

**SOUTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS**

IN THE MATTER OF )  
THE LICENSE APPLICATION )  
OF JOSH G. BIBERDORF, DC )  
)

**ORDER**

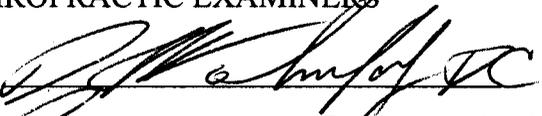
Josh G. Biberdorf, DC, having entered into a Consent Agreement, a copy of which is attached and incorporated by this reference, and the Board having fully considered the matter, it is hereby

ORDERED that the Proposed Decision of the Hearing Examiner dated May 25, 2011 is hereby attached, incorporated and adopted by the Board; and it is further

ORDERED that the Consent Agreement is hereby adopted, in total, and that Dr. Biberdorf shall fully comply with the order set forth in the Consent Agreement.

Dated this 30 day of September, 2011.

**SOUTH DAKOTA BOARD OF  
CHIROPRACTIC EXAMINERS**

By:   
Its: PRESIDENT - SDBCE

**STATE OF SOUTH DAKOTA  
BOARD OF CHIROPRACTIC EXAMINERS**

**IN THE MATTER OF THE LICENSE  
APPLICATION OF JOSH G.  
BIBERDORF, D.C.**

**PROPOSED DECISION  
MED 10-06**

This matter came on for hearing on January 6, 2011. Craig Kennedy and Andrew Marshall appeared on behalf of the South Dakota Board of Chiropractic Examiners (sometimes hereinafter referred to as "the Board"). Craig Pfeifle appeared on behalf of Josh G. Biberdorf, D.C.

**ISSUE**

Whether Dr. Biberdorf has committed unprofessional conduct, specifically, entering into a financial contract which would obligate a patient to pay for care to be rendered in the future.

Based on the evidence presented by the parties, the Hearing Examiner enters the following:

**FINDINGS OF FACT**

**I.**

Dr. Biberdorf is a graduate of Northwestern College of Chiropractic. He has been licensed to practice chiropractic in South Dakota since 1998.

**II.**

Dr. Biberdorf practices as part of the Black Hills Health & Wellness Center, a chiropractic clinic in Rapid City, South Dakota.

**III.**

After an examination and neurological, orthopedic, and chiropractic testing, Dr. Biberdorf makes a recommendation to each patient of the type of care and frequency of care as part of a chiropractic care plan. Hearing Transcript ("HT"), pp. 73-74.

**IV.**

Each care plan Dr. Biberdorf uses in his practice includes a "pre-pay" option. HT, p. 73.

## **V.**

After Dr. Biberdorf has developed a treatment plan and has estimated the number of treatments needed, the patient is presented a “breakdown” of fees. If the patient elects to undertake a treatment regimen, he or she is given a choice of prepaying or paying monthly. HT, p. 74.

## **VI.**

The “Chiropractic Care Plan” (Ex. 1) is an agreement between a patient and Dr. Biberdorf concerning payment for chiropractic services.

## **VII.**

If a patient elects to receive ongoing chiropractic services, the office manager for Black Hills Health & Wellness Center (not Dr. Biberdorf) reviews the chiropractic care plan with the patient. HT, p. 78.

## **VIII.**

Dr. Biberdorf’s patients are given two payment options: pre-payment or extended payment. Ex. 1, p. 2.

## **IX.**

Those patients who select the pre-payment option receive a discount from the usual and customary charges at Black Hills Health & Wellness Center. Ex.1, p. 2, para. 2a.

## **X.**

If a patient elects the pre-payment option “full payment is due within ten days of the effective date of this agreement [the Chiropractic Care Plan].” Ex. 1, p. 2.

## **XI.**

Black Hills Health & Wellness Center deposits pre-payments into a non-interest bearing account. The clinic withdraws funds from that account to pay for services rendered. HT, p. 74-75.

## **XII.**

Patients at Dr. Bieberdorf’s clinic may also choose an “Extended Payment Option” pursuant to which they “... agree to pay the fee in twelve equal consecutive monthly installments.” Ex. 1, para. 2b.

### **XIII.**

Patients who choose the Extended Payment Option have three options: providing the clinic with a credit card account number which will be processed once a month for the agreed upon amount; providing twelve post-dated checks; or a finance plan. *Id.*

### **XIV.**

The Chiropractic Care Plan "... has been designed as a financial agreement between your chiropractor and [the patient]. It is limited exclusively to the financial obligations of the parties." *Id.*, p. 8.

