

**BEFORE THE MINNESOTA  
BOARD OF CHIROPRACTIC EXAMINERS**

In the Matter of  
Timothy James Scherz, D.C.  
License No. 5140

**STIPULATION AND ORDER  
FOR VOLUNTARY SURRENDER**

**STIPULATION**

Timothy J. Scherz, D.C. (“Respondent”), and the Complaint Review Panel (“Review Panel”) for the Minnesota Board of Chiropractic Examiners agree the below-referenced matter may be resolved without trial of any issue or fact as follows:

**I.**

**JURISDICTION**

A. The Minnesota Board of Chiropractic Examiners (“Board”) is authorized pursuant to Minnesota Statutes sections 148.01 to 148.108, to license and regulate chiropractors and to take disciplinary action as appropriate.

B. Respondent holds a license from the Board to practice chiropractic in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Order.

**II.**

**CONFERENCE**

On April 20, 2010, Respondent and his attorney, Timothy Baland, Baland Law Office, P.L.L.P., 2140 Fourth Avenue North, Anoka Minnesota 55303, appeared before the Review Panel to discuss allegations made in a Notice of Conference with Complaint Panel served on February 23, 2010. The Review Panel was represented by Careen H. Martin, Assistant Attorney General.

### III.

#### FACTS

A. The parties agree this Stipulation and Consent Order is based upon the following facts:

1. On April 21, 2009 the Panel met with Respondent in an educational meeting to discuss two complaints received by the Board regarding allegations that Respondent was engaging in false and misleading advertising, and that Respondent's advertising was derogatory toward other chiropractors.

2. Based on information Respondent provided at the meeting, the Panel decided to terminate the educational meeting and obtain a number of Respondent's patient records for a records review.

3. The Board received two additional complaints regarding Respondent's advertising after the April 21, 2009 educational meeting.

4. The panel obtained a sampling of Respondent's records and a records review was conducted. The records review revealed the following concerns:

a. For patient # 21, Respondent recorded "numbness & tingling down arm down neck to forearm to little finger to (sic) and 4<sup>th</sup> finger." There was no documented follow up on this significant finding.

b. For patient # 15, Respondent documented a sudden, recent weight loss of 30 pounds, but did not document an explanation for the loss, made no referral for this symptom, and provided no follow up treatment or recommendations.

c. For patient # 17, Respondent documented an "inefficient breathing pattern noted from T5-T7" with no explanation for the symptom, no referral for this symptom, and did not provide follow up treatment or recommendations.

d. For patient #22, Respondent documented “New condition. L ileum pain, L knee pain. Advised medical care.” He did not document an explanation for the referral of a condition that is within his scope of practice to treat.

e. In 11 patient records reviewed, Respondent documented “Don’t manually adjust [area] due to possible medical condition,” but did not elaborate on or identify the particular medical condition.

5. Respondent’s advertisements are false or misleading as follows:

a. Respondent’s advertisements claimed “Most Chiropractors today ‘play medical doctor’ in that they are trying to remove symptoms with massage, physical therapy, spinal decompression, etc.” The cited treatment modalities are within the scope of practice under the Chiropractic Practice Act and Respondent has no means by which to quantify whether “most” chiropractors “play medical doctor.”

b. Respondent’s advertisements claimed “Most chiropractors are trying to practice medicine with a chiropractic license.” There is no evidence to support the claim that most chiropractors are practicing outside their scope of practice.

c.. Respondent’s advertisements claimed “In most offices, you won’t even be adjusted on the first visit because they will tell you that they have to study the x-rays and exam findings first before adjusting you. This is a lie! . . .” There is no evidence to support this claim.

6. In his written response to the Notice of Conference, Respondent indicated he is no longer using the advertising identified above. In the written response and at the conference, Respondent explained that he practices “principled” or “straight” chiropractic, which focuses on identifying, analyzing, and correcting vertebral subluxation. Respondent explained that due to his treatment philosophy, he will not manually adjust an area when a patient indicates

pain in that area. Respondent further explained that because he does not diagnose or treat disease, if a patient has an underlying medical condition, including pain in a particular area, he will tell the patient that he does not treat medical conditions or symptoms, and inform the patient in a general manner that the patient should follow up with a physician. For this reason, Respondent also does not conduct detailed history and examinations on medical conditions other than subluxations, nor does he provide follow up care, recommendations, or specific referrals where medical conditions other than subluxations are indicated by subjective or objective findings.

