



1           2.    If so, is such conduct contrary to the recognized  
2 standards of the profession and does such conduct constitute a  
3 violation of ORS 684.100(1)(g)(A)?

4           3.    If so, does the Board of Chiropractic Examiners have  
5 authority to revoke the license of the Petitioner and is such  
6 revocation appropriate for the violation?

7 FINDINGS OF FACT:

8           1.    Petitioner is a licensed chiropractic physician subject  
9 to the jurisdiction of the Oregon Board of Chiropractic Examiners,  
10 hereinafter referred to as Board, which is the state agency  
11 responsible for licensing and regulating chiropractic in the State  
12 of Oregon.

13           2.    Petitioner was employed by Patient to administer  
14 treatment for back pain, neck pain and tension headaches.

15           3.    Patient went to Petitioner's office for an initial  
16 examination on February 22, 1991. Subsequent office visits  
17 occurred on February 25, March 8, March 12, April 8, May 9 and May  
18 17, all in 1991.

19           4.    Petitioner's diagnosis (Exhibit 3, page 7) of the  
20 patient dated February 22, 1991, includes references to:

21                "1) Chronic cervical and thoracic strain with  
                  \* \* \*

22                2) LB strain, R ilium., & bio-stress L & C  
23 spine."

24           5.    Petitioner's treatment plan (Exhibit 3, pages 7-8) under  
25 the same date included:

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- 1           "1) HP, M, MS, MA (Hot Pack, Manipulation, Massage  
2           Therapy)  
3           2) TSE & JMT (Joint Mobilization Therapy)  
4           3) PE regarding TS (Patient Education regarding  
5           Thoracic Strain) "

6           6.     Petitioner's notes relating to office visits of March 8  
7           and March 12, 1991 (Exhibit 3, page 8) bear similar notations with  
8           no reference to symptoms or treatment of the Patient's breasts or  
9           thighs or discussion of Patient's orgasmic experience.

10          7.     Petitioner administered several conventional  
11          chiropractic treatments such as hot packs, manipulation and  
12          massage therapy to Patient's upper back and neck.

13          8.     Petitioner touched Patient's breasts, nipples and inner  
14          thighs on one occasion in the Petitioner's office when patient  
15          came for treatment of the above-described conditions. This  
16          occurred on either the second (March 8, 1991) or third (March 12,  
17          1991) office visit.

18          9.     At the next office visit, Petitioner said to Patient,  
19          "Do you achieve orgasm?"

20          10.    There was no clinical basis for touching the Patient's  
21          breasts, nipples and thighs or for inquiring about whether she  
22          experiences orgasm.

23          11.    The touching and sexual inquiries which occurred further  
24          contributed to the Patient's physical and emotional distress for  
25          which she was seeking treatment.

26          12.    Prior to massage treatment, Patient described to  
27          Petitioner how she experiences electrical energy through her body,  
28          a pulsating energy which causes her body to tremble and shake

1 during yoga exercises and massage. Patient had no such experience  
2 while in the Petitioner's office. Patient did not request  
3 treatment for this condition.

4 13. Patient's delay of more than two years in notifying the  
5 Petitioner and the Board of her complaint was justified based on  
6 the trauma and distress caused by the Petitioner's conduct.  
7 Patient was simply unable to confront the situation until getting  
8 the reassurance of another chiropractor.

9 14. Patient's inability to recall the exact date of the  
10 offensive conduct is not significant given the passage of two  
11 years and the distress associated with the events.

12 ULTIMATE FINDINGS OF FACT:

13 1. Petitioner touched Patient's breasts, manipulated her  
14 nipples, touched her inner thighs and inquired about her ability  
15 to achieve an orgasm during the Patient's scheduled office visit.

16 2. The touching of Patient's breasts, nipples and inner  
17 thighs by Petitioner had no therapeutic value and could have had  
18 none given the nature of Patient's symptoms.

19 3. The inquiry about Patient's experience with orgasm was  
20 unrelated to any of the conditions he was being asked to treat.

21 4. The contact was initiated for the sole purpose of  
22 Petitioner's personal sexual gratification.

