

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
BOARD OF CHIROPRACTIC EXAMINERS**

IN THE MATTER OF:

**GREGORY M. MOLL, DC**

) FINAL ORDER

)

) OAH Case No.: 901397

) Agency Case No.: 2009-5007

**HISTORY OF THE CASE**

On September 22, 2009, the Board of Chiropractic Examiners issued a Notice of Proposed Disciplinary Action (Revocation) against Gregory M. Moll, DC. On October 22, 2009, Dr. Moll requested a hearing.

On November 12, 2009, the Board of Chiropractic Examiners referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) John Mann was assigned to preside at hearing. A prehearing conference was held on January 4, 2010. ALJ Mann presided at the conference. Senior Assistant Attorney General Lori Lindley represented the Board. David Briggs, attorney at law, represented Dr. Moll. At the conference, the parties agreed to a hearing on March 1 and 2, 2010.

Another prehearing conference was held on February 24, 2010. ALJ Mann presided at the conference. Ms. Lindley represented the Board. Hunter Emerick, attorney at law, and Mr. Briggs represented Dr. Moll. The purpose of the conference was to discuss Dr. Moll's request for depositions and his request to postpone the hearing. ALJ Mann advised Mr. Emerick that he did not have the authority to order depositions. Ms. Lindley advised Mr. Emerick that the Board would not authorize depositions in the case. Mr. Emerick was also concerned that the hearing would extend beyond the two scheduled hearing dates and suggested that the hearing be rescheduled for a later time with additional hearing dates. ALJ Mann denied that request, but suggested that additional hearing dates would be possible if needed.

The hearing began as scheduled on March 1 and 2, 2010 at the Board's office in Salem, Oregon. The hearing was continued and was concluded on March 9 and 11, 2010. ALJ Mann presided at the hearing. On March 10, 2010, the Board issued an Amended Notice of Proposed Disciplinary Action (Revocation) to correct a citation to an administrative rule. The Board served that Notice on Dr. Moll at the beginning of the hearing on March 11, 2010.

Dr. Moll participated in the hearing and was represented by his attorneys, Mr. Emerick and Mr. Briggs. Ms. Lindley represented the Board. Dr. Moll testified as a witness for the Board and on his own behalf. Patients No. 1, 2, 3, 4, 5 and 6 testified for the Board. The Board also presented testimony from Mary Moll, Detective Dave Steele of the Oregon State Police, Board investigator Tom Rozinski, Dave McTeague, the Board's Executive Director and Beverly

Ratheligershe. Dr. Moll presented testimony from Lana Jean, Rema Bergin, Tami Burns, and Marvin Moll. The record closed at the end of the hearing on March 11, 2010.

On May 3, 2010, Dr. Moll filed exceptions to the ALJ's Proposed Order. On May 27, 2010, the Board considered those exceptions and found them to either be without merit or not supported by the evidence in the record. On June 15, 2010, the Board issued an Amended Proposed Order. On June 24, 2010, Dr. Moll filed exceptions to the Amended Proposed Order. The Board considered those and issues this final order after considering those exceptions.

### ISSUES

1. Whether Dr. Moll engaged in sexual relations and/or had a romantic relationship with Patients No. 1, 2, and 3, while they were current patients, in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(1)(a)-(e).

2. Whether Dr. Moll engaged in conduct, or made verbal comments, toward Patients No. 4 and 5, that could reasonably be interpreted as sexual, seductive, sexually demeaning or romantic in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(1)(a).

3. Whether Dr. Moll's conduct with and towards Patient No. 6 during their romantic relationship and subsequent breakup constituted unprofessional conduct under *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015.

4. Whether Dr. Moll revealed confidential or private information about a patient to Patient No. 6 in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(11).

5. Whether Dr. Moll provided equine adjustments, based on referrals from Patient No. 7, without referrals from a licensed veterinarian in violation of *former* ORS 684.100(1)(g)(A) and ORS 684.025(3).

6. Whether Dr. Moll failed to keep chart notes on patients, friends and co-workers in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0005.

### EVIDENTIARY RULING

The Board offered Exhibits A1 through A19. Exhibits A1 through A10, Exhibit A12, Exhibits A15 through A17, and Exhibit A19 were admitted in their entirety without objection. Dr. Moll objected to Exhibit A18 in its entirety. The objection was overruled and Exhibit A18 was admitted into the record. Dr. Moll objected to portions of Exhibits A11, A13 and A14. The objections to Exhibit A11 were overruled and the Exhibit was admitted into the record.

Exhibit A13 was admitted into the record with the exception of the following portions which were not admitted:

Page 1: The sixth sentence of paragraph 2 (beginning "There is also credible...")

Page 5: Paragraph 1.

Page 8 – 9: Bottom paragraph of page 8 through end of paragraph on page 9.

Page 9: The first, third, and fourth full paragraphs.

Page 10: Paragraph 6.

Page 12: Two sentences beginning on line 6 of the first full paragraph beginning with “Dennis admitted that Greg...” and ending with “in one ear and out the other.”

Page 12: The first sentence of the third full paragraph and all of the bottom two paragraphs on the page.

Page 13: Paragraph 6.

Page 14: The first full sentence on the top of the page and the third full paragraph.

Pages 14-15: The paragraph that begins at the bottom of page 14 and ends at the top of page 15.

Page 16: Paragraph 6.

Page 22: The second, third, and fifth full paragraphs.

Page 23: Paragraph 2 beginning “Greg admitted to taking a trip to Canada....”

All other objections to Exhibit A13 were overruled on the record.

Exhibit A14 was admitted into the record with the exception of the paragraph beginning on the bottom of page one and concluding at the top of page two, and the bottom full paragraph on page 2.

Dr. Moll offered Exhibits 101 through 126. Exhibits 102, 106, 107, 110 through 113, 118, 119, 125 and 126 were admitted without objection. Exhibits 101, 104, and 105 were not admitted because they were duplicative of the Board’s Exhibits. The Board objected to Exhibits 103, 108, 114, 115, 116, 117, and Exhibits 120 through 124. The objection to Exhibit 120 was sustained and Exhibit 120 was not admitted into the record. The remaining objections were overruled and Exhibits 103, 108, 114, 115, 116, 117, and Exhibits 121 through 124 were admitted into the record.

#### BOARD EXPLANATION

The Board has made several additional findings of fact in the Amended Proposed and Final Orders. These additional findings were provided via testimony and evidence presented at the contested case hearing and was supported by substantial evidence. ORS 183.650(3) states:

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings only if the agency determines that there is clear and convincing evidence in the record that the finding was wrong. For the purposes of this section, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

The Board's additions were not changes to any findings of fact from the ALJ, (with the exception of Finding of Fact number 20 as explained in footnote number 2), but were merely added to the findings of fact in the order. The statute notes that the ALJ makes a finding of historical fact if he determines that an event did or did not occur in the past or a circumstance or status did or did not exist. The ALJ made no formal findings on these additional findings of fact as they were absent from the proposed order. Thus, since additional findings of fact that are substantially supported in the record are not considered modifications to the Administrative Law Judge's findings, no explanation of those modifications is necessary. (See *Gienger v. Department of State Lands*, 230 Or. App. 178 (2009) .

