BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
JOHN OLIVER MEADORS, DC TO
PRACTICE AS A CHIROPRACTIC
PHYSICIAN IN THE STATE OF UTAH

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDED ORDER
CASE NO. DOPL-2013-225

APPEARANCES:

Harold L. Reiser for Respondent John Oliver Meadors, DC.
Dan Lau for the Division of Occupational and Professional Licensing.

BOARD MEMBERS:

Jay D. Anderson, DC
Richard C. Engar, DDS
Carlyle Bret Whittaker, DC
Craig D. Campbell, DC

BY THE UTAH CHIROPRACTIC PHYSICIAN LICENSING BOARD:

On June 11, 2013, the Utah Division of Occupational and Professional Licensing
(Division) brought allegations against John Oliver Meadors (Respondent) through a Notice of
Agency Action and Petition. Respondent is licensed as a chiropractic physician with the Division
and subject to its jurisdiction and regulation.
This matter was heard by the five-member Utah Chiropractic Physician Licensing Board (Board) in a hearing held January 9, 2014. The Board has considered and weighed the evidence according to the applicable standard of proof, that being a preponderance of the evidence, and now enters the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. At all relevant times, Utah Spine & Disc and Newlife Body Contour were owned and operated by Respondent.

I. Patient Laurel Hughes.

2. On or about September 15, 2009, Laurel Hughes entered into a contract for services with Utah Spine & Disc. Under the contract, Respondent agreed to provide specified services and products, including D.S.B.E. orthotics.

3. Ms. Hughes was quoted a total price of $5,997. She paid the full amount up front with a credit card.

4. At no time prior to beginning treatment did Respondent provide Ms. Hughes with an itemized description of the amount that would be charged for each visit, treatment, or product contracted for.

5. During his treatment of Ms. Hughes, Respondent kept an internal record of her care, with the cost of each treatment or product deducted from the total price paid in advance.

6. On September 17, 2009, Respondent deducted from Ms. Hughes's account $1,000 for "orthotic purchase/fitting."

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1 Prior to the Board's engaging in deliberations in this case, Michael D. Smithers, DC resigned from the Board. Dr. Smithers did not participate in crafting this recommended order. The remaining Board members constitute a quorum of the Board.

8. Ms. Hughes did not consider that she needed an orthotic insert. When presented with the insert, Ms. Hughes told Respondent's staff that she did not want it, and she declined to have it trimmed to fit her shoe. Regardless, Respondent's staff gave it to her and told her to keep it, stating that she had paid for it.

9. Ms. Hughes has never used the insert. In fact, she has never opened the sealed package in which it arrived from the manufacturer.

10. Respondent's internal accounting records indicate that, by November 3, 2009, Ms. Hughes had received at least $5,997 worth of treatments and products, including the $1,000 orthotic insert. Nevertheless, Respondent continued to treat Ms. Hughes through approximately January of 2010.

11. Respondent's internal accounting records indicate that Ms. Hughes's treatment costs totaled $8,695.00, of which Respondent wrote off $2,698.00.

II. Patient Lisa Cordner.

12. Lisa Cordner visited Respondent's office on or about June 29, 2010. She sought treatment for migraine headaches. She was approximately 49 years old at the time of her initial visit.

13. Ms. Cordner was a mildly retarded adult. She was so diagnosed on November 19, 2005 by Dr. Elizabeth Allen, Ph.D. and was found to qualify for disability benefits under applicable federal laws.
14. Ms. Cordner's disability was readily apparent due to her physical appearance and her behavior. Specifically, Ms. Cordner was unusually short and unusually overweight for a middle-aged adult. She also had an unusually large head and a remarkably childlike demeanor. For example, she would not talk to people she did not know, but she smiled and laughed frequently, with or without apparent reason.

15. Respondent regularly treats elderly patients who might have difficulty understanding and remembering the terms of a financial transaction. Therefore, it is his usual practice to require each patient who needs financing to be accompanied by a person who can provide assistance in making financial decisions, arrangements, and agreements.

16. Ms. Cordner's mother accompanied her daughter to Respondent's office and remained with her throughout each visit.

17. On July 6, 2010, Respondent quoted Ms. Cordner a total price of $5,250 for 20 visits and provided her with a form through which she applied for a credit card with CareCredit in order to pay for the treatment.

18. Mrs. Cordner was present while her daughter filled out the credit application, but did not involve herself in the process or assist Ms. Cordner to complete it.

19. At least one member of Respondent's office staff was also present while Ms. Cordner completed the credit application, but this staff member did not assist Ms. Cordner directly. Rather, Respondent's employee conversed casually with Mrs. Cordner while waiting for Ms. Cordner to complete the paperwork independently.

20. On July 6, 2010, Ms. Cordner was approved for $6,000 in credit from CareCredit, and Respondent charged $5,250 to the credit card.
21. The patient responsibility agreement provided to Ms. Cordner by Respondent's staff states Respondent's refund policy, in relevant part, as follows: "We will refund any unused cash, less charges for services rendered at the usual and customary fees charged by Utah Spine and Disc."\(^2\)

22. On July 12, 2010, following Ms. Cordner's fourth visit to Respondent's office, Mrs. Cordner notified Respondent's staff that her daughter did not wish to continue her treatment and would not be returning to the office.

23. Respondent did not initiate any refund process upon being notified that Ms. Cordner was terminating her treatment. Despite Respondent's stated policy of refunding any "unused cash," it is Respondent's practice to require a patient to affirmatively request a refund, even if the patient pays up front for an extended course of treatment and, thereafter, opts to discontinue the program.

24. None of the paperwork provided to Ms. Cordner clearly and conspicuously discloses that refunds are tendered only upon request.

25. Neither Ms. Cordner nor her mother affirmatively requested a refund of any part of the $5,250 purchase price at the time the treatment plan was cancelled.

26. Ms. Cordner never made any payments to CareCredit, which ultimately began a collection process against her. When these circumstances came to the attention of the Division, the information was referred to the Salt Lake County District Attorney's Office.

