ORIGINAL

BEFORE THE IDAHO STATE BOARD OF

CHIROPRACTIC PHYSICIANS

In the Matter of the Chiropractic License of:	)	Case No. CHIA-P3C-01-98-002
JEFFREY B. SCHWARTZ, D.C., License No. CHIA-290,	)	**FINAL ORDER**
Respondent.	)	

THIS MATTER came on for hearing on September 14, 15, and 22nd, 1998, before Wes L. Scrivner, the designated Hearing Officer. The State appeared in person and by its attorney of record, Kirsten L. Wallace, Idaho Deputy Attorney General. Respondent, Dr. Jeffrey B. Schwartz, appeared in person and by and through his attorney of record, Charles B. Lempesis. Both parties presented witnesses, testimony, and documentary evidence. On October 30, 1998, the Hearing Officer submitted his Findings of Fact, Conclusions of Law, and Recommended Order.

This matter then came before the Idaho State Board of Chiropractic Physicians at a regularly scheduled meeting of the Board on December 11, 1998. The Respondent, his attorney, and the State's attorney presented argument to the Board. The Board, having conducted an independent review of the record and having considered all evidence and arguments of counsel presented before the Hearing Officer, the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order and all other matters of record, and good cause appearing therefor, the Board unanimously adopted the following Order.

IT IS HEREBY ORDERED as follows:

1. That the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order are hereby adopted and incorporated herein by reference.

2. That the Respondent's conduct has violated Idaho Code Sections 54-712(10) and 54-712(11) as set forth in the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order. Pursuant to Idaho Code Sections 54-707(4), 54-712, and 54-713, the Board possesses the authority to impose the following disciplinary sanctions upon the Respondent, Dr. Jeffrey B. Schwartz: the Respondent's license to practice chiropractic medicine in the state of Idaho shall be revoked and is hereby revoked.

3. This is the Final Order of the Board.

a. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Board will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by the operation of law. (See Section 67-5247(4), Idaho Code.)

b. Pursuant to Section 67-5270 and 57-5272, Idaho Code, any party aggrieved by this Final Order, or orders previously issued in this case, may appeal this Final Order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (i) a hearing was held; (ii) the final agency action was taken; or (iii) the party seeking review of this Final Order resides.

c. An appeal must be taken within twenty-eight (28) days (i) of the service date of this Final Order; (ii) of any order denying petition for reconsideration; or (iii) of

the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. (See Section 67-5273, Idaho Code.) The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

4. The Bureau Chief of the Bureau of Occupational Licenses shall cause a true and correct copy of this Final Order to be served upon the Respondent's attorney and the State's attorney by mailing a copy to them at their addresses as provided.

DATED this 17 day of December, 1998.

STATE BOARD OF CHIROPRACTIC
PHYSICIANS

By _____
GLENN W. MOLDENHAUER, D.C.
Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of December, 1998, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Charles B. Lempesis Attorney at Law W. 201 7th Avenue Post Falls, Idaho 83854 Attorney for Respondent	___ U.S. Mail X Certified Mail ___ Hand Delivery
Kirsten L. Wallace Deputy Attorney General Office of the Attorney General P.O. Box 83720 Boise, Idaho 83720-0010 Attorneys for State	___ U.S. Mail X Certified Mail ___ Hand Delivery

Carmen Westberg

Carmen Westberg, Bureau Chief
Bureau of Occupational Licenses

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BEFORE THE IDAHO STATE BOARD OF

CHIROPRACTIC PHYSICIANS

In the Matter of the Chiropractic License of:	)	Case No. CHIA-P3C-01-98-002
JEFFREY B. SCHWARTZ, D.C., License No. CHIA-290,	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RECOMMENDED ORDER
Respondent.	)	

The hearing in this case was held before the Idaho State Board of Chiropractic Physicians (Board) on September 14, 15, and 22, 1998, at Templin's Cavanaugh Resort, in Post Falls, Idaho, pursuant to a Notice of Hearing dated July 15, 1998. The State was represented by Kirsten L. Wallace, Esq., Deputy Attorney General, and the Respondent was represented by Charles B. Lempesis, Esq., of Post Falls, Idaho.

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.

The Chairman of the Board is Glenn C. Moldenhauer, D.C., and other members are Henry West, D.C., Eric Boughton, D.C., James Hollingsworth, D.C., and Sandra Averill. The hearing was stenographically transcribed by a certified court reporter. The entire proceeding was also videotaped.

On July 15, 1998, the Board filed its complaint for revocation or other sanctions concerning Respondent's alleged actions with six different female Complainants, and 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:

Bobbi Burrows

Pete Marion

Jocelyn Peterson

Saundra Hubbard

Dorinda McAfee

Renee Langelier

Elinda Edgemon

Susan Manley Smith

The following witnesses testified on behalf of the Respondent:

Jeffrey B. Schwartz, D.C.

Roger Ehlert, Ph. D.

Mary Jo White, D.C.

Patricia Harris

The following exhibits were admitted into evidence:

For the Board: Exhibits No. 2-8, 10A,10B,11,13,14

For Respondent: Exhibits No. A - G.

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. CHIA000290. Respondent's clinic in Post Falls is known as Schwartz Chiropractic, and he is in practice alone.

Respondent appears to be held in high regard by the citizens of the community, and has received a large number of supporting letters from patients, which are in evidence before the Board. Respondent's skills as a chiropractor are not questioned, and the evidence was almost unanimous that his clinical skills are exceptional.

