

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of
Michael R. Pinkus, DC
License No. 1994

STIPULATION AND ORDER

WHEREAS, on or about May 31, 1990, the Minnesota Board of Chiropractic Examiners (Board) instituted the above-captioned matter by serving upon Michael R. Pinkus, DC (Respondent) a document entitled, "Notice Of Conference With Complaint Panel," a copy of which Notice is attached hereto and made a part hereof; and

WHEREAS, on June 19, 1990, Respondent and his attorney and representatives of the Board met in a conference to discuss the allegations set forth in the Notice; and

WHEREAS, based upon the conference discussion, the parties wish to resolve this matter without the necessity and expense of a contested case hearing by entering into the instant Stipulation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Respondent and the Board as follows:

A. During all times material herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice chiropractic in the State of Minnesota.

B. If the Board in its discretion does not approve this Stipulation, it shall be deemed withdrawn and of no evidentiary value and shall not be introduced or relied on by either party; except that Respondent agrees that, should the Board reject this Stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto.

C. Respondent expressly waives formal hearing on all facts and legal conclusions referenced herein and any and all procedures before the Board relative to said facts and conclusions to which he might otherwise be entitled by law. .

D. Respondent does not contest the facts and conclusions hereinafter following and grants that the Board may, for purposes of its proceedings relating to this Stipulation, consider the following as true:

1. Respondent was born in 1956. He graduated from Northwestern College of Chiropractic in 1983 and was licensed by the Board the same year.

2. Respondent practiced chiropractic in St. Louis Park, Minnesota, from 1984 through 1989. He moved to Florida in January 1990 and is not presently practicing.

3. At the conference with the Board's representatives on June 19, 1990, Respondent stated, among other things, substantially as follows with respect to the several allegations set forth in the Notice of Conference:

a. Most of the alleged recordkeeping deficiencies occurred only a short time after Respondent began practicing and may be attributed to his lack of experience. As Respondent's practice evolved, he devised better forms and maintained more complete and accurate records.

b. Respondent's billing practices were generally satisfactory, although errors did occasionally occur.

c. Patients' requests for the transfer of their records, including x-rays, were normally honored in a timely fashion. The instances of withholding cited in the Notice of Conference were unfortunate exceptions.

d. All multiple, single day adjustments which Respondent conducted were justified on the basis of the patients' acute conditions.

4. Proof at hearing of one or more of the allegations set forth in the Notice of Conference would empower the Board to take disciplinary action against

Respondent's license and to assess Respondent the cost of the proceeding. Minn. Stat. § 148.10, subd. 1 and subd. 3(c).

E. NOW, THEREFORE, IT IS FURTHER STIPULATED AND AGREED that upon this Stipulation the Board may forthwith adopt and implement the following Order:

1. At such time as Respondent resumes the practice of chiropractic in the State of Minnesota, he shall be on probation with the Board for two years. Periods of residency or practice outside of Minnesota will not apply to the expiration of the probationary period. During probation, the following terms and conditions shall apply:

a.1) Respondent shall make and maintain complete, accurate, current, legible, and readily retrievable records on every patient he sees in a professional capacity. At a minimum, each such record shall include:

- a) The patient's health history;
 - b) Respondent's examination findings, including findings relative to any and all chiropractic, neurological and orthopedic tests;
 - c) The results of any and all laboratory tests;
 - d) Any and all x-rays of the patient taken by Respondent and x-ray reports;
 - e) Respondent's diagnosis;
 - f) A treatment plan prepared by Respondent;
 - g) Progress notes based on the SOAP format;
 - h) Any and all insurance billings and receipts;
- and
- i) A ledger card, listing the dates of all visits by the patient, all services provided on each visit, and the dollar amount charged for each service provided.

2) For purposes of verifying Respondent's compliance with the foregoing requirements, Respondent shall promptly provide copies of any and all patient records which may be requested by the Board pursuant to this Order or Minn. Stat. § 148.104.

b. Any and all requests for the transfer of patient records, including x-rays, made in accordance with Minn. Stat. § 144.335 shall be complied with by Respondent within ten (10) days of the receipt of the request, regardless of the status of the patient's account.

c. Not less frequently than monthly, Respondent shall provide an itemized written statement to every patient whose account includes any unpaid balance.