\(^2\) Additional language included in Respondent's refund policy states the following: "In order for any refund to be considered, I understand that I must complete the first 15 visits as well as a re-exam. This does not include the first two free treatments. If I terminate treatment prior to 15 visits I understand that I forfeit any refund what so ever [sic]." This disclaimer conflicts with the assurance, immediately following, that Utah Spine and Disc will refund any and all unused cash, with no stated restrictions. Given this confusing and conflicting language, the Board considers that Respondent may be held to his assurance that, as of a date of cancellation, the actual cost of any products or services not provided to the patient will be refunded in full.
27. On December 17, 2012, Respondent was charged criminally with exploitation of a vulnerable adult (case number 121911561, Third District Court, Salt Lake County, State of Utah).

28. Ms. Cordner passed away on March 12, 2013. Dr. Elizabeth Allen, the therapist who diagnosed Ms. Cordner with mild retardation, had also passed away as of that date.

29. Prior to March 28, 2013, the prosecuting attorney in the criminal case mentioned to Respondent's counsel that her case "was falling apart." She made this statement because she had been unable to contact Ms. Cordner and Dr. Allen to arrange for their evidence and testimony at trial. As of March 28, 2013, the prosecutor did not know that these key witnesses were deceased.

30. On March 28, 2013, Respondent e-mailed Division staff about the criminal case stating, in relevant part: "I was simply arrested and charged without good cause. ... [T]he district attorney has postponed the preliminary hearing two times and has stated that she has no desire to move forward on this case." The Division argues that, at all relevant times, these statements were false.

31. As to the first statement ("I was simply arrested and charged without good cause"), the prosecutor testified at hearing that she believed there was good cause for Respondent's arrest and the associated charge. However, that question was never adjudicated in the criminal case. Where that question involves a fairly complicated legal issue that is not before the Board or within its jurisdiction, the Board declines to consider further whether Respondent's statement about the basis for his criminal case was true or false.

32. The second statement ("[T]he district attorney has postponed the preliminary hearing two times") is not strictly accurate. According to the court docket, Respondent had
been arraigned as of January 29, 2013, and a hearing of some sort was scheduled for February 1, 2013. On January 29, 2013, the court granted a stipulated motion to continue the February 1, 2013 hearing, but without setting a new date. On March 1, 2013, a preliminary hearing was scheduled for April 18, 2013. That hearing was never held; instead, the prosecutor filed a motion to dismiss on April 17, 2013. However, the relevant issue—at least from the Division's perspective—is that the preliminary hearing, once clearly scheduled, was never postponed.

33. The third statement ("[The district attorney] has stated that she has no desire to move forward on this case") is not strictly accurate. As of the date of Respondent's e-mail, the district attorney had mentioned to Respondent's counsel that she had evidentiary challenges, but she had not stated a lack of desire to move forward. Similarly, while the district attorney was ultimately unable to move forward with the case due to her inability to call key witnesses, she did not motion for dismissal because she never had, or because she had but then lost, a desire to prosecute the case.

III. June 20, 2012 Subpoena.


35. Division investigator Dee Thorell visited Respondent's office undercover on June 19 and 20, 2012 to generate evidence from which it might be determined whether Respondent was practicing in his profession without a current license.

36. On June 19, 2012, Respondent took Ms. Thorell from the waiting room of his office into an exam room and gave her a brief physical examination. He identified minor problems with three discs and noted that Ms. Thorell was standing off center.
Respondent then had Ms. Thorell meet with his assistant for a compression treatment and a laser treatment.

37. On June 20, 2012, Ms. Thorell repeated the compression and laser treatments with a different assistant. As she left Respondent's office, she requested and received a copy of her patient file.

38. At no time during Ms. Thorell's treatment did Respondent or his staff know that Ms. Thorell was a Division investigator.

39. On June 20, 2012, following Ms. Thorell's second treatment, two Division investigators (not including Ms. Thorell) personally served Respondent with a subpoena and a cease and desist order. The subpoena required the complete patient chart for any patient examined, diagnosed, or treated by Respondent between June 1, 2012 and June 20, 2012.

40. The deadline for compliance with the subpoena was June 27, 2012. Respondent did not provide any patient charts to the Division by the deadline.

41. On July 5, 2012, Respondent filed an objection to the subpoena, making various legal arguments as to why it should be quashed. In relevant part, Respondent stated that he had no records responsive to the subpoena. This statement was false. At a minimum, Ms. Thorell's file was responsive.

42. Respondent's arguments in opposition to the subpoena were reviewed and adjudicated by W. Ray Walker, the Division's hearing officer and investigative subpoena authority.

43. On August 1, 2012, Mr. Walker issued an order denying the motion to quash, finding that the Division yet had issues to investigate under the subpoena, and ordering Respondent to provide records by August 13, 2012.
44. Respondent did not request reconsideration or review of Mr. Walker's order. The order has been in effect at all relevant times.

45. Respondent did not affirmatively provide any records to the Division by August 13, 2012.

46. At hearing, Respondent admitted to examining, diagnosing, and/or treating Ms. Thorell during the time period stated in the subpoena, but maintained that he did not examine, diagnose, or treat anyone else.³

47. Respondent and agents for the Division, including Division counsel, exchanged numerous e-mails regarding the investigation and the subpoena. In several of the e-mails, Respondent's counsel invites Division representatives to visit Respondent's office in order to verify whether Respondent had responsive records. The Division never visited the office.

48. The Division investigators who served Respondent with the June 20, 2012 subpoena and cease and desist order recorded their interaction with Respondent and his staff. The recording reveals the following:
   a. The investigators told Respondent's receptionist that they wished to see Respondent in person in order to effect service.
   b. The receptionist informed the investigators that Respondent would meet with them to accept service, but would not talk with them.

