

1
2 BEFORE THE
3 BOARD OF CHIROPRACTIC EXAMINERS
4 STATE OF OREGON

4 In the Matter of)
5 DON W. DeSPAIN, DC) Case No. 98-1020
6 Licensee.)
7 _____) **STIPULATED**
FINAL ORDER

8 1.

9 The Oregon Board of Chiropractic Examiners (hereafter "Board") is the state agency
10 responsible for licensing and disciplining chiropractic physicians in Oregon. Don W. DeSpain,
11 DC (hereafter "Licensee") held a license to practice as a chiropractic physician in Oregon from
12 August 24, 1994, to July 31, 1999, when said license expired.

13 2.

14 On February 19, 1999, the Board issued a Notice of Proposed Revocation of License
15 (hereafter "Notice") against Licensee that alleged Licensee engaged in unprofessional, unethical,
16 and/or fraudulent conduct in violation of ORS 684.100(1)(a), (g), and/or (q), OAR
17 811-035-0015(1) and/or (12), and/or OAR 811-015-0000(3).

18 3.

19 On February 19, 1999, the Board also issued an Order by Consent (hereafter "Consent
20 Order") wherein the Board ordered certain limitations on Licensee's license, pending further
21 order of the Board.

22 4.

23 Licensee consented to entry of the Consent Order prior to issuance.

24 5.

25 On August 6, 1999, the Board received written notice from Licensee that Licensee had
26 decided not to renew his chiropractic license.

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6.

The expiration of and failure to renew Licensee's chiropractic license has caused the Board to potentially lose jurisdiction over this matter and the Board issues this Stipulated Final Order for the purpose of concluding the action based on the notice issued on February 19, 1999.

FINDINGS AND CONCLUSIONS

7.

The Board must accept Licensee's decision not to renew his chiropractic license in Oregon.

8.

The Board appears to lack jurisdiction to proceed with the prosecution of this case against Licensee following the expiration of Licensee's chiropractic license and the decision by Licensee not to renew said license.

9.

If Licensee ever reapplies for a chiropractic license in Oregon, the Board may consider this Stipulated Final Order, the Consent Order, and the Board's entire file on this matter in deciding whether to grant Licensee a chiropractic license.

FINAL ORDER

10.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Notice of Proposed Revocation of License issued against Don W. DeSpain, DC on February ____, 1999, is hereby dismissed without prejudice.

Dated this 2nd day of September, 1999.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

Original signature on file
at the OBCE office.

By: Dave McTeague, Executive Director

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IT IS SO STIPULATED AND AGREED TO this 27th day of August, 1999. The undersigned stipulates and admits to the facts, findings, and conclusions, as described hereinabove, and waives any and all rights to a hearing and to challenge or appeal this order.

Original signature on file
at the OBCE office.

Don W. DeSpain, DC

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In the Matter of)
Don W. DeSpain, D.C.)
Licensee.)

ORDER BY CONSENT
Case # 98-1020

This matter having come before the Board of Chiropractic Examiners (Board) for consideration of the entry of an interim order restricting the practice of Licensee Donald W. DeSpain (Licensee), and licensee having given his consent to this order restricting his practice pending further order of the Board, it is hereby ORDERED that:

Pending further order of the Board:

- 1) Licensee shall not examine or treat any female patient unless a disinterested adult female or an adult female licensed health-care professional is present; further,
- 2) Licensee shall not engage in any conduct or verbal behavior toward any female patient that may reasonably be interpreted by the patient as sexual, sexually suggestive, seductive, or demeaning.

Dated this 19th day of February, 1999.

OREGON BOARD OF CHIROPRACTIC EXAMINERS

Original signature on file
at the OBCE office.

Dave McTeague, Executive Director

I hereby consent to the entry by Oregon Board of Chiropractic Examiners of the foregoing Order restricting my license to practice chiropractic pending further order of the Board.

Original signature on file
at the OBCE office. 7-FEB. '99

Donald W. Despain, D.C. Date

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BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

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In the Matter of)	
)	NOTICE OF PROPOSED
Don W. DeSpain, D.C.)	REVOCATION OF LICENSE
)	Case # 98-1020
Licensee.)	

