

**BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS**

**FILED**

CAB

AUG 19 2008

In the Matter of )  
 )  
**David Matheny, D.C.** )  
Kansas License No. 1-03279 )  
\_\_\_\_\_ )

KS State Board of Healing Arts

KSBHA Docket No. 08- HA-00072

**CONSENT ORDER**

**COMES NOW** the Kansas State Board of Healing Arts ("Board"), by and through Dan Riley, Associate Counsel ("Petitioner"), and David Matheny D.C., ("Licensee"), and move the Board for approval of a Consent Order affecting Licensee's license to practice chiropractic in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is P.O. Box 517, 122 E Park, Gardner, Kansas 66030.

2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-03279 on or about June 15, 1973. Licensee holds a current "active" license to engage in the practice of chiropractic, having last renewed on December 31, 2007.

3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the healing arts, specifically the practice of chiropractic, K.S.A. 65-2801 *et seq.*

4. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. The Disciplinary Panel authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his right to a hearing and/or to dispute or otherwise contest the allegations contained herein before the Board. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. Petitioner has investigated and has reasonable cause to believe that with respect to at least six (6) patients, Licensee failed to maintain adequate patient records related to patient intake, examination and treatment, services rendered, pertinent

findings and test results. Petitioner also alleges that Licensee specifically failed to adequately evaluate and document x-ray impressions utilized in patient diagnosis and treatment, and failed to adequately identify and document impressions referenced in patient records. These allegations, if proven, constitute unprofessional conduct and are grounds for discipline pursuant to K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b) (25) and also K.S.A. 65-2836(k) and K.A.R. 100-24-1.

1. In lieu of concluding the pending formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following provisions with respect to his license to engage in the practice of chiropractic in Kansas:

**a. EVALUATION AND MONITORING OF PATIENT RECORDS**

The record keeping, documentation, office processes and coding and billing processes of the Licensee will be assessed and monitored by Compliance Coding Initiatives Inc. as documented in the document incorporated by reference and attached as

ATTACHMENT A. The plan includes:

Development of a Practice Compliance Plan

Medical Record Documentation Review

Education and Training

Operations Assessment

Coding and Billing Processes Assessment

Reports to the Board - Including an Initial Assessment, Progress Report on or before February 15, 2009, and a Final Report upon completion of all components of

ATTACHMENT A.

## **b. EVALUATION AND MONITORING OF PATIENT X-RAYS**

The X-ray techniques of Licensee shall be reviewed and monitored and over-reads conducted by Dr. Doran Nicholson D.C., Midwest Radiology, Lees Summit Missouri, (reviewer) for a period of not less than 12 months from the date of this agreement, subject to extension based upon the progress as evaluated by the reviewer. The evaluation shall include all aspects related to the use of x-ray impressions including technique, interpretation, documentation and the utilization of x-rays in patient diagnosis and treatment. The number of new patient files on which monitoring and over-reads shall be conducted shall be as follows:

### **i) PHASE 1**

33% of new patient files in which x-rays are taken shall be randomly selected by reviewer for a period not less than six (6) months from the execution of this Consent Order. Reviewer may extend the (6) month period upon documentation of unsatisfactory progress by Licensee. Review/monitoring process shall include recommendations for chart modifications when deemed necessary by reviewer. A report shall be submitted by reviewer to the Board not later than 2/15/09.

### **i) PHASE 2**

Upon reviewer's recommendation of Licensee's adequate progress in PHASE 1, reviewer shall select not less than 10% of new patient files in which x-rays are taken shall be randomly selected for a period not less than three (3) months. Reviewer may extend the (3) month period upon documentation of unsatisfactory progress by Licensee. The review/monitoring process shall include recommendations for chart modifications when deemed necessary by reviewer. A report shall be submitted by the reviewer to the Board at the conclusion of

Phase 2.

ii) PHASE 3

Upon reviewer's recommendation of Licensee's adequate progress in PHASE 2, reviewer shall select not less than 5 new patient files in which x-rays are taken per month, shall be randomly selected for a period not less than three (3) months. Reviewer may extend the (3) month period upon documentation of unsatisfactory progress by Licensee. Review/monitoring process shall include recommendations for chart modifications when deemed necessary by reviewer. A report shall be submitted by the reviewer to the Board at the conclusion of Phase 3.

13. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

14. Nothing in the Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints received under the Risk Management law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

15. Licensee hereby releases the Board, its individual members (in their official and personal capacities), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to, those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601

*et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against Releasees.

6. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.

7. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

8. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

9. Licensee, by signature to this document waives any objection to the participation of the Board members, including the Disciplinary Panel, and General Counsel in the consideration of this offer of settlement. Licensee agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceeding on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or

admitted as evidence.

20. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

21. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

22. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-1068.

23. Licensee shall obey all federal, state and local laws and rules governing the practice of the healing arts in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

24. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

25. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that in lieu of concluding the presently pending formal proceedings, Licensee, by his signature affixed to this Consent Order, voluntarily

agrees to the following provisions regarding his license to practice chiropractic in Kansas

**a. EVALUATION AND MONITORING OF PATIENT RECORDS**

The record keeping, documentation, office processes and coding and by billing processes of the Licensee will be assessed and monitored Compliance Coding Initiatives Inc. as documented in the document incorporated by reference and attached as ATTACHMENT A. The plan includes:

Development of a Practice Compliance Plan

Medical Record Documentation Review

Education and Training

Operations Assessment

Coding and Billing Processes Assessment

Reports to the Board - Including an Initial Assessment, Progress Report on or before February 15, 2009, and a Final Report upon completion of all components of ATTACHMENT A.

**b. EVALUATION AND MONITORING OF PATIENT X-RAYS**

The X-ray techniques of Licensee shall be reviewed and monitored and over-reads conducted by Dr. Doran Nicholson D.C., Midwest Radiology, Lees Summit Missouri, (reviewer) for a period of not less than 12 months from the date of this agreement, subject to extension based upon the progress as evaluated by the monitor. The evaluation shall include all aspects related to the use of x-ray impressions including technique, interpretation, documentation and the utilization of x-rays in patient diagnosis and treatment. The number of new patient files on which monitoring and over-reads shall be conducted shall be as follows:

i) PHASE 1

3% of new patient files in which x-rays are taken shall be randomly selected by reviewer for a period not less than six (6) months from the execution of this Consent Order. Reviewer may extend (6) month period upon documentation of un-satisfactory progress by Licensee. Review/monitoring process shall include recommendations for chart modifications when deemed necessary by reviewer. A report shall be submitted by reviewer to the Board not later than 2/15/09.

i) PHASE 2

Upon reviewers' recommendation of Licensee's adequate progress in PHASE 1, reviewer shall select not less than 10% of new patient files in which x-rays are taken shall be randomly selected for a period not less than three (3) months. Reviewer may extend (3) month period upon documentation of un-satisfactory progress by Licensee. Review/monitoring process shall include recommendations for chart modifications when deemed necessary by reviewer. A report shall be submitted by the reviewer to the Board at the conclusion of phase 2.

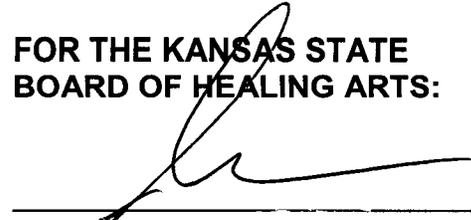
i) PHASE 3

Upon reviewers' recommendation of Licensee's adequate progress in PHASE 2, reviewer shall select not less than 5 new patient files in which x-rays are taken per month, shall be randomly selected for a period not less than three (3) months. Reviewer may extend (3) month period upon documentation of un-satisfactory progress by Licensee. Review/monitoring process shall include recommendations for chart modifications when deemed necessary by reviewer. A report shall be submitted by the reviewer to the Board at the conclusion of

Phase 3.

IT IS SO ORDERED on this 19<sup>th</sup> day of AUGUST, 2008.

**FOR THE KANSAS STATE  
BOARD OF HEALING ARTS:**

  
\_\_\_\_\_  
Executive Director

8-19-08  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
David Matheny D.C. ✓



**CODING & COMPLIANCE INITIATIVES, INC.**

April 18, 2008

Mr. Steve Schwarm  
Polsinelli Shalton Flanigan Suelthaus  
155 S. Kansas Ave, #301  
Topeka, KS 66603

***Re: Corporate Compliance Plan Development, Medical Record Review  
and Operations Assessment***

Dear Mr. Schwarm:

The purpose of this letter is to confirm that Polsinelli Shalton Flanigan Suelthaus has retained Coding & Compliance Initiatives, Inc. (CCI) to assist Dr. Matheny with the development of a Corporate Compliance Plan document, along with performing medical record documentation reviews and an operations assessment.

