

IOWA BOARD OF CHIROPRACTIC

IN THE MATTER OF:)	CASE NO. 09-021
)	DIA NO. 11ICB005
GREGORY HAINES, D.C.)	
License No. A05751)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER
)	

On May 24, 2011, the Iowa Board of Chiropractic (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Gregory Haines, D.C. (Respondent). Respondent was charged with:

Count I: Conviction of a felony related to his profession or occupation or conviction of any felony that would affect his ability to practice within the profession, in violation of Iowa Code section 147.55(5) and 645 IAC 45.2(11);

Count II: Habitual intoxication or addiction to the use of drugs, in violation of Iowa Code section 147.55(4) and 645 IAC 45.2(6); and

Count III: Failure to notify the Board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred, in violation of Iowa Code section 147.55(9) and 645 IAC 45.2(15).

The hearing was held on October 12, 2011 at 10:10 a.m. at the Lucas State Office Building, Des Moines, Iowa. The Respondent elected to have the hearing closed to the public, as authorized by 272C.6(1)(2011). The hearing was recorded by a certified court reporter. The state of Iowa was represented by Assistant Attorney General Meghan Gavin. Respondent appeared and was represented by attorney Mark Fowler. Respondent stipulated to violations on all three counts in the Statement of Charges and presented evidence solely on the issue of sanction.

The following Board members were present for the hearing: Chairperson Michael Powell, D.C.; John Calisesi, D.C.; Bradley Brown, D.C.; Nancy Kahle, D.C.; Julie Mueller and Sharon Tate, public members. Administrative Law Judge Margaret LaMarche from the Iowa Department of Inspections and Appeals

assisted the Board in conducting the hearing and was instructed to prepare the Board's Decision in conformance with their deliberations.

THE RECORD

The record includes State Exhibits 1-5 (See Exhibit Index for description; pp. 7-21 (Attachment 1) of Exhibit 2 were stricken by agreement of the parties) and Respondent Exhibits A-D. The record also includes the testimony of Respondent and of his spouse, Denette Haines.

FINDINGS OF FACT

1. Respondent was initially issued license number A05751 to practice chiropractic in the state of Iowa on November 2, 1993. At all times relevant to this Decision and Order, Respondent was practicing as a chiropractor in Muscatine, Iowa. (State Exhibits 3, 7)

2. Respondent resides in Muscatine, Iowa and also owns a farm in Rock Island County, Illinois. (Testimony of Respondent; Exhibit 2)

a) On November 3, 2009, Illinois law enforcement officers conducted a consent search of Respondent's Illinois farm. They seized 10 suspected cannabis (marijuana) plants that were hanging from rafters in an outbuilding; a blue tarp containing dried cannabis "shake"; miscellaneous equipment used to grow marijuana including glass tubes, soil, and seed starter trays; a 100 count box of Ziploc Sandwich baggies; a blue electric bong and glass vials; and a plastic baggie containing suspected cannabis. The suspected cannabis field tested positive for marijuana. (Exhibit 2, pp. 71-75)

b) On November 3, 2009, Iowa law enforcement officers interviewed Respondent at his residence in Muscatine, Iowa about the report they had received that he was growing marijuana on his Illinois farm. (Exhibit 5, pp. 38-40, 54-58) Respondent was interviewed by Illinois law enforcement the following day. (Exhibit 2, pp. 67-70, 76-79)

During both interviews, Respondent admitted growing, using, and sometimes selling marijuana over a period of more than thirty years. He reported that he first started growing marijuana when he was approximately 15 years old and then started selling marijuana when he was 16 or 17 years old. He

stopped these activities for a period of time after he was arrested in 1982 or 1983. (Exhibit 2, pp. 54-56, 67-68)

Respondent told the officers that he started growing marijuana again for medical use after he was diagnosed with polycystic kidney and liver disorder in 1993. (Exhibit 2, p. 57, 68) Respondent provided a detailed description of the methods he used to grow marijuana, which included starting the plants from seeds in his Muscatine home and then transplanting them to the Illinois farm as they matured. (Exhibit 2, pp. 55-57, 68) During the interviews, Respondent admitted that he has sold marijuana for \$100 an ounce but would not say how often he sells it. (Exhibit 2, p. 77) Respondent admitted selling approximately one ounce of marijuana to a friend in 2008 for \$100. (Exhibit 2, pp. 58, 116) However at hearing Respondent claimed that he grew marijuana for personal use only. (Testimony of Respondent)