Respondent graduated from high school in 1965. He then went to drafting school and became an electro mechanical draftsman, and returned to the University of Minnesota to study pre-med. During his pre-med studies, he developed allergy problems that were successfully treated with chiropractic. Respondent then changed majors, and graduated from the Northwestern College of Chiropractic in Minneapolis, Minnesota in 1972.

Respondent has been licensed in the State of Idaho since 1972. He opened a practice in Caldwell in 1973, where he practiced for nine years. Respondent then moved to Phoenix, Arizona for approximately six months where he worked with another chiropractor. In 1982 Respondent opened a practice in Billings, Montana where he practiced until the early 1990's, when he moved to California to work in the business of medical practice management. In 1993 respondent moved to Post Falls, Idaho where he established his business known as Schwartz Chiropractic, and he has been in private practice there ever since.

Respondent has been very active in community affairs in the City of Post Falls.

Respondent indicated that it helps promote his business, and gives him the chance to give back to the community. Respondent has been on the American Red Cross Board of Directors in Post Falls, the Post Falls Food Bank Board of Directors, a member, officer and board member of the Post Falls Kiwanis Club, actively involved in the Post Falls Chamber of Commerce, worked with the City Park Commission, Black Bay Development Committee, Steering Committee, and was a Parks and Recreation Commissioner.

Respondent has not been the subject of any professional license proceeding such as this in Idaho or any other jurisdiction.

The eight count complaint detailed allegations made by six different women, all of whom were patients of Respondent (including one who was also an employee). Counts one through six concerned each of the six women, and allege violations of I.C.§ 54-712 (10) and (11). Count seven, alleging violations I.C.§ 54-712 (1), was withdrawn at hearing. Count eight concerned allegations that Respondent continued to provide services after July 1, 1998, without having properly renewed his license.

Respondent admits having sexual relations with three of the Complainants, Burrows, Peterson, and McAfee. Respondent denies any improper conduct with Langelier, Hubbard, and Edgemon, the other three Complainants.

The applicable provisions of the Chiropractic Practice Act, under which the Board is given the authority to take disciplinary action against any licensee are as follows:

> I.C. §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:

(1) Has been convicted, found guilty, received a withheld judgment or suspended sentence in this or any other state of a felony or a crime involving moral turpitude;

(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; [or,]

(11) Has committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude.

Criminal charges have been filed against Respondent pursuant to I.C. § 18-919, the statute proscribing sexual exploitation of patients by a medical provider. The charges in those cases related to two of the complaining witnesses in this proceeding. During the first part of the hearing, Respondent represented that he had entered guilty pleas to two counts, but that the pleas were conditional, and subject to approval by the Court. When the second day of the hearing (September 15, 1998) was adjourned, and continued to a later day (September 22, 1998) at the request of Respondent, he indicated that the criminal charges might be resolved by the time the hearing resumed on September 22, 1998. On September 22, 1998, when the hearing resumed, Respondent indicated that no disposition had been made of the criminal charges, and he had now entered not guilty pleas, and was challenging the statute on constitutional grounds. The State moved to

dismiss Count seven of the complaint, which alleged a violation of I.C. §54-712(1), as no disposition had been made of the criminal charges.

The complainants allege that I.C. § 54-712 (11) applies to this case. This section concerns the commission of acts which would *constitute a crime* involving moral turpitude, whether or not there is an adjudication of guilt. Complainants allege that a violation of I.C. §18-919 is a crime of moral turpitude, that Respondent violated it, (though not convicted in any criminal tribunal so that I.C. §54-712 (1) doesn't apply), and since he committed acts which would constitute the crime, Respondent thus violated I.C. § 54-712 (11).

I.C. §18-919 provides:

§ 19-919. Sexual exploitation by a medical care provider

(a) Any person acting or holding himself out as a physician, surgeon, dentist, psychotherapist, chiropractor, nurse or other medical care provider as defined in this section, who engages in an act of sexual contact with a patient or client, is guilty of sexual exploitation by a medical care provider. This section does not apply to sexual contact between a medical care provider and the provider's spouse, or a person in a domestic relationship who is also a patient or client. Violation of this section is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed one (1) year, or both.

(b) For the purposes of this section:

(1) "Intimate part" means the sexual organ, anus, or groin of

any person, and the breast of a female.

(2) "Medical care provider" means a person who gains the trust and confidence of a patient or client for the examination and/or treatment of a medical or psychological condition, and thereby gains the ability to treat, examine and physically touch the patient or client.

(3) "Sexual contact" means the touching of an intimate part of a patient or client for the purpose of sexual arousal, gratification, or abuse, and/or the touching of an intimate part of a patient or client outside the scope of a medical examination or treatment.

(4) "Touching" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

"Moral turpitude" is not defined in the I.C. §54-712, but some appropriate definitions are found in appear in Ballantines Law Dictionary, Third Edition, (citations omitted):

"Baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general."

"Something immoral in itself, irrespective of the fact that it is punished by law."

A violation of this statute would certainly be an act of moral turpitude.

Although Respondent denies any wrongdoing with three of the complainants, the main weight of Respondent's case was mitigation. As noted above, Respondent acknowledges having sexual relations with three of the Complainants, and he admits that it was wrong, and that he knew it was wrong at the time even though he was adamant that all of the activity was consensual.

