BEFORE THE IDAHO STATE BOARD OF CHIROPRACTIC PHYSICIANS

ORIGINAL

In the Matter of the License of:	)	
	)	
DENNIS M. DIAZ,	)	Case No. CHI-P3C-01-00-015
License No. CHI-429,	)	
	)	**STIPULATION AND**
Respondent.	)	**CONSENT ORDER**
	)	

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WHEREAS, information having been received by the Idaho State Board of Chiropractors (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Dennis M. Diaz (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

The parties agree that the State would attempt to prove the following allegations at a hearing in this matter:

1. The Board may regulate the practice of chiropractic in the State of Idaho in accordance with title 54, chapter 7, Idaho Code.

2. Respondent is a licensee of the Idaho State Board of Chiropractors and holds License No. CHI-429 to practice chiropractic in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 7, Idaho Code.

3. On or about June 30, 2000, and July 6, 2000, B.G., an adult female, received chiropractic care from Respondent at his office located at 627 Sixth Avenue, Lewiston, Idaho.

4. During the course of providing treatment to B.G. at the July 6, 2000, appointment, Respondent made sexual advances and sexual contact with B.G., including, but not limited to, kissing, inappropriate massage of her breasts and groin area, inappropriate touching, and inappropriate sexual contact during an examination.

5. Criminal charges arising from Respondent's contact with B.G. on or about July 6, 2000, were filed against Respondent in Nez Perce County Case No. CR00-03586. The criminal complaint alleged that Respondent's acts violated Idaho Code § 18-919. On or about April 13, 2001, a judgment after plea of guilty was entered against Respondent for a violation of Idaho Code § 18-903, battery, and Respondent was ordered to:

a. Pay $300 fine plus court costs of $63.50;

b. Serve 90 days in jail, suspended;

c. Complete 100 hours of community service by June 29, 2001;

d. Pay community service cost of $60.00;

e. Complete one year supervised probation during which Respondent must (1) commit no crime, (2) pay restitution for victim's counseling up to $1,500.00, (3) pay probation supervision fees of $25.00 per month, (4) sign the probation agreement, and (5) obtain a psychosexual evaluation within 60 days of the sentencing date and follow any recommended treatment.

6. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of chiropractic, specifically Idaho Code §§ 54-54-712(10), (11), and (13) and constitute grounds for disciplinary action against Respondent's license to practice chiropractic in the State of Idaho.

5. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby agrees to the discipline against his license as set forth in Section C below.

B.

I, Dennis M. Diaz, by affixing my signature hereto, acknowledge that:

1. I have read the allegations pending before the Board, as stated above in section A and the Complaint filed in this case. I make no admissions in signing this document, but I acknowledge that, if proven, these allegations constitute cause for disciplinary action upon my license to practice chiropractic in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of chiropractic in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. License No. CHI-429 issued to Respondent Dennis M. Diaz is hereby suspended for a period of five (5) years from the date of entry of the Board's Order. Three (3) years of said suspension shall be stayed provided Respondent complies with the terms of this Stipulation. During the 2-year mandatory suspension period, Respondent shall not practice chiropractic in the State of Idaho.

2. Respondent shall pay to the Board an administrative fine in the amount of Two Thousand and No/100 Dollars ($2,000.00), with One Thousand and No/100 Dollars ($1,000.00) of said administrative fine stayed. The stay is conditioned upon Respondent's compliance with all of the terms of this Stipulation.

3. Respondent shall pay investigative costs and reasonable attorney fees in the amount of Two Thousand Nine Hundred and No/100 Dollars ($2,900.00).

4. The total of the costs, fees, and administrative fine is $3,900.00. Respondent shall make monthly payments to the Board for the payment of the administrative fine and investigative costs and attorney fees in twelve (12) equal installments of Three Hundred Twenty-five and No/100 dollars ($325.00) each, made payable to the Idaho State Board of Chiropractors via certified check or money order. The first installment shall be due and payable to the Board within thirty (30) days of the date of entry of the Board's Order. The remaining eleven (11) installments shall be postmarked no later than the last day of each calendar month thereafter. **Failure to make timely payments under this provision shall result in the immediate imposition of the remaining period of suspension and the initiation of default proceedings.**

5. Respondent shall attend and complete a minimum of twelve (12) hours of scientific clinics, forums, or chiropractic study each year during the two year suspension period from a provider or school, college, or university approved by the Board;

6. Respondent shall undergo individual counseling by a licensed mental health care provider with documented experience in treating sexual offenders at his own expense, which therapy shall address the circumstances giving rise to the allegations pending before the Board. Respondent shall provide a copy of this Stipulation to the licensed mental health care provider prior to treatment. Prior to beginning therapy, the Board must approve the proposed mental health care provider and the proposed treatment plan. Any proposed treatment plan must incorporate polygraph testing from a qualified polygrapher. During the course of therapy, the Board must receive quarterly progress

reports from the mental health care provider. Upon completion of all recommended treatment, the licensed mental health care provider shall prepare a thorough assessment of Respondent's course of treatment, prognosis, and also provide an opinion as to whether Respondent is able to function independently and/or safely as a chiropractor in private practice. Such assessment shall be forwarded to the Board for its review in consideration of any request for reinstatement.

