

SETTLEMENT AGREEMENT

A. PARTIES

This Settlement Agreement is made by the North Dakota State Board of Chiropractic Examiners (Board) and Dr. Jeffrey Pokorny (Dr. Pokorny).

B. RECITALS

1. The Board regulates the practice of chiropractic in North Dakota. See North Dakota Century Code (N.D.C.C.) ch. 43-06.
2. N.D.C.C. §§ 43-06-15(1)(e) and 43-06-15(1)(l) authorize the Board to revoke, suspend, or take other action regarding the license of a chiropractor who engages in unprofessional or dishonorable conduct, renders excessive or inappropriate treatment, or charges unconscionable fees, or commits a violation of N.D.C.C. ch. 43-06 or the code of ethics or rules adopted by the Board.
3. Dr. Pokorny holds a license to practice chiropractic in the state of North Dakota (license number 734).
4. Dr. Pokorny is the subject of a complaint. The Board appointed a Peer Review Committee (PRC) to investigate and review this case pursuant to N.D.C.C. § 43-06-15(6). After reviewing the PRC Report, the Board determined that there is reasonable cause of nineteen (19) violations of N.D.C.C. § 43-06-15(1)(l) and North Dakota Administrative Code (N.D. Admin. Code) § 17-03-01-01(3), related to documentation, and N.D.C.C. § 43-06-15(1)(e), related to the charging of unconscionable fees, as follows:
 - a. Counts 1-2
 - i. Patient: C.H.
 - ii. Violation: N.D.C.C. § 43-06-15(1)(l), N.D. Admin. Code § 17-03-01-01(3), and N.D.C.C. § 43-06-15(1)(e).
 - iii. Dates of Service: 08/27/2020 and 08/31/2020.

iv. Finding: Blue Cross/Blue Shield was billed \$80.00 for a 98941 procedure on each date. Their explanation of payment lists a patient responsibility of \$76.41 for each date. The account statement indicates that the patient's charge is reduced by \$27.00 to \$53.00 (which is the PCC "cash fee schedule" rate). The resulting fee charged the patient is not consistent with what BCBS indicates is the patient's responsibility, so the fee charged the patient is "not right" making it an unconscionable fee [N.D.C.C. § 43-06-15(1)(e)]. Additionally, the PRC finds that because the resulting fee charged the patient is incorrect that makes it an inaccurate reflection of the fee that should be charged to the patient [N.D. Admin. Code § 17-03-01-01(3)].

b. Counts 3-4

- i. Patient: W.O.
- ii. Violation: N.D.C.C. § 43-06-15(1)(I), N.D. Admin. Code § 17-03-01-01(3), and N.D.C.C. § 43-06-15(1)(e).
- iii. Dates of Service: 08/24/2020 and 08/27/2020.
- iv. Finding: Medicare was billed \$50.00 for a 98943 procedure on each date. The Medicare remittance advices requested by the PRC for 08/24 and 8/27/2020 lists a patient responsibility of \$50.00 on each 98943. Medicare paid \$0.00 for each 98943. The patient's amount for the 98943 was reduced by \$29.00 (due to the supposed PCC "cash fee schedule") for each date even though the Medicare RA indicates that the patient is responsible for the full \$50.00. Due to these incorrect adjustments amounting to \$29.00 for each date the balance due from the patient is off by \$58.00 so the resulting fee charged the patient is "not right" making it an

unconscionable fee [N.D.C.C. § 43-06-15 (1)(e)]. Additionally, the PRC finds that because the resulting fee charged the patient is incorrect that makes it an inaccurate reflection of the fee that should be charged to the patient [N.D. Admin. Code § 17-03-01-01(3)].

c. Counts 5-6

- i. Patient: R.S.
- ii. Violation: N.D.C.C. § 43-06-15(1)(I), N.D. Admin. Code § 17-03-01-01(3), and N.D.C.C. § 43-06-15(1)(e).
- iii. Dates of Service: 08/18/2020 and 08/20/2020 rendered by Dr. Mason Pokorny.
- iv. Finding: Blue Cross/Blue Shield was billed \$80.00 for a 98941 procedure on each date and \$55.00 for a 98943 procedure on 08/18/2021. Their explanation of payment lists a patient responsibility of \$80.00 for the 98941 for each date and \$55.00 for the 98943. The account statement indicates that the patient's charge for each 98941 is reduced by \$27.00 to \$53.00 (which is the PCC "cash fee schedule" rate) and the 98943 charge is reduced by \$34.00 to \$21.00 (which is the PCC "cash fee schedule" rate). The resulting fee charged is not consistent with what BCBS indicates is the patient's responsibility, so the fee charged the patient is "not right" making it an unconscionable fee [N.D.C.C. § 43-06-15(1)(e)]. Additionally, the PRC finds that because the resulting fee charged the patient is incorrect that makes it an inaccurate reflection of the fee that should be charged to the patient [N.D. Admin. Code § 17-03-01-01(3)].

