

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2011-10582**

**DAVID EVAN YACHTER, D.C.**

**RESPONDENT,**

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**ADMINISTRATIVE COMPLAINT**

Petitioner, Department of Health, by and through its undersigned counsel, files this Administrative Complaint before the Board of Chiropractic Medicine against Respondent, David Evan Yachter, D.C. In support Petitioner alleges:

1. Petitioner is the state department charged with regulating the practice of Chiropractic Medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 460, Florida Statutes.
2. At all times material to this Complaint, Respondent was a chiropractic physician within the State of Florida, having been issued license number CH 6780 on or about June 23, 1994.

3. Respondent's address of record is 1401 N.W. 122<sup>nd</sup> Avenue, Plantation, Florida, 33323.

4. On or about October 17, 2008, Patient B.L., an eighty-seven (87) year old female, presented to Respondent with complaints of leg pain for approximately two (2) months.

5. On or about October 17, 2008, Patient B.L. had x-rays of the cervical and lumbar regions and a full spinal thermographic scan.

6. On or about October 17, 2008, Respondent recommended to Patient B.L. a Corrective Care Plan of treatment that included eighty (80) adjustments and a lesser number of exercise type modalities and sessions.

7. On or about October 17, 2008, Respondent sold Patient B.L. the Corrective Care Plan through CareCredit, which included a pre-payment package plan consisting of eighty (80) chiropractic adjustments and a lesser number of exercise type modalities and sessions.

8. A pre-payment package plan is when a patient pays in advance for one or a series of visits.

9. Patient B.L. paid \$3,034.50 to the Respondent for the pre-payment plan on or about October 21, 2008.

10. Respondent failed to utilize trust accounting procedures regarding the \$3,034.50 payment.

11. The pre-payment plan sold to Patient B.L. was not justified by the medical records.

12. Patient B.L. received treatment from Respondent's clinic on the following dates: October 21, 22, 23, 27, 28, 29, 30; and, November 3, 5, 7, 10, 14, 2008.

13. Patient B.L. generally received some combination of the following treatments on each date of service: chiropractic manipulation, therapeutic exercise, and/or therapeutic activities.

14. During the course of treatment, Respondent failed to record an adequate history or physical examination appropriate for the conditions complained of by Patient B.L.

15. Respondent failed to record, and/or failed to perform, an evaluation of Patient B.L. which included an evaluation of the pulses in her lower extremities, any alterations of dermatomes, any alterations in Patient B.L.'s reflexes, and failed to rule out the possibility of the presence of a deep vein thrombosis.

16. Respondent took x-rays of Patient B.L.'s cervical and lumbar spine.

17. Respondent failed prepare, and/or retain as part of Patient B.L.'s medical records, a report of his x-ray findings and diagnoses for the cervical and lumbar spine.

18. Respondent's daily treatment notes failed to adequately describe Patient B.L.'s subjective complaints and/or objective findings.

19. Respondent's daily treatment notes, related to the chiropractic care, failed to adequately describe the treatment rendered. Specifically, but in no way by limitation, the daily treatment notes fails to specific the spinal levels treated, or the volume of the exercise performed.

20. Respondent's treatment notes for Patient B.L. failed to contain a diagnosis.

21. Respondent's treatment notes for Patient B.L. failed to contain a prognosis.

22. Patient B.L. was ultimately diagnosed with, and treated for, arterial disease including stenosis/occlusion of the lower extremities.

### **Count One – Record Keeping**

23. Petitioner re-alleges paragraphs one (1) through twenty-two (22), as though fully set forth herein.

24. Section 460.413(1)(m), Florida Statutes (2008), provides that failing to keep legibly written chiropractic medical records that identify

clearly by name and credentials the licensed chiropractic physician rendering, ordering, supervising, or billing for each examination or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories, examination results, X-rays, and diagnosis of a disease, condition, or injury is grounds for disciplinary action by the Board of Chiropractic Medicine.

25. Section 460.413(1)(ff), Florida Statutes (2008), subjects a chiropractor to discipline for violating any provision of this chapter, or chapter 456, or any rules adopted pursuant thereto.

26. Rule 64B2-17.0065, Florida Administrative Code (F.A.C.), sets forth the minimal recordkeeping standards as set forth below in pertinent part:

a. Rule 64B2-17.0065(3), F.A.C. states that medical records shall be legibly maintained and shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs dispensed or administered; reports of consultations and hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician in determining the appropriate treatment of the patient. Initial and follow-up services (daily records) shall consist of documentation to justify care. If abbreviations or symbols are used in the daily recordkeeping, a key must be provided.

b. Rule 64B2-17.0065(4), F.A.C., states that all patient records shall include a patient history; symptomatology and/or

wellness care; examination finding(s), including X-rays when medically or clinically indicated; a diagnosis; a prognosis; assessment(s); a treatment plan; and, treatments provided.

c. Rule 64B2-17.0065(5), F.A.C., states all entries made into the medical records shall be accurately dated. The treating physician must be readily identifiable either by signature, initials, or printed name on the record. Late entries are permitted, but must be clearly and accurately noted as late entries and dated accurately when they are entered into the record.

d. Rule 64B2-17.0065(6), F.A.C., states that once a treatment plan is established, daily records shall include: (a) Subjective complaint(s); (b) Objective finding(s); (c) Assessment(s); (d) Treatment(s) provided, and (e) Periodic reassessments as indicated.

