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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

RICHARD L. HORAITIS, D.C.,

FINAL DECISION AND ORDER

RESPONDENT

LS0110121CHI

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

Richard L. Horaitis, D.C.

2998 Beechwood Ind Court

Hubertus, WI 53033

Wisconsin Chiropractic Examining Board

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

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

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

FINDINGS OF FACT

1. Richard L. Horaitis, D.C., Respondent, date of birth August 23, 1961, is licensed by the Wisconsin Chiropractic Examining Board to practice chiropractic in the state of Wisconsin, pursuant to license number 2931, which was first granted February 19, 1993.
2. Respondent's last address reported to the Department of Regulation and Licensing is 2998 Beechwood Ind Court, Hubertus, WI 53033.
3. During the time of the events of this matter, Respondent practiced chiropractic medicine at Richfield Chiropractic & Family Rehabilitation Center in Hubertus, Wisconsin.

COUNT I

4. Ms. A, who was then 21 years of age, received chiropractic services from Respondent on approximately 13 occasions, beginning July 7, 2000 and ending September 11, 2000, when she moved from the Hubertus area. Ms. A was referred to Respondent for treatment by her sister, Ms. B, who had received chiropractic services from Respondent.

5. Respondent's records indicate that on July 7, 2000, Ms. A's first appointment with Respondent, she presented

with persistent urinary tract infections, a history of kidney infections, a digestive disorder and back pain along with minor headaches.

6. During their initial session on July 7, Respondent took Ms. A's medical history, x-rays and performed muscle testing. During a subsequent session early in treatment, Respondent and Ms. A discussed details of Ms. A's life.

7. During the course of treatment, in addition to performing various adjustment techniques, Respondent provided Ms. A with nutritional suggestions and lifestyle/ergonomic recommendations. Respondent also counseled Ms. A regarding unresolved family stress issues and provided emotional support to assist Ms. A in finding better relief from past traumas that he believed were manifesting into physical illness.

8. At an appointment on August 21, 2000, Respondent performed adjustments on Ms. A and then surprised Ms. A by giving her a light kiss on the lips.

9. On August 25, 2000, Ms. A had a lengthy treatment session with Respondent. During the session, another patient arrived and Respondent asked Ms. A to wait for him in the massage room. Ms. A went to the massage room and laid on the massage table, fully clothed and covered by a sheet. Ms. A remained fully clothed and Respondent gave her a massage and they talked. Sometime during the session, Respondent kissed Ms. A on the lips, rubbed her bare stomach, pulled up her shirt and rubbed her between her shoulders.

10. On August 30, 2000, Ms. A presented to Respondent with mild abdominal tenderness that she had been experiencing for the past two days. Respondent assessed Ms. A's condition and performed various adjustment techniques and checked Ms. A's diet and sugar/carbohydrate intake. Sometime during the session, Respondent gave Ms. A a hug and while doing so, rubbed himself against her. Respondent also pulled up Ms. A's shirt, rubbed her stomach and back, and attempted to kiss her on the lips, using his tongue. Ms. A pulled away during his attempt to kiss her.

11. In the morning on September 1, 2000, Respondent invited Ms. A to stop by the office for a visit. Ms. A did so and immediately upon her arrival at the office, among other things, the following occurred:

- a. Respondent removed Ms. A's shirt and kissed and sucked her breasts.
- b. Ms. A rubbed Respondent's penis through his pants.
- c. Respondent expressed a desire to bring Ms. A to orgasm.

12. On Sunday, September 3, 2000, Respondent was completing paperwork at the office, which was closed and no other staff was present. Respondent called Ms. A and invited her to stop by for a visit. Ms. A did so and shortly after she arrived, among other things, the following occurred:

- a. Respondent and Ms. A french-kissed.
- b. Respondent removed Ms. A's clothing and licked her neck and breasts.
- c. Respondent slapped Ms. A's buttocks.
- d. Respondent placed his penis between Ms. A's breasts and ejaculated on her breasts.
- e. Ms. A questioned Respondent about whether he was violating his Hippocratic Oath by his actions. Respondent stated that he was not because he was not causing her harm.

13. On September 11, 2000, Ms. A saw Respondent for treatment for the last time. After performing a few chiropractic adjustments, Respondent kissed and hugged Ms. A and fondled her breasts.

COUNT II

14. Ms. B, Ms. A's sister, received chiropractic services from Respondent at various times from February 2, 2000, when she was 29 years old, until September 12, 2000. Ms. B saw Respondent for treatment of severe allergies and a variety of other health concerns that had not fully responded to previous methods of treatment. Ms. B was referred to Respondent by a homeopath who had been providing treatment to Ms. B and who was also a patient of Respondent. Respondent also provided chiropractic treatment to Ms. B's children.

15. During their first session on February 2, Respondent took Ms. B's medical history and performed an adjustment. Respondent and Ms. B also discussed many aspects of Ms. B's personal life. During the course of treatment, Respondent also counseled Ms. B regarding unresolved family stress issues and provided emotional support to assist Ms. B in finding better relief from past traumas that were manifesting into physical illness.

16. On September 4, 2000, Labor Day, Ms. B was concerned that her two-year-old daughter was getting a cold and wanted her to get an adjustment prior to the daughter's upcoming surgery. In response to Ms. B's call, Respondent encouraged Ms. B to meet him at the office that day.

17. Ms. B brought her daughter to Respondent's office. After Respondent performed the adjustment on Ms. B's daughter, Ms. B stood, holding her daughter, and talked to Respondent about vitamins. While they talked, Respondent leaned over and tried to kiss Ms. B. As Ms. B pulled away, Respondent followed her movement in an attempt to keep kissing her. Ms. B told Respondent to stop and she took her daughter to the car.

