FILE COPY

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
THOMAS J. HEINE, D.C. RESPONDENT	:	FINAL DECISION AND ORDER

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Thomas J. Heine, D.C.
555 W29956 Windcrest Drive
Waukesha, WI 53188

Chiropractic Examining Board
1400 E. Washington Avenue, Room 178
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 E. Washington Avenue, Room 183
P.O. Box 8935
Madison, WI 53708

A hearing was conducted in the above-captioned matter on August 3, 1988, at 1400 East Washington Avenue, Madison, Wisconsin. Respondent appeared in person and by Attorney Paul R. Erickson. Complainant appeared by Attorney Michael J. Berndt. At the hearing, the parties submitted a Stipulation as to Findings of Fact and Conclusions of Law executed by Dr. Heine, Mr. Erickson and Mr. Berndt. The purpose of the hearing, therefore, was to take evidence relating to the circumstances underlying the stipulated facts and to argue as to discipline, if any, to be imposed. The parties also submitted written arguments in the latter regard, with the last of these being received on September 13, 1988.

Based upon the Stipulation and upon other evidence of record herein, the Chiropractic Examining Board adopts as its final decision in the matter the following Findings of Fact; Conclusions of Law, and Order.

FINDINGS OF FACT

1. That the respondent, Thomas J. Heine, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 446, Stats., to practice as a chiropractor in the State of Wisconsin.

2. That the respondent's license is number 1349, issued on May 21, 1976.

3. That the respondent's address is S55 W29956 Windcrest Drive, Waukesha, Wisconsin 53188.

4. That from January, 1979, until May, 1982, Patient A was a patient of the respondent.

5. That when Patient A began seeing the respondent she was fifteen years of age.

6. That approximately one year after Patient A started seeing the respondent, the respondent kissed her and hugged her during the course of chiropractic sessions.

7. That at some later date, the respondent attempted to fondle Patient A's breasts during the course of a chiropractic session.

8. That during the period from March, 1981, until May, 1982, the respondent told Patient A he loved her and told Patient A about the possibility of a divorce from his spouse.

9. That consensual sexual contact occurred between Patient A and the respondent during chiropractic sessions on a regular basis from March, 1981, until May, 1982.

CONCLUSIONS OF LAW

1. That by engaging in the activities described above, the respondent has engaged in activities related to the practice of chiropractic which do not comply with accepted standards of practice in the profession contrary to Wis. Adm. Code sec. CHIR 3.04(8) (Register, July, 1979, No. 283).

2. That the board has jurisdiction to take disciplinary action against the respondent pursuant to sec. 446.03, Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the license of Thomas J. Heine, D.C., to practice as a chiropractor in the State of Wisconsin be, and hereby is, suspended for a period of one year, commencing 10 days from the date of the signing of this Order.

IT IS FURTHER ORDERED that the license of Thomas J. Heine, D.C., be and hereby is, limited in the following manner:

1) That Thomas J. Heine, D.C., undergo evaluation by a psychologist acceptable to the Board, for the purpose of insuring that rehabilitation is complete; that such evaluation be followed, as determined by the psychologist, by regular psychological therapy, with quarterly reports to the Board until the psychologist deems and reports to the

Board that rehabilitation has occurred, and that this report be followed by an independent evaluation by a second psychologist acceptable to the Board, verifying that indeed rehabilitation has occurred;

2) That for an indefinite period of time after the Respondent, Thomas J. Heine, D.C., returns to his practice, the Respondent must insure that a second person, either a female employe, an adult female relative of the patient, or the patient's spouse, be present in his presence with any female patient, and that all office staff be informed of this limitation.

FURTHER, IT IS ORDERED that Counts II through VII of the Complaint herein be, and hereby are, dismissed.

EXPLANATION OF VARIANCE

The Board having adopted the hearing examiner's proposed findings of fact and conclusions of law, declines to adopt the proposed order, but instead adopts an order which reflects the Board's belief that a moderately long suspension of the Respondent's license should consist of one year.

