

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of
James Dicey III, D.C.

Licensee.

) **FIRST AMENDED STIPULATED**
) **FINAL ORDER**

) **Case # 2003-5009**

) **Case # 2000-1017**
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The Oregon Board of Chiropractic Examiners (hereafter "Board" or "OBCE") is the state agency responsible for licensing, regulating and disciplining chiropractic physicians and certified chiropractic assistants in the State of Oregon. James Dicey III, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board has determined the facts as follows:

1.

In August 2000, a written complaint was filed by patient A. The complaint alleges unprofessional and inappropriate massage of a patient's buttocks and inappropriate touching near genital area without cause, inappropriate and sexually explicit questions and repeated attempts to establish an intimate relationship with a patient. In addition, the complaint stated that the patient had observed Licensee's behavior that was irrational on a number of occasions and knowledge of alcohol and/or drug substance abuse. A patient-chiropractic relationship began and patient A had several treatments on a regular schedule.

2.

During August and September of 1995 Patient B sought treatment with Licensee and was treated twice a week for three months. Patient B later worked for Licensee in his clinic beginning January 1996. Patient B received free chiropractic adjustments as a job benefit from

the Licensee. She averaged a treatment approximately once a week. Licensee became sexually intimate with Patient B and eventually co-habitated with her in 1997. Licensee continued to have a sexual relationship with Patient B until 1999.

In an interview with the board investigator, Licensee admitted to a long term sexually intimate relationship with Patient B.

3.

Between 1994 and 2000 Licensee engaged in the use of controlled substances and/or cocaine/anabolic steroid/alcohol use both on the clinic premises and off the clinic premises. This impacted Licensee's ability to safely conduct his chiropractic practice and compromised the health and safety of his patients.

4.

Between April and June 1999, Patient C sought treatment with Licensee. A patient-chiropractic relationship began between Patient C and Licensee. In April to June 1999, Licensee was involved in a sexually intimate relationship with Patient C. The sexual relationship ended within two months. Patient C continued with chiropractic treatment with Licensee and has been treated since 1999, once or twice a week by Licensee. Since 1999, Licensee has continued in his sexually intimate relationship with Patient C as recent as January 2001.

5.

On May 17, 2001, the Board ordered a competency examination by Dr. Edward Vien, Psy.D. Dr. Vien has reviewed the notice and examined Licensee. During the examination Licensee admitted that he provided Patient B treatment as a chiropractor before they began their sexual relationship. Licensee also admitted that for 18 months they co-habitated. Licensee

admitted that he has currently been providing chiropractic treatment to Patient C during the last fourteen months and they briefly resurrected their romantic relationship after she became his patient in January 2001.

Dr. Vien found that Licensee lacked appreciation for the inherent inequality of power and conflict of interest in patient-doctor relationships and Licensee's multiple roles of health club patron, trainer and chiropractor create diffuse boundaries and identity confusion. Dr. Vien indicated that licensee seemed receptive to improving his professional and personal functioning and would likely be an active participant to enhance his clinical practice. He suggested Licensee participates in a mental health treatment program, be assigned a chiropractic mentor and psychiatric referral was recommended.

6.

After the Notice of Proposed Disciplinary Action was served on Licensee on January 30, 2002, the Board was notified of two other complaints made by patients D and E. Patient D alleged that Licensee unhooked her bra without seeking permission or prior discussion, to perform a massage. Patient E complained that Licensee had asked her out for lunch and for dates on occasions while in the clinic for treatment.

7.

Licensee denies the allegations as to patients D and E. Licensee also denies that he massaged Patient A's buttocks, touched her genital area, asked her sexually explicit questions or attempted to establish an intimate relationship with her. Licensee also denies that he engaged in the use of controlled substance and/or cocaine/anabolic steroid and the abuse of alcohol on the clinic premises.

8.

On April 10, 2002, Licensee signed a Stipulated Final Order requiring various orders. It was required that Licensee enter into treatment specializing in professional impairment, that Licensee submit to random urine or blood specimens for a period of seven years and that he be on a probation of five years. Licensee agreed to abide by the stipulations he signed that further discipline may occur if they were violated. In random samples taken from Licensee pursuant to the Stipulated Order, RSS testing found Licensee tested positive for Alcohol on April 3, 2003 and positive for Cocaine on April 18, 2003. In an interview with the Oregon Board of Chiropractic Examiners, Licensee admitted to use of cocaine on one occasion and alcohol on other occasions.

9.

Conclusions of Law

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations ORS 684.100 (1)(g)(A); and OAR 811-035-0015 and (1)(a)(b)(c). Being under the influence of alcohol and/or drugs is a violation of ORS 684.100(1)(f) and OAR 811-035-0015(13). Failure to chart note a termination of the doctor-patient relationship violates OAR 811-035-0015(1)(B)(d). The Board finds that Licensee violated the original Stipulated Final Order and is in violation of OAR 811-035-0015(23) for disobeying a Board Order.

Stipulations

This matter having come properly before and been considered by the Board, and Licensee having voluntarily stipulated and consented to the issuance and entry of this order by signing below,

IT IS HEREBY ORDERED THAT:

1. Licensee's license is placed on probation for a period of 5 years that is to begin from the date this order is signed in final format.
2. Licensee has a permanent condition on his license, effective 1 June 2002, that Licensee will remove and separate his chiropractic clinic from co-location with or in the same general location to any and all gym/health club/spa facilities; including, but not limited to 'The Health Habit' gym, located at 12215 SW Main Street, Tigard, Oregon.
3. During probation, Licensee agrees to enter into treatment with an Oregon licensed psychologist or psychiatrist who possesses specialized training in both trauma resolution and professional impairment, this corrective counseling should address the Licensee's substance abuse as well as the Licensee's childhood experiences, the relevant impact on his adult functioning, and should include empathy training, decision making, stress management, personal boundaries and preventative safeguards. The treatment professional must be approved by the OBCE and Licensee shall continue in treatment for as long as that professional deems necessary. All therapy and reporting will be at the sole cost of the Licensee.

