

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND)
PROFESSIONAL REGULATION)
of the State of Illinois, Complainant,)
v.)
RICHARD M. HAGMEYER,)
License No. 038.009122,) No. 2009-10614
Respondent.)

ORDER

This matter having come before an Administrative Law Judge of the State of Illinois, Department of Financial and Professional Regulation, Division of Professional Regulation ("Department"); and the Administrative Law Judge having issued a Report and Recommendation; and the Medical Disciplinary Board of the Department having accepted the recommendation of the Administrative Law Judge and issued its Findings of Fact, Conclusions of Law and Recommendation to the Director of the Department; and the Department having complied with all required notices; and the time allowed for filing of a Motion for Rehearing before the Director of the Department having now passed;

NOW, THEREFORE, I, JAY STEWART, Director of the Division of Professional Regulation of the Department of Financial and Professional Regulation of the State of Illinois, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendation of the Medical Disciplinary Board of October 15, 2014 in this matter.

IT IS THEREFORE ORDERED that Respondent Richard M. Hagemeyer's Certificate of Registration as a Chiropractic Physician in the State of Illinois, License No. 038.009122 be REPRIMANDED.

DATED THIS 17th DAY OF November, 2014.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL
REGULATION of the STATE of ILLINOIS;
MANUEL FLORES, ACTING SECRETARY

DIVISION OF PROFESSIONAL REGULATION



JAY STEWART
DIRECTOR

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
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DEPARTMENT OF FINANCIAL AND)
PROFESSIONAL REGULATION)
of the State of Illinois, Complainant,)
v.)
RICHARD M. HAGMEYER,)
License No. 038.009122,)
Respondent.)

No. 2009-10614

ILL. DEPT. OF FINANCIAL AND
PROFESSIONAL REGULATION
14 OCT 15 PM 4: 33
CLERK OF THE COURT

TWENTY DAY NOTICE

TO: Lillian Walanka, Esq.
Law Office of Glen D. Crick, Ltd.
111 W. Washington St., Ste 1820
Chicago, Illinois 60602

PLEASE TAKE NOTICE that the Medical Disciplinary Board of the Division of Professional Regulation of the Department of Financial and Professional Regulation of the State of Illinois, after considering the record presented in the above case, has recommended that Respondent's Certificate of Registration as a Chiropractor in the State of Illinois, License No. 038.009122, be Reprimanded. A copy of the Administrative Law Judge's Report and Recommendation and the Board's Findings of Fact, Conclusions of Law and Recommendation are attached hereto.

YOU ARE HEREBY NOTIFIED that you have 20 days from the date this Notice is mailed to present to the Division of Professional Regulation your written Motion for a Rehearing. Said Motion shall specify the particular grounds for a rehearing. The Director of the Division of Professional Regulation may grant oral argument on this motion if deemed necessary for a clearer understanding of the issues presented. The Department shall have 20 days to file a response to said motion and Respondent shall have 7 days after the date the Department's response is due to file a reply, unless otherwise ordered by the Director.

DIVISION OF PROFESSIONAL REGULATION

BY: 

Kristina Waldron
Attorney for the Department

Kristina Waldron
Attorney, Medical Prosecutions
Illinois Department of Financial and Professional Regulation
Division of Professional Regulation
100 West Randolph, 9th Floor
Chicago, Illinois 60601
312-814-1693
kristina.waldron@illinois.gov

**STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION**

DEPARTMENT OF FINANCIAL AND)	
PROFESSIONAL REGULATION)	
of the State of Illinois.)	
)	Complainant.
v.)	No. 2009-10614
)	
RICHARD M. HAGMEYER.)	
License No. 038-009122.)	
)	Respondent.

ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATION

This report is being filed with the Illinois Medical Disciplinary Board (hereinafter "Board") by Administrative Law Judge Donald W. Seasock pursuant to 227 Illinois Compiled Statute 60/35.

BACKGROUND OF CASE

Richard M. Hagemeyer (hereinafter "Respondent") is the holder of a Certificate of Registration as a Chiropractor in the State of Illinois, License No. 038-009122, issued by the Department of Financial and Professional Regulation (hereinafter "Department"). Respondent's license is currently on active status.