### FINDINGS OF FACT

1. Gregory Moll, DC, has been a licensed chiropractor in Oregon since 1992. Since that time, Dr. Moll has continuously practiced at clinics in Stayton and Salem, Oregon. (Test. of Moll.)
2. Dr. Moll's interpretation of dating was that he saw someone socially on a regular basis. (Test. Of Moll)
3. Patient No. 1 first sought treatment from Dr. Moll in the late 1990s following an automobile accident. She received treatment from him for several months, but discontinued seeing him when she moved to Dallas, Oregon. (Test. of Patient No. 1.)
4. Dr. Moll said he did not recall telling Patient 1 about his personal sexual details with he and his wife. He also denied that he discussed oral sex with his wife with Patient 1 during a patient encounter. Patient 1 testified that in 2002 she recalled Dr. Moll talking about finding a naked women on his treatment table and she was a stripper that was a birthday gift for him. She also recalled him talking about receiving oral sex from his wife in the morning. (Testimony of Moll, Test. of Patient 1)
5. Detective Steele testified that Patient 1 had told him on June 23, 2009, that Dr. Moll had made comments during treatment she received about his wife performing oral sex in the shower. (Det. Steele, Exhibit A 11)
6. In January 2002, Patient No. 1 sought treatment from Dr. Moll for neck and shoulder pain following ear surgery. (Test. of Patient No. 1.) Patient No. 1 received treatment from Dr. Moll on at least two occasions in January 2002. (Ex. A3 at 18; test. of Moll)

7. In late January 2002, Dr. Moll and his then-wife, Mary Moll, attended a birthday party for Patient No. 1's then-husband. Shortly after the party, Dr. Moll and Patient No. 1 began speaking on the phone on a regular basis and regularly exchanged instant messages. Dr. Moll made it clear to Patient No. 1 that he wanted to be involved in a physical relationship with her. (Test. of Patient No. 1.) Dr. Moll denied saying this in his testimony. Patient No. 1 also expressed an interest in having a physical relationship with Dr. Moll's wife. (Test. of Moll)

8. Sometime in late January or early February 2002, Dr. Moll told Patient No. 1 that they would need to end their doctor/patient relationship due to the growing personal relationship between her, Dr. Moll, and his wife. (Test. of Patient No. 1; test. of Moll.) On February 15, 2002, after having this conversation, Dr. Moll fitted Patient No. 1 with orthotics and billed the visit to Patient No. 1's insurance company. (Test. of Moll; Ex. A3 at 20)

9. In February 2002, Dr. Moll and Patient No. 1 engaged in kissing and "touching" at Dr. Moll's clinic. (Test. of Patient No. 1) Dr. Moll denied that this occurred during testimony stating "that did not happen." Dr. Moll also denied that he pressured Patient 1 for a relationship at any time. Within a couple of weeks after that visit, Dr. Moll and Patient No. 1 had mutual oral sex at Patient No. 1's home. (*Id.*) Dr. Moll denied that this occurred during his testimony stating "that did not happen." Sometime between February and April 2002, Patient No. 1 stayed with Dr. Moll and his wife at Dr. Moll's beach house. During that stay, Patient No. 1 had sexual relations with Dr. Moll and his wife. Dr. Moll testified that the three way sexual experience was either his wife or Patient 1's idea. (Test. of Patient No. 1; Test. of Moll; Test. of Mary Moll)

10. Later in the spring of 2002, Dr. Moll rode his bicycle to Patient No. 1's home and told her husband that he was in love with Patient No. 1. Patient No. 1's husband was upset and asked Dr. Moll to leave. Dr. Moll denied that he did that in testimony. On a regular basis Dr. Moll called and sent e-mails to Patient No. 1 concerning their relationship. Patient No. 1 found the communications to be controlling and frightening. In one e-mail, Dr. Moll implied that he would cause trouble for Patient No. 1's family if she did not end her friendship with Dr. Moll's wife. Dr. Moll did not recall saying this. Patient No. 1 e-mailed a copy of the Board's rules regarding sexual contact with patients to Dr. Moll. Following that e-mail, Dr. Moll stopped contacting Patient No. 1. (Test. of Moll, Test. of Patient No. 1)

11. Patient No. 2 was injured when she was ejected from a vehicle in May of 2001. She began receiving treatment from Dr. Moll on May 18, 2001. She continued to receive additional treatments from Dr. Moll through July 24, 2001. Patient No. 2 did not receive any additional treatment from Dr. Moll after her last visit on July 24, 2001. Moll said he also saw her after she visited a podiatrist, sometime in late 2001, where they talked about biking in the spring. (Test. of Patient No. 2; Ex. A2., Test of Moll)

12. In early 2002, Patient No. 2 contacted Dr. Moll to discuss bicycling and other mutual interests. (Test. of Moll.) At that time, she was 22 years old. (Ex. A2 at 3.) Dr. Moll was 40 or 41 years old and married. (Ex. At 2; test. of Moll.) Dr. Moll and Patient No. 2 soon became close friends. Dr. Moll denied stating to Patient 2 that he was interested in dating her while she

was a patient and denied asking her to do anything socially while a patient. (Test. of Moll; test. of Patient No. 2)

13. In March 2002, Patient No. 2 attended a party, as a guest of Dr. Moll and his wife, at the home of Patient No. 1. (Test. of Moll; test. of Patient No. 1.) Patient No. 2 was intoxicated and got sick at the party. As a result, her memory of what occurred there is not good, but she believes she overheard Dr. Moll and his wife stating that Dr. Moll could "have" Patient No. 2 because Ms. Moll "had" Patient No. 1. Dr. Moll denied making this comment (Test. of Patient No. 2., Dr. Moll)

14. On April 12, 2002, Patient No. 2 signed a document, prepared by Dr. Moll, stating that she had agreed to end the doctor/patient relationship. The document recited that she had not had contact with Dr. Moll since her last appointment on October 20, 2001.<sup>1</sup> The document stated that Patient No. 2 wanted to pursue a "close personal friendship" with Dr. Moll. Patient 2 testified that it was her signature on the document, but did not recall signing a document of that type. (Test. Of Patient 2, Ex. 108)

15. Dr. Moll signed a certification of patient records on November 18, 2009, stating that he had no patient records for Patient 2. Dr. Moll testified he did not have any patient records for Patient 2 as they had been destroyed. However, Dr. Moll was in possession of the termination agreement of Patient 2. (Ex. 108) Dr. Moll stated that he put (or kept) the termination agreement in his office safe in April of 2002. The Board did not receive the termination of patient relationship agreements on Patients 2 or 3 until provided by Dr. Moll's attorney on January 13, 2010. (Test. of Moll, Rozinski, Ex. 125)

16. In May of 2002, Patient No. 2 participated with Dr. Moll and his wife in the "Reach the Beach" bicycle race which is held in May of each year. (Test. of Moll; Test of Patient No. 2)

17. Patient No. 2 moved in with Dr. Moll and his wife in the summer of 2002. Soon after moving in, she and Dr. Moll began a sexual relationship. Patient No. 2's presence in the home caused significant tension between Dr. Moll and his wife and with his children. As a result, Patient No. 2 moved in, briefly, with Dr. Moll's brother. A short while later, Dr. Moll left his wife and moved into a home owned by his grandmother. Patient No. 2 moved into the home along with Dr. Moll and the two continued to live together for a short period of time. (Test. of Moll; test. of Mary Moll; Test. of Marvin Moll) Dr. Moll and his wife divorced in early 2003. (Test. of Mary Moll)

18. Sometime in the fall of 2002, a friend of Patient 2 convinced her to leave Dr. Moll. Patient No. 2 initially agreed to leave some furniture with Dr. Moll to satisfy a debt. She later changed her mind and entered Dr. Moll's home, when he was not present, and removed the furniture. Dr. Moll was upset and called and left messages for Patient No. 2 about the issue. (Test. of Moll; test. of Patient No. 2)

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<sup>1</sup> Patient No. 2 denied having any treatments that were not submitted to the insurance carrier and confirmed that her last treatment with Dr. Moll was in July 2001. There is no evidence in the record, other than the termination document, to establish that Dr. Moll treated Patient No. 2 in October 2001.

19. In December 2002, Patient No. 2 sent a Christmas card to Dr. Moll. On the card, she wrote:

I'm sorry things Ended the way they did. I hope some day you will understand.  
You have been a good friend and always will be.

(Ex. 107)(emphasis in original.) She also wrote:

P.S. if we are still talking, maybe we can still do Cycle Oregon. Take Care!