³ The Board does not find Respondent's claim to be credible. It simply defies reason to assume that over a period of 20 calendar days, during which time Respondent was unaware of his lapsed license, Respondent went to work as usual but unintentionally restricted his activities so that the Division's undercover investigator was the only patient he examined, diagnosed, or treated. Regardless, it is sufficient for this order to limit the inquiry to whether Respondent provided the one record he admits as being responsive to the subpoena; specifically, the record of Ms Thorell's treatment.
c. After accepting service, Respondent asked the Division investigators two questions:

   i. Respondent asked whether the Division hadn't already received the records identified in the subpoena. The investigator responded that the subpoena was in reference to a different matter; specifically, to an investigation into whether Respondent had practiced on an expired license.

   ii. Respondent asked if his lapsed license could be remedied by paying a fee and inquired why the Division had not sent him a bill. The investigator explained that Respondent would have to contact the Division for instructions regarding his license renewal.

In addition, one of the investigators explained that the cease and desist order prohibited Respondent from practicing until his license was successfully renewed.

d. The investigators' conversation with Respondent lasted three minutes and 36 seconds. At that point, the investigators asked to speak with Respondent's co-worker, Dr. Barry, and Respondent left to get him.

e. Respondent accompanied Dr. Barry back into the room and involved himself in the ensuing conversation regarding Dr. Barry's license status. The conversation lasted four minutes and three seconds. At that point, the investigators asked to speak with one of Respondent's employees, and Respondent left to get her.
f. While Respondent was away, Dr. Barry expressed to the investigators some frustration he was having in getting the results of his licensing examination, and the investigators expressed sympathy.

g. Respondent accompanied his employee back into the room. In answer to questions the investigators posed to the employee, Respondent stated that another chiropractic physician was on site to supervise her work.

h. In conversing with Respondent's employee, one of the Division investigators asked Dr. Barry to "be quiet." At no time did either investigator use the words "shut up."

i. The conversation with and about Respondent's employee lasted six minutes and ten seconds.

49. On August 28, 2012, Respondent wrote a letter to Francine A. Giani, Executive Director of the Utah Department of Commerce. In his letter, Respondent asserts that the Division investigators told him to "shut up" five times during their June 20, 2012 interaction with him. This statement is false.

IV. November 14, 2012 subpoena; standards for ultra sonic fat reduction and radio frequency skin tightening.

50. Division investigator Laurie Neff visited Newlife Body Contour on or about November 2, 2012 as part of an undercover investigation.

51. Division investigator Brittany Butsch visited Newlife Body Contour on or about November 14, 2012 as part of the same undercover investigation.

52. Both Ms. Neff and Ms. Butsch were treated in the Newlife Body Contour Center, undergoing treatments where ultrasonic fat reduction and/or radio frequency skin tightening techniques and/or other modalities were used on them.
53. At the time of these treatments, Respondent employed one or more master estheticians at Newlife Body Contour Center and had access to at least one licensed advance practice registered nurse (APRN).

54. Ms. Neff did not consult personally with a physician, an APRN, or a properly supervised physician's assistant in planning or undergoing treatment at Newlife Body Contour Center.

55. Utah Code § 58-1-102(8)(a)(i) defines "nonablative procedure" as any procedure that is expected or intended to alter living tissue, without going so far as to excise, vaporize, disintegrate, or remove any living tissue. The statute contemplates that a nonablative procedure would be expected or intended to permanently alter living tissue in a manner that falls short of actually destroying it.4

56. Respondent's employee, a licensed master esthetician, testified that an ultrasonic fat reduction treatment utilizes an ultrasonic frequency that penetrates a patient's fat cells to implode the fat into a liquidized form that can be eliminated through the patient's lymphatic system. The employee testified that a radio frequency skin tightening treatment stimulates collagen cells so that they turn over at a more rapid pace.

57. As to both treatments, the employee testified that they would be considered "nonablative." The Board agrees.

58. Both fat cells and collagen cells are living tissue and, according to Respondent's evidence, neither the ultrasonic nor the radio frequency treatment directly destroys such cells. However, it appears that the ultrasonic treatment is expected and intended to permanently alter fat cells by liquidizing them. Similarly, it appears that the radio frequency

4 Utah Code § 58-1-102(9) provides that a procedure that is expected or intended to temporarily alter living skin tissue by excising or removing dead skin cells—but with no meaningful risk of damage to any tissue below the outer layer of the epidermis—is considered a "superficial procedure" rather than a "nonablative procedure."
frequency treatment is expected and intended to permanently alter collagen cells so as to increase their production of collagen. In these circumstances, the Board finds that each treatment satisfies the statutory definition of a nonablative procedure.

59. On November 14, 2012, the Division served Timothy Schwen with a subpoena requesting the complete patient chart for any patients examined, diagnosed, or treated with ultrasonic fat reduction or radio frequency skin tightening between November 1 and November 14, 2012.

60. At all relevant times, Mr. Schwen was the office manager and registered agent for Newlife Body Contour.

61. The deadline for compliance with the subpoena was November 21, 2012. Respondent has never provided patient files or records in response to the subpoena. At all relevant times, Respondent has had at least two patient files that are responsive to the subpoena; specifically, Ms. Neff's and Ms. Butsch's.

62. In addressing the November 14, 2012 subpoena at hearing, Respondent emphasized that he never actually received it. Respondent also emphasized that he ceased to own Newlife Body Contour on November 14, 2012.

V. Respondent's television advertisement.

63. At relevant times, Respondent has aired a television commercial in which he is referred to as "Dr. Meadors." In the commercial, Respondent appears wearing a white lab coat and a stethoscope.

64. Nothing in the advertisement clearly discloses that Respondent is a chiropractic physician, not a licensed physician/surgeon.
65. Since being informed by the Division that such an advertisement may be considered violative of applicable regulations, Respondent has made appropriate corrections.

66. In addressing this commercial at hearing, Respondent emphasized that he was unaware of the advertising disclosure requirements until the Division brought them to his attention.

67. Respondent advertises extensively, airing as many as 30 television commercials per day. The Division did not review all of Respondent's advertisements before filing its petition in this matter.

