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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

THE STATE BOARD OF CHIROPRACTIC

**COMMONWEALTH OF PENNSYLVANIA,
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

v.

**MARKELL D. BOULIS, DC,
Respondent**

FILE NO. 2006-43-00770

DOCKET NO. 0758-43-2008

FINAL ADJUDICATION AND ORDER

**BASIL L. MERENDA, COMMISSIONER
BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

**KATHLEEN G. McCONNELL, DC, CHAIRPERSON
STATE BOARD OF CHIROPRACTIC**

2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105-2649

TAB

Department of State

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PROHIBITORY

HISTORY

This case comes before the State Board of Chiropractic (Board) to determine whether the license to practice chiropractic of Markell D. Boulis, DC, (Respondent) should be revoked, suspended, or otherwise disciplined pursuant to the Chiropractic Practice Act¹ (Act) and the Criminal History Record Information Act (CHRIA). By notice and order to show cause filed on April 10, 2008, the Commonwealth alleged that Respondent was convicted in federal court of various felony offenses, committed immoral or unprofessional conduct, and failed to demonstrate the qualifications or standards for licensure. On May 12, 2008, Respondent filed an answer in which he neither admitted nor denied the allegations of the order to show cause, but asserted various facts in mitigation of any sanction to be imposed. Respondent explicitly waived a hearing.

On July 31, 2008, the Commonwealth filed a motion for judgment on the pleadings. Respondent did not respond to the motion for judgment. By order dated October 3, 2008, the Board granted the Commonwealth's motion for judgment on the pleadings. The order extended to Respondent the opportunity to request a hearing during the next 20 days, but Respondent did not do so.

The Board² deliberated this matter at its meeting September 25, 2008, and now issues this adjudication and order as a final determination of the charges against Respondent.

¹ Act of December 16, 1986 (P.L. 1646, No. 188), *as amended*, 63 P.S. §§ 625.101 *et seq.*

² Board member Joseph T. Grice, DC, has recused and has not participated in the deliberation or decision of this matter.

FINDINGS OF FACT

1. Respondent is licensed as a chiropractor in Pennsylvania, license no. DC-004824-L. (Board records; order to show cause at ¶ 1).
2. Respondent also holds a certification to perform adjunctive procedures, certificate no. AJ-004824-L. (Board records; order to show cause at ¶ 2).
3. Respondent's license and certification have been suspended since 1994, based upon an automatic suspension following Respondent's drug trafficking conviction in Georgia. (Board records; order to show cause at ¶¶ 3-4 and attached exhibit 1).
4. At all times pertinent to this matter, Respondent held a license to practice chiropractic in the Commonwealth of Pennsylvania. (Order to show cause at ¶ 5).
5. Respondent's last known address on file with the Board is 1100 Washington Road, Carnegie, PA 15106. (Board records; order to show cause at ¶ 6).
6. On March 6, 2006, in the United States District Court for the Southern District of Ohio, Respondent pled guilty to false statements related to healthcare matters, in violation of 18 U.S.C. § 1035. (Order to show cause at ¶¶ 10-13 and attached exhibit 3 at information, plea agreement, and judgment).
7. As a result, on January 26, 2007, Respondent was sentenced to serve 35 months in prison, followed by three years of supervised release, and ordered to pay restitution of \$820,099.24 to several insurance companies and the Ohio Bureau of Workers' Compensation, with the sentence to run concurrent to Respondent's sentence in the Western District of Pennsylvania. (Order to show cause at ¶ 15 and attached exhibit 3 at judgment).
8. From 1999 through 2003, Respondent caused fraudulent bills to be created and submitted to public and private healthcare benefit programs for chiropractic services that either had not

been provided or that had previously been paid for. (Order to show cause at ¶¶ 10-13 and attached exhibit 3 at information, plea agreement, and judgment).

9. Respondent's current mailing address is 4010 Muirfield Drive, Presto, PA 15142. (*See*, answer filed May 12, 2008).

10. Respondent received the order to show cause, as evidenced by his filing of answer. (*See*, answer filed May 12, 2008).

11. In his answer, Respondent neither admitted nor denied the allegations of the order to show cause, but asserted various facts to mitigate any sanction to be imposed, and waived a hearing. (*See*, answer filed May 12, 2008).

