

BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON

In the Matter of)	Stipulated Final Order
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David Heller, D.C.)	
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)	
Licensee.)	Case # 2000-1011 - 2000-1022
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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. David Heller, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board has determined the facts as follows:

Findings of Fact

1.

In the Summer of 1998, patient A sought treatment with licensee. A patient/chiropractor relationship began and patient A had an Initial Consult and treatment and one regular treatment session. During the second treatment session Licensee asked personal questions regarding sex. Also during the second treatment session Licensee put his hand on patient A's buttocks several times and moved his hand further down on her buttocks each time. Patient A did not understand the touching or her buttocks to be related to legitimate chiropractic treatment and felt Licensee was making sexual gestures to her. Licensee told patient A "I have to be careful with you because I'm attracted to you." Licensee further stated "I got in trouble before for being attracted to a patient." Licensee

continued to administer treatment to patient A, massaging her head, neck, and shoulders, and continuing to talk to her and complimenting her. At one instance, Licensee while standing close to patient A, who was standing against a wall. Licensee moved close to Patient A, wrapping one of his arms around her and looked her in the eye. Patient A felt the behavior of Licensee was intimate and sexual. Licensee then told patient A "I can refer you to another chiropractor."

2.

Within two days after he attempted to refer Patient A to another chiropractor, Licensee called Patient A and an intimate sexual relationship began between Licensee and Patient A for a three month period.

3.

In an interview with the board investigator, Licensee indicated that after treatment of Patient A as referred to above, he did admit to having an intimate relationship with Patient A, however stated that he had severed the doctor-patient relationship. Licensee also told the investigator "I have had relationships with lots of women in this town and some of them were former patients, but I am always careful to stop treating someone before I start seeing them." Licensee admitted he had had sexual relations with more than 5 former patients in the town where his practice is located. The Board has reviewed Patient A's patient records and finds no evidence of termination of the doctor-patient relationship.

4.

During the Fall of 1998, Patient B sought follow up treatment with Licensee. In 1998, Patient B confided in Licensee that she was having marital problems. As she was ready

to leave, licensee stood in front of the door and gave Patient B a full body hug. I said "you give a great hug" to which he replied "I'm really good in bed." Patient B felt that Licensee was attempting to flirt with her and make sexual advances with her. She told him "please don't do this to me." Later Patient B realized that Licensee was attempting to be sexual with her.

5.

Licensee was disciplined in 1994 for sexual misconduct, which involved two patients. Licensee received a 30-day suspension, a two-year probation period and requirement for a chaperon with female patients in the final order in December 1994. In the final order, it found that Licensee's objectivity was compromised by personal feelings toward a patient. He told her he was attracted to her, hugged her and indicated he wanted a sexual relationship with her. It was found that Licensee continual course of conduct clearly showed that he was unable to keep his personal feelings from affecting the professional relationship he must maintain with patients.

Conclusions of Law

6.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations ORS 684.100 (1)(g)(A); and OAR 811-035-0015 and (1)(a)(b)(c). Failure to chart note a termination of the doctor-patient relationship violates OAR 811-035-0015(1)(B)(d).

Stipulations

7.

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,

IT IS HEREBY ORDERED THAT:

1. Pursuant to ORS 183.415(5), the Board and Licensee agree to informally dispose of and settle this matter.
2. Licensee stipulates that he has been advised of his right to request a hearing in this matter pursuant to ORS 183.415(2)(a), and to be represented at a hearing pursuant to ORS 183.415(3).
3. Licensee waives his right to a hearing in this matter.
4. Licensee is placed on suspension, during which time he may not engage in the practice of chiropractic, for 60 days beginning on the day following signature of this Stipulated Final Order by all parties.
5. Following the period of suspension, Licensee is placed on probation permanently.
6. As a condition of this probation, Licensee must have a chaperone present when treating or examining patients within the first three years of his probation. At the end of the three year period as noted above, after a finding by Licensee's treating psychologist and/or psychiatrist it is determined that Licensee does not pose a risk to patients and may practice with skill and care towards female patients, the chaperone requirement will cease. The probation shall remain permanently however.

