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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
WAYNE M. HIETPAS, D.C., RESPONDENT.	:	[Case No. LS 9609051 CHI]

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

Wayne M. Hietpas, D.C.
310 Fourth Street
Algoma, WI 54201

State of Wisconsin
Chiropractic Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing was conducted in the above-captioned matter on June 4, 5 and 9, 1997. The respondent, Dr. Wayne M. Hietpas, appeared personally and by his attorney, Michael S. Siddall, HERRLING, CLARK, HARTZHEIM & SIDDALL, Attorneys at Law, 800 North Lynndale Drive, Appleton, Wisconsin 54914. The complainant appeared by attorney, John R. Zwieg, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. A transcript of the hearing was prepared and filed on July 8, 1997.

The Administrative Law Judge (ALJ) filed his proposed decision on December 2, 1997. The Complainant filed Objections to the Proposed Decision on December 23, 1997. The Respondent filed Objections to the Proposed Decision on December 29, 1997, pursuant to an extension granted by the Chair of the Chiropractic Examining Board. Respondent filed a response to Complainant's Objections on December 30, 1997. Complainant filed a response to Respondent's original Objections on January 7, 1998.

The Board deferred consideration of the Proposed Decision from its January meeting to its meeting of February 5, 1998, to afford adequate opportunity to review the recently filed objections and responses of the parties. Consideration and action on the Proposed Decision was deferred again, because of inadequate quorum, to February 10, 1998. At the meeting of February 10, 1998, the Board took up consideration of this matter. In connection with its consideration of the Proposed Decision, the Board consulted with the Administrative Law Judge on his impressions of witness demeanor and credibility. The Board deliberated and took the following final action in this matter, accepting the ALJ's recommended findings of fact and conclusions of law, and modifying his recommended order only as to length of suspension.

On the basis of the entire record herein, the Chiropractic Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Wayne M. Hietpas, D.C., the respondent herein, date of birth July 17, 1967, is a doctor of chiropractic medicine licensed to practice chiropractic in the state of Wisconsin pursuant to license number 2929, which was granted February 19, 1993. Dr. Hietpas' last address reported to the Department of Regulation and Licensing is 310 Fourth Street, Algoma, Wisconsin 54201.

2. Patient 1 is a 36 year old female, who has been licensed as a certified public accountant since approximately 1992. In July, 1993, Patient 1 was involved in an automobile accident with her husband. Patient 1 suffered severe head lacerations, as well as neck, back and foot injuries.

3. In or about September 1993, Patient 1 sought chiropractic care for the pain resulting from her automobile accident injuries. Subsequently, Patient 1's chiropractor moved out of the area and Patient 1 decided to seek another chiropractor.

4. Dr. Hietpas first provided chiropractic services to Patient 1 on February 8, 1994 at his office in Algoma. Subsequently, Dr. Hietpas provided chiropractic services to Patient 1 on February 10, 11, 14, 17 and 19, 1994. During this time, Dr. Hietpas became aware that Patient 1 was experiencing emotional problems.

5. At some point prior to February 19, 1994, Dr. Hietpas came to suspect that Patient 1 was being abused by her husband. In fact, prior to and through the above dates, Patient 1 was subjected to physical and verbal abuse from her husband.

6. Patient 1 arrived at Dr. Hietpas' office for a chiropractic appointment at approximately 7:00 a.m. on the morning of Saturday, February 19, 1994. During the appointment Dr. Hietpas told Patient 1 that she was not responding to his treatment as he had anticipated and asked her if there were other issues bothering her. Patient 1 indicated that she

was having emotional difficulties as a result of verbal and physical abuse from her husband. Dr. Hietpas and Patient 1 then discussed the sources of Patient 1's emotional difficulties and Patient 1 was left with the impression by Dr Hietpas that her physical problems would not improve unless Patient 1's emotional problems were resolved. Dr. Hietpas told Patient 1 that he would attempt to find someone to help Patient 1 deal with these problems. Dr. Hietpas said his office would be closed by noon that day and that he could meet her for lunch to discuss her problems in more detail and what could be done to help her.

7. After the chiropractic appointment the morning of February 19, 1994, Patient 1 drove to her workplace in Sturgeon Bay, about a 30 minute drive from Algoma. During a telephone call later that morning, arrangements were made for Dr. Hietpas to pick up Patient 1 at her workplace for lunch.

8. Later that day, Dr. Hietpas picked up Patient 1 at her work place and drove to a restaurant in Baileys Harbor. During the ride, Dr. Hietpas told Patient 1 that the Kewaunee County Abuse Services might be a resource to assist her with spousal abuse problems. He indicated that he had contacted the Kewaunee County Police Department and that they would be contacting Patient 1 to arrange contact with the Kewaunee County Abuse Services.

9. During lunch Dr. Hietpas and Patient 1 continued their discussion of the assistance that might be available to her. They also discussed Dr. Hietpas' upcoming marriage the following Saturday, February 26, 1994, and his thoughts on his fiancee -- who was also a chiropractor -- joining him in his practice. During lunch, Patient 1 was emotionally distraught. Dr. Hietpas suggested that after lunch they go to Dr. Hietpas' home to further discuss her problems and to allow her a place to calm herself. Patient 1 agreed.

10. After lunch Dr. Hietpas drove Patient 1 back to her workplace to pick up her automobile. She followed Dr. Hietpas to his home, arriving there at sometime between 2:45 p.m. and 3:15 p.m. She parked her car on the street in front of his house. Once inside, Dr. Hietpas put on music and showed Patient 1 some wooden art work he was making to give to his wedding party. Dr. Hietpas also provided Patient 1 a tour of his home, including his upstairs bedroom.

11. While in the bedroom, Dr. Hietpas started kissing Patient 1. Patient 1 did not resist Dr. Hietpas' sexual advances. They engaged in sexual intercourse in the bedroom.

12. Dr. Hietpas thereafter stated that he had to leave to go sing at church. He and Patient 1 left his home, in their separate vehicles, at approximately 3:40 p.m.

13. Either later on the day of February 19, 1994, or the next day, Patient 1 related to her friend, Wanda, that Dr. Hietpas and she had engaged in sexual intercourse at his home.

14. Patient 1 began seeing a psychologist for her problems at the suggestion of her friend Wanda. During the first session on February 25, 1994, Patient 1 informed her psychologist that she had had an "affair", but did not provide the name of the specific person.

On April 13, 1994, Patient 1 informed her psychologist that Dr. Hietpas was the person to which she had previously been referring.

15. After February 19, 1994, Dr. Hietpas provided chiropractic services to Patient 1 on about 13 additional occasions, through an appointment on April 20, 1994. By correspondence dated May 11, 1994, Dr. Hietpas informed Patient 1 that he would be terminating the chiropractor-patient relationship.

16. Patient 1 separated from her husband in March, 1994, and subsequently divorced toward the end of that year.

CONCLUSIONS OF LAW

1. The Chiropractic Examining Board has jurisdiction in this proceeding pursuant to ch. 446, Stats.

2. Sec. 446.03(5), Stats., authorizes the Chiropractic Examining Board to take disciplinary action against a licensee who has engaged in unprofessional conduct. Sec. Chir 6.02(7), Wis. Adm. Code, defines unprofessional conduct to include: "Engaging in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient".