23 5. Petitioner's conduct caused significant distress to the  
24 Patient constituting a danger to her health and safety and  
25 impaired the Petitioner's ability to safely and skillfully  
26 practice chiropractic.

1 CONCLUSIONS OF LAW:

2 1. Petitioner's conduct constitutes a violation of ORS  
3 684.100(1)(g)(A) because it was unprofessional and dishonorable on  
4 the basis that:

5 (a) It was contrary to recognized standards of ethics of the  
6 chiropractic profession and the Petitioner's conduct endangered  
7 the health and safety of his Patient by causing severe distress  
8 and tension.

9 (b) It impaired the Petitioner's ability to safely and  
10 skillfully practice chiropractic by engaging in conduct solely for  
11 his personal sexual gratification.

12 2. ORS 684.100 authorizes the Board to discipline a person  
13 for a violation of ORS 684:100(1)(g)(A).

14 3. In disciplining a person as authorized by ORS 684.100(1),  
15 the Board may, under ORS 684.100(9)(d), "Revoke the license of the  
16 person to practice chiropractic in this state."

17 OPINION:

18 The Board alleged that Patient made seven appointments with  
19 the Petitioner during the first half of 1991 for the purpose of  
20 treating back pain, neck pain and tension headaches. According to  
21 the Petitioner's records, Exhibit 3, page 4, the Patient had  
22 appointments on the following dates: February 22, February 25,  
23 March 8, March 12, April 8, May 9 and May 17, 1991.

24 On each visit, the Patient remembered being dressed in a gown  
25 or shirt and shorts. Patient was unable to recall the dates of  
26 the visits. She alleged that on one of those visits for

1 treatment, either the second or third visit, the Petitioner  
2 provided conventional therapeutic massage to her upper back and  
3 neck with the Patient lying on her stomach. Subsequently, he  
4 directed Patient to lie on her back. After briefly massaging her  
5 neck and shoulders he placed his hands under her gown and began  
6 massaging her breasts and manipulating her nipples in a manner  
7 intended to cause sexual arousal. She claimed to have been  
8 shocked by this conduct and was unable to react.

9 Then, the Petitioner placed his hands on her inner thighs and  
10 began massaging at which point she directed him to stop. He  
11 complied and she terminated the visit.

12 During the next visit, according to the Patient, the  
13 Petitioner asked the Patient if she achieved orgasm. And, he told  
14 her he could not be her lover. Patient described both comments as  
15 uninvited and completely out of the context of the requested  
16 treatment.

17 Patient returned for subsequent treatments at later dates.  
18 According to the Patient the sexual contact occurred only at one  
19 visit. She was unable to recall the dates of the visits or the  
20 particular visit at which the offensive touching occurred.  
21 Counsel for the Board, on direct examination of the Patient, asked  
22 if it was a visit in February or March. Petitioner objected on  
23 the basis that the question was leading the witness. The  
24 objection was overruled. Patient responded that she could not  
25 recall.

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1 made the inquiry for the purpose of treating any condition which  
2 he was asked to treat.

3 Therefore, it can only be concluded that the inquiry was  
4 related solely to his sexual interest in the Patient rather than  
5 professional treatment. Patient testified that the question  
6 caused her distress and additional emotional tension, clearly  
7 contrary to her mental health.

8 As to the allegations that Petitioner touched the Patient's  
9 breasts and inner thighs, without any clinical justification,  
10 there are only the Patient's allegations supported by the hearsay  
11 testimony of \_\_\_\_\_ and the Petitioner's limited  
12 denial in his answer to the Notice of Proposed Revocation.

13 The patient was consistent, strong and decisive in her  
14 testimony describing how the events unfolded. On both direct and  
15 cross-examination she described the events in the same tone, one  
16 which gave a sense of reliability.

17 One may question the motives and believability of an accuser  
18 who comes forward only after the passage of more than two years  
19 and cannot recall the exact date of the alleged conduct. However,  
20 Patient's description of the delay, attributing it to the trauma  
21 and stress caused by the events, her lack of knowledge of the  
22 process available to her and her repressed memory of the events  
23 provided a very credible explanation.

