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BEFORE THE IDAHO STATE BOARD OF

CHIROPRACTIC PHYSICIANS

In the Matter of the Chiropractic License of: REESE RIGGIN, D.C., License No. CHIA-839, Respondent.	)	Case No. B3C-03-97-005 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED ORDER

The hearing in this case was held before the Idaho State Board of Chiropractic Physicians (Board) on August 22, 1997, at the State of Idaho, Bureau of Occupational Licenses, in Boise, Idaho, pursuant to a Notice of Hearing dated August 6, 1997. The State was represented by Nicole S. McKay, Esq., Deputy Attorney General, and the Respondent was represented by Blair J. Grover, Esq., of the firm of Grover & Archibald.

The entire Board was present at the hearing, including Chairman Glenn W. Moldenhauer, D.C; and Members Eric Boughton, D.C., James Hollingworth, D.C., Henry West, D.C., and Lay Member Sandy Averill.

The case was heard by Wes L. Scrivner, Esq., the Board's duly appointed Hearing Examiner, pursuant to I.C. §54-707(1), and the hearing was conducted pursuant to Title 67, Chapter 52, Idaho Code.

ORIGINAL

On August 6, 1997, the Board filed its complaint for revocation or other sanctions concerning Respondent's alleged actions with the three Complainants, who will be referred to by their initials in this proceeding: M.O., J.M., and M.B. On August 6, 1997, the Board issued an order, suspending the license of Respondent to practice chiropractic medicine in the State of Idaho until the completion of this hearing.

The following witnesses testified for the State:

M.O.
J.M.
M.B.

The following witnesses testified on behalf of the Respondent:

Respondent Reese Riggin, D.C.
Brad Egbert, D.C.
Richard Howard
Douglas J. Peterson, D.C.
Cortney Gertz
Nanette Chandler

The following exhibits were admitted into evidence:

For the Board:	Exhibits Nos. 1 and 2
For Respondent:	Exhibits Nos. A - J and N - Q

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board has jurisdiction in this proceeding pursuant to Idaho Code, §54-707, and it has the authority to issue licenses and to regulate the practice of chiropractic medicine in Idaho.

Respondent received his license to engage in the practice of chiropractic

medicine from the Board under License No. CHIA-839 on February 26, 1997.

Respondent established a chiropractic practice in Rigby, Idaho in March, 1997, after purchasing a commercial building in a conspicuous location in downtown Rigby. Respondent began seeing patients immediately after opening his office, and held an open house on April 10, 1997. Respondent continued to see patients until the Board entered its order on August 6, 1997, which prohibited him from seeing any patients until a complete evidentiary hearing was held. Respondent testified that, at the time of the hearing, he had 340 open patient files.

Respondent is 31 years old, he has been married for eight years, and he has five minor children ranging in ages from seven months to seven years. Respondent received an Associate of Arts and Sciences degree from Ricks College; a Bachelor of Science in Sports Medicine/Athletic Training from Eastern Washington University; and he attended chiropractic school at Parker College in Dallas, Texas, receiving his chiropractic degree in April, 1996.

Respondent worked his way through college, loading trucks part-time for United Parcel Service while he attended Eastern Washington University in Spokane, and he owned a lawn care business in Dallas while attending chiropractic school. In addition to being employed while attending college, Respondent incurred student loans totaling $103,000.

Since establishing his practice in Rigby, Respondent has volunteered as the assistant coach for the boys' varsity basketball team at Rigby High School, and as the

school's athletic trainer.

Prior to this hearing, Respondent had never been involved in any litigation, nor had he ever testified in any type of legal proceeding.

M.O., J.M., and M.B., the three complainants in this case, have each alleged sexual improprieties by Respondent, occurring in the time between late March and mid-June, 1997.

COMPLAINANT M.O.

