

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS
BOARD ACTION NO. 13-13
ADMINISTRATIVE ACTION NO. 13-KBCE-0262

*Pd 86,000.-
10/17/14*

KENTUCKY BOARD OF
CHIROPRACTIC EXAMINERS

COMPLAINANT

V.

ANTHONY SCATENA, D.C.

RESPONDENT

SETTLEMENT AGREEMENT

This Settlement Agreement ("the Agreement") is made, by and among the Kentucky Board of Chiropractic Examiners ("Board) and Anthony Scatena, D.C. ("Respondent").

Witnesseth

WHEREAS, the Board filed an Administrative Complaint in Board Action No. 13-13 and Administrative Action No. 13-KBCE-0262, alleging that the Respondent violated: (1) KRS 312.150(1)(f) by being guilty of deception, misrepresentation, fraud, or unethical conduct in the practice of chiropractic; (2) KRS 312.150(2)(d) by directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques; (3) KRS 312.150(2)(e) by perpetrating a fraud upon patients, third-payers, or others, relating to the practice of chiropractic, including violations for federal Medicaid and Medicare law when he billed for services not rendered; and (4) KRS 312.150(1)(g) by violating 201 KAR 21:100 Section 1(2) by failing to maintain legible documentation, whether electronically generated, computer generated, typewritten or hand written, that included the doctor's name; and

Whereas, the Board having been notified that the Respondent has allegedly acted in violation of KRS Chapter 312 and 201 KAR 21:015; and

Whereas, the parties mutually desire to settle the issues in an expeditious manner, without the need for a formal hearing; and

Whereas, the Respondent has had the opportunity at all times to seek advice from competent counsel of choice, and no coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Settlement Agreement; and

Whereas, the Respondent freely and voluntarily enters into this Settlement Agreement, motivated by a desire to resolve the issues addressed herein, and the Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms.

Terms of Agreement

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The Respondent acknowledges that the Board alleges he violated: (1) violated KRS 312.150(1)(f) by being guilty of deception, misrepresentation, fraud, or unethical conduct in the practice of chiropractic; (2) Respondent violated 312.150(2)(d) by directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques; (3) violated KRS 312.150(2)(e) by perpetrating a fraud upon patients, third-payers, or others, relating to the practice of chiropractic, including violations for federal Medicaid and Medicare law when he billed for services not rendered; and (4) violated KRS 312.150(1)(g) by violating 201 KAR 21:100 Section 1(2) by failing to maintain legible documentation, whether electronically generated, computer generated, typewritten or hand written, that included the doctor's name.

2. By entering into this Agreement, the Respondent recognizes that if this matter was to go to an administrative hearing, the Board would likely have sufficient evidence to sustain its disciplinary action against him. Nevertheless, he desires to settle the matter in an expeditious manner without resorting to a disciplinary hearing but in doing so, he does not admit to any wrongdoing or liability.

3. The Respondent agrees to:

- (a) A three-month suspension of his license, which shall be probated for a period of one year;
- (b) Pay the administrative penalty of \$5,000.00 within ninety (90) days of execution of this Agreement;
- (c) Allow random review by the Board or Board representative of a sampling of patient files and billing records for compliance during the first six months of the one-year probation period; and
- (d) Pay costs in the amount of \$1,000.00 associated with the investigation and prosecution of this matter within ninety (90) days of execution of this Agreement.

4. The Board agrees to:

- (a) A three-month suspension of his license, which shall be probated for a period of one year; and
- (b) Not seek any additional disciplinary action against the Respondent based on the factual allegations enumerated in the Amended Complaint.

5. All payments shall be by certified check or money order made payable to and mailed or tendered to the: Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142-0183.

6. The parties agree to execute all documents necessary to settle and dismiss Board Action No. 13-13 and Administrative Action No. 13-KBCE-00262.

7. The Respondent expressly understands and acknowledges that his failure to comply with and complete all terms of this Settlement Agreement shall constitute an independent violation of KRS 312.150(1)(g) for violating KRS 312.163(1)(d) for which the Board may impose the probated three-month suspension and additional penalties available under law after notice and opportunity to be heard.