3. Dr. Hietpas, by virtue of his conduct described in the above Findings of Fact, has engaged in unprofessional conduct within the meaning of sec. 446.03(5), Stats., as defined within sec. Chir 6.02(7), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of respondent, Wayne M. Hietpas, D.C., to practice chiropractic in the state of Wisconsin shall be, and hereby is suspended for not less than two (2) years. The suspension shall be effective commencing thirty (30) days following the date of the Final Decision and Order of the Chiropractic Examining Board.

FURTHERMORE, IT IS ORDERED that respondent shall, prior to the termination of the suspension, obtain a psychological evaluation relating to the issues raised by the board's Findings of Fact in this matter, to be conducted by a psychiatrist or psychologist approved in advance by the board, who has assessed and treated health care professionals found to have engaged in sexual contact with patients. The evaluation may include recommendations for limitations to be placed upon respondent's chiropractic practice, including recommendations relating to psychotherapy. If the evaluation recommends limitations, the respondent shall submit to whatever recommended terms or conditions as may be adopted by the board.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed upon the respondent, pursuant to sec. 440.22, Stats.

EXPLANATION OF VARIANCE

The Chiropractic Examining Board accepts without modification all of the ALJ's recommended findings of fact and conclusions of law. The Board accepts all terms of the ALJ's recommended order, except that in the first paragraph of the order the Board has modified the minimum period of suspension as follows:

ORDER

> *NOW, THEREFORE, IT IS ORDERED that the license of respondent, Wayne M. Hietpas, D.C., to practice chiropractic in the state of Wisconsin shall be, and hereby is suspended for not less than ~~one~~ two (~~1~~ 2) years. The suspension shall be effective commencing thirty (30) days following the date of the Final Decision and Order of the Chiropractic Examining Board.*
>
> . . . .

The Board has increased the ALJ's recommendation for a minimum one year suspension of Dr. Hietpas's license to a minimum period of two years suspension, based upon the severity of Dr. Hietpas's unprofessional conduct demonstrated in this case.

In professional licensing matters, the purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis.2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis.2d 481, 485 (1969).

Dr. Heitpas "continues to absolutely deny he had sexual relations with the [patient]." (Respondent's Objections to Increasing Severity of Discipline, p.1.) and requests dismissal of the Complaint. (Respondent's Objections to Proposed Decision, p. 14.) The Board, as the ALJ of course, is persuaded otherwise by the evidence. As the alternative to his absolute denial, Dr. Heitpas argues that if the Board finds against him, the Board should not increase the severity of the discipline proposed by the ALJ, as urged by the Complainant. Instead, Dr. Hietpas argues for the opposite extreme, that is, reject all of the disciplinary measures the ALJ recommends and merely issue a reprimand, the minimum disciplinary measure possible.

In support of his objections regarding discipline, Dr. Hietpas points to a prior decision of the Board, *In The Matter of Disciplinary Proceedings Against Thomas Heine, D.C.*, in which the Board imposed a one year suspension where the chiropractor, Dr. Heine, had engaged in a year long consensual sexual relationship with a patient. The Board is of the opinion that Dr. Hietpas's misconduct is of categorically greater severity. This was not a boundary violation of any "lesser" or "moderate" character, such as a limited touching of a sexual nature, a mutually romantic relationship involving sexual relations, or a consensual sexual encounter with a patient, any of which constitute very serious unprofessional conduct to start with. The severity of Dr. Hietpas's conduct goes well beyond any of those. As stated by the ALJ in his Opinion:

This case involves extremely egregious conduct. Dr. Hietpas utilized his position of trust and authority as a health care provider to obtain sexual gratification from a patient. The record is clear that Dr Hietpas was aware that Patient 1 had been the victim of recent spousal abuse. He claimed to offer to find assistance for her. Ultimately, he invited her to his home upon a pretext of giving her a place to collect her thoughts, and took sexual advantage of her vulnerable state. The fact that Patient 1 may have been a willing participant at the time, or at least offered no resistance to his advances, is not a defense to the unprofessional conduct committed in this case.

The Board would add that the patient's submission to Dr. Hietpas in these circumstances, in her emotionally distraught and vulnerable state which Dr. Hietpas took advantage of, cannot be viewed as "consensual," nor as any mitigation in regard to discipline.

The facts as found by the ALJ, with which the Board fully agrees, compel the inference that Dr. Hietpas, observing an opportunity in his patient's vulnerable emotional state, manipulated the patient and orchestrated the circumstances toward his eventual seduction of her. He knew of the patient's emotional distress over the verbal and physical abuse she had endured from her husband, and had suffered again only the night before. He offered to meet with her for lunch to provide further support and assistance. He drove about twenty miles out of his way to her Sturgeon Bay office to pick her up for lunch, even though the patient would be driving home in his direction, through the doctor's town of Algoma. Then for lunch he took the patient out to Bailey's Harbor, another 30 to 45 minute drive farther out on the Door Peninsula, all of which is highly peculiar and elaborate for a meeting of a *chiropractor* with *his patient* to consider *social service type resources* available to address the patient's *domestic abuse crisis*. Amid their discussion, anguishing enough for the patient, about the spousal abuse problems the she had been suffering, Dr. Hietpas talked about his upcoming marriage and his fiancee, seemingly throwing salt on her wounds, as it were, to break her down further. Then, following up their Bailey's Harbor lunch, Dr. Hietpas invited her to his home, upon a pretext of offering a place to calm down and compose herself. There in his home he put music on, showed off gifts for his wedding party, and took her on a tour of his home which ended in his bedroom. Once in the bedroom, Dr. Hietpas made his advance and started kissing her and thereupon took sexual advantage of his patient.

As argued by the Complainant in its Objections, this was premeditated sexual predation by Dr. Hietpas upon a highly distressed and emotionally defenseless person, who was his patient. As her chiropractor, Dr. Hietpas essentially advised that he could not treat her physical problems unless she first resolved her emotional problems. As her doctor he elicited and gained her confidence and trust that he would help her end her marital abuse, thereby resolve her emotional distress, and in turn take care of her physical problems. Then, in ultimate abuse of his position as her chiropractor, and in ultimate abuse of her confidence, trust and vulnerability, Dr. Hietpas victimized his patient. In so doing, Dr. Hietpas violated the most fundamental tenet of the healing arts, to do no harm to another. Very few other types of professional misconduct can be deemed more serious.

In determining appropriate discipline, the purpose of deterrence is the paramount consideration in this case. A minimum one year suspension is inadequate to convey, as sufficient deterrence to the profession, the measure of the Board's disapproval and intolerance of the kind of reprehensible conduct in which Dr. Hietpas engaged. The suspension of not less than two years recommended by the Complainant in its Objections, while accepted and imposed herein by the Board, is nevertheless considered minimally adequate for deterrence purposes in view of the severity of the misconduct in this case.