By way of mitigation, and providing an explanation for the conduct which Respondent admitted, he offered the testimony of an expert witnesses, his treating psychologist, Roger Ehlert, Ph.D, a licensed clinical psychologist who practices in Coeur d'Alene, Idaho. Dr. Ehlert had provided counseling to Respondent and his ex-wife prior to their divorce in 1993, and has recently seen Respondent in relation to this proceeding. Dr. Ehlert administered standard psychological tests, and after his examination he concluded that Respondent is not suffering from any particular diagnosable psychiatric disorder, other than an adjustment disorder related to the stress of these proceedings.

Dr. Ehlert was of the opinion that Respondent has a "slight possibility" of committing similar sexual acts in the future, and that it "should not be ruled out." Repeat incidents could occur in situations of "extreme stress" or where there is "no careful supervision."

Dr. Ehlert's exact words, when questioned about this issue, provided the following response:

"Q. . . . . In the context

of your evaluation of Dr. Schwartz and the testings you've performed and the discussions that you've had, have you formed an opinion as to, subsequent to the conduct which has occurred, whether or not Dr. Schwartz, if permitted to continue in his practice, would pose a risk to his patients or others?

A. Yes.

Q. What is that opinion, doctor?

A. That opinion is that under conditions of extreme stress or under conditions in which he felt that there was no careful supervision, there might be a slight possibility of that event. I consider it unlikely, but possible, and should not be ruled out."

Respondent denied that he ever moved from a geographic location because of any allegations of sexual improprieties, and there is no proof at hearing to the contrary. Respondent denied that there was any physical abuse involved in his fourth marriage, which ended in divorce in 1988, although the Findings of Fact and Conclusions of Law in his September 15, 1988 Divorce Decree specifically found that Respondent had physically abused his then wife and, in addition, had been married three times before and had abused each of those wives as well.

Mary Jo White, D.C., a chiropractor in Post Falls, testified for Respondent. She has worked in his clinic, and has provided transition services for his patients, and is available to assist with patients in the event professional supervision is required as a condition of restoring Respondent's license. Dr. White also testified as to Respondent's excellent clinical skills, and the value he adds to the community as an excellent chiropractor. Dr. White is acquainted with Respondent's clinical skills, as he has provided adjustments to her. Dr. White acknowledges a social relationship with Respondent.

Count One

Dorinda McAfee is a thirty-six year old single mother who initially saw Respondent in the early part of 1995 for treatment relating to a motor vehicle accident she had been involved in two years prior. McAffee saw Respondent from January 4, 1995 through January 13, 1995, and received no further care from Respondent until she returned to his clinic on January 26, 1998. McAffee had undergone gall bladder surgery in December of 1997 and had not yet fully recovered. She had been told by her physicians that she needed to go to Seattle for additional surgery. McAfee knew from her prior treatment with Respondent that he had dealt with herbal medicine, and she returned to see if she could find relief for her problems. She also took her twelve year old son to Respondent in early 1998.

When McAfee took her son to see Respondent for an initial visit, which was an extended appointment where her son underwent a complete examination,

Respondent visited with McAfee. The subject matter primarily concerned personal matters wholly unrelated to her son's treatment. McAfee thought it was quite odd that Respondent would devote considerable time to discussing McAfee's personal circumstances, but she was intrigued, if not flattered, and answered all of his questions.

As McAfee's treatment with Respondent continued, Respondent's interest in her continued to increase. They had extended discussions in the office and he also talked to her on the telephone. Their conversations surprised McAfee because, in her words, "He's big in the community and all I do is work in microbiology, and I just was a little surprised that a doctor of any kind would want anything to do with me." She was under the impression that they would begin dating.

The relationship between Respondent and McAfee did progress to a consensual sexual arrangement which continued from mid-March, 1998, through the first part of June, 1998. Although McAfee characterized the relationship as being manipulative on the Respondent's part, she did continue to date him and also continued to see him as a patient.

McAfee described an incident that occurred in Respondent's office some time in May of 1998, immediately following a chiropractic treatment. Respondent was "strong" and he pushed McAfee up against the door and was caressing, hugging and kissing her in a forceful manner. She told him that there were patients outside the room and she did not want for them to hear what was going on. This

was somewhat perplexing to McAfee because they hadn't talked for a week or so, and she prevailed upon him to let her go. Shortly after that incident, McAfee and her son accompanied Respondent on a two day camping trip. After the trip she concluded that their relationship was over because of comments made by the Respondent, including a negative comment about her son having ruined the camping trip, and she was simply under the impression that Respondent did not want to hear from her again. Although McAfee felt rejected by the abrupt end of the relationship she accepted it.

On the afternoon of June 1, 1998, after she was under the impression their relationship was over, McAfee was in Respondent's office talking to the receptionist, Jeannette, who happened to be McAfee's roommate. There were no patients in the office. The Respondent came into the office and complained of a stomach ache and said that he was going to go lay down. McAfee and Jeannette continued talking. When she was ready to leave the office McAfee heard Respondent call her name from one of his treatment rooms in the back portion of the clinic. McAfee responded to Respondent's call and went into the examining room. The lights were off and Respondent told McAfee to keep the lights off and to close the door and come over to him. At this point Respondent pulled McAfee over on top of him, whereupon she resisted and "stumbled off and fell off of the bed and off him." In McAfee's words Respondent then exposed himself and forced her to perform oral sex upon him.