CONCLUSIONS OF LAW


68. Utah Code § 58-73-501(10) provides that a chiropractic physician engages in unprofessional conduct if the licensee knowingly engages in billing practices that are abusive and represent charges that are fraudulent or grossly excessive for services rendered.

A. Laurel Hughes.

69. As found above, Respondent charged Laurel Hughes $1,000 for an orthotic insert, a price more than seven times what it cost Respondent to purchase the product from the manufacturer. The Board concludes that such a product markup is abusive and grossly excessive unless extensive and meaningful services are included with the product. In this case, Respondent did not provide Ms. Hughes with any of the services that might justify a $1,000 charge for an orthotic insert.

70. Where Ms. Hughes declined the orthotic after it was manufactured, Respondent incurred no additional costs—in labor or otherwise—to trim the inserts, fit them to Ms. 
Hughes's shoes, adjust them as needed over time, etc. According to Respondent's testimony, witnesses, and argument, it is these additional and attendant services that would justify charging $1,000 for a $137.58 product. In fact, the manufacturer testified that the orthotic has no value unless it is used in conjunction with his full treatment program, for which he charges his patients approximately $1,500.

71. In addition, when Ms. Hughes declined the orthotic, Respondent was on notice that he would not be required to provide any additional and attendant services. Nevertheless, he retained the total amount already charged to Ms. Hughes for those services. As such, the Board concludes that Respondent's billing practices were knowingly abusive and that he grossly overcharged Ms. Hughes for her orthotic inserts, in violation of Section 58-73-501(10).

72. In drawing this conclusion, the Board has considered Respondent's argument at hearing that Ms. Hughes was not charged anything for orthotic products or services because, after concluding her treatments, Respondent wrote off over $1,000 on her account. The Board disagrees.

73. According to Respondent's own accounting system, Ms. Hughes's account was debited $1,000 for the orthotic insert. If Respondent provided the insert and all related services free of charge, then Ms. Hughes's account should not have been debited at all. Alternatively, where Respondent did debit Ms. Hughes's account $1,000 for the insert, he later should have credited her account with that amount to demonstrate that the insert and any attendant services were, in fact, provided gratuitously. In either circumstance, Respondent's total write-off would have been reduced by $1,000.
74. As it is, Respondent collected $1,000 for the insert. Now, when the charge is challenged, Respondent wishes to metamorphose the charge into a loss. The Board does not credit this type of creative bookkeeping.

B. Lisa Cordner.

75. Respondent argues, and the Board agrees, that he could not have refused to treat Ms. Cordner, even if her mental disability raised the question of whether she clearly and actually understood her financial obligations. The Board also agrees that, at least in most circumstances, Respondent's policy of requiring a patient to involve another person in all financial decisions and commitments is sufficient to ensure that the patient's interests are protected.

76. Where Ms. Cordner's mother accompanied her daughter at every appointment, but did not involve herself in the paperwork or request that Respondent's employees give Ms. Cordner additional assistance, the Board finds nothing to place Respondent or his staff under an additional duty of care at the outset of the transaction with Ms. Cordner.

77. That being said, Respondent is required to comply with his own refund policy. After Ms. Cordner's fourth visit, Respondent was notified that she would not be continuing her treatments. At that point, Respondent was obligated to refund all unused cash on his own initiative. Where he failed to do so, the Board concludes that his actions were knowingly abusive and fraudulent, constituting a second violation of Section 58-73-501(10).

78. In drawing this conclusion, the Board notes Respondent's testimony that he was never personally informed that Ms. Cordner had terminated her treatment plan. However, even if true, this point is irrelevant. Respondent's office staff was actually notified of
the cancellation. The fact of the cancellation was entered into Respondent's business records. Respondent's refund policy stated affirmatively that all unused cash would be refunded. If Respondent does not wish to be personally involved in processing refunds in these circumstances, then he must train his staff to initiate a refund automatically and without a specific request from the patient. He may not avoid his own refund policy by avoiding personal knowledge of a cancellation.\(^5\)

II. Utah Code § 58-1-501(2)(h).

79. Utah Code § 58-1-501(2)(h) provides that a chiropractic physician engages in unprofessional conduct if the licensee practices or attempts to practice the profession by any form of communication that is false, misleading, deceptive, or fraudulent.

A. Respondent's motion to quash the June 20, 2012 subpoena.

80. As found above, Respondent falsely stated in his motion to quash the Division's June 20, 2012 subpoena that no record responsive to the subpoena existed. The Board concludes that this statement constitutes false, misleading communication and, as such, constitutes one violation of Section 58-1-502(2)(h).

B. Respondent's failure to comply with the June 20, 2012 and November 14, 2012 subpoenas.

81. As found above, Respondent has never provided records directly to the Division in response to the June 20, 2012 and November 14, 2012 subpoenas. The Board

\(^5\) In addition, the Board has concerns about language in Respondent's refund policy to the effect that a patient must complete at least 15 of the 20 scheduled visits and a re-exam before being eligible for any refund at all. As stated earlier, this language is concerning, first and foremost, because it contradicts the assurance immediately following that all unused cash will be refunded. Beyond that concern, it appears that Respondent would require a patient to use three-quarters of the initial investment, making only one-quarter subject to refund, even if the patient becomes unwilling or unable to continue treatment prior to the 16th visit. The Board would encourage Respondent to consider modifying his policy to ensure that, where he charges a patient up front for anticipated services, he also refunds in full the charge for any service not ultimately provided. See Utah Code § 58-73-501(13), which makes it unprofessional conduct for a chiropractic physician to receive "any fee, commission, rebate, or other compensation for professional services not actually rendered or supervised."
concludes that his failure to comply constitutes communication—or, more precisely, lack of required communication—that is deceptive. Therefore, Respondent's actions constitute two additional violations of Section 58-1-501(2)(h).

82. In drawing this conclusion, the Board has considered Respondent's argument to the effect that the Division was obligated to visit his office and review his records before alleging non-compliance with the subpoenas. The Board disagrees.

