

BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF OREGON

In the Matter of )  
 )  
Nicholas Brown, D.C. )  
License No. 2284, )  
 )  
Licensee. )  
\_\_\_\_\_ )

**STIPULATED FINAL  
ORDER**  
Case #2008-1028

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. Nicholas Brown, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon.

Findings of Fact

1.

In November 2007, Patient 1 began employment at Licensee's clinic as a certified chiropractic assistant. She was in her early 20's at the time. Soon Licensee began to provide treatment to Patient 1, as a patient for which Licensee prepared travel cards notes. Licensee also loaned her money to buy a car. In order for her to further her chiropractic assistant career, Licensee began to ask Patient 1 to accompany him on a number of business trips with him and was accompanied by another chiropractic assistant as well. These were portrayed as being training for her as well. They initially went on two trips, one to San Francisco and one to Los Angeles, with another staff member. On the third trip to Colorado, Licensee and Patient 1 were alone on the trip. When on the airplane, Patient 1 was afraid of flying and Licensee held her hand.

2.

Soon there were three more trips for training one to Utah and two to Colorado with Patient 1 and Licensee alone. On the first of these trips, she fell asleep in his bed. Patient 1 stated she later woke up when he came out wearing some kind of pajama bottoms (or shorts) and he joined her in bed. She stated she excused herself and went back to her room. Licensee stated

that Patient 1 voluntarily climbed into Licensee's bed and joined him under the covers to fall asleep, and only left after Licensee asked her to depart. Licensee and Patient 1 agree that no sexual activity took place.

On the second trip of this series, Patient 1 lay near him on a couch and he touched her hair and started to rub her shoulders. Licensee admits that he rubbed Patient 1's shoulders, but stated that he only did so after Patient 1 indicated that her neck and shoulders were sore. Patient 1 stated that he then massaged her upper chest. Patient 1 says she froze. She stated that she didn't know what to do as he was her boss and her chiropractor and she was confused. She stated that when he stopped she went to her room. Licensee denies massaging her upper chest, as he alleges that he never touched Patient 1's pectoral muscles or her breast tissue. Licensee alleges that Patient 1 returned to her room when Licensee told her he was going to bed. On another night on this trip Patient 1 ended up in his bed and spent the night, sleeping next to him, although both Licensee and Patient 1 agree that no sexual activity took place. He also hot-tubbed and went swimming with Patient 1 on this trip.

3.

On the third of this series, to Manti Utah, Patient 1 said they were watching a movie in his room again and she stated that he provided her with a drink that was heavily laced with alcohol. Patient 1 stated that she recalls little of what happened afterward. Licensee alleges that alcohol was only purchased that evening on Patient 1's request, and that he only made one drink for her that contained approximately 1 ounce of liquor. Licensee alleges that Patient 1 made herself two additional alcoholic drinks before going to bed. Patient 1 alleges that she felt loopy and she fell asleep. Patient 1 stated that she later ended up in Licensee's bed and they slept next to each other. Licensee awoke the next morning and ended up accidentally touching her breasts as they lay next to each other. Licensee got apologetic and said nothing more happened. He told her it wouldn't happen again. On the way home from the trip, Licensee apologized and Patient 1 stated that he pleaded for her not to tell anyone. Patient 1 said she then told Licensee that she had been raped previously and that the touching wasn't "like that" and they should forget about it.

In October 2008, the fourth trip of the series involved a trip to Colorado. On the first night they watched TV on the couch. On the second night, they watched TV in his bed and she ended up staying the night sleeping next to him. On the third night, they went to a comedy show where she had one alcoholic drink. They returned to the hotel and ended up on his bed. Licensee then had one act of voluntary sexual intercourse with Patient 1. The next day, Patient 1 stated that Licensee apologized to her. Licensee admits that he told Patient 1 that he had never done anything like that before and it wouldn't happen again.

Patient 1 left the job on or about December 2, 2008, soon after that when Licensee had told her he had planned another business trip. Patient 1 says she became distraught and for the next several months became withdrawn and significantly depressed. Patient 1 alleges that she attempted to harm herself and was prevented from doing so by her mother. Patient 1 has received mental health counseling due to these events.

4.

