



## Discipline: don't do this

*How the discipline process can turn terribly wrong—and how to prevent disaster at your board*

In part two of the Spring Education Meeting session titled “Disaster Preparedness: Weathering the Disciplinary Storm,” attendees learned what can go wrong in a worst-case scenario when the regulatory board fails to follow its own rules. The facts of the case against the licensee are unarguable. It’s not the case that’s the problem, it’s what the board did—or didn’t do—in its pursuit of public protection that cost it millions.

Tom Reichard, executive director of the Missouri State Committee for Social Workers opened by introducing someone he called “the poster child for discipline gone wrong.” He was referring to Joel A. Poole, chief counsel of the Missouri Attorney General office, who litigated a case against a chiropractor who was disciplined for wrongdoing but whose appeal prevailed in the courts with disastrous results for the board.

Poole recounted the events and decisions that led to a civil judgment in excess of \$6 million (nearly \$10 million as of 2014) for the plaintiff/chiropractor in the matter of *Edwards v. Gerstein, et al.* (members of the Missouri Board of Chiropractic Examiners).

### **Events leading to court action, as summarized by Joel A. Poole**

The Board of Chiropractic Examiners learned about this case

in 1996 from newspaper reports. A patient seeking treatment from the licensee whom the board later investigated and charged was a member of the Missouri Mennonite community, which had been experiencing an epidemic of hemophilia. The afflicted young man had earlier contracted the HIV virus from a tainted transfusion. Despite counsel from his community against marriage because of his condition, the young man decided to marry his sweetheart.

The couple faced a dilemma: They were warned of the consequences of unprotected sex; however, contraceptives of any kind were against the beliefs of the Mennonites. They chose to break from their belief system and took the advice to practice safe sex.

One day they heard about a chiropractor in Independence, Mo., who had a machine that could cure anything. The machine would reveal the underlying problem, and the chiropractor would sell the appropriate supplements for the cure.

The couple went to see this chiropractor, who took a blood test and began treating the husband with this machine while selling him the supplements. After several months of treatment, they received a call from the chiropractor, who said the husband’s HIV was cured.

The couple decided to then have unprotected sex and start their family. Fourteen months later, in May 1992, their daughter was born. She and the mother tested positive for HIV. In September 1992, the father died of AIDS. This was the story published in the 1996 newspaper.

The board hired a retired FBI director to do a preliminary investigation into the story published in the paper. The result was that the wife and her mother were advised to file citizen complaints against the chiropractor.

Investigation into the complaints revealed:

- One of the supposedly electrically charged liquid supplements given to the husband was a mixture of water and gin
- The couple were told by the chiropractor's wife not to tell anyone that the machine cured AIDS
- The chiropractor set aside one day a week to treat the ailing Mennonite community with his machine and sell them supplements

The retired FBI director reported to the board that there was probable cause to discipline the chiropractor's license. The board filed a charge for discipline for six counts of violating the rules of professional conduct, fraud, practicing medicine without a license, and other counts.

The chiropractor was found guilty on five of six charges.

**Q: So how was this case lost to the tune of millions?**

A: Upon an aggressive appeal by Edwards, the board lost the case when it was shown that they did not fulfill a number of their duties outlined below before the official complaint was filed, thus resulting in gross negligence on the part of the board.

These are the seven board duties before an official complaint is filed in Missouri against a chiropractor:

- Conduct a thorough and impartial investigation of the accusation
- Contact the accused and get his/her response
- Request and carefully review the chiropractor's treatment records
- Request and review other relevant medical records
- Interview all important fact witnesses
- Request and review other relevant documents
- Gather and consider information about the accuser and accuser's motives

Hear all the details of this case from Joel A. Poole on the DVD.

DVDs of the Spring Education Meeting can be ordered at no cost. Send your request to [info@aswb.org](mailto:info@aswb.org).