

**BEFORE THE BOARD OF CHIROPRACTIC EXAMINERS
FOR THE STATE OF IOWA**

IN THE MATTER OF:) CASE NO. 06-029
) DIA NO. 06DPHCB002
STEVEN S. LARSON, D.C.)
) FINDINGS OF FACT,
RESPONDENT) CONCLUSIONS OF LAW,
) DECISION AND ORDER

On October 31, 2006, the Iowa Board of Chiropractic Examiners (Board) issued a Notice of Hearing and Statement of Matters Asserted against Steven S. Larson, D.C. (Respondent), alleging that Respondent:

Count I: Violated 645 IAC 45.2(30) by failing to comply with the terms of an impaired practitioner recovery contract with the impaired practitioner review committee (IPRC);

Count II: Violated Iowa Code sections 147.55(4), 272C.10(4)(2005) and 645 IAC section 45.2(6) due to habitual intoxication; and

Count III: Violated Iowa Code sections 147.55(2), 272C.10(2) (2005) and 645 IAC 45.2(2)"e," professional incompetency, due to inability to practice with reasonable skill and safety by reason of excessive use of alcohol.

The hearing was initially scheduled for January 10, 2007 but was later continued to April 11, 2007, to give Respondent additional time to retain counsel and to allow the parties an opportunity to discuss settlement. Respondent filed a continuance request on April 4, 2007, which the state resisted. An administrative law judge (ALJ) denied the continuance. The Board reviewed the ALJ's ruling at Respondent's request prior to commencing the hearing and affirmed the decision to deny the continuance.

The hearing was held on April 11, 2007 at 9:00 a.m. at the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent appeared and was self-represented. Assistant Attorney General Theresa O'Connell Weeg represented the state of Iowa. The following Board

members presided at the hearing: Steven Kraus, D.C., Chairperson; Rodney Rebarcak, D.C.; Kathleen Doochen, D.C.; Michael Powell, D.C.; John Calisesi, D.C.; Diane Puthoff and Karen Whalen, public members. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing.

Following the hearing, the Board convened in closed executive session, in accordance with Iowa Code section 21.5(1)(f), to deliberate their decision. The administrative law judge was directed to prepare a draft of the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations. On May 9, 2007, attorney Becky Knutson filed an amended Post Hearing Statement of Steven S. Larson, D.C., and the state filed a Response. The Board subsequently delayed its meeting scheduled for May 9, 2007 to review the draft decision, to allow the Board members an opportunity to review the additional documents. On May 16, 2007, the Board met by teleconference to discuss the draft decision and the two additional documents. The Board agreed with the state's Response and voted in open session to approve this Findings of Fact, Conclusions of Law, Decision and Order.

THE RECORD

The record includes the Notice of Hearing and Statement of Matters Asserted (Confidential); Order Continuing Hearing; Respondent's Continuance Request, Resistance, and Ruling; Respondent's testimony; and State Exhibits 1-18 (see exhibit index for description); Post Hearing Statement of Steven S. Larson, D.C., filed 5/9/07; State Response to Post Hearing Statement, filed 5/10/07.

FINDINGS OF FACT

1. Respondent was issued chiropractic license no. 06419 to practice chiropractic in the state of Iowa on May 25, 2001. Respondent's license is currently active and will next expire on June 30, 2008. (State Exhibits 1, 3) Respondent practiced chiropractic for approximately 25 years at a number of different locations, including the states of Nevada, Colorado, California, and Iowa. The

majority of his practice has been in the state of California. In 2003, Respondent returned to Iowa to be near his family and help care for his father, who has health problems. (Testimony of Respondent; State Exhibits 3, 14)

2. Respondent has a lengthy history of Operating While Intoxicated (OWI) convictions.

a. On or about January 10, 1996, Respondent was charged in Placer County, California Municipal Court with Driving Under the Influence of Alcohol and Drugs (Count I) and Driving at .08% Or Higher (Count II), based on an incident that occurred on December 23, 1995. Respondent pled guilty. On March 12, 1996, Respondent was placed on probation for a period of three years, assessed \$1365 in fines and court costs, required to serve one day in jail, and required to enroll in a first Offender Alcohol Program within 14 days and complete the program without interruption. (State Exhibit 11)