7. Respondent shall execute a release of information allowing the Board to obtain access to any information it deems relevant to effectuating the terms of this order. A copy of the release is attached hereto.

8. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho that are not for three continuous months will not affect the three month period mentioned herein and would not trigger the requirement to notify the Board. Any period of time spent outside Idaho will not excuse compliance with the terms of this Stipulation.

9. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information in his control within a reasonable time after a request is made for such documents or information.

10. Respondent shall make all files, records, correspondence or other documents in his control available immediately upon the demand of any member of the Board's staff or its agents.

11. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

12. At the conclusion of the 2-year suspension period, Respondent will be eligible to apply to the Board for reinstatement. Provided Respondent has made a

showing of satisfactory completion of the requirements of Section C(2), (3), (4), (5) and (6) above, Respondent's license may be reinstated by the Board on a probationary basis. The Board retains discretion to determine the conditions of probation, if any, and may require as conditions of probation supervised practice, continued polygraph testing, and/or continued mental health counseling.

13. As part of its discretionary authority in Respondent's reinstatement process, the Board may take into consideration any criminal judgments of conviction entered against Respondent after the date of Respondent's execution of this Stipulation, including any withheld judgments and/or terms of probation.

14. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, the proceedings in this matter will continue. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint on file if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code §§ 54-712. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses or his designee shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337-50.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 22 day of August, 2001.

Dennis M. Diaz
Respondent

Approved as to form.

DATED this 23rd day of August, 2001.

By
Anthony C. Anegon
Of the firm, Attorneys for Respondent

I concur in this stipulation and order.

DATED this 29 day of August, 2001.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Kirsten Wallace
Kirsten L. Wallace
Deputy Attorney General

ORDER

Pursuant to Idaho Code §§ 54-712 and 713, the foregoing is adopted as the decision of the Board of Chiropractors in this matter and shall be effective on the 9th day of October, 2001. **IT IS SO ORDERED.**

IDAHO STATE BOARD
OF CHIROPRACTORS

By _____
Dennis Harper, D.C., Vice-Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October, 2001, I caused to be served a true and correct copy of the foregoing addressed and mailed as follows:

Anthony C. Anegon Aherin, Rice & Anegon 1212 Idaho St. P.O. Drawer 698 Lewiston, ID 83501-0698	X U.S. Mail, postage prepaid ___ Certified U.S. Mail, return receipt ___ Hand Delivery ___ Overnight Mail ___ Facsimile:_____ ___ Statehouse Mail
Kirsten L. Wallace Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	___ U.S. Mail, postage prepaid ___ Certified U.S. Mail, return receipt ___ Hand Delivery ___ Overnight Mail ___ Facsimile:_____ X Statehouse Mail

_____
Budd Hetrick, Deputy Chief,
Bureau of Occupational Licenses

AUTHORIZATION FOR RELEASE OF INFORMATION

I hereby authorize and direct any counselor, therapist, psychologist, or any other medical care provider, or a member of his staff, to release any and all records, reports, notes and/or information to the Idaho State Board of Chiropractors, to Kirsten L. Wallace, prosecuting attorney for the Idaho State Board of Chiropractors, or to such other representative of the Idaho State Board of Chiropractors as may be designated, for examination and for copying thereof, upon request for such records, reports, notes or information.

I further authorize any medical care provider, counselor, therapist, psychologist or other person who has such information, to consult with or discuss such information with any of the above named entities or persons.

I further consent that a photocopy of this authorization may be used in lieu of the original hereof.

DATED this 23 day of August, 2001.

Dennis M. Diaz

STATE OF IDAHO)
) ss
County of Ada)

On this 23rd day of August, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Dennis M. Diaz, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

SHEILA D. RHODES
NOTARY PUBLIC
STATE OF IDAHO

Sheila D. Rhodes
NOTARY PUBLIC FOR IDAHO
Residing at: Lewiston
My Commission Expires: 1-11-05