d. Counts 7-8

- i. Patient: R.S.
 - ii. Violation: N.D.C.C. § 43-06-15(1)(I), N.D. Admin. Code § 17-03-01-01(3), and N.D.C.C. § 43-06-15(1)(e).
 - iii. Dates of Service: 08/24/2020 and 08/26/2020 rendered by Dr. Jeff Pokorny.
 - iv. Finding: Blue Cross/Blue Shield was billed \$80.00 for a 98941 procedure on each date and \$55.00 for a 98943 procedure on 08/18/2021. Their explanation of payment lists a patient responsibility of \$80.00 for the 98941 for each date and \$55.00 for the 98943. The account statement indicates that the patient's charge for each 98941 is reduced by \$27.00 to \$53.00 (which is the PCC "cash fee schedule" rate) and the 98943 charge is reduced by \$34.00 to \$21.00 (which is the PCC "cash fee schedule" rate). The resulting fee charged is not consistent with what BCBS indicates is the patient's responsibility, so the fee charged the patient is "not right" making it an unconscionable fee [N.D.C.C. § 43-06-15(1)(e)]. Additionally, the PRC finds that because the resulting fee charged the patient is incorrect that makes it an inaccurate reflection of the fee that should be charged to the patient [N.D. Admin. Code § 17-03-01-01(3)].
5. Dr. Pokorny acknowledges he has been informed and understands he has a right to seek the advice of legal counsel to assist him in this matter.
 6. Dr. Pokorny acknowledges he has been informed and understands he has a right to a hearing and appeal under N.D.C.C. ch. 28-32 prior to any adverse action being taken against his license.

7. The Board and Dr. Pokorny wish to resolve this matter without an administrative hearing.

C. AGREEMENT

The Board and Dr. Pokorny agree to resolve this matter as follows:

1. Dr. Pokorny waives his right to an administrative hearing and appeal under N.D.C.C. ch. 28-32.
2. Dr. Pokorny's license to practice chiropractic will be placed on probation until such time as the following conditions are met:
 - a. Civil Penalty: Pursuant to N.D.C.C. § 43-06-15(8)(f)(2), Dr. Pokorny shall pay a civil penalty to the Board in the amount of \$500.00 per violation, for a total civil penalty of \$4,000.00. This civil penalty may be paid in full or by arrangement of a payment plan over the course of 6 months from the date of execution of this Settlement Agreement.
 - b. PRC fees and costs: Dr. Pokorny shall be responsible for payment of the PRC's fees and costs in the amount of \$14,625.00. This may be paid in full or by arrangement of a payment plan over the course of 6 months from the date of execution of this Settlement Agreement.
 - c. Monitoring: Dr. Pokorny shall successfully complete two (2) quarters of monitoring and review with KMC University at Dr. Pokorny's sole expense. Dr. Pokorny shall be responsible for contacting and scheduling the monitoring with KMC University directly. The reviews will meet the following criteria:
 - i. Each quarterly review will include a review of ten (10) randomly selected patient files. KMC University will determine the method for randomly selecting the files. All of the reviewed files will be files where Dr. Pokorny provided treatment to the patient. If Dr. Pokorny has not provided treatment to ten (10) patients, then

KMC University will review the files of the patients that Dr. Pokorny has treated, if any.

- ii. Each review will focus on:
 - (a) Dr. Pokorny's chiropractic practice, including Dr. Pokorny's chiropractic treatment and notes to determine whether they comply with generally acceptable professional standards of practice and care, in particular:
 - (1) Whether an appropriate examination was conducted to reach the diagnosis made for the patients;
 - (2) Whether the protocol provided was appropriate as to the amount, frequency, and method to reflect the appropriate utilization of chiropractic treatment;
 - (3) Whether the patient files are maintained in an appropriate and adequate manner;
 - (4) Whether Dr. Pokorny is practicing chiropractic in accordance with generally accepted standards of chiropractic practice;
 - (5) Whether Dr. Pokorny is practicing chiropractic in compliance with applicable statutes, rules, and regulations;
 - (6) Whether Dr. Pokorny is practicing chiropractic with reasonable skill and safety to patients; and
 - (7) Whether Dr. Pokorny's billing is accurate and corresponds correctly to the levels of service provided.
 - (b) Dr. Pokorny's provision of services as billing officer for his chiropractic clinic, including reviewing the data entry,

billings, and claim submissions to determine whether the medical records reflect the patient received the service reflected by the code description as identified on the claim; whether the services are billed under the proper provider name and number; whether the claim submission accurately reflects the evaluation and treatment of the patient; and whether the bills and claim submissions comply with generally acceptable standards of practice. Although it is not the role of KMC University to review the chiropractic practice of any chiropractor employed by the clinic other than Dr. Pokorny (if any), it will review the notes and treatment of other chiropractors employed by the clinic to the extent necessary to conduct a proper review of the billings, data entry, and claim submissions; and