83. First, on serving the June 20, 2012 subpoena, the Division knew that Respondent had at least one responsive record. On serving the November 14, 2012 subpoena, the Division knew that Respondent had at least two responsive records. The Division had no need to visit Respondent's office in order to verify these facts.

84. More importantly, Respondent has cited no authority to demonstrate that the Division is required to assist a respondent in complying with a subpoena or that the Division has any obligation to effect compliance on a respondent's behalf if invited to do so. Nor has Respondent shown that a licensee has the right to alter a mode of compliance that is stated in a subpoena.

85. A person who applies for a license with the Division voluntarily subjects himself to the Division's jurisdiction and regulatory authority. If the licensee feels that the Division exercises its authority in an improper or unduly burdensome manner, there is recourse. However, a licensee may not ignore or circumvent a Division subpoena without also obtaining a finding, utilizing the proper and established legal mechanisms, that he is relieved from complying in the manner required by the subpoena. Respondent obtained no such finding in this case.
86. The Board has also considered Respondent's argument that the one record he now admits as being responsive to the June 20, 2012 subpoena—specifically, Ms. Thorell's file—was in fact provided to the Division because it was provided to Ms. Thorell, who was at all relevant times an agent of the Division. Therefore, Respondent argues that he should be deemed to have complied with the subpoena.

87. To accept this argument would be to find that Respondent complied with the subpoena unknowingly and prior to its being issued. The Board does not find it necessary to undertake an analysis of Respondent's logic on this point. Respondent's argument ignores the essence of the Division's allegation, which is that Respondent made a misrepresentation to the Division and interacted with the Division in a misleading manner.

88. The crux of the matter is as follows. Upon being presented with the subpoena, Respondent had at least one responsive record. Yet, he did not provide it and claimed it did not exist. The fact that the Division had the record does not mitigate or obviate Respondent's acting in a misleading manner.

89. The Board has also considered Respondent's explanation that he reviewed his insurance billing records, but found nothing to guide him as to which files might be responsive to the November 20, 2012 subpoena. The Board considers this argument irrelevant. Respondent examined, diagnosed, and treated Ms. Thorell. If his business records fail to document his activities, that is potentially an additional instance of unprofessional

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6 The Board also notes Respondent's complaint that the Division's investigation in this matter looks like a "sting." The Board is not inclined to address such a complaint unless Respondent provides legal authority to demonstrate that the Division was obligated to act other than as it did. Respondent has made no such showing.
conduct. Under no circumstances does it excuse his making a false statement to the Division regarding his activities or his failing to provide records responsive to the subpoena.

90. In addition, the Board has considered Respondent's argument that he was represented by counsel on June 20, 2012 when Division investigators visited his office to serve the subpoena and cease and desist order. Respondent argues that, in these circumstances, the service constitutes prohibited communication under Rule 4.2 of the Utah Rules of Professional Conduct and under Utah Administrative Code § R151-4-402(2)(b).

91. Rule 4.2 of the Utah Rules of Professional Conduct states: "A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction in the matter may communicate with a person known to be represented by a lawyer" only in specific stated circumstances. Respondent appears to argue that the rule prohibits the investigators' communicating with Respondent in this case. The Board disagrees, for three reasons.

92. First, it is not clear that the rule applies at all. It has not been established that the investigators were acting under a government lawyer's direction. In fact, Respondent's counsel explains in his post-hearing declaration that he declined to meet with the investigators prior to June 20, 2012 because an assistant attorney general—i.e., a government lawyer—had not been assigned to the case. Respondent may not have it both ways.

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7 See Utah Code § 58-73-501(4) Unprofessional conduct includes "failing to maintain patient records in sufficient detail to clearly substantiate a diagnosis, all treatment rendered to the patient in accordance with the recognized standard of chiropractic care, and fees charged for professional services."
93. Second, it is not clear that the investigators were engaged in a criminal or civil law enforcement matter. They were engaged in an administrative investigation, which is arguably a different animal altogether.

94. Third, it is not clear that Respondent was in fact "represented" by counsel on June 20, 2012. No administrative case had been filed against Respondent on that date. If Respondent considers himself to have been represented because he had an attorney on retainer or because he had hired an attorney in a past action, then Rule 4.2(c)(1) would allow the communication as being "in the course of, and limited to, an investigation of a different matter unrelated to the representation[.]"

95. Respondent has provided no legal authority to establish clearly that a regulatory agency may not converse or interact with a licensee who has an attorney on retainer or who has been represented in the past. Were that the case, bad actors could effectively shield themselves from regulatory oversight simply by paying an attorney a nominal monthly fee. Such circumstances would be patently contrary to basic principles of consumer protection and would effectively divest the Division of its statutory investigative authority.

96. Utah Administrative Code § R151-4-402(2)(b) states: "If a party is represented by an attorney, service shall be made on the attorney." In arguing that the Division investigators violated this rule, Respondent ignores the fact that the rule deals with service of pleadings and documents issued by a presiding officer. It does not govern investigations.
97. Respondent also ignores Utah Administrative Code § R151-4-110(1)(a), which establishes that a party is considered to be "represented by counsel ... if counsel submits a written notice of appearance." No such notice has ever been filed in this case.

98. In addition, at hearing, the Division investigator testified that, in response to his queries to counsel, Respondent's attorney repeatedly assured a forthcoming response, but never actually responded or scheduled a meeting. This testimony aligns with counsel's statement of his preferred practice not to meet with investigators. In these circumstances, the Division was justified in concluding that Respondent would have to be engaged directly.

99. Given the foregoing, the Board does not consider further Respondent's argument that the Division acted improperly by sending investigators to personally serve Respondent with a subpoena and cease and desist order prior to filing a case against him.

100. Finally, the Board has considered Respondent's arguments that he never personally received the November 14, 2012 subpoena and that he should not be held to comply with it because he did not personally treat any patients at the Newlife Body Clinic. The Board considers these arguments unpersuasive.

