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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

RANDAL E. ARNOLD, D.C.
RESPONDENT.

Case No.: LS9909022CHI

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stats. §227.53 are:

*Randal E. Arnold, D.C.
331 Kentucky Street
Sturgeon Bay, WI 54235*

*Wisconsin Chiropractic Examining Board
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Chiropractic Examining Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Randal E. Arnold, D.C., Respondent, date of birth March 4, 1952, is licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the State of Wisconsin, pursuant to license number 1763, which was first granted August 19, 1982.
2. Respondent's last address reported to the Department of Regulation and Licensing is
331 Kentucky Street, Sturgeon Bay, WI 54235.
3. Respondent practiced as chiropractic at the Arnold Chiropractic Office (Office), Sturgeon Bay, WI 54235, at all times material to this matter.

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4. Ms. A became an employee of Respondent on April 8, 1985, when Ms. A was nineteen years of age. Ms. A

continued to be employed by Respondent at the Office from April 8, 1985, to January 26, 1998.

5. Respondent provided free chiropractic treatments to all employees of the Office, as a benefit of employment. Ms. A received treatments from Respondent, as follows:

1985: 15

1986: 38

1987: 10

1988: 11

1989: 15

1990: 10

1991: 2

1992: 3

1993: 15

1994: 13

1995: 13

1996: 9

1997: 23

1998: 3

6. Respondent was Ms. A's chiropractor from May of 1985 to January of 1998.

7. In 1993, while Ms. A was pregnant her feet became swollen. Respondent adjusted Ms. A's feet and ankles and when he finished the adjustment he kissed her feet.

8. Following the time of the birth of Ms. A's child in mid-1993, Ms. A was physically and emotionally drained. During that time Respondent gave Ms. A. hugs and told her how special she was.

9. On November 23, 1993, Ms. A wore a dress to work and Respondent commented that she looked nice. Later that day, Ms. A was at home while her husband received an adjustment from Respondent. Prior to the time Ms. A's husband could return home, Respondent called Ms. A and in a suggestive manner told her that she looked very nice and that he liked the way she looked every day.

10. The next day, Ms. A took her child to Respondent for an adjustment. At the conclusion of the treatment session, Respondent gave Ms. A a kiss and quickly left the room.

11. Over the next few weeks Respondent and Ms. A began talking with one another about non-work related topics. Respondent told Ms. A that he wanted more than a working relationship. Respondent made Ms. A feel very special.

12. By the end of 1993, Respondent and Ms. A, then 28, began a personal relationship that included sexual contact on several occasions over the next year. The sexual contact did not include sexual intercourse.

13. By the fall of 1994, Ms. A began to feel that Respondent was more interested in receiving something sexual from their relationship than caring about her. Respondent told her that he was never meant to be a one woman man.

14. On one occasion, Ms. A walked into Respondent's office and he was intentionally sitting with his penis exposed to her. Ms. A told Respondent that was inappropriate conduct. Respondent repeatedly wrote sexually explicit cards and notes to Ms. A and left them at her desk at the Office.

15. In April of 1995, Ms. A told Respondent that she no longer wanted the personal relationship with him, but she wanted to continue to work at the Office. Respondent resisted ending the personal relationship, but when Ms. A. insisted, he agreed to end the personal relationship and continue the work relationship.

16. From April of 1995 to January of 1998, Respondent made repeated unwanted romantic and sexual advances to Ms. A while both continued working at the Office. Among other things, Respondent: took and kissed her hand, held her hand, rubbed her leg, pressed himself against her and harassed her with comments or touches on an

almost daily basis.

17. In September of 1997, Respondent, Ms. A and two other office staff members went to Milwaukee overnight for a seminar. That evening, after they had all gone to dinner, they returned to the motel at which they all were staying. The other two staff members returned to the room they were sharing with Ms. A. Ms. A and Respondent did not return to their rooms because Ms. A wanted to take the opportunity to convince Respondent to stop pursuing her sexually.

18. During that discussion Respondent finally agreed to try to leave her alone at work. As they were returning to their rooms, Respondent grabbed Ms. A's hand and asked her to go to his room with him. He asked Ms. A to have sexual intercourse with him so that he could always remember what it was like. He promised that he would leave her alone, if she would have intercourse with him that night. Ms. A refused to enter Respondent's room and he then slammed the door in her face.

19. On January 26, 1998, at the end of the work day, Respondent told Ms. A that he was ending her employment at the Office because of changes in circumstances.

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20. Ms. B had been a patient of Respondent since April 24, 1988.

21. On January 3, 1996, Ms. B, who was then 34 years old, went to the Office complaining of pain from a lower back injury. Respondent examined and treated Ms. B.

22. Respondent provided evaluation or treatment of Ms. B's back injury in 1996, 1997 and 1998. The number of treatment sessions per year were:

1996: 125

1997: 83

1998: 33

23. In treatment sessions in March of 1996, Respondent began making comments to Ms. B regarding her personal appearance and invited Ms. B to Respondent's home for a sauna. Ms. B declined the invitation.