In addition, as argued by the Complainant (Complainant's Objections, pp. 4-5), there is evident a lack of remorse inferable from Dr. Hietpas's denial, and a callous and indifferent attitude inferable from both the character of the misconduct and Dr. Hietpas's alternative plea for a mere reprimand, all of which raise substantial doubt as to the capacity for rehabilitation on the part of Dr. Hietpas. *State v. Fuerst*, 181 Wis. 2d 903, 915-16 (Ct. App. 1994). The minimum two year suspension imposed herein will afford Dr. Hietpas a greater opportunity to appreciate the severity of his misconduct and address and correct whatever factors contributed to his gross deviation from a fundamental standard of professional conduct for a doctor of chiropractic, or any health professional for that matter. The minimum two year suspension also provides greater protection to the public. During this greater period of suspension, patients will not be exposed to Dr. Hietpas and the risk of similar misconduct, and after two years there would be greater likelihood that Dr. Hietpas will have achieved, and can demonstrate to the Board's satisfaction, a level of rehabilitation sufficient to consider permitting him to return to the practice of chiropractic, upon conditions or limitations as may be appropriate for protection of the health, safety and welfare of patients and the public.

Dated this 4 day of March, 1998.

WISCONSIN CHIROPRACTIC EXAMINING BOARD

James L. Greenwald D.C.

JAMES L. GREENWALD, D.C., VICE-CHAIR

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST WAYNE M. HIETPAS, D.C., RESPONDENT.	: : : : :	NOTICE OF FILING PROPOSED DECISION LS9609051CHI

TO: Michael S. Siddall, Attorney
Herrling, Clark, Hartzheim & Siddall
800 North Lynndale Drive
Appleton, WI 54914
Certified P 221 159 532

John R. Zwieg, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Chiropractic Examining Board by the Administrative Law Judge, Donald R. Rittel. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. Your objections and argument must be received at the office of the Chiropractic Examining Board, Room 174, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before December 23, 1997. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Chiropractic Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Chiropractic Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 2nd day of December, 1997.

Donald R. Rittel

Donald R. Rittel
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
WAYNE M. HIETPAS, D.C., RESPONDENT.	:	[Case No. LS 9609051 CHI]

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

Wayne M. Hietpas, D.C.
310 Fourth Street
Algoma, WI 54201

State of Wisconsin
Chiropractic Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
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1400 East Washington Avenue
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Madison, WI 53708

A hearing was conducted in the above-captioned matter on June 4, 5 and 9, 1997. The respondent, Dr. Wayne M. Hietpas, appeared personally and by his attorney, Michael S. Siddall, HERRLING, CLARK, HARTZHEIM & SIDDALL, Attorneys at Law, 800 North Lynndale Drive, Appleton, Wisconsin 54914. The complainant appeared by attorney, John R. Zwieg, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. A transcript of the hearing was prepared and filed on July 8, 1997.

On the basis of the entire record herein, the administrative law judge recommends that the Chiropractic Examining Board adopt as its final decision in this proceeding, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Wayne M. Hietpas, D.C., the respondent herein, date of birth July 17, 1967, is a doctor of chiropractic medicine licensed to practice chiropractic in the state of Wisconsin pursuant to license number 2929, which was granted February 19, 1993. Dr. Hietpas' last address reported to the Department of Regulation and Licensing is 310 Fourth Street, Algoma, Wisconsin 54201.

2. Patient 1 is a 36 year old female, who has been licensed as a certified public accountant since approximately 1992. In July, 1993, Patient 1 was involved in an automobile accident with her husband. Patient 1 suffered severe head lacerations, as well as neck, back and foot injuries.

3. In or about September 1993, Patient 1 sought chiropractic care for the pain resulting from her automobile accident injuries. Subsequently, Patient 1's chiropractor moved out of the area and Patient 1 decided to seek another chiropractor.

4. Dr. Hietpas first provided chiropractic services to Patient 1 on February 8, 1994 at his office in Algoma. Subsequently, Dr. Hietpas provided chiropractic services to Patient 1 on February 10, 11, 14, 17 and 19, 1994. During this time, Dr. Hietpas became aware that Patient 1 was experiencing emotional problems.

5. At some point prior to February 19, 1994, Dr. Hietpas came to suspect that Patient 1 was being abused by her husband. In fact, prior to and through the above dates, Patient 1 was subjected to physical and verbal abuse from her husband.

6. Patient 1 arrived at Dr. Hietpas' office for a chiropractic appointment at approximately 7:00 a.m. on the morning of Saturday, February 19, 1994. During the appointment Dr. Hietpas told Patient 1 that she was not responding to his treatment as he had anticipated and asked her if there were other issues bothering her. Patient 1 indicated that she was having emotional difficulties as a result of verbal and physical abuse from her husband. Dr. Hietpas and Patient 1 then discussed the sources of Patient 1's emotional difficulties and Patient 1 was left with the impression by Dr. Hietpas that her physical problems would not improve unless Patient 1's emotional problems were resolved. Dr. Hietpas told Patient 1 that he would attempt to find someone to help Patient 1 deal with these problems. Dr. Hietpas said his office would be closed by noon that day and that he could meet her for lunch to discuss her problems in more detail and what could be done to help her.

7. After the chiropractic appointment the morning of February 19, 1994, Patient 1 drove to her workplace in Sturgeon Bay, about a 30 minute drive from Algoma. During a telephone call later that morning, arrangements were made for Dr. Hietpas to pick up Patient 1 at her workplace for lunch.

8. Later that day, Dr. Hietpas picked up Patient 1 at her work place and drove to a restaurant in Baileys Harbor. During the ride, Dr. Hietpas told Patient 1 that the Kewaunee County Abuse Services might be a resource to assist her with spousal abuse problems. He indicated that he had contacted the Kewaunee County Police Department and that they would be contacting Patient 1 to arrange contact with the Kewaunee County Abuse Services.

9. During lunch Dr. Hietpas and Patient 1 continued their discussion of the assistance that might be available to her. They also discussed Dr. Hietpas' upcoming marriage the following Saturday, February 26, 1994, and his thoughts on his fiancee -- who was also a chiropractor -- joining him in his practice. During lunch, Patient 1 was emotionally distraught. Dr. Hietpas suggested that after lunch they go to Dr. Hietpas' home to further discuss her problems and to allow her a place to calm herself. Patient 1 agreed.

10. After lunch Dr. Hietpas drove Patient 1 back to her workplace to pick up her automobile. She followed Dr. Hietpas to his home, arriving there at sometime between 2:45 p.m. and 3:15 p.m. She parked her car on the street in front of his house. Once inside, Dr. Hietpas put on music and showed Patient 1 some wooden art work he was making to give to his wedding party. Dr. Hietpas also provided Patient 1 a tour of his home, including his upstairs bedroom.

11. While in the bedroom, Dr. Hietpas started kissing Patient 1. Patient 1 did not resist Dr. Hietpas' sexual advances. They engaged in sexual intercourse in the bedroom.

12. Dr. Hietpas thereafter stated that he had to leave to go sing at church. He and Patient 1 left his home, in their separate vehicles, at approximately 3:40 p.m.

13. Either later on the day of February 19, 1994, or the next day, Patient 1 related to her friend, Wanda, that Dr. Hietpas and she had engaged in sexual intercourse at his home.

14. Patient 1 began seeing a psychologist for her problems at the suggestion of her friend Wanda. During the first session on February 25, 1994, Patient 1 informed her psychologist that she had had an "affair", but did not provide the name of the specific person. On April 13, 1994, Patient 1 informed her psychologist that Dr. Hietpas was the person to which she had previously been referring.