Licensee shall have an OBCE approved female chaperone present during examination and treatment of all female patients during this time period. The chaperone shall not be related to the 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 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 that 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.

7. Licensee must enter into treatment with a qualified mental health professional and continue in treatment as long as that professional deems necessary. This mental health professional must specialize in treatment of sexual offenders approved by the OBCE. 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.
8. Licensee has a permanent condition on his license, effective October 1, 2001, that his practice of chiropractic be located in a clinic setting outside and separate and away from his personal residence. The clinic cannot be attached and/or located within the same building as his place of residence or in the same general location.
9. 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 incident may be used as a basis for license revocation.

8.

This Stipulated Final Order memorializes the entire agreement between the Licensee and the Board and supercedes all prior offers, negotiations or settlement discussions re Case # 2000-1011 and 2000-1022.

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

IT IS SO ORDERED this 6th of 2001.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

By:

Original signature on file
at the OBCE office.

2001

Dave McTeague
Executive Director

Date

Original signature on file
at the OBCE office.

David Heller DC

Date

**BEFORE THE
BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OREGON**

In the Matter of)

David Heller, D.C.)

Licensee.)

) **NOTICE OF PROPOSED**

) **REVOCATION OF LICENSE**

) **Case # 2000-1011, 2000-1022**

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. David Heller, D.C. (hereafter "Licensee"), is a licensed chiropractic physician in Oregon. The Board proposes to revoke Licensee's chiropractic license for the following reasons:

1.

In the Summer of 1998, patient A sought treatment with licensee. A patient-chiropractic relationship began and patient A had several treatments on a regular schedule. During treatment Licensee would often ask patient A about sex and other inappropriate personal questions.

2.

During treatment sessions, Licensee began putting his hand on Patient A's buttocks. As the treatment would progress, Licensee would reach farther down Patient A's buttocks. Patient A did not understand the touching of her buttocks to be related to legitimate treatment and felt that Licensee was making sexual gestures to Patient A. Licensee told Patient A "I have to be careful with you because I am attracted to you." He further stated "I got in trouble before for being

attracted to a patient.” Licensee continued to administer treatment to Patient A at times massaging her head, neck and shoulders while continuing to talk with Patient A about her attractiveness and complimenting her. At one instance, Licensee while standing close to her against a wall moving close to Patient A, wrapping his arms around her and look her in the eye. Patient A felt the behavior of Licensee was sexual and very intimate and that Licensee knowing did so with the hopes of making Patient A attracted to him. Licensee then told Patient A that he should not see her any longer and wanted to refer her to another chiropractor.

3.

Within two days after he attempted to refer Patient A to another chiropractor, Licensee called Patient A and an intimate sexual relationship began between Licensee and Patient A for a three month period.

4.

In an interview with the board investigator, Licensee indicated that after treatment of Patient A as referred to above, he did admit to having an intimate relationship with Patient A, however stated that he had severed the doctor-patient relationship. Licensee also told the investigator “ I have had relationships with lots of women in this town and some of them were former patients, but I am always careful to stop treating someone before I start seeing them.” Licensee admitted he had had sexual relations with more than 5 former patients in the town where his practice is located. The Board has reviewed Patient A’s patient records and finds no evidence of termination of the doctor-patient relationship.

5.

During the Fall of 1998, Patient B sought follow up treatment with Licensee. She had been a patient for two years prior to that time. During a treatment session in 1998, Patient B confided in Licensee that she was having marital problems. As she was ready to leave, licensee stood in front of the door and gave Patient B a full body hug. I said "you give a great hug" to which he replied "I'm really good in bed." Patient B felt that Licensee was attempting to flirt with her and make sexual advances with her. She told him "please don't do this to me." Later Patient B realized that Licensee was attempting to be sexual with her and had been waiting for an opportunity to make an advance toward her.

6.