(Test. of Patient 2 )

20. In the months following the end of their relationship, Dr. Moll sent a number of messages and made phone calls to Patient No. 2 that she interpreted as harassing. Detective Steele testified that after the sexual relationship ended that Dr. Moll refused to leave her alone. Patient 2 provided details about him harassing her by calling her, following her, sitting out in the parking lot at Salem Urgent Care where she worked, sending her gifts and letters and birthday gifts for 4 consecutive years following the breakup, after she had made it clear that she didn't want any further contact. Patient 2 also told him she had made a report to Salem Police Department about him being outside her work. Patient 2 also told Detective Steele that Moll was controlling, obsessive and acted weird in the relationship and when the relationship stopped he would harass her. In Exhibit A 18 Patient 2 wrote letters to Dr. Moll dated September 2, 2003, asking him to leave her alone, telling him she would contact the police if he didn't. Dr. Moll testified that Patient 2 requested that he leave her alone in the last two years when he made phone contact with her. (Test. of Moll, Patient No. 2, Det. Steele, Exhibit A 11, Ex A18)<sup>2</sup>

21. Dr. Moll met Patient No. 3 at a library in 1997. Patient 3 is Dr. Moll's current girlfriend. Later that year, Dr. Moll began treating Patient No. 3. He treated her as a long term patient on a regular basis through early 2008. Dr. Moll last treated her on January 18, 2008. Patient No. 3 has not seen Dr. Moll in his professional capacity since that time. In the spring of 2009, Patient No. 3 contacted Dr. Moll and asked if he was dating anyone. Patient No. 3 was interested in pursuing a personal relationship with him. (Test. of Patient No. 3)

22. On March 21, 2009, Patient No. 3 signed a document, prepared by Dr. Moll, which stated that she agreed to terminate the doctor-patient relationship "effective immediately." (Ex. 103.) The document recited that Dr. Moll last treated her on January 18, 2008 and that she had no professional or physical contact with him since that time. The document stated that she wished to pursue a close personal friendship with Dr. Moll. *Id.* Shortly after signing the document, Patient No. 3 began dating Dr. Moll and has continued to do so through at least March 2010. (Test. of Patient No. 3)

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<sup>2</sup> In the Proposed Order ALJ Mann stated however, that Patient 2 never reported her concerns to law enforcement. That was in error as the evidence shows by clear and convincing evidence that both Patient 2 and Det. Steele testified that she did file a police report with Salem Police Department.

23. Chart notes of Patient 3 from Dr. Moll did not contain the signed termination document. Dr. Moll admitted in testimony that when he reviewed the charts that the Board had received, that the termination of Patient 3 was not in the records. Dr. Moll then provided a copy to the Board within a few weeks of the hearing. (Testimony of Moll, Rozinski)

24. Witness Bev Ratheligershe testified that she was familiar with who Dr. Moll was as she was friends with Patient 6 who dated Dr. Moll. On January 22, 2009, Ms. Ratheligershe saw Dr. Moll and Patient 3 out for dinner at the Marcum Inn outside of Silverton, Oregon. She presented a Visa receipt for the dinner and her son accompanied her. As they exited, Dr. Moll placed his hand on the back of Patient 3 as they left the establishment. It appeared to her that Dr. Moll and Patient 3 were on a date. (Test. Of Bev Ratheligersehe)

25. Patient No. 4 was treated by Dr. Moll in February 2009. Patient No. 4 was referred to Dr. Moll by a co-worker who was also a friend of Dr. Moll. Patient No. 4 recognized Dr. Moll's name as a former student in a class she taught at a local gym. While receiving treatment, Dr. Moll made a number of sexual comments and jokes about Patient No., 4. Patient No. 4 did not believe that the comments were appropriate in the doctor/patient context, but thought that he felt comfortable making the comments because they knew each other in the past. Patient No. 4's co-worker encouraged Patient No. 4 to pursue a relationship with Dr. Moll. Patient No. 4 was interested in Dr. Moll and began communicating with him by phone calls and text messages. In one text message, Dr. Moll told Patient No. 4 that she was beautiful. He acknowledged that his comment was probably inappropriate. At hearing, Dr. Moll could not recall stating that to Patient 4. Dr. Moll began lifting weights with Patient No. 4 sometime in February or March of 2009. Dr. Moll and Patient No. 4 also went out for coffee at least twice. Eventually, Dr. Moll told Patient No. 4 that he did not want to pursue a relationship with her. (Test. of Moll, Patient No. 4)

26. Patient No. 5 received treatment from Dr. Moll sometime in the late 1990s or early 2000s. Patient No. 5 is a Licensed Massage Therapist and worked for a period of time in Dr. Moll's clinic. Patient No. 5 socialized with Dr. Moll one on one. Patient No. 5 said in her initial interview that Dr. Moll was often "crude and rude" and made sexual innuendos to her. She said it was entirely possible he made advances towards her, but she said she would ignore those comments. She indicated he was often verbally inappropriate to her in the context of a patient contact and also said that Dr. Moll confronted her husband at their home at one point. She said that Dr. Moll continued to harass her by driving by her house and calling after he came to her home. She also recalled Dr. Moll talking about how in love he was with a patient, referring to Patient 1. Dr. Moll testified that he never made any comments to Patient No. 5 while in the office that she interpreted as sexual or inappropriate. Patient No. 5 is distantly related to Dr. Moll and was a friend of his family. Dr. Moll denied making inappropriate verbal comments, sexual advances and approaching her husband. During social events, Dr. Moll would occasionally make flirtatious comments, but he never made any advances toward her that she interpreted as romantic. (Test. of Patient No. 5, Dr. Moll, Ex No. A13)

27. Patient No. 6 began dating Dr. Moll in 2004. Patient No. 6 had not been treated by Dr. Moll before they started dating. They continued dating, on and off, through February 2009.



In 2007 and 2008, Dr. Moll treated Patient No. 6 for injuries sustained in a motor vehicle accident. (Test. of Patient No. 6)

28. During a time when they had stopped seeing each other, Patient No. 6 was sexually assaulted by a man that she met on the internet. She later disclosed the incident to Dr. Moll, but told him that she was not interested in pursuing any criminal charges. However, Dr. Moll contacted a friend who worked as a police dispatcher and asked her to look up the license plate of the vehicle driven by the man who assaulted Patient No. 6. The friend did so and passed the information to Dr. Moll, who then relayed the information to Patient No. 6. Patient No. 6 was upset that Dr. Moll had pursued the matter. In testimony at hearing, Dr. Moll denied asking the dispatcher to run the plate at his request. In late 2008, at a time when Dr. Moll and Patient No. 6 were broken up, Dr. Moll sent several text messages to Patient No. 6 that referred to the sexual assault. (Test. Of Patient No. 6 and Moll)

29. In late 2008 or early 2009, Patient No. 6 and Dr. Moll resumed their relationship. However, Dr. Moll became concerned that Patient No. 6 might still be attempting to meet men through the internet. He therefore admitted to setting up a false profile on an internet dating service and began corresponding with Patient No. 6 when she responded to his posting. Using the alias, he agreed to meet Patient No. 6 for a date on February 12, 2009. When Patient No. 6 arrived at the agreed upon location, her expected date was not present. She used a computer at the facility to check her e-mail. Dr. Moll, using the alias, had left her an e-mail admitting that the profile was fake. Dr. Moll stated he did that to see if he could catch her internet dating when she had promised him she wasn't going to do that any longer Dr. Moll also made a number of comments confirming a great deal of personal information he had gleaned from Patient No. 6 during their e-mail exchanges. Patient No. 6 immediately, and correctly, surmised that Dr. Moll was the author of the e-mail. Dr. Moll and Patient No. 6 ended their relationship as a result of this incident. (Test. of Patient No. 6; test. of Moll)