M.O. is a 17-year-old high school student who began working for Respondent at the end of March, 1997, and was employed through most of June, 1997. She had heard about Respondent through a friend, applied for part-time work, and became employed by Respondent as a receptionist. M.O.'s job duties included answering the telephone, maintaining files, greeting patients, and performing whatever other tasks were necessary. Nanette Chandler was Respondent's primary employee and M.O. worked part-time after school and on Saturdays. Often, when M.O. worked at Respondent's office she was the only employee present. When there were no patients in the office, she was alone with Respondent. Initially, M.O. was hired to work after school, but Respondent needed someone to work from 1:00 to 6:00 p.m., so she began working only on Saturdays.

While she was working, Respondent would ask M.O. why she was so beautiful and why she was so was sexy. Respondent told M.O. that he knew she "wanted him," and he could tell just by the way she looked at him. Respondent would ask

M.O. about kissing other boys. Respondent told M.O. that he had had dreams about her and, on one occasion, he put his hand on her leg, and rubbed her leg, and said that in his dream she "was good." When M.O. began working for Respondent, he frequently hugged her, and Respondent admittedly gave M.O. "shoulder hugs," as he called them. M.O. testified that Respondent kissed her on the lips and on the cheek and, while Respondent denied kissing her on the lips, he did admit to giving her "a friendly peck on the cheek."

On one occasion, Respondent asked M.O. to come to his office to discuss how they could make the office work better. She sat in an armchair across from his desk and Respondent placed his hands on the arms of the chair and he kissed her.

After M.O. had worked for Respondent for awhile, her back began to bother her and her mother suggested that Respondent "adjust" her.

Respondent provided four different treatments for M.O. The first two treatments were provided after business hours while M.O. and Respondent were alone in the office. The third treatment occurred after school when M.O. stopped by on a day when she was not scheduled to work. On that occasion, Nanette Chandler and another patient were in the office. During the first, second, and fourth treatments, M.O. and Respondent were alone in the office.

On the first two occasions, Respondent adjusted M.O.'s back. During the third session, Respondent worked on M.O.'s lower back and M.O. stated that he went down the back of her pant and "rubbed my butt" under her underwear, massaging

her buttocks, approximately halfway down to her legs.

During the fourth adjustment, which occurred after office hours, Respondent asked M.O. to put a robe on for the adjustment, and he had her lay down on the table. He unhooked her brassiere while she was in the prone position. Respondent then had M.O. turn over onto her back. Her brassiere was still unhooked, although she was wearing a robe. Respondent massaged her chest and ran his hands over her breasts and nipples and said that she could take the rest of her clothes off and he would a provide a "full body massage." M.O. stated that she had to go to work and asked him to leave so she could put her clothes on. Respondent denies rubbing his hands over M.O.'s breasts and stated that there is "no reason to do that at all."

Respondent did not open a patient chart or file for M.O., he kept no records of any of the chiropractic treatments for M.O., and he did not charge for any of the treatments.

M.O. described an incident in the x-ray room while Nanette Chandler was out of town. M.O. went to work at 2:00 p.m., and when she went into the office all of the lights were off and nobody was around. Respondent's first scheduled appointment that day was at 3:00 p.m. M.O. entered the x-ray room where the lights were off and Respondent was laying on the x-ray table, and he asked her to come over. M.O. walked toward him and he asked her to come closer yet, then he pulled her on top of himself and hugged her. M.O. pushed herself away. M.O. had a skirt on that day and Respondent rubbed her legs and said that he liked that skirt because

he could see her legs when she crossed them. M.O. asked Respondent why the lights were off and he replied that he was resting. Respondent stated that he did not recall rubbing her leg, but does remember offering M.O. his arm so that she could "help him up."

M.O. described another incident where she was taking a patient folder back to a room and Respondent walked behind her and "grabbed my butt." Her only response was simply to walk away.

Respondent once asked M.O. to date him, and she said that he was 31 years old, with five kids, and she couldn't do that.

Respondent had occasion to travel to Rexburg to attend an open house at a friend's clinic and M.O. accompanied him. While they were driving down, Respondent grabbed M.O.'s hand and she pulled away. During the drive to Rexburg Respondent asked whether M.O. was going to file charges against him when she is 35, since that's when "most girls do it."