On June 12, 2012 the Department filed its Complaint against Respondent's license alleging that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public and obtained a fee by fraud, deceit or deceptive statement in violation of Sections 22 (A)(5) and (6) of the Illinois Medical Practice Act (hereinafter "Act") through the use of an Unlimited Care Agreement in the treatment of patient E.B. (Counts I & II). The Complaint also alleged that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public; obtained a fee by fraud, deceit or deceptive statement; used a false, fraudulent, or deceptive statement in any document connected with his practice; and failed to establish and maintain records of patient care and treatment in violation of Sections 22 (A)(5), (6), (31) and (41) of the Act when he failed to maintain proper medical records during the course of treatment of patient

E.B. (Counts III, IV, V, and VI). The Respondent filed an Answer denying that he violated the Act.

This matter proceeded to formal hearing on July 29, 2014 before Administrative Law Judge Donald W. Seasock. The Department was represented by attorneys Fred Moore and Kristina Waldron. Respondent was present and represented by attorney Lillian Walanka. No member of the Board was present. A second hearing day was held on August 26, 2014. At that time the Department was represented by attorney Kristina Waldron and Illinois Supreme Court Rule 711 Jennifer Fenton.

The Administrative Law Judge received the complete record of this proceeding on September 8, 2014.

Prior to commencement of hearing, argument and testimony were taken on Respondent's Motion to Bar the Testimony of the Department's Expert Witness Richard J. Dietzen, D.C. and Recuse Chiropractic Board Member Richard R. Fay, D.C. Respondent's motion was based on statements contained on Dr. Dietzen's clinic web site which references Dr. Fay's practice as a "sister" practice and as "business partners". Respondent also argued that Dr. Fay may have provided Dr. Dietzen information about Respondent obtained from Dr. Fay's participation in an informal conference with Respondent. When questioned about these issues Dr. Dietzen testified that the web site references to Dr. Fay's practice were intended to reflect their common interest in the use of certain technology used to treat foot drop. Tr.pg. 228, and that they do not have any financial interest in the other's practice. Tr.pg. 229, 230. He further testified that Dr. Fay had asked him if he would consider serving as an expert in this matter and that Dr. Fay provided no information to him other than what this matter generally involved. Tr.pg. 231-233.

Illinois case law provides that a person with a personal interest in the subject matter of a decision cannot act as an administrative arbiter. *Business and Professional People for Public Interest v. Barnich*, 244 Ill.App.3d 291, 614 N.E. 2d 341 (1st Dist.1993). "Interest" need not be pecuniary; it need only be that which can be viewed as having a particularly debilitating effect on the impartiality of the decision maker. *Board of Education of Community Consol. High School Dist. No 230 v. Ill. Education Labor Relations Board*, 165 ill. App. 3d 41, 518 N.E.2d 713 (4th Dist. 1987).

The Administrative Law Judge denied Respondent's motion to bar Dr. Dietzen, finding that there is no appearance of prejudice in Dr. Dietzen's testimony being heard by Board

members other than Dr. Fay nor has Dr. Dietzen acquired "improper" information relative to Respondent. As to Dr. Fay, because of the aforementioned web site references to him it is recommended that Dr. Fay recuse himself from deliberation in this matter to avoid any appearance of prejudice.

SUMMARY OF EVIDENCE

Exhibits

The following joint exhibits were admitted into evidence:

- Exhibit A:** E.B. Patient Records (pp. 1-24). (Resp. Ex. 1)
- Exhibit B:** Sign-in Logs, 7/14/08 & 8/1/08 (pp. 25-26). (Resp. Ex. 2)
- Exhibit C:** Letter from E.B., Sept. 19, 2008 (p. 27). (Resp. Ex. 3)
Note from Dr. Manuel Malicay, 9/8/08 (p. 28). (Resp. Ex. 4)
- Exhibit D:** "Confidential Comprehensive Health History," Blank Forms (pp. 29-33). (Resp. Ex. 5)
"Patient Intake Form," Blank Form (p. 34). (Resp. Ex. 6)
"Daily Progress Note 2012," Blank Form (p. 35). (Resp. Ex. 7)
"Cervical Spine Physical Examination," Blank Forms (p. 36-38). (Resp. Ex. 8)
"Lumbar Spine Physical Examination," Blank Forms (p. 39-41). (Resp. Ex. 9)
"Assessment of Care," Blank Form (p. 42). (Resp. Ex. 10)
"Treatment Plan," Blank Form (p. 43). (Resp. Ex. 11)

The following exhibits of the Department were admitted into evidence:

- Exhibit E:** Letter from Respondent, faxed Dec. 9, 2009 (p.44).
- Exhibit F:** IDPR Case No. 2009-10614, Report No. 2 (pp. 45-46).
- Exhibit G:** CV, Richard J. Dietzen, D.C. (pp. 47-48).