7. The Panel recognizes Respondent's practice philosophy. However, regardless of practice philosophy, Respondent is required to meet the minimum standard of care and comply with the Board's rules and statutes. Based on the records review and all the information provided, Respondent has failed to meet the minimum standard of care and the Board's rules and statutes as follows:

- a. Failure to conduct thorough and detailed history and examinations;
- b. Failure to follow up on all subjective and objective findings, particularly findings that may indicate a significant or life-threatening condition;
- c. Failure to render appropriate treatment or make appropriate referrals when indicated; and
- d. Failure to complete thorough and detailed documentation.

8. Respondent plans to move out of the state of Minnesota and does not intend to renew his chiropractic license.

#### IV.

#### LAWS

The Review Panel concludes the conduct described in section III above constitutes a violation of Minnesota Statutes section 148.10, subd. 1(a)(10), (14), (18) and (20) for purposes of this Stipulation and Order, and authorizes the Board to take disciplinary action against Respondent's license. Respondent acknowledges this conduct constitutes violations if proven by the Complaint Panel, and agrees to enter into this Stipulation and Order for purposes of settlement.

#### V.

#### ACTION

The parties agree the Board may take the following action and require compliance with the following terms:

##### **A. Voluntary Surrender**

1. The Board accepts Respondent's VOLUNTARY SURRENDER of his license to practice chiropractic in Minnesota. Respondent shall not:

a. Engage or attempt to engage in any act or practice in the State of Minnesota which constitutes the practice of chiropractic under Minnesota Statutes section 148.01 and Minnesota Rules 2500.0100, subpart 9b;

b. Advertise, use any of the terms or letters "Doctor of Chiropractic," "Chiropractor," "D.C." or any other title or letters under any circumstances as to lead the public to believe that he is engaged in the practice of chiropractic in Minnesota, or otherwise hold himself out in any manner as being authorized to practice chiropractic in Minnesota; or

c. Hold any ownership interest in a firm that engages in the practice of chiropractic in Minnesota except as authorized by Minnesota Statutes chapter 319B.

d. Imply to patients or other persons by words or conduct that Respondent is authorized to practice chiropractic in Minnesota.

e. Provide, direct, or assist in the provision of chiropractic care to any person in Minnesota or engage in any other procedure or practice which may be undertaken in Minnesota only by licensed health personnel or by the lawful delegates, assistants, technicians, or aids of such personnel.

2. Respondent shall surrender to the Board his chiropractic license. Respondent shall personally deliver or mail the license to the Minnesota Board of Chiropractic Examiners, c/o Dr. Larry Spicer, Executive Director, 2829 University Avenue S.E., Suite 300, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

**B. Reinstatement**

1. Respondent may petition for reinstatement of his license to practice chiropractic after Respondent is able to demonstrate by a preponderance of the evidence that Respondent is capable of practicing chiropractic in a fit and competent manner and according to the current standards as established by statutes and administrative rules. At the time of Respondent's petition, Respondent shall meet with a Board Complaint Panel. The meeting with the Board Complaint Panel shall be scheduled after Respondent has complied with, at a minimum, the following:

a. Self-Report. Respondent shall submit to the Board a report from Respondent himself. The report shall provide and address:

1) Type of employment in which Respondent has been involved;

2) Respondent's future plans in chiropractic and the steps he has taken to prepare himself to return to practice; and

3) Any other information Respondent believes would assist the Board in its ultimate review of this matter.

b. Recordkeeping Course. Prior to submitting his application for reinstatement, Respondent shall complete a one-on-one recordkeeping course with Joel B. Wulff, D.C., or another instructor who has been pre-approved by Board staff. The recordkeeping course shall last at least eight hours or until such time as the instructor determines the learning objectives have been met, whichever is later.

1) Respondent must provide the instructor with a copy of this Stipulation and Order prior to commencing the course.

2) Within 30-days of completion of this course, Respondent shall cause the instructor to submit to the Panel written verification of Respondent's compliance with this requirement. Successful completion shall be determined by the Panel or its designee.

