

**BEFORE THE BOARD OF CHIROPRACTORS
STATE OF MONTANA**

In the Matter of the Proposed Discipline of MICHAEL MCCLAIN, Chiropractor, License No. 1012.	Case Nos. 2011-CHI-LIC-8 2011-CHI-LIC-10 STIPULATION AND FINAL ORDER
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The Business Standards Division of the Department of Labor and Industry of the State of Montana (Department), through its legal counsel, and Michael McClain, D.C. (Licensee), through his legal counsel, stipulate and agree as follows:

1. Jurisdiction. Licensee is licensed as a chiropractor by the State of Montana Board of Chiropractors (Board), Montana License No. 1012. The Board has subject matter jurisdiction in this matter.

2. Waiver of Rights. Licensee has read and understands each term of the *Notice of Proposed Board Action and Opportunity for Hearing* (Notice) and this Stipulation, and understands the various rights provided, including the right to a hearing before an impartial hearing examiner, the right to present evidence and testify and confront and cross-examine witnesses at the hearing, the right to be represented by legal counsel, the right to subpoena witnesses, the right to request judicial review and appeal, and all other rights under Montana Code Annotated Title 2, chapter 4, part 6 (Montana Administrative Procedure Act), Title 37, chapters 1 and 12, and other applicable law. Licensee desires to avoid unnecessary expenditure of time and other valuable resources to resolve this matter. Therefore, Licensee voluntarily and knowingly waives the rights listed above and elects to resolve this matter on the terms and conditions of this Stipulation and acknowledges that no promise, other than those contained in this Stipulation, and no threat or improper assertion has been made by the Board or Department or by any member, officer, agent or representative of the Board or Department to induce Licensee to enter into this Stipulation.

3. Release. This Stipulation is a final compromise and settlement of this contested case proceeding. Licensee, his assigns, agents, and representatives, releases the Board, its members, officers, agents, or representatives from any and all liability, claim, and cause of action, whether now known or contemplated, including but not limited to, any claims under Montana Code Annotated Title 2, chapter 9, part 3 (Montana Tort Claims Act), as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case, its processing, investigation, litigation, or from the negotiation or execution of this Stipulation.

4. Entire Agreement. This Stipulation contains the entire agreement of the parties. All prior discussions and writings are superseded by this Stipulation, and no discussion by the Board prior to the approval of this Stipulation may be used to interpret or modify it. Any modification requires a written amendment signed by both parties and final Board approval.

5. Severability. If a court or administrative tribunal declares any term or condition contained in this Stipulation to be unenforceable for any reason, the unenforceable term or condition shall be severed from the remainder of this Stipulation, and the remainder of this Stipulation shall be interpreted and enforced according to its original intent.

6. Reservation. This Stipulation does not restrict the Board from initiating disciplinary action concerning allegations of unprofessional conduct that occur after the date Licensee signs this Stipulation or concerning allegations of conduct not specifically mentioned in this Stipulation that are now known to the board or yet to be discovered.

7. Stipulation Subject to Final Approval. This Stipulation is subject to final approval by the Board.

8. Renewed Right to Hearing – Inadmissibility of Stipulation. If the Board considers and does not approve this Stipulation, it is withdrawn and may not be considered as evidence for any purpose. Licensee will have a renewed 20 days from the date of the publicly noticed Board meeting to submit a written request for a hearing in this matter. Failure by Licensee to

request a hearing constitutes a default and allows the Board to enter a Final Order of discipline against Licensee. If, instead, this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any record relating to this Stipulation.

9. Entry of Final Order – Facts and Violations. Licensee denies the facts and violations stated below, but consents to the entry of a Final Order, to the extent it is consistent with this Stipulation and has final approval by the Board, as final resolution of these matters.

Licensee practices chiropractic at Vital Energy Chiropractic in Helena, Montana.

Case No. 2011-CHI-LIC-8

K.M. filed a complaint against Licensee on February 17, 2011. K.M. indicated in January 2008 she presented to Licensee with a sciatica issue. K.M. alleged Licensee proposed an 80-visit treatment plan and, after she declined the proposed treatment, Licensee represented to K.M. that declining the 80-visit treatment plan would result in her hospitalization and death.

Through counsel, Licensee responded to the complaint in a letter dated March 1, 2011, explaining his approach to chiropractic through wellness and maintenance, denying he told K.M. that her failure to sign up for an 80-visit treatment plan would result in hospitalization and death. Further, Licensee's response indicated K.M.'s complaint did not allege she received or paid for unnecessary or harmful chiropractic treatment.

The Screening Panel requested the Department investigate the allegations raised by the complaint at its March 4, 2011 meeting.

Case No. 2011-CHI-LIC-10

On March 16, 2011, the Department received a complaint S.W. filed against Licensee and his wife, Dr. Terah McClain, who is also a licensed chiropractor practicing at Vital Energy Chiropractic.

S.W. indicated that on May 9, 2010, she attended a lecture in which Licensee presented information on nutrition and benefits of receiving chiropractic treatment. Afterward, Licensee offered S.W. an examination at no charge.