Licensee was disciplined in 1994 for sexual misconduct, which involved two patients. Licensee received a 30-day suspension, a two-year probation period and requirement for a chaperon with female patients in the final order in December 1994. In the final order, it found that Licensee's objectivity was compromised by personal feelings toward a patient. He told her he was attracted to her, hugged her and indicated he wanted a sexual relationship with her. It was found that Licensee continual course of conduct clearly showed that he was unable to keep his personal feelings from affecting the professional relationship he must maintain with patients.

7.

On October 27, 2000, the Board ordered a competency examination by Dr. Kevin Krieg, Ph.D. Dr. Krieg has reviewed the notice and examined Licensee. During the examination Licensee admitted that he became romantically involved with Patient A. He also realized that it would be easy for doctors to take advantage of patients and admitted that doctors do have certain power

that can be used to abuse patients. After review Dr. Krieg found that Licensee accepted responsibility for many of the allegations but denied engaging in inappropriate sexual behavior during treatment sessions. He indicated that licensee has a moderate likelihood of benefiting from treatment. In terms of predatory behavior, Dr. Krieg indicated that the primary factor related to predatory behavior in Licensee's circumstances was his admitted recent boundary violations or sexual misconduct after being sanctioned for similar behavior in the past. However, Dr. Krieg indicated that Licensee's behavior meets the profile of an opportunistic offender that contains a manipulative quality that is concerning. Dr. Krieg also voiced concerns that Licensee has under reported to the extent of his misconduct. It suggests that he has utilized his position of authority as a health care professional to meet his needs at the expense of vulnerable patients. In addition, his actions have persisted in a self serving fashion without recognition of the impact of his behavior on the patients, suggesting he has not learned from past incidents and has been unable to place the patient needs above his.

8.

The Board finds that Licensee's conduct as described herein constitutes unprofessional conduct. Licensee's practice, as described above, constitutes violations ORS 684.100 (1)(g)(A); and OAR 811-035-0015 and (1)(a)(b)(c). Failure to chart note a termination of the doctor-patient relationship violates OAR 811-035-0015(1)(B)(d).

9.

Due to the aforementioned violations, the OBCE proposes to revoke Licensee's license due to the aforementioned violations.

10.

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

11.

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

12.

The answer shall be made in writing to the OBCE and shall include an admission or denial of each factual matter alleged in this notice, and a short plain statement of each relevant affirmative defense Licensee may have. Except for good cause, factual matters alleged in this notice and not denied in the answer will be considered a waiver of such defense; new matters alleged in this answer (affirmative defenses) shall be presumed to be denied by the agency and evidence shall not be taken on any issue not raised in the notice and answer.

13.

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

14.

If Licensee fails to request a hearing within 30 days, or fails to appear as scheduled at the hearing, the OBCE may issue a final order by default and impose the above sanctions against Licensee. Upon default order of the Board or failure to appear, the contents of the Board's file regarding the subject of this automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case.

IT IS SO ORDERED this 18th day of December, 2000.

BOARD OF CHIROPRACTIC EXAMINERS
State of Oregon

D...

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director

State of Oregon)

County of Marion)

Case # 2000-1011, 2000-1022

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 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**

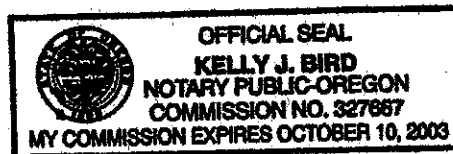
SUBSCRIBED AND SWORN to before me

this 13th day of Dec., 2000.

Original signature on file
at the OBCE office.

NOTARY PUBLIC FOR OREGON

My Commission Expires: 10/10/03



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CERTIFICATE OF SERVICE

I, Dave McTeague, certify that on December 18, 2000, I served the foregoing Notice of Proposed Revocation of License upon David Heller, D.C., the party hereto, by mailing, certified mail, postage prepaid, a true, exact and full copy thereof to:

David Heller D.C.
132 6th St
Ashland OR 97520

Kevin Burgess AAL
PO Box 10567
Eugene, Oregon 97440-2567

Original signature on file
at the OBCE office.

Dave McTeague
Executive Director
Oregon Board of Chiropractic Examiners

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