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The Board of Chiropractic Examiners (Board) is the state agency responsible for licensing, regulating and disciplining chiropractic physicians in the State of Oregon. Donald DeSpain, D.C. (Licensee), is licensed by the Board to practice as a chiropractic physician in the State of Oregon. The Board proposes to revoke the license of Licensee DeSpain for the reasons that follow.

1.

Licensee operates a one -person office with no other staff.

2.

In October - November 1998, Licensee provided chiropractic services to D.M, an adult female. D.M. sought treatment on two occasions for muscle spasms in her back. During both treatment sessions, D.M. was clothed in her panties and a tie-back hospital type gown. On both occasions, Licensee 's treatment included a lengthy massage followed by adjustments. On the second visit, Licensee massaged D.M.'s back, then moved to massaging her front. Licensee massaged D.M.'s upper shoulder area and sternum, then around and under her breasts. D.M. became uncomfortable, and closed her eyes. Licensee's thumbs grazed her nipples as he continued to massage D.S.'s breast area. Licensee then moved to D.M.'s groin area and massaged from her pelvic bones to the insides of her thighs, moving his hands from her pelvic bones, under her panties and onto the insides of her thighs. This conduct made D.M. uncomfortable and frightened. She noted that Licensee's breathing was in time with his massaging. The massage ended when D.M. opened her eyes. Licensee then manipulated D.M.'s neck and back a couple times and ended the session. D.M. was extremely upset by Licensee's actions, and did not return for subsequent treatment. Licensee admitted to performing "soft tissue work" on D.M.'s back area, but denied massaging the front portion of her body and acknowledged that there would be no reason to massage around the breast, groin area or inside of the thigh.

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3.

Licensee required D.M. to pay for each treatment session by cash or check, advising that that he did not bill insurance companies. Licensee advised D.M that he charged \$50.00 for each office visit and would provide her with an insurance billing form to submit to her insurance company. Licensee prepared an insurance billing form which reflected a greater amount than he charged D.M.

4.

Between October - November 1998, Licensee provided chiropractic services on 3 occasions to K.K., an adult female. K.K. presented with symptoms of general stress, tight muscles and an inability to relax. K.K. was clothed in a tie-back hospital type gown during each treatment session. On the first treatment, Licensee began by working (massaging) her back, then had K.K. roll over and massaged her front, under her gown. Licensee massaged the area of K.K.'s neck, shoulder, top of chest and between her breasts. On K.K.'s third visit on November 25, 1998, Licensee provided alcoholic beverages, consisting of nearly an entire bottle of wine, which he and K.K. consumed during the treatment session. As they drank wine, Licensee massaged K.K.'s entire back, top to bottom. When K.K. sat up to turn over as instructed, Licensee said something about wanting to kiss her. K.K. didn't respond, and felt very uncomfortable. She ignored the question and laid down on the table on her back. During the course of massaging her front, Licensee massaged her breast area, then moved his hands from between her breasts down to well below the breast and then out over her rib cage. This action pulled the gown down, exposing K.K.'s breasts. At some point after that, Licensee again told K.K. he wanted to kiss her. Licensee admitted drinking between one-half to two-thirds of a bottle of wine with K.K. during a treatment session, and admitted asking K.K. if she wanted to be kissed.

5.

The Board finds that the acts and conduct of Licensee described above constitute unprofessional conduct within the meaning of ORS 684.100(1)(g)(A), (q) and OAR 811-035-0015(1). Further, Licensee's practice, as described above, constitutes a continuing danger to the health or safety of the public. Licensee's conduct in providing an insurance billing form containing a higher rate than that charged to the patient constitutes a violation of OAR 811-015-0000 (3) for "failing to bill third party payors at the same rate the patient was billed;" of ORS 684.100 (1)(a) for fraud or misrepresentation; and of OAR 811-035-0015 (12), for unprofessional conduct by "perpetrating fraud upon...third party payors..."

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The Board proposes to revoke Licensee's license due to the aforementioned violations.

7.

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

8.

Licensee has the right, if Licensee requests, to have a formal contested case hearing before the OBCE or its 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.

9.

The 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.

10.

If Licensee fails to request a hearing within 21 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. The contents of the Board's file regarding the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

DATED this 19th day of February, 1999.

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BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By: _____
Original signature on file
at the OBCE office.
Dave McTeague, Executive Director