15. After February 19, 1994, Dr. Hietpas provided chiropractic services to Patient 1 on about 13 additional occasions, through an appointment on April 20, 1994. By correspondence dated May 11, 1994, Dr. Hietpas informed Patient 1 that he would be terminating the chiropractor-patient relationship.

16. Patient 1 separated from her husband in March, 1994, and subsequently divorced toward the end of that year.

CONCLUSIONS OF LAW

1. The Chiropractic Examining Board has jurisdiction in this proceeding pursuant to ch. 446, Stats.

2. Sec. 446.03(5), Stats., authorizes the Chiropractic Examining Board to take disciplinary action against a licensee who has engaged in unprofessional conduct. Sec. Chir 6.02(7), Wis. Adm. Code, defines unprofessional conduct to include: "Engaging in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient".

3. Dr. Hietpas, by virtue of his conduct described in the above Findings of Fact, has engaged in unprofessional conduct within the meaning of sec. 446.03(5), Stats., as defined within sec. Chir 6.02(7), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of respondent, Wayne M. Hietpas, D.C., to practice chiropractic in the state of Wisconsin shall be, and hereby is suspended for not less than one (1) year. The suspension shall be effective commencing thirty (30) days following the date of the Final Decision and Order of the Chiropractic Examining Board.

FURTHERMORE, IT IS ORDERED that respondent shall, prior to the termination of the suspension, obtain a psychological evaluation relating to the issues raised by the board's Findings of Fact in this matter, to be conducted by a psychiatrist or psychologist approved in advance by the board, who has assessed and treated health care professionals found to have engaged in sexual contact with patients. The evaluation may include recommendations for limitations to be placed upon respondent's chiropractic practice, including recommendations relating to psychotherapy. If the evaluation recommends limitations, the respondent shall submit to whatever recommended terms or conditions as may be adopted by the board.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed upon the respondent, pursuant to sec. 440.22, Stats.

OPINION

The respondent, Wayne M. Hietpas, is charged with having engaged in sexual intercourse with a female patient for whom he was providing chiropractic services. A chiropractor who engages in sexual contact with a patient has engaged in unprofessional conduct, pursuant sec. Chir 6.02(7), Wis. Adm. Code, and may be subjected to disciplinary action by the Chiropractic Examining Board under sec. 446.03(5), Stats.

More specifically, the Complaint in this proceeding alleges that Dr. Hietpas engaged in sexual intercourse with a female patient, referred to as Patient 1, at his home on Saturday, February 19,

1994. Dr. Hietpas denies the allegation, claiming that although Patient 1 expressed a desire for a romantic relationship with him at his home on that date, he declined her advances.

The factual background is as follows. In July of 1993 Patient 1 was involved in an automobile accident with her husband, Terry. She sustained injuries to the forehead, mid-back and foot. These injuries caused her substantial pain, for which she sought chiropractic care. For several months Patient 1 visited a female chiropractor. Subsequently, Patient 1 changed doctors, at least partially due to the fact Patient 1's chiropractor was moving her offices to a more distant location. She first received chiropractic services from Dr. Hietpas on February 8, 1994. One of her primary reasons for choosing Dr. Hietpas was because a close friend of hers was employed by Dr. Hietpas as a chiropractic assistant.

At the time of her initial visit to Dr. Hietpas, Patient 1 was 33 years old, married and had a 14 year old son and 9 year old daughter. She was and is a practicing certified public accountant. Patient 1 had had a very difficult childhood. Patient 1 grew-up in a dysfunctional family. According to Patient 1, her mother was an alcoholic and her parents divorced when she was 9 years old. Her mother was given custody, but after Patient 1 reported that her mother abused her, custody proceedings were held, at which Patient 1 was required to testify, and custody was transferred to her father when she was 14. At the age of 15, in around 1976, Patient 1 became pregnant by her later-husband Terry, and her family and Terry insisted that she have an abortion, which she did. In 1979, she married Terry. According to Patient 1, Terry emotionally and physically abused her throughout the marriage, including the February 1994 time period during which she was seeing Dr. Hietpas. Her marriage ended in divorce later that year, in December.

Patient 1 received services from Dr. Hietpas on about 20 different occasions, through and including April 20, 1994. Seven visits for chiropractic care were made from February 8, 1994 through February 19, 1994, the date Patient 1 alleges that she and Dr. Hietpas engaged in sexual intercourse at his home, and 13 visits were made after that date. [Exhibit 2]. Patient 1's last visit to Dr. Hietpas' office was on April 20, 1994. By correspondence dated May 11, 1994, Dr. Hietpas informed Patient 1 of his decision to terminate the chiropractor-patient relationship. [Exhibit 3].

On the day in question, Saturday, February 19, 1994, Patient 1 had an early morning appointment with Dr. Hietpas. During the appointment, Patient 1 was in physical pain and emotionally distressed. Patient 1 informed Dr. Hietpas that her husband had physically and emotionally abused her the evening before. Dr. Hietpas indicated that Patient 1 needed to resolve her emotional problems if she were to improve physicially. He said he would contact someone to assist Patient 1 with her situation at home. During the appointment they discussed meeting for lunch that day to further discuss the problems Patient 1 was experiencing. Patient 1 then left for her office in Sturgeon Bay, which was about 20 miles from Dr. Hietpas' office. The luncheon appointment was confirmed later by telephone, although it is disputed whether Patient 1 or Dr. Hietpas initiated the call. Dr. Hietpas drove to Patient 1's work place in Sturgeon Bay, picked her up and drove them to a restaurant about 30-45 minutes away in Baileys Harbor. Over lunch, Dr. Hietpas indicated that he had contacted an area police department for possible referrals to

assist Patient 1. They also discussed the upcoming marriage of Dr. Hietpas, which was planned for the next Saturday, February 26, 1994, as well as his fiancee -- who was, and is currently, also a chiropractor -- possibly joining his practice. During lunch, Patient 1 was emotionally upset and in physical pain. Dr. Hietpas suggested that Patient 1 needed to compose herself, and offered that she could come to his house for that purpose. Thereafter, Dr. Hietpas drove Patient 1 back to her workplace where she picked up her automobile and followed Dr. Hietpas to his home. They arrived there at around 2:45-3:00 p.m., according to Patient 1; 3:00-3:15 p.m., according to Dr. Hietpas.

Upon arrival, it is undisputed that Dr. Hietpas provided Patient 1 with a tour of his home, including his upstairs bedroom. Patient 1 claims that while in the bedroom, Dr. Hietpas kissed her and they proceeded to engage in sexual intercourse for about 30-45 minutes. Dr. Hietpas, however, claims that this did not occur; but rather, after they went back downstairs, Patient 1 told him that she "wanted him". He claims he told her that although he was flattered, he was committed to his fiancee who he was marrying the next weekend. According to Dr. Hietpas, Patient 1's reaction was one of being "disheartened" that he had rebuffed her advances. Both agree that Dr. Hietpas subsequently changed his clothes (although what he changed into is disputed), and left for church where he sang. Dr. Hietpas indicates he left for church about 3:40 p.m., which according to his timeline of having originally arrived between 3:00 and 3:15 p.m., he claims would not have provided sufficient time for him to have showed Patient 1 the house, engage in 30-45 minutes of sex, and dress to leave in time for church. However, even accepting Dr. Hietpas' time-line, it would have been "tight", but not impossible.