Further, the Board's decision to impose a one year suspension of the Respondent's license and to impose certain limitations, was based upon the seriousness of the facts in this case, the Board's responsibility to protect the public, the need to deter other licensees from similar behavior, the need to insure the Respondent's complete rehabilitation, and the Board's concurrence with the legal arguments of the complainant's attorney regarding discipline.

Dated at Madison, Wisconsin, this 28 day of March, 1989.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

BY: Meredith Bakke, D.C.
Meredith Bakke, D.C.
Chairman

MB:RJM:mkm
BDLS-434

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Chiropractic Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Chiropractic Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Chiropractic Examining Board.

The date of mailing of this decision is March 29, 1989.

WLD:dms
886-490

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST THOMAS J. HEINE, D.C., RESPONDENT.	: : : : :	REMAND ORDER AND MEMORANDUM

To: Paul R. Erickson
Gutglass, Erickson & Bonville, S.C.
Suite 600
700 North Water Street
Milwaukee, Wisconsin 53202-4267

Michael J. Berndt
Attorney-at-Law
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

On September 8, 1988 Wayne R. Austin, hearing examiner in this matter, issued a Proposed Decision with the Chiropractic Examining Board in which he recommended that the Board accept Stipulated Findings of Fact and Conclusions of Law and that the Board dismiss Counts II-VII of the Complaint pursuant to joint motions filed by the parties. The Board having reviewed the Proposed Decision and the record in this matter, renders the following Order and issues the following memorandum:

ORDER

IT IS HEREBY ORDERED that the hearing examiner's recommendations that the Board approve the stipulated Findings of Fact and Conclusions of Law and grant the motion dismissing Counts II-VII of the Complaint is not accepted and that the matter is REMANDED to the hearing examiner for further proceedings and consideration.

MEMORANDUM

In view of concerns for the protection of the public, the Board declines to accept the Stipulated Findings of Fact and Conclusions of Law and the request of the parties to dismiss Counts II-VII of the Complaint. The Board concludes that based upon the record, no reasonable basis exists to dismiss the counts, therefore it declines to dismiss the counts or to render a decision based solely on the stipulated Findings of Fact relating to Count I in the Complaint.

The record reflects that the allegations in the Complaint are serious, and, if true, dismissal of the allegations would not be in the best interest of the public. If the allegations are not true, the public has a right to know that too.

The Board is not bound by the Stipulation of the parties, refer to sec. 227.46(1), Wis. Stats., and sec. RL 2.12, Wis. Adm. Code, nor has it forfeited its right to deny the motion of the parties to dismiss Counts II-VII of the Complaint, 68 WiAG 30 (1979).

Dated at Madison, Wisconsin, this 18th day of November, 1988.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

By: Meredith H. Bakke, D.C.
Meredith H. Bakke, Chairman RWW

MHB:RWW:skv
HSP-74

BEFORE THE STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
THOMAS J. HEINE, D.C., RESPONDENT.	:	NOTICE OF FILING PROPOSED DECISION

To: Paul R. Erickson
Gutglass, Erickson & Bonville, S.C.
Suite 600
700 North Water Street
Milwaukee, Wisconsin 53202-4267

Michael J. Berndt
Attorney at Law
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Chiropractic Examining Board by the Hearing Examiner, Wayne R. Austin A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Chiropractic Examining Board, Room 174, Department of Regulation and Licensing, 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708, on or before October 14, 1988.

The attached Proposed Decision is the Examiner's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together with any objections and arguments filed, the Chiropractic Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 26th day of September, 1988.

Wayne R. Austin
Hearing Examiner

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
THOMAS J. HEINE, D.C. RESPONDENT	:	

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Thomas J. Heine, D.C.
555 W29956 Windcrest Drive
Waukesha, WI 53188

Chiropractic Examining Board
1400 E. Washington Avenue, Room 178
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Based upon the Stipulation and upon other evidence of record herein, the hearing examiner recommends that the Chiropractic Examining Board adopt as its final decision in the matter the following Findings of Fact and Conclusions of Law, which are the terms agreed upon and stipulated to by the parties; and adopt as well as the recommended Order.