b. On March 6, 1996, Respondent was charged in San Mateo County, California Municipal Court with driving a vehicle while under the influence (Count I); driving a vehicle while having .08% alcohol in his blood (Count II); and driving a motor vehicle when his driving privilege was suspended or revoked for excessive blood alcohol (Count III). The driving incident underlying this complaint occurred on February 22, 1996. The Complaint further asserts that Respondent had a prior conviction, on or about August 31, 1992 in San Francisco County Municipal Court. On March 19, 1996, Respondent waived his rights and entered a plea of guilty. (State Exhibit 12)

c. On May 4, 1999, Respondent was sentenced in Washoe County District Court, Nevada, on a felony charge of driving under the influence, based on an incident that occurred on February 24, 1998. The trial information in that case indicates that Respondent was previously convicted of driving under the influence on three occasions: on August 31, 1992 in San Francisco, California Municipal Court; on March 19, 1996 in South San Francisco, California Municipal Court; and on March 12, 1996 in Roseville, California Municipal Court. Respondent entered a plea of guilty and was sentenced to a minimum term of twelve months and a maximum term of thirty months and assessed a \$2,000 fine. (State Exhibit 10)

d. On August 15, 2003, Respondent was charged in Woodbury County District Court, Iowa with Operating While Intoxicated (OWI)-Fourth Offense. Respondent was subsequently convicted of OWI-Second Offense, an aggravated misdemeanor.¹ On March 8, 2005, Respondent was sentenced to the Woodbury County Jail for 365 days, with 305 days suspended. Respondent was ordered to attend and complete Drinker Driving School within six months of sentencing and was assessed a fine of \$2,000 plus surcharges. Respondent is currently on probation for this conviction. (State Exhibits 4-7)

e. When the Board's investigator spoke to the Woodbury County attorney about Respondent's March 2005 conviction, he learned that Respondent also had an OWI in Nebraska in the early 1990's. The Board's investigator subsequently contacted the state of Nebraska and was told that Respondent had an OWI in that state over 12 years ago. (State Exhibit 3)

3. The Board initiated an investigation after the Woodbury County Attorney reported Respondent's OWI conviction in his county. Respondent was contacted to provide a response. In his written response, Respondent asserts that his condition on the day of his OWI arrest was the result of mixing pain medication with two beers. Respondent submitted medical records indicating that he has been diagnosed with Chronic Fatigue Syndrome and Lyme Disease. Respondent also submitted an Assessment Report, completed on February 22, 2005, by Jackson Recovery Centers. The report did not recommend any treatment. (Testimony of Respondent; State Exhibits 13, 14)

4. On July 13, 2005, the Board issued Respondent a confidential order requiring him to undergo a comprehensive substance abuse evaluation, based on his history of OWI convictions. The Board's Evaluation Order acknowledged that Respondent had submitted a substance abuse assessment report to the Board, but concluded that the report was insufficient to address the Board's concerns because it was unclear whether the evaluating program was aware of the extent of Respondent's driving violations or his Lyme disease. In addition, the evaluation was not performed by a program identified and approved by the Board as one with

¹ On April 12, 2006, the Iowa Court of Appeals affirmed the conviction. (State Exhibit 8)

experience in performing substance abuse evaluations for health care professionals. (State Exhibit 15)

5. On September 15, 2005, Respondent was evaluated by Tonita Rios, Ph.D., CADC at the Area Substance Abuse Program of Iowa City and Ames. Respondent told Dr. Rios that he has had a problem with drinking but it is now under control. Respondent reported attending extended outpatient substance abuse treatment (group therapy, three hours a week for six months) in South San Francisco following his first OWI. He also reported receiving individual counseling and substance abuse treatment from a psychologist, 1-2 times per week for six months, to work through individual issues.² Respondent told Dr. Rios that he does not have a drinking problem now because he only drinks three times a year, two drinks per occasion.³

Dr. Rios diagnosed Respondent with alcohol dependence, not in remission, and recommended intensive outpatient substance abuse treatment, aftercare, and regular attendance at Alcoholics Anonymous (AA). Dr. Rios' recommendations were based, in large part, on Respondent's history of OWI convictions. Dr. Rios concluded that Respondent's continued use of alcohol and repeated OWI convictions despite negative consequences is a strong indicator of his significant problems with alcohol. Dr. Rios further concluded that Respondent has not learned the skills to stay sober and shows a lack of awareness of the connection between his legal problems and his alcohol dependence. (State Exhibit 16)

6. Following Dr. Rios' evaluation, the Board referred Respondent to the Impaired Practitioner Review Committee (IPRC). On March 10, 2006, Respondent entered into an Impaired Practitioner Recovery Contract, in which he agreed

² Respondent has not submitted any documentation of his prior substance abuse treatment.