The following exhibits of Respondent were admitted into evidence:

Group

- Exhibit 12:** Continuing Education Certificates of Completion:
12A Palmer Online 2012: Risk Management and Record keeping;
12B Documentation 101;
12C Coding and Documentation 201;
12D Coding and Documentation 202;
12E Coding and Documentation 203.
- Exhibit 14:** CV of Michael Miscoe, J.D.
- Exhibit 15:** C.V. of Richard M. Hagemeyer, D.C., Respondent.

Witnesses

The following witnesses testified during the Department's case in chief:

Richard M. Hagmeyer, D.C., Respondent, as an adverse witness.
Richard J. Dietzen, D.C., as an expert.

The following witnesses testified during the Respondent's case in chief:

Richard M. Hagmeyer, D.C., Respondent.
Michael Miscoe, J.D., as an expert.

STATEMENT OF FACTS

The Administrative Law Judge makes the following Findings of Fact, based upon clear and convincing evidence presented at hearing:

Respondent is the holder of a Certificate of Registration as a Chiropractor in the State of Illinois, License No. 038-009122, and currently practices at an office in Naperville, Illinois. He has always practiced as a solo-practitioner. As a chiropractic physician he was trained and practices in the area of chiropractic biophysics. This field focuses on the restoration of the curvature of the spine to address medical issues a patient may be experiencing elsewhere in the body. Tr.pg. 309-311. Further detail regarding Respondent's background is contained in his curriculum vitae, Exhibit 15.

Patient E.B. first visited Respondent's office on June 27, 2008. E.B. completed a patient intake form, indicating her chief complaint as severe pain in both wrists. Exhibit A pg. 1, 2, 3, Tr.pg. 326. E.B. also signed several other forms which described her financial obligation to pay for services rendered. Exhibit A pg. 4, 5, Tr.pg. 328. Generally, the forms informed E.B. to be prepared to pay all charges incurred at the time of an office visit and that should she discontinue care with Respondent all outstanding fees are immediately due and payable. At this initial visit Respondent examined and evaluated E.B. which included x-rays and an EMG. Exhibit A pgs. 12, 14. Tr.pg. 59, 327. Respondent's diagnosis of E.B. is reflected on what he refers to as a "Super Bill". Tr. pg. 62. Exhibit A pg. 13. E.B. paid for the services rendered to her at the time of this visit. Exhibit A pg. 17. Tr.pg. 66.

E.B. next saw Respondent on July 11, 2008. At this visit Respondent reviewed his findings with E.B. Tr.pg. 70, 113. E.B. informed Respondent for the first time of lower back pain. Tr.pg. 70, 79. Respondent's treatment plan for E.B. was "intensive care" with treatment 3

times a week for 8 to 10 weeks. E.B. would be re-examined at 6 to 8 weeks. Exhibit A pg. 12. Tr.pg. 63, 64, 80, 118, 343. Respondent also explained to E.B. an alternative financial payment plan under an Unlimited Care at a Fixed Fee Agreement (hereinafter "UCAFF"). Exhibit A pg.7. Tr.pg. 123. The terms of the agreement offered E.B. unlimited chiropractic services for 6 months at a fixed fee. According to Respondent the fixed fee offered was \$1,500.00 for the treatments described in Respondent's treatment plan. Tr.pg. 353. The agreement also provided that should E.B. stop care prior to completion of the 6 months that she would then be charged for all chiropractic services which have been rendered at Respondent's normal and customary rate. According to Respondent, E.B. said that she would think about it. Tr.pg. 173, 366. Respondent also provided chiropractic treatment at this visit which included charging for a patient re-examination. Exhibit A pg. 17.

Thereafter, in 2008 E.B. received treatment from Respondent on July 14th, July 16th, July 18th, July 21st, July 23rd, July 25th, July 28th, July 30th, August 1st, August 4th, August 6th, August 8th, August 11th and August 13th. During the course of this treatment E.B. paid \$65.00 on July 25th, \$35.00 on July 28th and \$1,500.00 on July 30th. Exhibit A pgs. 16, 17, 18. This last payment was charged to her CareCredit credit card which E.B. already had secured before she began treatment with Respondent. Tr.pg. 147, 153, 377. In a letter dated September 19th E.B. notified Respondent that she was terminating her therapy with him and requested a refund of any unused balance on her account. Exhibit C, Tr.pg. 391. Respondent did not provide a refund.