2. Respondent is hereby assessed a civil penalty of \$5,000. Respondent shall cause the Board to receive a certified check, cashier's check or money order in the amount of one-fifth of the assessment (\$1,000) not later than ten (10) days from the date of this Order. The check or money order shall be made payable to the Minnesota Board of Chiropractic Examiners. The balance of the assessment (\$4,000) shall be due and paid immediately at such time as Respondent resumes the practice of chiropractic in Minnesota.

3. Respondent shall notify the Board in writing immediately upon any resumption of his practice in Minnesota.

4. If Respondent violates or fails to fully comply with any part of this Order, the same shall constitute the violation of a lawful order of the Board within the meaning of Minn. Stat. § 148.10, subd. 1(10) (1988) and grounds for disciplinary action by the Board. Unless otherwise agreed by the parties, the existence of any such violation or circumstance shall be determined in accordance with the procedures for contested cases set forth in the Minnesota Administrative Procedure Act and rules of the Minnesota Office of

Administrative Hearings; provided that this Order and the Stipulation of which it is a part shall be admissible into evidence without objection at any contested case hearing.

5. This Order and the Stipulation of which it is a part shall be deemed to be a public document.

F. IT IS FURTHER STIPULATED AND AGREED that this Stipulation shall not in any way limit or affect the authority of the Board to initiate contested case proceedings against Respondent on the basis of any act, conduct, or omission of Respondent occurring before or after the date of this Stipulation which is not directly related to the specific facts and circumstances or requirements set forth in paragraphs D and E hereof.

G. Respondent has voluntarily entered into this Stipulation without threat or promise by the Board or any of its members, employees or agents, and after consultation with and advice from Respondent's counsel.

H. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

Dated: 2 Oct, 1990

Michael R. Pinkus D.C.
MICHAEL R. PINKUS, DC
Respondent

Upon consideration of this Stipulation and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that the terms of this Stipulation are adopted and implemented by the Board this 11th day of October, 1990.

MINNESOTA BOARD

OF CHIROPRACTIC EXAMINERS

A handwritten signature in cursive script, appearing to read "Wilma E. Behm, DC".

WILMA E. BEHM, DC
President

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of
Michael R. Pinkus, D.C.
License No. 1994

STIPULATION AND ORDER

WHEREAS, on or about September 12, 1994, the Minnesota Board of Chiropractic Examiners (Board) instituted the above-captioned matter by serving upon Michael R. Pinkus, D.C. (Respondent), a document entitled "Notice of Conference With Complaint Panel" (Notice) a copy of which is attached hereto and made a part hereof; and

WHEREAS, pursuant to the Notice, Respondent and his attorney and representatives of the Board met on October 18, 1994, to discuss the allegations set forth in the Notice; and

WHEREAS, based upon the conference discussion, the parties wish to resolve this matter without the necessity and expense of a contested case hearing or other procedures by entering into this Stipulation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Respondent and the Board as follows:

A. During all times material herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice chiropractic in Minnesota;

B. If the Board in its discretion does not approve this Stipulation, it shall be deemed withdrawn and of no evidentiary value and shall not be introduced or relied on by either party; except that Respondent agrees that, should the Board reject this Stipulation and if this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto;

C. Respondent expressly waives formal hearing on all facts and legal conclusions referenced herein and any and all procedures before the Board relative to said facts and conclusions to which he might otherwise be entitled by law;

D. Respondent does not contest the facts and conclusions hereinafter following and grants that the Board may, for purposes of its proceedings relating to this Stipulation, consider the following as true:

1. Respondent's date of birth is September 30, 1956. He graduated from Northwestern College of Chiropractic in 1983, and was licensed by the Board that same year. Respondent practiced chiropractic in St. Louis Park, Minnesota, from 1984 through 1989. On October 11, 1990, the Board issued a Stipulation and Order (1990 Order) to Respondent to address concerns around his billing and record keeping practices. Under the terms of the 1990 Order, Respondent was placed on probation with the Board for two years and assessed a civil penalty. Under the terms of the 1990 Order, Respondent's probationary period did not run for periods of time when Respondent was out of the state and not practicing chiropractic. Respondent moved to Florida in December 1990. Respondent returned to practice in Minnesota in December 1991, and practiced until December 1993. Respondent has not practiced chiropractic in Minnesota since December 1993.