30. Following their breakup, Dr. Moll regularly sent unwanted e-mails, texts, and phone messages to Patient No. 6. Patient No. 6 believed that Dr. Moll was harassing her and made several police reports to the Stayton Police about his conduct. Detective Steele of the Oregon State Police investigated the matter and concluded that no criminal charges were appropriate. (Test. of Patient No. 6; test. of Steele; Exs. A9, A10)

31. On May 13, 2009, Detective Steele told Dr. Moll that he was to have no further contact with Patient No. 6, either personally, electronically, or through third-parties, and that if he did so he could be arrested. (Ex. A9 at 5.) Dr. Moll has not violated that order. (Test. of Moll, Detective Steele)

32. Detective Steele testified that Dr. Moll denied running a license plate in regards to Patient 6's sexual assault. In his investigation of the license plate allegation, Detective Steele found that the dispatcher admitted to receiving the license plate information (3 POLI) from Dr. Moll who asked for the information from that plate. The dispatcher told him that she ran that information knowing that it was not allowed and gave that information to Dr. Moll. (Test. of Det. Steele)

33. Patient No. 7 was a horse trainer. Patient No. 7 referred Dr. Moll to several horse owners who wanted him to provide equine adjustments. Dr. Moll performed several such adjustments. He did not get a referral from a veterinarian before performing those adjustments because he did not know that one was necessary. (Test. of Moll)

34. Dr. Moll denied sending threatening text messages or e mails, or phone calls to, stalking or harassing Patients 1, 2 or 6. (Test. of Dr. Moll)

35. In testimony, Dr. Moll admitted that he treated several patients and friends without keeping chart notes on them. During the investigation, Dr. Moll admitted to the Board investigator that he had failed to keep chart notes on various friends, family and some patients, and provided the Board with a list of those patients. (Test. of Dr. Moll, Ex A13 page 20)

36. Investigator Rozinski testified that the termination of the doctor/patient forms on patients 2 and 3 were not provided to the Board when the records were certified by Dr. Moll on November 18, 2009. He testified those both arrived some time later; at least a month later. Mr. Rozinski also testified that in his recorded interview Dr. Moll admitted that he had failed to keep chart notes on various friends, family and some patients. (Test. of Rozinski)

### CONCLUSIONS OF LAW

1. The Board has proven that Dr. Moll engaged in sexual relations and had a romantic relationship with Patient No. 1, while she was a current patient, in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(1).

2. The evidence presented does not prove by a preponderance of evidence that Dr. Moll engaged in sexual relations or had a romantic relationship with Patients No. 2 or 3 while they were current patients.

3. The Board has proven that Dr. Moll engaged in conduct, and made verbal comments, toward Patient No. 4, that could reasonably be interpreted as sexual, seductive, sexually demeaning or romantic in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(1)(a).

4. The evidence presented does not prove by a preponderance of evidence that Dr. Moll engaged in conduct, or make verbal comments, toward Patient No. 5, that could reasonably be interpreted as sexual, seductive, sexually demeaning or romantic in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(1)(a).

5. The evidence presented does not prove by a preponderance of evidence that Dr. Moll's conduct with and towards Patient No. 6 during their romantic relationship and subsequent breakup constituted unprofessional conduct under *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015.

6. The evidence presented does not prove by a preponderance of evidence that Dr. Moll revealed confidential or private information about a patient to Patient No. 6 in violation of former ORS 684.100(1)(g)(A) and OAR 811-035-0015(11).

7. The Board has proven that Dr. Moll provided equine adjustments, based on referrals from Patient No. 7, without referrals from a licensed veterinarian in violation of ORS 684.025(3).

8. The Board has proven that Dr. Moll failed to keep chart notes on patients, friends and co-workers in violation of former ORS 684.100(1)(g)(A) and OAR 811-035-0005.

### OPINION

The Board alleged that Dr. Moll engaged in unprofessional conduct with five different patients; with engaging in unprofessional conduct with another woman whom he dated before she became a patient; with providing an adjustment to horses without a referral from a veterinarian and failing to keep chart notes on some patients. The Board has the burden to prove these allegations by a preponderance of the evidence. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Each of the allegations are addressed separately below.

#### 1. Patient No. 1.

Patient No. 1 was a patient of Dr. Moll in the late 1990s. She left Dr. Moll's care when she moved to Dallas, Oregon. In early 2002, Patient No. 1 again saw Dr. Moll for treatment. Dr. Moll treated Patient No. 1 at least twice in January 2002. In February 2002, Dr. Moll saw Patient No. 1 to fit her with orthotics. Dr. Moll did not provide any further treatment to Patient No. 1. Patient 1 meets the definition of a Patient as defined in OAR 834-010-0005(4).

Patient No. 1 contends that she and Dr. Moll engaged in intimate contact on three separate occasions. She alleges that they kissed in Dr. Moll's office, that they had mutual oral sex at Patient No. 1's home, and that she and Dr. Moll had sex with Dr. Moll's wife at his beach house in the spring of 2002. Dr. Moll only admits to the incident at the beach house, but denies any other sexual contact.

Former ORS 684.100(1)(1997)<sup>3</sup> provided, in relevant part:

<sup>3</sup> The statute was amended in 2005 and again in 2009. The version of the statute quoted above was in effect at the time of the alleged violations. The language quoted above remains part of the statute but has

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 adversely affect a physician's ability safely and skillfully to practice chiropractic.

OAR 811-035-0015(1) defines "unprofessional conduct," for purposes of ORS 684.100, to include, in relevant part:

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

(b) A licensee shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic 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 811-010-005(4) defines "patient" as follows:

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been renumbered as a result of the 2009 amendments as ORS 684.100(1)(f)(A). At all times relevant to the allegations in this case, the former numbering of the statute applies.

"Patient" means 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.

Dr. Moll contends that he terminated his doctor/patient relationship with Patient No. 1 because he was concerned that Patient No. 1 was developing a sexually intimate relationship with Dr. Moll's wife. Because of that relationship, Dr. Moll contends that he told Patient No. 1, in January 2002, that he could no longer treat her, although he agreed to fit her with orthotics on February 15, 2002. Within two months after that last visit, Dr. Moll admits that he had sexual relations with Patient No. 1.

The term "current patient" is not clearly defined under the rule. However, given the nature of a doctor/patient relationship, the mere cessation of treatment, by itself, would be insufficient. A patient may not have the need to seek treatment for an extended period of time, but might, nonetheless, still consider him or herself to be a patient of the doctor. This is exemplified by Patient No. 1's own history with Dr. Moll. She treated with him for a period of time, but stopped seeing him after she moved to another city. Several years later, she resumed treatment. Dr. Moll, by his own admission, did not seek to end the doctor/patient relationship until *after* he believed that an intimate relationship was budding between the patient and his wife. Under these circumstances, it is reasonable to consider Patient No. 1 as a "current patient" in April 2002 at the time of the admitted sexual contact.

In addition, the evidence established, more likely than not, that Dr. Moll engaged in a romantic relationship, and had sexual contact, with Patient No. 1 prior to April 2002. Patient No. 1 offered persuasive, plausible, and credible testimony regarding her encounters with Dr. Moll. The most striking thing about the testimony was how relatively tame her allegations were. Dr. Moll, through counsel, suggested that Patient No. 1 had some personal animus against Dr. Moll due to her close personal relationship with Dr. Moll's now ex-wife. However, Patient No. 1's testimony, while damaging to Dr. Moll, did not include any allegation of an ongoing and prolonged affair. She alleged only one encounter in Dr. Moll's office; an encounter that did not involve sexual intercourse. If, as suggested by Dr. Moll, Patient No. 1 intentionally fabricated the story out of personal animosity, it is unlikely she would have concocted such a modest tale. Indeed, the allegation that is the most potentially inflammatory, a three-way sexual encounter with Dr. Moll and his wife, is the only allegation admitted to by Dr. Moll.