In an interview with the Board Licensee denied any grooming behavior toward Patient 1 and said she was the aggressor and was "setting him up." Licensee did admit that they had sexual intercourse during that final trip. Licensee said that the sex was consensual and that Patient 1 was not visibly upset.

In an interview with the Board, Licensee admitted to letting Patient 1 convince him to help her buy a car, and permitted her without protest to: lay her head in his lap; lay on his bed in hotel rooms; sleep in his bed in hotel rooms; lay her head on his lap while watching TV on the couch in a hotel room; take hot tubs together with her clad in a bikini (he said he felt responsible for her safety); go on the water slide together with her; and let her leave her door open to their adjoining rooms while she changed (he said he did not see her changing). Licensee admitted that he would not have done these things or would have let them happen in front of his wife. He said he talked to his wife every night on his trips, but when asked if he told his wife that he was watching movies in bed with Patient 1, or that she slept in his bed, he said no.

#### Conclusions of Law

5.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's conduct, and blending doctor/patient and personal relationships as described above, in regards to Patient 1 constitutes violations of ORS 684.100 (1)(f)(A) and OAR 811-035-0015(1)(a)-(e). The Board finds that there was a doctor/patient relationship with Patient 1 prior to sexual contact and/or any boundary violations and that the doctor/patient relationship had not been appropriately terminated prior to sexual contact or boundary violation pursuant to OAR 811-010-0005(4).

#### Order

6.

The Board finds Licensee in violation of ORS 684.100(1)(f)(A) and OAR 811-035-0015(1)(b)-(e) and orders Licensee to complete the following:

1. Licensee wishes to resolve this matter short of a hearing and has decided, with representation, to waive his right to appeal and enter into this stipulated order.
2. Licensee's License to practice Chiropractic is hereby suspended for 90 consecutive days beginning July 2, 2010, through September 29, 2010. Licensee may not participate in any type of practice of chiropractic during that time period.

3. Licensee is placed on Probation for a period of three years from the date of completion of suspension.
4. Licensee must attend and complete the PROBE ethics program within the next six months at his own expense and provide proof of completion of the program and a final report of completion to the Board within thirty days of completion.
5. Licensee is assessed a civil penalty in the sum of \$5000 payable to the Board within 10 months of the date of this signed order.
6. Licensee will take and pass the NBCE ethic test within six months of this order.
7. Licensee agrees that he will not travel for business or pleasure with anyone who has been a former patient or a current patient, except for family members.

Dated this 29<sup>th</sup> of June 2010.

BOARD OF CHIROPRACTIC EXAMINERS

Original signature on file at OBCE

Dave McTeague  
Executive Director

Original signature on file at OBCE

By: \_\_\_\_\_  
Nicholas Brown, DC

BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF OREGON

In the Matter of	)	AMENDED
	)	<b>NOTICE OF PROPOSED</b>
Nicholas Brown DC.	)	
License No; 2284	)	<b>DISCIPLINARY ACTION</b>
	)	
Licensee.	)	<b>Case # 2008-1028</b>

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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. Nicholas Brown DC (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board proposes to discipline Licensee for the following reasons:

1.

In November 2007, Patient 1 began employment at Licensee's clinic as a certified chiropractic assistant. She was in her early twenties at the time. Soon Licensee began to provide treatment to Patient 1 as a patient for which Licensee prepared travel cards notes. Licensee also loaned her money to buy a car. In order for her to further her chiropractic assistant career, Licensee began to ask Patient 1 to accompany him on a number of business trips with him and was accompanied by another chiropractic assistant as well. These were portrayed as being training for her as well. They initially went on two trips, one to San Francisco and Los Angeles, with another staff member. On the third trip to Colorado Licensee and Patient 1 were alone on the trip. When on the airplane, Patient 1 was afraid of flying and Licensee held her hand.

2.

Soon there were three more trips for training, one to Utah and two to Colorado, with Patient 1 and Licensee alone. On the first of these trips, she fell asleep in his bed. She later woke up when he came out wearing some kind of pajama bottoms (or shorts) and he joined her in bed. She excused herself and went back to her room.

On the second trip of this series, Patient 1 laid near him on a couch and he touched her hair and started rubbing her shoulders. He then massaged her upper chest. Patient 1 says she froze. She didn't know what to do as he was her boss and her chiropractor and she was confused. When he stopped she went to her room. On another night on this trip Patient 1 ended up in his bed and spent the night, sleeping next to him. He also hot-tubbed and went swimming with Patient 1 on this trip.