**Professional Services**

Corporate Compliance Plan Development

CCI will assist Dr. Matheny develop a compliance plan document that incorporates the key elements outlined by the OIG in its model compliance guidance for small physician practices. The plan development will incorporate the following elements:

- ✓ Designation of a Compliance Officer and Committee
- ✓ Roles and responsibilities of the Compliance Officer and Committee
- ✓ Standards of conduct and policies / procedures
- ✓ Developing open lines of communication
- ✓ Internal auditing and monitoring protocols / risk assessments
- ✓ Education and training protocols regarding compliance rules and standards
- ✓ Responding to detected offenses
- ✓ Enforcing Disciplinary Standards



In addition to drafting the Compliance Plan document, CCI will provide some initial training for the provider and staff regarding the content of the Compliance Plan document, recommendations for conducting annual risk assessments, etc.

### Medical Record Documentation Review

In addition to assisting the Practice develop the Corporate Compliance Plan, CCI will assist the Practice evaluate the coding and documentation practices of the Clinic. We will evaluate the selected medical records using the following information:

- Medical record documentation
- Claim form and/or Charge ticket and/or itemized statement

Our services will include a quarterly review covering approximately 10% of the patients seen in the Clinic during each quarter. Based upon the Clinic's standard volumes, we anticipate reviewing 15 charts per quarter (one date of service per chart). Our review will include an evaluation of the following:

- Review CPT/HCPCS for level of accuracy
- Review ICD-9 for level of specificity
- Review for completion of medical record documentation
- Verify x-ray interpretations are recorded in the patient charts as applicable

Dr. Matheny's office will provide CCI with a list of patient encounters for each quarter, and CCI will randomly select the patient records for review. Our review will also encompass verifying the documentation adequately supports radiology services (x-ray) ordered and billed by the Clinic. CCI takes no position with regard to whether the x-ray interpretations are correct, but only whether a detailed interpretation and subsequent treatment plan (based upon the interpretation and any accompanying exam components) are documented in the medical record. As a component of the Clinic's compliance program, it is recommended that Dr. Matheny have an appropriate medical professional perform an over read of a randomly selected sample of x-rays to address the interpretation component.

### Reports

Based upon the results of our review, CCI will prepare a written summary of our findings and recommendations. In addition, we will prepare grids for each provider record reviewed that will illustrate data graphically and empirically indicating the accuracy level of the coding. Because our

Database will allow us to track historical performance we can show changes and improvements for the Clinic on an as needed basis.

The medical record report will assess the documentation in the progress notes and we will provide a detailed assessment of the documentation. This will result in a comparison of what was appropriate versus what was coded. This report will also identify if any services were performed and not billed. Explanatory comments will be included for each progress note reviewed in the medical record.

#### Education and Training

Individual education for Dr. Matheny will be provided by CCI to improve compliance and enhance the documentation quality through customized education and reinforcement. The training will focus upon CPT, ICD-9-CM, and medical record documentation guidelines depending upon the specific findings resulting from CCI's review. The training can be scheduled upon the completion of the onsite review.

#### Operations Assessment

CCI will assist the Clinic evaluate opportunities to improve the existing work processes and protocols within the Clinic. Accordingly, we expect to evaluate the following:

- Registration Process (Check-in) – CCI will spend part of a day evaluating the processes and communication protocols utilized by the Clinic to register patients, prepare them for their respective exams, discuss payment policies, etc.
- Clinical/Ancillary Processes – CCI will observe the processes utilized for ordering, providing and documenting ancillary services, such as x-rays. Our observation will also include interviewing Dr. Matheny to gain a better understanding of the Clinic's procedures for ordering and billing ancillary services.
- Coding / Billing Processes – CCI will spend part of the day observing the coding and billing processes, including a review of any existing policies and procedures covering the claims submission process. We will also review the existing documentation forms/templates utilized to capture and report services within the Clinic.

In addition to our onsite observations, CCI will also conduct interviews with staff members at Dr. Matheny's Clinic representing various functions within the Clinic. The purpose of our interviews is to provide CCI with a broader understanding of potential opportunities to improve the Clinic's operations based upon the perceptions of the team members working within the day-to-day operations. The information gathered from our interviews will serve to augment the information we will obtain through our onsite observations.

