

BEFORE THE BOARD OF CHIROPRACTIC EXAMINERS

STATE OF OREGON

In the Matter of the License to Practice as a  
Chiropractor of:

GERARD BERARDI, DC, Licensee.

STIPULATED FINAL ORDER OF  
RELINQUISHMENT OF LICENSE

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractors in the State of Oregon. Gerard Berardi, DC (Licensee), is licensed as a chiropractic physician by the Board, and practices in Portland, Oregon.

I

The Board issued a Notice of Intent to Revoke License on January 28, 1999. On January 28, 1999, Licensee was served with Notice of Intent to Revoke. On February 16, 1999, Licensee filed a response to the notice and a request for hearing. The Board and Licensee agree that the January 28, 1999 Notice of Intent to Revoke may be resolved on the terms set forth in this Stipulated Final Order of Surrender of Licensure.

II

FINDINGS OF FACT

The Board makes the following findings of fact:

1. Licensee is licensed by the Board to practice chiropractic in the State of Oregon.
2. Licensee currently practices chiropractic in Portland, Oregon.
3. The Board conducted an investigation into three separate complaints that Licensee had engaged in unprofessional conduct with female patients. The investigation resulted in the issuance of a Notice on January 28, 1999, hereby incorporated by reference.

III

CONCLUSIONS OF LAW

Based on the Findings of Fact contained in paragraph II above, the Board makes the following conclusions of law:

1. The Board has jurisdiction over the Licensee, Gerard Berardi, and over the subject matter of this proceeding.

2. Licensee engaged in unprofessional conduct as defined in ORS 684.100(1)(g)(A); OAR 811-035-0015(1).

3. Licensee agrees that, if proven, the allegations of the notice would constitute violations of ORS 684.100(1)(g)(a); OAR 811-035-0015(1). Licensee denies the above allegations but agrees that the Board may enter an order as follows:

IV

STIPULATIONS

NOW THEREFORE, the Board and Licensee stipulate and agree that this disciplinary action may be concluded by the entry of this Stipulated Final Order of Relinquishment of License upon the following terms:

1. Pursuant to ORS 183.415(5), the Board and Licensee agree to informally dispose of and settle this matter.

2. Licensee stipulates that he has been advised of his right to request a hearing in this matter pursuant to ORS 183.415(2)(a), and to be represented at a hearing pursuant to ORS 183.415(3).

3. Licensee waives his right to a hearing in this matter.

4. Licensee agrees to voluntarily relinquish his license to practice chiropractic in Oregon.

5. Licensee agrees not to reapply for licensure in Oregon.

6. Licensee contests that his conduct as found in Paragraph II constitutes a violation

1 of any applicable statute or rule.

2 7. Licensee waives the right to appeal this Stipulated Final Order.

3 8. This Stipulated Final Order memorializes the entire agreement between the  
4 Licensee and the Board and supercedes all prior offers, negotiations or settlement discussions  
5 regarding this matter.

6 **ORDER**

7 Base upon the foregoing FINDINGS OF FACT, CONCLUSION OF LAW, and  
8 STIPULATIONS, IT IS HEREBY ORDERED that the license of Gerard Berardi is hereby  
9 surrendered and accepted by the Board, and is hereby cancelled, effective upon the signing of  
10 this Order by the Board.

11 THIS STIPULATED FINAL ORDER OF RELINQUISHMENT OF LICENSE sets forth  
12 the entire agreement and stipulation of the parties to resolve this matter.

13 IT IS SO STIPULATED this 23 day of September 1999.

14 Original signature on file  
15 at the OBCE office.

16 GERARD BERARDI, DC

17 IT IS SO STIPULATED AND ORDERED this 27<sup>th</sup> day of September, 1999.

18  
19  
20 Original signature on file  
21 at the OBCE office.