³ At the hearing, Respondent denied telling Dr. Rios that he still uses alcohol and claimed that he has abstained from alcohol since August 1, 2003. Respondent presented no corroborating evidence or verification in support of his claim that he has been sober since August 2003. Dr. Rios collected information from Respondent as part of a comprehensive Board-ordered evaluation, and her report was more credible than Respondent's testimony. Dr. Rios' report appears balanced and includes a substantial amount of information that Respondent concedes is accurate. Dr. Rios has no apparent motivation to fabricate statements from Respondent, whereas Respondent has an obvious self-interest in minimizing his alcohol use to the Board.

to a number of conditions designed to ensure his recovery and protect the public. Respondent's participation in the program was confidential, so long as he complied with the terms of the contract. Respondent's contract with the IPRC required him, in part, to:

- Within 30 days of signing the contract, provide the IPRC with the names and curriculum vitae of three physicians or therapists as potential candidates for providing outpatient treatment services;
- Meet with the approved outpatient treatment provider for treatment and comply with all aftercare recommendations;
- Within 30 days of signing the contract, provide the IPRC with names and curriculum vitae or resume of three potential candidates to serve as a Worksite Monitor;
- Attend AA or NA meetings, verify attendance through a signed and dated log, and obtain an AA/NA sponsor within 30 days of signing the contract;
- Immediately begin participation in the chemical screening program operated by First Lab;
- Submit his own quarterly written reports and ensure quarterly written reports are filed by his approved outpatient provider, aftercare provider, and worksite monitor.

Respondent's contract with the IPRC further specified that if the IPRC determined that Respondent had become noncompliant with his contract, the IPRC would make a report to the Board that will include a recommendation as to whether treatment should be augmented or formal charges should be filed. Upon receiving a second notice from any source that Respondent was noncompliant, the IPRC would nullify his contract and refer his case to the Board for filing of formal charges or other appropriate action. (State Exhibit 17; Testimony of Respondent)

7. On June 26, 2006, the IPRC voted to nullify their contract with Respondent and refer his case to the Board for noncompliance with the terms of his contract. Specifically, the IPRC found that Respondent had failed to submit the names of three physicians or therapists to provide outpatient substance abuse treatment; failed to provide names and curriculum of physicians or counselors to provide aftercare; failed to submit names of three

candidates to serve as a Worksite Monitor; failed to respond to three communications from the approved chemical screening program; and failed to document attendance at AA or obtain a sponsor. (State Exhibit 18).

8. Respondent admits that he has not complied with any of these terms of his IPRC contract. Respondent never provided the IPRC with names of any prospective outpatient treatment providers, aftercare providers, or worksite monitors. Respondent has not been attending AA or NA and has not obtained a sponsor. (Testimony of Respondent; State Exhibits 17, 18)

9. Respondent has been practicing chiropractic in Iowa. At the time of the Board's initial investigation in May 2005, Respondent reported that he had business arrangements with two different chiropractic clinics in Sioux City, Iowa, which allowed him to treat his patients at their clinics. At the hearing, Respondent reported that he is now providing chiropractic services to "mostly family and some friends." He testified that he is practicing from a "home office" in Sioux City and that he also does house calls.

Respondent testified that his primary employment involves working as a consultant for start up chiropractic/medical clinics and facilities, and that his work requires significant travel. Respondent was in Mexico from approximately September-November 2006, consulting with a new chiropractic clinic and providing chiropractic services to indigents under the supervision of a Mexican chiropractor. (Testimony of Respondent; State Exhibit 3)

CONCLUSIONS OF LAW

COUNT I

645 IAC 45.2(30) provides that the board may impose any of the disciplinary sanctions provided in rule 645-45.3(147,272C) when the board determines that the licensee is guilty of...violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

The preponderance of the evidence established that Respondent violated the terms of his IPRC contract and 645 IAC 45.2(30) when he failed to provide the IPRC with names of potential candidates to serve as his outpatient

treatment provider, his aftercare provider, or his worksite monitor. Respondent failed to respond to three communications sent by the chemical screening program used by the IPRC. Respondent failed to attend AA or NA and failed to obtain a sponsor.

Based on his testimony at hearing, it appears that Respondent never intended to follow through with the terms of the IPRC contract. Respondent claimed that financial problems and his travel schedule prevented him from complying. However, these circumstances do not justify or explain Respondent's complete noncompliance. Compliance with the IPRC contract terms should have been Respondent's first priority. Moreover, even if Respondent was experiencing financial problems and travel issues, AA/NA meetings are available in nearly every community and are free of charge.

