

**THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF
THE SUPREME COURT OF OHIO**

OHIO STATE BAR ASSOCIATION,

Relator,

v.

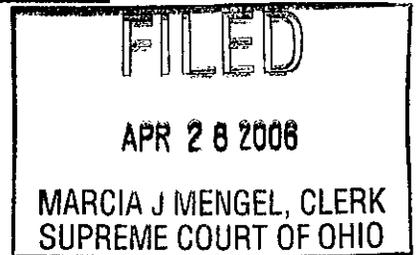
**JOHN D. CHIOFALO, D.C., DABOCO c/o
COUNTY CHIROPRACTIC CLINIC OF
ORRVILLE, et. al.,**

Respondents.

06-0840

Case No. UPL 03-01

FINAL REPORT



I. INTRODUCTION

This matter was assigned to a Panel consisting of Commissioners Judge Michael J. Corrigan - Chair, Kenneth A. Kraus and Richard R. Hollington. Relator Ohio State Bar Association was represented by Stephen S. Mazzei and Eugene P. Whetzel. Respondents John D. Chiofalo and County Chiropractic Clinic of Orrville (hereinafter "Respondents") were represented by William A. Thorman, III.

II. PROCEDURAL BACKGROUND

The Complaint in this matter was filed with the Board on January 6, 2003 and served upon the Respondents. The Relator's complaint alleged that Respondents are not admitted to practice law in Ohio and engaged in the unauthorized practice of law on May 9, 2002, by attending a formal, oral, adjudicatory hearing of the Industrial Commission of Ohio on behalf of another. The Relator further alleged the Respondents interpreted

statutory provisions and case law, and made or gave legal interpretations as to the weight, significance, and credibility of the evidence presented during the hearing.

In their answer filed on February 3, 2003, Respondents admitted they were not admitted to the practice of law in Ohio, but initially denied the balance of the complaint. Respondent Chiofalo further denied he had committed the unauthorized practice of law and stated he only acted as a witness during the hearing.

On March 19, 2003, the Relator filed a Motion for Summary Judgment and the Board subsequently set the matter for a non-oral hearing date. The Motion was unopposed. The affidavits of Respondent Chiafolo and witness Susan E. Baker, an attorney admitted to practice law in Ohio, were filed in support of the Motion.

On May 3, 2003, the Board ordered the present case held in abeyance pending the outcome of *Cleveland Bar Association v. CompManagement*. On December 15, 2004, the Supreme Court issued its decision in *CompManagement* and remanded the case to the Board with instructions to consider any allegations that the respondents in the case failed to act in accordance with the standards set forth in Industrial Commission Resolution No. R04-1-01 (June 2, 2004). 104 Ohio St.3d 168, 2004 Ohio 6506. The Board filed an Amended Final Report on Remand in *CompManagement* with the Supreme Court on January 24, 2006.

Simultaneous with the filing of this panel report with the Board, the Panel grants the Relator's Motion for Summary Judgment.

III. FINDINGS OF FACT

1). John D. Chiofalo is a licensed chiropractic physician in the State of Ohio. At all times relevant to the complaint he was acting in the scope and course of his employment as the employee of co-respondent County Chiropractic Clinic of Orrville.

2). Respondents are not, nor have they ever been admitted to practice law, granted active status, or certified to practice law in the State of Ohio pursuant to Rules I, II, VI, IX, or XI of the Rules for the Government of the Bar.

3). On May 9, 2002, Respondent Chiofalo attended an Industrial Commission of Ohio hearing in Canton, Ohio on behalf of his patient Paula A. Carter, an employee of Rubbermaid, Inc. Ms. Carter was represented during the hearing by a non-lawyer union representative. During the hearing, Susan E. Baker, attorney for Rubbermaid, Inc., objected to the recital by the Respondent of certain passages from a treatise on Ohio workers' compensation law. Ms. Baker's objection was subsequently overruled by the hearing officer and the Respondent was permitted to continue reading from the text and to make a closing statement on behalf of his patient.

4). Ms. Baker's affidavit was corroborated by the testimony of the Respondent Chiofalo. Respondent stated in an affidavit dated February 26, 2003, that he "presented testimony and argument regarding the professional credibility of a defense medical examiner, and [] cited, quoted, and argued definitions, meanings and application of legal terms from a legal text." He further admitted that he engaged in the "unauthorized practice of law in Ohio by appearing in person at a formal, oral, adjudicatory hearing, scheduled and held by the Industrial Commission of Ohio upon a

disputed workers' compensation matter, on behalf of [his] patient, and in the course of said appearance, interpret[ed] statutory provisions and case law and [made/gave] legal interpretations with respect to the nature, weight, significance, and credibility of the evidence presented and considered at said hearing.”

5). This Panel takes notice of the Industrial Commission of Ohio Resolution No. R04-01-01, promulgated on June 2, 2004, and later adopted by the Supreme Court in *Cleveland Bar Association v. CompManagement, Inc.*, 104 Ohio St. 3d 168, 2004 Ohio 6506. The resolution sets forth the Commission's standards concerning the permissible and impermissible conduct of non-lawyers appearing in hearings conducted by the Commission.

IV. CONCLUSIONS OF LAW

The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 671; *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288.

The practice of law “includes conducting cases in court, preparing and filing legal pleadings and other papers, appearing in court cases, and managing actions and proceedings on behalf of clients before judges, whether before courts or administrative agencies.” *Cleveland Bar Association v. Coats*, 98 Ohio St.3d 413, 2003 Ohio 1496 (emphasis added).