In mid-June McAfee contacted Respondent to return some personal property,

and she went to visit Respondent at his house. At that time Respondent was asking a number of questions regarding the handling of medical evidence. McAfee is a phlebotomist at Kootenai Medical Center and Respondent was questioning her about legal specimens, how they are handled, and so forth. This line of questioning surprised McAfee and when she asked him what the problem was Respondent informed her that a former employee was filing rape charges against him. McAfee explained that a rape kit is handled by the nursing staff and the physician and that she wouldn't have anything to do with the actual custody of the evidence. In the course of Respondent's questioning McAfee about the forensic issues, Respondent led her to believe that there weren't going to be any problems because the "good old boys" were going to take care of him, that he had friends in high places, the police department would hide or disregard the evidence, and so on.

McAfee felt that Respondent's line of questions were calculated to determine what type of help McAfee could provide regarding Respondent's possible criminal investigation. It is unknown whether this was actually Respondent's intent, but that was McAfee's perception and what prompted her to tell her story to the police.

McAfee discussed her version of the events with Pete Marion of the Post Falls Police Department and told him about the discussion regarding criminal evidence and that, in her words, "If I didn't put in my two cent's worth and stop him, that he was just going to continue, you know, picking up victims; and that's why I went to Pete."

Idaho Code § 54-712(10)

McAfee entrusted Respondent with her chiropractic care, and placed her confidence in Respondent. Respondent abused that trust and confidence by initiating and maintaining a exploitative and manipulative sexual relationship throughout her course of treatment. Respondent's actions constitute a violation of the Chiropractic Practice Act, Idaho Code §54-712(10).

Idaho Code § 54-712(11)

Respondent's actions were clearly violations of I.C. § 18-919:

1. McAfee was a patient;
2. Respondent was a chiropractor;
3. Respondent was a "medical care provider" as he gained the trust and confidence of McAfee for her examination and treatment, thereby gaining the ability to treat, examine and physically touch her;
4. Respondent admitted a sexual relationship with McAfee, which included oral sex, and sexual intercourse; and,
5. The sexual contact was clearly outside the scope of the medical examination and treatment.

Respondent's acts satisfy the elements of I.C. § 18-919, the statute proscribing sexual relations with a patient, a crime of moral turpitude. As a result, Respondent violated I.C. § 54-712(11).

Count Two

Bobbie Burrows is a twenty-nine year old married woman who saw Respondent as a patient between February 17, 1998, and May 12, 1998. The two

never had a social relationship, and never saw each other outside of the office. Respondent admitted that he kissed Burrows after an office visit in April, 1998. Respondent admits that on May 12, 1998, following a treatment procedure, while they were still in one of the examination rooms in the clinic, he performed oral sex on Burrows, and then had sexual intercourse with her. The next day, Burrows went to a women's crisis center and the incident was reported to the law enforcement authorities the following day.

Burrows initially went to Respondent to seek treatment for fibromyalgia. She had received treatment from other physicians but was never able to obtain satisfactory relief. She was told by some doctors that it was all in her head, or that she was depressed. Burrows sought the treatment of a chiropractor in Coeur d' Alene, who utilized acupuncture. As Burrows related it, the doctor told her that by inserting a needle in her ear it would help her "spirit feel better." She discontinued treatment with that provider, stating that she wanted to go to a "Christian physician." In speaking with one of her friends, she was told that Respondent was a Christian, and she also noticed a Christian symbol in his advertisement in the yellow pages. When she called to discuss possible treatment, the first thing she asked Respondent was whether he was a Christian, and Respondent said that he was.

During her first visit with Respondent in February 1998, Respondent took x-rays, performed an examination, and indicated that he wanted her to bring her husband back to the office so that he could explain a proposed course of treatment which was contemplated to be three times per week for three weeks. After Burrows

began her treatments with Respondent, she also took her daughter in for chiropractic treatments, and her husband began receiving treatments as well. Burrows thought that Respondent was caring, concerned, and intelligent. Respondent also appeared to believe her complaints about the fibromyalgia. Burrows stated that during the treatments Respondent would talk to her about "the Bible and things like that, too, when I would be in."

There was nothing inappropriate about the care provided by Respondent until April, 1998, when Respondent re-entered the treatment room, held Burrows by the shoulders, pulled her to him and kissed her. During this incident Burrows did not resist, complain, cry out, or otherwise indicate that Respondent's action was inappropriate; she merely stood there passively. Burrows didn't know quite what to do after this incident as she had never had a physician do this to her before, and she was quite conflicted as to what action to take, since Respondent had provided her with needed relief from her symptoms. Within a week after that incident Burrows took her daughter in for an appointment, and following that treatment Respondent asked for an opportunity to visit with Burrows, at which time he took her into another room in the office and apologized for kissing her the preceding week. Burrows likewise told Respondent that she was sorry if she had done anything that had led him to believe that his action was welcome. After that discussion, Burrows was of the opinion that it was safe to resume her treatments, since Respondent indicated he would not do anything inappropriate in the future.

On May 12, 1998, Burrows received treatment that required her to lie on a

bed, which was vertical, but which reclined and then retracted back to a vertical position. After the bed was returned to a vertical position and Burrows stepped off the platform at the base of the bed, Respondent asked for a hug. The request made Burrows feel uncomfortable, but she complied and gave Respondent a hug. After the hug, Respondent turned Burrows around and pushed her against the door which let out of the room. He continued talking to her, held her by the shoulders, started unbuttoning her blouse, was touching her breasts, and undid her pants. It was apparent that Respondent intended to have sexual intercourse with her but he was initially unable to enter her because, whereupon Respondent squatted down and performed oral sex upon her, then stood up and had sexual intercourse with her. At the conclusion he exited the room, telling her to "have a better day."