3.

On the third trip of this series, to Manti Utah, Patient 1 said they were watching a movie in her room and Licensee provided her with a drink that was heavily laced with alcohol. Patient 1 said she recalls little of what happened afterward. Patient 1 felt loopy and then fell asleep. Patient 1 later ended up in Licensee's bed and they slept next to each other. Licensee awoke the next morning and ended up touching her breasts. Licensee got apologetic and said nothing more happened. He told her it wouldn't happen again. On the way home from the trip, Licensee apologized and pleaded for her not to tell anyone. Patient 1 said she then told Licensee that she had been raped previously and that the touching wasn't "like that" and they should forget about it.

In October 2008 the fourth trip on this series involved a trip to Colorado. On the first night they watched TV on the couch. On the second night, they watched TV in his bed and she ended up staying the night sleeping next to him. On the third night they went to a comedy show where she had one alcoholic drink. They returned to the hotel and ended up on his bed. Licensee then had sexual intercourse with Patient 1. The next day Licensee apologized to Patient 1 again saying he had never done anything like that before and it wouldn't happen again.

Patient 1 left the job soon after that when Licensee had told her he had planned another business trip. Patient 1 says she became distraught and for the next several months became withdrawn and significantly depressed. Patient 1 attempted to harm herself and was prevented from doing so by her mother. Patient 1 has received mental health counseling due to these events.

4.

In an interview with the Board Licensee denied any grooming behavior toward Patient 1 and said she was the aggressor and was "setting him up." Licensee did admit that they had sexual intercourse during that final trip. Licensee said that the sex was consensual and that Patient 1 was not visibly upset.

In interview with the Board, Licensee admitted to letting Patient 1 convince him to help her buy a car, and permitted her without protest to: lay her head in his lap; lay on his bed in hotel rooms; sleep in his bed in hotel rooms; lay her head on his lap while watching TV on the couch in a hotel room; take hot tubs together with her clad in a bikini (he said he felt responsible for her safety); go on the water slide together with her; and let her leave her door open to their adjoining rooms while she changed (he said he did not see her changing). Licensee admitted that he would not have done these things or would have let them happen in front of his wife. He said he talked to his wife every night on his trips, but when asked if he told his wife that he was watching movies in bed with Patient 1, or that she slept in his bed, he said no.

5.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's conduct, and blending doctor/patient and personal relationships as described above, in regards to Patient 1 constitutes violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015(1)(a)-(e). The Board finds that there was a doctor/patient relationship with Patient 1

prior to sexual contact and/or any boundary violations and that the doctor/patient relationship had not been appropriately terminated prior to sexual contact or boundary violation pursuant to OAR 811-010-0005(4).

6.

Due to the aforementioned violations, the OBCE proposes to suspend Licensee's license for a period of 6 consecutive months from the date of the final order, 3 years probation following suspension, pay a \$5000 civil penalty within 30 days, and that Licensee successfully attend and complete the PROBE ethics class within 6 months and provide proof of completion to the board.

7.

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

8.

Licensee has the right, if Licensee requests, to have a formal contested case hearing before the OBCE or its Administrative Law Judge to contest the matter set out above. At the hearing, Licensee may be represented by an attorney and subpoena and cross-examine witnesses. That request for hearing must be made in writing to the OBCE, must be received by the OBCE within 30 days from the mailing of this notice (or if not mailed, the date of personal service), and must be accompanied by a written answer to the charges contained in this notice.

9.

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.

10.

If Licensee requests a hearing, before commencement of that hearing, Licensee will be given information on the procedures, rights of representation and other rights of the parties relating to the conduct of the hearing as required under ORS 183.413-415.

11.

If Licensee fails to request a hearing within 30 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. Upon default order of the Board or failure to appear, the contents of the Board's file regarding the subject of this automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

Dated this April 8, 2010

BOARD OF CHIROPRACTIC EXAMINERS  
State of Oregon

**Original signature on file at OBCE**

BY


Dave McTeague  
Executive Director

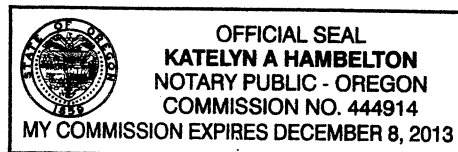


State of Oregon ) Case # 2008-1028  
County of Marion ) Nicholas Brown DC

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 Amended Notice of Proposed Disciplinary Action is true to the best of my knowledge as I verily believe.