FINDINGS OF FACT

1. That the respondent, Thomas J. Heine, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 446, Stats., to practice as a chiropractor in the State of Wisconsin.

2. That the respondent's license is number 1349, issued on May 21, 1976.

3. That the respondent's address is S55 W29956 Windcrest Drive, Waukesha, Wisconsin 53188.

4. That from January, 1979, until May, 1982, Patient A was a patient of the respondent.

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7. That at some later date, the respondent attempted to fondle Patient A's breasts during the course of a chiropractic session.

8. That during the period from March, 1981, until May, 1982, the respondent told Patient A he loved her and told Patient A about the possibility of a divorce from his spouse.

9. That consensual sexual contact occurred between Patient A and the respondent during chiropractic sessions on a regular basis from March, 1981, until May, 1982.

CONCLUSIONS OF LAW

1. That by engaging in the activities described above, the respondent has engaged in activities related to the practice of chiropractic which do not comply with accepted standards of practice in the profession contrary to Wis. Adm. Code sec. CHIR 3.04(8) (Register, July, 1979, No. 283).

2. That the board has jurisdiction to take disciplinary action against the respondent pursuant to sec. 446.03, Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the license of Thomas J. Heine, D.C., to practice as a chiropractor in the State of Wisconsin be, and hereby is, suspended for a period of 30 days, commencing 10 days from the date of the order of the Chiropractic Examining Board adopting the terms of this Proposed Decision.

IT IS FURTHER ORDERED that following the period of suspension, the license of Thomas J. Heine shall be limited for an indefinite period to require that any time Thomas J. Heine renders chiropractic treatment to a female patient in a closed treatment room, a female employee, an adult female relative of the patient, or the patient's spouse shall be present in the treatment room; and any time treatment is rendered to a female patient in a treatment room which is open to view, a female employee, an adult relative of the patient, or the patient's spouse shall be present in the immediate visual area of the treatment room.

IT IS FURTHER ORDERED that Counts II through VII of the Complaint herein be, and hereby are, dismissed.

OPINION

As set forth in the introduction to this Proposed Decision, the parties have agreed upon and stipulated to findings of fact and conclusions of law. Accordingly, the examiner, having accepted the Stipulation at the time of the hearing, need be concerned only with what discipline, if any, may be appropriate. While that task is never to be taken lightly, it is particularly daunting in this case because of the wildly divergent views of the parties in that regard. Respondent, in evaluating the stipulated facts and the circumstances in which they occurred, concludes that nothing more than a reprimand is justified. Complainant, evaluating those very same facts and circumstances, argues that respondent's license should be revoked. As fallback positions, respondent would apparently countenance a short suspension of licensure and complainant would apparently not seriously object to a minimum one-year suspension of licensure with conditions placed upon reinstatement. Even these compromise positions constitute considerably less than a consensus, however, and one is left to ponder whether the parties are in fact analyzing the same case. In one respect it is very possible that they are not. Complainant may well be approaching the question of discipline from the perspective of one unable to disregard the fact that this matter was commenced with the filing of a seven count Complaint. Respondent, on the other hand, would like to characterize the occurrences to which he stipulated as an innocent if unfortuitous romantic encounter. The examiner concludes that the seriousness of respondent's conduct, and accordingly the correct discipline to be imposed, lies somewhere between the respective positions of the parties.

Summarily stated, the facts of this case, as stipulated by the parties, are these: In January, 1979, patient A, who was at that time 15 years of age, became respondent's patient. By approximately one year later, respondent and patient A were kissing and hugging during chiropractic sessions, and at some later time, respondent attempted to fondle her breasts during the course of one such session. Finally, beginning in March, 1981, and until May, 1982, respondent and patient A engaged in "consensual sexual contact". During that same period, respondent professed his love for patient A and discussed with her the possibility of a divorce from his wife. Based on those facts and those facts alone, the parties have agreed that "respondent engaged in activities related to the practice of chiropractic which do not comply with accepted standards of practice in the profession."