Patient No. 1 was a credible witness. Her allegations were plausible, specific, and did not appear to be embellished in any way. Dr. Moll's responses to those allegations were not credible and did not cause the Board to distrust Patient No. 1's version of events. The Board has thus established, more likely than not, that Dr. Moll engaged in an ongoing romantic relationship with Patient No. 1 which included at least three occasions of sexual relations. Dr. Moll therefore violated *former* ORS 684.100(1)(g)(A) and OAR 811-811-035-0015(1).

## **2. Patient No. 2**

Dr. Moll and Patient No. 2 agreed that Patient No. 2 received treatment from Dr. Moll from May through July 2001. They also agreed that they entered into a sexual relationship that discontinued sometime in 2002. However, there is significant disagreement between Dr. Moll and Patient No. 2 as to when the relationship began.

Patient No. 2 initially testified that the relationship began sometime in 2001 within a short time after ceasing treatment. However, when pressed for details about the precise timing of events, her recollection was very unclear. She recalled accompanying Dr. Moll and his wife on the annual "Reach the Beach" bicycle race which occurs each May. Initially she could not recall the year that she did so, but contended that it was after she ceased treatment with Dr. Moll. When shown her patient billing records, she expressed confusion as to whether she went on the bike ride in 2001, the same month that she started treatment with Dr. Moll, or in 2002, approximately 10 months after she last received treatment. She asserted that she did not have sexual contact of any kind with Dr. Moll until after she moved in to Dr. Moll's home, but was unable to give the precise timing of when that occurred. Initially she claimed that she moved in with him sometime in the summer of 2001, but later conceded that it may have been in late 2001 or early 2002.

Other information in the record, however, demonstrates more likely than not, that Patient No. 2 moved in with Dr. Moll sometime after May 2002. First, Patient No. 2 recalled attending a party at Patient No. 1's home prior moving in with Dr. Moll. Patient No. 1 and Dr. Moll both testified that the party took place in March 2002. There is no evidence to suggest that Dr. Moll had any contact with Patient No. 1 in 2001. Dr. Moll testified that Patient No. 2 accompanied him on the Reach the Beach competition in May 2002. This is consistent with Patient No. 2's initial testimony that this occurred after she ceased treatment. Finally, despite initial denials, Patient No. 2 conceded that she sent a Christmas card to Dr. Moll following their breakup. Given her testimony concerning the timing of the relationship and her treatment, she could have sent the card no earlier than December 2002.

Furthermore, Dr. Moll provided a document, signed by Patient No. 2 and dated April 2002, which stated that he was terminating the doctor/patient relationship with her. Patient No. 2 acknowledged that the signature was genuine, but denied signing the document. However, when asked, she denied having signed any other forms without understanding their content. The document does not appear to have been altered in any way. There is no evidence to suggest that Patient No. 2 signed a blank page. Although the evidence has shown that the Board did not receive the document when the original patient records were requested from Dr. Moll, but received it on January 13, 2010, the Board did not produce contrary evidence in order to prove that the document is not genuine. A preponderance of the evidence demonstrates that the document is genuine and was signed in April 2002, at least eight months after the last documented treatment.

Patient No. 2 was a credible witness and appeared to make a sincere effort to recall the timing of relevant events. However, her testimony regarding the timing of her relationship was at times inconsistent, confused, and unreliable. It was also inconsistent with other testimony and objective evidence in the record.

Thus, the evidence established that the evidence presented does not prove by the clear and convincing evidence standard that Dr. Moll did not begin a romantic relationship with Patient No. 2, and did not have sexual contact with her, prior to May of 2002. This was after she has signed the termination form and at least 10 months after she last received treatment. Her treatment with Dr. Moll occurred over a three month period from May through July 2001. Given that relatively brief period of treatment, the signed termination form, and the long period of time between treatment and the first sexual contact, the evidence did not establish that Patient No. 2 was a "current patient" at the time that she was involved in a romantic relationship with Dr. Moll.

The evidence did not establish that Dr. Moll's relationship with Patient No. 2 occurred while she was a current patient of Dr. Moll. Therefore, the evidence did not establish that Dr. Moll's relationship with Patient No. 2 violated *former* ORS 684.100(1)(g)(A) and OAR 811-811-035-0015(1).

### **3. Patient No. 3**

Patient No. 3 is currently involved in a romantic relationship with Dr. Moll. She was a long-time patient of Dr. Moll, beginning in 1997. She last received treatment from Dr. Moll in January 2008. According to her testimony, she did not begin a romantic relationship with Dr. Moll until March or April of 2009.

Although Patient No. 3 was a long-term patient, there was a significant break in time between her professional relationship with Dr. Moll and their romantic relationship. OAR 811-035-0015(1)(d) does not provide a bright-line rule to determine when a doctor/patient relationship ends. However, the rule suggests that a longer period of "cooling off" should occur for long-time patients, such as Patient No. 3, and shorter-term patients, such as Patient No. 2. Given the fluidity of a doctor/patient relationship, it is reasonable to take that factor into consideration. A patient with a long standing professional relationship with a doctor is more likely to return for further treatment, even if there is a long break in between visits.

Nevertheless, the rule does not suggest or require any specific proportion of time where it is clear that both parties have determined to end the professional relationship. Given the length of time between the last treatment and the commencement of their personal relationship, the evidence established, more likely than not, that Patient No. 3 was not a "current patient" of Dr. Moll at the time they began their romantic relationship. Therefore, the evidence did not establish by clear and convincing evidence that Dr. Moll's relationship with Patient No. 3 violated *former* ORS 684.100(1)(g)(A) and OAR 811-811-035-0015(1).

The Board felt that the testimony of Ms. Ratheligershe was credible but was not conclusive as to the status of the relationship at that time. The Board feels that Dr. Moll's conduct of having a social outing with a long term patient was ill advised and will consider that later in the order under the section entitled "credibility and conduct."

### **4. Patient No. 4**

There is no allegation that Dr. Moll had a romantic relationship with Patient No. 4 or engaged in any sexual contact with her. However, the Board alleges that Dr. Moll made a number of comments to her that could be interpreted as sexual, seductive, and/or romantic to Patient No. 4 during the period of time she was receiving treatment in violation of OAR 811-035-0015(1)(a). A preponderance of evidence supports that allegation.

Patient No. 4 testified, credibly, that Dr. Moll often made flirtatious comments to her while providing treatment. During the period of treatment, Dr. Moll went to coffee with Patient No. 4 and regularly traded text messages. Patient No. 4 was interested in pursuing a personal relationship with Dr. Moll, and Dr. Moll was, at first, also willing to pursue such a relationship. The evidence established that Dr. Moll's statements and comments to Patient No. 4 violated *former* ORS 684.100(1)(g)(A) and OAR 811-811-035-0015(1).

#### **5. Patient No. 5**

Patient No. 5 was a patient of Dr. Moll and previously worked in Dr. Moll's clinic as a Licensed Massage Therapist. The Board alleged that Dr. Moll made sexual comments and advances towards Patient No. 5 in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-811-035-0015(1). Patient No. 5 testified at the hearing and did not support the Board's allegations. She was extremely upset about being called to testify and denied that Dr. Moll ever made any comments or advances that she believed were inappropriate. Apparently due to her hostility at being called as a witness, Patient No. 5 was reluctant, and apparently unwilling, to give direct answers to most questions. Consequently, her testimony was not reliable. Given her lack of cooperation, there is insufficient evidence in the record to support the Board's allegations with regard to this patient. The evidence thus failed to establish that Dr. Moll's statements and comments to Patient No. 5 violated *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015(1).