12. On or about July 31, 2008, the Commonwealth served its motion for judgment on the pleadings by sending it to Respondent by first class mail, postage prepaid, addressed to Respondent at 4010 Muirfield Drive, Presto, PA 15142. (*See*, motion for judgment on the pleadings at certificate of service).

13. The order granting judgment on the pleadings was served upon Respondent by first class mail addressed to Respondent at 4010 Muirfield Drive, Presto, PA 15142. (*See*, order granting motion for judgment on the pleadings, issued October 3, 2008).

14. Respondent has not filed a response to the motion for judgment on the pleadings. (*See*, docket entries).

15. Respondent has not request a hearing in this matter. (*See*, docket entries).

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this case. (Findings of Fact Nos. 1-4).
2. Respondent had adequate notice of the charges against him and was given an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504. (Findings of Fact Nos. 9-15).
3. Respondent is subject to discipline under section 506(a)(6) of the Act, 63 P.S. § 625.506(a)(6), because he was convicted in federal court of false statements related to healthcare matter, a felony. (Findings of Fact Nos. 1-8).
4. Respondent is subject to discipline of his license under the Criminal History Record Information Act, 18 Pa.C.S. § 9124(c)(1), based on his convictions in federal court for false statements related to healthcare matters, a felony. (Findings of Fact Nos. 1-8).
5. Respondent is subject to discipline under section 506(a)(11) of the Act, 63 P.S. § 625.506(a)(11), because he committed immoral or unprofessional conduct. (Findings of Fact Nos. 1-8).

DISCUSSION

Before considering the merits of this disciplinary action, the Board must address a procedural matter. After Respondent filed an answer to the order to show cause, the Commonwealth filed a motion for judgment on the pleadings, and Respondent did not respond to the motion. Judgment on the pleadings may be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Tulio v. Beard*, 858 A.2d 156, 158 (Pa. Cmwlth. 2004). When ruling upon a motion for judgment on the pleadings, the opposing party's allegations must be accepted as true and only those facts specifically admitted by the opposing party may be considered in support of the motion. *Id.*

The order to show cause alleged that Respondent had pled guilty to various felony charges in federal court and directed Respondent to file an answer. However, in his answer Respondent did not explicitly admit or deny the allegations, but solely asserted facts to mitigate any sanction to be imposed upon him. The General Rules of Administrative Practice and Procedure provide, in pertinent part, that:

A person upon whom an order to show cause has been served under § 35.14 (relating to orders to show cause) shall, if directed to do so, respond to the same by filing within the time specified in the order an answer in writing. **The answer shall be drawn so as specifically to admit or deny the allegations** or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. **Mere general denials** of the allegations of an order to show cause which general denials are **unsupported by specific facts** upon which respondent relies, will not be considered as complying with this section and **may be deemed as basis for entry of a final order without hearing**, unless otherwise required by statute, on the ground that the answer has raised no issues requiring a hearing or further proceedings. A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

1 Pa. Code § 35.37 (relating to answer to order to show cause) (emphasis supplied).

Accordingly, because Respondent did not specifically deny any of the allegations of the

order to show cause, the Board properly deemed Respondent to have admitted those factual allegations. As discussed below concerning Respondent's violations of the Act,³ the Board properly granted the Commonwealth's motion for judgment on the pleadings. Normally, the Board would still conduct a hearing in order to give the respondent an opportunity to present evidence in mitigation of a sanction to be imposed. However, in his answer Respondent explicitly waived a hearing. In its order granting judgment on the pleadings, the Board extended to Respondent another opportunity to request a hearing. Respondent did not take advantage of this additional opportunity. Accordingly, the Board did not schedule a hearing and is issuing this final adjudication without having conducted a hearing. *See*, 1 Pa. Code § 35.101 (once period of time in which to do so has passed, party who has not requested hearing has waived hearing, and agency may dispose of matter on pleadings).

Turning now to the merits of this matter, the Commonwealth charged that Respondent was subject to disciplinary action under section 506(a)(6) of the Act,⁴ 63 P.S. § 625.506(a)(6), and also under CHRIA, 18 Pa.C.S. § 9124(c)(1),⁵ because he was convicted of a felony.

³ The Commonwealth additionally charged that Respondent was subject to disciplinary action under section 506(a)(1) of the Act because he failed to demonstrate the good moral character required for licensure by section 501(a)(2). Because Respondent's deemed admission of the conviction does not eliminate all genuine issues of material fact for this count, the Board will not grant judgment on the pleadings as to this count. Because as discussed below the Board is able to take sufficient disciplinary action based upon the other counts for which judgment was granted on the pleadings, the Board will not further discuss this count.

