

BEFORE THE BOARD OF CHIROPRACTORS
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF CASE NO. 2012-CHI-LIC-1093 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1747-2014
TREATMENT OF THE LICENSE OF)	
MICHELE LARSEN,)	
Chiropractor, License No. 718.)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

Dr. Michele Larsen appeals from the decision of the State Board of Chiropractors (Board) finding reasonable cause to believe Dr. Larsen committed acts or omissions that authorized the Board to take disciplinary action against her license.

Hearing Officer Caroline A. Holien convened a contested case hearing in this matter on September 19, 2014. Kevin Maki, agency legal counsel, represented the Department of Labor and Industry. Dr. Larsen appeared on her own behalf. Dr. Larsen; N.P.; James Matthew Barry, Special Investigations Unit (SIU) Manager for American National Property and Casualty Company (ANPAC); and Heidi Kaufman, Compliance Specialist, Business Standards Division, presented sworn testimony.

The parties stipulated to the admission of Department's Exhibits 1, 2, 6, 10, 13, 14, 16, and 17 and Dr. Larsen's Exhibits J and N. Department's Rebuttal Exhibit 18 was admitted over Dr. Larsen's objection that neither she nor N.P. had received copies of the letter dated August 7, 2012. The document was admitted after proper foundation was laid showing the authenticity of the document as well as it being part of the business records maintained by ANPAC during the regular course of business.

The parties declined the opportunity to submit post-hearing briefing.

Based on the evidence adduced at hearing, the following findings of fact, conclusions of law, and recommended decision are made.

II. ISSUE

Whether disciplinary action should be taken against the license of Dr. Michele Larsen under the provisions of Mont. Code Ann. § 37-1-136 and, if so, the proper discipline to be taken.

III. FINDINGS OF FACT

1. Dr. Michele Larsen has been a licensed chiropractor in the State of Montana since 1992. Dr. Larsen currently holds Montana license number 718. There has been no previous disciplinary action taken against Dr. Larsen's license. There are currently no restrictions or limitations on Dr. Larsen's license.

2. Dr. Larsen was previously a licensed chiropractor in Minnesota and Wisconsin for approximately two years. Dr. Larsen no longer holds those licenses. There was no disciplinary action taken against Dr. Larsen's license in either Minnesota or Wisconsin.

3. Dr. Larsen owned and operated her own chiropractic practice in Whitefish, Montana. Effective May 31, 2012, Dr. Larsen closed her business due to personal health issues. Dr. Larsen is not currently in an active chiropractic practice.

4. In approximately June 2008, Dr. Larsen began providing chiropractic treatment to N.P. for injuries sustained in an automobile accident. Dr. Larsen treated N.P. for approximately 13 months.

5. In August 2009, N.P. was injured in a second motor vehicle accident. On August 31, 2009, Dr. Larsen began treating N.P. for injuries sustained in that accident.

6. N.P. filed a claim against the other driver in the second motor vehicle accident. The other's driver's insurance company was ANPAC, which settled N.P.'s claim and agreed to pay for the cost of her treatment with Dr. Larsen and Angel Massage Therapy, LLC (Angel Massage).

7. On May 23, 2012, Dr. Larsen submitted N.P.'s treatment records to Randall Colbert, attorney for ANPAC. Included in Dr. Larsen's submission was a Re-examination Supplement, which she completed that same day during or shortly after treating N.P. Dr. Larsen wrote, "[N.P.] is at maximum medical improvement . . .".

Dr. Larsen noted N.P. should “continue treatment until May 30, 2012,” and “[N.P.] is at maximum medical improvement.” Dr. Larsen included an accounting of N.P.’s treatment during the period beginning August 15, 2009 through May 30, 2012. For each treatment, Dr. Larsen included a Health Insurance Claim Form, which included her SOAP notes. SOAP notes include the doctor’s subjective observations based upon information provided by the patient; objective observations of the doctor; an assessment of the patient’s situation; and a procedure or plan. Dr. Larsen included two blank Health Insurance Claim Forms dated May 29 and May 30, 2012, which she intended to show N.P. required two additional treatments before she reached “maximum medical improvement” on May 30, 2012. Dr. Larsen did not intend to “pre-bill” for the appointments scheduled for May 29 and May 30, 2012. Department’s Exhibit 2.

8. On or about June 26, 2012, ANPAC issued approximately 37 checks to Dr. Larsen. Unbeknownst to Dr. Larsen, ANPAC had erroneously included checks that had been made payable to Angel Massage.