#### **6. Patient No. 6**

The Board has alleged that Dr. Moll violated two separate duties during his relationship with Patient No. 6. First, the Board alleged that Dr. Moll's behavior with and toward Patient No. 6 constituted a violation of his ethical obligations under *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015. Second, the Board alleged that Dr. Moll violated OAR 811-035-0015(11) by disclosing confidential information to Patient No. 6. Each allegation is addressed separately below:

##### **a. Relationship with Patient No. 6**

The parties agree that Dr. Moll entered into a romantic and sexual relationship with Patient No. 6 prior to entering into a doctor-patient relationship. Consequently, the Board has not alleged that Dr. Moll's relationship with Patient No. 6 violated OAR 811-035-0015(1)(b). Rather, the Board has alleged that Dr. Moll's conduct during a tumultuous relationship and breakup with Patient No. 6 violated his general ethical obligations as defined by *former* ORS 684.100(1)(g)(A) the Board's rules. Specifically the Board cited the prefatory language set forth in OAR 811-035-0015 which provides, in relevant part:



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.

(Emphasis added.) In the Board's view, the emphasized language in the rule imposes a generalized standard of ethical behavior, even when such behavior is not directly related to the chiropractic profession. In essence, the Board suggests that the above language imposes a duty of good citizenship. Thus, the Board suggests, Dr. Moll's behavior in his relationship with Patient No. 6, while not criminal, constituted such a departure from general standards of appropriate behavior, that it constituted a violation of Dr. Moll's ethical obligations as chiropractor.

Dr. Moll notes that the absence of any specifically published rule or statute which would put a chiropractor on notice that non-criminal behavior in a personal relationship could subject the licensee to discipline. Former ORS 684.100(1)(g)(A) defined "unprofessional or dishonorable conduct" to include "[a]ny conduct or practice contrary to recognized standard of ethics of the chiropractic profession." Dr. Moll correctly notes that the Board did not present any evidence that Dr. Moll's behavior violated any specifically recognized ethical standard, beyond the general standard set forth in the Board's rule.

In *Teacher Standards and Practices Commission v. Bergerson*, 342 Or. 301 (2007) the court held that the Teacher Standards and Practices Commission (TSPC) could not discipline a teacher based on criminal conduct engaged in during the breakup of the teacher's marriage. Specifically, the teacher, in an apparent fit of rage, drove her car into her estranged husband's unoccupied truck, causing it to slam into a garage door thereby causing significant property damage. The TSPC contended that this constituted "gross neglect of duty" under ORS 342.175(1)(b). The TSPC had adopted a rule which interpreted "gross neglect of duty" as imposing an obligation to behave ethically "at all times" and to "maintain the dignity of the profession by respecting and obeying the law." 342 Or. at 308-09.

The court held that the TSPC had exceeded its statutory authority by imposing such a broad standard. The court noted:

In ordinary parlance, professional duties are specific to a profession and are distinct from the moral and civic obligations of all citizens to behave ethically and to obey the law at all times. There is nothing in the statutes to indicate that the legislature intended the term "professional duty," as expressed in ORS 342.175(5) and implied in ORS 342.175(1)(b), to have anything other than that ordinary meaning. Depending on the profession at issue, there may be some areas where professional responsibilities and universally applicable moral and civil obligations may overlap, but the TSPC's position that teachers have a professional obligation to behave ethically and lawfully "at all times" eradicates the boundary between private and professional obligations altogether.

The Court's reasoning in *Bergerson* applies with equal force to the present case. It is true that the statutory language differs, but the principal is, nevertheless, the same. The Board's allegations with regard to Dr. Moll's relationship with Patient No. 6 bear almost no demonstrable relationship to the practice of the chiropractic profession. His behavior, while at times boorish and offensive, was entirely related to his personal life; it was not criminal and did not relate to his ability to practice chiropractic medicine. Imposing discipline upon a licensee for this kind of conduct would "eradicate[] the boundary between private and professional obligations altogether." *Id.*

The Board has the authority, under *former* ORS 684.100(1)(g)(A) to impose discipline based upon conduct contrary to a recognized ethical standard of the chiropractic profession; but if it wishes to do so, it must clearly articulate what that recognized standard is. There is no evidence in the record that meets that statutory requirement. The Board's rule, prohibiting conduct harmful to the public, does not imply a more general standard of morally upright behavior. While Dr. Moll's conduct in his relationship with Patient No. 6 may have been inappropriate, the evidence did not demonstrate that it violated Dr. Moll's ethical obligations as a chiropractor.

**b. Disclosure of Confidential Information**

OAR 811-035-0015(11) defines unprofessional conduct to include:

Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information.

In its Notice, the Board alleged that Dr. Moll disclosed private and personal information about a patient to Patient No. 6. The Notice also alleged that the other patient was offended when she learned that Dr. Moll had breached her confidentiality. However, the Notice does not allege what that information was, or how Dr. Moll learned of it. At the hearing, the Board conceded the reason for this omission: Patient No. 6 did not tell the Board about the content of the disclosure until February 26, 2010, the Friday prior to the start of the hearing. Thus, at the time the Board issued its Notice, the Board had no idea precisely what Dr. Moll was alleged to have disclosed to Patient No. 6.

At the hearing, Patient No. 6 testified that Dr. Moll told her that the other patient had informed him of an extra-marital affair. She also alleged that Dr. Moll told her that the patient sought treatment because she injured her back during a sexual encounter during the affair.

Dr. Moll contends that the Notice, by failing to allege the nature of the disclosure, violated OAR 137-003-0505(1)(b) which requires a contested case notice to include:

A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved[.]

In *The Grog House v. OLCC*, 12 Or App 426 (1973) the court held that due process required a contested case notice to contain sufficient specificity to allow the appellant to prepare a defense. However, the court held that any prejudice to the appellant was cured by the grant of a continuance of two-and-a-half days.

In this case, the Notice did not contain enough specificity to allow Dr. Moll to prepare a defense. The Notice thus contained the same defect as was present in *The Grog House*. However, that defect was cured in precisely the same manner. Patient No. 6 testified on March 2, 2010. The hearing was continued until March 9 and 11, 2010. Thus, Dr. Moll had an additional week to prepare a response to the allegations. Thus, any defect in the Notice did not violate Dr. Moll's due process rights.

However, the evidence in the record did not establish, more likely than not, that Dr. Moll disclosed the information to Patient No. 6. Dr. Moll denied having done so. Despite her allegations, Patient No. 6 did not reveal the nature of the information until the eve of the hearing, more than a year after she ended her relationship with Dr. Moll. Her testimony lacked any specifics about the precise timing and details of the disclosure. The late disclosure of the nature of the alleged privacy breach calls into question the reliability of her testimony. Patient No. 6 admitted that she had discussed the matter with the other patient on several occasions. Given the likelihood that the two women discussed the alleged disclosure and the private information, it is difficult to determine what Patient No. 6 learned from Dr. Moll and what she later learned from the other patient. Given the passage of time, it is entirely possible that Patient No. 6 has conflated the source of the information. It is thus impossible to know, with any reasonable certainty, what, if anything, Patient No. 6 learned from Dr. Moll, and what she learned from other sources.

The evidence thus failed to demonstrate by clear and convincing evidence that Dr. Moll revealed confidential information of a patient in violation of OAR 811-035-0015(11).

#### **7. Patient No. 7**

The Board alleged that Dr. Moll provided equine adjustments for Patient No. 7 without a veterinary referral. ORS 684.025(3) provides:

This chapter does not prohibit a person licensed under ORS 684.054 from accepting a referral from a practitioner licensed under ORS chapter 686. The care rendered as a result of the referral must be in writing and in accordance with ORS 686.040 (4) and only as prescribed and diagnosed by a licensee under ORS chapter 686. The applicable standard of care is established under ORS chapter 686.

ORS Chapter 686 governs the practice of veterinary medicine. Thus, under ORS 684.025(3), Dr. Moll was required to get a referral from a veterinarian before providing equine adjustments.