24 Patient, in her letter to Petitioner, dated April 23, 1993,  
25 Exhibit 5, pages 3-6, referred to three office visits rather than  
26 the seven which were recorded by Petitioner. She admitted the



1 error but explained that she had simply forgotten the exact number  
2 of visits after the passage of two years.

3 Further, in her complaint (Exhibit 5, page 1), Patient could  
4 not recall the exact time period during which she was a patient  
5 and could only remember that the offensive conduct occurred  
6 between September 1990 and June 1992. Upon cross-examination  
7 about her faulty recall of the dates and the accuracy of her  
8 memory of the actual events, Patient explained that her recall of  
9 the offensive conduct was quite clear despite her confusion about  
10 the exact dates. This is a plausible response.

11 According to the testimony of \_\_\_\_\_, the  
12 Patient described the touching and other events to her after  
13 becoming her patient in early 1993 and learning of the procedure  
14 for filing a complaint with the Board. The description was very  
15 similar in words and details to the description given by the  
16 Patient while testifying in this hearing. While  
17 testimony is hearsay it has corroborative value because of its  
18 consistency with the Patient's testimony given many months later.

19 It is noted that the cross-examination of the Patient by the  
20 Petitioner was interrupted to take the testimony of \_\_\_\_\_ who  
21 was scheduled in advance to testify by telephone and would not have  
22 been available at a later time on the same day. The Petitioner's  
23 objection was overruled on the basis that his cross-examination  
24 would not be adversely affected by the interruption and it was  
25 deemed important to obtain the testimony of an expert witness in  
26 an efficient manner. The Petitioner was allowed to resume his

1 cross-examination of the Patient immediately after the conclusion  
2 of testimony. The Petitioner was then given as much  
3 time as he needed to pursue his questioning of the Patient.

4 The Patient was asked why she returned to the Petitioner for  
5 additional treatment if the alleged conduct actually occurred.  
6 She explained that she was "frozen" by the shock of the touching  
7 when it occurred and she wanted to establish in her own mind that  
8 she was not responsible and that she could control the behavior of  
9 others which affected her that way. She also testified that she  
10 had a sense of denial that the events had occurred without her  
11 quicker intervention.

12 After her last visit on May 17, 1991, the Patient said she  
13 felt she had proven what she set out to, i.e., she was done.

14 The Patient's testimony is believable because of her demeanor  
15 and forcefulness in presenting her testimony. There was no  
16 evidence of animosity predating the alleged offensive conduct  
17 which might provide a motive for fabricating the allegations.

18 The Petitioner's answer, Exhibit 8, provides a limited denial  
19 of the allegations of touching. In the first paragraph on page 1,  
20 Petitioner states: "At no time during treatment of  
21 did I touch her breasts or inner thighs."

22 Then, in the first full paragraph on page 2 of his answer,  
23 Petitioner states:

24 The bottom line is that what happened between  
25 and I happened between two consenting adults and outside  
26 my professional relationship with . What  
happened in our personal relationship was made very  
distinct from our professional relationship at the time

1 it happened. And what happened in our personal  
2 relationship is more than what has been  
3 willing to admit to and now take responsibility for. She  
4 and I discussed these matters prior to them happening and  
5 were acted upon at a prearranged date and with her  
6 consent at the time, from start to finish. There were no  
7 surprises. These are very distinct "lines" I am  
8 referring to in regards to our professional and our  
9 personal relationship. Very distinct. And  
10 selective memory is not compatible with past reality.

11 It become apparent in the Petitioner's answers that he  
12 distinguishes between events which occurred in his personal and  
13 professional relationship with a patient. He seems to acknowledge  
14 that the alleged conduct occurred, and maybe more, but because the  
15 switch had been turned off, those acts which occurred in the  
16 suddenly personal relationship were acceptable. There is no claim  
17 that the alleged behavior occurred away from his office.

18 Petitioner simply believes that one minute he can be Dr. Boyd,  
19 D.C., acting in a professional capacity and the next he can be  
20 Patrick acting on a personal level. Somehow, the patient is  
21 expected to make the same distinction.

