

BEFORE THE IOWA BOARD OF CHIROPRACTIC

In the Matter of:)	DIA NO: 13ICB002
)	CASE NO: 12-022
)	
Harold Shelton, D.C.)	
License No. 04860)	FINDINGS of FACT,
)	CONCLUSIONS of LAW,
Respondent.)	and ORDER

The Iowa Board of Chiropractic (the Board) filed a statement of charges against Harold Shelton, D.C. (respondent). The statement of charges alleged that respondent submitted a false report of continuing education, and that he otherwise failed to comply with the Board's regulations requiring continuing education.

The case heard at the Board's headquarters on July 10, 2013. The following board members were present for the hearing: John Calisesi, D.C., David Gehling, D.C., Aaron Martin, D.C., Jason Wall, D.C., Nancy Kahle, D.C., Joellen Jensen, and Julie Mueller. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the board. Meghan Gavin, an assistant attorney general, represented the public interest. Respondent represented himself.

THE RECORD

The State's exhibits 1-10 were admitted. The State called Lalah McGowen as a witness. Respondent's exhibit A was admitted. Respondent testified on his own behalf.

FINDINGS OF FACT

Respondent Harold Shelton, D.C., has practiced chiropractic in Iowa since 1982. On June 29, 2012, he electronically filed his biannual license renewal. He affirmatively stated that he had completed the required hours of continuing education. The Board requires each licensee to complete 60 hours of education each biennium. (Exhibits 3-4, 10; McGowen testimony).

The Board conducts random audits of licensees to ensure compliance with continuing education requirements. On August 16, 2012, the Board sent a letter to respondent directing him to complete an enclosed Post Renewal Continuing Education Audit Report and submit it to the Board by September 15, 2012. The letter also directed respondent to submit copies of certificates of program, course completion documents, or other evidence to show that classes had been successfully completed. The letter specifically directed

respondent to complete each category on the form, including the dates attended. (Exhibit 5; McGowen testimony).

The Board received a report from respondent on September 18, 2012. He identified three courses for a total of 40 hours of contact hours. He did not provide any proof of program completion or identify the attendance dates for any of the courses. (Exhibit 6; McGowen testimony).

The Board's administrative staff reviewed the submission and considered it insufficient. On September 24, 2012, the Board sent a second letter to respondent. The second letter informed respondent that the information he provided was incomplete and directed him to provide copies of proof of program completion and corrections to his audit report within ten days. The second letter was sent by regular mail. On October 8, 2012, the Board followed up by sending the letter again by certified mail. Post office records show that the certified mail was delivered on October 10, 2012. The Board did not receive a response to either mailing. (Exhibits 7-9; McGowen testimony).

After the Board filed the statement of charges in this case, respondent sent a letter to the Board. He stated that his brother was fighting terminal lung cancer from July through November of 2010. Respondent saw his brother each weekend during that period to help him and his family. A few months later, his brother's wife suffered complications after a major surgery and was on life support for two weeks before being removed from life support. In 2011, respondent had a myocardial infarct. Later in the year, he had surgery to remove a 90 percent blockage of the right carotid artery. The combination of these factors brought on post-traumatic stress disorder, which he normally can keep under control. Additionally, respondent was ill with bacterial pneumonia during one of the response period to the Board's directives, which interfered with his ability to timely respond. Respondent stated he could provide documentation of continuing education, but did not provide such proof with his letter. (Exhibit A).

Respondent discussed many of these obstacles in the hearing before the Board. However, he could not explain the lapse in time in responding to the Board's inquiries. He testified that "he got in his mind" that he only had to complete 36 hours of education, as opposed to the 60 hours required by the rule. Respondent stated that he has completed 27 hours of education since filing the report, including 12 hours that he characterized as "Mickey Mouse" seminars. He stated the education was "not worth the time," but he will claim the time because the seminars were approved by the Board. (Respondent testimony).

CONCLUSIONS OF LAW

Regulatory framework: The Iowa Board of Chiropractic (the Board) was created by the legislature pursuant to Iowa Code section 147.13(5) and Iowa Code chapter 151. The

Board has the responsibility to establish qualification to obtain licensure, and to enforce Board standards through disciplinary actions after a chiropractor is licensed.¹

The Board requires each licensee to complete a minimum of 60 hours of continuing education approved by the Board every two years.² The licensee must be able to provide proof of attendance, including the date, location, course title, and presenter of the activity, number of program hours, and a certificate of completion.³

The Board may enter discipline for failure to committing a violation of its regulations relating to the practice.⁴ More specifically, the Board may impose discipline for failing to submit a biennial report of continuing education or submitting a false report.⁵ The Board has a range of disciplinary options, including revocation, suspension, probation, requiring additional education or training, civil penalties, and a citation and warning.⁶

Analysis: The statement of charges raised two counts: 1) failing to submit a biennial report or a false report, and 2) violating the Board's regulations relating to the practice. The two counts are similar and can be discussed together.

