

**BEFORE THE BOARD OF CHIROPRACTORS
STATE OF MONTANA**

In the Matter of the Proposed Discipline of TERAH MCCLAIN, Chiropractor, License No. 1063.	Case No. 2011-CHI-LIC-11 STIPULATION AND FINAL ORDER
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The Business Standards Division of the Department of Labor and Industry of the State of Montana (Department), through its legal counsel, and Terah McClain, D.C. (Licensee), through her legal counsel stipulate and agree as follows:

1. Jurisdiction. Licensee is licensed as a chiropractor by the State of Montana Board of Chiropractors (Board), Montana License No. 1063. The Board has subject matter jurisdiction in this matter.
2. Waiver of Rights. Licensee has read and understands each term of the *Notice of Proposed Board Action and Opportunity for Hearing* (Notice) and this Stipulation, and understands the various rights provided, including the right to a hearing before an impartial hearing examiner, the right to present evidence and testify and confront and cross-examine witnesses at the hearing, the right to be represented by legal counsel, the right to subpoena witnesses, the right to request judicial review and appeal, and all other rights under Montana Code Annotated Title 2, chapter 4, part 6 (Montana Administrative Procedure Act), Title 37, chapters 1 and 12, and other applicable law. Licensee desires to avoid unnecessary expenditure of time and other valuable resources to resolve this matter. Therefore, Licensee voluntarily and knowingly waives the rights listed above and elects to resolve this matter on the terms and conditions of this Stipulation and acknowledges that no promise, other than those contained in this Stipulation, and no threat or improper assertion has been made by the Board or Department or by any member, officer, agent or representative of the Board or Department to induce Licensee to enter into this Stipulation.

3. Release. This Stipulation is a final compromise and settlement of this contested case proceeding. Licensee, her assigns, agents, and representatives, releases the Board, its members, officers, agents, or representatives from any and all liability, claim, and cause of action, whether now known or contemplated, including but not limited to, any claims under Montana Code Annotated Title 2, chapter 9, part 3 (Montana Tort Claims Act), 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 of the matters raised in this case, its processing, investigation, litigation, or from the negotiation or execution of this Stipulation.

4. Entire Agreement. This Stipulation contains the entire agreement of the parties. All prior discussions and writings are superseded by this Stipulation, and no discussion by the Board prior to the approval of this Stipulation may be used to interpret or modify it. Any modification requires a written amendment signed by both parties and final Board approval.

5. Severability. If a court or administrative tribunal declares any term or condition contained in this Stipulation to be unenforceable for any reason, the unenforceable term or condition shall be severed from the remainder of this Stipulation, and the remainder of this Stipulation shall be interpreted and enforced according to its original intent.

6. Reservation. This Stipulation does not restrict the Board from initiating disciplinary action concerning allegations of unprofessional conduct that occur after the date Licensee signs this Stipulation or concerning allegations of conduct not specifically mentioned in this Stipulation that are now known to the board or yet to be discovered.

7. Stipulation Subject to Final Approval. This Stipulation is subject to final approval by the Board.

8. Renewed Right to Hearing – Inadmissibility of Stipulation. If the Board considers and does not approve this Stipulation, it is withdrawn and may not be considered as evidence for any purpose. Licensee will have a renewed 20 days from the date of the publicly noticed Board meeting to submit a written request for a hearing in this matter. Failure by Licensee to

request a hearing constitutes a default and allows the Board to enter a Final Order of discipline against Licensee. If, instead, this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any record relating to this Stipulation.

9. Entry of Final Order – Facts and Violations. Licensee disputes the facts and violations listed below, but consents to their entry by the Board in resolution of this matter. Licensee consents to the entry of a Final Order in this matter to the extent it is consistent with this Stipulation and has final approval by the Board.

Licensee practices chiropractic at Vital Energy Chiropractic in Helena, Montana.