Burrows did not resist Respondent's efforts to have sexual intercourse with her, she did not cry out, nor did she forcibly resist or call for assistance, despite the fact that the reception and waiting area was immediately behind the examining room door. This incident occurred while Burrows' daughters, aged seven and ten, were in the reception room by the front counter, just down the hall from the room where the event took place. Burrows then left with her girls and went home and took a shower because she felt "dirty."

Afterwards, on the night of the incident, Burrows felt sick at her stomach. She did not tell her husband, who simply thought she had the flu. The following day Burrows called her sister in Spokane and related what had happened, and the sister recommended that Burrows contact the Women's Center, which she did. At

that time Burrows was referred by personnel at the Women's Center to a hospital, where she went for an examination. The following day, May 13, 1998, Burrows reported the incident to the law enforcement authorities.

Idaho Code § 54-712(10)

Respondent's testimony was that Burrows had initiated the kissing incident, and she had asked him not to stop during the sexual incident on May 12, 1998. Although Burrows did not forcibly resist, and in fact passively endured both incidents, Respondent's behavior clearly abused the professional relationship. It is clear that Burrows had placed considerable trust and confidence in Respondent since he had represented himself to be a Christian, which provided comfort to Burrows, and he had provided quality care which she was not able to obtain from other medical providers. Burrows had struggled with the symptoms of fibromyalgia for years, and was understandably relieved when she finally found a doctor who actually believed her complaints and provided needed relief. Respondent admitted that he used bad judgment, and that what he did was wrong. Respondent was in a position to take the action he did solely because a physician-patient relationship existed. Although Respondent testified that he was not aware of I.C. § 18-919 which proscribes sexual relations with patients, he acknowledged that it was wrong to have sexual relations with a patient.

Respondent's actions constitute a violation of the Chiropractic Practice Act, Idaho Code §54-712(10), as Burrows placed her trust and confidence in Respondent, and Respondent abused that trust and confidence by engaging in the

foregoing sexual actions.

Idaho Code § 54-712(11)

Respondent's actions were clearly violations of I.C. § 18-919:

1. Burrows was a patient;
2. Respondent was a chiropractor;
3. Respondent was a "medical care provider" as he gained the trust and confidence of Burrows for her examination and treatment, thereby gaining the ability to treat, examine and physically touch her;
4. Respondent admitted engaging in sexual contact with Burrows, which included oral sex, and sexual intercourse; and,
5. The sexual contact was clearly outside the scope of the medical examination and treatment.

Respondent's acts satisfy the elements of I.C. § 18-919, the statute proscribing sexual relations with a patient, a crime of moral turpitude. As a result, Respondent violated I.C. § 54-712(11).

Count Three

Rene Langelier was a patient of Respondent from January, 1998, through July 6, 1998. She alleges that during a treatment, Respondent engaged in uninvited sexual conduct. Respondent denies any improprieties.

Renee Langelier is a forty-five year old married woman who consulted with Respondent in March, 1998, seeking relief from neck and back pain that had been a chronic problem for the past twenty years.

Langelier had recently moved to north Idaho and remarried a former husband, and they had purchased a franchise discount picture frame dealership in Coeur d'Alene.

Langelier was not referred to Respondent but had selected him as a chiropractor from the yellow pages. Langelier was attracted to a Christian symbol that was included in Respondent's yellow page advertisement. She considered herself a Christian woman and felt more comfortable in seeking treatment from an individual with similar values.

Langelier was uncomfortable at the initial consultation because Respondent asked that she get into a hospital gown and Langelier had never had to put on a hospital gown in a chiropractor's office before. Langelier considered the gown too small and also did not consider it to be a standard procedure, given her past experience with chiropractors.

During the initial appointments when Langelier received treatment, Respondent spent too much time talking about himself and Langelier's personal life, and he went beyond the "boundaries" of her "comfort zone." Respondent would stand too close to her and would discuss issues that were uncomfortable for her and that she did not feel were appropriate for a doctor/patient relationship. Respondent spent very little time discussing her pain, and Langelier said that she had to keep directing Respondent back to focusing on her pain instead of going "off on his own tangents talking about his own interests, his own activities and stuff."

Respondent began discussing Langelier's picture frame business and they

negotiated having pictures framed in return for chiropractic adjustments, which Langelier agreed to because she was having problems getting her business off to a successful start. At the second or third appointment Respondent told Langelier that he had been thinking about her the night before, which Langelier found strange because she had never had a doctor talk to her like that before. Respondent then discussed the picture frame business again, which calmed Langelier because Respondent seemed to be helping her with her business; she was new in the area and she thought that perhaps he could provide some assistance.

On one occasion, Respondent asked Langelier to accompany him to an art auction at Templin's Resort in Post Falls. He brought that subject up at successive appointments, and finally Langelier scheduled someone else to come in and watch her store so that she could meet him there, but he didn't show up at the scheduled time.

Respondent began to call Langelier at her place of work and he also called her at home and questioned her about things that she didn't think were any of his business, such as how she was doing or how her weekend was.

Langelier became uncomfortable when Respondent walked her back to her car following adjustments. It seemed odd to her since a doctor had never done that before.