101. On the date of the subpoena, Respondent was the owner of the facility that was subpoenaed. He was not merely a shareholder or an investor; he was the owner. As such, he was responsible for the business operations and records. Respondent's registered agent accepted service of the subpoena. Therefore, Respondent is deemed to be on notice of the subpoena and is responsible for compliance.\(^8\) Where the subpoena requires records of the business activities—not records of Respondent's personal

\(^8\) See Patel v City of Los Angeles, 738 F.3d 1058 (9th Cir. 2013) in which the court explains that a business owner is responsible to comply with an administrative subpoena served on the owner's business.
activities at the business facility—the fact that Respondent did not personally see
patients is irrelevant.

C. **Respondent's failure to comply with the Division order to comply with the**

**November 20, 2012 subpoena.**

102. As found above, Respondent has never complied with the order of the Division's
hearing officer requiring Respondent to comply with the November 20, 2012 subpoena.
The Board concludes that his failure to comply constitutes communication—or, more
precisely, lack of required communication—that is deceptive. Therefore, Respondent's
actions constitute a fourth violation of Section 58-1-501(2)(h).

103. In drawing this conclusion, the Board has considered Respondent's argument that the
subpoena has never had a valid basis. His argument is as follows:

a. One, the subpoena was issued as part of an investigation into unlicensed activity.

b. Two, as soon as Respondent became aware that his license had lapsed, he took all
necessary steps to reinstate the license, including payment of a $500 civil penalty.

c. Three, Respondent's license was reinstated by the Division on June 20, 2012,
which date is within 120 days of the May 30, 2012 license expiration date.

d. Four, Utah Code § 58-1-308(5)(c) states: "Except as otherwise provided by rule, a
license that is reinstated no later than 120 days after it expires shall be
retroactively reinstated to the date it expired."

e. Five, there is no rule in place to override the operation of Section 58-1-308(5)(c)
in this case.
f. Six, under Section 58-1-308(5)(c), Respondent’s license must be deemed never to have expired, such that there is not now—and such that there never was—any basis on which to investigate alleged unlicensed activity.

104. Respondent urges that the Board must consider the above argument because it is not considered in Mr. Walker’s order on Respondent’s motion to quash the subpoena. The Board disagrees.

105. If Respondent’s argument was presented to, but never addressed by, Mr. Walker, his remedy was to request review of Mr. Walker’s order. On the other hand, if Respondent’s argument was never raised before Mr. Walker, it should have been. At this point, Respondent may be estopped from raising new issues that could and should have been raised in his motion to quash the subpoena. Therefore, the Board declines to consider any issues related to the legality or reasonableness of the Division’s subpoena and holds Respondent to Mr. Walker’s findings and order to comply.9

D. Respondent’s false statement to Francine Giani.

106. As found above, Respondent falsely stated to Francine Giani that Division investigators told him multiple times to "shut up" during service of the June 20, 2012 subpoena. The Board concludes that this statement constitutes false, misleading communication and, therefore, a fifth violation of Section 58-1-502(2)(h).

107. In drawing this conclusion, the Board has considered Respondent’s argument that his misrepresenting the investigators’ language is understandable because their behavior

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9 At hearing, Respondent also urged that the Division could have addressed his license lapse in a less heavy-handed manner. Specifically Respondent argued that it was not necessary to use an undercover investigator and to issue a subpoena in order to address a license lapse. Rather, the Division could have called Respondent to remind him of his obligation to renew his license. The Board agrees that the Division has a variety of processes available to it in investigating and interacting with licensees. However, where Respondent has demonstrated no legal authority to show that the Division was obligated to act other than it did, the Board declines to consider further Respondent’s complaints about choices the Division made in dealing with him.
toward him was so aggressive and unconscionable that it would be reasonable for him to remember the encounter as if he had been ordered to "shut up" multiple times. The Board disagrees.

108. Viewed objectively, there is nothing offensive or improper about the investigators' language or demeanor as caught on the audio recording of their June 20, 2012 interaction with Respondent, which lasted less than four minutes. The atmosphere of the interaction became somewhat strained when Respondent involved himself in the investigators' dealings with other people, and it appears from Respondent's tone of voice that he began to feel agitated. However, he wished the Division investigators "a good day" as they left his office. None of the participants raised their voices. The investigators did not threaten or interrogate Respondent. They did not argue with him or accuse him of any wrongdoing. They explained that they were serving a subpoena and a cease and desist order, and they attempted to answer Respondent's questions. Thereafter, they made no objection to Respondent's participating in their interaction with his co-worker and his employee.

109. It is clear to the Board, both from the recording and from Respondent's conduct at hearing, that Respondent becomes angry quickly and easily; that he is dismissive of the Division's authority; and that he feels the Division has targeted and victimized him. If Respondent felt threatened by the Division investigators, it is more likely due to his own psychology than to their behavior. The Board finds nothing in the record to justify or reasonably explain Respondent's misrepresentation to Ms. Giani regarding the investigators' conduct.

E. Respondent's inaccurate statements to Sally Stewart.
110. As found above, two of Respondent's statements in his e-mail to Sally Stewart regarding the status of his criminal case are not strictly accurate.

111. As to Respondent's statement regarding the delay of an initial hearing, the Board concludes that Respondent, who is not an attorney, did not fully understand the minutiae of the legal proceedings. Where a scheduled hearing had been postponed once by stipulation, the Board understands and is willing to overlook Respondent's failure to be strictly accurate as to the nature of the hearing and the number of postponements.

112. As to Respondent's statement regarding the prosecutor's state of mind and her desire—or lack of desire—to move the criminal case forward, the Board has more concern. Respondent would do well to consider carefully before making representations as to others' intentions, particularly where his professional license is at stake. In these circumstances, Respondent's false statement constitutes a sixth violation of Section 58-1-502(2)(h). That being said, it appears that Respondent was led to believe that the criminal case would not go forward and that, in fact, it did not go forward. In these circumstances, the Board is willing to allow Respondent some leeway in making a hasty and misguided representation as to the reason.

