

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of
Mauro Civica, D.C.

Licensee.

) Stipulated Final Order
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)
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) Case # 99-1012, 99-1020, 99-1021
) 99-1024, 99-3005, 2000-1008
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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. Mauro Civica, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board has determined the facts as follows:

Findings of Fact

1.

An Amended Notice of Proposed Disciplinary Action was served by the Board on January 22, 2001. Dr. Civica filed a response to the amended notice on February 22, 2001 denying the allegations. The matter proceeded to contested case hearing on March 13-16, 2001 before the Hearings Panel. On May 14, 2001, the hearing officer issued the proposed order. The proposed order found the following violations:

1. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0015(1)(a) by engaging in conduct towards patient JE, undoing the belt on her jeans and slipping his hand between her jeans and her underwear, that was reasonably interpreted by the patient as sexual or seductive.
2. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0015(1)(a) by engaging in conduct towards patient DM, taking his hands and massaging the patient's buttocks underneath her underwear and touching her labia, that was reasonably interpreted by the patient as sexual or seductive.

3. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0005(2) by failing to inform patient JE of his procedures while administering a hip adjustment and obtaining the patient's informed consent prior to undoing the belt on her jeans and slipping his hand between her jeans and her underwear.
4. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0005(2) by failing to inform patient DM of his procedures and obtaining the patient's informed consent prior to performing a breast examination while the patient's father was present in the treatment room.
5. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0005(2) by failing to inform patient DM of his procedures while administering a massage and obtaining the patient's informed consent prior to taking his hands and massaging the patient's buttocks underneath her underwear and touching her labia.
6. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0095 by failing to maintain records on seven patients that met the medically standard for record keeping.

On September 20, 2001, the Board issued the Final Order revoking the Licensee from practice of chiropractic in the State of Oregon and added the following violation:

Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0015(1)(a)(b) and (c) by engaging in sexual relations with a patient and/or touching of sexual or intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either the licensee or patient in the conduct towards patient TC, that involved digital penetration of her vagina and finally to performing oral sex on TC which was reasonably interpreted by the patient as sexual or seductive.

2.

On November 15, 2001, Licensee filed a Motion for Reconsideration of the Final Order and the Board allowed Licensee to address the Board at their board meeting. At the Board Meeting Licensee made a statement of apology and remorse to the patient complainants and to the Board.

Conclusions of Law

3.

Based on the Hearing Officer Findings and the contested case hearing, 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 and (1)(a)(b)(c). There were also violations of record keeping under ORS 684.100(1)(g) and OAR 811-010-0095.

Stipulations

4.

After Reconsideration of the Final Order, the Board and Licensee have agreed to resolve all matters arising out of Licensee's conduct. The Board has formally voted on Reconsideration to withdraw the Final Order entered in this case and enter into this stipulation. 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,

Pursuant to ORS 183.415(5), the Board and Licensee agree to informally dispose of and settle this matter and Stipulate to the following:

1. Licensee agrees that he has been advised of his right to request review of this matter pursuant to ORS 183.415(2)(a).
2. Licensee waives his right to review in this matter.
3. Licensee's license is suspended for 45 days beginning on the day following the orders final signature by all parties, during which time he may not engage in the practice of chiropractic,
4. Following the period of suspension, Licensee's license is placed on probation for a period of 7 years.

5. As a **PERMANENT** restriction on his license, Licensee has agreed to the following:

A. Licensee shall have an OBCE approved female chaperone present during examination and treatment of all 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 to the OBCE will also be signed.

Further, each female patient shall be required to read and initial a statement explaining the reasons for having a female chaperone 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.

B. Licensee is permanently prohibited from performing any coccyxgeal or vaginal adjustments.

C. Licensee is permanently prohibited from massaging any female patients.

6. During probation, Licensee agrees to enter into treatment with an Oregon licensed psychologist or psychiatrist approved by the OBCE and continue in treatment as long as that professional deems necessary. This professional must specialize in treatment of sexual offenders. All therapy and reporting will be at the sole cost of the licensee. Licensee shall cause the treating psychologist to submit periodic reports to the OBCE regarding Licensee's progress at a duration of not less than once every six months. 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. The Board has agreed that it will not use the services of Dr. Blake Fischer-Davidson in this matter.

7. During probation, Licensee will be required to submit to annual compliance polygraph tests with a polygrapher chosen by the Board. Licensee will provide for all costs for the examinations.
8. 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.
9. Licensee is assessed costs for this proceeding in the amount of \$15,000.00 pursuant to ORS 684.100(9)(g). Licensee will pay those to the Board directly during the probationary period with monthly installments of \$179.00 to begin on January 1, 2001 and to continue until paid in full. If Licensee falls in arrears in his payment three months or more, the Board will request the services of the Oregon Department of Revenue in account recovery.
10. Licensee agrees that the Board may revoke his license if after a contested case hearing it is shown that the provisions of this stipulated final order have been violated. Licensee agrees to not engage in any conduct or verbal behavior toward any patient that may be reasonably 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, the conduct may be used as a basis for license revocation.

5.

This Stipulated Final Order memorializes the entire agreement between the Licensee and the Board and supercedes all prior offers, negotiations or settlement discussions re

I have read and I fully understand all of the above Stipulated Final Order and fully agree to its terms.

IT IS HEREBY ORDERED (pursuant to the above Stipulations) THAT:

1. Licensee's license is suspended for 45 days beginning the day following the orders signature by all parties;
2. Licensee's license is on probation for a period of 7 years

3. Licensee is permanently prohibited from performing any coccyxgeal or vaginal adjustments;
4. Licensee is permanently prohibited from massaging any female patients;
5. Licensee must permanently have an approved chaperone for all female patients;
6. During probation licensee agrees to enter treatment with a professional psychologist or psychiatrist;
7. During probation, Licensee will complete annual compliance polygraphs;
8. During probation, Licensee will allow Board access to records to review patient records and record keeping process;
9. Licensee will reimburse the Board costs of \$15,000 according to the terms of the stipulation.

IT IS SO ORDERED this 14th of December, 2001.

BOARD OF CHIROPRACTIC EXAMINERS

State of _____

By: _____
Dave M. _____
Executive Director

Original signature on file
at the OBCE office.

By: _____

Mauro Civica, D.C.

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of

MAURO A. CIVICA, D.C.,
License No.: 3039
Licensee.

)
) Case # 99-1012, 99-1020, 99-1021, 99-1024,
) 99-3005, 2000-1008
)
) **AMENDED NOTICE OF PROPOSED**
) **DISCIPLINARY ACTION**
)

The Oregon Board of Chiropractic Examiners (hereafter "Board") is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Mauro A. Civica, D.C. (hereafter "Licensee"), is currently licensed by the Board to practice as a chiropractic physician in Oregon and is subject to the jurisdiction of the OBCE. The OBCE proposes to revoke Licensee's license to practice chiropractic, pursuant to ORS 183.413 and ORS 684.100, for unprofessional or dishonorable conduct described as follows:

1.

In January 1999 Licensee entered into a physician-patient relationship with female patient number 1. Licensee treated patient 1 for one visit. During that visit, licensee pressed with extreme pressure on patient number 1's abdomen, near her ovary causing extreme pain and vaginal bleeding. Licensee did not explain to patient number 1 that he was going to use extreme pressure on her abdomen prior to using the technique.

2.

During the examination of patient 1 in January 1999, licensee asked patient number 1 very specific and intrusive questions regarding her sexual activity. In addition, licensee discussed with patient 1, other patients, using their entire name, and described to patient number 1 the conditions of those patients, noting they were similar to patient number 1's conditions.

3.

During December 1998, licensee entered into a physician-patient relationship with female patient number 2. Licensee treated patient 2 for three visits in December 1998. On the third visit, licensee administered a trigger-point therapy in patient number 2's groin area. During this therapy treatment, licensee undid patient number 2's belt and zipper on her pants, pushed his hand down between her jeans and her underwear. Licensee did not ask permission to do this, nor explain to patient number 2 that he was going to do it, in addition give reasons for the necessity to do the conduct described. When patient 2 asked licensee why he unzipped her pants and touched her groin area, licensee provided no response. During the therapy, licensee used extreme pressure on patient 2's groin area as he massaged and adjusted her, causing considerable pain to patient 2.

4.

While treating patient 2, licensee told her that he worked part-time for the Hubbard City Police Department.

5.

From November 1998 to January 1999, licensee entered into a physician-patient relationship with female patient number 3. Patient number 3 sought treatment for chronic low back pain. On patient number 3's initial visit licensee asked her personal questions regarding her sexual activity and inferred that the sexual activity may be the cause of the pain. During the following exams, licensee continued to ask questions of an intrusive nature and make comments of a very personal nature in regards to patient number 3's sexual activity. Licensee inquired of patient 3's sexual activity, ability to orgasm and oral sex habits.

6.

During treatment of patient 3, licensee wanted to perform a coccyx and/or vaginal adjustment on her. Licensee also told patient 3 that he needed to massage the muscles on the inside of her spine and the only way to do it was to reach inside her vagina. Patient number 3 accepted the medical explanation that licensee gave her due to ongoing pain that was not resolved. Licensee

performed a coccyx and/or vaginal adjustment on patient 3. Licensee also administered a trigger-point therapy to patient 3, pushing so hard that it caused pain, emotional discomfort and distress.

7.

During treatment of patient 3, licensee told her he worked part-time as a police officer for Hubbard City Police.

8.

In January 1998, licensee entered into a physician-patient relationship with female patient number 4. Licensee treated patient 4 for 1 month. Patient 4 sought treatment from licensee due to injury from a motor vehicle accident. During treatments, patient 4 became extremely uncomfortable with the way licensee massaged her legs and groin area. Licensee would reach his fingers in under patient 4's underwear to reach an area of her groin and his fingers would brush up against her genital area.

9.

During treatment of patient 4, licensee would ask intrusive and specific questions regarding patient 4's sexual activity, the status of her marriage and ability to orgasm. Patient 4 felt very uncomfortable with the questions Licensee asked.

10.

After surgery on her back, patient 4 returned to licensee after a lull in treatment for approximately 6 months. During an August 1999 visit, patient 4 brought her father with her. At this visit, patient 4 was uncomfortable by where and how licensee touched her, but because her father was present in the treatment room, licensee did not act as he had as described in paragraph 8.

11.

Patient 4 continued on another visit and when in the treatment room, alone with licensee, licensee massaged her shoulders, upper and lower back and spread patient 4's legs apart. Licensee pulled up the clinic gown, massaging the pressure points in patient 4's groin. As licensee massaged her groin, licensee moved his fingers under her underwear. While this went on for several minutes, licensee slipped his entire hand under patient 4's underwear and cupped her genital area. This

behavior caused Patient 4 to become emotionally upset, afraid and distressed by what Licensee had done. While treating patient 4, licensee told her he worked part-time for Hubbard City Police.

12.

In August, 1999, patient number 5, also a family friend, was receiving a massage from Licensee in his office. Besides being a family friend with patient 5, licensee entered into a physician-patient relationship with patient 5. During that massage, licensee locked the door and turned out the lights. Patient 5 was asked to completely disrobe and put on a gown. After a back massage, licensee asked patient 5 to turn over. While being massaged licensee removed the patient's entire gown and massaged patient 5's breasts, while asking her about her sexual activity. Licensee told patient 5 he had waited for her to be a certain age so he could engage in sexual activity. Licensee proceeded to insert his fingers into patient's vagina and thereafter began to perform oral sex on patient 5. Licensee took his shirt off while oral sex was performed. Licensee then began to unzip his pants when patient 5 indicated she wanted to leave the office.

13.

The Board also ordered a competency examination by Dr. Blake Fischer-Davidson, Psy.D. Dr. Fischer-Davidson has reviewed the statements of Patient 5 and finds the report alarming in that Licensee appears calculating in setting up the offense and that licensee abused his status as a "second Dad" by beginning to groom her by asking questions of her sex life prior to the offenses in paragraph 12. Dr. Fischer-Davidson finds that he is a sexual offender and has predatory tendencies and clearly uses intimidation to gain compliance. He was convinced that should Licensee be allowed to continue to practice chiropractic, it would place the public at risk. The diagnosis was sociopathic and severe narcissistic personality disorders and he would be in that classification identified by the National Chiropractic Mutual Insurance Company, "Sexual Misconduct, Ethical and Legal Ramifications and the Chiropractic Profession" by Michael Stahl D.C. and Stephen M. Foreman D.C.

14.

The conduct described in paragraphs 2-13, regarding licensee's inappropriate touching of patients one through four, the verbal behavior consisting of intrusive questions and comments regarding their personal and sexual history violates ORS 684.100(1)(g)(A), unprofessional or dishonorable conduct, conduct contrary to recognized standards of ethics in chiropractic profession as defined in OAR 811-035-0015(1), conduct or verbal behavior that may be reasonably interpreted by the patient as sexual in nature. Unprofessional conduct means any unethical, deceptive or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health or welfare or safety of patients, in any of which cases proof of actual injury need not be established.