### **XV.**

The Chiropractic Care Plan concerns care to be provided in the future. Ex. 1, HT, p. 109.

### **XVI.**

Approximately twenty percent of Dr. Biberdorf's patients enter into patient care contracts.

### **XVII.**

Exhibit 1 is a copy of the contract which gave rise to this contested case. That "Chiropractic Care Plan" recommends a regimen of 60 chiropractic adjustments over a period of one year.

### **XVIII.**

The subject patient provided Black Hills Health & Wellness Center with six post-dated checks when that contract (Ex. 1) was signed. The patient was to provide a further six checks later. Ex. 1, p. 4.

### **XIX.**

Dr. Biberdorf made the recommendation for 60 adjustments over a one year period (Findings of Fact # XVII) following the subject patient's initial presentation.

### **XX.**

Dr. Biberdorf testified at the hearing that after making an initial recommendation concerning the number of treatments he reevaluates that recommendation after 8-12 treatments. HT, p. 94.

### **XXI.**

The "Chiropractic Care Plan", however, provides that "In the unusual

circumstance that your condition requires more or less care than projected by the doctor in the Recommended Care Plan on page 1, you will be notified immediately and together we will create a new and updated agreement.” Ex. 1.

## **XXII.**

Of the twenty plus prepaid contracts Dr. Biberdorf provided to the Board, he could not recall any in which the agreement was changed or updated concerning the number of recommended treatments. HT, pp. 95-96.

## **XXIII.**

Dr. Biberdorf began using Chiropractic Care Plans (such as Exhibit 1) in his practice approximately six to eight years ago. HT, pp. 72-73.

## **XXIV.**

Dr. Biberdorf obtained the Chiropractic Care Plans or contracts from an out-of-state practice management consulting firm. HT, p. 85.

## **XXV.**

Dr. Biberdorf has been aware for some time of the Board’s position that patient care contracts such as he uses in his practice violate applicable administrative rules. See HT, p. 85.

## **XXVI.**

Dr. Biberdorf did not submit the subject contracts to the Board for review prior to using them in his practice. HT, p. 85.

## **XXVII.**

There is no advantage gained by a patient who signs a contract with Dr. Biberdorf, except for the discount for pre-payment, which advantage may be lost if the patient elects to discontinue care.

## **XXVIII.**

The subject contracts are clearly intended to promote a perceived need for care and do so.

## **XXIX.**

The subject contracts require patients of Dr. Biberdorf to pay in advance for care to be provided in the future.

## **XXX.**

To the extent that any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

## **CONCLUSIONS OF LAW**

### **I.**

The South Dakota Board of Chiropractic Examiners has jurisdiction over the parties and subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision in this matter pursuant to the provisions of SDCL 36-5-15.2 and Ch. 1-26D.

### **II.**

The Board of Chiropractic Examiners is responsible for the professional discipline of chiropractors. SDCL 36-5-15.2.

### **III.**

The Board of Chiropractic Examiners may revoke the license of a chiropractor who is guilty of unprofessional conduct. SDCL 36-5-16.

### **IV.**

A chiropractor who enters into a financial contract which would obligate a patient to pay for care to be rendered in the future is guilty of unprofessional conduct. ARSD 20:41:09:01.

### **V.**

The Board of Chiropractic Examiners may impose sanctions upon a chiropractor for any violation of ARSD Ch. 20:41:09. ARSD 20:41:10:05.02.

### **VI.**

Upon satisfactory proof of professional conduct, the Board of Chiropractic Examiners may impose any of the following sanctions, or a combination thereof:

- (1) formal reprimand;
- (2) probation of license;
- (3) suspension of license;
- (4) revocation of license; or

(5) restitution and payment of all expenses of investigation and proceedings.

ARSD 20:41:10:05.05.

**VII.**

Dr. Beiberdorf has entered into financial contracts which obligate his patients to pay for care to be rendered in the future. In so doing, he is guilty of unprofessional conduct pursuant to ARSD 20:41:09:01.

**VIII.**

The Board of Chiropractic examiners has established the above-described unprofessional conduct by clear and convincing evidence.

**IX.**

The Board of Chiropractic Examiners having established unprofessional conduct by Dr. Biberdorf based upon clear and convincing evidence, he is therefore subject to discipline up to and including revocation of his license to practice chiropractic in the state of South Dakota.