F. Respondent's television commercial.

113. Utah Code 58-67-102(12)(a)(iv) establishes that a person who practices a healing art, but who is not a licensed medical doctor, may not advertise using the word "doctor" in a manner that might cause a reasonable person to believe that the individual is a licensed physician and surgeon. Any such person must conspicuously describe "the branch of the healing arts for which the person has a license."
114. As found above, Respondent appeared in his commercial wearing a white lab coat and a stethoscope, and he is identified as "Dr. Meadors." The advertisement failed to specify that Respondent practices in the healing arts as a chiropractic physician. In these circumstances, the Board concludes that a reasonable person would likely be led to believe that Respondent is a licensed physician/surgeon. Therefore, the Board concludes that Respondent's commercial violated Section 58-67-102(12)(a)(iv) and constitutes a communication that is misleading to the public, making it a seventh violation of Section 58-1-502(2)(h).

115. In drawing this conclusion, the Board has taken into consideration Respondent's argument that he was unaware of Section 58-67-102(12)(a)(iv) until he was contacted by the Division about the problem advertisement. Even if true, this point is irrelevant. A licensed professional is deemed to know and understand the regulations that apply to him in his practice of the profession.¹⁰

116. Despite the above, Respondent's violation is somewhat mitigated by the fact that he promptly corrected his advertisement so as to appropriately disclose his credentials and professional license.

117. The Board has also considered Respondent's argument that the Division may not sanction him for improper advertising because it has not sanctioned similarly-situated licensees in the past. Respondent raised this equal protection argument at hearing, and the presiding officer agreed to allow post-hearing argument and briefing on the issue. Following hearing, the presiding officer ordered Respondent as follows:

¹⁰ See Vance v. Fordham, 671 P.2d 124, 129 (Utah 1983): "Members of a profession can properly be held to understand its standards of performance." See also Heinecke v. Department of Commerce, Division of Occupational and Professional Licensing, 810 P.2d 459, 465 (Utah App. 1991); "... the statutes and rules governing the nursing profession provided [licensee] Heinecke with adequate notice of the standards of the nursing profession."
Respondent shall provide records, which records may include notarized affidavits, regarding chiropractic physician(s) who have been previously engaged by the Division regarding failure to fully and accurately disclose their credentials in advertising. The records shall fully specify the facts of any prior case/situation so that it may be compared to Respondent's case.

118. Respondent has provided no notarized affidavits or other records fully specifying the facts of a prior case. Rather, Respondent's counsel has provided a declaration in which he attests that, to the best of his recollection, he previously assisted another chiropractic physician to correct an advertisement that was of concern to the Division and that, following the correction, no disciplinary action was taken.

119. Respondent's counsel does not provide the name of the chiropractic physician to whom he refers. He does not provide a Division case number. He does not specify the type of advertising, the nature of the misrepresentation, or any other facts that would allow for an inquiry into whether the licensee's situation was so similar to Respondent's that identical treatment is mandated. Respondent has not even provided enough information to allow verification that his counsel's recollection is correct. In these circumstances, Respondent has failed to satisfy his burden of proof to establish an affirmative defense of disparate treatment. Therefore, the Board does not consider this argument further.

III. Utah Code § 58-1-506(3).

120. Utah Code Ann. § 58-1-506(3) provides that a physician, a qualified nurse practitioner, or a properly supervised physician assistant must develop a treatment plan for, and

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11 Under applicable case law, a licensee who brings an equal protection/disparate treatment argument must do more than simply claim or allege it. He must "establish as a prima facie case that the administrative agency's action in his or her case was contrary to the agency's prior practice." Pickett v. Utah Department of Commerce, Division of Occupational and Professional Licensing, 858 P.2d 187, 191 (UT App. 1993) (internal quotations omitted) See also Kelly v. Salt Lake City Civil Serv. Comm'n, 8 P.3d 1048, 1056 (UT App 2000): "Meaningful disparate treatment can only be found when similar factual circumstances led to a different result without explanation;" Yardley v Dept of Corr., 2006 UT App 49: "To show inconsistency, a petitioner must demonstrate how 'similar factual circumstances led to a different result without explanation'" (quoting and citing Kelly).
conduct a face-to-face evaluation of, a patient undergoing a nonablative cosmetic medical procedure.

121. As found above, ultrasonic fat reduction and radio frequency skin tightening constitute nonablative cosmetic medical procedures. However, Respondent did not ensure that his employees complied with the regulations governing nonablative cosmetic medical procedures by having Ms. Neff meet with medical personnel to evaluate her and develop her treatment plan. Therefore, the Board finds that Respondent has violated Section 58-1-506(3).

122. Utah Code Ann. § 58-1-401(2)(b) provides that the Division may take action against a licensee who is found to have engaged in unprofessional conduct. Permissible actions include revoking, suspending, or restricting a license, placing a license on probation, and/or issuing a public or private reprimand to the licensee.

123. Respondent has been found to have engaged in ten instances of unprofessional conduct. His abusive billing practices have financially injured his patients and undermined the reputation and integrity of the chiropractic profession. Respondent's failure to comply with standards to ensure that patients will be properly monitored by medical professionals while undergoing nonablative cosmetic medical procedures has placed the health and safety of the public at risk. Where Respondent has repeatedly defied the authority and jurisdiction of the Division, where he has failed to educate himself regarding the regulations governing advertising and other standards within the profession, and where he is defiant in his position that he has never done anything wrong, the Board concludes that Respondent's license must be suspended for a period
of time in order to verify that he makes appropriate changes in his business practices to ensure the public safety going forward.