15.

The conduct described above regarding patient 1 in paragraph 2, wherein medical conditions of other patients were discussed using patient names, violates OAR 811-035-0015(11), which violates rights of privacy or confidentiality of patient unless required by law to disclose.

16.

The conduct described in paragraphs 2-13 wherein no explanation of procedure prior to touching the specific areas was discussed with patients 1 through 5, violates OAR 811-035-0005 (1) and (2) which state: The health and welfare of the patient shall always be the first priority of Chiropractic physicians and expectation of remuneration shall not affect the quality of service to the patient, 2: Chiropractic physicians shall inform the patient of the diagnosis, plan of management and prognosis in order to obtain a fully informed consent of the patient during the early course of treatment.

17.

The conduct described in paragraphs 2-13 violates the medically accepted standards as adopted in Boards Practice and Utilization Guidelines enumerated in OAR 811-010-0095 (2)(b).

18.

A licensed massage therapist, (co-worker 6) shared office space with licensee for several months. Worker 6 saw licensee during office hours and while patients were in the office, leave a pornographic drawing on top of the copy machine. The drawing was a depiction of a naked female with a large vagina and oversized breasts. The figure was headless. Being concerned for her clients, worker 6 confronted licensee and expressed her distaste. Licensee made light of the incident. Coworker was upset, especially since she had female patients who were previously raped or abused.

On another occasion, coworker 6 saw licensee cleaning his gun in the office and saw licensee bring the gun into the patient waiting room while patients were present. In addition, coworker 5 witnessed licensee walking with a patient into the lobby area where other patients were present, and continue to discuss that patient's medical condition.

19.

The conduct described in paragraph 18 above violates ORS 684.100(1)(g)(A) and OAR 811-035-0015(11) and 811-035-0015(1)(a).

20.

Medical records of patient 1 contain limited initial intake information in the file. During an interview, licensee acknowledged there was limited intake information in the file. There is no diagnosis and no treatment plan in patient 1's records. Licensee agreed there was no record of treatment. Patient records of patient 2 provide no objective findings on two separate visits and limited on another. In addition, licensee cannot describe a system as to how the patient files and records in the computer and paper files are reconciled to assure that each record is accurate and complete.

21.

The conduct described in paragraph 20 violates OAR 811-015-0005(1) and OAR 811-035-0005(2) and (4) and ORS 684.100(1)(g)(q).

22.

Medical records obtained by the Board for visit on November 4, 1998 of patient 3 do not contain objective findings. In addition, licensee cannot describe a system as to how the patient files and records in the computer and paper files are reconciled to assure that each record is accurate and complete.

23.

The conduct described in paragraph 22 violates OAR 811-015-0005(1) and OAR 811-035-0005(2) and (4) and ORS 684.100(1)(g)(q) .

24.

In the medical records of patient 4, dated 7/26/99, there are no records treatment implemented. This violates OAR 811-015-0005(1).

25.

In review of patient 4's medical records, the Board found duplicate billings for an office visit of January 5, 1998. The billing charges for the same date of service was different in addition to different billing codes were applied. The patient was not notified of the changes to the billing dates of January 5, 1998 at any time. Licensee admitted that he had not made the patient aware of those changes.

26.

The conduct in paragraph 25 above violates OAR 811-015-0010(2) and (3) and OAR 811-035-0015(12).

27.

Licensee provided the medical records of patient 7 as a patient who had received either internal rectal or vaginal coccygeal adjustments by him. The Medical records of patient 7 contain the type of treatment in the section of the chart note for objective findings. (Licensee has reported coccygeal adjustments as objective findings of this patient) This creates an inaccurate record for the patient. In addition, in the chart notes there is no objective findings that indicate this as a choice of treatment or at least an explanation for why this form of treatment was chosen on this

patient. There are numerous examples of incomplete and irregular charting which is often confusing, misleading and does not present a pattern of critical thought based on testing, evaluating and forming diagnosis and resulting choices for treatment.

28.

The conduct described in paragraph 21 violates OAR 811-015-0005(1) and OAR 811-035-0005(2).

29.

Licensee provided the medical records of patient 8 as a patient who had received either internal rectal or vaginal coccygeal adjustments by him. The Medical records of patient 8 lack evidence of objective evaluation based on the patient complaint. The diagnoses based on the patient complaints from July 29, 1998 do not change throughout the patient history. This patient was charged for x-rays on 8/26/98 but there is no discussion of x-ray findings throughout the patient history treatment in this file. There were no records of coccygeal adjustments performed on this patient. There are numerous examples of incomplete and irregular charting which is often confusing, misleading and does not present a pattern of critical thought based on testing, evaluating and forming diagnosis and resulting choices for treatment.

30.

The conduct described in paragraph 21 violates OAR 811-015-0005(1) and OAR 811-035-0005(2).

31.

Licensee provided the medical records of patient 9 as a patient who had received either internal rectal or vaginal coccygeal adjustments by him. The Medical records of patient 9 show by way of history a 1981 coccyx fracture. There is mention in a personal letter written by this patient that she had two coccygeal adjustments. There is only mention in this file of one adjustive procedure on 3/9/98. When reading the chart there are objective findings that continue through numerous treatments and remain unchanged. This patient was charged for x-rays on 8/4/99 but

there is no discussion of x-ray findings throughout the patient history treatment in this file. There was a charge for new patient examination on 8/4/99 when the patient was an on-going patient. There are numerous examples of incomplete and irregular charting which is often confusing, misleading and does not present a pattern of critical thought based on testing, evaluating and forming diagnosis and resulting choices for treatment.

32.

The conduct described in paragraph 21 violates OAR 811-015-0005(1) and OAR 811-035-0005(2).

33.

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

34.

NOTICE OF RIGHT TO A HEARING

Licensee has the right, if Licensee requests, to a hearing as provided by the Administrative procedures Act (ORS Chapter 183) before the Board or its hearing officer to contest the matter set out above. At the hearing, Licensee may be represented by an attorney, and may subpoena and cross-examine witnesses. A request for hearing must be made in writing to the Board, and must be received by the Board within 30 days from the date of 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. Upon receipt of a request for hearing, the Board will notify licensee of the time and place of the hearing. If Licensee requests a hearing, Licensee will be given, prior to the commencement of the hearing, information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing as required by ORS 183.413(2).

35.

Licensee's answer shall be made in writing to the Board 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

there is no discussion of x-ray findings throughout the patient history treatment in this file. There was a charge for new patient examination on 8/4/99 when the patient was an on-going patient. There are numerous examples of incomplete and irregular charting which is often confusing, misleading and does not present a pattern of critical thought based on testing, evaluating and forming diagnosis and resulting choices for treatment.

32.

The conduct described in paragraph 21 violates OAR 811-015-0005(1) and OAR 811-035-0005(2).

33.

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

34.

NOTICE OF RIGHT TO A HEARING

Licensee has the right, if Licensee requests, to a hearing as provided by the Administrative procedures Act (ORS Chapter 183) before the Board or its hearing officer to contest the matter set out above. At the hearing, Licensee may be represented by an attorney, and may subpoena and cross-examine witnesses. A request for hearing must be made in writing to the Board, and must be received by the Board within 21 days from the date of 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. Upon receipt of a request for hearing, the Board will notify licensee of the time and place of the hearing. If Licensee requests a hearing, Licensee will be given, prior to the commencement of the hearing, information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing as required by ORS 183.413(2).

35.

Licensee's answer shall be made in writing to the Board 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 shall be presumed admitted; failure to raise a particular defense in the answer will be considered a waiver of such defense; and new matters alleged in the 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.

36.

If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the hearing, the Board 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 case automatically becomes part of the evidentiary record of this Disciplinary action for the purpose of proving a prima facie case. ORS 183.415(6).

DATED this 22nd day of January, 2001.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:  Original signature on file
at the OBCE office.

Dave McTeague, Executive Director
Oregon Board of Chiropractic Examiners

CERTIFICATE OF SERVICE

I, Michael L. Summers, certify that on January 22, 2001, I served the foregoing Amended Notice of Proposed Revocation of License upon Mauro A. Civica, DC, the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Mauro A. Civica, DC
452 NW First
Canby, Oregon 97013

And by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

Thomas E. McDermott, Attorney-at-Law
Lindsay, Hart, Neil & Weigler, LLP
1300 SW Fifth Ave., Suite 3400
Portland, Oregon 97201-56

Original signature on file
at the OBCE office.

Michael L. Summers
Investigator
Oregon Board of Chiropractic Examiners

VERIFICATION

State of Oregon)

County of Marion)

Case # 99-1012, 99-1020, 99-1021, 99-1024, 99-3005, 2000-1008

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

Original signature on file
at the OBCE office.

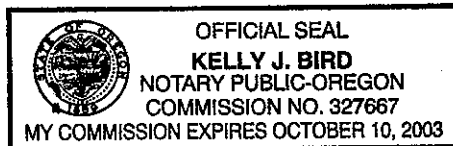
DAVE McTEAGUE, EXECUTIVE DIRECTOR
OREGON BOARD OF CHIROPRACTIC EXAMINERS

SUBSCRIBED AND SWORN to before me

this 22nd day of January, 2000.

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON
My Commission Expires: 10/10/03



NOTE:

The Stipulated Final Order for Case # 99-1012 dated December 14, 2001 supersedes the “Final Order” dated September 20, 2001. (The original drafted Final Order 09-20-01 is a public document and therefore included)

**BEFORE THE HEARING OFFICER PANEL
For the
OREGON BOARD OF CHIROPRACTIC EXAMINERS**

**In the Matter of
MAURO A CIVICA, D.C.**

**License No.: 3039
Licensee**

) **FINAL ORDER**

) **Board Case #99-1012, 99-1020**
) **99-1021, 99-1024, 99-3005,**
) **2000-1008**

) **HOP Case # G60422**

HISTORY OF THE CASE

The Oregon Board of Chiropractic Examiners served a Notice of Proposed Disciplinary Action on Dr. Civica on July 20, 2000. The Board received a timely request for hearing on August 11, 2000, and referred the matter to the Hearing Officer Panel on October 9, 2000. Two pre-hearing conferences were held on December 11, 2000, and January 23, 2001. By consent of the parties and waiver of further notice, the hearing was conducted March 13-16, 2001, at the offices of the Board of Chiropractic Examiners in Salem, Oregon.

An Amended Notice of Proposed Disciplinary Action was served by the Board on January 22, 2001. Dr. Civica filed a response to the amended notice on February 22, 2001, denying the allegations stated in the Amended Notice. At hearing, the Board struck paragraphs 25 and 26 relating to billing charges and no evidence was taken at hearing on that issue.

Dr. Civica was represented at hearing by Thomas E. McDermott, an attorney with the firm of Lindsay, Hart, Neil & Weigler, LLP. The Board was represented by Lori Lindley, Assistant Attorney General. There were twenty-six witnesses called to testify in this matter. To preserve as much as possible the confidentiality of the doctor-patient relationship, the complaining witnesses/patients are identified by initials only in this decision. Their full names may be ascertained from the record. A complete list of the witnesses is attached to this decision as Exhibit A.

EVIDENTIARY RULINGS

Exhibits J-1 through J-8 are jurisdictional documents identified by the hearing officer and received into evidence without objection. The licensee submitted one exhibit, L-1, that was received without objection.

The Board submitted Exhibits B-1 through B-28. Exhibits B-7 & B-8 were excluded based on a prior ruling excluding the testimony of David Dryden as to the

circumstances of Dr. Civica being removed from reserve officer status with the City of Hubbard police department. It was alleged that Dr. Civica engaged in a pattern of intimidating conduct towards his patients by telling them he was a reserve officer with the Hubbard police. The Hearing Officer ruled to exclude the evidence and ruled the Board failed to establish the relevancy of his removal from reserve officer status.

Exhibit 4 was received, although the exhibit was not accurately described as "medical records." Not everything in that exhibit came from the patient's chart.

There were objections to B-6 and B-9 on relevancy grounds. These are educational articles that the Board embraces. The objection to relevancy was overruled with appropriate weight to be given to the articles.

Exhibit B-14 was objected to because it was unsigned and unclear who prepared it and for what purpose. The exhibit was tentatively identified as a summary of an interview with Dr. Civica by Dr. McCarthy. The exhibit was excluded until Dr. McCarthy was called to testify and could authenticate the exhibit. The exhibit was re-offered during Dr. McCarthy's testimony and was received.

Exhibit B-18 was excluded as duplicative of Exhibit J-1. Exhibit B-24 was renumbered as Exhibit J-8 and received into evidence.