⁴ **Section 506. Refusal, suspension or revocation of license.**

(a) Reasons enumerated. -- **The board** may refuse to issue a license or **may suspend or revoke a license** for any of the following reasons:

* * *

(6) **Being convicted of a felony**, a misdemeanor in the practice of chiropractic, or receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges, **in the courts of this Commonwealth, a Federal court, or a court of any other state, territory, possession or country.**

63 P.S. § 625.506(a)(6) (emphasis supplied).

⁵ **Section 9124. Use of records by licensing agencies.**

As established by the findings of fact, on March 6, 2006, in the federal district court for the Southern District of Ohio, Respondent pled guilty to false statements related to healthcare matters, in violation of 18 U.S.C. § 1035. The offense of false statements related to healthcare matter is not classified by letter grade, but the maximum sentence of imprisonment authorized by the section is five years. 18 U.S.C. § 1035(a). Accordingly, the offense of false statements related to healthcare matters is a felony. *See*, 18 U.S.C. § 3559(a)(4) (offense that is not specifically classified by letter grade in the section defining it is a class D felony if the maximum term of imprisonment is at least five years, but less than ten years). Because he was convicted of this felony in federal court, Respondent is subject to disciplinary action under section 506(a)(6) of the Act and is also subject to disciplinary action under CHRJA.

The Commonwealth also charged that Respondent was subject to disciplinary action under section 506(a)(11) of the Act⁶, for committing immoral or unprofessional conduct. Immoral conduct includes the commission of an act involving moral turpitude, dishonesty or corruption. 49 Pa. Code § 5.81(2)(ii). Commonwealth Court has defined crimes involving moral

(c) State action authorized. – **Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:**

- (1) **Where the applicant has been convicted of a felony.**
- (2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

18 Pa.C.S. § 9124(c) (emphasis supplied).

⁶ **Section 506. Refusal, suspension or revocation of license.**

(a) Reasons enumerated. -- **The board may refuse to issue a license or may suspend or revoke a license for any of the following reasons:**

- (11) **Committing immoral or unprofessional conduct.** Unprofessional conduct shall include any departure from, or failure to conform to, the standards of acceptable and prevailing chiropractic practice. Actual injury to a patient need not be established.

63 P.S. § 625.506(a) (emphasis supplied).

turpitude as “anything done knowingly contrary to justice, honesty or good morals.” *Foose v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 578 A.2d 1355, 1357 (Pa. Cmwlth. 1990). Determination of whether a crime involves moral turpitude turns on the elements of the crime, not on an independent examination of the details of the behavior underlying the crime. *Startzel v. Department of Education*, 562 A.2d 1005, 1007 (Pa. Cmwlth. 1989).

As indicated above, Respondent pled guilty to false statements related to healthcare matters. A conviction for false statements related to healthcare matters conclusively⁷ establishes that in a matter involving a healthcare benefit program the defendant knowingly and willfully made materially false, fictitious or fraudulent statements or representation in connection with the delivery of or payment for healthcare benefits. 18 U.S.C. § 1035(a). In a matter involving a healthcare benefit program, knowingly and willfully making materially false, fictitious or fraudulent statements or representation in connection with the delivery of or payment for healthcare benefits is an act knowingly done contrary to justice, honesty and good morals. The offense of false statements related to healthcare matters involves moral turpitude, and it also involves dishonesty and corruption. Respondent caused fraudulent bills to be created and submitted to public and private healthcare benefit programs for chiropractic services that either had not been provided or that had previously been paid for. These actions also involve dishonesty and corruption. Because he committed acts involving moral turpitude and because those acts also involved dishonesty or corruption, as shown by his conviction, Respondent committed immoral conduct in violation of the Board’s regulation at § 5.81(2)(ii) and is therefore subject to disciplinary action under section 506(a)(11) of the Act.

⁷ See, *Burnworth v. State Bd. of Vehicle Mfrs., Dealers and Salespersons*, 589 A.2d 294 (Pa. Cmwlth. 1991) (respondent may not collaterally attack guilty plea in subsequent civil license suspension proceeding).