In response to an inquiry from a Department investigator Respondent's office wrote confirming the treatment period in question and that E.B. was offered a discounted 6 month care plan for \$1,500.00 which E.B. committed to and provided her a substantial discount to care provided. Enclosed with the response, a copy of the agreement was provided to the investigator. Exhibit E. Tr.pg. 399.

In his treatment of E.B. Respondent used a single sheet document he refers to as a "travel card" to record his findings from visit to visit. This document is replicated on pages 14 and 15 in Exhibit A. Tr.pg. 67, 77. This document contains various labeled sections for Respondent to report. These sections include "Subjective", "Objective", "Treatment" and "Progress, Exacerbations, Aggravation and Daily Notes". No findings were reported in the subjective section for any of E.B.'s office visits. Tr.pg. 89. No findings of any kind were reported for E.B.'s

July 14th and August 1st office visits. Tr.pg.100, 106. Further findings regarding this document will be discussed later in this report.

DISCUSSION

Pursuant to the Illinois Civil Administrative Code, 20 ILCS 2105/2105 10, the practice of the regulated professions, trades, and occupations in Illinois is hereby declared to affect the public health, safety, and welfare of the People of this State and in the public interest is subject to regulation and control by the Department. It is further declared to be a matter of public interest and concern that standards of competency and stringent penalties for those who violate the public trust be established to protect the public from unauthorized or unqualified persons representing one of the regulated professions, trades, or occupations.

The Department may revoke, suspend, place on probationary status, refuse to renew, or take any other disciplinary action as the Department may deem proper with regard to the license of any person issued under the Illinois Medical Practice Act for a variety of offenses described in section 22(A) of this Act.

It is the Department's position that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public and obtained a fee by fraud, deceit or deceptive statement in violation of sections 22 (A)(5) and (6) through the use of an Unlimited Care Agreement in the treatment of patient E.B. (Counts I & II). It is also the Department's position that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public; obtained a fee by fraud, deceit or deceptive statement; used a false, fraudulent, or deceptive statement in any document connected with his practice; and failed to establish and maintain records of patient care and treatment in violation of Sections 22 (A)(5), (6), (31) and (41) of the Act when he failed to maintain proper medical records during the course of treatment of patient E.B. (Counts III, IV, V, and VI). The burden of proof rests with the Department to establish by clear and convincing evidence that these propositions are true. 68 Ill.Admin.Code 11110.190(a).

Dr. Richard Dietzen testified on behalf of the Department. Dr. Dietzen was board certified as a chiropractic examiner in 1980. He has served in a number of leadership roles in both the Chicago and Illinois Chiropractic Societies and was instrumental in the development of a chiropractic department at Belmont Community Hospital. Further detail regarding Dr.

Dietzen's background is contained in his curriculum vitae, Exhibit G. He was qualified as an expert.

Michael Miscoe, J.D. testified on behalf of Respondent. He described himself as being a forensic professional coder and compliance officer. He holds certifications as a Certified Professional Coder and as a Certified Healthcare Compliance Consultant with a specialty coding certification in Chiropractic. Mr. Miscoe testified during the course of his work he has reviewed hundreds of thousands of chiropractic medical records. Tr.pg. 444. Further detail regarding Mr. Miscoe's background is contained in his curriculum vitae, Exhibit 14. He was qualified as an expert in the area of chiropractic record keeping. Tr.pg. 453.

Unlimited Care at a Fixed Fee agreement (UCAFF)

Respondent argues that there is a question of whether E.B. accepted the UCAFF and points to a number of deficiencies in the document itself. Exhibit D pg.4, Tr.pg. 197-202. Whether under the law of contracts there is an enforceable written contract between the parties is not at issue here. Rather, there is sufficient evidence in the record to establish that Respondent's office believed that E.B. had accepted the UCAFF agreement and had acted in accordance with this financial arrangement with E.B. Exhibit E, Tr.pg. 206. As such, it is proper to review Respondent's financial relationship with E.B. within the context of the Medical Practice Act. However, since E.B. did not testify at hearing this review will be limited.