Licensee shall cause the treating psychologist or psychiatrist to submit periodic reports to the OBCE regarding Licensee's progress at a duration of not less than once every month. Licensee waives any privilege and consents to allow contact between the treating psychologist or psychiatrist and the OBCE for purposes of verifying compliance with the terms and conditions of this proposed order.

Treatment will be required until such time that the provider deems and supports in writing that Licensee is no longer in need of treatment. If no further treatment is deemed necessary, the Board may require a second evaluation from a professional so that a joint determination by the professionals involved can be made to determine if removal from treatment is appropriate.

4. During probation, Licensee will be required to allow visits by the Board or its representative who shall have access to Licensee's business premises to examine, review and photocopy Licensee's patient records and record keeping process.
5. Licensee will be required to do the following:
 - a. Provide access to all medical and treatment program records.
 - b. Submit to random urine and/or blood specimen examinations at Licensee's expense. Licensee also shall submit to random urine and/or blood specimen request at any reasonable time to any authorized representative of the Board for the purpose of laboratory testing to see if substance abuse has occurred. These tests will be required for a period of 7 years which begins upon final signature of this order. The frequency of the tests shall be designated by the Board beginning at a

rate of 36 per year and unless or until otherwise provided by the Board in writing.

- c. If requested by the treating psychologist or psychiatrist Licensee demonstrate to the Board participation in a treatment program for substance abuse (either one-on-one counseling or group counseling) for a minimum of one time per month for a period of not less than one year. Licensee will provide appropriate documentation with medical and treatment records that show participation.
 6. During the term of Probation the Licensee shall have an OBCE approved female chaperone present during examination, treatment and any other consultation with female patients. The chaperone shall not be related to the Licensee or involved in the past or currently in a personal relationship with Licensee. The chaperone shall meet with representatives of the Board to be interviewed. The Licensee shall provide the chaperone with a copy of the Stipulated Final Order and obtain the chaperone's agreement to inform the Board if the chaperone has concerns that Licensee has violated the conditions of the Stipulated Final Order or is engaging in behavior which may place a patient at risk. An agreement with Licensee stipulating no harm or retribution to the chaperone may be incurred for reporting any and all violations of the provisions of this agreement to the OBCE will also be signed.
- Further, each female patient shall be required to read and initial the following statement "I understand that Dr. Dicey is required to have a female chaperone

present at all times while treating female patients,” at the time of her initial visit.

A parent or guardian shall sign the statement for a female patient who is below the age of eighteen (18). The chaperone shall initial the statement. Licensee shall retain the statement in the patient’s file. A patient may not waive the presence of the chaperone. The chaperone shall initial the patient’s chart at the time of each visit to confirm her presence during the visit.

7. Licensee agrees not to use any alcohol or drugs other than as follows:
 - (a) as legally prescribed to Licensee and then only after a copy of the applicable prescription is delivered to and received by the Board;
 - (b) legal non-prescription medication as directed; or
 - (c) as legally administered to Licensee in a medical emergency.

8. Licensee agrees that the Board may revoke his license if after a contested case hearing it is shown that the provisions of this final order have been violated. Licensee agrees to not engage in any conduct or verbal behavior toward any patient that may be reasonable interpreted by the patient as sexual, sexually suggestive, seductive or demeaning. If at any time after the date of entry of this order, the OBCE establishes after contested case hearing that licensee has engaged in inappropriate sexual contact with patients and/or illicit use of controlled substances and/or the abuse of alcohol, the conduct may be used as a basis for license revocation.

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

10. Licensee agrees that he has been advised of his right to request a hearing in this matter pursuant to ORS 183.415.
11. Licensee agrees to waive this right to a hearing or appeal of this matter.

11.

The stipulated final order memorializes the entire agreement between the Licensee and the Board and supercedes all prior offers, negotiations or settlement discussions. I have read and I fully understand all of the above facts and order and fully agree to its terms.

IT IS HEREBY ORDERED THAT:

1. Licensee is on probation for five years;
2. Licensee will separate his chiropractic clinic from any location of a gym/health spa/club or spa facility;
3. Licensee agrees to treatment with an Oregon licensed psychologist or psychiatrist as long as that professional deems necessary;
4. Licensee is required to undergo random urine and blood examinations and provide medical treatment records to the board for seven years;
5. Licensee will allow visits by the Board to examine, review and photocopy Licenses' patient records
6. Licensee will have an OBCE approved female chaperone during probation;
7. Licensee agrees not to use any alcohol or drugs for the term of probation other than as follows:

- (a) as legally prescribed to Licensee and then only after a copy of the applicable prescription is delivered to and received by the Board;
- (b) legal non-prescription medication as directed; or
- (c) as legally administered to Licensee in a medical emergency.

8. Licensee will pay the costs of this disciplinary proceeding to the Board.

IT IS SO ORDERED this _____ of August, 2003.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:

8-2-2003
Original signatures on file
at the OBCE office.

Dave McTeague
Executive Director

Original signatures on file at
the OBCE office. 2

James Dickey III D.C. U
Licensee

Date:

8-15-2003