The Commonwealth has met its burden of proof, and the Board must determine an appropriate sanction. As discussed above, the Board may suspend or revoke the license of one who, as Respondent has done, was convicted of a felony (under section 506(a)(6) of the Act and under CHRIA) or committed immoral or unprofessional conduct (under section 506(a)(11) of the Act and under CHRIA). Additionally, the Board may levy a civil penalty of up to \$1,000 on any licensee who violates any provision of the Act. Section 703 of the Act,⁸ 63 P.S. § 625.703. The Board may levy a separate civil penalty for each violation of the Act. *See*, Statutory Construction Act, 1 Pa.C.S. § 1930 (whenever a penalty is provided for violation of a statute, the statute should be construed as to be for each violation). In determining a sanction, the Board considers the seriousness of the offense and any mitigating evidence. Because Respondent did not request a hearing, the Board has no mitigating evidence to consider.

In federal court, Respondent pled guilty to feloniously making false statements in healthcare matters. The court sentenced Respondent to serve 35 months in prison and to pay over \$820,000 in restitution. For almost five years, Respondent caused fraudulent bills for chiropractic services to be submitted to healthcare insurers, demanding payment for services that either were not provided or which had already been submitted and paid. Respondent utilized the authority of his license to commit these crimes in the practice of his profession and brought great disrespect upon the profession of chiropractic. A licensed chiropractor must not fraudulently bill

⁸ Section 703. Civil penalty.

In addition to any other civil remedy or criminal penalty provided for in this act, **the board**, by a vote of the majority of the maximum member of the authorized membership of the board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, **may levy a civil penalty of up to one thousand dollars (\$1,000) on any current licensee who violates any provision of this act** or on any person who practices chiropractic without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

63 P.S. § 625.703 (emphasis supplied).

insurance carriers for chiropractic services that were not provided. *See*, section 506(a)(14) of the Act, 63 P.S. § 625.506(a)(14) (Board may take disciplinary action against licensee who intentionally submitted to third-party payor claim for service or treatment that was not actually provided to patient). Respondent's violations were extremely serious.

A licensed chiropractor is expected to be of good moral character. *See*, section 501(a)(2) of the Act, 63 P.S. § 625.501(a)(2) (among other requirements, applicant for license to practice chiropractic must submit satisfactory proof of good moral character). Respondent's commission of immoral acts, as discussed above, suggests that he is not of the requisite good moral character for licensure as a chiropractor.

In the absence of any mitigating evidence, the Board concludes that, in order to protect the public, it must revoke Respondent's license to practice chiropractic. In light of the amount of restitution the court ordered Respondent to make, the Board concludes that the imposition of a civil penalty is not necessary in order to deter Respondent and others from committing similar violations in the future.

Wherefore, the Board enters the following order.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF CHIROPRACTIC

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs : Docket No. 0758-43-2008
v. :
 :
 : File No. 2006-43-00770
Markell D. Boulis, DC, :
Respondent :

FINAL ORDER

AND NOW, this 24th day of November, 2008, having duly convened and considered the entire record of the proceedings, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the State Board of Chiropractic hereby **REVOKES** the license to practice chiropractic of Respondent, Markell D. Boulis, DC, license number DC-004824-L.

All licensure documents, including wall certificate and wallet cards, shall be returned to the State Board of Chiropractic. The licensure documents shall be delivered to Board Counsel, Bureau of Professional and Occupational Affairs, P.O. Box 2649, Harrisburg, PA 17105-2649 on or before the effective date of this order.

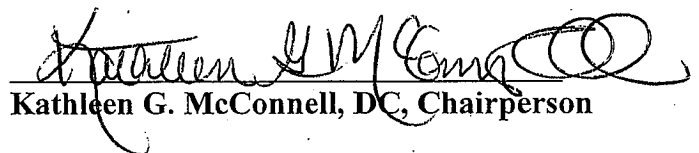
This order shall be effective December 24, 2008, 30 days after the date of mailing indicated below.

**BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS**

STATE BOARD OF CHIROPRACTIC



Basil L. Merenda, Commissioner



Kathleen G. McConnell, DC, Chairperson

Respondent's address:

Markell D. Boulis, DC
4010 Muirfield Drive
Presto, PA 15142

Commonwealth's attorney:

Shawn E. Smith, Esquire

Board counsel:

Thomas A. Blackburn, Esquire

Date of mailing:

November 24, 2008

Notice

The attached Final Adjudication and Order represents the final agency decisions in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court in accordance with the Pennsylvania Rules of Appellate Procedure. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such appeals is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Order page of the Final Order.