The gist of the financial relationship was that E.B. was to receive 6 months of chiropractic services from Respondent for a flat fee of \$1,500. Based on the number and frequency of treatments planned E.B. would receive a discount from the normal and customary fees charged by Respondent for these treatments. If E.B. chose to stop seeing prior to the completion of the 6 months she would then be charged for all chiropractic services which have been rendered at Respondent's normal and customary rate.

Dr. Dietzen testified that the issue of these types of financial arrangements has been brought up before Boards and at other places. Tr.pg. 233. Mr. Miscoe testified that the use of these types of financial arrangements is not uncommon in the chiropractic profession. Tr.pg. 456, 457, 500. No evidence was introduced which identifies, by Illinois law, rule or within the profession itself, this type of arrangement as being *per se* unprofessional or unethical. As such, any analysis can only focus on the specific facts presented here.

Dr. Dietzen opined that a patient has a fundamental right to discontinue, for whatever reason, medical treatment from a provider. Tr.pg. 261. The trier of fact accepts this principle as self evident. He further opined that a financial arrangement between a patient and a physician such as the UCAPP penalizes the patient if the patient terminates treatment prior to completing the term of the financial arrangement, meaning that the patient does not receive the full benefit of the discount provided. Tr.pg. 261, 264. According to Dr. Dietzen an "escape clause" needs to be provided in the arrangement. Tr.pg. 264, 293, 294. Dr. Dietzen opined that the use of this financial arrangement with E.B. was potentially both unprofessional and unethical on the part of Respondent. Tr.pg. 265. Mr. Miscoe opined that this financial arrangement did not penalize E.B. but rather offered her the potential for a large discount. Tr.pg. 458,459, 468, 470, 499

In focusing on the facts presented, E.B. received services from Respondent on a number of occasions between July 11th and July 30, 2008. After giving credit for what E.B. paid prior to July 30th, E.B. incurred and owed \$980.00 for services received and charged at Respondent's usual and customary rate. On July 30th, E.B. paid \$1,500.00. Thereafter, E.B. received additional services from Respondent on a number of occasions up to including August 13th. E.B. incurred and owed \$570.00 for these services received and charged at Respondent's usual and customary rate. When what was owed and what was paid is reconciled E.B. received \$50.00 worth of service for no charge. Respondent testified that he made no attempt to collect this amount. Tr.pg. 208, 209. There was no evidence presented that Respondent's usual and customary rate for services was excessive. Therefore, it is assumed that Respondent's rate at the time was in line with other providers in the areas. As such, if E.B. had obtained these services from another provider she would have owed an additional \$50.00 to that provider. The argument that E.B. was penalized because she did not receive a greater financial benefit from Respondent because she chose to exercise her right to discontinue seeing Respondent is misplaced. Such an argument is applicable not only to E.B. but to any patient under a similar agreement. As noted above, there is no prohibition in Illinois, either by law, rule or within the profession itself, that strictly prohibits the use of this arrangement. As such, the trier of fact does not accept Dr. Dietzen's opinion on this issue.

The Department failed to meet its burden regarding its allegations relating to Respondent's financial arrangement with E.B.

Medical Records

In reviewing Respondent's records regarding E.B. Dr. Dietzen pointed out the following issues: Respondent failed to include his diagnosis on the evaluation page (Exhibit A, pg. 12) which is typically put as part of the SOAP note, Tr.pg. 243; while Respondent billed for a July 11th re-examination of E.B. Respondent failed to document this re-examination in E.B.'s chart (travel card Exhibit A, pg. 14 & 15). Tr.pg. 247; according to E.B.'s travel card Respondent adjusted E.B.'s lumbar section on July 11th but there is no note that E.B. complained of back pain and that was not a part of her initial diagnosis, Tr.pg. 248; in looking at E.B.'s travel card it is difficult to determine E.B. progress. It is important to track positive and well as negative changes in a patient, Tr.pg. 248, 249; no findings were reported in the subjective section of the travel card for any of E.B.'s office visits, Tr.pg. 258; and no treatment notes of any kind were reported for E.B.'s July 14th and August 1st office visits. Dr. Dietzen was then asked the following:

Q: So, within a reasonable degree of medical certainty, can you give an opinion as to whether this is professional and/or ethical for a physician to chart this way?

A: There should be a record, a daily record. If the patient was seen that day, there should be a record of what was reported by the patient and what was done, what the findings were and what was done.