Objections were raised to Exhibits B-19, B-22, B-23, and B-27 as hearsay. The objection was overruled and the affidavits were received. The testimony was relevant and was accorded the proper weight.

Exhibit B-17 was offered as a statement by one of the expert witnesses to be called by the Board. It was excluded pending the testimony of this witness who could authenticate the statement. The exhibit was not re-offered and the exhibit was not received.

The audiotape of the initial interview of TC was moved by the OBCE counsel to be admitted into evidence. Dr. Civica's counsel objected as prejudicial. The Hearing Officer sustained the objection and denied admittance of the audiotape.

Exhibits B-1 through B-4 (as noted), B-5, B-6, B-9 through B-13, B-15, B-16, B-19 through B-23, and B-25 through B-28 were received into evidence. A complete list of the exhibits is attached to this decision as Exhibit B.

It should be noted that while affidavits, expert reports and summaries of witness interviews were received into evidence, the hearing officer placed greater weight on the testimony at hearing which was under oath and subject to cross-examination. Any conflicts, omissions, or inconsistencies between witness statements contained in the exhibits that were received into evidence and the testimony at hearing were resolved in favor of the sworn testimony.

There was a pre-hearing motion by the Board to allow a key witness, TC, who lives in Iowa to testify by telephone. The motion was denied because of the nature of the proceeding, the nature of the testimony to be given by this witness, the importance of this testimony to the Board's case, and concerns about the efficacy of the licensee's cross-examination as well as the hearing officer's assessment of credibility. The Board renewed the motion to have the witness appear via videoconference. This motion was allowed. The hearing was convened on March 14, 2001, at the offices of the Division of Child Support on Lancaster Drive in Salem, Oregon, and the testimony of this witness was heard by videoconference. No video recording was made of this testimony. The hearing officer's audio recording of the testimony is the only record.

A pre-hearing motion was filed on behalf of Dr. Civica seeking a ruling on the legal issue of whether TC's testimony was relevant since Dr. Civica denied any doctor-patient relationship with TC. OAR 137-003-0580 provides the following:

(1) Not less than 21 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion shall be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The agency by rule or in writing may elect not to make available this process for ruling on legal issues. The hearing officer shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

By letter dated February 20, 2001, the Board notified the hearing officer and the licensee that the Board was not delegating to the hearing officer the authority to rule on any issues in this proceeding. (Exhibit J-5) The motion was not considered.

ISSUES

Whether the licensee's license to practice chiropractic shall be revoked for unprofessional and dishonorable conduct pursuant to ORS 183.413 and ORS 684.100.

FINDINGS OF FACT

1. Dr. Civica has been licensed as a chiropractic doctor by the State of Oregon since 1998. Dr. Civica bought a practice from another chiropractor in Canby, Oregon effective January 1, 1998. Dr. Civica has lived in Canby, Oregon and performed chiropractic in his clinic since that time. Prior to purchasing his practice, Dr. Civica attended Palmer College in Davenport, Iowa for his training in chiropractic. Before attending Palmer College, Dr. Civica practiced for a short time as a licensed massage

therapist in Canada. He was trained in massage therapy in Hawaii following recovery from severe injuries sustained in a head-on collision while living in Hawaii. He became interested in the healing arts as a result of this experience and he was encouraged to enter chiropractic by a chiropractor who helped him a lot during his recovery from the physical injuries. Dr. Civica was born in Rome, Italy and was raised in an orphanage until age sixteen. He has lived in Florence, Nice, Spain, New York, Hawaii, Canada, Iowa and Oregon. He can read and write in four languages.

2. JE had three treatments with Dr. Civica following an auto accident and back surgery in 1998. Nothing occurred on the first two treatments that caused her any concerns. On the third visit, she had just come from work and was dressed in jeans and a top. She was having her hips adjusted and was lying on her back on the table. Dr. Civica undid the belt on her jeans and slipped his hand between her jeans and her underwear. The hand was on top of her underwear. He did not touch any other part of her body while he was under there. He just did it without explaining to her what he was going to do. She felt he should have asked her to change into some shorts. She had previously treated with another chiropractor who always had her change into shorts and a gown. That is how she knew that what Dr. Civica did was improper. When she asked him twice what he was doing, Dr. Civica provided no response. She said it was very unprofessional. She stated that a man should never do that to a woman.
3. DM treated with Dr. Civica in the spring or summer after an auto accident in December 1997. She had pain in her neck and back. Her father accompanied her on the first examination and was present in the examination room during treatment. She was in a gown but had her bra and underwear on. While she was on her stomach, Dr. Civica unhooked her bra. When she rolled over on her back, he casually slipped her bra down and did a breast examination in front of her father. Dr. Civica did not say he was going to do that, he just did it.
4. On DM's last visit, Dr. Civica gave her a massage. On this visit DM was alone with Dr. Civica. She was in a lot of pain. He massaged her back for a while. Then he moved her underwear up her buttocks and massaged her buttocks. DM testified that the way he was massaging was not professional. He was taking his hands and rubbing them up underneath her underwear. He was touching her labia.
5. It was the testimony of TC that she has known Dr. Civica since she was 13 living with her family in Davenport, Iowa. Her family became acquainted with Dr. Civica while he was studying to be a chiropractor at Palmer College in Davenport. Her father became best of friends with Dr. Civica and both her parents were involved in his wedding. Dr. Civica and his wife were considered part of the family and were invited to all the family get togethers. Dr. Civica lived about two miles away from her family. While Dr. Civica was an intern at Palmer College, he performed chiropractic adjustments on TC, and her parents, so he could earn credit. Dr. Civica would be alone with her up to the time of the adjustments, but a doctor would be present when he was administering the adjustments. Those records of prior treatment are in Exhibit B 26.

6. TC considered Dr. Civica to be part of her family, a second dad. She absolutely trusted him. She felt comfortable in talking to him about things she would not talk about with her parents. Beginning about age 16 or 17, TC and Dr. Civica would discuss sexual matters. TC does not recall who initiated the conversations. She was 17 when she first told Dr. Civica that she was curious about oral sex. It was a subject she was very interested in. She enjoyed giving oral sex to her boyfriend at the time. She was 18 when she told Dr. Civica that she had not had orgasm during intercourse. Dr. Civica asked how far she had gotten with her boyfriend and what she liked to do. He asked if she had had intercourse and if she liked it. These discussions took place at Palmer College, his car and at his home. She was alone with him when these conversations occurred. These discussions with Dr. Civica about her sexual activities never made her uncomfortable. During this same period of time, Dr. Civica had asked permission to give TC a massage, but her mother declined to give permission.
7. In August 1999, TC and her parents visited Dr. Civica and his family in Canby, Oregon. She was 19 at the time. During this visit, Dr. Civica offered to show TC his office and to give her a massage. She had no need for chiropractic adjustment or massage that day. They went to the office at around 4:00 PM. There was a patient waiting for Dr. Civica when they arrived. While Dr. Civica examined this patient, he had TC enter things into the computer and she assisted him in taking a x-ray of the patient. TC testified that Dr. Civica never mentioned that he would perform the massage at his house.
8. After the patient left, he gave her a tour of the office. He took her into the back supply room and grabbed a blue-green sheet. Then he took her into one of the exam rooms and told her to strip and cover herself with the sheet. He left while she was taking her clothes off. She took her clothes off and got on the table on her back and covered herself with the sheet. Dr. Civica turned on some soft music and came back into the room and shut the door. There is evidence in the record that the door was locked. In Exhibit B 20 TC stated the door was locked by Dr. Civica. He had lotion with him and he began massaging her shoulders. After pulling the sheet down to her waist, he then massaged her breasts in a circular motion for about five minutes. Then he massaged her legs and the inside of her thighs progressing to digital penetration of her vagina and finally to performing oral sex on TC. She did not try to resist; she was scared. When he got up and started to unbuckle his belt, she got up and started getting dressed.
9. After she started getting dressed, he left and went into another room and started playing a guitar. While riding back to the house, he asked her if she wanted to turn around so she could give him oral sex. She said no. Dr. Civica came up with a story that an older lady had come in to the clinic and he had to treat her and that was why they were late for dinner. When they got to the house, he told the story. She did not say anything. They had dinner with the Civica family and her family and then TC and Dr. Civica went to a movie together. TC testified that if she declined the

invitation that would cause suspicion, so she said yes. He again indicated that they could go back to the office, but she said no.

10. About ten minutes after they both arrived back at the Civica home, TC's boyfriend, Bruce Wheeler called for her. She stated that he could tell something was wrong by the way her voice was and asked if there was anything wrong. She chose not to discuss it with him until she arrived back in Iowa. In the affidavit of Bruce Wheeler, Exhibit B 27, Mr. Wheeler indicates as soon as he got on the phone with her, he could tell there was something wrong. TC indicated she couldn't talk about it but told him when she got back home. TC told Bruce Wheeler what occurred. His version of what occurred mirrors her testimony at hearing.
11. She left the next day with her parents to return to Iowa. She told her boyfriend about the incident as soon as she got back to Iowa. She did not tell her parents about the incident until May 2000 when she wrote her mother a letter about it. The incident was subsequently reported to the Board.
12. Charts for seven of Dr. Civica's patients were reviewed by two chiropractors licensed in the State of Oregon. Both doctors opined that the charts did not meet minimal standards of competency for record keeping by chiropractic doctors. There were either missing or incomplete records of a diagnosis, a treatment plan or a record of treatment. There was limited intake information and a failure to record objective findings to support treatments that were provided. There was a failure to document parental permission to give a coccyxgeal adjustment to a minor. There was no explanation of x-rays findings. Adjustment procedures were included in the objective findings while other adjustments were included in the treatment notes. The charts were difficult to read, the records did not seem accurate, and there were exclusions of treatments that had been performed.
13. Dr. Civica testified that he was not taught about record keeping at Palmer College. Dr. Civica blamed his poor records on the lack of training and a new computer system. Dr. Civica installed a new system that is working pretty well now. Dr. Civica believes that his charting has improved significantly over the last year. He has taken several classes. He has worked closely with Dr. Croft who is an expert in chiropractic reports, particularly in reports of whiplash injuries.
14. Dr. Kevin McGovern has been a licensed clinical psychologist in the State of Oregon since 1975. He also has a certificate in Washington as a provider of assessment and treatment for sex offenders, a special certification that Oregon does not have. He is qualified by education, training and experience as an expert in the area of human sexuality. He became more involved with sexual boundary violations in the late 1980s working with the Oregon Board of Medical Examiners and then with the Oregon Foundation for Medical Excellence providing seminars on the topic of sexual boundary violations and how physicians and healthcare professionals get involved inappropriately with patients. He has traveled throughout the United States lecturing groups on these subjects. The Board of Medical Examiners has referred cases to him

for evaluation and also refers doctors for treatment that have violated boundaries. He has also worked on the defense of medical doctors as opposed to the Board. In addition to doctors, he has worked with dentists, physical therapists, physician assistants, nurses and educators.

15. Dr. McGovern saw Dr. Civica on three separate occasions, on October 12, 2000, November 20, 2000, and March 9, 2001. In addition, Dr. Civica met with an associate of Dr. McGovern on December 9, 2000, for additional testing. The battery of psychological tests administered on Dr. Civica included the Rorschach ink blots projective test; the Greenberg Social-Psychological History questionnaire developed by a psychologist in Seattle; the Able Cognition Scale II developed by a psychologist in Atlanta, Georgia that deals with basic perceptions toward sexuality with women; the Cornell Medical Index, a health questionnaire developed by the Cornell University Medical School; the Incomplete Sentences Blank; the Minnesota Multiphasic Personality Inventory II developed by the University of Minnesota; and the Millon Multiaxial Clinical Inventory III.
16. Dr. McGovern reviewed the test data. From the testing that was done, he concluded that Dr. Civica was well grounded in the world and not suffering from a psychosis or schizophrenia. He did not have indicators of a strong affective disorder such as high anxiety or depression. He is somewhat hyper-vigilant that would be normal in his situation of being subjected to an examination of his psychology, marriage, practice and complaints. He does have some narcissistic traits. Dr. Civica did not reveal a severe narcissistic personality disorder.
17. Dr. Civica had a benign MMPI that means he is not reporting many psychological problems. Just looking at his MMPI, it correlates with a person that is not usually in therapy. On the Millon he did have a slight elevation with narcissistic personality features but this is pretty common with doctors and healthcare professionals. He did not describe anything unusual as sexual behavior on the Greenberg Social-Psychological History questionnaire. On the Able Cognition Scale, his responses were relatively normal for his attitudes toward women. Dr. Civica did not describe himself as an aggressive, punitive type of person with women.
18. There are validity scales with two of the tests that are designed to "smoke out" someone who is trying to present themselves as better than they are. On the MMPI, Dr. Civica presents as a person who can control his behavior. The MMPI has an impulsivity scale on which he did not score high. This means that at the time he went through the evaluation, he did not present himself as an overly impulsive person who uses chronic poor judgment and is out of control. This is the same thing as poor impulse control. If you look at the results of the MMPI and the Millon, he was not identified as a person with poor impulse control. This means that he has the ability to control his behavior.
19. Dr. McGovern testified that there are differences between Dr. Civica's perceptions and the perceptions of his patients. Dr. Civica did not try to claim that these people

were out to get him. Dr. McGovern and Dr. Civica talked about why these perceptions have emerged since there has been more than one and what safeguards did Dr. Civica intend to take so that these types of complaints or concerns do not arise in the future. Dr. McGovern believes Dr. Civica recognizes the need to have more effective protocols in the future.