### Reports

Based upon the results of our operations assessment, CCI will prepare a written summary of our findings and recommendations.

Our procedures will be performed on a test basis and cannot be relied upon to detect all errors or violations of laws, regulations or the Clinic's policy. Your client is responsible for notifying us of changes in policies and procedures that may necessitate a re-evaluation of compliance. In addition, management is responsible for advising us of any adverse communications with its regulators or other third parties, which may affect compliance with policies, procedures, laws or regulations. Our services do not include interpretation of legal matters.

### Professional Investment

The investment for the above services will be as follows:

Development of Compliance Plan Document	\$1,500
Medical Record Review, Report and Education	\$1,000 per review
Operations Assessment	\$1,750

Our invoices will be due prior to commencing services. Each service will be billed separately at the time the engagement is to begin.

Dr. David Matheny and Polsinelli Shalton Flanigan Suelthaus, as evidenced by their signatures hereto, acknowledges the obligation of Dr. Matheny to pay our Firm for services rendered, whether arising from your request or whether otherwise necessary as a result of our efforts in this engagement, regardless of the outcome of this review.

Our personnel understand that they are subject to and will abide by any reasonable confidentiality restrictions and protective orders. In addition, we always treat as confidential any documents or information made available to us in connection with these kinds of engagements and will take appropriate steps to segregate all material related to our work in this engagement from other files in files in our offices.

Any written reports or other documents that we prepare are to be used only for the purpose of this review and may not be published or used for any other purpose without our written consent.

We understand that all communication between CCI personnel on this engagement and Polsinelli Shalton Flanigan Suelthaus, as well as any materials or information developed or received by us pursuant to this agreement, whether oral or written, may be protected by applicable legal privileges and, therefore, will be treated as confidential. Accordingly, we agree, except as required by applicable law, or court or governmental order

our process, not to disclose any of our communications, or any of the information we receive or develop in the course of our work for you, to any person or entity apart from such persons or entities as you may designate. If we receive access to any of the materials in our possession relating to this arrangement or if we are sought by a third party, we will promptly notify the Practice of such action, and we will endeavor to our defense in connection with the response to such a request and we will cooperate with you concerning the response thereto.

All services will be rendered by and under the supervision of qualified staff in accordance with the terms and conditions set forth in this letter. CCI makes no other representation or warranty regarding either the services to be provided or any deliverables; in particular, and without limitation of the foregoing, any express or implied warranties arising by custom or usage in the profession, and warranties arising by operation of law are expressly disclaimed.

Any controversy or claim arising out of or relating to this Agreement or the services provided by CCI pursuant thereto (including any such matter involving any parent, subsidiary, affiliate, successor in interest or agent of Dr. Matheny or CCI) shall first be submitted to voluntary mediation. A mediator will be selected by our agreement or if we cannot agree, one acceptable to all parties will be appointed by the American Arbitration Association. We agree that the mediation will proceed in accordance with the customary practice of mediation.

If any portion of this Agreement is held to be void, or otherwise unenforceable, in whole or part, the remaining portion of this Agreement shall remain in effect. Only a writing signed by authorized representatives of each party may amend this agreement.

Please acknowledge your agreement with the terms of this engagement letter by signing, dating and returning a copy to Shellie Sulzberger. We look forward to working with you on this important matter.

Very truly yours,

Shellie Sulzberger, LPN, CPC  
CODING & COMPLIANCE INITIATIVES, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PETITION was served on the 19<sup>th</sup> day of August, 2008, by United States mail, first-class postage pre-paid and addressed to:

David Matheny, D.C.  
122 East Park  
Gardner Kansas 66030

Steve A. Schwarm  
Polsinell Law Firm  
555 Kansas Avenue  
Suite 101  
Topeka, Kansas 66603

a copy was hand delivered to:

Dan Riley  
Kansas Board of Healing Arts  
235 SW Topeka Blvd  
Topeka, Kansas 66603-3068

And to:  
Compliance coordinator  
Kansas Board of Healing Arts  
235 SW Topeka Blvd  
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

Jack Confer  
~~Lawrence T. Buening, Jr.~~  
Executive Director  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

Cathy A. Brown