**X.**

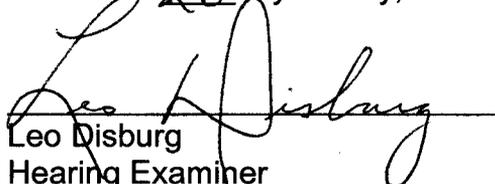
To the extent that any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

Based on the above Findings of Fact, and Conclusions of Law, the Hearing Examiner proposes the following:

**PROPOSED ORDER**

It is ordered that Josh Biberdorf, D.C., be subject to such discipline as the law allows and the Board of Chiropractic Examiners may deem appropriate.

Dated this 25 day of May, 2011.



Leo Disburg  
Hearing Examiner  
Office of Hearing Examiners  
523 E. Capitol  
Pierre, SD 57501

**SOUTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS**

IN THE MATTER OF )  
THE LICENSE APPLICATION )  
OF JOSH G. BIBERDORF, DC )

**CONSENT AGREEMENT**

IT IS AGREED by the South Dakota Board of Chiropractic Examiners (Board) and Josh G. Biberdorf, DC (Dr. Biberdorf) as follows:

1. Dr. Biberdorf holds an active South Dakota license for the practice of chiropractic.
2. The Board commenced an action against Dr. Biberdorf on August 25, 2010, alleging that Dr. Biberdorf had committed acts of unprofessional conduct, specifically violating ARSD 20:41:09:01.
3. A contested case hearing was held before Leo Disburg of the Office of Hearing Examiners on January 6, 2011.
4. Mr. Disburg entered proposed findings of fact, conclusions of law, and a proposed order on May 25, 2011.
5. It is the intent of the parties to this Consent Agreement to provide an agreed recommendation to the Board for the appropriate disciplinary action to be taken in this case.
6. Dr. Biberdorf agrees that by signing this Consent Agreement, he is waiving his right to appeal a final decision and order of the Board incorporating the proposed findings of fact and conclusions of law of the hearing examiner. He further understands and agrees that by signing this Consent Agreement he is voluntarily and knowingly waiving his right to present briefs and oral argument to the Board, and to appeal the Board's decision to circuit court.

7. Dr. Biberdorf agrees that the Board has the authority to enter into this Consent Agreement and to issue the following decision and subsequent order:

### **ORDER**

1. This Consent Agreement shall constitute a formal reprimand pursuant to SDCL 36-5-16.1 and shall take effect immediately upon its adoption by the Board. This Consent Agreement, and the Board's findings of fact and conclusions of law are public records of the Board and the State of South Dakota. The Consent Agreement, findings of fact and conclusions of law, and the Board's Order will be published on the Board's website, and reported to the national databank, and all other entities deemed necessary by the Board in compliance with state and federal law.
2. Dr. Biberdorf will be on probation for a period of twelve (12) months. Dr. Biberdorf will allow the Board, or its representatives, random access to his office and an opportunity to review his records during the period of probation solely to verify that Dr. Biberdorf has discontinued the use of contracts in violation of 20:41:09:01.
3. That Dr. Biberdorf will attend and successfully complete the ProBe Program in Denver, Colorado during the period of probation and provide the Board proof of successful completion within thirty (30) days thereafter. Dr. Biberdorf will bear the full expense of ProBe attendance, and will receive no continuing education credits for attendance at the program.
4. Dr. Biberdorf shall repay all expenses of the investigation and trial of this case, including attorneys' fees, in the sum of \$10,000.00, within thirty (30) days of entry of the Board's final order.

WHEREAS, Dr. Biberdorf has unconditionally accepted this Consent Agreement by

affixing his signature to this document.

By:   
Josh G. Biberdorf, DC

Date: 9/22/2011

By:   
Craig A. Pfeifle, Attorney for Dr. Biberdorf

Date: 9/22/2011

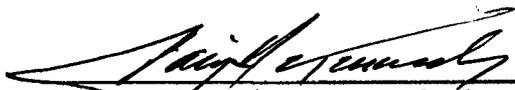
SOUTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

By:   
Marcia Walter, Executive Director

Date: 9/27/11

By: , D.C.  
Dr. Mark Bledsoe, Board Investigator

Date: 9-27-11

By:   
Craig A. Kennedy, Attorney for South  
Dakota Board of Chiropractic Examiners

Date: 9/26/11