On one occasion Respondent's behavior made Langelier feel uncomfortable during a treatment. She was lying face down on a table during an adjustment and Respondent discussed how a woman's intuition is accurate, such as when a man

is standing behind a women in the grocery store, he can look her up and down and she doesn't even have to turn around to know that she is being "x-rayed from the back." Langelier discussed the situation with one of her female employees and received some validation for her concerns. The next day, she called Respondent and questioned him about the conversation and wondered what it was all about. Respondent denied the conversation or at least claimed he had no recollection of it and whereupon Langelier told him that she would "cut him some slack."

While Langelier was a patient of Respondent, she was having marital difficulties with her husband, and that subject was discussed with Respondent.

The incident which precipitated Langelier's discussions with the police occurred in mid-April of 1998. As it was described by Langelier, she had received treatment in a hospital emergency room for a migraine headache on a Friday, and on Monday she had an appointment with Respondent. At that Monday appointment Respondent had Langelier lay down on a table on her back and Respondent grasped the pressure point on her right hand in his hands as he was standing to the right of her. Langelier was uncomfortable because it hurt while he was grasping her hand. Respondent then placed Langelier's hand on his groin area and started gyrating back and forth. Langelier opened her eyes and could see in a mirror what Respondent was doing, at which time Respondent realized that she could see and immediately changed his behavior to something more innocuous. At that time, Langelier thought to herself that she couldn't leave the room fast enough and she couldn't believe what had just happened.

Oddly enough, Langelier solicited further treatments from Respondent after the April incident, but she stated that the reason she returned was because she was in excruciating pain, and Respondent provided her with relief from her pain.

Respondent now owes Langelier in excess of $950.00 for some limited edition prints. She has obtained the services of an attorney and made a demand of Respondent for $30,000.00 in compensation for Respondent's alleged wrongdoing, including the money owed for the prints.

Regardless of whether Langelier has made a demand for $30,000.00 for Respondent's conduct, which admittedly gives Langelier a financial interest in the proceedings, Langelier's testimony is more credible than Respondent's blanket denial of any wrongdoing.

Idaho Code § 54-712(10)

Langelier sought a chiropractor who had similar Christian values, and she placed her trust and confidence in Respondent to provide her medical care.

Respondent's actions in calling Langelier at her place of employment and at her home to discuss topics which had nothing to do with her treatment; the sexual innuendo in discussing women's intuition during the course of treatment; Respondent's continued inquiries regarding Langelier's personal life and, finally, his overtly sexual physical behavior at the April appointment clearly constitute an abuse and exploitation of Langelier arising out of the trust and confidence placed in Respondent by Langelier.

Respondent's actions in making sexual innuendos in the course of treatment;

discussions of a personal nature in under the guise of providing chiropractic care; and overt sexual behavior during the course of a chiropractic treatment all constitute an abuse and exploitation of Langelier arising from the trust and confidence which she placed in him, and thus are violations of the Chiropractic Practice Act, Idaho Code §54-712(10).

Idaho Code § 54-712(11)

Respondent's actions were not violations of I.C. § 18-919, since he did not touch any intimate parts of Langelier, an element of the statute.

Count Four

Saundra Hubbard is a thirty-three year old single mother who sought chiropractic treatment following injuries she received in a motor vehicle accident. Respondent denies all of Hubbard's allegations.

Hubbard was injured in a motor vehicle accident on August 3, 1995. She continued to have neck and shoulder pain, and her attorney referred her to Respondent for treatment. Hubbard first saw Respondent on April 12, 1996, and her treatment ended in March, 1997.

When Hubbard began seeing Respondent, she was in the midst of ending a relationship with a man who had physically and emotionally abused her. When Hubbard began receiving treatment from Respondent, she found him to be "really friendly and just nice and personable." Hubbard trusted Respondent because, in her words, "He's my doctor. I mean you kind of look up to people like that."

As the treatments progressed, Respondent seemed to become friendlier, and

they discussed Hubbard's relationship with the man with whom she was involved. While Hubbard was in the clinic for treatment, Respondent began giving her hugs, and tried to kiss her. Hubbard always felt uncomfortable with Respondent's actions, and repeatedly told him that he shouldn't be doing that because he was married.

A fire had damaged Respondent's clinic, and for a time he saw patients in a trailer which was parked in front of the business. During one treatment in the trailer, Respondent provided an ultrasound treatment for Hubbard. She was wearing a hospital gown, with athletic shorts on underneath. Someone knocked on the door, and Respondent did not allow the person to come in, and was atypically abrupt with the person, which puzzled Hubbard because she always found Respondent to be very friendly. After the treatment, Respondent began rubbing her shoulders, caressing her, kissing her, and telling her how lonesome he was. Hubbard sat up, and she again reminded Respondent that he was married, but Respondent persisted in kissing her on the neck and trying to kiss her face, and rubbing up against her. Respondent laid on top of her and was "rubbing his privates" against her. Hubbard was aware that Respondent ejaculated, since he took her hand and put it into his pants so that she could feel it.

Hubbard did not immediately contact any authorities after the incident in the trailer. She did confide in a friend, but was ashamed to tell anyone else because she felt embarrassed, humiliated, and stupid because Respondent was able to do what he did. Hubbard didn't think she would be believed, since Respondent held a respected position in the community, although those were not Hubbard's exact

words.

Hubbard continued treatments with Respondent after the trailer incident. She was involved in litigation from her motor vehicle accident, and did not want to jeopardize that case by going public with this situation.

Idaho Code § 54-712(10)

Respondent's actions towards Hubbard are violations of the Chiropractic Practice Act, Idaho Code §54-712(10). Hubbard trusted Respondent with her chiropractic care, and placed her confidence in Respondent. She looked up to Respondent. By repeated instances of hugging and attempting to kiss Hubbard, discussing her personal life and ultimately engaging in the sexual acts in the trailer, Respondent abused that trust and confidence.