3) Respondent is responsible for arranging and paying for the instruction.

4) Only hours obtained by an MBCE-approved sponsor may be applied toward license renewal requirements.

c. Records Review. Following completion of the recordkeeping course, and upon request by the Board, Respondent shall submit a sampling of new patient records to the Board for review and assessment of Respondent's compliance with current recordkeeping standards.

d. SPEC Examination. Within 120<sup>DAYS</sup> prior to petitioning, Respondent shall take and pass the Special Purposes Examination in chiropractic (SPEC).

e. Reregistration Requirements. Respondent shall meet all reregistration requirements in effect at the time of his petition for reinstatement, including but not limited to:

- 1) Completing the appropriate application;
- 2) Payment of all licensing fees which would have been required of a fully licensed chiropractor in the interim;
- 3) Demonstration of completion of all continuing education requirements which would have been required of a fully licensed chiropractor in the interim.

f. Additional Information. Respondent shall provide any additional information relevant to his petition reasonably requested by the Review Panel.

2. The Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement pursuant to paragraph V.B above, take any of the following actions:

- a. Issue a chiropractic license to Respondent;
- b. Issue a chiropractic license to Respondent with limitations upon the scope of Respondent's practice and/or with conditions for Respondent's practice; or
- c. Deny Respondent's request for issuance of a chiropractic license based upon his failure to meet the burden of proof.

## **VI.**

### **CONSEQUENCES FOR NONCOMPLIANCE**

If Respondent engages in any act which constitutes the practice of chiropractic as defined in Minnesota Statutes section 148.01 to 148.108 or Minnesota Rules 2500.0100 to 2500.6050, or implies by words, advertising, or any other conduct that Respondent is authorized to practice chiropractic, the Board may in its discretion pursue additional remedy, including



bringing an action in district court for injunctive relief pursuant to Minnesota Statutes section 214.11.

## VII.

### ADDITIONAL INFORMATION

A. Respondent waives the contested case hearing and all other procedures before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or rules.

B. Respondent waives any claims against the Board, the Minnesota Attorney General, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Order, which may otherwise be available to Respondent.

C. This Stipulation and Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

D. Either party may seek enforcement of this Stipulation and Order in any appropriate civil court.

E. Respondent has read, understands, and agrees to this Stipulation and Order and has voluntarily signed the Stipulation and Order. Respondent was informed of his right to be represented by counsel. Respondent was represented by counsel. Respondent is aware this Stipulation and Order must be approved by the Board before it goes into effect. The Board may approve the Stipulation and Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Respondent, the Stipulation and Order will take effect and the order as modified will be issued. If the changes are unacceptable to Respondent or the Board

rejects the Stipulation and Order, it will be of no effect except as specified in the following paragraph.

F. Respondent agrees that if the Board rejects this Stipulation and Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Order or of any records relating to it.

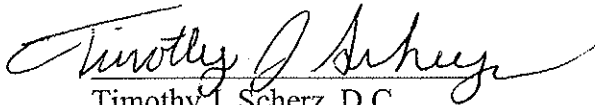
### VIII.

#### DATA PRACTICES NOTICES

A. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5 (2008). Data regarding this action will be provided to data banks as required by Federal law or consistent with Board policy. While this Stipulation and Consent Order is in effect, information obtained by the Board pursuant to this Order is considered active investigative data on a licensed health professional, and as such, is classified as confidential data pursuant to Minnesota Statutes section 13.41, subdivision 4.

B. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

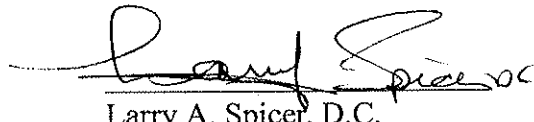
For the Complaint Panel:



Timothy J. Scherz, D.C.

Respondent

Dated: 08/03 /, 2010



Larry A. Spicer, D.C.

Executive Director

Dated: September 16, 2010

**ORDER**

Upon consideration of the Stipulation, the Board accepts the VOLUNTARY SURRENDER of Respondent's license, and adopts all of the terms described above on this

16 day of September, 2010.

MINNESOTA BOARD  
OF CHIROPRACTIC EXAMINERS

  
TERESA L. MARSHALL, D.C.  
President

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