18. Ms. B came back and stood in the doorway of the office and chastised Respondent for trying to kiss her. Respondent told Ms. B that he had become attracted to her over the past couple of months and described ways in which he wanted to act on that attraction.

19. In approximately late September or early October 2000, Respondent called Ms. B at home and asked her if she would like to meet him after work for a drink so they could talk. Ms. B refused. Respondent continued to call Ms. B in an attempt to meet with her. This upset Ms. B and she avoided his calls.

20. One day while Ms. B was at home, Respondent tried calling her eight times. Ms. B did not answer the phone but noted his calls on her Caller ID. Ms. B's spouse called Respondent and told him to stop calling Ms. B.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction over this matter pursuant to § 446.03, Stats.
2. The Wisconsin Chiropractic Examining Board has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.
3. Respondent, by engaging in the conduct with Ms. A while she was his patient as set out in Count I, has engaged in practices which constitute a substantial danger to the health, welfare or safety of a patient, which is unprofessional conduct as defined by Wis. Adm. Code § CHIR 6.02(1) and is subject to discipline pursuant to § 446.03(5), Stats.
4. Respondent, by engaging in the conduct with Ms. A while she was his patient as set out in Count I, has engaged in sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, which is unprofessional conduct as defined by Wis. Adm. Code § CHIR 6.02(7) and is subject to discipline pursuant to § 446.03(5), Stats.
5. Respondent, by engaging in the conduct with Ms. B while she was his patient as set out in Count II, has engaged in practices which constitute a substantial danger to the health, welfare or safety of a patient, which is unprofessional conduct as defined by Wis. Adm. Code § CHIR 6.02(1) and is subject to discipline pursuant to § 446.03(5), Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Subject to paragraph 3, below, the license of Richard L. Horaitis, D.C., to practice chiropractic in the state of Wisconsin is hereby SUSPENDED for a minimum of twelve (12) months, effective 30 days from the date of this Order.
2. During the period that Respondent's license is suspended, the provision of Wis. Adm. Code § CHIR 4.07 shall apply and Respondent shall not do any of the following:
 - a. Perform any of the functions in s. Chir 4.03.
 - b. Have any professional contact with patients.
 - c. Be present in any chiropractic office, other than to receive care.
3. The suspension of Respondent's license shall end after the twelve month period, upon Respondent providing proof sufficient to the Board that:
 - a. Respondent has taken and completed a one day educational program addressing appropriateness of boundaries between health care professionals and their patients or clients. Respondent shall provide information about the program to the Board, or its designee, and receive approval from the Board, or its designee, that the program meets the requirement of this paragraph.
 - b. Respondent has, at his own expense, undergone an assessment by a mental health care practitioner or practitioners with experience in assessing health care practitioners who have become involved sexually with patients.
 - i. The practitioner or practitioners performing the assessment must have been approved by the Board or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the assessment being performed. Such approval shall not be withheld,

except for good cause, for any practitioner with experience in assessing health care practitioners who have become involved sexually with patients and who has been certified by the Wisconsin Sex Offender Treatment Network.

ii. The Division of Enforcement shall provide the assessor(s) and Respondent with those portions of the investigative file which the Division believes may be of assistance in performing the assessment. Respondent may provide the assessor(s) with any information Respondent believes will be of assistance in performing the assessment.

iii. Respondent shall authorize the assessor(s) to provide the Board, or its designee, with the assessment report and all materials used in performing the assessment and shall provide the Board, or its designee, and the Division with the opportunity to discuss the assessment and findings with the assessor(s).

c. The assessor(s) rendered opinions to a reasonable degree of professional certainty that Respondent can practice with reasonable skill and safety to patients and public.

4. If Respondent has complied with the requirements for the termination of the suspension, the Board may limit Respondent's license in any manner reasonably necessary to implement recommendations made by the assessment, including, but not limited to:

a. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist. Such approval shall not be withheld, except for good cause, for any practitioner with experience in treating health care practitioners who have become involved sexually with patients and who has been certified by the Wisconsin Sex Offender Treatment Network.

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

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

5. Following nine months of suspension, Respondent may provide the Board with proof of compliance with the requirements of the preceding paragraphs. If Respondent has provided the Board with the necessary materials within a reasonable period before a meeting of the Board, the Board shall consider the materials and determine at that meeting whether to end the suspension after twelve months and what, if any, limitations to place on the license. The parties shall be given notice and an opportunity to be heard at that meeting.

6. If Respondent believes that any refusal to end the suspension or that any limitation imposed by the Board is inappropriate, Respondent may seek a hearing pursuant to § 227.01(3), Stats. The suspension or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

7. Any request for approval of educational programs or assessors and payment of costs and evidence of compliance with the requirements to terminate the suspension shall be mailed, faxed or delivered to:

Department Monitor

Department of Regulation and Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708-8935

Fax: (608) 266-2264

8. Pursuant to § 440.22(2), Stats., costs of the proceeding in the amount of \$4,500.00 are assessed against Respondent and are payable to the Department of Regulation and Licensing. Respondent shall pay the costs of the proceeding within 12 months of the date of this Order. As required by § 440.22(3), Stats., the Board shall not lift the suspension until all costs are paid.

9. Violation of any term or condition of this Order, or of any limitation imposed under paragraph 4 above, may constitute grounds for revocation of Respondent's license as a chiropractor in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation imposed under paragraph 4 above, the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

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

Dated this 21st day of February, 2002.

Dale Strama, D.C.

Chairperson

Chiropractic Examining Board