Before discussing the significance of the foregoing facts from a disciplinary perspective, it is perhaps important to point out what is not involved in this case. First, there is no violation of section Chir 6.02(7) of the board's code prohibiting "engaging in sexual intimacies with patients in the office." That provision was not promulgated until December, 1984. Second, there is no finding and no evidence that the relationship was anything other than entirely consensual. Third, there is no finding and no evidence that there was any psychotherapeutic relationship so as to raise the specter of some transference phenomenon. Finally, there is no finding and no evidence that the affected patient suffered any harm as a result of the sexual relationship. Nonetheless, the parties have agreed and the examiner fully concurs that respondent's conduct did not comply with accepted professional standards. While the American Chiropractic Association's Code of Ethics is not legally binding on chiropractors, and while violation of that code is not therefore a basis for disciplinary action, the code is perhaps instructive in terms of accepted standards of practice within the profession. In speaking to the chiropractor's responsibility to the patient, Rule A(10) states that "Doctors of chiropractic should maintain the highest standards of professional and personal conduct and should refrain from all illegal or morally reprehensible conduct." Rule C(2) states in part, "Doctors of Chiropractic should by their behavior, avoid even the appearance of professional impropriety and should recognize that their public behavior may have an impact on the ability of the profession to serve the public." For a married Doctor of Chiropractic in his thirties to carry on a sexual relationship with a teenage female during the course of chiropractic sessions is the very antithesis of those principles, and must be considered a serious breach of the standards of practice in the profession.

In terms of what discipline appropriately addresses that breach, one must, as did both the parties, look to the objectives of licensee discipline. These include rehabilitation of the licensee, protection of the public, and deterring other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. State v. McIntyre, 41 Wis. 2d 481 (1969). Looking at rehabilitation first, there is considerable evidence in this record that significant reformative action has occurred. Respondent has remarried and has three children by his second marriage. He and his wife are active in their church and respondent has undergone counseling with both the church's pastor and Mark Tengler, a Christian counselor. In his offices, none of the treatment rooms have doors, and he employs his wife's mother, a registered nurse, to assist him and to be present in appropriate circumstances when respondent is treating female patients. Complainant suggests that these actions should not be accorded great weight in evaluating respondent's rehabilitation inasmuch as "they were made while Dr. Heine was functioning under the threat of license revocation." Instead, complainant argues that "rehabilitation may be best accomplished by the imposition of a harsh discipline." The psychological evaluation prepared by psychologist Walter J. Gleason also raises questions as to rehabilitation, referring to a "general system of denial of wrongdoing [reflecting respondent's] difficulty in accepting blame for his behavior." Of similar effect are the last two sentences of Dr. Gleason's report, where he states as follows:

Dr. Heine is under the influence of his pastor, his church and a Christian counselor and it is to be hoped that a combination of all three will in time result in a psychological conversion phenomenon. It is very difficult to predict what the psychological endpoint of this man may be but he has some very practical insights into the principles of professional practice he must maintain to keep his license.

Thus, while it appears to the examiner that respondent has made a substantial and sincere reformative effort, it is, as the psychologist's report suggests, difficult to conclude with any certainty that his rehabilitation is complete. Accordingly, considerations of rehabilitation and of public protection militate for an order which will help to ensure that those measures which respondent has already instituted to obviate any questions as to the manner in which he conducts his practice remain in place.

While the recommended limitations on respondent's office procedures perhaps adequately addresses the considerations of rehabilitation and public protection, the deterrence objective requires something more. Respondent is correct that the most effective deterrent against sexual activity with patients in a practice setting has already been accomplished by the promulgation of Wis. Stats. sec. Chir 6.02(7) prohibiting such conduct. On the other hand, for the board to take no disciplinary action other than the suggested limitations would do little or nothing to communicate to licensees the seriousness with which the board views the conduct in question. To the extent the board considers respondent's conduct to be intolerable, therefore, considerations of deterrence call for a moderately long suspension of respondent's license as well.

Dated at Madison, Wisconsin this 26th day of September, 1988.

Respectfully submitted,

Wayne R. Austin
Hearing Examiner

WRA:gad
BDLS-273