2. At the conference, Respondent stated essentially as follows with respect to the several allegations set forth in the Notice:

a) In October 1992, Respondent submitted to the Board various patient records in compliance with the terms of the 1990 Order. Members of the Board, expressing continued concerns over Respondent's practice, requested a further review of Respondent's records pursuant to the 1990 Order.

b) Respondent admits there is no signed permission slip in the patient record to treat patient PD, who was a minor. Respondent stated he normally requires a signed consent before treating a minor.

c) Respondent admits he did not comply with paragraph E.1.a.2) of the 1990 Order when he failed to provide complete patient records, including three Workmen's Compensation patient records, three personal injury patient records and three private insurance or private pay patient records. The records Respondent submitted were not in the categories

requested by the Board, and did not include billing records. Respondent stated he was practicing on a very limited basis and did not have enough records to submit to the Board. When the Board called Respondent's attention to the fact that no billing records had been submitted, he immediately supplied them.

d) Respondent stated he keeps his patient records in the SOAP format and, therefore, felt his patient progress notes were adequate. However, a review of the patient records submitted indicated that Respondent's patient progress notes were not adequate. Respondent did not record any changes in treatment plans or follow-up examinations; nor did he typically make subjective and objective findings. Respondent further failed to note improved or worsened conditions and failed to access other health records for patients. Respondent stated that the 1990 Order caused him to be more careful with his recordkeeping practices, but he acknowledged his recordkeeping lacked specificity in many respects, and did not rise to the standards required by the 1990 Order.

e) Respondent's diagnoses often were not supported by his documented examination findings. In many cases Respondent failed to provide adequate examinations for patients and failed to order radiographs when indicated.

f) Respondent admits he does not always obtain patients' vital signs, particularly if the patient is very young.

3. Proof at hearing of one or more of the allegations set forth in the Notice of Conference With Complaint Panel would empower the Board to take disciplinary action against Respondent's license and to assess Respondent the cost of the proceedings. Minn. Stat. §§ 148.10, subd. 1(10), (14), (18).

E. NOW, THEREFORE, IT IS FURTHER STIPULATED AND AGREED that upon this Stipulation the Board may forthwith adopt and implement the following Order:

1. Respondent is hereby **REPRIMANDED**.
2. Respondent is hereby assessed a **CIVIL PENALTY** of \$500. Respondent shall cause the Board to receive a certified check, cashier's check or money order within sixty

(60) days of the date of this order. The check or money order shall be made payable to the Minnesota Board of Chiropractic Examiners.

3. Respondent's license is hereby placed on **CONDITIONAL** status with the Board. Respondent's retention of his license is conditional upon his completion of the following:

a) Within ninety (90) days of the date Respondent begins to practice chiropractic, Respondent shall take and complete a course in recordkeeping. The course may be no less than eight (8) hours and must be approved by the Board.

b) Respondent shall take and shall pass the Special Purpose Examination of Chiropractic (SPEC) no later than April 1995. Respondent shall pass the examination with the recommended passing score of the National Board of Chiropractic Examiners of not less than 375. If Respondent does not pass the examination by April 1995, Respondent's license to practice chiropractic in the the State of Minnesota shall be automatically suspended. Such suspension shall remain in effect until such time as Respondent takes and passes the SPEC and is notified in writing by the Board that he may again practice.

c) The conditional status of Respondent's license to practice chiropractic shall be lifted upon a showing by Respondent that he has complied with paragraph E.3.a&b, above.

4. Any and all costs associated with Respondent's compliance with the terms and requirements of this Order, including the recordkeeping course and the SPEC requirement, described in paragraph E.3.a&b, above, shall be borne by Respondent.

5. At such time as Respondent resumes the practice of chiropractic in the State of Minnesota, Respondent's license shall be placed on **PROBATION** with the Board for three (3) years. Periods of residency or practice outside of Minnesota will not apply to the expiration of the probationary period.