20. Dr. McGovern is not a chiropractor although he has been treated by one. There is an overwhelming amount of literature and education directed at healthcare professionals. Because of this and his own work, he has questioned Dr. Civica about some of his treatments because they are not things Dr. McGovern would do if he were trained as a chiropractor. Dr. McGovern testified that Dr. Civica's vaginal and/or pelvic techniques were experimental and recommended that those areas of the female should be touched by a massage therapist. He stated that his experience tells him that women are extremely sensitive about their pelvic, vaginal and breast area and especially if a male is touching those areas. He considered that with the number of women who are sexually assaulted or abused, he felt those areas were extremely sensitive and made his recommendations based on that. He feels Dr. Civica needs to be more sensitive to the needs of his willing patients. He needs to be sensitive to what comes over the fax machine, by e-mail and the patient. Dr. McGovern said Dr. Civica is planning on a different office practice, different approaches, and to be more aware of those safeguards. Dr. Civica is willing to participate in therapy about it and to go to any programs about risk management procedures.
21. Dr. Civica has made modifications in his practice and indicates he will be far more sensitive and aware of the needs of the patient. He will have intrusive medical procedures chaperoned. He has hired a massage therapist to do the massaging. He is not going to be involved in any more controversial, intrusive interventions, including trigger points around the groin. He is trying to restore his position in the community and to be helpful to people who need his assistance.
22. Dr. McGovern opined that when healthcare professionals go through an experience like this, the recidivism rate of re-offending is extremely low because of everything the licensing boards and other responsible parties are doing today and in the past. In his own clinic, working with doctors who have been assessed and treated, Dr. McGovern believes he has had one recidivism issue that was not sexual but failing to follow the guidelines imposed by the board. Dr. McGovern testified that Dr. Able believes the recidivism rate for professionals who have gone through lengthy investigations, evaluations and assessments, is about one percent. Based on a Canadian study of 30,000 sex offenders of all categories, including incarcerated individuals, the recidivism rate for this type of behavior is about 13%. Dr. McGovern believes that in this case, with intervention, remedial education, and appropriate safeguards, the risk of re-offending is very low. If Dr. Civica follows his self-imposed guidelines and works in tandem with the Board, the risk of re-offending is probably lower than for chiropractors in general.

23. Dr. Fischer-Davidson the Board's expert, who performed the initial evaluation pursuant to the Competency Order testified that his initial evaluation showed Dr. Civica could continue to practice and would benefit from remedial education, counseling therapy and he recommended having a chaperone with women patients for some time. The initial evaluation was performed on December 14, 1999. Dr. Civica did not discuss any allegations specifically with Dr. Fischer-Davidson on the advice of his attorney. He testified that once practitioners are accused of misconduct they often minimize and deny. Dr. Civica denied any inappropriate sexual contact with patients when evaluated by this expert. Dr. Fischer-Davidson categorized him as a situational offender with a mild neurotic classification. He was administered the Beck Anxiety Inventory and the Beck Depression Inventory. From his initial evaluation Dr. Fischer-Davidson did not find any predatory diagnosis. He testified that diagnosis would include impulse control issues, acts that are deliberate, grooming and the misuse of power and some intimidation.
24. Dr. Fischer-Davidson also testified that he provided a supplementary report. He obtained a statement from TC, a letter she had written and an audiotape of TC. In that report he changed his diagnosis to sociopathic with severe personality disorder. In testimony, Dr. Fischer-Davidson explained that he changed his diagnosis for several reasons. In particular, the allegations made by TC were very concerning to this expert since Dr. Civica had admitted to her that he had sexual contact with other patients in his office. He also found some intimidation in that he took TC there in the late afternoon, locked the doors, all after another patient had left. TC also stated that Dr. Civica had asked TC to lie about why they were late when returning to the Civica home. In terms of grooming, Dr. Fischer-Davidson testified that TC stated at the age of 17 she discussed a lot of sexual questions with him and she considered him her confidant. In addition, he considered the abuse of power, not only professionally but that he was considered to be a second father figure to her since the age of 13. Dr. Fischer-Davidson also testified that the information provided by TC, that Dr. Civica further told her that he had been keeping his eye on her since she was 13 and was waiting for her to become old enough to become a sexual partner, was a factor in his changed diagnosis. Dr. Fischer-Davidson testified that after considering the possibility that people can lie or make things up, he found TC to be very credible.

OPINION

The Oregon Board of Chiropractic Examiners has alleged that Dr. Civica violated ORS 684.100(1)(g)(A) for inappropriate touching of patients or conduct or verbal behavior that may be reasonably interpreted by the patient as sexual in nature, of patients KM, JE, TB, DM and TC which included intrusive questions, dishonorable conduct and conduct contrary to recognized standards of ethics of chiropractic profession as defined in OAR 811-035-0015(1).

Dr. Civica was also alleged to have violated patient confidentiality in regards to patient KM in violation of OAR 811-0035-0015(11).

Dr. Civica was also alleged to have failed to provide explanations of procedures prior to touching the specific areas discussed in patients, KM, JE, TB, DM and TC, as a violation of OAR 811-035-0005(1)(2). It was also alleged that Dr. Civica violated OAR 811-035-0005(2) for failing to inform the patient of the diagnosis, plan of management and prognosis in order to obtain a fully informed consent.

It was also alleged that Dr. Civica violated the medically accepted standards as adopted by the Boards Practice and Utilization Guidelines enumerated under OAR 811-010-0095(2)(b) as to patients KM, JE, TB, DM and TC.

As to a co-worker, AH it was alleged that Dr. Civica violated ORS 684.100(1)(g)(A) and OAR 811-035-0015 for a pornographic cartoon in the office.

Medical records violations as to patients B, F and S were alleged to violate OAR 811-035-0005(2) and (4) and ORS 684.100(1)(g)(q), OAR 811-015-0005(1).

The Statutes which govern Oregon Chiropractors evolve from ORS 684.100 (1). The State Board of Chiropractic Examiners may refuse to grant a license to any applicant or may discipline a person upon any of the following grounds:

(g) Unprofessional or dishonorable conduct, including but not limited to:

(A) Any conduct or practice contrary to recognized standard of ethics of the chiropractic profession or any conduct or practice that does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition that does or might impair a physician's ability safely and skillfully to practice chiropractic.

(B) Willful ordering or performance of unnecessary laboratory tests or studies; administration of unnecessary treatment; failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care; or otherwise ordering or performing any chiropractic service, X-ray or treatment that is contrary to recognized standards of practice of the chiropractic profession.

(C) Gross malpractice or repeated malpractice.

OAR 811-035-0015 provides the following:

Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic physician:

(1)(a) Engaging in any conduct or verbal behavior with or towards a patient that may reasonably be interpreted [by the patient] as sexual, seductive or sexually demeaning (also see ORS 684.100).

(b) A licensee shall not engage in sexual relations with a current patient unless a consensual sexual relationship existed between them before the commencement of the doctor-patient relationship.

(c) "Sexual relations" means:

(A) sexual intercourse; or

(B) any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either licensee or patient.

(d) In determining whether a patient is a current patient, the Board may consider the length of time of the doctor-patient contact, evidence of termination of the doctor-patient relationship, the nature of the doctor-patient relationship, and any other relevant information.

(e) A patient's consent to, initiation of or participation in sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.

OAR 811-035-0005 provides the following:

(1) The health and welfare of the patient shall always be the first priority of Chiropractic physicians and expectation of remuneration shall not affect the quality of service to the patient.

(2) Chiropractic physicians shall inform the patient of the diagnosis, plan of management, and prognosis in order to obtain a fully informed consent of the patient during the early course of treatment.

OAR 811-035-0095 provides the following:

(b) "Medically Accepted Standards" means those standards of care, skill and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances. The Board's Practice and Utilization Guidelines (NMS) as published in 1991, is adopted as the medically accepted standard for neuromusculoskeletal conditions and treatment.

Oregon Chiropractic Practices And Utilization Guidelines, Volume 1, Common Neuromusculoskeletal Conditions, Chapter III, Recording Keeping And Report Writing:

The quality of a physician's health care is dependent on his/her ability to gather, organize, analyze and make decisions on clinical data. Good decisions are the result of accurate and complete facts being retrievable from a patient's records. Therefore, documentation of the patient's health history, presenting complaint(s), progression of care, diagnosis, prognosis and treatment plan should be reflected in the record keeping and written reports of the patient file.

Chart notes should be reported at each visit in a form which may be understood by the chiropractor's peers. While the patient's history indicates their status at the time of the initial visit or at the onset of a new condition, the progress record (often called chart notes) reflects the patient's state of health at subsequent points of time. The minimum acceptable records should create a story of the patient's response to the physician's management of their case. This story should be legible and clear enough to allow a peer to assume management of the case after initial review of the chart notes.

OAR 811-015-0005 provides the following:

- (1) It will be considered unprofessional conduct not to keep complete and accurate records on all patients, including but not limited to case histories, examinations, diagnostic and therapeutic services, treatment plan, instructions in home treatment and supplements, work status information and referral recommendations.

(a) Dr. Civica has established a pattern of behavior that is a threat to his patients.

The Board has reviewed the evidence in the record and agrees that although there is insufficient evidence to find Dr. Civica is clinically a dangerous sexual predator, Dr. Civica has established a pattern of crossing boundaries and is a threat to his patients. Whether Dr. Civica is found to be a sexual predator is not the issue in this matter. The pattern of crossing boundaries by Dr. Civica is a serious concern to the Board since they have a responsibility to protect the health and safety of the patients. Many witnesses testified to conduct and behavior on behalf of Dr. Civica that the Board finds troubling. These areas are summarized below.

Testimony was presented to show that Dr. Civica intimidated his patients by telling them he was a reserve officer with the Hubbard Police Department, keeping a gun in his office, speaking publicly about breaking people's necks, and being unusually rough or hurtful around the hips and groin of some of his female patients. Testimony was also presented to show that Dr. Civica engaged in grooming by hugging his patients, asking selected female patients very personal questions about their sexual activities, asking only certain patients to wear a gown, asking patients if they wanted to work out with him at a local gym, and employing invasive treatments without the presence of a chaperone. Each of these allegations will be discussed separately below.

In regard to Dr. Civica telling his patients that he was a reserve police officer, DM testified that she felt intimidated. She did not elaborate on this response except to say that it may have come up when she was talking about her affiliation with the fire department and that she realized that he had access to information. She said that he already knew her home address and that she was really scared and she felt intimidated.

Another witness, TB, testified that she felt uncomfortable at one point in time because Dr. Civica brought a map of Hubbard to her on one of her appointments and tried to show her where she lived. He asked, "Is this where you live?" She did not know the purpose of this. She also testified that she told him that she lived with her nephew and that he had had some problems with a drunk driving ticket. Dr. Civica told her that if he ever saw her nephew driving around, he would arrest him. Dr. Civica knew her nephew's name. She did not elaborate any further in her testimony on these matters.

There was testimony that Dr. Civica spoke at a Chamber of Commerce luncheon in Canby. One witness said he spoke something about breaking somebody's neck or his ability to do so. It had something to do with force, using weapons, or his martial arts skills. Another witness said Dr. Civica was talking about stress in a person's life and the things that can happen. Dr. Civica said he had been in some sort of military position and how he could break your neck and do things like that. It was totally off the subject that Dr. Civica started with, which was about stress and how it relates to your job and everyday life. It was not referring to chiropractic treatment.

TB testified that Dr. Civica performed Shiatsu treatments where he would apply pressure to her inner thighs and her abdomen right inside her hipbones. It was a lot of pressure and she was in pain. He also applied pressure to the muscles in her lower back and buttocks, applying quite a bit of pressure that was very uncomfortable. KM testified Dr. Civica had AH, a massage therapist who shared office space, come in and participates in part of her treatment. He was going to show AH something to do when she gave KM a massage that might help KM. The treatment was administered to an area below her hip and above her pubic area on the right side. He had AH placed her hands on KM's abdomen and then he placed his hands on top of hers and pushed really hard. It caused severe pain and she had spotting for about three days. JE testified Dr. Civica pressed hard down along the ridge of her hip, and asked her to move her leg out and back. It was very painful, but did not bruise her. He had done this same maneuver on the prior visits, but it was a lot harder on the third visit. She told him it was hurting her.