Idaho Code § 54-712(11)

Respondent's actions were violations of I.C. § 18-919:

1. Hubbard was a patient;
2. Respondent was a chiropractor;
3. Respondent was a "medical care provider" as he gained the trust and confidence of Hubbard for her examination and treatment, thereby gaining the ability to treat, examine and physically touch her;
4. Respondent touched Hubbard's groin area, an "intimate part" as defined in the statute, when he was lying on top of her;
5. Respondent's act of lying on top of Hubbard was for the purpose of sexual arousal, gratification and abuse, and was thereby "sexual

contact" as defined by the statute; and,

6. The sexual contact was clearly outside the scope of the medical examination and treatment.

Respondent's acts satisfy the elements of I.C. § 18-919, the statute proscribing sexual relations with a patient, a crime of moral turpitude. As a result, Respondent violated I.C. § 54-712(11).

Count Five

Jocelyn Petersen is a thirty-one year old married woman, with three children. Peterson moved to Post Falls in early June, 1997, from Oklahoma, after finishing a tour of duty with the United States Air Force. Peterson was in need of employment, and she learned that there was a job opening at Schwartz Chiropractic. She interviewed with Respondent, and took the position of chiropractic assistant on June 16, 1997.

Respondent also provided chiropractic treatment to Peterson beginning on June 23, 1997, with documented chart notes describing sixteen treatments through July 24, 1997, although her treatments continued long after. Peterson's personal case history form was dated June 17, 1997, and indicated her purpose in obtaining treatments was to have better health and relieve discomfort that had been present for five years.

Peterson's and Respondent's versions of the sexual relationship are both similar and wildly divergent. Both concede that there were at least sixteen incidents, perhaps somewhere between seventeen and twenty-five occasions of

oral sex or intercourse. Peterson claims that she was "forcibly raped" on sixteen occasions. Respondent claims that it was nothing more than an affair. The sexual behavior occurred initially at Respondent's home, and occurred frequently in Respondent's office during working hours.

Peterson claims that she continued working for Respondent because she needed the money, and that Respondent threatened to break her arms and her legs if she ever told anyone. Peterson thought that if she continued to be a hard worker, turn the other cheek, and treat Respondent with kindness, the sexual relationship would end.

Respondent produced a greeting card given to him by Peterson for Bosses' Day, and as late as February of 1998, Peterson wrote a Valentine's Day note to Respondent.

Perhaps Peterson's version has some basis in reality, however, it strains credibility to allege sixteen forcible rapes under any scenario. Undoubtedly Respondent was controlling, and Peterson may have felt she had to be subservient to his wishes, but it appears that the two entered into a sexual affair which lasted approximately eight months. During this time, Peterson also shared with Respondent intimate details of her relationship with her husband.

In February, 1998, there was an incident of domestic violence at Peterson's home, in which she told police that her husband had struck her after they had quarreled about his brother living with them. After summoning the police, the first person Peterson called was Respondent, who then came to her house and provided

support. Peterson says that what really happened was that she confessed the sexual relationship with Respondent to her husband, who became outraged and inadvertently struck her in his anger, and she feared that her husband would then pursue Respondent.

Idaho Code § 54-712(10)

Regardless of the exact nature of the relationship between Respondent and Peterson, there is no dispute that Respondent and Peterson had an extended sexual relationship during the time when a physician-patient relationship existed. Whether the relationship was at best consensual, and at worst controlling and exploitive by Respondent, or whether Peterson was an employee, does not excuse Respondent's conduct in light of IC § 54-712 (10). Peterson sought chiropractic care from Respondent, in fact it was a "benefit" of employment at Schwartz Chiropractic. Respondent's files demonstrate that Peterson was a patient, she completed a personal and medical history form prior to Respondent providing medical treatment, insurance information was supplied, and her progress was charted like any other patient. Peterson was having serious marital difficulties, and she shared the details of those problems with Respondent. Peterson needed the money from employment, and was pleased with her progressive increases in her rate of pay. Although the consensual nature of the relationship is apparent, Peterson was clearly in a position to be exploited by Respondent. There is no dispute that Peterson and Respondent were involved in a sexual relationship during the course of time that Respondent also provided chiropractic services to her. The

initiation and continuation of the sexual relationship with Peterson was an abuse and exploitation of the trust and confidence placed in Respondent by Peterson, and amounts to a violation of I.C. § 54-712 (10).

Idaho Code § 54-712(11)

Respondent's actions were obvious violations of I.C. § 18-919:

1. Peterson was a patient;
2. Respondent was a chiropractor;
3. Respondent was a "medical care provider" as he gained the trust and confidence of Peterson for her examination and treatment, thereby gaining the ability to treat, examine and physically touch her;
4. Respondent admitted an extended sexual relationship with Peterson, which included oral sex, and sexual intercourse; and,
5. The sexual contact was clearly outside the scope of the medical examination and treatment.

Respondent's acts satisfy the elements of I.C. § 18-919, the statute proscribing sexual relations with a patient, a crime of moral turpitude. As a result, Respondent violated I.C. § 54-712(11).

Count Six

Elinda Edgemon is a forty-nine year old divorced woman who was Respondent's patient from November 10, 1993, until November 21, 1995. Edgemon suffered from migraine headaches, and sought treatment from Respondent. Edgemon was referred to Respondent by her fiancé, Julius, who was

also a patient of Respondent. Julius and Respondent were friends, and hunted together.