6. During the period of probation, the following terms and conditions shall apply:

a) Respondent shall notify the Board as soon as he returns to any practice of chiropractic.

b) Respondent shall make and maintain complete, accurate, current, legible and readily retrievable records on every patient he sees in a professional capacity. At a minimum, each record shall include:

- 1) The patient's health history;
- 2) Respondent's examination findings, including findings relative to any and all chiropractic, neurological and orthopedic tests;
- 3) The results of any and all laboratory tests;
- 4) Any and all x-rays of the patient taken by Respondent and x-ray reports;
- 5) Respondent's diagnosis;
- 6) A treatment plan prepared by Respondent;
- 7) Progress notes based on the SOAP format;
- 8) Any and all insurance bills and receipts; and
- 9) A ledger card, listing the dates of all visits by the patient, all services provided on each visit and the dollar amount charged for each service provided.

c) For the purposes of verifying Respondent's compliance with the foregoing requirements, Respondent shall promptly provide copies of any and all patient records which may be requested by the Board pursuant to this Order or Minn. Stat. § 148.104.

d) Respondent shall permit authorized Board representatives to enter and inspect his chiropractic clinic, with or without notice, to verify Respondent's compliance with this Order and Minn. R. 2500.5000, relating to recordkeeping. A copy of said rule is attached hereto and made a part hereof.

e) Entry and inspection pursuant to paragraph E.6.d., above, may occur only during normal clinic hours when Respondent or an agent of Respondent is on the premises. Respondent shall promptly provide copies of any and all patient records requested

by the Board or its authorized representatives pursuant to this Order or Minn. Stat. § 148.104. The Board may remove records for up to 72 hours for examination and photocopying.

f) In the event the Board or its authorized representatives enter Respondent's chiropractic clinic pursuant to paragraph E.6.d., above, and in the event that the Board has not previously reviewed Respondent's patient records under this Order, Respondent shall have the right to an educational review of his records by representatives of the Board in lieu of further disciplinary action. Under such circumstances, the Board shall not have the right to exercise its authority under this provision until thirty (30) days have passed since an educational review has taken place.

g) Respondent may petition the Board for removal of his probation at any regularly scheduled Board meeting no sooner than three years from the effective date of this Order.

7. Respondent's failure to comply with any term, condition or requirement of this Order shall authorize and empower the Board to suspend Respondent's license for an indefinite period of time. Alternatively, the Board may extend the period of probation and its associated requirements.

a) The existence of any violation or cause referenced in paragraph 7 above, shall be determined by the Board at a regular or special meeting thereof. Respondent shall be given not less than thirty (30) days notice of the meeting. The notice shall specify all allegations and shall be accompanied by copies of all supporting documents and any written statements to be submitted to the Board. Respondent may likewise submit documents and written statements and shall have the opportunity to address the Board at the meeting. The Board's decision shall be based upon its judgment as to the preponderance of the evidence.

b) Any decision of the Board under this part indefinitely suspending Respondent's license or extending the period of probation shall be final and binding upon Respondent and shall not be subject to judicial review or to a judicial stay pending any attempt by Respondent to seek such review. In the event the Board indefinitely suspends Respondent's

license as provided under this part, Respondent shall not petition for reinstatement earlier than six (6) months from the date of suspension.

9. This Order and the Stipulation of which it is part, including all attachments, shall be deemed to be public documents.

F. IT IS FURTHER STIPULATED AND AGREED that this Stipulation shall not in any way limit or affect the authority of the Board to initiate contested case proceedings against Respondent on the basis of any act, conduct or omission of Respondent occurring before or after the date of this Stipulation which is not related to the facts, circumstances or requirements referenced herein.

G. Respondent has voluntarily entered into this Stipulation without threat or promise by the Board or any of its members, employees or agents, and after consultation with and advice from Respondent's counsel.

H. Respondent hereby knowingly and voluntarily waives any and all claims against the Board, the Minnesota Attorney General, the State of Minnesota and their agents, employees and representatives which may otherwise be available to Respondent under the Americans With Disabilities Act relative to the action taken or authorized against Respondent's chiropractic license under this stipulation.

I. This Stipulation contains the entire agreement between the parties, there being no other kind, verbal or otherwise, which varies this Stipulation. The 1990 Order is withdrawn and is no longer in effect.

Dated: 11 November, 1994


MICHAEL R. PINKUS, D.C.
Respondent