From the description of the treatments, the testimony of these patients that they experienced pain is entirely credible. There is insufficient basis in the record to determine whether the treatments were too rough or too painful. While the subjective complaints of pain by the patients must be considered, in the absence of some standard or expert opinion it is impossible to say whether their level of pain was unusual, unexpected, or too severe.

The Board also finds troubling other testimony from witnesses. There was testimony that that Dr. Civica engaged in grooming by hugging his patients, asking certain female patients very personal questions about their sexual activities, asking only certain patients to wear a gown, asking patients if they wanted to work out with him at a local gym, and employing invasive treatments without the presence of a chaperone.

The evidence showed that Dr. Civica did ask certain female patients probing and very personal questions about their sexual activities. TB testified that she went to Dr.

Civica because she was having a lot of pain in her lower back and sacrum. He asked whether she was married and she responded that she was not, but that she had a boyfriend. He asked if she had had anal sex because a hard thrusting motion during anal sex could possibly cause her back to go out. When she replied that she never had anal sex, Dr. Civica commented that he felt sorry for her boyfriend. He asked how long she had been in a relationship with her boyfriend, and she said, "quite a while." He asked her about the quality of that relationship and if they were having sex regularly. He asked if she had orgasms regularly. He asked if intercourse was painful. He asked if she had vaginal dryness. She answered the questions because she thought there might be a medical reason for him to ask since her pain was in her low back.

About three weeks into her treatments, TB had a neck adjustment. When she came in for her next appointment, her jaw was not closing correctly on the left side and it hurt. She asked him about that. He asked her if she was able to perform oral sex. When TB responded she didn't do that, Dr. Civica replied he felt sorry for her boyfriend.

KM testified that she went to Dr. Civica for low back pain. He asked her questions about her address and marital status. He asked if her groin area hurt during intercourse. He did not ask about orgasms or any other sexual questions. She was not offended and did not feel the question about pain during intercourse was out of line because it could have had something to do with her low back pain. She did feel that being asked if she was "single" or if she had a boyfriend was out of line because she had gone through a major tragedy in her life right before she went in there, her ex-husband had committed suicide. She and Dr. Civica talked about that a little and there were some questions asked about that. She just really did not want to answer them, so she did not answer.

DM went to Dr. Civica for pain in her neck and back from an auto accident. Dr. Civica asked about her relationship with her husband. He asked about the medications she was on. He asked if she was able to have orgasms. He asked about her sex life, but did not ask about oral sex. The questions about her sex life made her uncomfortable.

Other female patients called by Dr. Civica as character witnesses were asked if they were asked questions about their sex life. They all responded that they were not asked such questions. Therefore, if Dr. Civica was engaging in a pattern of grooming his female patients for sexual advances by asking personal and sexual questions, he was doing so only on a very selective basis and not with all female patients. The three female patients who testified to these sexual questions were all being seen for pain in the low back and both TB and KM testified that they did not feel the questions were out of line because sexual activity could have something to do with their low back pain. Only DM testified to feeling "uncomfortable" about being questioned about her sex life.

These questions were asked by a doctor treating a patient, and are regarding issues that are one of the most personal and intimate nature. This Board finds it inappropriate and troubling that Dr. Civica engaged in this behavior during treatment of a patient.

TB testified that she had regular adjustments to her low back for a couple of weeks after her initial examination. Around the third week, Dr. Civica suggested a coccyx adjustment for her tailbone. He told her that he would go anally and that it might be a little uncomfortable. He said it was a quick procedure and it would adjust her tailbone. That was on a Monday and she had 48 hours to think about it before her next appointment on Wednesday. She did not feel very comfortable about it and she called Dr. Hartwell, another chiropractor, to ask if it was a legitimate procedure. Dr. Hartwell called back and said that it was a way to adjust the tailbone. On Wednesday, she told Dr. Civica that she did not feel she needed that particular adjustment because the pain was not in her tailbone. Dr. Civica responded that he thought her pain was in her tailbone, but she replied that it was higher up. He then told her that the pain was in her sacrum. She was not familiar with that terminology at the time. She did not have a coccyx adjustment.

On the next treatment visit or possibly the one after that Dr. Civica showed TB a reference book containing an illustrated diagram of the anal coccyxgeal adjustment procedure. TB was not sure why he did that, because she was not experiencing pain in the area of her coccyx, and had already declined that adjustment. However, she assumed he was attempting to convince her that treatment method was an actual clinical procedure.

TB testified that her pain did not go away. Dr. Civica had done some massaging and pushing on her abdomen, but the muscles were still really tight. She was not able to stand up straight. Dr. Civica then suggested a vaginal adjustment that would help him get to the muscles that were causing her problems. The doctor brought her a book with a picture showing the adjustment he was proposing. He said he would go vaginally and massage the muscles causing her pain. He would go vaginally because he could get to them better than by massaging on her abdomen. TB did not call Dr. Hartwell and ask about that procedure because she felt like a fool for challenging Dr. Civica the first time about the coccyx adjustment. She figured that he was being honest with her and this was something that was legitimate.

TB had a vaginal adjustment performed the same day that Dr. Civica spoke to her about it or at the next appointment. He had her lay on the table in a reverse hurdle stretch with her foot against her inner thigh. He put on a latex glove and went in vaginally, massaging the sides of the vaginal wall. She remembers it taking between five and seven minutes, going from one side to the other. He did not talk to her during the procedure. Dr. Civica asked if she wanted someone else in the room. She declined because she trusted him. She was uncomfortable because of pain on one side and made some noise to that effect. She was not comfortable lying on the table in the first place. She felt pain from him pushing on the areas that were irritated.

TB testified that she had endured almost two weeks of constant pain. She could not perform just normal walking around and she could not sit for long periods of time without standing up and walking around. It was painful to get up to do anything. She started getting better about four days after the vaginal adjustment; she loosened up a bit,

but she does not relate getting better to that procedure. She continued to treat with Dr. Civica for a few weeks after the vaginal adjustment.

Although the hearing officer found insufficient evidence to infer that Dr. Civica meant anything sexual in nature by his use of the vaginal adjustment with this patient, there was testimony about the procedure that the Board finds concerning. Dr. Richard McCarthy testified he had never heard of or would support a coccyx adjustment to be done inter-vaginally. He indicated there is risk due to the tissue of the female. In addition, he testified that in his review of the records of the patients he found no clinical justification or indication in the records to show a need for a coccyx adjustment. Further, Dr. Malone, a treating chiropractor and member of the Peer Review Committee of the Board, testified that the patient charts of three other patients showed no objective findings related to their coccyx adjustment and justifying those procedure. These charts were provided to the Board by Dr. Civica relating to other coccyxgeal adjustments. Even Dr. McGovern referred to the inter-vaginal procedure as experimental and indicated he had told Dr. Civica to cease from performing it.

About six to eight months later, TB was thrown from a horse and went to see Dr. Hartwell. He brought up the telephone conversation about the coccyx adjustment and asked why she did not go back to that doctor. She told him she did not feel comfortable with Dr. Civica. He asked why she did not feel comfortable and she told him about the vaginal adjustment that Dr. Civica had performed. Dr. Hartwell said it was inappropriate and that she needed to call the Chiropractic Board. The conversation ended when Dr. Hartwell basically told her she had been violated. She then filed a complaint with the Board and later pursued an unsuccessful claim for \$30,000 in damages against Dr. Civica. On cross-examination, she stated that her motivation for being at the hearing was because she was not satisfied with the lawsuit result. On redirect, TB testified that she first filed her Board complaint in August 1999. She waited several months for something to be done with Dr. Civica. She became frustrated with the lack of results and decided to sue Dr. Civica in tort. That tort stalled and finally her civil attorney indicated she needed to choose one or the other. She let the lawsuit get dismissed. Her main motivation for filing the Board complaint and testifying at hearing was to make sure that no other woman would have the same thing happen to them.

Finally, there is the "Supplementary Psychosexual Evaluation" by Dr. Fischer-Davidson, that is not dated but which is stamped received by the Board on July 13, 2000. (Exhibit B-21.) In that report, Dr. Fischer-Davidson says that he reviewed the Board's Supplemental Investigation Report dated June 30, 2000, that summarizes an interview with TC. On the basis of this additional information, Dr. Fischer-Davidson revises the conclusions and recommendations he made in his Psychosexual Evaluation of Dr. Civica dated December 27, 1999. (Exhibit B-15.) He states his belief that Dr. Civica "is a sexual offender; has predatory tendencies; and clearly uses intimidation to gain compliance." He states that his previous recommendation of remedial education and counseling is "insufficient to insure the public safety" and that continued practice by Dr. Civica "would place the public at risk." He states that his "revised diagnosis according to the typology developed by Dr. Gary Richard Schoener is 'Sociopathic and severe

narcissistic personality disorders'." He further states that Dr. Civica "would fall within the 'Sociopathic or narcissistic character disorder' classification identified in the pamphlet produced by NCMIC Insurance Company."

After review of the record, the Board finds that there is inconsistent testimony from Dr. McGovern in terms of the diagnosis of sociopathic and addictive. He indicated that people who are sociopathic will start finding other avenues or other ways of responding to their sexual needs and he was not aware of Dr. Civica showing this behavior. Yet, Dr. Civica testified that since October 2000 he was dating and was intimate with his office massage therapist, Ms. Nylen and was involved in a romantic relationship with her. He also testified that he had treated her and charted her treatment at least five times. This shows the Board that after the complaints about behavior in 1999 and an ongoing investigation, that in the fall of 2000 Dr. Civica continued with this behavior since he dated and became romantically involved with a co-worker/patient, Ms. Nylen. Dr. Civica's own expert ignored the very behavior he testified to at the hearing. In addition, Dr. McGovern testified that if a doctor had treated a patient/co-worker and began a romantic involvement with them, he would consider that a boundary violation. The Board finds this inconsistent and convenient for this to be ignored by Dr. McGovern.

The Board finds that the above conduct and behavior of Dr. Civica substantiates a pattern of conduct that is a threat to his patients.

(b) There was a doctor-patient relationship between Dr. Civica and TC.

The Board finds that TC was a patient of Dr. Civica.

It was the testimony of TC that she has known Dr. Civica since she was 13 living with her family in Davenport, Iowa. Her family became acquainted with Dr. Civica while he was studying to be a chiropractor at Palmer College in Davenport. Her father became best of friends with Dr. Civica and both her parents were involved in his wedding. Dr. Civica and his wife were considered part of the family and were invited to all the family get togethers. Dr. Civica lived about two miles away from her family.

While Dr. Civica was an intern at Palmer College, he performed chiropractic adjustments on TC, and her parents, so he could earn credit. Dr. Civica would be alone with her up to the time of the adjustments, but a doctor would be present when he was administering the adjustments. Those records of prior treatment are in Exhibit B 26.

TC considered Dr. Civica to be part of her family, a second dad. She absolutely trusted him. She felt comfortable in talking to him about things she would not talk about with her parents. Beginning about age 16 or 17, TC and Dr. Civica would discuss sexual matters. TC does not recall who initiated the conversations. She was 17 when she first told Dr. Civica that she was curious about oral sex. It was a subject she was very interested in. She enjoyed giving oral sex to her boyfriend at the time. She was 18 when she told Dr. Civica that she had not had orgasm during intercourse. Dr. Civica asked how far she had gotten with her boyfriend and what she liked to do. He asked if she had had

intercourse and if she liked it. These discussions took place at Palmer College, his car and at his home. She was alone with him when these conversations occurred. These discussions with Dr. Civica about her sexual activities never made her uncomfortable. During this same period of time, Dr. Civica had asked permission to give TC a massage, but her mother declined to give permission.

In August 1999, TC and her parents visited Dr. Civica and his family in Canby, Oregon. She was 19 at the time. During this visit, Dr. Civica offered to show TC his office and to give her a massage. She had no need for chiropractic adjustment or massage that day. They went to the office at around 4:00 PM. There was a patient waiting for Dr. Civica when they arrived. While Dr. Civica examined this patient, he had TC enter things into the computer and she assisted him in taking a x-ray of the patient. TC testified that Dr. Civica never mentioned performing the massage at the house. Dr. Civica took TC to his office to give her the massage, despite having a chiropractic table in his home.