As is often the circumstance in cases of this nature, no one was present at Dr. Hietpas' home to observe what actually transpired between he and Patient 1. Accordingly, in such "word against word" cases, it is necessary to look to other areas in determining whether it is more likely than not that Dr. Hietpas engaged in the alleged sexual misconduct with a patient. The burden is upon the complainant to establish the affirmative on this question; and not upon the respondent to prove the opposite.

Complainant offers two primary areas of subsequent conduct by Patient 1 which are argued to be actions consistent with Patient 1's claims. One is that Patient 1 immediately informed a friend of the sexual encounter with Dr. Hietpas in a telephone conversation lasting about an hour. The other is Patient 1's statement on February 25, 1994 upon her initial visit to a psychologist less than a week after the events involving Dr. Hietpas at his home, that she had had an "affair"; subsequently naming Dr. Hietpas, specifically.

Complainant claims that Patient 1 told a friend of hers of the sexual contact with Dr. Hietpas, either the same day, or within a day or two after it occurred. Wanda DuChateau has known Patient 1 since they were both about 5 years old, were best friends throughout both grade school and high school, and currently live about 3 miles from each other. (Exhibit #6, pp. 11-12). They remain close friends. (Exhibit #6, p. 12). The deposition testimony of Wanda DuChateau was read into the hearing record (Trans., pp. 302-311), and is set forth in detail as follows:

Question: Can you tell me when that --
Answer: (Wanda DuChateau) I don't recall. These are all. We talked a lot about Dr. Hietpas. A lot about him.
Question: Well, did she tell you that she had sex with him?
Answer: She told -- she told me about that incident, yes.
Question: When did she tell you about that incident?
Answer: I would say it must have been very shortly after. If not the same day, if not the day after. I'm not sure because she had -- she was very excited or upset about it at that time. So I would imagine it was right then.
Question: But you don't know for sure?
Answer: No, I don't remember.
Question: Can you give me a month?
Answer: Oh, I would say we're talking either that day or the day after. Or the day after that. Within a matter of a couple days, if not that day.
Question: Okay. Could you give me a month?
Answer: Oh, could I give you a month? I'm not good with months and dates. I -- maybe July. It was a summer month.
Question: Okay. And could you tell me what year?
Answer: I would say about two years ago.
Question: July of '95?
Answer: It could be. There was a lot of things going on.
Question: '94?
Answer: I mean her divorce, the dates, and the fact that it's not just pertaining to me. It's hard to keep up other people's dates and times. And when they did things in their life, much less my own.
****
Question: What time of day was it?
Answer: I think it might have been late afternoon. I don't recall. I don't recall the times.
Question: And what makes you think that it was close in time to when it occurred, this conversation?
Answer: Because it wasn't like -- because the way she said it.
Question: Okay. Would it be accurate to say then, you think it was close in time to when the sex occurred, not because she told you that it was, but because of the way she presented it?
Answer: Yes.
Question: In other words, she didn't say it happened today or yesterday or two days ago.
Answer: Correct.
****
Question: When she told you about this sexual encounter, tell me what she told you? Now, this is in the telephone conversation, correct?
Answer: Correct.
Question: Were you at that time long distance or was it a local call?
Answer: I think that was a local call.
Question: Okay. From your house to her house was a local call?

Answer: Correct.
Question: Was she at home or at work?
Answer: She was, if I recall, at home.
Question: Okay. Do you recall what time of day it was? I think you told me late afternoon, you thought?
Answer: I think so. I --
Question: Tell me what was said?
Answer: She said my God, guess what happened. You'll never believe this. And I said what? And she said I had sex with the doctor, with Dr. Wayne, at his house. I can't believe that happened. And I said what? And she repeated it again. And she started repeating it again. **And I said, isn't he getting married next week, you know?** What do you -- it was a lot of her talking to me. She said that they went up to Door County, he stopped, had to get some money out of a Tyme machine. They went out to eat up north, up in Door County. Came back and went to his house. And she said that then he was all over her. And then they had sex or, they had sex and that she said -- and then he got up and went to church. Something on that order.
Question: What day of the week did this occur on?
Answer: I don't recall.
****
Question: Well, I just want to make it clear that she didn't tell you when it occurred, correct? In terms of the date?
Answer: Well, she called me. It was either that day when she got home, or the very next day. She didn't have to say today is Tuesday, I'm telling you. I mean, when I think back two years ago, I don't remember what day that was, but.
Question: She didn't tell you I had sex with him yesterday or today or last week, correct? . . . .Yeah, and she never told you a day or a date, correct?
Answer: Okay. She never said that I did that today, but there are some things I think you don't need to say. I mean if you were in a car accident and you came screaming in the building, you're not going to assume it happened last month. I mean it. It's just common sense.
Question: Was she upset?
Answer: Yes.
Question: Was she mad at herself? Was she mad at Dr. Hietpas? . . . . Who was she mad at? What was she upset with?
Answer: I think both.
Question: And how long did that conversation last?
Answer: Probably an hour.
Question: What else did she tell you during that hour conversation?
Answer: I don't -- I tried calming her down. She kept repeating it. And went over and over. We talked a long time. I -- I don't really know that. We just went over and over the same things, I guess.
Question: Did you give her any advice on that first conversation?
Answer: I don't know if I did or not.
Question: Do you recall?

> Answer: I thought maybe -- I thought maybe that he liked her. Or was in love with her. Maybe he thought he was. I didn't -- I had no idea behind the motivation of anything. **I was confused as to why he was getting married next week and that would happen.** And I was just -- I was confused about the whole thing, and I didn't really know what to say. I listened a lot. (Emphasis added).

The testimony is set forth in detail because it is Ms. DuChateau's discussion with Patient 1 which lends the most corroborative support for Patient 1's allegations, given that she claims it took place the same day, or a day after, the alleged events. Respondent points to the same testimony as being contradictory to Patient 1's allegations and internally inconsistent, in that Ms. DuChateau cannot recall the specific date, season or year that the conversation took place.

In my opinion, however, the most important aspect of Ms. DuChateau's testimony lies not in the fact she cannot precisely recall the date, season or year in which the conversation occurred; but rather, her recollection of the conversation in relationship to other relevant factors. Ms. DuChateau's recollection of the excited nature of Patient 1 during the telephone conversation is consistent with Patient 1 relating a very recent and extraordinary event: that being, having just engaged in sexual intercourse with Dr. Hietpas. Additionally, Ms. DuChateau is able to place the conversation at a time prior to Dr. Hietpas' impending marriage. She specifically recalls that Dr. Hietpas was to be married within a week after the conversation with Patient 1. Dr. Hietpas was married on February 26, 1994, which places the telephone conversation with Patient 1 during the prior week.

The fact that Ms. DuChateau does not otherwise recall the exact time of the conversation with Patient 1 is not to be unexpected. Recalling dates of events occurring in the lives of other people, especially when they occur approximately three years prior to providing testimony, can be an extremely difficult undertaking for those with even the best of memories. Here, Ms. DuChateau appears to have no motive for fabricating her conversation with Patient 1, and honestly admits that she is not only bad at remembering dates, but cannot provide one in this case. What is key to analyzing the veracity of Ms. DuChateau's testimony, is that she recalls the conversation as having taken place just prior to Dr. Hietpas' wedding, and her clear perception that Patient 1 was relating an event contemporaneous in time with their conversation.