**RECOMMENDED ORDER**

On the basis of the findings of fact and conclusions of law outlined herein, the Utah Chiropractic Physician Licensing Board recommends to the Director of the Division (Director) that Respondent's license be revoked, with the revocation stayed immediately in favor of license suspension. While Respondent's license is suspended, he shall cease and desist from advertising and providing chiropractic and healing art services and treatments, whether provided by Respondent individually or through any company or business Respondent owns or operates, whether in whole or in part. The Board recommends that Respondent's license remain suspended for a period of at least six months, with the suspension being lifted in favor of license probation upon Respondent's complying with the following conditions to the satisfaction of the Board:

1. Respondent shall establish pricing for chiropractic and healing art services and treatments on a per-service, per-treatment, per-visit basis. Respondent shall disclose his pricing schedule up front to each patient who presents for treatment. If Respondent offers a package price that is discounted, each service, treatment, and visit shall be discounted proportionately.

2. Respondent shall establish a non-interest-bearing escrow trust account in which to hold and secure patient funds tendered in advance for anticipated or scheduled services. Respondent shall not draw from the trust account any money unless he can first demonstrate the following:

   a. that appropriate diagnostic steps were taken before the associated treatment or service was recommended to the patient;

   b. that the patient understood the associated treatment or service and consented to undergo it; and

   c. that the treatment or service was actually provided by Respondent or by a person properly trained and supervised by Respondent to provide the treatment or service.
3. Respondent shall modify his accounting procedures to provide each patient whose funds are secured in Respondent's trust account with an account balance statement at the conclusion of each service, treatment, or visit. The statement may be in paper or electronic form.

4. Respondent shall modify his refund policy so that it is clear and internally consistent. Respondent shall demonstrate that his refund policy complies strictly with all applicable statutes and regulations and that refunds are tendered promptly, whether they are requested or otherwise required.

5. Respondent shall revise his record-keeping system to ensure that it documents all patient information, diagnostic processes, treatment actions, and service providers on a per-service, per-treatment, per-visit basis.

6. Respondent shall provide all advertising, regardless of medium, to the Board for approval in advance of the advertising being disseminated to the public.

7. Respondent shall secure a peer supervisor to oversee all aspects of his professional practice, including business operations and record keeping. The peer supervisor shall be approved by the Board in advance. If the peer supervisor charges a fee for his or her services, Respondent shall personally bear the costs.

Upon Respondent's complying with the above conditions for obtaining a probationary license, the Board recommends that Respondent's license remain on probation for a period of five years, according to the following terms and conditions:

1. Respondent and his supervisor shall meet personally with the Board at the first regularly-scheduled Board meeting following issuance of the probationary license to discuss supervision goals. Goals shall include review of Respondent's billing and patient records, as well as any other aspects of professional and ethical practice that the supervisor finds to be of concern. Thereafter, Respondent shall meet with the Board on a quarterly basis.

2. While on probation, Respondent shall work under the supervision of his peer supervisor and bear any associated costs. Respondent's supervisor shall review at least 20% of Respondent's patient records on a random basis and bring to the Board's attention any records that are incomplete or that demonstrate a failure to comply with industry standards, whether as to patient treatment, billing, or otherwise.

3. Respondent shall cause Respondent's supervisor to submit reports to the Board and Division assessing Respondent's compliance with the substantive and ethical regulations governing the chiropractic profession. The reports shall be submitted monthly for the first six months of license probation and quarterly thereafter. The receipt of an unfavorable report may be considered to be a violation of probation.
4. At each meeting with the Board, Respondent shall provide for the Board's review his billing and treatment records for any patient who has funds in Respondent's trust account, but who has cancelled or missed three or more treatments or appointments. Respondent shall also provide for the Board's review any additional billing and patient records identified by his supervisor as being incomplete or otherwise faulty.

5. No later than Respondent's second quarterly meeting with the Board, he shall provide an essay detailing what he has learned from this disciplinary action.

6. Respondent shall provide all advertising, regardless of medium, to the Board for approval in advance of the advertising being disseminated to the public.

7. During each license renewal cycle while Respondent's license remains on probation, Respondent shall successfully complete an ethics course through the Federation of Chiropractic Licensing Boards PACE program (Providers of Approved Continuing Education). Any course Respondent proposes to complete in satisfaction of this requirement shall be approved by the Board in advance. Respondent may not use this ethics course to satisfy his ongoing continuing education requirement for license renewal.

8. At the Board meeting immediately following Respondent's completion of each ethics course, Respondent shall provide to the Board an essay detailing what he learned from the course and any changes he needs to make in his professional practice.

9. Respondent shall notify any employer or practice associate of Respondent's license probation. Respondent shall provide a copy of the final order to any employer or practice associate and cause any such employer or practice associate to acknowledge in writing receipt of the final order.

10. While on probation, Respondent shall be subject to random investigation by the Division, with or without notice, whether announced or under cover.

11. In the event Respondent does not practice for a period of sixty (60) days or longer, Respondent shall notify the Division and Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of his license probation. It shall be within the discretion of the Division and Board to modify this requirement if Respondent satisfactorily explains to the Division and Board that compliance in Respondent's case is impractical or unduly burdensome. Respondent shall work at least sixteen (16) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" as a chiropractic physician.

12. Respondent shall notify the Division and Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification shall be required regardless of whether Respondent is employed as a chiropractic physician.
13. If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. Respondent shall notify the licensing authorities of the jurisdiction to which Respondent moves of the provisions of the final order. Periods of residency or practice outside the State of Utah may apply to the license probation period if the new state of residency places equal or greater conditions upon Respondent as those contained in the final order.

14. Respondent shall maintain an active license at all times during the period of probation. Failure to do so shall be considered a violation of Respondent's probation.

15. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

16. Should Respondent violate or fail to comply with any term or condition of his license probation, the stay of his license revocation may be lifted following the Board's review of the circumstances. Such review shall be conducted in an informal proceeding without hearing.

17. Respondent's license probation may not be terminated early other than as specified in Paragraph 16 above.

This recommended order shall be effective on the signature date below.

DATED this 11th day of February, 2014.

Signed by the Presiding Officer pursuant to a grant of authority from the Utah Chiropractic Physician Licensing Board and on its behalf.

UTAH DEPARTMENT OF COMMERCE

[Signature]
Jennie T. Jonsson
Presiding Officer