24. In April of 1996, Respondent told Ms. B that hugging would help Ms. B feel better and help with the pain from the injury. Respondent began hugging Ms. B at the end of treatment sessions. After several weeks of hugging Ms. B at treatment sessions, Respondent attempted, on several different occasions, to kiss Ms. B during treatment sessions.

25. In the late spring of 1996, Respondent did kiss Ms. B during treatment sessions and the kissing became passionate. Respondent began giving Ms. B back massages during treatment sessions, and told her that he was at her disposal. At a treatment session in May of 1996, Respondent told Ms. B that he wanted them to be "intimate friends."

26. Respondent began initiating intimate sexual contact with Ms. B at treatment sessions. Respondent told Ms. B that the sexual contact would "distract her pain." Respondent and Ms. B continued having intimate sexual contact, without intercourse, at treatment sessions through March of 1997.

27. On March 27, 1997, Respondent and Ms. B engaged in sexual intercourse for the first time. This incident took place at Respondent's home.

28. In April of 1997, Respondent and Ms. B had sexual intercourse at the Office during a scheduled treatment session for the first time. Sexual contact continued at treatment sessions and they had sexual intercourse at the Office during treatment sessions on three additional occasions.

29. In October of 1997, the Office was modified by removing the doors to treatment rooms. At Respondent's request, Ms. B began meeting Respondent at the Office on Saturdays when no one else was there and they had sexual intercourse there on several occasions.

30. Respondent continued his professional relationship and his sexual relationship with Ms. B until the end of May 1998, when Respondent's wife became aware of the personal relationship.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction over this matter pursuant to §446.03, Stats.

2. The Wisconsin Chiropractic Examining Board has authority to enter into this stipulated resolution of this matter pursuant to §227.44(5), Stats.

3. Respondent, by engaging in sexual contact with Ms. A while she was his patient, has committed unprofessional conduct as defined by Wis. Adm. Code § CHIR 6.02(7) and is subject to discipline pursuant to §446.03(5), Stats.

4. Respondent, by engaging in sexual contact with Ms. B while she was his patient, has committed unprofessional conduct as defined by Wis. Adm. Code § CHIR 6.02(7) and is subject to discipline pursuant to §446.03(5), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the license of Randal E. Arnold, D.C., to practice chiropractic in the state of Wisconsin is hereby SUSPENDED for a period of at least two years, effective 30 days from the date of this order.

2. The delegation of all adjunctive services, including x-ray examination procedures, preliminary patient histories, and physiological therapeutics, pursuant to § 446.02(7), Stats., by a licensed chiropractor to Respondent during the period of time that Respondent's license to practice chiropractic is suspended is limited as follows:

a. During the period that Respondent's license is suspended, Respondent does not have a valid license to practice chiropractic and is an unlicensed person, as defined by Wis. Adm. Code § CHIR 10.01(3), for purposes of delegation of adjunctive services by a licensed chiropractor.

b. Respondent shall provide a copy of this Final Decision and Order to every licensed chiropractor, prior to the time that chiropractor delegates performance of any adjunctive service to Respondent.

c. Any licensed chiropractor who elects to delegate the performance of any adjunctive service to Respondent retains ultimate responsibility for the manner and quality of the service which is delegated. [Wis. Adm. Code § CHIR 10.06.]

d. Respondent shall not accept the delegation of any physiological therapeutics for female patients, and shall not perform any physiological therapeutics involving female patients.

e. At all times that Respondent is performing any other delegated adjunctive service which involves a female patient, there shall be one or more other clinic personnel physically present in the room with Respondent and the patient.

f. The clinic personnel who was physically present in the room at the time of the delegated service shall legibly note in the patient's record that the individual was present in the room during the entire time of the delegated service and shall sign the note.

3. That Respondent may petition the Chiropractic Examining Board for the termination of the suspension, after two years, under the following terms and conditions:

a. Respondent shall, at Respondent's own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who have become involved sexually with patients.

b. The practitioner performing the assessment must have been approved by the Board, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.

c. Respondent must provide proof sufficient to the Board that Respondent can practice with reasonable skill and safety of patients and public.

d. If the Board determines to end the suspension, Respondent's license shall be limited in a manner to address any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.

ii. Additional professional education in any identified areas of deficiency.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.

e. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

4. If Respondent believes that the Board's refusal to end the suspension is inappropriate or that any limitation

imposed or maintained by the Board under paragraphs 2 or 3 is inappropriate, Respondent may seek a class 1 hearing pursuant to §227.01(3)(a), Stats., in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The suspension or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

5. Violation of any term or condition of this Order, or of any limitation imposed under paragraphs 2 or 3 above, may constitute grounds for revocation of Respondent's license as a chiropractor in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation imposed under paragraphs 2 or 3 above, the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 2nd day of September, 1999.

Terry K. Freitag, D.C.

Chairperson

Chiropractic Examining Board