On the return from the trip to Rexburg, Respondent stated that he planned on taking a trip to Washington and that M.O. could go with him and visit her friend in Coeur d'Alene. Respondent stated that his wife was a heavy sleeper and that when she went to sleep M.O. could go up to the front of the car and have some fun with him.

M.O. described another incident when Respondent provided a ride home to her on his motorcycle. He asked her to hold him around his waist, and he kept sliding

back and asking her to hold on tighter, which made her uncomfortable.

The sexual overtures and comments made by Respondent made M.O. uncomfortable and she did not want to go to work, however, she was reluctant to quit the job because she had just left a job at Dairy Queen in order to go to work for Respondent, and her parents had discouraged her from going from job to job just because of dissatisfaction with a boss. Finally, because of Respondent's conduct, M.O. could not bring herself to return to work and she told her parents about his behavior. M.O.'s father is a law enforcement officer, and he promptly took her to the Sheriff's Office and asked her for a statement, which she provided.

While at school one day, M.O. was informed that she had some flowers to pick up in the office. Unbeknownst to M.O., it was secretary's week, and Respondent had sent her flowers with a card thanking her for all the assistance at the office. Respondent had signed the card, "Love, Dr. Riggin." Nanette Chandler also described receiving flowers during secretary's week, however, her card was not signed with similar affection.

Respondent described his relationship with M.O. as being very friendly and said that they were great "buds." M.O. admitted that she stopped by the office occasionally on the way home from school when she was not scheduled to work, just to say "hi."

M.O. admitted that she continued to work for Respondent in spite of the sexual harassment, even though it bothered her. She stated that she wondered if she was

doing something to cause it, she felt guilty about it, and she was embarrassed to tell anyone about it, indicating that she just couldn't tell someone what was going on, because it was hard to talk about it.

COMPLAINANT J.M.

J.M. is 19-year-old single mother with a 2-year-old child and she is also a high school student. J.M. first sought treatment from Respondent on March 21, 1997, for migraine headaches and back problems. Her second appointment was on May 1, 1997, and her third appointment was on May 15, 1997.

On the first and third appointments, Respondent provided hot packs for her back, massage, and he adjusted her back, providing treatment through her clothes, and he did not ask that she put on a patient robe. The fourth and final treatment by Respondent occurred on June 2, 1997. During that appointment, Respondent massaged J.M.'s back and asked her to undo the top button on her shorts, and he massaged the top of her buttocks. When he massaged her buttocks, he massaged under her underwear to the bottom of her shorts, although he had not previously done that in the first three appointments. He unhooked her brassiere, massaged her sides, and J.M. relates that Respondent touched the sides of her breasts. Even though she was very tense, she complied when Respondent asked that she roll over onto her back, whereupon Respondent massaged her upper neck and ran his hands over her breasts. Respondent rubbed the palms of his hands over her nipples and J.M. stated that she was trembling and had an urge to cry. She left, went home, and

told her boyfriend's mother, who promptly called Respondent, who denied everything. J.M. called Respondent later, but he denied the incident, chuckled, and said that he never did what he alleged. J.M., who was on probation for a drug violation, told her probation officer of the incident and the officer promptly called the police, who requested that J.M. give a verbal statement, which she did.

J.M. was contacted by an officer of the police department with whom she was acquainted, and she said that she would not be willing to come forward and press charges unless other patients were willing to do so.

There was a conflict in the evidence in that J.M.'s written statement indicated that the fourth appointment was on May 2, 1997, and the treatment in question was actually on June 2, 1997. It appeared that she was mistaken as to the date. She subsequently reviewed her diary and confirmed that the actual date of the fourth appointment was June 2, 1997. In addition, on Exhibit 2, J.M.'s statement, she indicated that the fourth appointment was on a Monday afternoon, May 2, 1997, but that date fell on a Friday. June 2, 1997, however, was a Monday. Exhibit A, Respondent's treatment record for J.M., also confirmed that "pt. guardian" called to talk about "a concern" on June 2, 1997, and the records also note that at 4:45 p.m. patient called herself, and expressed being very "uncomfortable" with treatment. In that treatment note, Respondent explained that he had done everything right and noted that J.M. seemed comfortable throughout the treatment, showed no signs of being uncomfortable with the treatment, talked throughout the treatment, and stated

that she was not having any problems.