Dr. Moll admitted that he performed equine adjustments without such a referral, but contended that he did not understand the need to have such a referral. Nevertheless, based on his admission, the evidence established that Dr. Moll violated ORS 684.025(3).

## **8. Credibility and Conduct**

During the hearing, Dr. Moll's lack of veracity became evident in many areas. The following are areas that the Board has reviewed and has concerns regarding Dr. Moll's truthfulness:

a. Dr. Moll denied requesting that his friend, a dispatcher run the license plate with the information he received from Patient 6. Yet the evidence shows that Oregon State Police Detective Dave Steele testified that the dispatcher had told him that she had run the vehicle plate and had given that information to Dr. Moll at his request. These statements were corroborated in Exhibit A10. Patient 6 also testified that she did not request that the license plate information be obtained. The evidence is more likely than not that Dr. Moll requested his friend, a dispatcher, to run the license plate.

b. In regards to Patient 1, Dr. Moll denied two incidences of sexual contact (kissing in the office or any sexual intimacy at Patient 1's house). The evidence shows that Patient 1 credibly testified that sexual intimate contact occurred with Dr. Moll on three separate occasions. Dr. Moll only admits to the beach house sexual encounter. Dr. Moll denied other specifics in regards to Patient 1. For example, Patient 1 testified that Dr. Moll rode his bicycle to their home in Dallas to tell her husband he had feelings for her. Dr. Moll denied that he did that. Dr. Moll asserts that a verbal termination of dr/patient agreement was entered, yet Patient 1 denies that occurred. The evidence is more likely than not that Dr. Moll was not truthful about his intimacies with Patient 1.

c. Patient 6 testified that she wore a clinic gown in the office during one of their sexual encounters. When asked if it was because she was cold, she said no. Dr. Moll asserts she wore a clinic gown because she was cold.

d. In regards to Patient 4 Dr. Moll denies making any attempt at trying to date Patient 4. The evidence showed that he traded text messages with her and lifted weights with her at the gym soon after she had been to see him as a patient.

e. Patients 1, 2 and 6 all testified that Dr. Moll harassed them via telephone calls, text messages or dropping by their place of employment or other locations. All three of these patients recounted to Oregon State Police Detective Dave Steele their specific instances of harassment. Patient 1 testified that Dr. Moll said in a telephone call he would cause trouble for her family and she felt that the comments were controlling and frightening. Patient 2 wrote letters (exhibit A 18) asking Dr. Moll to stay away from her. She also testified at length at hearing about instances of Dr. Moll showing up outside of her place of employment after dark. Patient 6 went to the Stayton Police Department on three occasions and eventually the Oregon State Police Detective Steele to request that Dr. Moll leave her alone. In evidence there are several threatening text messages from Dr. Moll to Patient 6. (See Ex A6 and A7) The Board believes that this type of conduct establishes a continual pattern of inappropriate behavior on Dr. Moll's behalf.

f. The termination of doctor/patient relationship forms (Ex 102 and 103) were not produced until January 13, 2010. In requests for patient records at the initial stage of

investigation, these were not produced. In fact, Patient 2's records were destroyed. Dr. Moll signed a certification of patient records on November 18, 2009, stating that he had no patient records for Patient 2. Dr. Moll testified he did not have any patient records for Patient 2 as they had been destroyed. However, Dr. Moll was in possession of the termination agreement of Patient 2. (Ex. 108) Dr. Moll stated that he kept the termination agreement in his safe in April of 2002. The Board did not receive the termination of patient relationship agreements on Patients 2 or 3 until provided by Dr. Moll's attorney on January 13, 2010. (Test. of Rozinski, Ex. 125)

g. Dr. Moll admits to creating "alternate" identities on internet dating websites to spy on Patient 6 and see if she was being truthful about refraining from communication with others while they were dating.

h. Dr. Moll failed to take any responsibility for any conduct as to Patient 1, or 4 in this matter. The only one thing he admitted to, the three way sexual encounter with Patient 1, Dr. Moll recounts how it was his ex wife and Patient 1 that were intent on having that encounter.

i. Dr. Moll testified that he did not begin to date Patient 3 until the spring 2009. The termination of the dr/patient relationship form was signed on March 21, 2009. Yet Ms. Ratheligershe testified that she saw Dr. Moll and Patient 3 having dinner at a restaurant on January 22, 2009. The Board finds that Dr. Moll was not completely honest in his testimony. The evidence showed that Dr. Moll was with a patient in a social setting, possibly dating, three months prior to terminating them as a patient. This type of behavior by Dr. Moll demonstrates to the Board that Dr. Moll's continued blurring of the doctor/patient boundaries within short time periods is a common occurrence. Dr. Moll has not grasped the importance of maintaining professional boundaries with his patients.

The above sequence of events overwhelmingly demonstrates to the Board, that Dr. Moll lacked credibility that the Board expects of a licensed chiropractor in the state of Oregon. Furthermore, his conduct of harassing Patients 1, 2 and 6 demonstrates a pattern of conduct that seriously concerns the Board.

## **9. Additional Allegation – Failure to Keep Chart Notes**

The Notice contains an additional allegation that Dr. Moll failed to keep chart notes on patients, friends and co-workers in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-015-0005. As testified to by Dr. Moll and confirmed by his interview with the Board, Dr. Moll admitted to this violation. Thus, the alleged violation has been proved.

## **10. Sanction**

ORS 684.155(2) grants the Board the authority to deny, suspend or revoke the license of any licensee for violation of the statutes and rules governing the practice of chiropractic medicine. The statute also allows the Board to place licensees on probation for such violations. The Board's Notice proposes to revoke Dr. Moll's license. This is premised upon each of the allegations set forth in the Notice. Furthermore, *Olson v. Mortuary Board*, 230 Or. App. 376 (2009) found that the imposition and choice of penalty for violations of law governing funeral service providers and funeral homes is a matter within the board's discretion.

In the proposed order, the ALJ pointed out that a number of the more serious allegations were not supported based on the evidence provided at the hearing. The allegations that were

substantiated at the hearing were that Dr. Moll engaged in consensual sexual conduct with Patient No. 1 while she was still a patient; that he made sexually inappropriate comments to Patient No. 4; that he performed equine adjustments without a veterinary referral and that he failed to keep patient charts on patients. The ALJ also pointed out in the proposed order that the violations as to Patient 1 and 4 were very serious and warranted a 1 year suspension of Dr. Moll's license.

The Board finds that Dr. Moll's conduct with respect to Patients No. 1 and Patient No. 4 are very serious. The relationship of Physician-Patient is an entrusted relationship that causes an imbalance of power between a physician and a patient. The Board has made it a common practice in their newsletters and outreach to the profession, that this type of behavior is not allowed. The Board 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. They demonstrate that at least on those two occasions Dr. Moll has failed to draw a clear, and professionally appropriate, line between his professional obligations and his personal sexual interest in his patients. It is further demonstrated, that with a recent violation occurring in 2009, Dr. Moll continues to cross those boundaries. These failures constituted a breach of his professional obligations. In addition, Dr. Moll admits to having violated his professional obligation by failing to get the required veterinary referral prior to performing equine adjustments and to keep required patient charts. Given these violations, a sanction is clearly warranted.

Although the violations alone are reason for the Board to request a lengthy suspension, the Board also considers the lack of Dr. Moll's credibility and the harassment of Patient 1, 2 and 6 to be aggravating factors to consider when deciding what sanction is appropriate. In the case of *In Re Griffith*, 748 P. 2d 86, 304 Or. 575 (1987) an attorney bar complaint case, 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. In addition, in *Corcoran v. Board of Nursing*, 197 Or. App. 517 (2005), the Appellate Court found that the Board can reach its own conclusions regarding a respondent's credibility, so long as they explain the reasons as to those findings. Section 8 of this order goes into specific detail as to what those credibility findings are and provides the reasoning herein.