On March 16, 2011, the Department received a complaint S.W. filed against Licensee and her husband, Dr. Michael McClain, who is also a licensed chiropractor practicing at Vital Energy Chiropractic.

S.W. indicated that on May 9, 2010, she attended a lecture where Dr. Michael McClain presented information on nutrition and benefits of receiving chiropractic treatment. Afterward, Dr. Michael McClain offered S.W. an examination at no charge.

S.W. presented to Vital Energy Chiropractic on May 11, 2010 for her examination. The complaint she filed detailed several concerns she had with Vital Energy Chiropractic's business practices:

A Vital Energy Chiropractic assistant conducted a thermal scan of S.W., making comments, "this isn't good at all," which left S.W. feeling uneasy.

Licensee informed S.W. that she needed to bring someone with her to the examination results appointment for emotional support. This comment made S.W. concerned that there was "something very seriously wrong" with her.

When S.W. presented for her examination results appointment, Dr. Michael McClain spoke to her and others in the waiting room about the human spine, nervous system, and overall health. S.W. expressed concern in her complaint about several comments made by Dr. Michael McClain regarding the importance of receiving chiropractic treatment from Vital Energy Chiropractic and disadvantages with certain medical treatment.

Dr. Michael McClain then proposed an 82-visit treatment plan for S.W., with a down payment of \$3,000 required before treatment. Knowing S.W. did not have insurance, Dr. Michael McClain suggested she apply for credit to finance the chiropractic treatment plan.

Counsel for Licensee and Dr. Michael McClain submitted a letter dated April 21, 2011, which explained Vital Energy Chiropractic promotes the benefits of chiropractic care.

Further, the letter indicated Licensee did not inform S.W. that she was required to bring another person to her appointment in order to discuss her examination results, citing to the office protocol for meeting with a patient.

With the concurrence of a member of the Screening Panel on March 21, 2011, the Department initiated an investigation into the allegations raised by the complaint.

On April 6, 2012, the Screening Panel again reviewed the complaints, Licensee's responses, and the completed investigation, and found reasonable cause to believe Licensee violated statutes, rules, or standards justifying disciplinary proceedings. The Screening Panel further directed the Department to serve Licensee with a formal Notice.

On October 4, 2013, the Board accepted a proposed Stipulation and entered a Final Order against Dr. Michael McClain in Case Nos. 2009-017-CHI, 2010-016-CHI, and 2010-017-CHI, which contained similar allegations to the facts and violations asserted in this matter.

The Board finds Licensee's actions constitute unprofessional conduct under Mont. Code Ann. § 37-1-316(5) and (18).

10. Stipulated Disciplinary Sanctions. Upon acceptance of this Stipulation by the

Board, Licensee agrees to the following:

a. Licensee must successfully complete one continuing education (CE) course in ethics and boundaries that is in addition to the Board's annual CE requirements.

i. Licensee must submit proof that she has completed the CE required by this Stipulation within 6 months of entry of the Final Order in this matter to the following address:


Business Standards Division
Department of Labor and Industry
Compliance Unit
301 South Park Avenue
P.O. Box 200514
Helena, MT 59620-0514

b. This Stipulation serves as a public reprimand for Licensee's unprofessional conduct, which occurred in 2009 and 2010.


11. Public Documents. The Notice and this Stipulation and Final Order issued by the

Board are public documents that the Department, at minimum, must make publicly available on the Department's website and professional databases, and may otherwise distribute to other interested persons or entities.

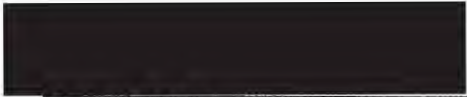
12. Complying with the Terms of the Stipulation. Licensee's failure to strictly abide by the terms of the Stipulation shall constitute a violation of the Final Order of the Board.


Terah McClain, D.C.
Licensee

Sept. 25, 2014
DATE


Kenneth K. Lay
Attorney for Terah McClain, D.C.

