

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL STANDARDS**

In the Matter of the License to Practice)	OPS No. 94-03-091 CD
Chiropractic of:)	Prog. No. CH 0012
)	
PATRICK L. VANQUAETHEM, D.C.,)	PREHEARING ORDER NO. 1:
)	ORDER ON RESPONDENT'S
Respondent.)	MOTION TO DISMISS
)	

A prehearing conference was held before Kathleen A Stockman, Presiding Officer for the Chiropractic Quality Assurance Commission (formerly the Chiropractic Disciplinary Board) (hereinafter referred to as "the Commission"), on May 13, 1994. Patrick L. VanQuaethem, D.C., (Respondent) was represented by Frank Morris, Attorney at Law. The Department of Health (Department) was represented by Janet McDonald, Assistant Attorney General. Robert Lewis, court reporter, recorded the proceedings.

Having reviewed the record and listened to oral argument, the Presiding Officer now issues the following:

I. PROCEDURAL HISTORY

1.1 In the Statement of Charges dated April 19, 1993, the Department alleged the Respondent committed acts of unprofessional conduct. A Notice of Opportunity to Defend and Notice of Hearing Opportunity, dated April 19, 1993, were sent to the Respondent.

1.2 The Respondent sent an Application for Adjudicative Hearing, dated May 5, 1993, to the Department requesting a settlement conference with possibility of formal hearing.

1.3 A Notice of Commencement of Adjudicative Proceeding and Notice that a Hearing Would be Conducted, dated May 17, 1993, were sent to the Respondent.

1.4 The Department sent the Respondent a Scheduling Order, dated February 9, 1994. The Respondent submitted a Motion to Dismiss and Memorandum of Authority dated March 24, 1994. The Department's response to this motion was dated April 7, 1994.

1.5 A prehearing conference was held on May 13, 1994, for oral argument regarding the Respondent's motion.

II. PARTIES' CONTENTIONS

2.1 The Respondent claims that he is entitled to a dismissal of the Statement of Charges because the Department failed to approve or deny his application for an administrative proceeding, commence an adjudicative proceeding, or dispose of the application within 90 days in accordance with RCW 34.05.419.

2.2 According to the Respondent, RCW 34.05.419 requires an agency to commence an adjudicative proceeding within 90 days; and, the adjudicative proceeding is the hearing itself.

2.3 The Department contends that under RCW 34.05.413, an adjudicative proceeding commences when an agency or presiding officer notifies the party that a prehearing conference, hearing, or other stage of adjudicative proceeding will be conducted.

2.4 The Department also contends that the "shall" language of RCW

34.05.419 is discretionary, not mandatory.

III. ANALYSIS

3.1 The presiding officer shall rule on prehearing motions.

3.2 The issue, as framed by the Respondent, is whether to commence an adjudicative proceeding, the actual hearing must take place within 90 days of the Department's receipt of the Respondent's Application for an Adjudicative Proceeding.

3.3 The Administrative Procedure Act defines an "adjudicative proceeding" and "commencing an adjudicative proceeding" and sets out procedure for the issue at hand:

3.3.1 RCW 34.05.010(1) defines "adjudicative proceeding:"

'Adjudicative proceeding' means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency.

3.3.2 RCW 34.05.419(1) provides in part:

After receipt of an application for an adjudicative proceeding, . . . , an agency shall proceed as follows:

(1) . . . within 90 days after receipt of the application . . . , the agency shall do one of the following:

(a) Approve or deny the application . . . ;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with RCW 34.05.416.

3.3.1 RCW 34.05.413(5) defines when an adjudicative proceeding

commences:

An adjudicative proceeding commences when the agency or presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

3.4 Neither the Administrative Procedure Act (APA), as cited above, nor the authority cited by the Respondent, support his claim that the actual hearing must be held with 90 days from the date of the Application for Adjudicative Proceeding. RCW 34.05.413(5) clearly provides that an adjudicative proceeding commences when the agency or presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted. Thus, Respondent's claim that the actual hearing must take place within 90 days is without merit.

3.5 Even if the Respondent's claim that the actual hearing must take place within 90 days is true, the Respondent's request for dismissal of the Statement of Charges is an inappropriate remedy. The Department has alleged the Respondent committed serious acts of unprofessional conduct and violated the Uniform Disciplinary Act, RCW 18.130. The purpose of the Uniform Disciplinary Act is to assure the public of professional competence for their protection. The legislature had determined that the protection of the health and well-being of the public is of paramount importance. RCW 18.26. To conclude that the scheduling requirements of the APA are mandatory and jurisdictional would deprive the Commission of the ability to enforce the Uniform Disciplinary Act for the protection of the public. Nothing in the APA suggests or compels that result. In fact, RCW 34.05.570(4)(b) states in part:

A person whose rights are violated by agency's failure to perform a duty that is required by law to be performed may file a Petition for Review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance.

Therefore, dismissal of the statement of charges is not the appropriate remedy.

3.6 Finally, the Respondent has made no showing that he has been prejudiced in any way.

IV. DECISION AND ORDER

Based on the above Procedural History, Contentions of the Parties, and Analysis, the presiding officer now issues the following ORDER:

The Respondent's Motion to Dismiss is DENIED.

DATED THIS 6TH DAY OF JULY, 1994.

/s/

KATHLEEN A. STOCKMAN, Health Law Judge
Presiding Officer