Respondent submitted a report to the Board on September 18, 2012. However, the report was insufficient on its face. Respondent did not report completing 60 hours, he did not report the dates of completion, and he did not provide a certificate of completion. The Board gave respondent an opportunity to supplement his report by providing the needed information. Respondent failed to file any response at all. Not only did he fail to provide the requested information, he did not contact the Board to clarify the request or seek more time to reply. He did nothing at all.

The report filed by respondent is not necessarily false, but he failed to verify any of the classes he has taken, thus calling into question the veracity of the hours he reported. The licensee has a responsibility to demonstrate compliance by detailing the information about each class taken and certifying its completion. Respondent failed to do that, despite repeated requests from the Board. Respondent attended the hearing, but still failed to submit any verification of completion of any of the classes claimed on the form.

Respondent's failure to provide all information required by the report amounts to a failure to file the report. Respondent failed to provide basic verifying information, such as the dates of attendance and the certificates of completion. The Board gave respondent

¹ Iowa Code sections 147.34, 147.55, 151.3.

² 645 IAC 44.2(1).

³ 645 IAC 44.3(1).

⁴ 645 IAC 45.2(12).

⁵ 645 IAC 45.2(21).

⁶ 645 IAC 45.3.

a chance to submit additional information, and he did not respond to specific requests for information.

Similarly, respondent failed to comply with the Board's regulations on continuing education. He is required to complete 60 hours over two years. He did not do so. By his own admission at hearing, he talked himself into believing he only needed 36 hours. He did not complete the 60 hours of continuing education required by the Board.

Sanction: The Board's concern rises above respondent's failure to report and comply with the CLE requirements. Respondent demonstrated a disregard of the Board's continuing education requirements in two ways. First, he failed to file a response or to contact the Board in any way after it sent the September 24, 2012 letter requesting information. The Board understands that respondent was attending to family crises and personal health problems during the same biannual period, but that is no excuse for simply ignoring requests for information from the Board.

Second, he demeaned classes approved by the Board as Mickey Mouse classes and said they were not worth his time. It is generally accepted throughout all major professions that continuing education is important to remain current in the profession. The Board has adopted continuing education requirements in alignment with this purpose. Respondent showed a lack of respect for the Board's regulations, and with that, a lack of respect for the authority of the Board itself.

The Board believes it important that respondent appreciate the purpose for continuing education. While the Board allows licensees some flexibility in method of attendance, the Board believes it important that respondent complete his requirements through in-person classes, and not through telephonic or other electronic means. Respondent shall also attend four additional hours of ethics courses, pay a civil penalty, and be given a citation and warning.

DECISION AND ORDER

The Iowa Board of Chiropractic finds that respondent Dr. Harold Shelton violated 645 IAC 45.2(12) and 45.2(21) by failing to complete continuing education requirements, by filing an incomplete continuing education report, and failing to respond to requests for additional information and documentation by the Board. The following sanctions are imposed:

- 1) **CITATION AND WARNING:** The Board issues a public citation and warns respondent that any further violations of the Board's regulations may result in further disciplinary action.

- 2) **CIVIL PENALTY:** Respondent shall pay a civil penalty of \$250.00. Respondent shall pay the civil penalty to the Board within 30 days of the date of this order.
- 3) **CONTINUING EDUCATION:** Respondent shall complete 20 hours of additional courses to be applied to the biannual report covering the July of 2010 through June of 2012 reporting period. Respondent cannot substitute any classes previously taken – he can only use classes taken after the entry of this order. All 20 hours must be through in-person instruction. Respondent must verify his attendance through a certificate of completion that is filed with the Board. Respondent must complete this requirement within twelve months from the date of this order.

Additionally, respondent must complete four hours of ethics classes in addition to the 20 hours required above. All four hours must be through in-person instruction. Respondent must verify his attendance through a certificate of completion that is filed with the Board. Respondent must complete this requirement within twelve months from the date of this order.

Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing and \$ 41.25 for the court reporter fees Respondent shall remit \$ 116.25 for these expenses within thirty days of receipt of this decision. In addition, the executive secretary of the board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing to be paid within thirty days of receipt of the bill.

Violation of any of the provisions of this order may be the subject of additional disciplinary action.

Dated this 9th day of September, 2013.



John Calisesi, D.C., Chairperson
Iowa Board of Chiropractic

cc: Meghan Gavin, Assistant Attorney General
Respondent

Notice

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.