9-29-14
DATE



Kevin G. Maki
Department Counsel
Montana Board of Chiropractors

9-29-14
DATE

FINAL ORDER

The Montana Board of Chiropractors (Board) enters, as its Findings of Fact and Conclusions of Law, the facts and violations as stated in the Stipulation. The Board, giving primary consideration to the sanctions that are necessary to protect and compensate the public and secondary consideration to any sanctions designed to rehabilitate Terah McClain, D.C. (Licensee), approves, adopts, and incorporates the Stipulation into this Final Order.

DATED this 15th day of December, 2014.




Presiding Officer
Montana Board of Chiropractors

CERTIFICATE OF SERVICE

I certify I served a true and accurate copy of the foregoing *STIPULATION AND FINAL ORDER* via United States Postal Service, first-class postage prepaid, on the following:

Terah McClain, D.C.
c/o Kenneth K. Lay, Esq.
Crowley Fleck, PLLP
P.O. Box 797
Helena, MT 59624-0797

DATED this 18th day of December, 2014.



Department of Labor and Industry

Kevin G. Maki
Special Assistant Attorney General
DEPARTMENT OF LABOR AND INDUSTRY
Office of Legal Services
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P.O. Box 200514
Helena, MT 59620-0514
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**BEFORE THE BOARD OF CHIROPRACTORS
STATE OF MONTANA**

In the Matter of the Proposed Discipline of TERAH MCCLAIN, Chiropractor, License No. 1063.	Case No. 2011-CHI-LIC-11 NOTICE OF PROPOSED BOARD ACTION AND OPPORTUNITY FOR HEARING
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TO: Terah McClain, D.C.
c/o Kenneth K. Lay, Esq.
Crowley Fleck, PLLP
P.O. Box 797
Helena, MT 59624-0797

On April 6, 2012, the Screening Panel of the Montana Board of Chiropractors (Screening Panel) considered information presented by the Montana Department of Labor and Industry (Department) and directed issuance of this *Notice of Proposed Board Action and Opportunity for Hearing* (Notice) to Terah McClain, D.C. (Licensee).

A. FACT ASSERTIONS

1. Licensee is licensed by the Montana Board of Chiropractors (Board) to practice as a chiropractor, holding Montana License No. 1063. At all times relevant, the license was current and will expire on September 1, 2014, unless renewed.

2. 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, chapter 12.

3. Licensee practices chiropractic at Vital Energy Chiropractic in Helena, Montana.

4. On March 16, 2011, the Department received a complaint S.W. filed against Licensee and her husband, Dr. Michael McClain, who is also a licensed chiropractor practicing at Vital Energy Chiropractic.

5. S.W. indicated that on May 9, 2010, she attended a lecture where Dr. Michael McClain presented information on nutrition and benefits of receiving chiropractic treatment. Afterward, Dr. Michael McClain offered S.W. an examination at no charge.

6. S.W. presented to Vital Energy Chiropractic on May 11, 2010 for her examination. The complaint she filed detailed several concerns she had with Vital Energy Chiropractic's business practices:

a. A Vital Energy Chiropractic assistant conducted a thermal scan of S.W., making comments, "this isn't good at all," which left S.W. feeling uneasy.

b. Licensee informed S.W. that she needed to bring someone with her to the examination results appointment for emotional support. This comment made S.W. concerned that there was "something very seriously wrong" with her.

c. When S.W. presented for her examination results appointment, Dr. Michael McClain spoke to her and others in the waiting room about the human spine, nervous system, and overall health. S.W. expressed concern in her complaint about several comments made by Dr. Michael McClain regarding the importance of receiving chiropractic treatment from Vital Energy Chiropractic and disadvantages with certain medical treatment.

d. Dr. Michael McClain then proposed an 82-visit treatment plan for S.W., with a down payment of \$3,000 required before treatment. Knowing S.W. did not have insurance, Dr. Michael McClain suggested she apply for credit to finance the chiropractic treatment plan.