S.W. presented to Vital Energy Chiropractic on May 11, 2010 for her examination. The complaint S.W. filed detailed several concerns she had with Vital Energy Chiropractic's business practices:

A Vital Energy Chiropractic assistant conducted a thermal scan of S.W., making comments, "this isn't good at all," which left S.W. feeling uneasy.

Stipulation and Final Order

Dr. Terah McClain informed S.W. she needed to bring someone with her to the examination results appointment for emotional support. This comment made S.W. concerned there was "something very seriously wrong" with her.

When S.W. presented for her examination results appointment, Licensee spoke to her and others in the waiting room about the human spine, nervous system, and overall health. S.W. expressed concern in her complaint about several comments made by Licensee regarding the importance of receiving chiropractic treatment from Vital Energy Chiropractic and disadvantages with certain medical treatment.

Licensee then proposed an 82-visit treatment plan for S.W., with a down payment of \$3,000 required before treatment. Knowing S.W. did not have insurance, Licensee suggested she apply for credit to finance the chiropractic treatment plan.

Through counsel, Licensee responded to the complaint in a letter dated April 21, 2011. The response explained Licensee promotes the benefits of chiropractic care and denied Licensee made fabulous claims or misstatements to S.W. The response indicated Licensee had no knowledge of a Vital Energy Chiropractic assistant telling S.W. "this isn't good at all" during a thermal scan, and it is not Licensee's practice for his assistants to comment on or analyze patient examination results. Further, the response indicated Dr. Terah McClain did not inform S.W. that she was required to bring another person to her appointment in order to discuss her examination results, citing to the office protocol for meeting with a patient.

With the concurrence of a member of the Screening Panel on March 21, 2011, the Department initiated an investigation into the allegations raised by the complaint.

The Department's investigation into Complaint Nos. 2011-CHI-LIC-8 and 2011-CHI-LIC-10 concluded K.M., S.W., and other individuals who presented to Vital Energy Chiropractic felt pressured to commit to treatment plans that, after receiving second opinions, may not have been necessary from a chiropractic or medical standpoint.

On April 6, 2012, the Screening Panel again reviewed the complaints, Licensee's responses, and the completed investigation, and found reasonable cause to believe Licensee violated statutes, rules, or standards justifying disciplinary proceedings. The Screening Panel further directed the Department to serve Licensee with this formal Notice.

On October 4, 2013, the Board accepted a proposed Stipulation and entered a Final Order against Licensee in Case Nos. 2009-017-CHI, 2010-016-CHI, and 2010-017-CHI. The prior cases contained similar allegations to the facts and violations asserted in these matters.

Licensee's actions constitute unprofessional conduct under Mont. Code Ann. § 37-1-316(5) and (18) and Admin R. Mont. 24.126.2301(1)(a)(i).

10. Stipulated Disciplinary Sanctions. Upon acceptance of this Stipulation by the

Board, Licensee agrees to the following:

Stipulation and Final Order

In Re Michael McClain, Case Nos. 2011-CHI-LIC-8 and 2011-CHI-LIC-10.

a. This Stipulation serves as a public reprimand for Licensee's unprofessional conduct, which occurred in 2009 and 2010.

b. No further sanctions are necessary in these matters to protect the public health, welfare, or safety, as the conduct occurred in 2009 and 2010 without continued occurrences; the Board addressed similar and prior conduct by Licensee in the Final Order it entered against Licensee on October 4, 2013 for Case Nos. 2009-017-CHI, 2010-016-CHI, and 2010-017-CHI.

11. Public Documents. The Notice and this Stipulation and Final Order issued by the Board are public documents that the Department, at minimum, must make publicly available on the Department's website and professional databases, and may otherwise distribute to other interested persons or entities.

12. Complying with the Terms of the Stipulation. Licensee's failure to strictly abide by the terms of the Stipulation shall constitute a violation of the Final Order of the Board.

[Redacted Signature]

Michael McClain, D.C., Licensee

9-24-14

DATE

[Redacted Signature]

Kenneth K. Lay
Attorney for Michael McClain, D.C.

9-29-14

DATE

[Redacted Signature]

Kevin G. Maki
Department Counsel
Montana Board of Chiropractors

9-29-14

DATE

FINAL ORDER

The Montana Board of Chiropractors (Board) enters, as its Findings of Fact and Conclusions of Law, the stipulated facts and violations as stated in the Stipulation. The Board, giving primary consideration to the sanctions that are necessary to protect and compensate the public and secondary consideration to any sanctions designed to rehabilitate Michael McClain, D.C. (Licensee), approves, adopts, and incorporates the Stipulation into this Final Order.

DATED this 15th day of December, 2014.



Presiding Officer
Montana Board of Chiropractors

CERTIFICATE OF SERVICE

I certify I served a true and accurate copy of the foregoing *STIPULATION AND FINAL ORDER* via United States Postal Service, first-class postage prepaid, on the following:

Michael McClain, D.C.
c/o Kenneth K. Lay, Esq.
Crowley Fleck, PLLP
P.O. Box 797
Helena, MT 59624-0797

DATED this 18 day of December, 2014.



Department of Labor and Industry