After the patient left, he gave her a tour of the office. He took her into the back supply room and grabbed a blue-green sheet. Then he took her into one of the exam rooms and told her to strip and cover herself with the sheet. He left while she was taking her clothes off. She took her clothes off and got on the table on her back and covered herself with the sheet. Dr. Civica turned on some soft music and came back into the room and shut the door. There is evidence in the record that the door was locked. In Exhibit B 20 TC indicates the door was locked by Dr. Civica. He had lotion with him and he began massaging her shoulders. After pulling the sheet down to her waist, he then massaged her breasts in a circular motion for about five minutes. Then he massaged her legs and the inside of her thighs progressing to digital penetration of her vagina and finally to performing oral sex on TC. She did not try to resist; she was scared. When he got up and started to unbuckle his belt, she got up and started getting dressed.

After she started getting dressed, he left and went into another room and started playing a guitar. While riding back to the house, he asked her if she wanted to turn around so she could give him oral sex. She said no. Dr. Civica came up with a story that an older lady had come in to the clinic and he had to treat her and that was why they were late for dinner. When they got to the house, he told the story. She did not say anything. They had dinner with the Civica family and her family and then TC and Dr. Civica went to a movie together. He again indicated that they could go back to the office, but she said no.

About ten minutes after they both arrived back at the Civica home, TC's boyfriend, Bruce Wheeler called for her. She stated that he could tell something was wrong by the way her voice was and asked if there was anything wrong. She chose not to discuss it with him until she arrived back in Iowa. In the affidavit of Bruce Wheeler, Exhibit B 27, Mr. Wheeler indicates as soon as he got on the phone with her, he could tell there was something wrong. TC indicated she couldn't talk about it but told him when she got back home. TC told Bruce Wheeler what occurred. His version of what occurred mirrors her testimony at hearing.

She left the next day with her parents to return to Iowa. She told her boyfriend about the incident as soon as she got back to Iowa. She did not tell her parents about the incident until May 2000 when she wrote her mother a letter about it. The incident was subsequently reported to the Board.

Whether the relationship of physician and patient exists depends on the facts at hand. *Oliver v. Brock*, 342 So. 2d 1 (Ala., 1977). The relationship between a doctor and his patient has its foundation in the theory that the physician is learned, skilled and experienced in those subjects about which the patient ordinarily knows little or nothing, but which are of the most vital interest to him, since they determine the health and well-being of the patient. *61 Am Jur. 2d, Physicians and Healers Section 166*. The relationship is a consensual one where the patient knowingly seeks the assistance of a physician and the physician knowingly accepts him or her as a patient. *Findlay v. Board of Sup'rs*, 72 Ariz 58, 230 P2d 526, 24 ALR2d 841 (1951). The existence of the relationship is a matter of fact depending on the questions whether the patient entrusted himself or herself to the care of the physician and whether the physician accepted the case. *Peterson v. Phelps*, 123 Minn 319, 143 NW 793 (1913); *Parkell v. Fitzporter*, 301 MO 217, 256 SW 239, 29 ALR 1305 (1923); *Hansen v. Pock*, 57 Mont 51, 187 P 282 (1920); *O'Neill v. Montefiore Hospital* (1st Dept) 11 App Div 2d 132, 202 NYS2d 436 (1960).

When the physician accepts the patient or undertakes to treat her, and the patient accepts the services of the doctor, the relationship of physician and patient is created. *17 ALR 4th 132 Section 3, What Constitutes a Physician Patient Relationship*. Whether a physician-patient relationship is created is a question of fact, turning upon a determination of whether the patient entrusted her treatment to the physician and the physician accepted the case. *Lyons v. Grether* 239 SE 2d 103 (1977). TC had known Dr. Civica for over six years and trusted him. When she agreed to receive a massage from Dr. Civica, and willingly came to his office for that specific purpose, removed her articles of clothing to get a massage, she entrusted her treatment to Dr. Civica, thus, forming the relationship of physician-patient.

Dr. Civica had treated TC on other occasions and had asked for her to receive a massage on other occasions prior to the visit in August 1999. TC's mother CC testified that Dr. Civica was planning to show TC the office, that there was a patient he was working on and if he had time he would give her a short massage. CC testified she thought there would be a secretary to assist present at the massage and didn't see any problems with TC going for a massage. She further testified that she and her family had been told that Dr. Civica did massage work and he was going to give TC a short massage and maybe show her some techniques at the clinic when he was working on the patient he had there at the time.

There is no requirement that there be a finding that the patient thought the relationship was one of physician-patient at the time that it occurred. The Hearing Officer found that TC was not credible in her discussion of the physician-patient

relationship. He stated that TC's response to a question about what she thought was the purpose of the massage was not credible. TC stated that the purpose was to get a massage from a chiropractor. She added that the massage he would give would be from a licensed physician. He would be acting as a doctor and not as her friend. She testified it was not a social visit. This testimony was found by the Hearing Officer to be inconsistent with her prior statement that she was not in need of chiropractic adjustment or massage that day. The need for chiropractic services by a patient does not determine the formation of a physician-patient relationship. The board is not changing the demeanor credibility finding of the hearing officer in this matter. What TC thought the relationship was with Dr. Civica is immaterial to a legal finding of a physician/patient relationship.

In addition, the Hearing Officer in observing her testimony via videoconference, found her responses to the purpose question were coached and rehearsed. He stated that she hesitated before responding and her eyes rolled upward as though she was searching her memory, much like an actor trying to remember her lines. However, the Hearing Officer found the balance of TC's testimony appeared to be natural and unrehearsed. Thus, the Hearing Officer believed the testimony of TC when she described what occurred in the office and the conduct of Dr. Civica during that office visit. Thus, TC's testimony is uncontroverted. The Board finds the testimony as to the facts surrounding the massage of TC to be credible.

The Physician-Patient relationship begins when the patient arrives at the office and continues while at the office. Dr. McCarthy, a licensed State of Oregon Chiropractor and President of the Oregon Board of Chiropractor Examiners testified that in his professional opinion and clinical experience, the Physician-Patient relationship begins at the time a patient is presented to you, the individual is either presented by interview and then subsequently examined and treated. He further testified that there is no time in a clinic setting when the Physician-Patient relationship did not exist, nor does it matter if the Dr. and Patient are friends. Dr. McCarthy expanded on the fiduciary duty that a chiropractor has to his patient. There is confidentiality, there is an entrusted relationship between the physician and patient that adds some imbalance to the relationship. He testified that the physician may have an advantage and access to information regarding the patient which the physician must respect, preserve and protect.

Dr. Blake Fischer-Davidson, a licensed Oregon clinical psychologist, testified that the Patient-Physician relationship begins the moment any contact is made with the implication or discussion of clinical professional services. He further stated that that would be true if they were family friends or not. Even Dr. Civica's own expert Dr. Kevin McGovern testified that the Physician-Patient relationship begins when a person comes in for clinical purposes and the doctor agrees to treat them.

Dr. Civica was not credible in his testimony that TC was not his patient. TC was treated like a patient while in the office. TC testified that she was requested to take a drape, go into a treatment room, disrobe and await her massage from Dr. Civica. Dr. Civica sought permission from TC's mother, which was granted and indicated he wanted

to do it at the office. Furthermore, there was a patient in the office minutes prior to TC's massage and that patient was receiving treatment from her Chiropractor, Dr. Civica.

Dr. Civica drove TC to the office for the specific purpose of giving her a massage. Dr. Civica had a patient in the office prior to the planned massage of TC and had TC wait for him to complete services to that patient prior to her massage. Note, in Exhibit J 6 in the Affidavit of Mauro Civica D.C., Dr. Civica stated that TC asked for a massage. This contradicts the credible testimony of TC who stated that Dr. Civica mentioned the massage to her. In Exhibit J 6, Dr. Civica stated that he had TC come to his office so he could use the massage table after the close of business.

The Board has defined "patient" to mean "any person who is examined, treated, or otherwise provided chiropractic services whether or not the person has entered into a physician/patient relationship or has agreed to pay a fee for services." OAR 811-010-0005(4). "Chiropractic services" is not otherwise defined in the rules, but it was argued that the massage provided to TC was chiropractic services and therefore, she was a patient. "Chiropractic" is defined at ORS 684.010 to mean:

- a) That system of adjusting with the hands the articulations of the bony framework of the human body, and the employment and practice of physiotherapy, electrotherapy, hydrotherapy and minor surgery.
- (b) The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuromusculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges.

The Board finds that massage is part of the "practice of physiotherapy" and/or one of the "rational therapeutic measures as taught in approved chiropractic colleges." In exhibit J-7 the Board cited the case of *Zeh v. National Hospital* 233 Or. 221, 231, 377 P. 2d 852 (1963) which stated that massage treatment is a form of chiropractic service. In finding that physicians frequently give or prescribe massages, the court cited Volume 8, *The Cyclopedia of Medicine, Surgery, Specialities* page 907.

In the Oregon Chiropractic Practices and Utilization Guide, exhibit B-28 page 7, the guide clearly indicates that chiropractic therapeutic care and patient management includes manual therapy and states that adjustment, manipulation, mobilization and soft tissue manipulation are part of that treatment regime. On page 21 of that Guide, Manual Therapy is defined as:

"Therapeutic application of manual force. Includes such procedures as **massage**, active relaxation, passive stretch, exercises, joint mobilization, thrust manipulation, immobilization and stabilization." (emphasis added)

Dr. Civica's own expert Dr. McGovern testified that he assumes massage is included as treatment for chiropractic care. In addition, Dr. Civica testified that trigger point therapy would include a massage when he spoke of the psoas muscle. In his description, Dr. Civica stated "You would ask the patient to perform a motion that would engage the muscle and that is to lift their knee. And you would feel a very strong tight rope which is usually very painful. You could cross fiber the massage and ask the patient to extend their leg lower to thirty degrees and externally rotate and drop to zero degrees." Thus, Dr. Civica uses the term massage when discussing chiropractic technique.

In addition, Civica's conduct at his clinic implies that a physician-patient relationship existed between Dr. Civica and TC. The Board's definition of what constitutes a patient is not limited to those individuals who formally present to the doctor's office with a request for care. Dr. Civica asked TC to come to his clinic for a massage. Dr. Civica had a scheduled patient immediately prior to TC's massage. He did not provide it to her at his home where he keeps a chiropractic adjusting table, or elsewhere. When TC arrived at the clinic and up to the moment of the massage, Dr. Civica gave TC instructions as to how to prepare for the massage. Dr. Civica treated TC as a physician would treat any patient coming into the clinic for care. Although Dr. Civica did not set up a patient chart on TC, the treatment rendered, a massage, was the same or similar treatment any female patient would be given when seeking chiropractic treatment. TC was treated with a massage prior to any sexual contact and was provided chiropractic services by Dr. Civica.

In summary, the board finds that a physician/patient relationship existed based on several factors. These factors are that Dr. Civica treated a patient just prior to the planned massage of TC; TC was treated like a patient prior to the massage when she was told to go in the treatment room, disrobe and await her massage; Dr. Civica took TC to his office where he performs tasks as a chiropractor to give TC a massage.

This Board has reviewed the above evidence and finds that a Physician-Patient relationship existed between TC and Dr. Civica. It was clear from the expert testimony and facts in the record, that there was a Physician-Patient relationship established. In addition, the Board finds that massage is a chiropractic treatment given to TC when she received a massage at Dr. Civica's office during August of 1999.

(c) There was no verbal behavior that could reasonably have been interpreted by the patient as sexual.

It has already been discussed that Dr. Civica asked TB, KM and DM questions about their sexual activities, but he did not ask these questions of other female patients who testified as character witnesses for Dr. Civica. TB testified that she answered the questions because she thought there might be a medical reason for him to ask since her pain was in her low back. KM testified to being "uncomfortable" with questions about her marital status and if she had a boyfriend. It should be noted that KM's discomfort with being asked if she was single or had a boyfriend had nothing to do with any sexual

overtones to the question, but was her personal reaction based on recent events in her life. She testified that being questioned about pain during intercourse did not offend her and was not out of line because it could have something to do with her low back pain. DM testified that she felt uncomfortable in answering questions about her sex life, but this is a common reaction by many people in talking about sex. She did not testify that she was offended by the questions or that she felt they were inappropriate or out of line.

However, as stated in section (a) of this order, the Board is deeply troubled by the pattern of conduct and behavior used by Dr. Civica in his treatment of these patients. This demonstrates that Dr. Civica had made several unprofessional comments in the context of the most personal and intimate questions a doctor can ask a patient.

(d) There was inappropriate touching of female patients that could reasonably have been interpreted by the patient as sexual.

JE testified to having had three treatments with Dr. Civica following an auto accident and back surgery in 1998. Nothing occurred on the first two treatments that caused her any concerns. On the third visit, she had just come from work and was dressed in jeans and a top. She was having her hips adjusted and was lying on her back on the table. Dr. Civica undid the belt on her jeans and slipped his hand between her jeans and her underwear. The hand was on top of her underwear. He did not touch any other part of her body while he was under there. He just did it without explaining to her what he was going to do. She felt he should have asked her to change into some shorts. She had previously treated with Dr. Hartwell who always had her change into shorts and a gown. That is how she knew that she Dr. Civica did was improper. She said it was very unprofessional. She stated that a man should never do that to a woman.