7. Counsel for Licensee and Dr. Michael McClain submitted a letter dated April 21, 2011, which explained Vital Energy Chiropractic promotes the benefits of chiropractic care. Further, the letter indicated Licensee did not inform S.W. that she was required to bring another person to her appointment in order to discuss her examination results, citing to the office protocol for meeting with a patient.

8. With the concurrence of a member of the Screening Panel on March 21, 2011, the Department initiated an investigation into the allegations raised by the complaint.

9. On April 6, 2012, the Screening Panel again reviewed the complaints, Licensee's responses, and the completed investigation, and found reasonable cause to believe Licensee violated statutes, rules, or standards justifying disciplinary proceedings. The Screening Panel further directed the Department to serve Licensee with this formal Notice.

B. CHARGE OF STATUTES, RULES, OR STANDARDS VIOLATED

Based on the fact assertions, the Screening Panel Found reasonable cause to believe Licensee violated each of the following statutes, rules, or standards, justifying disciplinary proceedings:

Mont. Code Ann. § 37-1-316. Unprofessional Conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part: . . .
(5) a misleading, deceptive, false, or fraudulent advertisement or other presentation in the conduct of the profession or occupation; . . .
(18) conduct that does not meet the generally accepted standards of practice.

C. STATEMENT OF RIGHTS AND PROCEDURES

1. You may request a hearing to contest these charges. To exercise the right to a hearing, you must send a written request within 20 days of receipt of this Notice, addressed as follows:

Becky Carter, Compliance Unit Supervisor
Business Standards Division
Department of Labor and Industry
301 South Park Avenue
P.O. Box 200514
Helena, MT 59620-0514

2. Failure to request a hearing within 20 days of the receipt of this Notice constitutes a default and allows the Board to enter a Final Order of discipline against you based on the facts available to it.

3. If you request a hearing within 20 days, the Commissioner of Labor and Industry will appoint an impartial hearing examiner to conduct the hearing. The hearing examiner will notify you and the Department of the time and place of the hearing. You have the right to appear in person or by or with counsel.

4. Procedural and substantive requirements governing this matter may be found at Montana Code Annotated Title 2, chapter 4, part 6 (Montana Administrative Procedure Act); Title 37, chapter 1, parts 1 and 3; and Title 37, chapter 12, including the right to a hearing before an impartial hearing examiner, the right to present evidence and testify and confront and cross-examine witnesses at the hearing, the right to be represented by legal counsel, the right to subpoena witnesses, and the right to request judicial review and appeal.


5. After a proposed decision of a hearing examiner, a default, or a stipulated agreement, the Board will issue a Final Order imposing one or any combination of the sanctions under ruled adopted by the Board under Mont. Code Ann. §§ 37-1-136 and 37-1-312(1) as follows:

- a. revocation of the license;
- b. suspension of the license for a fixed or indefinite term;
- c. restriction or limitation of the practice;
- d. satisfactory completion of a specific program of remedial education or treatment;
- e. monitoring of the practice by a supervisor approved by the disciplining authority;
- f. censure or reprimand, either public or private;
- g. compliance with conditions of probation for a designated period of time;
- h. payment of a fine not to exceed \$1,000.00 for each violation (deposited in the state general fund);
- i. denial of a license application; and/or
- j. refund of costs and fees billed to and collected from a customer.

6. You may request judicial review of a Final Order of the Board entered after consideration of a proposed decision of a hearing examiner by filing a petition in district court within 30 days of the issuance of a Final Order.

7. In lieu of a hearing, you may enter into a stipulated agreement resolving potential or pending charges that include one or more sanctions authorized by law.

DATED this 4th day of April, 2014.



Kevin G. Maki
Special Assistant Attorney General
DEPARTMENT OF LABOR AND INDUSTRY