Q: Why is it important that these things are accurately charted?

A: Well, for continuity of care, it's important to know where the patient is every time you see them, and you need to refer back to that sometimes. I would say for continuity of care and quality of care. Tr.pg. 250, 251.

Respondent testified that as a practitioner in the area of chiropractic biophysics (using CBP and Pettibone techniques) his focus is on the restoration in the curvature of the spine in order to address the immediate issues facing the patient, Tr.pg. 309-312, 316. in this case, E.B.'s issues with her wrists. Respondent testified that to restore curvature of the spine significant time is required. He also explained that because the focus of his treatment is restoration it is not necessary to monitor subjective complaints of the patient. Tr.pg. 312. Respondent compared his "school" of chiropractic medicine with that of Dr. Dietzen's, whose practice deals with acute care to address the immediate pain being experienced by the patient. Tr.pg. 313. This difference in "schools" of treatment makes a difference in record keeping. Tr.pg.315. Respondent testified that he would document subjective complaints if the patient indicates he or she is getting worse, Tr.pg. 73, 84, 356, not better or the same, Tr.pg. 79 and identified two notations where E.B.

complained of lower back pain. Respondent testified that but for these two notations E.B. reported to be the same on each visit. Tr.pg. 85, 357. Mr. Miscoe concurred that from his review of the information available to him Dr. Dietzen engages in acute care and opined that because these two chiropractors practice different disciplines that the focus of record keeping is different. Tr.pg. 461, 462. Mr. Miscoe also opined that recording symptomatic complaints, particularly in the area of chiropractic biophysics, is not always relevant and what is important is to record what is changing. Tr.pg. 462, 534. He opined that from his review of E.B.'s records (Exhibit A) Respondent adequately addressed the record keeping issues involved in chiropractic practice. Tr.pg. 507-516. Mr. Miscoe testified that there is no requirement in the profession that all patient information be transposed on a single document and having a patient's diagnosis on the super bill which is part of the patient's record is acceptable. Tr.pg. 522.

Respondent testified that his billing under a re-examination code on July 11th was based on the time he spent with E.B. that day. Tr. pg. 348. Mr. Miscoe testified that Respondent's coding for re-examination was proper (Tr.pg. 528, 529) in that "one of the quirks of evaluation management is that it's commonly a code that is reported for an examination". Tr.pg. 528. Respondent testified that it is not unusual for a patient to complain about other areas of the body as a chiropractor is adjusting an area associated with the patient's initial complaint. The chiropractor then would evaluate the new complaint. This is what occurred on E.B.'s July 11th visit.

In regards to the record keeping issues identified by Dr. Dietzen, and without the benefit patient E.B.'s testimony, the trier of fact finds that the testimony provided by Respondent and by Mr. Miscoe adequately addresses these issues except for one.

In his practice Respondent uses a travel card for his patients. It contains his record from visit to visit, in terms of his objective findings and treatment provided. Tr.pg. 66, 67. The travel card comes to him for each patient visit. As previously discussed, Respondent would also record the subjective complaints of the patient on the travel card if there was a change but could also document subjective complaints in the objective portion of the document. Tr.pg. 97. It is undisputed that no findings of any kind were reported on the travel card for E.B.'s July 14th and August 1st office visits. Respondent initially testified that this was an oversight on his part. Tr.pg. 178. Respondent was asked how bills were then generated for these visits. Respondent explained that at the end of the day his staff writes down on one to three sheets the names of the patients

visiting that day from the patient sign in sheets. Exhibit B. Respondent referred to these sheets as the daily activity sheet(s). The services or procedures performed for a patient would be then written down by that patient's name. This information is obtained from the patient's travel card. Once completed, the daily activity sheet is sent to his outside billing service. Tr.pg.102, 103, 178, 372. As to E.B.'s two visits not recorded on her travel card Respondent testified that he completed the daily activity sheet based on what was always done to E.B. Tr.pg. 103. He testified alternatively that he completed the daily activity sheet from memory, Tr.pg. 105, 178, or that all patients receive an adjustment. Tr.pg. 179. During his direct testimony he placed the blame for these two undocumented visits on his office staff when they didn't take the information from the daily activity sheet and transfer it over to the patient's card. Tr.pg. 353, 373.