22 It is not acceptable to subject patients to this role playing  
23 and expect them to be objective and in control at all times. The  
24 Patient was vulnerable because of the conditions for which she was  
25 seeking treatment. The Petitioner believes he can take advantage  
26 of this vulnerability with impunity by simply putting on a  
27 different hat. This is exactly the kind of conduct prohibited by  
28 ORS 684.100(1)(g)(A). It clearly crosses the boundary into areas  
29 which constitute a danger to the health and safety of patients.

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1 In this case, the Petitioner caused significant harm to  
2 Patient's mental health and jeopardized his ability to provide  
3 professional treatment of Patient's symptoms.

4 It is concluded, based upon the believability of the Patient  
5 and the Petitioner's answer to the Notice of Proposed Revocation,  
6 that the sexual touching and questions occurred as described by  
7 the Patient. It is further concluded that the touching and  
8 questions were, in fact, detrimental to the mental health of the  
9 Patient, and occurred solely for the sexual gratification of the  
10 Petitioner in violation of ORS 684.100(1)(g)(A). It is irrelevant  
11 whether the Patient, at anytime, invited or was receptive to the  
12 Petitioner's conduct.

13 As to the appropriate sanction, the Board is authorized by  
14 ORS 684.100(9)(d) to revoke the license of a person to practice  
15 chiropractic in this state if such person has engaged in conduct  
16 which violate ORS 684.100(1)(g)(A). Having concluded that such a  
17 violation did occur, the remaining issue is to determine the  
18 appropriate sanction.

19 Based upon the potential vulnerability of patients under the  
20 care of a chiropractor and the potential for harm to the patient's  
21 mental and physical well-being, it can be reasonably concluded  
22 that the health and safety of other patients should not be  
23 jeopardized by allowing the Petitioner to continue in practice.

24 There were no Ex Parte communications relating to this  
25 matter.

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1 NOTICE:

2 The Petitioner was notified of the date, time and place of  
3 this contested case hearing in compliance with the Administrative  
4 Procedures Act (ORS chapter 183).

5 ADDENDUM:

6 The Board issued its Final Order on May 2, 1994, revoking the  
7 license of Patrick Boyd. Boyd appealed the May 2, 1994 Final  
8 Order to the Oregon Court of Appeals on July 10, 1994. The appeal  
9 was perfected on the grounds that Boyd had never received a copy  
10 of the Proposed Order.

11 On June 21, 1994, the Board voted to withdraw the May 2, 1994  
12 Final Order from the Court of Appeals for reconsideration under  
13 ORS 183.482(6). The Board notified Boyd by letter of June 20,  
14 1994, of the withdrawal of the May 2, 1994 Final Order and the new  
15 opportunity to file exceptions to the April 8, 1994 Proposed  
16 Order. The text of the April 8, 1994 Proposed Order and the May  
17 2, 1994 Final Order are substantially the same.

18 On July 5, 1994, Boyd wrote the Board expressing confusion  
19 concerning jurisdiction and the exceptions process. Boyd was  
20 allowed until July 20, 1994, to file exceptions to the April 8,  
21 1994 Proposed Order. As of July 21, 1994, Boyd had filed no  
22 exceptions. Having no new information to consider, the Board  
23 adopts the April 8, 1994 Proposed Order as a Final Order.

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1 FINAL ORDER:

2 IT IS HEREBY ORDERED that Patrick Boyd's license to practice  
3 chiropractic in the State of Oregon is revoked as of the date of  
4 this Final Order.

5  
6 IT IS SO ORDERED this 29 day of April, 1994.

7 Original signature on file  
8 at the OBCE office.

9 CHRISTIE JOACHIM, EXECUTIVE DIRECTOR  
10 OREGON BOARD OF CHIROPRACTIC EXAMINERS

11 NOTICE: You are entitled to judicial review of this Final Order  
12 pursuant to the provisions of ORS 183.480. Judicial review may be  
13 obtained by filing a petition in the Oregon Court of Appeals. The  
14 petition may be filed within 60 days from the date of service of  
15 this Final Order.  
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