Original signature on file at OBCE

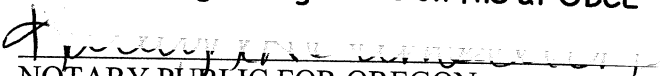
  
\_\_\_\_\_  
Dave McTeague, Executive Director  
Oregon Board of Chiropractic Examiners



SUBSCRIBED AND SWORN to before me

this 8<sup>th</sup> day of April, 2010

Original signature on file at OBCE

  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Dec. 8<sup>th</sup>, 2013

## Certificate of Service

I, Dave McTeague, certify that on April 8, 2010, I served the foregoing Amended Notice of Proposed Disciplinary Action upon the party hereto by mailing, regular mail, postage prepaid, a true, exact and full copy thereof to:

Nicholas Brown, DC  
Timber Linn Chiropractic Clinic  
2216 9th Ave SE  
Albany, OR 97321

Richard R. Meneghello AAL  
Fisher and Phillips LLP  
111 SW Fifth Ave. Suite 1250  
Portland, OR 97204

*Original signature on file at OBCE*

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Dave McTeague  
Executive Director  
Oregon Board of Chiropractic Examiners

BEFORE THE  
BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF OREGON

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5.

Patient 1 made a civil case damages claim for her sexual assault and battery against Licensee and that claim settled for payment from Licensee in the amount of \$60,000. The agreement specified that Patient 1 would keep the settlement and the agreement strictly confidential.

6.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's conduct, and blending doctor/patient and personal relationships as described above, in regards to Patient 1 constitutes violations of ORS 684.100 (1)(g)(A); and OAR 811-035-0015(1)(a)-(e). The Board finds that there was a doctor/patient relationship with Patient 1 prior to sexual contact and/or any boundary violations and that the doctor/patient relationship had not been appropriately terminated prior to sexual contact or boundary violation pursuant to OAR 811-010-0005(4).

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Due to the aforementioned violations, the OBCE proposes to suspend Licensee's license for a period of 6 consecutive months from the date of the final order, 3 years probation following suspension, pay a \$5000 civil penalty within 30 days, and that Licensee successfully attend and complete the PROBE ethics class within 6 months and provide proof of completion to the board.

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Dated April 2, 2010

BOARD OF CHIROPRACTIC EXAMINERS  
State of Oregon

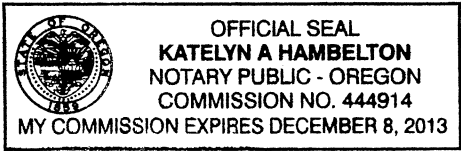
**Original signature on file at OBCE**

By \_\_\_\_\_  
Dave McTeague  
Executive Director

State of Oregon ) Case # 2008-1028  
County of Marion ) Nicholas Brown DC

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 Notice of Proposed Disciplinary Action is true to the best of my knowledge as I verily believe.

**Original signature on file at OBCE**  
\_\_\_\_\_  
Dave McTeague, Executive Director  
Oregon Board of Chiropractic Examiners



SUBSCRIBED AND SWORN to before me  
this 2nd day of April, 2010

**Original signature on file at OBCE**  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Dec. 8th, 2013

**Certificate of Service**

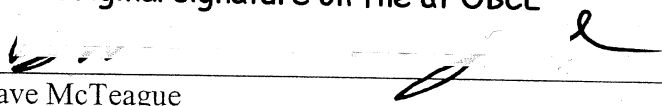
I, Dave McTeague, certify that on April 2, 2010, I served the foregoing Notice of Proposed Disciplinary Action upon the party hereto by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Nicholas Brown, DC  
Timber Linn Chiropractic Clinic  
2216 9th Ave SE  
Albany, OR 97321

By regular mail to:

Richard R. Meneghello  
Fisher and Phillips LLP  
Suite 1250  
111 SW Fifth Ave.  
Portland, OR 97204

*Original signature on file at OBCE*

  
\_\_\_\_\_  
Dave McTeague  
Executive Director  
Oregon Board of Chiropractic Examiners