Also tending to support Patient 1's allegations are subsequent comments she made to her psychologist. On or about February 25, 1994, less than a week after her visit to the home of Dr. Hietpas, Patient 1 began to see Dr. Dennis White. Although most of the visit concerned Patient 1's marital problems, including her husband's abuse, she offered to Dr. White that she had had "an affair". Subsequently, at their session on April 13, 1994, Patient 1 confided in Dr. White that the "affair" alluded to really involved her and Dr. Hietpas having engaged in sex.

The fact that Patient 1 initially referred to having had an "affair" does not lead to the conclusion that she is being untruthful about having had intercourse with Dr. Hietpas a week earlier. Clearly, Patient 1's testimony today alleges an isolated incident of sexual intercourse, and not an

affair. Nevertheless, given her state of mind at the time, her reference to having an "affair" can be seen as an attempt to provide Dr. White with an important fact surrounding her current mental state of affairs, without trusting him sufficiently to disclose the actual details of her sexual encounter with Dr. Hietpas.

Although an "affair" is an obvious mischaracterization of the sexual conduct with Dr. Hietpas, its significance is that Patient 1 did provide Dr. White with information that she had been sexually intimate with someone other than her husband. Patient 1's reluctance to more fully and accurately describe the event upon her initial visit with Dr. White is consistent with her general distrust of men, even professional men such as Dr. White, at that time. This distrust of men, as well as Patient 1's cautious approach toward trusting any male professional, is well evidenced in a journal which she subsequently kept at the request of Dr. White. In it, she constantly refers to herself in a highly self-deprecating fashion and utilizes frank, even vulgar language to describe her feelings toward men. [Ex. 1, pp. 20-211].

However, the fact that Patient 1 uses vividly stark language in her journal does not support respondent's claim that Patient 1 is fabricating her story. In fact, it is consistent with angry, "stream of consciousness" writings that might be expected from an individual who has been the subject of historic spousal and recent professional abuse, and who is attempting to reduce the resultant confusing and mixed emotions to writing at her therapist's suggestion. The fact that Patient 1 wrote angrily about Dr. Hietpas, and her relationship with men in general, appears to be the result of life-experiences, not any delusional nor hallucinatory state of mind.

It should also be noted that Dr. White's diagnosis of Patient 1 was depression, anxiety, reaction depression "and one could argue an additional diagnosis of posttraumatic stress disorder, which is really very much the same." [Ex. 18b, p. 138]. Respondent's expert, Dr. Ralph Baker, suggests that she may also suffer from a borderline personality disorder, and may be subject to paranoid tendencies that cause her to distort reality with respect to intimate relationships. However, Dr. Baker's testimony is based solely upon a review of Patient 1's medical records. In fact, Dr. White's additional diagnoses beyond depression were not testified to as reaching the requisite degree of medical probability or certainty, and appear to be essentially based on speculation. Additionally, while Dr. White has treated Patient 1 for 2½-3 years, Dr. Baker has not seen her professionally. Based upon these factors, Dr. Baker's testimony is not accorded any weight.

Finally, Patient 1 does not appear to have had any compelling motive for fabricating an allegation of having engaged in sexual intercourse with Dr. Hietpas. Her subsequent discussion with Wanda DuChateau and dealings with her psychologist, Dr. White, are consistent with her allegations that Dr. Hietpas and she engaged in sexual intercourse.

Dr. Hietpas indicates, however, that his conduct subsequent to Patient 1's visit to his home is consistent with his version of the event; that is, that he declined Patient 1's advances. Dr. Hietpas told his fiancee the following day that Patient 1 had made sexual overtures to him while in his house, whereupon his fiancee recommended that the events be immediately reduced to

writing in the event subsequent questions were raised. Dr. Hietpas had his secretary type up his version of the events. However, this conduct can be seen to be the result of Dr. Hietpas' coming to the immediate realization that his fiancee was going to find out about Patient 1's visit to his home, and that he would need a ready explanation if Patient 1 divulged what occurred. Dr. Hietpas' actions speak more toward the need for an instant and plausible explanation for having had Patient 1 in his home in the first place, and the events that transpired there, than they do of an accurate, contemporaneous description of events.

In my opinion, it is more likely than not that Patient 1 is telling the truth, and that she and Dr. Hietpas engaged in sexual intercourse.

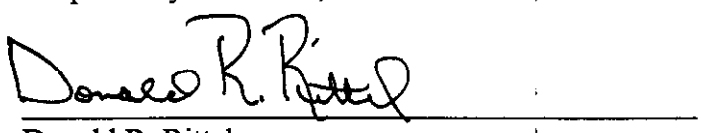
In reaching this conclusion, the final issue to be considered is the appropriate discipline, if any, to be imposed against Dr. Hietpas. In this regard, it must be recognized that the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis.2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis.2d 481, 485 (1969).

This case involves extremely egregious conduct. Dr. Hietpas utilized his position of trust and authority as a health care provider to obtain sexual gratification from a patient. The record is clear that Dr. Hietpas was aware that Patient 1 had been the victim of recent spousal abuse. He claimed to offer to find assistance for her. Ultimately, he invited her to his home upon a pretext of giving her a place to collect her thoughts, and took sexual advantage of her vulnerable state. The fact that Patient 1 may have been a willing participant at the time, or at least offered no resistance to his advances, is not a defense to the unprofessional conduct committed in this case.

Complainant recommended that Dr. Hietpas' license be suspended for a substantial period of time to be accompanied by a professional psychological assessment and appropriate limitation upon any restored license. In my opinion such discipline is an appropriate manner in which to deter other licensees from engaging in similar misconduct. It imposes a lengthy suspension which conveys a clear message to other licensees that such conduct will be dealt with strongly in order to deter others from following respondent's course of practice. The order also serves to rehabilitate respondent as well as protect the public through requiring a psychological assessment to be followed by any appropriate and necessary limitations upon respondent's future practice, should they be found to be required.

Dated this 2nd day of December, 1997.

Respectfully submitted,



Donald R. Rittel
Administrative Law Judge

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE CHIROPRACTIC EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Wayne M. Hietpas, D.C.,

Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On March 19, 1998, I served the Final Decision and Order dated March 14, 1998, LS9609051CHI, upon the Respondent Wayne M. Hietpas' attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 158 744.

Michael S. Siddall, Attorney
800 N. Lynndale Drive
Appleton WI 54914

Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me
this 19th day of March, 1998.

Daniel R. Rottel

Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: MICHAEL S SIDDALL ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 3/19/98 Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN CHIROPRACTIC EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935

FILE COPY

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Case # LS9609051CHI
WAYNE M. HIETPAS, D.C., RESPONDENT.	:	

On March 14, 1998, the Chiropractic Examining Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on March 30, 1998, the Chiropractic Examining Board received the *Affidavit of Costs* in the amount of $5,182.30, filed by Attorney John R. Zwieg. On March 25, 1998, the Chiropractic Examining Board received the *Affidavit of Costs of the Office of Legal Services* in the amount of $3,924.21, filed by Administrative Law Judge Donald R. Rittel. The Chiropractic Examining Board considered the affidavits on April 23, 1998, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of $9,106.51, which is 100% of the costs set forth in the affidavits of costs of Attorney John R. Zwieg and Administrative Law Donald R. Rittel, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by her to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before May 23, 1998, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Chiropractic Examining Board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached *"Guidelines for Payment of Costs and/or Forfeitures"* should be enclosed with the payment.

