## IOWA BOARD OF CHIROPRACTIC

IN THE MATTER OF:	)	CASE NO. 08-056 DIA NO. 09DPHCB002
DOUGLAS DVORAK, D.C.	)	
License No. A05380	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER
	)	[DEFAULT]

On September 29, 2009, the Iowa Board of Chiropractic (Board) filed a Notice of Hearing and Statement of Charges against Douglas Dvorak, D.C. (Respondent). Respondent was charged with 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 645 IAC 45.2(11).

The hearing was held on October 12, 2011 at 9:20 a.m. at the Lucas State Office Building, Des Moines, Iowa. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2011), and was recorded by a certified court reporter. The state of Iowa was represented by Assistant Attorney General Meghan Gavin. Respondent did not appear for hearing and did not ask for a continuance. 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 1-11. (See Exhibit Index for description of Exhibits 1-9. Exhibit 10 is Respondent's handwritten acknowledgment of receipt of the Notice of Hearing and Statement of Charges and his Answer; Exhibit 11 is the certified mail receipts for delivery of the Board's Rescheduling Order to Respondent and the Warden at the Federal Correctional Institution in Forrest City, Arkansas.)

#### FINDINGS OF FACT

- 1. Respondent was initially issued license number A05380 to practice chiropractic in the state of Iowa on August 29, 1988. At all times relevant to this Decision and Order, Respondent was practicing as a chiropractor in Cedar Rapids, Iowa. (State Exhibits 3, 7)
- 2. On September 24, 2008, Respondent was criminally charged in the United States District Court for the Northern District of Iowa with:
  - twenty-two counts of federal mail fraud, in violation of 18 U.S.C. §1341;
  - eleven counts of identity theft, in violation of 18 U.S.C. §1028A(a)(1); and
  - six counts of money laundering, in violation of 18 U.S.C. §1956(a)(1)(B)(i).

The charges were based on allegations that beginning in late 2005 and continuing through early 2007, Respondent:

- knowingly and willfully devised, executed, and attempted to execute a scheme to defraud the Medicaid program by false and fraudulent pretenses and representations;
- used the United States Postal System to submit fraudulent claims to the Medicaid program and to receive Medicaid payments on the fraudulent claims; and
- obtained names and birthdates of adults and children in the Cedar Rapids area and fraudulently used this information, without the persons' knowledge or consent, to submit fraudulent Medicaid claims.

# (Exhibit 7)

- 3. Respondent was found guilty on all 39 counts on April 10, 2009. At his sentencing on October 8, 2009, Respondent was committed to the custody of the United States Bureau of Prisons for a total term of 85 months. Upon his release from imprisonment, Respondent is required to be on supervised release for three (3) years. Respondent was also required to pay an assessment of \$3,900 and restitution in the amount of \$71,375.82. (Exhibit 8)
- 4. On July 8, 2009, the Board issued a Notice of Hearing and Statement of Charges charging Respondent with conviction of a felony related to his profession or occupation or conviction of a felony that affects his ability to

practice. The Notice of Hearing and Statement of Charges was personally served on Respondent by an Investigator from the Department of Inspections and Appeals on October 21, 2009. (Exhibit 2, Exhibit 3, p. 3)

- 5. On November 4, 2009, Respondent filed a handwritten acknowledgement of the Notice of Hearing and Statement of Charges and an Answer denying the allegations in the Statement of Charges. Respondent also informed the Board that his criminal case was on appeal to the Eighth Circuit Court of Appeals. (Exhibit 10)
- 6. On January 8, 2010, the Board continued the disciplinary hearing pending further Order. (Exhibit 4)
- 7. In a decision filed on August 20, 2010, the Eighth Circuit affirmed Respondent's convictions and sentence. (Exhibit 9)
- 8. On May 5, 2011, the state filed a Request for Hearing, noting that Respondent's criminal appeals have now been exhausted. The Request for Hearing was served on Respondent by certified mail at the Federal Correctional Institution in Forrest City, Arkansas, where he is incarcerated. (Exhibits 5, 6)
- 9. On July 26, 2011, the Board issued a Rescheduling Order setting the hearing for October 12, 2011 at 9:00 a.m. The Rescheduling Order was served on Respondent and on the Warden of the Federal Correctional Institution in Forrest City, Arkansas. The certified notice to the Warden was signed for on July 29, 2011 at 8:43 a.m. The certified notice to Respondent was signed for on August 2, 2011 at 8:58 a.m. (Rescheduling Order; Exhibit 11) Respondent did file a request to reschedule the hearing and did not appear for the hearing.

## **CONCLUSIONS OF LAW**

## Failure to Appear

The Statement of Charges and Notice of Hearing were properly served on Respondent by personal service.<sup>1</sup> The Order Rescheduling Hearing was served on Respondent and on the warden of the institution where he is incarcerated by certified mail, return receipt requested. Respondent has had proper notice of this

<sup>1 645</sup> IAC 11.6(1)"a."

proceeding but did not appear for hearing and did not request a continuance. If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.<sup>2</sup> The Board elected to proceed with the hearing in Respondent's absence.

# Felony Convictions

645 IAC 45.2 provides, in relevant part:

**Grounds for discipline.** 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 any of the following acts or offenses:

. . .

**45.2(11)** Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

See also Iowa Code section 147.55(5).

Respondent was convicted of 39 felony counts in federal court based on his fraudulent and dishonest billing practices with respect to the federal Medicaid program. These practices, which are described in the Eighth Circuit decision, included identity theft. Needless to say, Respondent's convictions are directly related to his chiropractic practice and adversely affect his ability to continue to practice within the chiropractic profession. Protection of the public health, safety, and welfare requires revocation of his license.

#### ORDER

IT IS THEREFORE ORDERED that license number A05380, issued to Respondent Douglas Dvorak, D.C., is hereby REVOKED with no possibility of reinstatement for a minimum period of ten (10) years.

<sup>&</sup>lt;sup>2</sup> 645 IAC 11.21(1).

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IT IS FURTHER ORDERED that *prior* to filing a Petition for Reinstatement, Respondent must:

- successfully complete all terms of his supervised release, including payment of all fines and restitution; and
- successfully complete all licensing examinations required for new licensees at that time. The licensing examinations must be completed within two (2) years of the date that Respondent applies for reinstatement.

If Respondent complies with the foregoing requirements and files a Petition for Reinstatement, then he will have the burden of proof to establish that the reason for the revocation no longer exists and that it is in the public interest for his license to be reinstated.<sup>3</sup>

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent Douglas Dvorak, D.C. shall pay \$75.00 for fees associated with the disciplinary hearing and \$55.00 for the court reporter fees. The total fees of \$130.00 shall be paid within thirty (30) days of receipt of this decision.

Dated this 8th day of November, 2011.

<sup>&</sup>lt;sup>3</sup> 645 IAC 11.31.