While it is impossible to determine exactly what occurred during the June 2, 1997 treatment, J.M. is more credible than Respondent as to the conflicting testimony, as she immediately went home and confided in her boyfriend's mother; she immediately contacted Respondent to confront him about the treatment; she immediately provided information to her probation officer; and she promptly filed a statement with the law enforcement authorities. Nor can it be ignored that M.O. had an identical complaint about Respondent's massaging of her breasts, which Respondent admits he would have "no reason at all" to do. Considering that there is absolutely no evidence that M.O. and J.M. knew each other, discussed the matter, or compared notes or experiences, it is extremely unlikely that the two women would fabricate identical complaints.

COMPLAINANT M.B.

M.B. is a single, divorced 19-year-old woman who presently lives with a male friend and his mother. She sought treatment with Respondent following a motor vehicle accident wherein her car rolled over and she suffered injuries to her neck and back. She was referred to Respondent by a friend and she began receiving treatments on March 18, 1997. The treatments began with heat packs to the neck and back and then adjustments were added as her progress continued.

M.B. was 18 years old at the time she began receiving treatments from Respondent, and she turned 19 on July 12, 1997.

Unlike the situations with M.O. and J.M., there is very little conflicting testimony regarding M.B. Respondent admits that what began as a physician-patient relationship later progressed into a sexual relationship. M.B. described her relationship with Respondent as being "good friends" at first. She liked him, he was a nice guy, she was new in the area, she had few friends, and he talked with her during the treatments. M.B. stated that they flirted a lot during the office visits.

As the appointments progressed, Respondent told M.B. that he knew she "wanted him." M.B. testified that she didn't take him seriously, indicating that she knew he was married, and essentially she shrugged it off. Each time that Respondent treated M.B., he would tell her how beautiful she was, and he told her that he fantasized about having sex with her.

During treatments, Respondent would ask M.B. for various sexual favors and more than once he asked her to perform oral sex on him, which she never did. Both Respondent and M.B. admitted that on at least one occasion, Respondent performed oral sex on her, and that Respondent exposed his penis to M.B. on more than one occasion.

There was never any intimacy between Respondent and M.B. outside of Respondent's office.

Respondent maintains that his sexual relationship with M.B. occurred after she was a patient and never during, however, the evidence clearly demonstrates the contrary. The sexual relationship between Respondent and M.B. began soon after

M.B. sought chiropractic treatment. Although she did visit the office after May 5, when there were no more treatment records, she would call first or drop in and sign in on the patient roster, even though her intentions were not for receiving chiropractic treatment. Respondent and M.B. would see each other after the office was closed and after Nanette or M.O. were gone for the day, and sometimes she would sign out on the patient roster, and sometimes she would not.

On one occasion, M.B. witnessed a conversation between M.O. and Respondent and suspected that something was going on between the two. M.B. confronted Respondent and told him not to "mess with" M.O. because she was under age.

M.B. also hesitated to report the situation with Respondent and indicated that she felt bad for his family and children, but when she found out that M.O. had reported inappropriate sexual behavior, she changed her mind and decided to come forward.

M.B. was never released from treatment or told that her course of treatment had concluded.

Respondent called M.B. by telephone on several occasions and stopped by to see her employer, with whom he was friends at the time she was working. Respondent asked M.B. not to tell her boss about their relationship. As indicated above, there is very little dispute concerning the situation with M.B. Respondent admitted that there was sexual contact and that it was inappropriate because he was

married; he admitted being infatuated with M.B.; and he stated that he accepts responsibility for the situation, yet he does not seem to recognize the problem with her being a patient. Respondent steadfastly denied that chiropractic treatment was rendered during the occasions when sexual intimacies were exchanged, and he indicated that M.B. was very forward, flirtatious, and easy to talk to. Respondent admits that it was inappropriate to have a sexual relationship with a former patient.