The Supreme Court has also stated as a general rule that “representation of another before an administrative agency generally constitutes the practice of law”. *Columbus Bar Ass’n v. Smith* (2003), 100 Ohio St.3d 278, 2003 Ohio 5751 at ¶4. However, as an exception to this rule the Court recently held that “nonlawyers who appear and practice in a representative capacity before the Industrial Commission and the Bureau of Workers’ Compensation in conformity to Industrial Commission Resolution No. R04-1-01 are not engaged in the unauthorized practice of law.” *CompManagement* at ¶70.

Accordingly, the Panel has applied Resolution No. R04-01-01 to the record in this case and finds the Respondents John D. Chiofalo and County Chiropractic Clinic of Orville engaged in the unauthorized practice of law by violating (B)(2), (B)(3), and (B)(4) of the resolution. The Respondents violated (B)(2) through the citation to case law and the interpretation of administrative provisions relevant to workers’ compensation law, and violated sections (B)(3) and (B)(4) by offering legal interpretations with respect to the medical testimony of the employer’s reviewing physician.

V. PANEL RECOMMENDATIONS

The Panel recommends that the Supreme Court of Ohio issue an Order finding that Respondents John Chiofalo and the County Chiropractic Clinic of Orville have engaged in the unauthorized practice of law, and have done so in violation of Industrial Commission of Ohio Resolution No. R04-1-01 (B)(2), (B)(3), and (B)(4).

The Panel recommends that the Supreme Court of Ohio issue a further Order enjoining Respondents from engaging in the unauthorized practice of law in the future and specifically in contravention of Resolution No. R04-01-01.

The Panel further recommends that a civil penalty not be imposed against the Respondents. In construing the underlying conduct in light of the factors set forth in Gov.Bar R.VII(8)(B), evidence was provided of only one offense, and Respondent Chiofalo ultimately admitted to the conduct as alleged after the Complaint was filed. In further mitigation, the Respondent agreed he would not engage in similar conduct in the future, had never held himself out as an attorney, and planned to attend training offered by the state chiropractic association as to the proper conduct of chiropractors participating in Industrial Commission hearings.

VI. BOARD RECOMMENDATIONS

Pursuant to Gov.Bar R. VII(7)(F), the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio considered this matter on April 19, 2006. The Board adopted the findings, conclusion of law and recommendations of the Panel. Specifically, and as provided herein, the Board adopts the Panel's recommendation that the Supreme Court issue an Order finding that Respondents John Chiofalo and the County Chiropractic Clinic of Orville have engaged in the unauthorized practice of law, and have done so in violation of Industrial Commission of Ohio Resolution No. R04-1-01 (B)(2), (B)(3), and (B)(4).

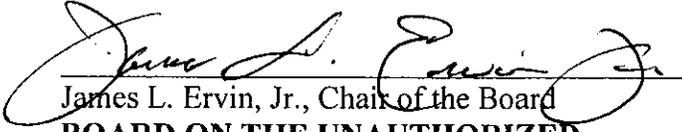
The Board further recommends that the Supreme Court issue an Order enjoining Respondents from engaging in conduct in the same or similar acts as those described

herein as the unauthorized practice of law and as more specifically set forth in Industrial Commission of Ohio Resolution No. R04-1-01, and from engaging in any other act in the State of Ohio constituting the practice of law unless and until Respondent John Chiofalo secures from the Supreme Court of Ohio, or from the highest court of some state, territory or other jurisdictional entity of the United States, a license to practice law and he registers in accordance with the Rules for the Government of the Bar of Ohio.

The Board does not recommend the imposition of civil penalties under Gov.Bar R. VII(8)(B).

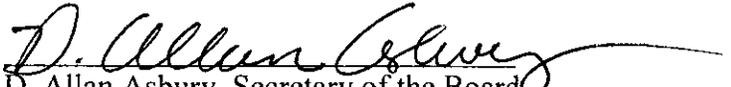
STATEMENT OF COSTS

No costs or expenses were incurred to date by the Relator or Board in this matter.


James L. Ervin, Jr., Chair of the Board
**BOARD ON THE UNAUTHORIZED
PRACTICE OF LAW**

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 28th day of April, 2006: William A. Thorman, III, Esq., Philip J. Fulton Law Office, 89 E. Nationwide Blvd., Ste. 300, Columbus, OH 43215; County Chiropractic Clinic of Orrville, 516 West High Street, Orrville, OH 44667; John D. Chiofalo, D.C., DABCO, c/o County Chiropractic Clinic of Orrville, 516 West High Street, Orrville, OH 44667; Eugene P. Whetzel, Esq., General Counsel, Ohio State Bar Association, 1700 Lake Shore Drive, Columbus OH 43204; Stephen S. Mazzei, Esq., Young, Reverman & Mazzei Co., LPA, 1014 Vine Street, Suite 2400, Cincinnati, OH 45202; Wayne County Bar Association, 107 W. Liberty St., Wooster, OH 44691-4863; Ohio State Bar Association, 1700 Lake Shore Drive, P.O. Box 16562, P.O. Box 16562, Columbus, OH 43216-6562; Office of Disciplinary Counsel, 250 Civic Center Drive, Ste. 325, Columbus, OH 43215.


D. Allan Asbury, Secretary of the Board