

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: EDWARD KESSLER, D.C.
License No.: 0104-000532

ORDER

In accordance with Sections 54.1-2915 and 9-6.14:11 of the Code of Virginia (1950), as amended ("Code"), an informal conference before the Credentials Committee ("Committee") of the Virginia Board of Medicine ("Board") was convened on August 3, 2001, in Richmond, Virginia, to receive evidence concerning the application for reinstatement of chiropractic licensure of Edward Kessler, D.C. By official notice dated July 20, 2001, Dr. Kessler was fully informed of the alleged violations of applicable statutes and regulations that could form the bases for possible denial of his application for reinstatement and/or the bases for disciplinary action. Dr. Kessler appeared in person and was not represented by counsel.

FINDINGS OF FACT

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact:

1. Dr. Kessler was issued a license to practice chiropractic in the Commonwealth of Virginia on January 16, 1985. Since on or about December 1, 1990, Dr. Kessler has been practicing chiropractic in the Commonwealth of Virginia without a valid license. Specifically, subsequent to allowing his license to lapse on November 30, 1990, due to non-payment of the biennial renewal fee, Dr. Kessler has continuously practiced chiropractic without a license in at least three (3) separate locations or businesses:
 - a. Dr. Kessler was sole owner of and practitioner at Green Run Chiropractic Center from approximately May 1985 to May 1997;
 - b. Dr. Kessler practiced chiropractic in the office of another chiropractor for approximately two (2) months in 1997; and
 - c. Dr. Kessler has been the sole owner of and practitioner at Edward Kessler, D.C. chiropractic office since approximately September 1997.

Order – Dr. Kessler

d. From on or about January 7, 1998, to May 4, 2001, Dr. Kessler received third-party reimbursement from Trigon Blue Cross Blue Shield in the amount of \$9,352.63, for unlicensed chiropractic services he rendered. By his own admission, Dr. Kessler was aware that he has failed to renew his chiropractic license since 1990. Dr. Kessler stated to the Committee that he did not reveal to patients or colleagues that he was unlicensed.

2. Dr. Kessler advertises in local telephone directories and in information he distributes that his chiropractic practice includes the use of Contact Reflex Analysis (“CRA”). CRA is a system of reflex response testing, which is described in literature Dr. Kessler provides as “very precise and scientific.” Dr. Kessler utilizes CRA as a diagnostic modality, and suggests various nutritional supplements that he sells out of his office as a result of the diagnosis obtained. Contact Reflex Analysis is a modality for which there exists no search or scientific evidence to support its efficacy, and for which the rationale for nutritional supplements is not therapeutically proven.

3. On or about May 18, 2001, an unannounced site inspection was conducted of Dr. Kessler’s chiropractic practice, which revealed the following:

- a. Dr. Kessler’s office was cluttered, with current patient files stacked in disarray in various rooms, including the floor in the room in which Dr. Kessler treats patients;
- b. Nutritional supplements were stored adjacent to a cage containing a live bird; and
- c. Dr. Kessler’s records for current patients were incomplete and essentially illegible. Noted deficiencies included the absence of discernable plan of care in any of the records, and a lack of any history and physical information for most patients.

Order – Dr. Kessler

4. Dr. Kessler has defaulted on Health Education Assistance Loans totaling \$49,972.57, and as a result, has been excluded from participation in Medicare/Medicaid. Dr. Kessler represented that he started to repay the loans and that his last payment was in the 1990s. However, in a letter dated June 4, 2001, the United States Department of Justice confirmed that Dr. Kessler has made no payments, and a judgment was entered against Dr. Kessler in United States District Court on June 3, 1998. Dr. Kessler submitted Interrogatories in connection with a civil proceeding filed in the United States District Court for the Eastern District of Virginia. Based upon his responses, a payment plan was established, requiring Dr. Kessler to remit payment in the amount of \$100.00 per month beginning July 1, 2001. As of July 10, 2001, Dr. Kessler was in default of this payment plan. Dr. Kessler provided the Committee with documentation that showed he recorded sending payment in the amount of \$100.00 to the Department of Justice on or about July 30, 2001. He stated to the Committee that he has not made the payment due on August 1, 2001.

5. On or about May 24, 2001, Dr. Kessler falsified his application for reinstatement of his license to practice chiropractic in the Commonwealth of Virginia. Specifically:

- a. Dr. Kessler indicated he was licensed to practice chiropractic in the state of Alabama beginning April 1984. Verification received from Alabama indicates that Dr. Kessler took the examination, but never received a license.
- b. Dr. Kessler answered “no” to Question 8, which asks if he has ever had any action taken against him by Medicaid, when Dr. Kessler was excluded from Medicaid participation following default of his student loans, as outlined above.

6. Dr. Kessler has not completed sufficient Continuing Education (“CE”) credits to qualify for reinstatement of his chiropractic license. Specifically, Dr. Kessler has not met the continued competency

Order – Dr. Kessler

requirements prescribed in Sections 18 VAC 85-20-235 and 18 VAC 85-20-240 of the Board's General Regulations in that he has failed to obtain a minimum total of 120 hours of CE within the past four (4) years, including not less than 60 Category I hours of CE. Dr. Kessler has reported completion of:

- a. Eight (8) course hours in CRA at Parker College of Chiropractic on April 12, 1997;
- b. Six (6) course hours in CRA at Parker College of Chiropractic on October 19, 1997;
- c. An unspecified number of hours in CRA in videotaped seminars dated March 1995; September 1997; October 1997; June 2000, July 2000; and September 2000;
- d. An unspecified number of hours in practice building seminars with Dr. David Singer from 1991 to 1995.

Dr. Kessler has failed to provide evidence that any of the above CE courses qualify as Category I, CCE accredited hours.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Committee concludes that Dr. Kessler is in violation of Sections 54.1-111; 54.1-2902; and Sections 54.1-2915.A (1) and (3) as further defined in Sections 54.1-2914.A (5), (7), (8), (11), and (13) [*formerly Sections 54.1-2914.A(7), (9), (10), (13), and (15)*] of the Code; and Sections 18 VAC 85-20-40.A and .C; 18 VAC 85-20-235 and 18 VAC 85-20-240 of the Board's General Regulations.

ORDER

WHEREFORE, it is hereby ORDERED that Dr. Kessler's application for reinstatement of his license to practice chiropractic in the Commonwealth of Virginia be, and hereby is, DENIED. The Board further denies

Order - Dr. Kessler

Dr. Kessler the privilege of applying for reinstatement of his chiropractic license for a period of not less than two (2) years.

The Board refers this matter to the Office of the Attorney General to see the issuance of a Cease and Desist Order to prevent Dr. Kessler from continuing the unlicensed practice of chiropractic.

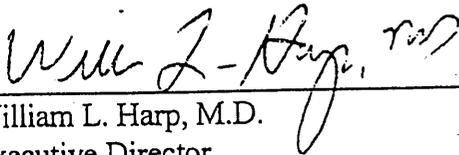
The Board refers this matter to the appropriate Commonwealth Attorney's Office for review based upon Dr. Kessler's acknowledgement of unlicensed practice of chiropractic in the Commonwealth of Virginia from 1990 to 2001.

Pursuant to Section 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400.10 of the Code, Dr. Kessler may, not later than 5:00 p.m., on September 13, 2001, notify William L. Harp, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, Virginia 23230, in writing that he desires a formal administrative hearing before the Board.

Therefore, this Order shall become final on September 13, 2001, unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD



William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

Entered: 8/10/01


A TRUE COPY TESTE:
RENEE S. DIXON, DISCIPLINE CASE MANAGER
VIRGINIA BOARD OF MEDICINE