Out of the 7 patient witnesses called, two of these found violations by the Board. These violations were very serious since they were sexual in nature. The Board has an obligation to protect the public and to assure to patients that a practitioner will uphold the professional boundaries in providing chiropractic care. At no time did Dr. Moll admit to any inappropriate behavior toward Patient 1 or 4. The patient witnesses in this case were vulnerable and at times during testifying were upset. Patients 1, 2 and 6 all testified that they felt harassed by Dr. Moll and were at times afraid of his behavior. So much so, that they felt it necessary to report to the Oregon State Police what had occurred which resulted in an investigation, several reports to be filed and eventually Detective Steele warning Dr. Moll to stay away from Patient 6. From the

time that Dr. Moll was sexually involved with Patient 1 as late as 2002, to the time when his violations occurred with Patient 4 in 2009, his conduct did not improve. Dr. Moll's conduct with Patient No. 1 and 4 demonstrates that he has not learned to set clear and appropriate professional boundaries with his patients. Dr. Moll has clearly crossed the boundary into areas that constitute a danger to the health and safety of patients. Based upon the lack of his credibility, that he continually harassed some of the patients and the potential for harm to patient's mental and physical well being, the Board feels that although the severe sanction of revocation was not supported by the ALJ's proposed order, a heavy sanction is warranted nonetheless.

It is clear that Licensee does not understand that the blending of the doctor/patient relationship with a personal relationship puts his patients at risk of harm. Over the 7 year period between treatment of Patients 1 and 4, Dr. Moll's behavior did not improve. The Board feels the appropriate sanction is that of a lengthy suspension in addition to other requirements to assist Dr. Moll in preventing boundary crossings in the future. The Board finds that Dr. Moll's license should be suspended for a period of eighteen months.<sup>4</sup> During the period of his suspension, Dr. Moll is required to be placed on probation for a period of five years following the suspension period. Dr. Moll is required to attend and complete the PROBE ethics program within six months of the date of the final order; that he be required to take and pass the NBCE Ethics exam, that when he returns to practice, Licensee is required to use Board approved female chaperones when treating all female patients. Dr. Moll has a permanent license restriction that he is forbidden to have any sexual or romantic relationships with any former patient for two years following the last treatment date or written termination of the dr/patient relationship. Prior to return to practice, Dr. Moll is required to have a complete evaluation by a professional approved by the Board who deems he is safe to practice chiropractic in the state of Oregon. If the evaluator recommends any treatment protocols to assist in preventing future violations of sexual boundaries, Dr. Moll is required to adhere to that treatment plan and recommendation.

In his exceptions filed, Dr. Moll spends a great deal of time comparing his sanction to other cases that were factually different or not as egregious in terms of conduct. The Board feels it is important to point out that each case is not the same as the other. All cases differ factually as to the type of conduct that was committed and the seriousness of the violations. This is especially true with sexual boundary violations. The Board has spent a considerable amount of time reviewing the findings of fact in this case and the aggravating factors to arrive at the appropriate sanction. After review of the ALJ's Proposed Order sanction of a one year suspension, the Board felt that the period of suspension for the violations proven was not as severe as was necessary. As a Board made up of 5 chiropractors and 2 public members, the Board feels that the majority of chiropractor members understand the importance of their Board Mission to protect the public and that the discipline of those who violate the law and prevention of sexual boundary violations is one of the Board's top priorities in their regulatory responsibility.

## 11. Costs

The Board contends that Licenses should pay the costs of the disciplinary proceeding.

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<sup>4</sup> The Board has issued suspensions of a one year duration in the Ed Pahl case, case number 97-1016 that involved one instance of digital penetration of a patient without informed consent in 1998.

The ALJ agreed with the Board.

Pursuant to ORS 684.100(9)(g), in disciplining a person under ORS 684.100(1), the Board may take other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings. Having reviewed the record, the ALJ believed that it is appropriate for Licensee to pay for the costs of the disciplinary proceeding, including the investigative costs and the attorney fees.

#### ORDER

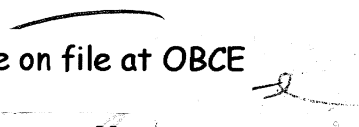
The Board of Chiropractic Examiners issues the following order:

Gregory M. Moll, DC, engaged in unprofessional conduct in violation of *former* ORS 684.100(1)(g)(A) and OAR 811-035-0015, OAR 811-015-0005 and violated ORS 684.025(3). The appropriate sanctions for Dr. Moll's violations are as follows:

1. Dr. Moll's license shall be suspended for a period of no less than eighteen months. The suspension begins on Monday, August 23, 2010.
2. Licensee will be on a five year period of probation after he completes the suspension period.
3. Prior to readmitting active practice of chiropractic in the state of Oregon Licensee must prove he had attended and completed PROBE as required in paragraph 5 below and he has in place a Board approved female chaperone.
4. Prior to readmitting active practice of chiropractic in the State of Oregon Licensee must take and pass the NBCE Ethics and Boundaries examination.
5. Pursuant to ORS 684.100(9)(e) the Board orders Licensee to attend and complete the PROBE ethics program within six months of the date of the final order, and provide a certificate of successful completion of the program to the Board within 30 days of completion along with a final report as required by that program.
6. During the period of probation Licensee is required to have in place a Board approved female chaperones when treating all female patients. Licensee will provide a chaperone for all female patients who are not accompanied by another adult while receiving chiropractic treatment. The requirement applies to examination and treatment including taking patient history. The chaperone is to be board approved and not involved in any prior or current personal relationship with Licensee. Any person who is to serve as a chaperone must be approved by the Board.
7. Licensee has a permanent license restriction that he is forbidden to have any sexual or romantic relationships with any former patient for two years following the last treatment date or written termination of the dr/patient relationship.
8. Prior to return to practice, Licensee is required to have a complete evaluation by a psychologist or psychiatrist approved by the Board who deems he is safe to practice chiropractic in the state of Oregon. If the evaluator recommends any treatment protocols to assist in preventing future violations of sexual boundaries, Licensee is required to adhere to that treatment plan and



- recommendation.
9. Any violations of this order may result in further discipline, after notice and a hearing, up to and including revocation of license.
  10. Pursuant to ORS 684.100(9)(g) the Board assess costs of the disciplinary proceeding in the following amounts which include the investigative costs and attorney fees in the following amounts:
    - a. OAH costs: 4,086.50 (to date)
    - b. DOJ costs: \$25,155.00

  
Original signature on file at OBCE  
-----  
Dave McTeague  
Executive Director  
Oregon Board of Chiropractic Examiners

Dated: August 10, 2010

### FINAL ORDER

After considering all the evidence, the proposed order, and the timely filed exceptions, if any, the Board will issue the final order in this case. This final order may adopt the proposed order prepared by the Administrative Law Judge as the final order or modify the proposed order and issue the modified order as the final order (*see* OAR 173-003-0065).


### APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 et seq.

State of Oregon ) Agency Case No.: 2009-5007  
) OAH Case No.: 901397  
County of Marion ) Gregory Moll DC

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

Original signature on file at OBCE

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

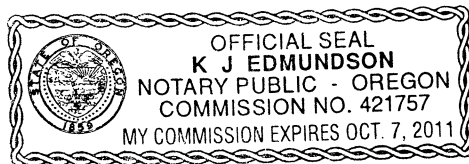
SUBSCRIBED AND SWORN to before me

this 10<sup>th</sup> day of August, 2010

Original signature on file at OBCE

NOTARY PUBLIC FOR OREGON

My Commission Expires: 10-7-2011



**CERTIFICATE OF MAILING**

On August 10, 2010, I mailed the foregoing Final Order issued on this date in Agency Case No.: 2009-5007 & OAH Case No. 901397.

By: First Class Mail

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**Original signature on file at OBCE**

Dave McTeague  
Executive Director  
Oregon Board of Chiropractic Examiners

