

The orders were provided to the hearings officer by Board counsel to assist her in determining an appropriate sanction. The licensee is not prejudiced by the late filing of the orders. The orders are admitted as Exhibit 15.

FINDINGS OF FACT

1. Dr. Heller is licensed to practice as a chiropractic physician in the State of Oregon. He maintains an office in Ashland, Oregon.
2. During the summer or fall of 1991, Heller had a brief sexual relationship with a woman named [redacted]. This relationship lasted for approximately two months and ended in the fall of 1991.
3. In October, 1992, [redacted] strained her back lifting a mattress. The chiropractor she had previously used was no longer in business, and had turned [redacted] file over to Heller. [redacted] who needed immediate treatment, went to see Heller about her injury.
4. Heller treated [redacted] in his office on four occasions between October 15 and October 21, 1992. During these visits, [redacted] felt that Heller was making inappropriate references to their past relationship. Once when Heller adjusted [redacted] he asked if she remembered the last time he adjusted her. Heller was referring to a time during their relationship when they were together in bed. Heller also told [redacted] that he would like to see more of her and asked her to go with him to a movie. [redacted] declined. [redacted] general impression was that he wanted to be close to her again.
5. Heller also treated [redacted] at her apartment on at least two occasions. These visits were not recorded in the chart notes. [redacted] received these treatments in her living room while she was either sitting or standing. Although [redacted] appreciated Heller's gesture in volunteering to treat her at home, she was not comfortable with receiving the treatments at home.
6. Heller called [redacted] on one other occasion to treat her at home. [redacted] declined Heller's offer.
7. After [redacted] visit in Heller's clinic on October 21, she decided that she did not want Heller to treat her any more. She was uncomfortable with the way Heller was relating to her and [redacted] (see below) and disliked the references made to their prior relationship.

8. When [redacted] canceled future visits, Heller called [redacted] to find out if there was a problem. He asked her to take a walk to discuss the situation. [redacted] declined, but told him that she thought his conduct was unprofessional, and that it was inappropriate for Heller to be making sexual advances to [redacted] and [redacted]. After this conversation, [redacted] felt "finished" with Heller and chose not to report Heller's conduct to the Board.
9. Between October 8 and October 26, 1992, Heller also provided professional services to [redacted] a longtime friend of [redacted] who chose to go to Heller she worked with a woman who was Heller's room mate. Heller treated [redacted] nine times at his office. During an office visit, Heller told [redacted] that he had considered asking her to go with him to see a movie. He also remarked that he was attracted to her, making it difficult for him to maintain a professional relationship with her.
10. On at least two occasions, Heller treated [redacted] at her apartment. No chart notes were made of these treatments. [redacted] did not have any difficulties with Heller until the second home visit, which occurred during the week of October 24 and 25. When Heller first called to schedule a home visit, [redacted] declined, stating that she did not need his services. He called again, and [redacted] told him she felt fine and a visit was unnecessary as she had a scheduled appointment in his office on Monday, October 26. He persisted, however, until she agreed to let him treat her at home.
11. [redacted] became uncomfortable with Heller during the home visit because he made statements which she believed were inappropriate. Heller told [redacted] that he was interested in her, that it was difficult for him to keep their relationship on a professional level and that he wanted to have sex with her. Heller treated [redacted] while she was lying on her bed in her bedroom.
12. Heller scheduled the home visits with [redacted] and [redacted] on the same days, if possible. He treated [redacted] first, then [redacted]. The two women lived near each other in the same apartment complex.
13. After the last home visit, [redacted] did not want to be treated by Heller. Because she was on a SAIF claim, she was unsure that she could cancel her appointments. She attended the appointment on October 26. Shortly thereafter, she contacted SAIF and received approval to find another doctor. She then canceled her remaining appointment with Heller.

14. Heller called _____ to find out why she had canceled her appointments. _____ informed him that he knew why she had canceled. When he said he didn't know, she explained that she did not feel safe and did not feel comfortable around him. Heller wanted her to continue her treatments with him, but she replied that she could not continue with him.

15. _____ was out of her house on the evening of October 29, 1992, and arrived home around 11:30 p.m. Heller pulled up behind her in his car, making it impossible for her to leave in her car. He handed her a card, saying that he intended to put it in her mailbox. He then left.

16. _____ went into her house and read the card, which said:

I am so sorry. (I'm not sure for what) but I'm sorry I got in the way of being your doctor or your friend. I hate the idea of seeing you and feeling awkward, and I don't like the idea of not seeing you at all either. I realize my apologies don't make any difference. You don't owe me an explanation, but I wish you would do me a favor, and explain things to me. Is timing part of the problem. You probably haven't heard the last of me (unless you're willing to write me a mean and nasty note to tell me to fuck off!) Please be willing to talk to me. (Signed) David.