Dated this 23rd day of April, 1998.

CHIROPRACTIC EXAMINING BOARD

By: Terry K. Dietz, D.C.
A Member of the Board

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST WAYNE M. HIETPAS, D.C., RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS OF OFFICE OF BOARD LEGAL SERVICES (Case No. LS 9609051 CHI)

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Donald R. Rittel, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the state of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as the administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of this proceeding for the Office of Board Legal Services in this matter:

ADMINISTRATIVE LAW JUDGE EXPENSE
Donald R. Rittel

DATE	ACTIVITY	TIME SPENT
10/1/96	Conduct Hearing on Motion to Stay Proceedings	0.50 hours
10/4/96	Review arguments, prepare and issue Motion Decision	3.00 hours
10/28/96	Conduct Prehearing Conference; prepare Memorandum	0.50 hours
11/19/96	Conduct Prehearing Conference; prepare Memorandum	0.50 hours
3/19/97	Conduct Hearing on Motion to Compel Discovery	0.50 hours
4/17/97	Review arguments, prepare and issue Motion Decision	5.00 hours
6/3/97	Conduct Evidentiary Hearing	5.25 hours
6/4/97	Conduct Evidentiary Hearing	6.50 hours
6/9/97	Conduct Evidentiary Hearing	1.50 hours
	Review record; prepare Proposed Decision	24.00 hours
	TOTAL TIME SPENT	47.25 hours

Total administrative law judge expense for Donald R. Rittel,
47.25 hours @ $ 43.958 per hour, salary and benefits: $ 2,077.01

REPORTER EXPENSE
Magne-Script

ACTIVITY	COST
Attending and transcribing 6/3/97 Hearing	$ 814.70
Attending and transcribing 6/4/97 Hearing	$ 851.00
Transcribing 6/9/97 Hearing	$181.50

Total reporter expense for Magne-Script: $ 1,847.20

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES **$ 3,924.21**

Donald R. Rittel
Administrative Law Judge

Sworn to and subscribed before me
this 25th day of March, 1998.

Notary Public, State of Wisconsin
My Commission is permanent

1:\alj\costs\hietpas

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

WAYNE M. HIETPAS, D.C.,
RESPONDENT.

LS9609051CHI

AFFIDAVIT OF COSTS

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

John R. Zwieg, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed to practice law in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement.

2. That in the course of those duties I was assigned as a prosecutor in the above captioned matter.

3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above captioned matter.

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Hours	Minutes
2/21/95	Initial review and screening of complaint		30
6/23/95	Discussion w/ investigative staff		30
6/29/95	Ltr to Complainant		45
7/11/95	Discussion w/ investigative staff		15
10/11/95	Discussion w/ investigative staff		15
2/16/96	Discussion w/ investigative staff re' interviews of Complainant & Respondent and tele. conv. w/ Complainant	1	
2/19/96	Review of ltr from Atty Siddall & discuss w/ investigator		15
2/28/96	Discussion w/ investigative staff		15
3/6/96	Review of ltr from Atty Siddall; memo to records custodian re' request for complaint	1	
3/11/96	Tele conv with Atty Siddall & draft memo		30
3/13/96	Ltr to Atty Siddall; memo to investigator	1	15
3/18/96	Review of ltr from Atty Siddall		15

3/22/96	Tele conv w/ Atty Siddall & draft memo		30
3/28/96	Review of ltr from Atty Siddall & witness statement		45
5/2/96	Review of ltr from law firm of Hinshaw & Culbertson; memo to records custodian re' open records request		30
5/13/96	Discussion w/ investigative staff		30
5/23/96	Review of file & Primary Investigation Complete Summary	2	45
8/29/96	Tele conv w/ Complainant & draft memo		30
8/30/96	Review of file & draft Complaint & Identification of Patient	3	
9/3/96	Draft Notice of Hearing; arrange for ALJ & hearing date; ltr to Board Advisor; arrange for service of complaint; ltr to Atty Siddall w/ Notice of Hearing, Complaint & Identification of Patient; tele conv w/ Atty Murray & draft memo. Tele conv w/ Complainant; tele call to Dept. of Community Programs & draft memo; ltr to Complainant	2	15
9/5/96	(2) Memos to file re' direction to staff re' add'l investigative contacts; ltr to Atty Murray w/ Notice of Hearing & Complaint; ltr to Complainant		45
9/18/96	Preparation for & travel to and from Sturgeon Bay to interview Complainant & draft memo	8	
9/19/96	Review of memo/fax from Atty Siddall re' conflict with hearing date		15
9/20/98	Review of Respondent's Answer to Complaint		30
9/24/96	Review of Notice of Prehearing Conference		15
9/27/96	Review of ltr from Atty Siddall re' freedom of information act request. Memo to records custodian re' Atty Siddall's records request; review of Respondent's Notice of Motion & Motion to Stay Proceedings and Brief in Support of Motion to Stay		45
10/1/96	Ltr to Atty Murray. Prehearing conf. and argument on motion for stay.	1	15
10/7/96	Review of ALJ's Order Denying Motion to Stay Proceeding		30
10/9/96	Ltr to Complainant; review of ltr from Atty Murray		45
10/17/96	Preparation for prehearing conference and cancellation of conference.		30
10/18/96	Review of ALJ's Notice of Rescheduled Prehearing Conference		15
10/28/96	Preparation for & prehearing conference & draft memo; review of ALJ's Memorandum on Prehearing Conference		45
10/29/96	Review of Complainant's deposition in civil matter.	3	45
10/31/96	Review file and Draft Complainant's Preliminary Witness List	2	15
11/15/96	Review of ltr to ALJ by Atty Siddall re' rescheduling hearing		15
11/19/96	Prehearing conference re: Respondent's request for rescheduled hearing and memo.		30
11/20/96	Review of ltr from Atty Siddall re' discovery request; review of ALJ's Memorandum on Prehearing Conference		30