9. On or about July 19, 2012, Dr. Larsen deposited all of the checks into her business account. Neither Dr. Larsen nor her bank noted that two of the deposited checks were payable to Angel Massage and not Dr. Larsen.

10. On July 31, 2012, Colbert sent Dr. Larsen a letter advising her that ANPAC would not be paying for services rendered on November 29 and November 30, 2012, which were incorrect dates. The actual dates of service were May 29 and May 30, 2012. Colbert noted ANPAC would not be paying for those dates of service as they had been billed in advance and were contrary to Dr. Larsen’s notation that N.P. had achieved “maximum medical improvement” in the accounting she had submitted on May 23, 2012. Department’s Exhibit 16.

11. On August 7, 2012, Dr. Larsen sent a certified letter to N.P. advising her of the situation. Dr. Larsen noted she had resubmitted her claim to Colbert requesting payment of \$653.00 for services rendered on May 29 and May 30, 2012. Larsen wrote: “Once I am paid, I will cut a check [sic] the portion of the checks that was accidentally deposited. Until I am paid in full, I will hold the money in escrow waiting payment.” Department’s Exhibit 1.

12. On August 7, 2012, Dr. Larsen sent a similar letter to Colbert stating, “I will hold the money in escrow that was accidentally deposited until I am paid in full either by [ANPAC] or by [N.P.]. Once I am paid in full, I will cut a check in the amount of the deposit intended for another practitioner.” Department’s Exhibit 10.

13. On August 7, 2012, Colbert prepared a letter informing Dr. Larsen that she had wrongfully received and kept two checks in the amount of \$360.00 and \$180.00 that were intended for Angel Massage. Neither Dr. Larsen nor N.P. received copies of this letter. However, a copy of the letter was included in ANPAC's file regarding N.P.'s claim. Department's Exhibit 18.

14. On August 7, 2012, Dr. Larsen transferred funds from her business account to a personal checking account. Dr. Larsen used her personal checking account for personal expenses, but "mentally noted" she had funds in the account meant to be held in "escrow" for N.P. Department's Exhibit 14.

15. On August 10, 2012, N.P. paid Angel Massage \$632.68 in settlement of the balance owed as a result of Dr. Larsen's receipt of the two checks she erroneously received from ANPAC. The amount paid by N.P. included interest that had accrued as a result of the balance being outstanding for several months.

16. On August 20, 2012, former ANPAC Claims Representative John Elet filed a complaint against Dr. Larsen with the Board. Elet was the ANPAC representative who had worked with Dr. Larsen and had requested she prepare a narrative regarding N.P.'s treatment.

17. On July 18, 2013, the Board's Screening Panel found reasonable cause to believe Dr. Larsen had committed unprofessional conduct and directed issuance of a Notice of Proposed Board Action and Opportunity for Hearing.

IV. CONCLUSIONS OF LAW

1. The Board has subject matter jurisdiction and legal authority to bring this action under Mont. Code Ann. §§ 37-1-131; 37-1-136; 37-1-307; 37-1-309; and Title 37, ch. 12.

2. A licensee may be found to have violated a provision of Mont. Code Ann. § 37-1-136 or a rule of unprofessional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly or negligently. Mont. Code Ann. § 37-1-320.

3. A licensee engages in unprofessional conduct by "misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds." Dr. Larsen violated Mont. Code Ann. § 37-1-316(13).

4. Dr. Larsen violated Mont. Code Ann. § 37-1-316(13) by failing to return funds she knew or should have known were intended for Angel Massage on behalf of her patient, N.P.

5. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(e).

6. Montana Code Annotated § 37-1-312(2) provides that in determining which sanctions are appropriate, the Board must first consider sanctions that are necessary to protect the public and only after that determination has been made may the Board then consider and implement requirements designed to rehabilitate the licensee. Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may impose a private reprimand and that the Board may further stay the imposition of a sanction.

V. RECOMMENDED ORDER

Upon careful consideration of what sanction, if any, is necessary to protect the public, the Hearing Officer recommends Dr. Larsen receive a public reprimand and be ordered to refund the costs and fees incurred by N.P. in the amount of \$632.68 within 30 days of this order. Dr. Larsen appears to have been cooperative in her dealings with the Department during the course of its investigation. However, Dr. Larsen has not yet appeared to be willing to accept responsibility for the fact that she held funds that she knew or should have known were intended to cover the costs of services provided to N.P. by another provider. Dr. Larsen's unprofessional conduct has imposed an undue financial burden upon N.P. and is contrary to the provisions of Mont. Code Ann. § 37-1-316(13).

DATED this 26th day of September, 2014.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
Hearing Officer

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.