At hearing, Respondent and his wife explained that the polycystic kidney and liver disease causes him constant chronic pain and sometimes acute pain, especially when he has kidney stones. Respondent expects that he will eventually have renal failure. He does not want to use non-steroidal anti-inflammatory drugs (NSAIDs) for pain because these drugs could cause further liver and kidney damage. Respondent has been self-medicating with marijuana that he has grown in multiple locations, including his Illinois farm. Respondent denies that he ever used marijuana prior to treating patients. (Testimony of Respondent; Denette Haines; Exhibit D; Exhibit 2, p. 57)

c) Respondent consented to a search of his Muscatine home and his personal vehicle on November 3, 2009. During the search of Respondent's home, officers seized a pill bottle containing suspected marijuana seeds, guns, a digital electronic scale, bags of potting soil and manure, a grow light, and other items. (Exhibit 2, pp. 84-88) Respondent also consented to a search of his chiropractic office on November 3, 2009. Law enforcement did not find any items of evidentiary interest in the office. (Exhibit 2, pp. 100-104)

3. On November 4, 2009, Respondent was criminally charged in Rock Island County, Illinois with two felonies:

Count I: Unlawful Possession/Production of Cannabis Sativa Plant, in violation of 720 ILCS 550/8(b), a Class 4 felony; and

Count II: Unlawful Possession With Intent To Manufacture Cannabis, in violation of 720 ILCS 550/5(e), a Class 2 felony.

(Exhibit 5)

4. On January 20, 2011, Respondent waived his right to a jury trial and pled guilty to Unlawful Possession With Intent To Manufacture Cannabis. Respondent was placed on probation for a term of 24 months, subject to a number of terms and conditions. The terms of probation included, but were not limited to:

- Unannounced inspections of his home, farm, and office;
- Completion of an alcohol and drug evaluation within 60 days and compliance with all treatment recommendations; and
- Random drug testing.

It is Respondent's understanding that his conviction could be removed from his record if he successfully completes probation. (Exhibit 5; Exhibit A; Testimony of Respondent)

5. Respondent did not report his conviction to the Iowa Board although Board rule requires convictions to be reported within thirty days.¹ Respondent's criminal attorney advised him that he did not need to immediately report the conviction to the Board because the conviction could be vacated as early as December 2011. (Testimony of Respondent; Denette Haines)

6. On March 24, 2011, Respondent reported to MECCA Services in Iowa City for the court ordered substance abuse evaluation. MECCA submitted a one page written evaluation report to Respondent's probation officer on March 28, 2011. The evaluation concluded that Respondent did not meet the criteria for diagnosis, based upon the e American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition, the Rapid Alcohol and Drug Problems Screen, and the evaluation. Respondent provided a urine sample at the time of the evaluation, which was negative. The MECCA evaluation did not recommend treatment. The evaluation report includes the following statement: "Please note this recommendation is valid for ninety days from the date of evaluation." (Exhibit B)

¹ 645 IAC 45.2(15).

7. Respondent reports that his last use of marijuana was in 2009. He is not currently taking any medication to treat his pain and reports that he just “suffers.” Respondent has been subject to random urine screens by his probation officer. All of these urinalysis results have been negative for drugs. Respondent’s probation has recently been transferred to the state of Iowa, and he has been assigned an Iowa probation officer. Respondent’s Iowa probation officer requires him to submit to both scheduled and random urine screens. (Testimony of Respondent; Exhibit C)

CONCLUSIONS OF LAW

Respondent stipulated to violations on all three counts charged in the Statement of Charges. The only issue presented to the Board at hearing was the sanction to be imposed for these violations. Respondent has been convicted of a serious felony that can affect his ability to safely practice chiropractic. Respondent has been growing and using marijuana, which is an illegal mood altering substance that can be addictive. The Board understands that in recent years Respondent’s personal use of marijuana was for medical purposes. Nevertheless, given Respondent’s very long history of growing and using marijuana, the Board was not convinced that he will be able to remain abstinent aided solely by will power and the limited oversight provided by random urine screens. In addition, the Board is unwilling to rely on a one-page substance use evaluation report, which is now more than six months old, for assurance that Respondent does not need treatment and an aftercare program in order to remain abstinent.

