

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	
)	FINAL DEFAULT ORDER
Mario Tomaino, D.C.)	
License No; 3525)	DISCIPLINARY ACTION
)	
Licensee.)	Case # 2005-3014
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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. Mario Tomaino, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon.

Findings of Fact

1.

In January 2005, Patient 1 became a patient of Licensee. Patient 1 also worked in the office where Licensee did and began working previous to Licensee beginning work there in Christmas of 2004. Around April 2005, Licensee began to initiate horseplay in the office, playing around in the office by bumping into her or giving her gentle pushes while working. Licensee would then join Patient 1 for lunch occasionally. By May 2005, Licensee began to pull at her work smock, placed his hands on her shoulders and other slight touchings on her body. As the month passed, Licensee escalated his conduct toward Patient 1.

2.

Licensee said things like "you are so tiny, I have to be careful not to break you." It was clear from the way Licensee said that to Patient 1 that it was sexual in meaning. Licensee began

to look at Patient 1 in ways that made her feel uncomfortable. In June 2005, Licensee began to send text messages to Patient 1's cell phone. The messages were questions about her sex life, things she did away from work, etc... There were 25 different text messages from Licensee to Patient 1. Licensee had begun to invite Patient 1 out on dates in his text messages to her. Patient 1 declined his invitations.

3.

Patient 1 attended a work place social function in June 2005. After the party was over, several co-workers went out for a cocktail. Throughout the evening Licensee kept making uninvited and unwanted sexual advances toward Patient 1 in front of the others. Licensee would try to pull her close by touching her arm, squeezing her sides and rubbed his leg against hers under the table. Patient 1 did her best to give him the message she was not interested.

4.

In an interview with the Board in October 2005, Licensee accepted responsibility for his inappropriate behavior toward Patient 1. Licensee accepted that Patient 1 was in fact a patient and his conduct was unprofessional.

5.

On December 2, 2005, the Proposed Notice of Discipline was issued to Licensee and the notice notified him that he needed to request a hearing within 30 days. The notice was sent via certified mail and was not returned as undeliverable. The notice also notified Licensee that the Board would rely on their file as evidence for a final default order. Licensee did not request a hearing within the 30 day time period required.

Conclusions of Law

6.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015(1)(a).

Order

7.

Due to the aforementioned findings and violations, the OBCE issues a reprimand to Licensee, requires that he take and pass an ethics course and report completion to the Board, and be issued a civil penalty in the sum of \$1000 payable within 30 days of this final order.

IT IS SO ORDERED this 12th of January 2006.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By: _____
Original signature on file
at the OBCE office.

Dave McTeague
Executive Director

State of Oregon) Case # 2005-3014
County of Marion) Mario Tomaino D.C.

I, Dave McTeague, being first duly sworn, state that I am the Executive Director of the Oregon Board of Chiropractic Examiners, and as such, am authorized to verify pleadings in this case: and that the foregoing Final Default Order is true to the best of my knowledge as I verily believe.

Original signature on file
at the OBCE office.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners



SUBSCRIBED AND SWORN to before me

this 11 day of Jan, 2006

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 11-5-08

Certificate of Service

I, Dave McTeague, certify that on Mario Tomaino DC, on January 12, 2006, I served the foregoing Final Default Order upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Mario Tomaino DC
4403 SE 43rd Ave.
Portland, Oregon 97216

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

