

Arkansas Chiropractic Board's Fine of PT Upheld

Editorial Staff

The Arkansas Supreme Court has upheld a decision of the Circuit Court of Pulaski County, Arkansas, against Michael Teston, a licensed physical therapist who was fined \$10,000 in 2002 by the state chiropractic board for performing "spinal manipulation."

In early 2001, Katherine Fryar, who had been injured in a car accident, visited Teston's office and received treatment. Approximately a year later, she filed a complaint with the Arkansas State Board of Chiropractic Examiners against Teston, claiming she had been hurt by the technique he performed on her.

The board sent an investigator, Dennis Hendrix, to Teston's office in May 2002, posing as a patient. Teston performed treatment maneuvers on Hendrix - including "an upper body twisting that created a popping in the spine."

In testimony before the board in December 2002, Fryar said that during her treatment session, Teston had also "popped" the cervical, thoracic and lumbar regions of her spine. She detailed the amount of pressure applied during the maneuver and the body positions involved, and stated that he had referred to what he was doing as "releasing the joint."

The chiropractic board ultimately determined that in both instances, Teston had performed spinal manipulation that could only be performed by licensed doctors of chiropractic in the state of Arkansas; essentially, the board ruled that Teston had practiced chiropractic without a license. Each manipulation counted as one violation of Arkansas law (specifically, the Arkansas Chiropractic Practices Act), with a penalty of up to \$5,000 per violation, resulting in the \$10,000 fine.

Teston filed a petition for judicial review in the Pulaski County Circuit Court on Jan. 17, 2003, challenging the ruling. The trial court denied this petition and affirmed the board's decision; Teston then filed a notice of appeal, which was certified from the Arkansas Court of Appeals directly to the Arkansas Supreme Court for review.

The Arkansas Supreme Court's official opinion, delivered on April 7, 2005, notes the following (excerpted; emphasis ours):

- "Teston argues first that there was no substantial evidence that he was subject to the Arkansas Chiropractic Practices Act ... and claims that he was exempt from the Chiropractic Act because he was performing procedures within the scope of the Arkansas Physical Therapy Act."
- "Physical therapy involves the use of manual therapy techniques, including mobilizations, which are 'passive movement(s) accomplished within [the] normal range of motion of the joint.' ... The evidence before the Chiropractic Board substantially supported its conclusion that Teston's treatment of Fryer and Hendrix involved moving their joints beyond their normal range of motion, and consequently, Teston's actions did not fall within the definition

of the practice of physical therapy."

- "Furthermore, the evidence supported the Chiropractic Board's conclusion that Teston performed 'spinal manipulations' or 'spinal adjustments' ... and both 'spinal manipulation' and 'adjustment' are encompassed within the definition of the 'practice of chiropractic.'"
- "We conclude that the evidence supports the finding made by the Board, namely, that Teston's treatments of Fryer and Hendrix were spinal manipulations that can only be performed by licensed chiropractors."

Resources

1. *Michael Teston, Appellant, vs. Arkansas State Board of Chiropractic Examiners, Appellee.* Appeal from the Circuit Court of Pulaski County, Arkansas. Official Opinion of the Supreme Court of Arkansas, delivered April 7, 2005. No. 04-420.
2. Chiropractic board fines PT for performing spinal manipulation. *Dynamic Chiropractic*, Feb. 24, 2003: www.chiroweb.com/archives/21/05/09.html.

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