22 DAVE MCTEAGUE, EXECUTIVE DIRECTOR

23 LHL:/GEN26641

24

25

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

**BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF OREGON**

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

In the Matter of	)	
	)	NOTICE OF INTENT TO
Gerard Berardi, D.C.	)	REVOKE LICENSE
	)	Case # 98-1011
Licensee.	)	

TO: GERARD BERARDI, D.C.

The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Gerard Berardi, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to revoke the license of Licensee for the following reasons.

1.

On October 9, 1995, female patient A. F. began receiving chiropractic care from Licensee at Mountain Park Chiropractic Clinic, Lake Oswego, Oregon for severe back pains. She first saw Licensee because the doctor she regularly saw, Licensee's associate, Mark Walsh, D.C., was not available. Licensee continued to provide chiropractic treatments to A. F. until December 19, 1997, when A. F. terminated the doctor-patient relationship. A personal, non-professional relationship began in or around October 17, 1995, and Licensee was sexually intimate with A. F. between approximately February 11, 1996 and January 19, 1998.

2.

In or around May, 1992, B. H. went to the office of Licensee to seek treatment for pain she was experiencing in her lower back. Licensee directed B. H. to lay down on the treatment table on her back with her legs approximately one foot apart. While B. H. was lying down,

1 Licensee crawled on top of her and put one of his knees in between her legs and stretched out on  
2 top of her, with his pelvis to her pelvis. Soon after that office visit, while B. H. was Licensee's  
3 patient, Licensee was sexually intimate with B. H.

4 3.

5 Licensee treated 19-year old female patient C. L. who presented with chronic constipation  
6 in or around December, 1982. C. L. was treated by Licensee for over ten months. On or about  
7 October 14, 1983, Licensee insisted that he should give C.L a breast examination. Licensee stood  
8 and watched C. L., who was seated, take off her robe and bra. Licensee grabbed C.L.'s breasts at  
9 the base with his thumbs below the gland and his fingers above and then slid his fingers and thumb  
10 over her breast to the nipples.

11 4.

12 The Board finds that the acts and conduct of Licensee described above constitute  
13 unprofessional conduct. Licensee's practice, as described above, constitutes a clear and present  
14 danger to the health or safety of his patients and the public. The above acts are in violation of  
15 ORS 684.100(1)(g)(A), OAR 811-035-0015(1), as well as OAR 811-015-0005(1)(failure to keep  
16 complete and accurate records on all patients).

17 5.

18 The Board proposes to revoke Licensee's license due to the aforementioned violations.

19 6.

20 Licensee shall pay costs of this disciplinary proceeding, including investigative costs and  
21 attorney fees pursuant to ORS 684.100(9)(g).

22 7.

23 Licensee has the right, if Licensee requests, to have a formal contested case hearing before  
24 the OBCE or its hearings officer to contest the matter set out above. At the hearing, Licensee  
25 may be represented by an attorney and subpoena and cross examine witnesses. That request for  
26 hearing must be made in writing to the OBCE, must be received by the OBCE within 21 days  
27 from the mailing of this notice (or if not mailed, the date of personal service), and must be  
28 accompanied by a written answer to the charges contained in this notice.

1  
2  
3  
4  
5  
6  
7  
8

8.

The answer shall be made in writing to the OBCE and shall include an admission or denial of each factual matter alleged in this notice, and a short plain statement of each relevant affirmative defense Licensee may have. Except for good cause, factual matters alleged in this notice and not denied in the answer will be considered a waiver of such defense; new matters alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and evidence shall not be taken on any issue not raised in the notice and answer.

9

9.

If Licensee fails to request a hearing within 21 days, or fails to appear as scheduled at the hearing, the OBCE may issue a final order by default and impose the above sanctions against Licensee. Licensee's submissions to the OBCE to-date regarding the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

14  
15

DATED this 28<sup>th</sup> day of January, 1999.

16  
17

BOARD OF CHIROPRACTIC EXAMINERS

18

State of Oregon

19  
20  
21

By:

Original signature on file  
at the OBCE office.

22

Dave McTeague, Executive Director