent agree to entry of the following Agreed Order:

5.1 Respondent's credential to practice as a naturopathic physician in the state of Washington is **SUSPENDED** for at least one (1) year from the effective date of this Agreed Order and until Respondent fulfills the requirement of Paragraph 5.2.E below.

5.2 When Respondent returns to practice, following the **SUSPENSION**, Respondent must comply with the following conditions.

A. Respondent's credential to practice as a naturopathic physician in the state of Washington is placed on **PROBATION** for seven (7) years from the date of reinstatement. During the **PROBATIONARY PERIOD**, Respondent shall comply with the following conditions.

B. Respondent shall pay a fine to the Board in the amount of ten thousand dollars (\$10,000.00), which must be received by the Board within one (1) year of the date of reinstatement. The fine shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Board of Naturopathy, at PO Box 1099, Olympia, WA 98507-1099. Credit or Debit cards can also be used for payment at the front counter of the Department of Health building at 111 Israel Road SE, Tumwater, WA 98501, during regular business hours.

C. In addition to mandatory continuing education, within one (1) year of the date of reinstatement, Respondent shall complete twenty-four (24) hours of continuing education, pre-approved by the Board or its designee, as follows:

1. Twelve (12) hours of continuing education in the area of Ethics.

2. Six (6) hours of continuing education in the area of Endocrinology.
3. Six (6) hours of continuing education in the area of Obesity Management.

Respondent shall provide the Board with proof of completion of such continuing education within thirty (30) days of such completion. Failure to complete the required minimum hours of pre-approved continuing education in the specified areas within the specified time(s) shall constitute a violation of this Agreed Order.

D. Respondent acknowledges that the standard of care for naturopathic physicians in the state of Washington is that the physician must evaluate each patient in person before prescribing, authorizing, or recommending any treatment or use of any substance. Respondent further acknowledges that such an evaluation includes an in-person physical examination and that the physician must see each patient at least once per year.

E. Before Respondent is released from suspension and admitted back into practice, Respondent shall write and submit to the Board a paper on the importance of physical examinations and in-person examination of patients. The paper shall be five thousand (5,000) words and shall be typed in no smaller than ten (10) point font.

F. Within thirty (30) days of the date of reinstatement Respondent shall update his web site as follows:

1. The web site shall include no reference to Respondent as a "bariatric endocrinologist."
2. The web site shall include no reference to hCG for weight loss.
3. The web site shall not include offers to treat out of state patients.
4. The web site shall include a statement that all new patients will receive an in person physical examination on their first visit to Respondent.

G. Respondent shall not prescribe, authorize, or recommend any treatment or the use of any substance for any patient whom Respondent has not first evaluated in person. Such an evaluation must include an in person physical examination. Respondent must see each patient in person at least once per year.

H. For new patients, at the initial visit, Respondent shall show each patient a copy of this Agreed Order or a summary of this Agreed Order, which has been approved in advance by the Board. For existing patients, at the first visit after the date of reinstatement, Respondent shall show the patient a copy of this Agreed Order or a summary of this Agreed Order approved in advance by the Board.

I. For the first year of the PROBATIONARY PERIOD Respondent shall cooperate with quarterly audits of patient records conducted by a Department of Health investigator. The investigator shall collect and copy fifteen (15) random files. The Board or its designee shall review the files. Patient records shall include documentation that Respondent has shown the patient a copy of this Agreed Order or a summary of this Agreed Order as approved by the Board.

1. If Respondent successfully completes all quarterly audits conducted by within one (1) year of the date of reinstatement, Respondent shall then cooperate with semi-annual audits of patient records conducted by a Department of Health investigator for the next two (2) years and annual audits for the next four (4) years. The investigator shall collect and copy fifteen (15) random files. The Board or its designee shall review the files. Patient records shall include documentation that Respondent has shown the patient a copy of this Agreed Order or a summary of this Agreed Order as approved by the Board.

J. Respondent shall neither prescribe for patients nor treat patients in states where he is not licensed to practice as a health care provider.

K. Respondent shall comply with the terms and conditions of the judgment and sentence entered in federal court.

L. For the duration of the probationary period, Respondent shall submit monthly to the Board or its designee his office telephone record of the calls made and received from patients.

5.3 Any documents required by this Agreed Order shall be sent to Department of Health Compliance at PO Box 47873, Olympia, WA 98504-7873.

5.4 Respondent is responsible for all costs of complying with this Agreed Order.

5.5 Respondent shall inform the Department of Health Office of Customer Service, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change. The mailing address for the Office of Customer Service is PO Box 47865, Olympia, WA 98504-7865.

5.6 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension of the credential after a show cause hearing. If Respondent fails to comply with the terms and conditions of this order, the Board may hold a hearing to require Respondent to show cause why the credential should not be suspended. Alternatively, the Board may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

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7. ACCEPTANCE

I, RICHARD A. MARSCHALL, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Board without my appearance. I understand that I will receive a signed copy if the Board accepts this Agreed Order.


RICHARD A. MARSCHALL
RESPONDENT

8-26-13
DATE


SETH A. ROSENBERG, WSBA #41660
ATTORNEY FOR RESPONDENT

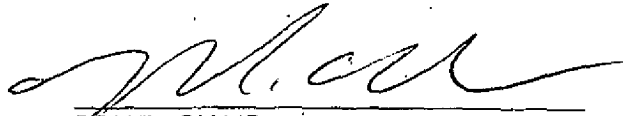
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8. ORDER

The Board accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.


DATED: November 15, 2013

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
BOARD OF NATUROPATHY



PANEL CHAIR

PRESENTED BY:



JUDY L. YOUNG, WSBA #3790
DEPARTMENT OF HEALTH STAFF ATTORNEY

November 15, 2013

DATE