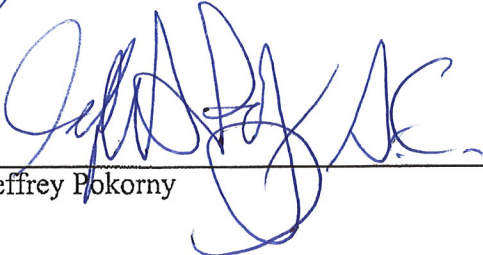
- (c) Dr. Pokorny's provision of services as billing supervisor for the clinic, including reviewing whether individuals performing the billing functions are properly trained, qualified, and supervised to perform the assigned billing functions.
- iii. KMC University will provide a written report or evaluation to the Board and Dr. Pokorny after each review. Each report will identify and explain any concerns or deficiencies raised by the review. If the report or evaluation identifies concerns or deficiencies, the report will include remedial recommendations for the concerns or deficiencies.
- iv. Within fifteen days of being notified by KMC University of any concern or deficiency, Dr. Pokorny will provide to the Board and

KMC University a written corrective action plan of how the concern or deficiency will be addressed and remedied. The corrective action plan will specify the dates by which corrective actions will be completed. Within sixty days of being notified by KMC University of any concern or deficiency, Dr. Pokorny will demonstrate to KMC University and the Board that he has addressed and remedied the concern or deficiency.

- v. KMC University will give written notice to the Board and Dr. Pokorny if it determines Dr. Pokorny is not being cooperative with the reviews.
- vi. KMC University's reviews under this Settlement Agreement conclude after two (2) quarters, unless agreed to otherwise by the parties. Although the reviews may discontinue after two (2) quarters, if any concern or deficiency is raised by KMC University in its last reviews, Dr. Pokorny must continue monitoring with KMC University as set forth above until such time as KMC University raises no concerns or deficiencies.
- vii. If KMC University sees no concerns or deficiencies prior to the end of the two (2) quarters, KMC University may notify the Board and the Board may terminate monitoring early, at its sole discretion.
- viii. Should Dr. Pokorny's license become suspended under the terms of this Settlement Agreement, the monitoring will be suspended until such time as Dr. Pokorny's license is reinstated and shall continue as set forth above.
- d. Dr. Pokorny will comply with the law and rules governing the practice of chiropractic in any jurisdiction in which he may practice as a chiropractor.

3. A violation of this Settlement Agreement is a violation of N.D.C.C. § 43-06-15(1)(n) and grounds for disciplinary action. The Board shall determine, in its sole discretion and without a hearing or appeal, whether Dr. Pokorny has fulfilled the terms of this Settlement Agreement. If Dr. Pokorny fails to fulfill the terms of this Settlement Agreement, including compliance with and completion of the monitoring, the Board may take further disciplinary action against his license without a hearing or appeal.
4. This and any subsequent disciplinary action will be reported in accordance with N.D. Admin. Code § 17-03-02-03.
5. The terms of this Settlement Agreement apply in any jurisdiction that Dr. Pokorny may practice as a chiropractor.
6. No breach of any provision of this Settlement Agreement can be waived by an undersigned party unless in writing. Waiver of any one breach by an undersigned party shall not be deemed to be a waiver of any other breach of the same or any other settlement provision.
7. There are no covenants, promises, undertakings, or understandings other than as specifically set forth in this Settlement Agreement.
8. This Settlement Agreement shall be governed by the substantive laws of the State of North Dakota without regard to conflicts of law principles.
9. The undersigned parties represent and declare that in signing this document they rely solely upon their own judgment, belief, and knowledge and the advice and recommendation of their own independently selected counsel, if any, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in signing this document by representations or statements, except those referred to or contained in this document.

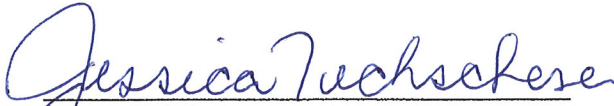
Dated this 21 day of February, 2024.



Dr. Jeffrey Pokorny

STATE OF NORTH DAKOTA)
COUNTY OF Stark)

This record was acknowledged before me on
this 21 day of February, 2024 by Dr. Jeffrey Pokorny.



Notary Public

JESSICA TUCHSCHERER
Notary Public
State of North Dakota
My Commission Expires Nov. 6, 2027

Dated this 1 day of March, 2024.

NORTH DAKOTA STATE BOARD OF
CHIROPRACTIC EXAMINERS

By: 

Dr. Sheri Ten Brock, President