Idaho Code §54-712(10) provides as follows:

> 54-712. Discipline by the Board — Grounds. Any license or permit issued under the provisions of this chapter shall be subject to restriction, suspension, revocation or other discipline pursuant to the provisions of sections 54-707 and 54-713, Idaho Code, if the Board finds that the licensee:
>
> (10) Has engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient;

J.M. and M.B. were clearly patients of Respondent and they sought treatment from him for specific complaints. Although M.O. initially began a relationship with Respondent as that of an employee, when Respondent began providing chiropractic treatments for her, she became a patient. As one of Respondent's witnesses testified, any one who has been provided chiropractic treatment is a patient of the chiropractor. All three of the female complainants in this action placed their trust and confidence in Respondent by seeking his treatment as a chiropractic physician. All three women were very young, 17, 18, and 19 years old, respectively. When Respondent initiated sexual advances by making sexually inappropriate remarks,

overtures, requests, contact, and ultimately a sexual relationship in the case of M.B., clearly the physician-patient relationship was abused by Respondent, and the trust and confidence placed in him by the patients was exploited by Respondent.

As to M.O., Respondent violated the Chiropractic Practice Act, Idaho Code §54-712(10) by:

1. Making unwelcome, inappropriate sexual references and remarks, including telling her that she "wanted him," that she was sexy and beautiful, and by inquiring about her private life;

2. Inappropriate contact, including kissing her on the cheek, kissing her on the lips, hugging her, rubbing her leg, and massaging and touching her breasts under the guise of providing chiropractic treatment;

3. Failing to maintain appropriate physician-patient and physician-employee boundaries by attempting to enter into a sexual relationship with M.O. when his advances were unwelcome, she was underage, and she was a patient as well as his employee.

As to J.M., Respondent violated the Chiropractic Practice Act, Idaho Code §54-712(10) by:

1. Massaging and touching her breasts and buttocks under the guise of providing chiropractic treatment.

As to M.B., Respondent violated the Chiropractic Practice Act, Idaho Code §54-712(10) by:

1. Initiating and persisting in an intimate sexual relationship with M.B. while she was a patient, during regularly scheduled chiropractic examinations;

2. Maintaining an intimate sexual relationship with M.B. in his office while she was still a patient, whether after hours or during times when M.B. would sign in as a patient, regardless of whether she intended to receive chiropractic treatment.

ORDER

Based on the foregoing, the Hearing Officer recommends that the State Board of Chiropractic Physicians take such disciplinary action against Respondent's license as it shall deem necessary and appropriate.

SCHEDULE FOR REVIEW

1. This is a Recommended Order of the Hearing Officer. It will not become final without action of the Board.

2. Any party may file a petition for reconsideration of the Recommended Order with the Hearing Officer within the latter of fourteen (14) days of the service date of the Recommended Order, or fourteen (14) days from the entry of a modification of the Recommended Order by the Hearing Office on his own motion. The Hearing Officer issuing the Recommended Order (or modified Order) will dispose of any petition for reconsideration within twenty-one (21) days of its receipt or the petition will be considered denied by operation of law.

3. Within twenty-one (21) days after the latter of (a) the service date of the Recommended Order, (b) the service date of any modification of the Recommended Order by the Hearing Officer on his own motion, (c) the service date of a denial of a petition for reconsideration from this Recommended Order, or (d) the failure within

twenty-one (21) days to grant or deny a petition for reconsideration from this Recommended Order, any party may in writing support or take exception to any part of this Recommended Order and file briefs in support of the party's position on any issue in the proceeding.

4. Written briefs in support of or taking exception to the Recommended Order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board will issue a final Order within fifty-six (56) days of receipt of the written briefs or oral arguments (if the Board should elect to have oral argument), whichever is later. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final Order.

DATED this 2nd day of September, 1997.

WES L. SCRIVNER
Hearing Examiner