COUNTS II and III

Iowa Code sections 147.55(4), 272C.10(4)(2005), and 645 IAC 45.2(6) authorize the board to discipline a licensee for habitual intoxication or addiction to the use of drugs.

Iowa Code sections 147.55(2) and 272C.10(2)(2005) authorize the board to discipline a licensee for professional incompetency. Pursuant to 645 IAC 45.2(2)(e), professional incompetency includes, but is not limited to, the inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or other type of material or as a result of a mental or physical condition.

The preponderance of the evidence, including Respondent's history of repeated OWI convictions, Dr. Rios' substance abuse evaluation report, and Respondent's failure to follow through with treatment, establishes that Respondent is habitually intoxicated and unable to practice chiropractic with reasonable skill and safety due to his excessive use of alcohol. In Burns v. Iowa Board of Nursing, 495 N.W.2d 698, 701 (Iowa 1993), the Iowa Supreme Court held that the nursing board, acting within the parameters of due process, must be allowed to apply Iowa Code section 147.55(4) on a case-by-case basis. The Board is not required to wait until habitual intoxication becomes so debilitating that there is immediate danger of harm to patients. Id.

Respondent's OWI convictions demonstrate a very long history of excessive and inappropriate use of alcohol leading to repeated legal problems. In at least one case, Respondent mixed his use of alcohol with pain medications. Dr. Rios has recently diagnosed Respondent as alcohol dependent and has determined that he requires extensive outpatient treatment and aftercare. However, Respondent has failed to comply with any of these recommendations.

As pointed out by Dr. Rios, even though Respondent's use of alcohol led to serious legal consequences, he continued to drink to excess and continued to have OWI's. Continued use despite negative consequences is a strong indicator of significant problems with alcohol. Respondent now claims that he has abstained from alcohol since 2003, but this claim is inconsistent with the information he provided to Dr. Rios. Respondent presented no evidence to corroborate his claim of sobriety. While there is no evidence that Respondent has practiced chiropractic while under the influence of alcohol, his ability to safely practice is seriously compromised by his failure to obtain the appropriate and recommended treatment for his alcohol dependence. Unless Respondent undergoes treatment and establishes an effective recovery program, he will not have the skills to stay sober and will be unable to practice chiropractic with reasonable skill and safety.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the license to practice chiropractic in the state of Iowa issued to Steven S. Larson, D.C., license no. 06419, is hereby **INDEFINITELY SUSPENDED**, effective on the date of service of this order.

IT IS FURTHER ORDERED that the indefinite suspension shall continue for a minimum period of six (6) months. **IT IS FURTHER ORDERED** that the Board will not consider reinstatement until Respondent:

- A. Completes an intensive outpatient substance abuse treatment program through a provider or facility pre-approved by the Board.
- B. Actively participates in an aftercare substance abuse program, as recommended by his treatment provider and approved by the Board.

C. Signs all necessary releases for the outpatient treatment provider and aftercare program to share information with the Board.

D. Regularly attends Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings as recommended by his treatment provider and aftercare program and approved by the Board. Respondent shall obtain a sponsor and shall document his attendance through a written log detailing the name, date, time and place of each meeting and including initials or a signature of another person at the meeting.

E. Establishes a record of consistent participation in the chemical screening program approved by the Board.

F. Abstains from all mood altering chemicals, including drugs and alcohol, unless prescribed or dispensed by a physician, physician assistant, or advanced registered nurse practitioner in an appropriate manner for a legitimate purpose. Respondent shall provide the Board with copies of all prescriptions within ten days of receiving the prescription from a health care provider.

G. Obtains a written recommendation from a Board-approved evaluator or Board-approved treatment facility stating that he is in a successful recovery and is safe to return to the practice of chiropractic.

Any application for reinstatement will be subject to 645 IAC 11.31. Respondent must demonstrate that the reason for the license suspension no longer exists and that it is in the public interest for his license to be reinstated.

IT IS FURTHER ORDERED that the Respondent shall pay a \$75.00 hearing fee and \$165.00 in costs for the court reporter. The \$240.00 in hearing fees and costs shall be paid within thirty (30) days of receipt of this decision. The cost of a transcript will be charged to the party requesting it. Iowa Code section 272C.6; 645 IAC 11.23.

This findings of fact, conclusions of law, decision and order is approved by the board on May 16, 2007.

Judicial review of the Board's action may be sought within 30 days of issuance of this Decision and Order, in accordance with the terms of the Iowa Administrative Procedure Act. 645 IAC 11.29.