_____ perceived the letter as a threat and reported the incident to the Ashland Police Department.

17. In her complaint to the Board, _____ stated that Heller was treating her at home as an excuse to see her, that he wanted to make love to her and that he knew that what he was doing was unethical. The formal complaint was signed in May, 1993.

18. Heller does not see his actions as unethical, but naive. He does not hug patients anymore, stating that misinterpreted his hug. He admits that he should not have told _____ that he was attracted to her, and that he should not have referred to his past relationship with _____ while treating her. He does not perceive an ethical problem to arise if he asks a former lover out to the movies while treating her.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensee and the subject matter of the complaint.
2. Dr. Heller violated ORS 684.100(1)(g)(A).

ORS 684.100(1)(g)(A) provides that the Board may discipline a licensee for unprofessional or dishonorable conduct which includes, but is not limited to:

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

OAR 811-35-005(2) provides that chiropractic doctors should "conduct themselves as to acquire the confidence and respect of their patients."

OAR 811-35-005(6) provides that chiropractic doctors "shall respect the rights of their patients as individuals and conduct themselves accordingly."

Dr. Heller admitted that it was not appropriate to ask patients out on dates because it would be hard to maintain a professional relationship while involved in a personal relationship. He indicated that such a relationship might affect his objectivity. In other words, such activity might impair his ability to practice safely. When a chiropractor loses his or her objectivity, the chiropractor's ability to perform services is influenced.

In the present case, Dr. Heller's objectivity was compromised by his personal feelings towards her. He told her that he was attracted to her, hugged her, and indicated that he wanted a sexual relationship with her. It is impossible for him to "acquire the confidence and respect of [his] patients" as required by OAR 811-35-005(2) when he is professing his physical attraction to a patient. Further, his ability was impaired, as shown by his failure to make chart notes about the home visits.

The notice alleges incidents which concluded on or about October 26, 1993. As the incident regarding the note to occurred outside the alleged time frame in the notice, the incident cannot be used to find a separate violation of the statute in this action. The information is relevant, however, to show that Heller's objectivity was severely skewed. He simply could not leave alone. did not owe Heller any explanation as to why she canceled her appointments. Even after Heller talked with about her decision, he felt he needed to maintain contact with her. Hence, he wrote her a note asking for an explanation and stating that she had not seen the last of him. As a doctor, Heller should have ended his inquiry of after his conversation with her on or about October 26, 1993. His continuing course of conduct clearly shows that he was unable to keep his personal feelings from affecting the professional relationship he must maintain with his patients.

Dr. Heller's actions towards were also inappropriate and constitute a violation of ORS 684.100(1)(g)(A). By referring to their past sexual relationship, and by asking to a movie, he again stepped beyond the bounds of a doctor/patient relationship. He did not conduct himself in such a way as to acquire confidence and respect. To the contrary, felt that Heller was trying to initiate a close personal relationship with her during a time that she needed treatment. not wishing to deal with the situation any further, decided to find another physician.

The notice alleges that Heller used his practice as an avenue to enhance his personal life. If so, he is clearly operating outside the bounds of ethical conduct. Heller, however, provided chiropractic treatment to each woman. Both and initially appreciated his efforts to treat them at home. Although the evidence does not establish that Heller was seeing these two patients at home solely to further his personal relationships, the Board is concerned about the home visits to these two women.

It is appropriate to place Heller on probation for a period of two years. During this probationary period, Heller must have a female chaperon present when treating female patients. This restriction is not limited to treatment in his office. Failure to have a female chaperon present when treating female patients will result in Heller's license being limited to treatment of male patients only.

It is also appropriate for Heller's license to be suspended for 30 days.

Counsel for the licensee suggested that it would be more appropriate to require Heller to refrain from unsolicited contact with patients outside the office setting. The difficulty with this requirement is some of Heller's inappropriate conduct occurred in his office. We suspect that none of the statements would have been made if someone else had been present. The requirement of a female chaperon is appropriate under the circumstances of this case.

In the June 11, 1993 Notice of Proposed Sanctions, the OBCE proposed to impose a 30-day suspension and the use of a female chaperon on Heller. After considering the November 7, 1994 Proposed Order and the November 17, 1994 Exceptions filed by Heller, the OBCE believes, based on the Findings of Fact and the Conclusions of Law herein adopted, that the original sanctions as proposed are appropriate in this case.

FINAL ORDER

Heller's license to practice chiropractic is suspended for 30 days and he is placed on a two year probation commencing five days after the issuance of a final order. As a condition of his probation, Heller must have a female chaperon present when treating female patients. Failure to have such chaperon present when treating female patients will result in Dr. Heller's license being limited to the treatment of male patients only.

Dated at Salem, Oregon, this 27 day of December, 1994.

Original signature on file
at the OBCE office.

Christie Joachym
Executive Director

Notice: You are entitled to a 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 the State Court Administrator, Supreme Court Building, Salem, Oregon 97310, within 60 days from the service of the Final Order.