8. The Parties agree to take all actions necessary that would cause the conditions and obligations under this Agreement to become effective upon the date of this Agreement, or, in the event that additional documents may need to be executed after the date of this Agreement, the Parties agree to cooperate with each other and execute such additional documents to effectuate the purposes as stated herein.

9. Each of the Parties represents and warrants to the other that it has taken all requisite action to authorize the execution, delivery and performance of its obligations hereunder, and that each party has all requisite power and authority to enter into this Agreement and to effectuate the purposes herein and that the Agreement will in fact be legally binding and will constitute the valid and legally binding obligation of each party and will be enforceable against each party in accordance with the respective terms hereof.

10. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, in accordance with the laws of the

Commonwealth of Kentucky without reference to its choice of law rules. Any dispute arising hereunder shall be settled by a state court of appropriate jurisdiction in Franklin County, Kentucky. The Parties irrevocably consent to the personal jurisdiction and venue of such court. The Parties agree that any such litigation shall be by bench trial only, each of the Parties irrevocably waiving its right to jury trial in any dispute arising hereunder.

11. This Agreement may not be modified except by a written agreement signed by all Parties.

12. The Parties represent, agree, and acknowledge that they have read this Agreement in its entirety and fully understand and agree to its terms.

Costs

Except as provided above, the parties shall bear their own costs, expenses and attorney fees incurred in this matter, except as provided herein.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent, for the Respondent individually, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, Kentucky Board of Chiropractic Examiners, and the Kentucky Attorney General, and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, the Complaint, or this Settlement Agreement.

Acceptance by the Board

This Settlement Agreement, when executed by the Respondent and the Board President, shall become effective when endorsed by the Respondent and the Board President, which will constitute the effective date of this Settlement Agreement.

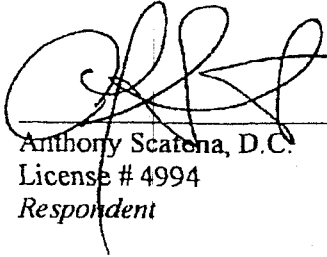
Complete Agreement

This Settlement Agreement consists of seven (7) pages and embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set forth above. The Respondent shall not rescind, revoke, withdraw, or attempt to modify this Settlement Agreement prior to or during its presentation to the Board at a meeting of the Board. It may not be altered, amended or modified without the express written consent of both parties.

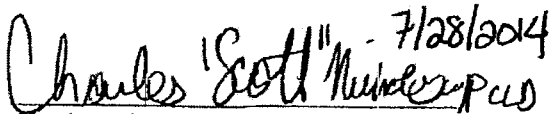
IN WITNESS WHEREOF, the undersigned have seen, approved and agreed:

[SIGNATURE PAGE INTENTIONALLY PLACED ON NEXT PAGE]

Have Seen, Understood, and Approved:


Anthony Scatena, D.C. 7/22/2014
License # 4994 Date
Respondent

Mark Woodward, D.C. Date
Kentucky Board of Chiropractic Examiners
Board President

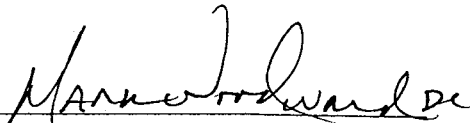

Charles Nichols 7/28/2014
Strasburger & Price, LLP
909 Fannin Street, Suite 270 2.300 CW
Houston, Texas 77010
Counsel for the Respondent

Brian T. Judy Date
Assistant Attorney General
700 Capitol Ave
Frankfort, KY 40601
Counsel for the Board

Randall Strause Date
Strause Law Group, PLLC
804 Stone Creek Parkway, Suite 1
Louisville, Kentucky 40223


Have Seen, Understood, and Approved:

Anthony Scatena, D.C. Date
License # 4994
Respondent

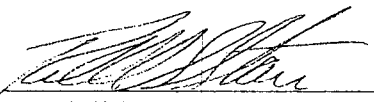
 05/27/14

Mark Woodward, D.C. Date
Kentucky Board of Chiropractic Examiners
Board President

Charles Nichols Date
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909 Fannin Street, Suite 220
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Counsel for the Respondent

 8/19/14

Brian T. Judy Date
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Counsel for the Board

 8/14/14

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