Edgemon and Julius moved from California to North Idaho because Edgemon's daughter was living there, and was anticipating undergoing brain surgery, and Edgemon wanted to be near.

There was nothing untoward in Respondent's treatment of Edgemon until December of 1994. In December of 1994, just after an adjustment, Edgemon was dismounting the treatment bed and Respondent pulled her to him, put his arms around her, kissed her on the mouth, and attempted to put his tongue in her mouth. Edgemon did not return the kiss, but just stood there shocked by incident. Respondent then told her that it was a "Christmas kiss." Edgemon continued to see Respondent for treatment because, in her words, she "still trusted him as far as a doctor."

Edgemon did not tell Julius about the kiss, although she did confide it to her adult daughters. When asked why she didn't inform Julius, Edgemon explained that she did try to "feel him out" by mentioning Respondent's demeanor, in hopes of determining what his reaction might be, and Julius indicated that Respondent is "just like that," which did not provide Edgemon with sufficient confidence to divulge what had happened.

Edgemon describes a bizarre incident which occurred in March of 1995, during the course of a treatment. Respondent entered the room while Edgemon was laying supine on a treatment bed, and turned off the light. He then crawled up

on the bed, laid down on top of Edgemon, and began gyrating his pelvis on her vaginal area. Edgemon asked him what he was doing, and told him to stop and to get off of her, which he did. Respondent climbed off of the bed, and removed his pants and underwear. Edgemon was now off of the bed and standing near the wall of the room, and Respondent was in front of her, between her and the door. Respondent began fondling himself, and several times grasped Edgemon's hand and put it to his penis, and each time Edgemon withdrew her hand. Respondent asked Edgemon to perform oral sex, which she refused, and Respondent then ejaculated into a towel. Edgemon demanded that Respondent leave the room, which he did. Edgemon was very upset by the incident, and wondered how it might appear if someone had entered the room while this was going on. The situation was made even more bizarre since Julius was in the treatment room adjoining the one where the incident occurred. Respondent categorically denies this incident.

Edgemon returned for treatment, and states that she did so because Respondent effectively treated her pain. However, Edgemon testified that she never saw Respondent alone, and always insisted upon Julius being present, and instructed Julius not to leave the treatment room under any circumstances.

Edgemon did not report anything to the law enforcement authorities until she was contacted by Pete Marion. Edgemon's explanation was as follows:

> "Q. Why didn't you go to the police?
>
> A. I don't -- They wouldn't believe me.
>
> It's my word against his. I'm -- and, again,

Dr. Schwartz, he let you know that he was like on the City Council, Kiwanis, the police wouldn't believe me 'cause part of the policemen was his patients, who's going to believe a girl from California that just moved down here and then trying to slander a doctor.

Q. Did he tell you about all of these organizations?

A. Yes.

Q. Did he tell you that he had patients who were members of the police department?

A. Um-hmm.

Q. Was that a "yes"?

A. Yes. Yes."

Edgemon's testimony was more credible than the wholesale denial by Respondent. It is difficult to imagine how Edgemon could benefit from fabricating such a tale, and relating the same to police and to this Board, especially considering the embarrassing and humiliating nature of the incident. There is no evidence that Edgemon has a any financial interest in the matter, and given the dates of treatment, any statute of limitation for an action in tort would have passed.

Idaho Code § 54-712(10)

Respondent's actions toward Edgemon constitute a violation of the

Chiropractic Practice Act, Idaho Code §54-712(10). Edgemon, as did the other women who testified in this case, entrusted Respondent with her chiropractic care and placed her confidence in Respondent. Respondent abused that trust and confidence by kissing Edgemon in December, 1994, and by the sexual activities described by Edgemon which occurred in March, 1995.

Idaho Code § 54-712(11)

Respondent's actions were violations of I.C. § 18-919:

1. Edgemon was a patient;
2. Respondent was a chiropractor;
3. Respondent was a "medical care provider" as he gained the trust and confidence of Edgemon for her examination and treatment, thereby gaining the ability to treat, examine and physically touch her;
4. Respondent touched Edgemon's groin area, an "intimate part" as defined in the statute, when he was lying on top of her;
5. Respondent's act of lying on top of Edgemon was for the purpose of sexual arousal, gratification and abuse, and was thereby "sexual contact" as defined by the statute; and,
6. The sexual contact was clearly outside the scope of the medical examination and treatment.

Respondent's acts satisfy the elements of I.C. § 18-919, the statute proscribing sexual relations with a patient, a crime of moral turpitude. As a result, Respondent violated I.C. § 54-712(11).

Count Eight

The State alleges that Respondent provided chiropractic services from July 1, 1998 up until suspended on July 15, 1998 without properly renewing his license as required by IDAPA 24.0301.250, Rule 250 of the Board, which provides that licenses not renewed prior to July 30th of each year will be canceled. The exhibits demonstrate that Respondent's application was received by the Bureau of Occupational Licenses on July 14, 1998. The evidence is not entirely clear, however, the extent to which Respondent was actually providing chiropractic services between July 1, 1998 and July 15, 1998 when he was summarily suspended pending further proceedings, although there was one chart note for treatment of Langelier on July 6, 1998.

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, given the violations of the Chiropractic Practice Act.

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 30th day of October, 1998.

WES L. SCRIVNER
Hearing Examiner