JE did not testify to anything overtly sexual with regard to this incident. She did not testify that Dr. Civica touched her genitals or made a sexual advance towards her. Her complaint was that in the course of treating her he undid her belt and stuck his hand down her pants without explaining what he was going to do and getting her permission. It is reasonable to infer from her testimony that had she been in shorts and a gown, she would not have objected to Dr. Civica placing his hand on her shorts in the same manner that he placed it on top of her underwear. When JE asked him on two occasions what he was doing, Dr. Civica provided no response. It was the invasive act of undoing her belt and putting his hand down her pants without warning that upset her. This is a reasonable reaction to what occurred and could reasonably have been interpreted by her as sexual or seductive.

This act was not only insensitive to the feelings of the patient and in disregard of the protocols requiring the physician to explain his procedures, it was intended to arouse or satisfy sexual desire. In addition, it could reasonably have been interpreted by JE as sexual or seductive.

DM testified that she treated with Dr. Civica after an auto accident. She had pain in her neck and back. Her father accompanied her on the first examination and was

present in the examination room during treatment. She was in a gown but had her bra and underwear on. While she was on her stomach, he unhooked her bra. When she rolled over on her back, her casually slipped her bra down and did a breast exam in front of her dad. He did not say he was going to do that. He just did it.

On her last visit when she was alone with Dr. Civica, he gave her a massage. She was in a lot of pain. He massaged her back for a while. Then he moved her underwear up her buttocks and massaged her buttocks. DM testified that the way he was massaging was not professional. He was taking his hands and rubbing them up underneath her underwear. He was touching her labia.

With regard to the breast exam, DM did not testify to anything sexual in nature. She did not testify that Dr. Civica was massaging or stimulating her breasts. She said Dr. Civica touched her breasts while doing a breast exam. It is difficult to conceive of a doctor doing a breast exam without touching the breasts. It was inappropriate for Dr. Civica to have conducted this breast exam without explaining it to his patient and getting her consent, especially if it was going to be administered in front of her father. It was not reasonable, however, for this patient to have interpreted a breast exam given in the course of a medical examination to be sexual, seductive, or sexually demeaning.

With regard to the massage, it was inappropriate for Dr. Civica to have massaged her buttocks up underneath her underwear and to have touched her genitals in any manner during this treatment. The touching of her buttocks and genitalia is reasonable to be interpreted by her as sexual or seductive.

The testimony of TC that involved digital penetration of her vagina and finally to performing oral sex on TC, is clear and direct evidence in this proceeding that Dr. Civica solicited and/or seduced or actually engaged in sex with a patient, TC. TC's testimony was supported by the testimony of her mother, CC and the affidavit of her boyfriend, Bruce Wheeler. TC's testimony as to the facts surrounding Dr. Civica's conduct toward her is uncontroverted. The Board and hearing officer find TC's testimony credible and the Board specifically finds a physician-patient relationship existed between them.

Since there has been a finding by the Board of a Physician-Patient relationship between Dr. Civica and TC, and a finding that the massage administered to TC was in fact a form of chiropractic treatment, the Board finds that Dr. Civica provided chiropractic treatment to TC for the purpose of arousing or gratifying sexual desire of the licensee and it was reasonable for her to have interpreted it as sexual, seductive or sexually demeaning.

(e) There were no breaches of patient confidentiality.

There was insufficient evidence at hearing that Dr. Civica breached any patient confidentiality.

(f) There were failures to explain procedures.

The Board alleged in its pleadings that Dr. Civica failed to explain to KM that he was going to use extreme pressure on her abdomen prior to administering the treatment. KM testified, however, that Dr. Civica did tell her there would be a lot of pressure before he applied the treatment. There was no credible evidence to support this allegation.

JE testified credibly that Dr. Civica failed to explain that he was going to undo the belt on her pants and place his hand on top of her underwear while administering a treatment. He just did it without explaining to her what he was going to do.

Although TB never had a coccyx adjustment, she testified to Dr. Civica having brought her a book with a picture showing the adjustment he was proposing and that he explained how the procedure would be performed. She also testified to his explanation of the vaginal adjustment before she consented to the treatment. There is no evidence on which to find that Dr. Civica failed to explain his procedures to TB.

DM testified credibly that Dr. Civica failed to explain that he was going to perform a breast examination in front of her father who was present in the examination room. He also failed to explain the manner in which he was going to massage her buttocks by placing his hands up under her underwear.

(g) There were no violations of medically accepted standards.

The Board alleged in its pleadings that the conduct with respect to KM, JE, TB and DM violated medically accepted standards as adopted in the Board's Chiropractic Practices and Utilization Guidelines (Exhibit B-28). There was insufficient evidence to support that allegation at hearing.

(h) The cartoon was not sexual conduct directed towards a patient.

The facts about the cartoon were undisputed. The Board finds that there was insufficient evidence that the cartoon was conduct of a sexual nature directed towards any patient of Dr. Civica.

(i) Patient records did not meet medically accepted standards of competency.

Dr. Richard McCarthy, Chair of the Board of Chiropractic Examiners, testified credibly to his review of Dr. Civica's patient charts for KM, JE, TB and DM. He met with Dr. Civica on October 21, 1999. The purpose of the interview was to review with Dr. Civica the four charts that Dr. McCarthy had been given to review, and also for Dr. Civica to respond to some questions that came up as a result of the review of the charts. In that interview, Dr. Civica could not describe clearly his system for keeping patient records. Some of the records were kept in a hard copy file and some were in a computer. It was not clear whether the hard copy file was a complete record or whether the

computer file was a complete record, and what the differences were between the hard copy file and the computer file. Dr. McCarthy could not determine what was accurate.

Dr. Civica testified credibly that he was not taught about record keeping at Palmer College. They did bring in people who had computer programs to offer but they did not really tell much about it. There was no computer system involved with his purchase of the chiropractic practice in Canby. There was a manual system of record keeping. He bought the practice on January 1, 1998, and was anticipating that the doctor who sold him the practice would stay until March or April. He left at the end of February. This was right when Dr. Civica purchased a computer system. He wanted to have something that was more legible, understandable, and able to be edited than the manual system. He installed a computer in every room and a system called "DC Easy" that has been written to help the doctor in charting. The transition to a computer system did not go smoothly. He spent about \$17,000 on the system. The person who sold it to him was supposed to train him for about four months but got fired two days after the system was purchased. The cost to bring in another trainer was prohibitive, so he had to learn the system himself.

Dr. Civica testified that the system is working pretty well now. He believes that his charting has improved significantly over the last year. He has taken several classes. He has worked closely with Dr. Croft who is an expert in chiropractic reports, particularly in reports of whiplash injuries.

In his review of KM's chart, Dr. McCarthy had a question about objective findings. He said he found no record of a diagnosis, treatment plan or record of treatment. He stated that Dr. Civica acknowledged there was limited intake information in the file and there was no record of treatment. In Dr. McCarthy's opinion there was a records violation in that there was incomplete documentation of the diagnosis which is a conclusion of the chief complaint in addition to objective findings that lead to implementation of treatment.

In JE's file, Dr. McCarthy stated there were no objective findings on two separate visits. He found violations in that there were entry dates of December 23, 1998, and December 28, 1998, but no objective findings were recorded for either date. There were also incomplete objective findings for September 15, 1999.

In regard to TB's file, there were missing objective findings again on one particular day and the inability to assure an accurate record whether it be hard copy or computer. In the DM file, there was no evidence of any treatment given to DM on July 26, 1999. Dr. Civica acknowledged that DM had been treated on that day. Dr. Civica blamed it on his computer problems.

Dr. McCarthy testified he uses a minimum competency standard when reviewing records for possible violations. It would be the bare minimum that a doctor could use and still uphold the statutory responsibility for record keeping. The record has to tell the story of what occurred on that visit as to what the complaints were, what the doctor found with

respect to those complaints, an assessment or diagnosis, and then a treatment plan that correlates to those findings.

That testimony is consistent with Chapter III of the Board's Practice and Utilization Guidelines (Exhibit B-28). Chapter III on "Record Keeping and Report Writing" describes in somewhat more detail a system for chart notes that is commonly identified by the acronym SOAP. The acronym stands for subjective complaints, objective findings, assessment and diagnosis, and plan of management. These guidelines state:

"The quality of a physician's health care is dependent on his/her ability to gather, organize, analyze and make decisions on clinical data. Good decisions are the result of accurate and complete facts being retrievable from a patient's records. Therefore, documentation of the patient's health history, presenting complaint(s), progression of care, diagnosis, prognosis and treatment plan should be reflected in the record keeping and written reports of the patient file."

Dr. Bonnie Malone, a licensed chiropractor in Sisters, Oregon, participates on the Board's peer review committee that reviews allegations of misconduct by chiropractors as requested by the Board. She was given the charts of three of Dr. Civica's patients to review: B, F and S. Dr. Malone was asked to do an independent review. Dr. Malone indicated that Dr. Civica had provided these files as patients who received a coccyxgeal adjustment.

With respect to the B file, it appeared these were computer-generated records. She found them confusing. At some points there were coccyxgeal adjustments, but they were listed as objective findings and not as treatment of the patient. Subjective input from the treatment was included in objective findings. This patient was a minor and she found no evidence of parental permission to do such a procedure on a 15 year-old. She would have had such a document in the file. Another thing with the B file is that the diagnosis never changes. It continues to be the same throughout the entire history of treatment of this patient. She would expect to find some changes. The period of treatment is uncertain because the intake examination on this patient, as well as others she examined, does not have a date of reference. She had to refer to the billings to determine the initial date of examination. B was treated from July 30, 1999, through October 25, 1999.

There are no records of any objective findings related to the coccyxgeal adjustment to indicate a reason for choosing that procedure. Dr. Malone noted that later in the patient's treatment the patient would have the same complaints, but a different adjustment would be administered. Dr. Malone did not see any evaluation indicating that this was a treatment of choice for this patient. She would expect to see some explanation as to why there were different treatments being administered for the same complaints.

In regard to the F file, Dr. Malone testified the diagnosis did not change. Treatment began on July 29, 1998, and lasted until June 7, 2000. Dr. Malone found

charges for x-rays, but they were not in the treatment chart. There was no explanation of x-ray findings. Dr. Malone feels that if x-rays are being used as a diagnostic tool, then inclusion of what was found on the x-rays should be included in the chart even if no pathology was found requiring chiropractic adjustment. There was no demonstration anywhere in the chart that a coccyxgeal adjustment was done.

In regard to the S file, Dr. Malone said she was not sure when intake examination occurred. The chart does say a coccyxgeal adjustment was proposed and the patient discussed it with her husband and elected to proceed. The patient had been diagnosed with a coccyx fracture in 1981. It was not evident from the record that a coccyxgeal adjustment had been performed. There is a note from the patient in the chart. On March 9, 1998, the patient referred to having had a posterior coccyxgeal adjustment and on March 13, 1998, stated that he had performed a vaginal coccyxgeal adjustment. There was no indication in the chart notes that a vaginal coccyxgeal adjustment had been performed. Adjustment procedures were included in the objective findings while other adjustments were included in the treatment notes. There were x-rays charted but no notes about those x-rays.

Dr. Malone found the charts to be difficult to read, the records did not seem accurate, and there were exclusions of treatments that had been performed. Dr. Malone believes that minimum competency in record keeping is explained in the "dead doctor" rule. Under the "dead doctor" rule, another doctor should be able to come into the clinic and actively proceed with treatment on the patient should the formerly treating doctor be deceased. Based on her review of these records, she would not be able to come in and take over treatment of these patients from Dr. Civica. In regard to B's chart, Dr. Malone testified that if she had to take over this patient, she would want to start over with the record keeping.

The Board finds by a preponderance of the evidence that for the seven patient charts that were reviewed and testified about, these seven charts failed to meet medically accepted standards for competency for record keeping as outlined in the Board's Practice and Utilization Guidelines (Exhibit B-28). The Board finds it inconceivable that Dr. Civica would perform a highly sensitive procedure such as a vaginal or coccyxgeal adjustment and fail to note that in the patient's charts as was found with patients identified above.

(j) Dr. Civica's continued practice of chiropractic would place the public at risk.

The Board's expert witness, Dr. Fischer-Davidson, testified that he has serious concerns about Dr. Civica's fitness for practice and a risk to public safety. Dr. Civica's expert witness, Dr. McGovern, testified that with intervention, remedial education, and appropriate safeguards, the risk of re-offending by Dr. Civica is very low. However, in testimony Dr. McGovern admitted that there is not one test that can truly identify a sex offender, only a person, being there in person, seeing the behavior occur can be the true test according to Dr. McGovern.