Respondent's reliance on the daily activity sheet as being part of E.B.'s record is unconvincing and misplaced. As described by Respondent the daily activity sheet is an office mechanism containing the name of multiple patients used to simplify billing. By its very nature and purpose the daily activity sheet would not contain any of Respondent's findings relative to E.B.'s conditions, progress or new complaints for the two undocumented office visits. Further, the daily activity sheet cannot be part of E.B.'s record as they are not saved. Tr.pg. 103. In relying on the daily activity sheet and directing fault to his staff a number of issues are raised regarding E.B.'s July 14th and August 1st office visits. Was Respondent's memory of what treatment E.B. received accurate? Respondent acknowledged that E.B. received different treatments on different dates. Tr.pg. 104. Did Respondent provide treatments to E.B. on these dates which were not normally provided? Respondent acknowledged that he may have provided additional treatment on these dates which were not billed. Tr.pg. 355. If, as described by Respondent, his staff had come to him for information on the services and treatment provided to E.B. at July 14th and August 1st office visits since these were not contained on her travel card why didn't Respondent himself complete the travel card for these dates? Respondent acknowledged that he determines what was recorded in E.B.'s chart. Tr.pg. 406. Even if Respondent reasonably relied on his staff to transpose daily activity information to the travel card this does not address the fact the daily activity sheets would not contain any of Respondent's findings relative to E.B.'s conditions, progress or new complaints for these two office visits. Also, the question arises that since an undocumented visit occurred on July 14th why

didn't Respondent take action to address this before it happened a second time to this same patient. Respondent acknowledged that he didn't always have the travel card with him when he treated E.B. Tr.pg. 412. Based on the above, the trier of fact concludes that Respondent's failure to properly document two of E.B's office visits represents a breach of the standard of care owed to E.B. which could have an adverse impact on her continuity and quality of care as expressed by Dr. Dietzen. In so concluding the trier of fact does not accept the opinion expressed by Mr. Miscoe on this issue. Based on his training and experience Mr. Miscoe's focus is on physician record keeping as to correlate billing for reimbursement to some third party. Tr.pg. 501. In formulating his opinion regarding the absence of any record of E.B's July 14th and August 1st office visits on her travel card he relied on the fact that these visits were recorded on the patient ledger (a document generated from daily activity sheet as discussed above). Tr.pg. 517. Whether the fact that these two office visits are only recorded as occurring on the patient ledger is sufficient for third party reimbursement is not at issue here. What is at issue is whether Respondent's records meet acceptable medical standards so as to address continuity and quality of care. Failure to record the results of two office visits on E.B.'s travel card does not.

Coding

During his testimony Dr. Dietzen identified several issues with Respondent's coding of the services he performed. However, during cross examination he stated that he is not a coding expert. Tr.pg. 280. Mr. Miscoe testified that Respondent's coding was correct. Tr.pg. 527.

The Department failed to meet its burden regarding its allegation relating to improper coding.

Billing for Services not Rendered

At the close of Department's case in chief Respondent moved for a directed finding regarding any allegation relating to Respondent billing E.B. for services not rendered. Respondent's motion was granted as there was no evidence presented in support of this allegation.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Administrative Law Judge concludes as a matter of law the following:

1. The Illinois State Medical Disciplinary Board has jurisdiction over the subject matter and the parties in this case.
2. The Department failed to prove by clear and convincing evidence that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or obtained a fee by fraud, deceit or deceptive statement through the use of an Unlimited Care Agreement in the treatment of patient E.B. in violation of Sections 22 (A) (5) and (6) of the Illinois Medical Practice Act (Counts I & II).
3. The Department failed to prove by clear and convincing evidence that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public; obtained a fee by fraud, deceit or deceptive statement; or used a false, fraudulent, or deceptive statement in any document connected with his practice when Respondent billed for services not rendered in violation of Section 22 (A)(5)(6) and (31) of the Illinois Medical Practice Act (Counts III, IV, and V).
4. The Department proved by clear and convincing evidence that Respondent engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public when he failed to make a medical record of two dates where patient E.B. received treatment in violation of Section 22 (A)(5) of the Illinois Medical Practice Act. Respondent also violated Section 22 (A) (31) to the extent that this Act requires a licensee to establish and maintain records of patient care and treatment in a professional manner. (Counts III and VI).