11/21/96	Review of ALJ's Notice of Rescheduled Hearing; ltrs to Complainant & witness		30
11/26/96	Review of Respondent's Designation of Witnesses		15
1/13-14/97	Draft Complainant's Response to Respondent's First Request for Production of Documents; preparation of exhibits and ltr to Atty Siddall	5	15
2/18/97	Review of ltr to ALJ from Atty Siddall & Notice of Motion and Motion to Compel Discovery & Affidavit in Support of Motion to Compel Discovery		30
2/28/97	Review of ltr from Atty Siddall & Defendant's Designation of Expert and Lay Witnesses		45
3/6/97	Review of ltr from Atty Siddall and Notice of Deposition re' Inv. Williams		15
3/19/97	Hearing on Motion to compel discovery		30
3/21/97	Tele conv w/ Atty Siddall & draft memo; ltr to ALJ		30
3/26/97	Review of ltr from Atty Siddall and Amended Notice of Deposition re' Inv. Williams		15
3/31/97	Review of ltr to ALJ from Atty Siddall		30
4/3/97	Review of ltr from Atty Siddall requesting ltr from Dr. White		15
4/4/97	Ltr to Atty Siddall w/ copy of ltr from Dr. White		15
4/9/97	Preparation for deposition of Inv. Williams and attend deposition.	1	30
4/10/97	Review of file; draft Complainant's Supplemental Response to Respondent's First Request for Production of Documents; preparation of materials and ltr to Atty Siddall; ltr to ALJ	2	
4/15/97	Review of file and draft Complainant's Final Witness List; ltr to Atty Siddall w/ Complainant's Final Witness List	1	15
4/18/97	Review of ALJ's Order Denying Motion to Compel Discovery	1	
5/2/97	Review of ltr to ALJ from Atty Siddall & Amended Defendant's Designation of Expert and Lay Witnesses		45
5/21/97	Review of ltr from Atty Siddall re' additional witness		15
5/22/97	Review of ltr from Atty Siddall; re: use of deposition of witness		15
6/01/97	Draft Complainant's Legal Memorandum in Support of Objection to Respondent's Introduction of Extrinsic Evidence to Attempt to Attack the Credibility of a Witness; preparation for hearing	7	30
6/2/97	Review of ltr from Atty Siddall & copies of depositions of Jan Nazi, Terry Vlies and James Voelker.	2	45
6/3/97	Preparation for and attending hearing	9	
6/5/97	Preparation for and attending hearing	9	
6/9/97	Preparation for and closing argument	3	45
12/3/97	Review of ALJ's Proposed Decision	1	30
12/5/97	Ltr to Complainant w/ copy of Proposed Decision & Notice of Filing		15

12/8/97	Ltr to Board Advisor w/ copy of Proposed Decision		30
12/15/97	Tele message from Board Advisor & draft memo		15
12/22/97	Review of ltr from Complainant		15
12/22-23/97	Draft Complainant's Objections to Proposed Decision; review of ltr from ALJ re' request for extension of time to file Respondent's objections to Proposed Decision	3	30
1/6/98	Review of ltr from Atty Siddall & Respondent's Objections to Proposed Decision & Respondent's Objections to Increasing Severity of Discipline	1	
1/7/98	Draft Complainant's Response to Respondent's Objections to Proposed Decision	3	15
1/8/98	Ltr to Complainant		30
2/11/98	Review of ltr to ALJ from Atty Siddall & Motion to Reopen Testimony; tele. conv. w/ Atty Siddall and discussions w/ investigative staff	1	15
2/12/98	Tele conv w/ Complainant & draft memo		45
3/2/98	Ltr to Atty Siddall		30
3/5/98	Review of ltr to Mr. Musial from Atty Siddall		15
3/19/98	Review of Final Decision, tele. conv. w/ Complainant and ltr to Complainant	1	15

TOTAL HOURS 103 Hrs. 0 Min.

Total attorney expense for 103 hours 0 minutes at
$41.00 per hour (based upon average salary and benefits
for Division of Enforcement attorneys) equals: $ 4223.00

INVESTIGATIVE STAFF EXPENSE

Date	Activity	Hours	Minutes
2/14/95	Tele conv w/ Complainant re' possible complaint & draft memo		45
6/15/95	Review of complaint; preparation of consents for release of information & ltr to Complainant		45
6/23/95	Review of ltr from Complainant; discussion w/ Atty Zwieg		30
7/11/95	Review of ltr from Complainant; discussion w/ Atty Zwieg		15
9/18/95	Ltr to Dr. White		15
10/11/95	Review of ltr from Dr. White; discussion w/ Atty Zwieg		15
2/12/96	Ltr to Respondent		15
2/14/96	Travel to Sturgeon Bay to interview Complainant; travel to Algoma to interview Respondent	9	
2/16/96	Discussion w/ Atty Zwieg; draft memos of interviews of Complainant & Respondent; conv w/ Complainant and Atty Flynn	2	15
2/19/96	Review of ltr from Atty Siddall; discussion w/ Atty Zwieg		15
2/20/96	Ltr to Atty Siddall		15

2/28/96	Review of ltr from Atty Siddall; discussion w/ Atty Zwieg		15
3/20/96	Ltr to Dr. White; attempts to locate witness (Dr. Mark)		30
3/22/96	Tele conv w/ Atty Flynn & draft memo		15
4/1/96	Review of progress notes from Dr. White re' Complainant		15
4/2/96	Tele conv w/ Ms. DuChateau & draft memo		30
4/24/96	Ltr to Complainant; review of ltr from law firm of Hinshaw & Culbertson	1	
5/13/96	Review of Complainant's response to request for add'l info; discussion w/ Atty Zwieg		30
5/22/96	Review of file and preparation of Case Summary	1	30
5/23/96	Preparation of Primary Investigation Complete Summary		45
6/3/96	Ltr to Atty Murray re' request for copy of civil complaint		30
6/12/96	Review of ltr from Atty Murray & Amended Summons and Complaint		15
10/18/96	Review of deposition of Respondent & draft summary	5	
10/30/96	Review of deposition of Complainant & draft summary	6	
11/21/96	Review of file; memo to file documenting Complainant contacts	1	
4/9/97	Deposition of Inv. Williams	1	30
5/16/97	Preparation of consents for release of information & ltr to Complainant		15
5/19/97	Review of ltr from Atty Murray & copies of deposition transcripts for (3) witnesses	1	
5/20/97	Ltr to Marriage & Family Therapy Center re' Complainant's medical records; preparation of consent forms		15
5/23/97	Review of deposition of witness & draft summary	2	
5/29/97	Review of ltr from Sturgeon Bay Chief of Police Nordin; review of Complainant's medical records from Marriage & Family Therapy Center		15
12/23/97	Ltr to Atty Siddall w/ Complainant's Objections to Proposed Decision		15
2/11/98	Discussion w/ Atty Zwieg; attempts to locate and tele conv w/ Complainant's sister & draft memo		45
TOTAL HOURS		39 Hrs.	15 Min.

Total investigator expense for 39 hours and 15 minutes at $20.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: $ 785.00

OTHER EXPENSES

2/14/96	Mileage to & from Sturgeon Bay and Algoma to interview Complainant & Respondent: 370 miles at 20¢/mile	$ 74.00
9/18/96	Mileage to & from Sturgeon Bay to interview Complainant: 350 miles at 20¢/mile	$ 70.00
4/9/97	Copy of transcript of Deposition of Dan Williams taken 4/9/97	$ 30.30
	TOTAL ASSESSABLE COSTS	$5,182.30

John R. Zwieg

Subscribed and sworn to before me
this 30th day of March, 1998.

Notary Public
My Commission is permanent

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Department of Regulation & Licensing

State of Wisconsin

P O Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416 hearing or speech
TRS# 1-800-947-3529 impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On March 14, 1998, the Chiropractic Examining Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $9,106.51 Case #: LS9609051CHI

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $ 9,106.51

The costs and/or forfeitures are due: May 23, 1998

NAME: Wayne Hietpas, D.C. LICENSE NUMBER: 2929

STREET ADDRESS: 310 Fourth Street

CITY: Algoma STATE: WI ZIP CODE: 54201

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

For Receipting Use Only

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

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Ch. 440.22, Stats.
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