ORDER

IT IS THEREFORE ORDERED that license number A05751 issued to Respondent Gregory Haines, D.C. is hereby placed on PROBATION for a period of five (5) years, subject to the following terms and conditions:

1. Respondent shall complete a comprehensive substance abuse evaluation at a facility approved by the Board within sixty (60) days of the issuance of this Decision and Order. Respondent may submit the names of up to three (3) facilities for the Board’s consideration and approval if the Board agrees one of the facilities is acceptable. If the Board does not find any of the Respondent’s suggestions acceptable then the Board may direct respondent to use a facility identified by the Board. The Respondent shall

notify the Board in writing five days prior to the date he will be starting evaluation. The Board will send the approved facility a copy of the Board's Decision and Order and all exhibits as background information for the evaluation. Respondent shall ensure that the evaluation doesn't begin until the approved facility has received a copy of the Board's Decision and Order and all exhibits as background information for the evaluation. Respondent shall sign all necessary releases to permit the evaluating facility to communicate with the Board. Respondent shall ensure that the evaluating facility provides a written report to the Board at the conclusion of the evaluation. The written report shall include the facility's diagnosis, if any, and its recommendations for treatment and or aftercare, if any. Respondent shall be responsible for all costs of the evaluation.

2. Respondent shall fully comply with any recommendations made by the approved facility following the evaluation, including but not limited to treatment recommendations, aftercare recommendations, and recommendations for attendance at structured recovery support groups like Narcotics Anonymous (NA). Respondent shall provide verification of his compliance to the Board in his written quarterly reports.

3. Respondent shall abstain from the use of marijuana or any illegal substance. Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for Respondent's use by a duly licensed treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent will not consume any foods or products containing poppy seeds and/or alcohol or use any type of soaps, body lotions or mouth washes containing alcohol.

4. Respondent shall submit to all requirements and conditions of the Board's chemical screening program using FirstLab or other laboratory identified by the Board. This may include but isn't limited to a daily call-in and random laboratory reporting requirements to provide a urine, blood, hair, nail, saliva, sweat or other bodily substance specimen. Respondent shall also provide random blood, urine, hair, nail, saliva, sweat or other bodily substance specimens on demand by an agent of the Board. Collection of samples are to be witnessed by authorized personnel at the approved collection site. Respondent is responsible for all costs of chemical screening.

5. Respondent shall file sworn quarterly written reports with the Board attesting to his compliance with all the terms of this Decision and Order no later than January 1, April 1, July 1, and October 1 of each year. The quarterly report shall list each of the terms of this Decision and Order and how he has complied with each of the terms including each recommended action made by the approved evaluation facility if there were any recommendations. If Respondent has been required to attend treatment, aftercare, or structured support group meetings, then he shall verify his attendance/participation in the quarterly reports. Respondent shall document attendance/participation to such structured support group meetings by attaching to each quarterly report statements signed or initialed by another person in attendance at the meetings attesting to his attendance. The statement shall include the time, date and location of the meetings attended.
6. Respondent shall pay a civil penalty of one thousand dollars (\$1,000) within sixty (60) days of the issuance of this Decision and Order.
7. Respondent shall fully comply with all of the terms of his criminal probation and shall abide by all state and federal laws.
8. Respondent may not file a request to modify the conditions of probation until he has successfully served at least three years of the five year probationary term.
9. Any violation of the terms of probation will be grounds for further disciplinary action, as authorized by Iowa Code section 272C.3(2)(a)(2011).

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent Gregory Haines, D.C. shall pay \$75.00 for fees associated with the disciplinary hearing and \$68.75 for the court reporter fees. The total fees of \$143.75 shall be paid within thirty (30) days of receipt of this decision.

Dated this 8th day of November, 2011.