Factors in Aggravation and Mitigation

Pursuant to 68 Ill.Admin.Code 1130.200(a), when making a determination of the appropriate disciplinary sanction to be imposed, the Department shall consider certain factors in aggravation and mitigation. In this case, several aggravating factors are being considered:

(a)(1) the seriousness of the offense and (a)(4) the impact of the offense on any injured party;

It cannot be disregarded that the failure to make a medical record of two dates where patient E.B. received treatment could potentially harm this patient.

(a)(7) lack of contrition for offenses;

While Respondent initially testified that his failure was an oversight on his part later testimony shifted the blame to his office staff.

Factors in mitigation being considered are:

(b)(1) the lack of prior disciplinary history;

Respondent has no prior disciplines.

(b)(1) any voluntary remedial actions taken.


Respondent has taken continuing education in the area of record keeping and has changed the forms used in his office.

RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends to the Illinois State Medical Disciplinary Board that Respondent's Certificate of Registration as a Chiropractic Physician in the State of Illinois, License No. 038-009122, be reprimanded.

Respectfully submitted:

Dated: SEPTEMBER 12, 2014


Donald W. Seasock
Administrative Law Judge

**STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION**

DEPARTMENT OF FINANCIAL)	
AND PROFESSIONAL REGULATION)	
of the State of Illinois,)	
Complainant,)	No. 2009-10614
v.)	
)	
RICHARD M. HAGMEYER,)	
License No. 038.009122,)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION TO THE DIRECTOR**

Now comes the Illinois Medical Disciplinary Board (the "Board") of the Department of Financial and Professional Regulation, Division of Professional Regulation of the State of Illinois (the "Department") and, after reviewing the record in this matter, a majority of its members hereby make the following Findings of Fact, Conclusions of Law, and Recommendation to the Director of the Department:

FINDINGS OF FACT

The Board adopts the Findings of Fact contained in the September 12, 2014 Report and Recommendation of Administrative Law Judge Donald W. Seasock (the "ALJ Report and Recommendation") and incorporates the Findings of Fact herein.

CONCLUSIONS OF LAW

The Board adopts the Conclusions of Law contained in the ALJ Report and Recommendation and incorporates the Conclusions of Law herein.

RECOMMENDATION TO THE DIRECTOR

Based on the aforementioned Findings of Fact and Conclusions of Law, the Board accepts the ALJ's recommendation that Respondent's Certificate of Registration as a Chiropractic Physician in the State of Illinois, License No. 038.009122, be REPRIMANDED.

DATED THIS 15 DAY OF October, 2014.

[Redacted]

MEMBER

[Redacted]

[Redacted]

MEMBER

[Redacted]

MEMBER

[Redacted]

MEMBER

[Redacted]

MEMBER

[Redacted]

MEMBER

[Redacted]

MEMBER

MEMBER

MEMBER

MEMBER

Case No.: 2009-10614
License No.: 038.009122

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF PROFESSIONAL REGULATION)
of the State of Illinois, Complainant)

v.)

) 2009-10614
)

RICHARD HAGMEYER Respondent

NOTICE


TO: RICHARD HAGMEYER


PLEASE TAKE NOTICE that the Director of the Division of Professional Regulation did sign the attached Order.

YOU ARE FURTHER NOTIFIED that you have a right to judicial review of all final administrative decisions of this Department, pursuant to the provisions of the "ADMINISTRATIVE REVIEW ACT," approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto.

The order of the Director of the Division of Professional Regulation will be implemented as of the date of the Order unless the Order states otherwise.

DIVISION OF PROFESSIONAL REGULATION
of the State of Illinois

BY: 
Clerk for the Department

All inquiries should
be directed to:
Chicago Office - 312-814-4504
Springfield Office - 217-785-0820

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) ss:

UNDER PENALTY of perjury, as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned Certifies that I caused copies of the attached NOTICE AND CONSENT OR ORDER, to be deposited in the United States mail, by certified mail at 320 W. Washington, Springfield, Illinois 62786, before 5:00 p.m. with proper postage prepaid on November 19th, 2014 to all parties at the addresses listed on the attached documents.



AFFIANT

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF PROFESSIONAL REGULATION)
of the State of Illinois, Complainant)

v.)

) 2009-10614
)

RICHARD HAGMEYER Respondent

NOTICE


TO: LILLIAM WALANKA, ESQUIRE
LAW OFFICE OF CLEN CRICK, LTD
111 W WASHINGTON ST STE 1820
CHICAGO, IL 60602

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AFFIANT