

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI STATE BOARD OF CHIROPRACTIC EXAMINERS
AND MICHAEL K. MILLER, D.C.

MICHAEL KELLY MILLER ("Miller" or "Licensee") and the Missouri State Board of Chiropractic Examiners ("Board") enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a chiropractor, No. 004675, will be subject to discipline based on the violations set forth in Part I hereof. Pursuant to § 536.060, RSMo. Supp. 2013, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo. Supp. 2013. The Board and Licensee jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo. Supp. 2013.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of

discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to him by law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Licensee acknowledges that he has received the investigative report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license as a chiropractor, License No. 004675, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo., and Chapter 331, RSMo. (as amended).

The parties stipulate and agree that the disciplinary order and disposition agreed to by the Board and Licensee in Part III herein is based only on the agreement set out in Parts I and II herein. Licensee understands that the Board may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either not currently known to the Board or which may be later discovered.

I.

Joint Stipulation of Facts

Based upon the foregoing, the Board and Licensee herein jointly stipulate to the following:

1. At all relevant times herein, Licensee has held a license to practice as a chiropractic physician in the State of Missouri, as issued by the Board pursuant to Chapter 331, RSMo. Licensee was initially issued a license by the Board in February of 1982.

2. At all times relevant herein, Licensee has owned and operated a chiropractic clinic organized as Brookside Health Services, Inc. d/b/a Waldo Rehabilitation Health & Wellness located at 7337 Broadway, Kansas City, Missouri ("clinic").

3. On or about April 29, 2014, in the United States District Court for the Western District of Missouri, Case No. 14-00103-01-CR-W-DGK, an Information was filed charging Licensee with one count of Health Care Fraud, in violation of 18 U.S.C. Sections 1347 and 2, a Class C Felony ("Information").

4. In summary, the Information was premised upon Licensee's conduct undertaken over a period of February 2009 through December 2011, during which time Licensee "*knowingly and willfully executed and attempted to execute a scheme and artifice to defraud a health care benefit program [Medicare], and to obtain, by means of false or fraudulent pretenses . . . money . . . under the custody or control of a health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, all in violation of 18 U.S.C. Sections 1347 and 2.*" (Emphasis added). A true and accurate copy of the Information is attached hereto as "Attachment A".

5. Specifically, the Information charged Licensee with knowingly and willfully engaging in a scheme to defraud Medicare by seeking reimbursement for "nerve block injections" being provided to numerous patients of his clinic, primarily for the purpose of purportedly relieving symptoms associated with diabetic neuropathy. As a result of his scheme, Licensee received at least \$879,582 in improper Medicare reimbursement payments. "Nerve block injections" are not, and were not during the times relevant herein, approved for reimbursement by Medicare because they are deemed to be experimental or investigational in nature, and hence not "medically necessary". See

Attachment A.

6. On or about April 30, 2014, Licensee entered into a written Plea Agreement with the United States Attorney for Western District of Missouri, which was filed with the United States District Court for the Western District of Missouri on that same date ("Plea Agreement"). In the Plea Agreement, Licensee admitted that he was guilty of the crime charged in Count One of the Information, and admitted that all material factual allegations contained in said Information were true. *See* Plea Agreement, Case No. 14-00103-01-CR-W-DGK. A true and accurate copy of the Plea Agreement is attached hereto as "Attachment B".

7. In the Plea Agreement, Licensee agreed to the following as an appropriate disposition of his case: (1) a sentence of imprisonment within the range of 15-21 months; (2) after imprisonment, three years of supervised release; (3) restitution to Medicare in the approximate amount of \$879,582; (4) no fines; and (5) forfeiture of [certain identified personal and real property owned by Licensee].

II.

Joint Conclusions of Law

1. The Missouri State Board of Chiropractic Examiners is an agency of the State of Missouri created and established pursuant to § 331.090, RSMo. Supp., for the purpose of executing and enforcing the provisions of Chapter 331, RSMo.

2. Michael K. Miller, D.C., was at all times relevant herein licensed to practice chiropractic pursuant to Chapter 331, RSMo., holding license No. 004675.

3. Section 331.060.2, RSMo. 2000, provides as follows:

"2. The board may cause a complaint to be filed with the administrative hearing commission

as provided by Chapter 621, RSMo., against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or the of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;”

* * *

4. Licensee’s admitted conduct, leading to entry of the Plea Agreement in the federal criminal proceeding described above, constitutes a violation of § 331.060.2(2), RSMo. 2000, in that such crime, without limitation, constitutes an offense “an essential element of which is fraud [or] dishonesty” and is an offense which is “reasonably related to the qualifications, functions or duties of” a chiropractor licensed pursuant to Chapter 331, RSMo.

5. Section 331.060.3, RSMo. 2000, provides in relevant part as follows:

“3. . . . Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination:

(1) Censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years; or

- (2) May suspend the license, certificate or permit for a period not to exceed three years; or
- (3) Revoke the license, certificate or permit.”

6. In view of the above, Licensee’s Missouri license to practice chiropractic is subject to discipline based upon the provisions of §§ 331.060.2 (2) and 331.060.3, RSMo. 2000.

III.

Joint Agreed Disposition

Based on the foregoing, the parties mutually agree and stipulate that, in lieu of formal disciplinary action against Licensee, the following shall constitute the resolution accepted by the Board and Licensee in this matter under the authority of §§ 536.060, 621.045.3, and 621.110, RSMo.:

1. Surrender of License. Licensee desires and agrees to voluntarily surrender his license to practice as a chiropractor, no later than Tuesday, January 27, 2015. Such surrender shall be effectuated by the delivery of Licensee’s chiropractic license certificate(s) to the attention of the Board’s general counsel, such delivery to be completed on or before January 27, 2015. Upon surrender of his license, Licensee shall cease to hold any authority to practice as a chiropractic physician in the state of Missouri, and shall immediately remove any signs, advertisements, websites, business cards, or any other broadcast or print media, which identify him as a “chiropractor”, “chiropractic physician”, “D.C.”, or any similar terminology which would imply licensure as such in the state of Missouri.

IV.

General Provisions

1. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.
2. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.
3. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 331, 610, and 620, RSMo., as amended. The parties further understand and agree that the disposition of this matter shall be reportable to any applicable state or national professional licensing and reporting databases.
4. Licensee, together with his partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo. (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any issue concerning or resulting in any way from the negotiation or execution of this Settlement Agreement. The parties acknowledge

that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

5. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, he may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

6. If Licensee requests review by the Administrative Hearing Commission, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement shall become effective the earlier of: a) 15 days after the document is signed by the Executive Director of the Board; or b) January 27, 2015.

Michael K. Miller, D.C.

Michael K. Miller, D.C.

Michael K. Miller, D.C.

01/15/2015
Date

Attorney for Licensee

Missouri State Board of Chiropractic
Examiners

Loree Kessler
Loree Kessler, Executive Director

1/21/15
Date

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