27. Respondent violated Section 460.413(1)(m), Florida Statutes (2008) and/or Rule 64B2-17.0065, F.A.C., in one or more of the following ways:

(a) By failing to record and/or maintain an adequate examination or history of Patient B.L. appropriate for the conditions complained of by Patient B.L.;

(b) By failing to record and/or maintain an evaluation of Patient B.L.'s pulse in her lower extremities, alteration of dermatomes, alteration in Patient B.L.'s reflexes, or rule out possible deep vein thrombosis;

(c) By failing to justify the pre-payment treatment plan sold to Patient B.L.;

- (d) By failing to adequately describe Patient B.L.'s objective findings or subject complaints in the daily treatment notes;
- (e) By failing to adequately describe the treatment provided to Patient B.L. in the daily treatment notes;
- (f) By failing to record and/or maintain a report for the cervical and lumbar x-rays taken of Patient B.L.;
- (g) By failing record and/or maintain a diagnosis in Patient B.L.'s treatment records; and/or
- (h) By failing to record and/or maintain a prognosis in Patient B.L.'s treatment records.

28. Based on the foregoing, Respondent violated Section 460.413(1)(m), Florida Statutes (2008), Section 460.413(1)(1)(ff), Florida Statutes (2008), and/or Rule 64B2-17.0065, F.A.C., by failing to comply with minimal record keeping standards.

### **Count Two – Trust Accounting**

29. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-two (22), as if fully set forth herein.

30. Section 460.413(1)(y), Florida Statutes (2008), provides that failing to preserve the identity of funds or property of a patient is grounds for disciplinary action by the Board of Chiropractic Medicine.

31. Rule 64B2-14.001(2), Florida Administrative Code (F.A.C.), states that the minimum trust accounting records which shall be maintained by all chiropractors practicing in Florida who receive or disburse trust money in the course of their professional practice are:

(a) A separate bank account other than the chiropractor's regular business or personal account designated for the deposit of such funds.

(b) A journal, file or receipts, file of deposit slips, or checkbook stubs listing the source and date of all receipts of trust funds.

(c) A journal which may consist of cancelled checks, showing the date and receipt of all trust funds disbursements.

(d) A file or ledger containing an accounting for each person from whom or for whom trust money has been received.

32. Respondent failed to comply with requirements of Section 460.413(1)(y), Florida Statutes (2008), and/or Rule 64B2-14.001(2), F.A.C., through one or more of the following actions:

(a) By failing to keep a separate bank account for the deposit of trust fund monies he received from Patient B.L.;



(b) By failing to maintain a journal which may consist of cancelled checks, showing the date and receipt of all trust funds disbursements; or

(c) By failing to maintain a file or ledger containing an accounting for each person from whom or for whom trust money has been received.

33. Based on the foregoing, Respondent violated Section 460.413(1)(y), Florida Statutes (2008), Section 460.413(1)(ff), Florida Statutes (2008), and/or Rule 64B2-14.001(2), F.A.C., by failing to preserve the identity of funds or property of Patient B.L.

### **Count Three – Standard of Care**

34. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-two (22), as if fully set forth herein.

35. Section 460.413(1)(r), Florida Statutes (2008), subjects a chiropractic physician to discipline for gross or repeated malpractice or the failure to practice chiropractic medicine at a level of care, skill, and treatment which is recognized by a reasonably prudent chiropractic physician as being acceptable under similar conditions and circumstances.

36. Respondent failed to practice chiropractic medicine at a level of care, skill and treatment which is recognized by a reasonably produce chiropractic physician as being acceptable under similar conditions and circumstances, through one or more of the following:

(a) By failing to conduct an adequate examination or history of Patient B.L. appropriate for the conditions complained of by Patient B.L.;

(b) By failing to record evaluate Patient B.L.'s pulse in her lower extremities, alteration of dermatomes, alteration in Patient B.L.'s reflexes, or rule out possible deep vein thrombosis; or,

(c) By failing to appropriate evaluate and/or diagnose Patient B.L.'s complaints of leg pain.

37. Based on the foregoing, Respondent violated Section 460.413(1)(r), Florida Statutes (2008).

**WHEREFORE**, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 29<sup>th</sup> day of March, 2012.

Steven L. Harris, M.D., M.Sc.  
Interim State Surgeon General

*Tari Rossitto-Van Winkle*

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**FILED**

DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK:

*Angela Burton*

DATE:

*3/30/12*

PCP: March 29, 2012

PCP Panel: Kevin Fogarty, D.C. & Wayne Wolfson, D.C.

## **NOTICE OF RIGHTS**

**Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.**

## **NOTICE REGARDING ASSESSMENT OF COSTS**

**Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.**