In addition, the Board puts great weight on the lack of information available to Dr. McGovern prior to testifying at hearing. In his review of Dr. Civica and examination process, Dr. McGovern did not have all the investigatory information before him. He admitted in testimony he had not reviewed the investigatory statements from JE, DM, TB or KM, the first four complaining witnesses, nor had he reviewed a taped statement of TC. Dr. Fischer-Davidson had reviewed this material prior to making his finding and testifying at hearing. Dr. Fischer-Davidson testified that it is important for an expert to have accurate and complete information in order to evaluate the case professionally and be relied upon as an expert. He further testified that the value of the evaluation could be affected if any information is not provided. Through no fault of his own, Dr. McGovern has based his opinion on inaccurate and/or missing information. Dr. McGovern's opinion regarding risk to the public was severely diminished since he was not provided the complete information necessary, as was Dr. Fischer-Davidson. This Board finds Dr. Fischer-Davidson's opinion is more persuasive in his concerns for continuing practice.

By their education, training and experience, both doctors are eminently qualified as experts in the area of human sexuality. Dr. Fischer-Davidson has performed 300 psychosexual evaluations and has provided expert assistance in sex offender treatment with adolescents and adults since 1990. Dr. Fischer-Davidson testified to reverse the pattern of behavior he found in his supplementary report, the first thing that would need to happen (and literature supports this he noted) is an admission to the violation, a willingness to engage in treatment, having a network to support treatment, developing an empathy with the victim, and understanding the cycle and pattern and taking responsibility. At no time did Dr. Civica ever admit to any inappropriate behavior toward a patient to Dr. Fischer-Davidson. Dr. Civica denied repeatedly to Dr. McCarthy performing any inter-vaginal or coccygeal adjustments to TB. However, he admits during cross-examination that he administered an inter-vaginal adjustment to TB. Dr. Civica admitted to his own expert, Dr. McGovern that he did push his hand under JE's pants and was insensitive in regards to a pornographic cartoon. There was no admission as to any inappropriate conduct with DM or TC.

Dr. McGovern testified that Dr. Civica had a different perception of the events than the patients and witnesses who testified.

Dr. Fischer-Davidson explained his change of diagnosis in the supplemental report in testimony. (Exhibit B 21) He stated the diagnosis was different because he felt the allegations made by TC were very concerning. Specifically her reports that Dr. Civica had sexual contact with patients in the office. Clearly there is intimidation; alone in the clinic, locked the door, turned down the lights and asked her to lie about being late. He also pressured her for fellatio and intercourse after they had returned to the house. TC also described Dr. Civica as huge and physically intimidating.

In terms of grooming, Dr. Fischer-Davidson indicated since the age of 17 they had discussed sexual issues and Dr. Civica had become her confidant. He asked her a lot of questions about sexual history and experience.

There also was abuse of power in that she considered him a second father figure. He told her he had been keeping his eye on her since she was 13 until she was old enough to be his sexual partner. He appeared to be calculating since he had set up the conditions, used his position as her chiropractor and fathers best friend.

In his diagnosis of Dr. Civica, Dr. Fischer-Davidson stated the characteristics of a sociopath or narcissistic personality were that they are deliberate. He stated that Dr. Civica had crossed boundaries when it suited him. He stated the characteristics of this diagnosis are cunning in the way they pick their victims who have less credibility or are unreliable. They are hostile at times and can be attacking.

In comparing the two expert psychologists, this Board finds it very important to focus on their similar findings. Dr. Fischer-Davidson and Dr. McGovern performed similar tests on Dr. Civica. The timing of the tests were within 7 months of one another. These test results were very similar according to the testimony of Dr. McGovern. They both found that Dr. Civica did not have poor impulse control, evidence of deviancies nor predatory type diagnosis. It is only when Dr. Fischer-Davidson reviews the investigation of TC, the letter and audio tape, that Dr. Fischer-Davidson finds that any remedial education or counseling recommended earlier, was insufficient to insure public safety. It was Dr. Fischer-Davidson's opinion in the supplemental report, (Exhibit B21) that Dr. Civica should not be allowed to continue chiropractic practice as it would place the public at risk. It is also important to the Board that the hearing officer and Dr. Fischer-Davidson found TC's testimony as to the events credible. The hearing officer refers to her testimony as to what occurred as "natural and unrehearsed." The Board agrees that the testimony of TC was compelling and credible.

The Board has reviewed Dr. McGovern and Dr. Fischer-Davidson's testimony and finds Dr. Civica's continual practice of Chiropractic would put the public at risk. In terms of public risk, the Board finds that greater weight is to be given to the expert opinion of Dr. Fischer-Davidson. He had available complete information including the statements of the complainants, JE, DM, TB and KM, which were reviewed by him as well as the taped interview of TC and Bruce Wheeler.

CONCLUSIONS OF LAW

1. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0015(1)(a) by engaging in conduct towards patient JE, undoing the belt on her jeans and slipping his hand between her jeans and her underwear, that was reasonably interpreted by the patient as sexual or seductive.
2. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0015(1)(a) by engaging in conduct towards patient DM, taking his hands and massaging the patient's buttocks underneath her underwear and touching her labia, that was reasonably interpreted by the patient as sexual or seductive.

3. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0015(1)(a)(b) and (c) by engaging in sexual relations with a patient and/or touching of sexual or intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either licensee or patient in the conduct towards patient TC, that involved digital penetration of her vagina and finally to performing oral sex on TC, which was reasonably interpreted by the patient as sexual or seductive.
4. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0005(2) by failing to inform patient JE of his procedures while administering a hip adjustment and obtaining the patient's informed consent prior to undoing the belt on her jeans and slipping his hand between her jeans and her underwear.
5. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0005(2) by failing to inform patient DM of his procedures and obtaining the patient's informed consent prior to performing a breast examination while the patient's father was present in the treatment room.
6. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-035-0005(2) by failing to inform patient DM of his procedures while administering a massage and obtaining the patient's informed consent prior to taking his hands and massaging the patient's buttocks underneath her underwear and touching her labia.
7. Dr. Civica violated ORS 684.100(1)(g) and OAR 811-010-0095 by failing to maintain records on seven patients that met the medically accepted standard for record keeping.

SANCTIONS

ORS 684.100 provides the following:

- (9) In disciplining a person as authorized by subsection (1) of this section, the board may use any or all of the following methods:
 - (a) Suspend judgment.
 - (b) Place the person on probation.
 - (c) Suspend the license of the person to practice chiropractic in this state.
 - (d) Revoke the license of the person to practice chiropractic in this state.
 - (e) Place limitations on the license of the person to practice chiropractic in this state.
 - (f) Impose a civil penalty not to exceed \$10,000.
 - (g) Take other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings.

Dr. Civica was found to have engaged in conduct on two occasions with female patients where the conduct could reasonably have been interpreted by the patient as sexual or seductive. One of these violations is more egregious in that a patient's buttocks

and genitalia were touched. In addition, this Board finds that Dr. Civica had sexual relations with a patient, TC which is an additional violation of unprofessional conduct.

The relationship of Physician-Patient is an entrusted relationship that causes an imbalance of power between a physician and a patient. Dr. McCarthy and Dr. Fischer-Davidson testified to this fiduciary obligation of a physician and in describing that discussed the manifestation of power and control. Dr. Fischer-Davidson testified that inappropriate behaviors are issues of power and control more than sexual drive or frustration. It is a very definite clear personal way of controlling another person. He further testified that the power and control could translate into a chiropractor patient-doctor relationship as well. The relationship is more accentuated in terms of power and control because patients rely on physicians to take care of them.

In Exhibit B 16, the Oregon Board of Chiropractic Examiners discusses the long-standing Board policy on unprofessional conduct in regards to sexual contact. That policy specifically states that "any conduct of a sexual nature in the confines of a doctor-patient relationship, including those that are consensual, is inherently inappropriate because of the power relationship involved." All licensed chiropractors in the State of Oregon are provided with this policy outline in addition to being accountable to follow the applicable rules on ethics in their chosen profession.

In the case of *In Re Griffith*, 748 P. 2d 86, 304 Or. 575 (1987) an attorney bar complaint issue, in considering a sanction for a discipline matter, the Court considered the aggravation and mitigation factors set out in the 1986 American Bar Association Standards. Among those factors considered were multiple offenses, refusal to acknowledge wrongful nature of the conduct, and vulnerability of the victim.

Out of the five complaining witnesses, three of these produced violations found by the Board, and two produced violations found by the hearing officer. These violations are very serious since they are sexual in nature. The multiple amounts of complainants is an important factor to consider in dealing with appropriate discipline.

At no time did Dr. Civica ever admit to any inappropriate behavior toward a patient to Dr. Fischer-Davidson. Dr. Civica did admit to his own expert, Dr. McGovern that he did push his hand under JE's pants and was insensitive in regards to a pornographic cartoon. There was no admission as to any inappropriate conduct with DM or TC.

The complaining witnesses in this case were vulnerable and at times during testifying were upset. Witnesses testified that their experiences with Dr. Civica have changed the way they trust professionals and their relationships with men and the way they react to situations they are faced with. Sandra Hall, DM's sister, testified that DM sounded hysterical on the phone and was very emotional and was crying when she requested her to come to her assistance soon after leaving Dr. Civica's office after her massage occurred. She testified it took an hour to get DM to tell her what had occurred.

Dr. Fischer-Davidson's finding in his supplemental report that any remedial education or counseling was insufficient to insure public safety convinces this Board that to allow any continued practice of Dr. Civica would put the public at great risk. For this Board to allow this chiropractor to continue treatment to any patient is an unacceptable risk that this Board is unwilling to take. Dr. Civica has clearly crossed the boundary into areas that constitute a danger to the health and safety of patients. Based upon the vulnerability of patients under the care of a chiropractor and the potential for harm to patient's mental and physical well being, it can be reasonably concluded that the health and safety of other patients should not be jeopardized by allowing Dr. Civica to continue to practice.

The sanction of revocation is very serious. The sanction of revocation in this matter is consistent with sanctions imposed by the Board in other cases that are similar. In considering the revocation in this matter, the Board has reviewed and takes official notice of other sexual violation cases wherein a revocation or full relinquishment of the Chiropractors license was enforced. (The final orders for the cases below are attached herein)

Patrick Boyd, license revoked 7/29/94 (sexual contact with female patient; touching breast, inner thigh)

Gerard Berardi relinquished in lieu of revocation 1/28/99 (Inappropriate touching and sexual intercourse with patient)

Jeffrey Utter permanent surrender in lieu of revocation 4/30/91 (inappropriate sexual contact)

John Johnson surrender of license in lieu of revocation 7/27/95 (Four complainants, fondling of breasts of all four, two with digital penetration)

Charles Meece revocation with agreement not to reapply 11/27/91 (Inappropriate touching of female patient)

Michael Lang revocation 7/24/97 (Sexual relationship with patient, revoked for not following terms of probation/chaperone)

The Board does not agree with Dr. Civica's expert, Dr. McGovern, who believes with intervention, remedial education, and appropriate safeguards, the risk of re-offending is very low.

The Board finds that a revocation is warranted in this matter. The Board has considered the findings of the hearing officer and finds the violations against JE and DM (violations 1 and 2 on page 30 of this order) are so serious that those violations alone warrant a revocation. In addition, the Board finds that the finding that TC was a patient and Dr. Civica engaged in sexual relations and/or touching of the patient (violation 3 on page 31 of this order) is so serious that that violation alone warrants a revocation.

The violations found by this Board are so egregious and reprehensible that to allow Dr. Civica to practice in chiropractic would be an abrogation of the Boards responsibility to regulate the practice of chiropractic and to protect the public.

The Board proposed in its Notice of Proposed Disciplinary Action to assess the licensee for the costs of this disciplinary proceeding, including investigative costs and attorney fees. Based on ORS 684.100(9)(g) and *George Adams v. The Board of Medical Examiners*, 170 Or App 1, 11 P. 3d 676, September 27, 2000, costs are awarded.

FINAL ORDER

Dr. Mauro Civica shall be revoked from the practice chiropractic in the State of Oregon. Revocation will commence on 1 December 2001. Dr. Civica shall pay costs of disciplinary proceeding including investigative costs and attorney fees.

It is so ordered this 20th day of September 2001

Original signature on file
at the OBCE office.

Kathleen Galligan D.C.
Vice President
Oregon Board of
Chiropractic Examiners

A party is entitled to judicial review of the Final Order. Judicial review is by the Oregon Court of Appeals pursuant to the provisions of ORS 183.482. Judicial review may be obtained by filing a petition for review with the Office of State Court Administrator, Supreme Court Building, Salem, Oregon 97310. ORS 183.482 requires that an appeal is requested by filing a petition in the Court of Appeals within 60 days following the date the order upon which the petition is based is served.

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